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December 14, 2010

Hon. Barbara Gerrard, Supervisor, and
Members of the Town of New Castle Town Board
Town Hall
200 South Greeley Avenue
Chappaqua, NY 10514

Chappaqua Crossing

Dear Supervisor Gerrard and Members of the Town Board:

We write on behalf of SG Chappaqua B, LLC (“Owner”), in response to the remarks made and actions taken by the Town Board at its work session on November 30 with respect to our Chappaqua Crossing Project and the Final Environmental Impact Statement (FEIS) that the Owner has submitted to you in connection with that Project’s long-delayed approval.

As explained below, not only were those remarks and actions unwarranted -- and a major disservice to the Owner -- but they misled the public about the Project, abused SEQRA’s environmental review process for improper purposes and demonstrated that the Town’s leadership appears to have joined with those who by their actions seek to preserve the Town’s exclusionary past while undermining the viability of its largest commercial property and frustrating the Town’s stated goals of providing needed market rate housing for seniors, affordable housing for families and expanded recreational facilities for all Town residents. Beyond its damage to the community, that course will also expose the Town to large liabilities for tax refunds and damage claims by an Owner who has tried for more than five years to work with the Town to reuse an extraordinary property that now lies nearly vacant in the heart of your community, in large part because the Town has refused to permit it to be used appropriately for either commercial or residential purposes.

When we arrived for your November 30 work session, we learned that the Town Board and its counsel were in executive session, though there was not then any pending or threatened litigation against the Town concerning our Project. When the public portion of the work session was finally convened at 8:45 AM, the Supervisor asked the Town Attorney to read a proposed resolution. The draft resolution took pains to recite, unnecessarily, the lengthy history of the FEIS and then instructed the Town’s attorneys and consultants to work with the Owner to complete an FEIS on which the Owner’s attorneys and consultants were already working with

the Town's representatives. Indeed, that work had progressed to the point that, as noted by the Supervisor and the Town Attorney at the Town Board's previous work session, only relatively minor revisions were required to complete the document (those revisions were awaiting the receipt of comments from the Town's own consultants and staff). "The salami," said the Town Attorney at that time, "is getting sliced increasingly thin" as the document neared completion.

It was only after the Supervisor began listing the Town Board's "concerns" to be incorporated by reference that the purpose of the new resolution became clear -- to provide a pretext for delaying yet again approval of the FEIS and action on the Project by the Town Board. The Board's new concerns were a litany of complaints against the Project that mirrored, at times verbatim, the objections of the Project's die-hard opponents from the earliest public hearings on the draft Scoping Document in the fall of 2007, objections that had long-since been answered by the Owner in both the Draft Environmental Impact Statement of March 2009 and the FEIS itself and that had not previously been expressed by the Town Board in its numerous comments on either the March 2010 or July 2010 FEIS drafts or on the final FEIS submission of October 2010.

What had happened, clearly, was that the Town Board members, stung by the venom of Project opponents, had simply reversed course and decided to abuse their role as SEQRA lead agency to rewrite the FEIS at the last moment, not to more accurately assess environmental impacts, but to reflect their new-found belief that the Project was a fundamental threat to the community.

And what a threat it is! Chappaqua Crossing has the temerity to propose (1) eliminating commercial leasing restrictions that hamstring the Town's most important taxpaying property; (2) building market-rate residential units that will meet an identified community need and provide substantial tax revenues to the Town and School District with little or no new service requirements; (3) constructing, without cost to the Town, more affordable housing units than the Town has built in the last decade; (4) donating 6.5 acres of prime land to the Town for recreational or other municipal use; (6) providing traffic improvements to relieve existing conditions at a congested intersection near its property; and (7) doing all of the above through a high-quality residential and commercial design that responds fully to Town Board comments and requests over the past two years and is expected to provide millions of dollars of additional annual revenues to the Town, the School District and the County.

Nor do the Town Boards' stated concerns stand up when examined. For example:

1. Commercial Space: The Supervisor first asserted that the Project reduced the site's commercial space in a manner that is inconsistent with the Town Board's goal of maximizing commercial space on this site. In fact, the Owner's Modified Project preserves, at the Town Board's specific request, the site's 600 Building, as well as Buildings 100 through 500, for a total of 662,000 square feet, and proposes to demolish only the vacant 700 Building, which has 10,000 square feet, and several smaller support buildings.

More importantly, because of the Town Board's failure to act on the Owner's three-year old petition to remove senseless and obsolete restrictions on leasing commercial space, the

existing office space is now more than 80% vacant (following the final departure of Reader's Digest last week) and in default under the existing zoning requirement that at least one tenant occupy 200,000 square feet of commercial space. Moreover, as the Town Board is aware, the Owner is prepared, following approval of the overall Project, to make substantial investments to improve and reposition the site's commercial space to make it more competitive in the Westchester market. The Town Board's decision to delay and rewrite the FEIS will delay and threaten these investments and, by so doing, undercut further the Board's professed concern for commercial use of the site.

2. Commercial Parking: The Supervisor also complained that the Project did not provide sufficient commercial parking, including parking for possible expansion of the site's commercial use. This, however, was a transparent attempt (following suggestions by one Planning Board member) to use the pretext of commercial parking to reduce any residential use of the site. In fact, the site's existing parking spaces are largely unutilized, and the Owner has proposed to institute a Parking Management Plan (to be approved by the Planning Board) that would not only encourage ride-sharing, van pooling and transit usage (which the Town Board has previously encouraged), but would also require the Owner to monitor and demonstrate on an on-going basis that its parking facilities are adequate to meet tenant needs.

The Owner has also included in the FEIS, as requested by the Town Board, illustrative plans showing how the number of commercial parking spaces could easily be increased (if necessary) by utilizing the 6.5 acres of the site that the Town has insisted be donated to it for future recreational use. (If the Town Board now prefers that these 6.5 acres be retained by the Owner for office parking, the Owner will be happy to oblige.) The Owner has also explained that "shared parking" between commercial and residential users of the site is not feasible because the residential parking spaces have been designed to meet Town code requirements, cannot be assumed to be available for office employee parking and are required to make the residential units marketable.

3. Railroad Station Parking: Several Town Board members stated that the Owner had failed to deal adequately with the potential increased demand for railroad station parking spaces. However, the FEIS includes, as requested, an updated survey of that parking lot's utilization and includes the Owner's specific commitment to provide peak hour jitney service (similar to that provided historically by Reader's Digest) to and from the railroad station (and hamlet stores) for Project residents and office employees. Expansion of the existing station parking lot (if desirable at all) to meet overall community need is not a responsibility of the Owner and, indeed, would likely encourage more, not less, traffic in the hamlet and surrounding street network.

4. Residential Density: As the Town Board knows full well, the original residential density proposed for Chappaqua Crossing was 348 units. The current application's Proposed Action includes 278 units (including 56 affordable units), less than the density permitted by the Zoning Code for the proposed MFPD district, and less than half the density permitted by the Code when applicable density bonuses (such as those for senior and affordable units) are taken into account. The Modified Project included in the FEIS has a density that has been further reduced to 199 units at the specific request of the Town Board during preparation of the FEIS.

Since both of these density figures are far below that contemplated by the MFPD provisions of the Zoning Code (and have absolutely no adverse impacts on either the environment or any municipal services), it is disingenuous in the extreme for the Town Board now to complain about this level of residential density.

5. Residential Buildings: The Town Board also reversed course to criticize the location of both the North Village and East Village residential components of the Project. The North Village was said to be too high (more than 35 ft) and inconsistent with the area's character and viewshed, even though the North Village area is not currently visible from off-site locations studied in the FEIS, and the North Village units would have little or no visibility from any off-site location, except perhaps for very fleeting glances from a passing car on the Saw Mill River Parkway in winter months. Moreover, as the Town Board members are aware from the Owner's earlier presentations of the revised North Village plans -- which reduced the density of the North Village substantially and confined its footprint to previously disturbed areas, as requested by the Town Board -- the slightly increased height of those units is intended to provide easily accessible parking for residents of those units (without any visual impact for neighbors) and to reduce the extent of earthwork in the area also as requested by the Town Board. The East Village, which was also redesigned to meet Town Board comments, was now said to be sited in an entirely unacceptable location that is a threat to the site's "natural corridor" and "habitat connectivity," notwithstanding the obvious fact that this portion of the site is largely either a paved driveway or mowed lawn at present and that neither the East Village nor any other portion of the site threatens "habitat connectivity."

6. Affordable Housing: Of all the Town Board's resurrected "concerns" about the Project, the one that rings most hollow is the feigned complaint that the Project does not provide enough affordable housing. This is, after all, a community with one of the highest average household incomes in the nation that has managed to build three -- three! -- units of affordable housing since 2000, despite its role in the 1975 Berenson decision (which led to the adoption of the Town's MFPD zoning district), the allocation to the Town of 258 affordable units by Westchester's Housing Opportunity Commission and the identification as one of the designated communities where the County is required to use all of its authority to insist on fair and affordable housing pursuant to the Stipulation settling the federal litigation in Anti-Discrimination Center v. Westchester County. The Owner has attempted to help the Town meet some of these obligations by proposing to build, at its expense, 278 units of largely senior housing, including 56 units of affordable housing. In response to public pressure, the Town Board insisted that the Owner reduce the number of residential units below 200, understanding full well that to do so the Owner would also need to reduce the percentage of affordable units in its Project, particularly when it was facing the loss of Reader's Digest as a commercial tenant and a demand from the Town for a donation of 6.5 acres of land for a future ballfield.

The indefensible nature of the Town Board's position is put into bolder relief by its members' comments that, come to think of it, the Project site is not really appropriate for MFPD zoning anyway. The Board's reasons for this about-face, never expressed in its comments on previous FEIS submissions, track the claims of Project opponents that all multifamily housing, not to mention affordable housing, belongs in the Chappaqua Hamlet, not adjacent to the B-RO-

20 business zone, where neighbors or passing motorists might glimpse such housing . If this is so, and we firmly believe it is not, on what theory does the Town Board now demand more affordable units on a site that it believes is inappropriate for that housing? The implication is clear that the Town Board is now simply grasping for whatever argument it finds convenient to justify its refusal to face up to both its legal obligations to the Owner and its legal and moral obligations to the broader public.

In fact, the zoning code provides for four different multifamily districts: Multifamily Residence District-Chappaqua (MFR-C), Multifamily Residence District-Millwood (MFR-M), Multifamily Planned Development District (MFPD), and Multifamily Designed Residential Developments (MFDRD). Both of the MFR Districts provide for high density multifamily development specifically “in or adjacent to the business center of the Chappaqua Hamlet” and “in and around the center of the Millwood Hamlet.” Notably, the MFPD requirements are more flexible since the location is not specifically required to be within the hamlets. Application of new MFPD zones is left for future determination, and the focus is on medium density near regional roadways and services and with utility infrastructure to support the development. As we noted in the FEIS, Chappaqua Crossing is considered “medium density”(as defined in the TDP) and the site is appropriate for medium density residential since it is within close proximity to the Chappaqua hamlet, Town services, schools and the train station, as well as having the infrastructure to support the proposed residential density. At 3.2 units per acre, the density of the FEIS’ Modified Project is less than Pheasant Run, Stone Creek, and Old Farm Lake.

7. County Sewer District Extension: There is also the matter of the Town Board’s double-talk on the County sewer district extension. The Owner has made clear from the outset that its Project requires County approval for an extension of the Saw Mill River Basin Sewer District. Indeed, the Town Board has required the FEIS to include an analysis of alternatives without such an extension. As you know, the Owner has met with the County to discuss such an extension (the Supervisor and Town Attorney were in fact present at that meeting). The Owner believes that, precisely because the Project includes affordable housing paid for entirely by the Owner, there are favorable prospects for such an extension, something the Town Board has in the past encouraged the Owner to pursue in the explicit hope that similar relief might also be available (with the Owner’s assistance) for several existing Town subdivisions. For the Town Board now to suggest that such an extension is not appropriate, or that it would somehow preempt future commercial expansion on the site, is simply bewildering and, again, a pretext for avoiding responsible action on the applications pending before you. It is also inconsistent with the fact that the Town Board has itself petitioned the County to grant the sewer district extension that it now criticizes.

8. Taxes: The Town Board also listed among its concerns an alleged “negative cash flow” to the Town from the Project. We have received no such comments from either the Board or its consultants since the resubmission of the FEIS in October. As you know, the FEIS contains a detailed projection of expected tax revenues from the Project, both under the 2008 analysis requested by your consultant and the 2015 analysis required by your final Scoping Document. The FEIS also contains conservative projections of incremental taxes and expenses for the Town, the Chappaqua Central School District and other taxing jurisdictions. Those

projections show positive annual cash flows to the Town ranging from approximately \$81,000 to \$180,000 for 2008 and \$120,000 to \$266,000 for 2015. The corresponding annual projections for the School District are \$626,000 to \$1,043,000 for 2008 and \$950,000 to \$1,559,000 for 2015. Moreover, these projections assume that existing taxes for the site would continue and grow, even in the absence of the Project. In fact, the Owner now intends to pursue its pending tax certiorari proceedings vigorously and, as you surely know, the complete departure of Reader's Digest now means that, under current zoning, future taxes from the site will drop to near zero.

* * * *

We and our client sincerely hope that the Town Board's comments on November 30 will prove to be an aberration and that, despite those comments, the Town Board will:

(1) act promptly -- no later than its regularly scheduled meeting on January 14, 2011 -- to approve the FEIS for Chappaqua Crossing substantially as submitted in its third revision in October 2010;

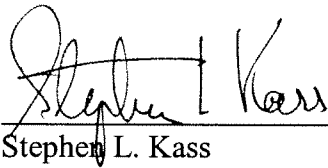
(2) notice and hold any new or continued public hearing required for the zoning amendments necessary to carry out the Proposed Action and Modified Project, as described in the FEIS; and

(3) no later than March 31, 2011, take all remaining action to approve the zoning amendments and concept plan approval required to approve either the Proposed Action or the Modified Project.

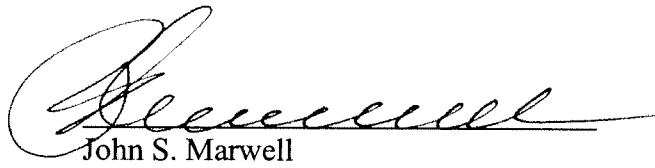
We emphasize, however, that this is not some land-use or civics game in which our client will be toyed with by a Board hoping to placate a recalcitrant public. There are real challenges facing the Chappaqua Crossing site, and real investments that have already been made (and will in the future be required to be made) to bring this property back to productive use for the benefit not simply of the Owner, but also for the Town, its taxpayers, residents and other businesses. There are also real damages that have been sustained by our client as a result of the glacial pace at which the Town Board has moved in reviewing this Project.

If the Town Board is prepared to move forward constructively as outlined above, the Owner will continue to do its part. If, however, the Town Board continues in the manner suggested by its November 30 comments,¹ it will jeopardize this last opportunity to revitalize the Chappaqua Crossing site as an integrated parcel and set the Town on a course that is certain to prove costly to the entire community, economically and otherwise, in the near term and in the years to come. We urge you to change that course while it is still possible to do so.

Sincerely,



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¹ The 21-page memo received late last Friday from your counsel (not your environmental consultants) only increases this concern. Reading more like a litigation document demand than a genuine request for any missing information, this self-serving document conjures a variety of speculative and remote potential impacts that have no reasonable relation to the Project, have already been addressed by the FEIS or have not previously been raised by the Town during its three-year environmental review of this Project.