

MINUTES OF A WORK SESSION
OF THE TOWN BOARD
OF THE TOWN OF NEW CASTLE
TUESDAY, NOVEMBER 30, 2010

PRESENT: Barbara S. Gerrard, Supervisor
Robin Stout, Council Member
Michael B. Wolfensohn, Council Member

Supervisor Gerrard called the meeting to order at 8:00 a.m. Deputy Town Administrator Paderewski and Town Counsel Smith were present. Deputy Town Supervisor Mottel and Council Member Buckley have recused themselves from consideration of the matter under consideration at the meeting and were not present for the discussion.

Council Member Wolfensohn moved, seconded by Council Member Stout to move into Executive Session at 8:02 a.m. to receive advice of counsel.

VOTE AYES ALL

Council Member Wolfensohn moved, seconded by Council Member Stout to move out of Executive Session at 8:45 a.m. and resume the Work Session.

VOTE AYES ALL

CHAPPAQUA CROSSING Supervisor Gerrard stated the Town Board has before them a proposed resolution regarding the SEQRA review for Chappaqua Crossing. Supervisor Gerrard noted there are at least two and half pages of background information in the resolution discussing the history of the application starting from the first filing. Supervisor Gerrard also noted the resolution does contain reference to Town Board member views.

Supervisor Gerrard asked if there was anything Town Counsel wanted to add. Town Counsel Smith then read excerpts from the resolution, and the Town Board commenced discussion.

Supervisor Gerrard stated one of the major things the Town Board is concerned about is the proposed reduction in the BRO-20 zone. It is problematic because only three percent of the Town's assessed value comes from commercial property. This comes from the Frey report which was done in connection with revaluation. The Town is concerned with maintaining the potential for further commercial expansion down the line and how the Town protects its not so diverse tax base. Ninety-seven percent residential is regarded as unsustainable.

The proposed new building height is another major issue, and the Town Board finds it unacceptable, especially for a location outside of the hamlet. Within the hamlet, the Town development plan anticipates buildings consisting of three stories with a maximum of height of 35'. It seems inappropriate that Chappaqua Crossing would have structures taller than those outside of the hamlet. It is inconsistent with the view shed and character of the area. The Town is also concerned about the under building garages and the height issues for the facilities as they relate to emergency services. It is hoped the Town's consultants will discuss these issues with the Chappaqua Fire Department.

Parking is a significant issue. The present parking plan, and the term "plan" is used loosely, does not even meet the present Town code. Under the proposal, there is no room for parking for the current 600,000 square foot of business use. The idea that Chappaqua Crossing will eventually rent over time and "find space" is regarded as unacceptable by the Town. The landbanking concept is acceptable, but despite an entire twelve months of requests for details on the parking management plan, their current iteration is unsatisfactory. The Town has complete lack of confidence that the applicant's "concept" would work. The Town needs to aggressively preserve land for parking for future employees. Supervisor Gerrard believes it is very possible that the significant tenancies would be physician's offices or other related medical facilities which have high parking requirements for patients and clients. Given the location near Northern Westchester Hospital this is a very likely tenant for them to consider. The applicant currently only offers 1,360 parking spaces for commercial and 409 parking spaces for residential. Despite the consultant's request for specificity, the applicant "dismissed the shared parking" suggestion among the proposed residential and commercial. If they do not find this amenable, then any parking availability should go to the commercial because that is what is important to the Town.

There are inconsistencies with the Town's development plan. The proposed development of the site is totally different from any other development in Town, and this has been previously discussed. The Town has no objection to mixed use, but issues of the MFPD requirements are not fully met. Supervisor Gerrard also questions the proposed zoning text amendments.

In addition, the AFFH requirements are very important, and the Town regards inclusion of only 10% AFFH as too low. The County sent a letter on November 23 encouraging an increase of that percentage. County money is available, and Supervisor Gerrard believes it should be utilized by the applicant to achieve this goal. The Town would like to see 20%. If the applicant is serious about assisting the Town in meeting its goals, then nothing less than 20% of the project is appropriate.

The Data Center definition is still too vague, and it ranges from very low impact to high impact and this goes to parking as well as traffic. It would be unwise at this point for the Town to reduce the parking requirements under something that is hypothetical.

The stormwater retention area in the current plan also encroaches on the BRO-20 area which gives the Town the same problem as the parking and reducing the area for

expansion. It does not allow the Town to plan for the future for the hopefully larger commercial base.

There are open space issues. There is a negative impact on habitat connectivity, and currently the East Village is regarded as open space. It does not mean that no development could take place there, but it is not an area that is already developed. We do recognize that this is a negative environmental impact.

Sewers continue to be a problem. The County has not yet acted on the application. One hundred twenty of the proposed 199 units are currently outside of the existing district.

There are also density and community character issues. Under the proposal as it is right now, the applicant proposes a density of 3.6 units per acre. The Proposed Action has a proposed density of 4.3 units per acre. To put this into context, the Old Farm Lake Development has 3.2 units per acre and Ledgewood Commons has 2.3 units per acre. The Town feels this is too dense.

There are no one bedroom units proposed. We recognize and we agree with the County that providing alternative housing needs to address the needs not just of New Castle but of the region. We question the lack of one-bedroom units. We also question the proposed cost of \$700,000 to \$1 million as meeting the needs we all recognize. The County has set a range of housing types that are "affordable", and this is in the Westchester 2025 planning document.

The proposal's consistency with MFPD and "Smart Growth" policies also are a concern.

The MFPD district requires accessibility, and the location does have access to Westchester County Bee Line Bus line 19, but this is of limited value because of its limited destinations and limited runs. The applicant has proposed a jitney to the train. However, there are questions on how this is enforced. In addition, the Town's jitney attempt of several years was only a limited success.

The MFPD requirements talk about proximity to jobs. Right now there are few jobs at the site. The commercial portion also has to be developed before any claims can be made that the site offers job opportunities.

Utility services are another requirement of the MFPD. While water is not a problem the sewers are a problem. In addition, to the extent this area is sewered the commercial base is a priority.

The MFPD also discusses adjoining land uses intended as transitional. Town houses would seem to be a good fit and perhaps some condos but not the apartment style and density that is proposed by the applicant. Traffic access should be safe and adequate, and there are significant traffic issues.

Increased density without the necessity of extensive earth moving, cuttings, and fillings is a requirement of the MFPD. One of the Town Board's primary concerns with the North Village in the Proposed Action is that there would be extensive earth moving, cutting, and filling. The Town recognizes the Modified Project has reduced this impact greatly, but to the extent that Proposed Action is still out there, it is still an issue. The natural environment is supposed to be regarded as important in choosing the MFPD. There are wetlands and steep slope issues, and the wetlands and the natural corridor which will be destroyed by the East Village continue to be a concern.

Supervisor Gerrard asked if the other Town Board members had comments.

Council Member Stout thanked Supervisor Gerrard for her comments and added he is in agreement with her comments. Council Member Stout re-emphasized the building height issue, which the Town Board feels is very important, and feels it creates some significant impacts as to how the applicant would get this mitigated. Council Member Stout is also concerned about the on-site parking issues and feels the Town of New Castle would be well served by additional affordable housing. Council Member Stout was disappointed that the latest iteration of the Summit Greenfield plan only offered 10% for affordable housing and feels this is insufficient. Council Member Stout added there has been concern about parking at the train station parking lot. He would like to ensure that this has been thoroughly examined. In addition, the conclusion of the HR&A report dated October 18, 2010 is that "this development will transition from one that provides surplus cash flow to the Town to one that generates negative cash flow assuming other variables remain constant". Council Member Stout feels this is something that should be very closely looked at.

Council Member Wolfensohn stated he agrees with both the Supervisor and Council Member Stout, and he has the same concerns. He feels it is important to note that when the MFPD was created environmental requirements and restrictions were much different than they are today. Council Member Wolfensohn also expressed concerns about the density, the view shed, and the parking as well as what is going to happen with the commuter parking lot in downtown. Council Member Wolfensohn is also concerned about staging and wants to make sure the Town has an understanding as to what will be built and when because commercial is extremely important to the Town as well as affordable housing.

Supervisor Gerrard asked for a motion on the resolution.

Council Member Stout moved, seconded by Council Member Wolfensohn, to adopt the following Resolution regarding preparation of comments on the Chappaqua Crossing Final Environmental Impact Statement:

WHEREAS, the Town Board of the Town of New Castle ("Town Board") received a Petition dated July 9, 2007, with Exhibits 1 through 24 ("Petition"), from SG Chappaqua B, LLC ("Petitioner"), as owner of a parcel identified as Tax Lot 93.9-1-1 consisting of 114 acres and several adjoining parcels consisting of approximately 6 acres,

all located between the Saw Mill River Parkway and State Route 117 in the Town of New Castle and commonly known as the Reader's Digest property ("Property"), seeking to change the zoning of a portion of the Property consisting of approximately 64.3 acres ("Proposed Rezoned Portion") from B-RO-20 and R-1A to MFPD in order to construct 278 units of age-restricted housing and workforce housing on the Proposed Rezoned Portion ("Proposed Residential Rezoning and Construction"); and

WHEREAS, incidental to the Proposed Residential Rezoning and Construction, Petitioner also has applied to the Town of New Castle Zoning Board of Appeals for variances from certain restrictions in the B-RO-20 zoning on the Property and has stated its intention to redevelop the existing office space in that portion of the Property which will remain in B-RO-20 zoning after the Proposed Residential Rezoning and Construction ("Proposed Commercial Variance and Redevelopment"); and

WHEREAS, by resolution adopted August 14, 2007, the Town Board determined that the Proposed Residential Rezoning and Construction and the Proposed Commercial Variance and Redevelopment ("Proposed Action") are subject to the State Environmental Quality Review Act under NYS Environmental Conservation Law, Article 8 ("SEQR"), preliminarily classified the Proposed Action as a Type 1 action under SEQR, and declared its intention to act as Lead Agency for the purpose of reviewing the environmental impacts of the Proposed Action under SEQR ("Lead Agency"); and

WHEREAS, by resolution adopted September 18, 2007, the Town Board declared that it had been established as Lead Agency for the purpose of reviewing the environmental impacts of the Proposed Action under SEQR; and

WHEREAS, by resolution adopted November 27, 2007, the Town Board authorized the Town Supervisor to complete and sign a Determination of Significance under SEQR declaring that the Proposed Action "may result in one or more large and important impacts that may have a significant impact on the environment, therefore a positive declaration will be prepared" and adopted a Positive Declaration under SEQR regarding the probable environmental impacts if the Proposed Action is approved and built; and

WHEREAS, by resolution adopted February 20, 2008, the Town Board adopted a certain "Scoping Document for Preparation of a Draft Environmental Impact Statement" for the Proposed Action in accordance with NYS Department of Environmental Conservation Rule 617.8 (6 NYCRR §617.8); and

WHEREAS, the Town Board received a draft Draft Environmental Impact Statement for the Proposed Action dated October 15, 2008 ("First Draft DEIS"), from Petitioner in accordance with NYS Department of Environmental Conservation Rule 617.9 (6 NYCRR §617.9) and reviewed that First Draft DEIS and comments on it from Town staff and the Town's planning consultant, other consultants, special counsel, and counsel and by resolution adopted January 27, 2009, the Town Board acting as Lead Agency determined that the First Draft DEIS was incomplete and issued to Petitioner a Summary of Completeness Review Comments Prepared by Lead Agency; and

WHEREAS, the Town Board received draft First Draft DEIS revisions dated March 31, 2009 (“Revised Draft DEIS”), from Petitioner on March 31 and April 3, 2009, and further revisions to the Revised Draft DEIS, including but not limited to written Town comments and Petitioner responses to the respectively same dated May 1 and May 7, 2009 (“Further Revised Draft DEIS Revisions”), which upon further communication with Town staff and the Town’s planning consultant, other consultants, special counsel, and counsel, were integrated into the Revised Draft DEIS resulting in a Draft Environmental Impact Statement dated May 2009 (“May 2009 DEIS”); and

WHEREAS, the Town Board reviewed and considered the Revised Draft DEIS, the Further Revised Draft DEIS Revisions, the May 2009 DEIS, and those written comments from Town Staff and the Town’s planning consultant, other consultants, special counsel, and counsel, and those oral comments from Town Staff and the Town’s planning consultant, other consultants, special counsel, and counsel, and other advice, information, and impressions available to them, and by resolution adopted May 19, 2009, the Town Board acting as Lead Agency for the Proposed Action determined that the May 2009 DEIS was adequate with respect to its scope and content for purposes of commencing the public review under SEQR in accordance with NYS Department of Environmental Conservation Rule 617.9 (6 NYCRR §617.9) on condition that certain requirements (“DEIS Conditions”) would be satisfied; and

WHEREAS, Petitioner satisfied the DEIS Conditions and the Town Board issued a Notice of Completion of the Draft Environmental Impact Statement and a Notice of Public Hearing on the Draft Environmental Impact Statement under NYS Department of Environmental Conservation Rule 617.9 and Rule 617.12 (6 NYCRR §617.9 & §617.12) on May 22, 2009, held Public Hearings on the May 2009 DEIS and on the proposed rezoning of a portion of the Property to MFPD and the Multi-Family Planned Development Concept Plan components of the Proposed Action at Town Hall on June 23, 2009, and July 29, 2009, and received written comments on the May 2009 DEIS until between June 23, 2009, and September 25, 2009 (“Comment Period”); and

WHEREAS, a total of 50 persons spoke at the Public Hearings and 153 written comments were received during the Comment Period; and

WHEREAS, the Town Board received a first draft Final Environmental Impact Statement dated March 2010 (“First Draft FEIS ”) from Petitioner by letter dated March 15, 2010; and

WHEREAS, the Town Board, Town staff and the Town’s planning consultant, other consultants, special counsel, and counsel reviewed the First Draft FEIS and Town staff and the Town’s planning consultant, other consultants, special counsel, and counsel met and otherwise communicated comments to the Petitioner regarding the First Draft FEIS including but not limited to detailed written Town comments provided to the Petitioner on June 8, 2010; and

WHEREAS, the Town Board has received a Modified Project Petition dated July 22, 2010, with Exhibits 1 through 13 (“Modified Project Petition”), from Petitioner as owner of the Property to change the zoning of a portion of the Property consisting of approximately 61.6 acres from B RO 20 and R 1A to MFPD (“Modified Proposed Rezoned Portion”), to adopt certain associated text changes to the Town Code zoning provisions on residential lot and bulk requirements in order for Petitioner to construct 199 units of housing on the Proposed Rezoned Portion, including 20 units of affordable housing, and to omit any age-restriction like that originally proposed for the Proposed Residential Rezoning and Construction (“Modified Proposed Residential Rezoning and Construction”), and to adopt certain text changes to the Town Code zoning provisions on business uses, parking and loading requirements, and lot and bulk requirements, among other things, to provide for new low density uses but increase the space to be occupied and reduce the parking requirements applicable to the remaining B RO 20 (“Modified Proposed Commercial Rezoning and Redevelopment”); and

WHEREAS, the Town Board received a revised draft FEIS dated July 2010 (“First Revised Draft FEIS”) from Petitioner by letter dated July 23, 2010, which, among other things, presented and analyzed the Modified Proposed Residential Rezoning and Construction and the Modified Proposed Commercial Rezoning and Redevelopment (“Modified Proposed Action”); and

WHEREAS, the Town Board, Town staff and the Town’s planning consultant, other consultants, special counsel, and counsel reviewed the First Revised Draft FEIS, and Town staff and the Town’s planning consultant, other consultants, special counsel, and counsel met and otherwise communicated comments to the Petitioner on the First Revised Draft FEIS orally and in writing; and

WHEREAS, the Town Board received a second revised draft FEIS dated October 2010 (“Second Revised Draft FEIS”), from Petitioner by letter dated October 19, 2010; and

WHEREAS, the Town Board, Town staff and the Town’s planning consultant, other consultants, special counsel, and counsel reviewed the Second Revised Draft FEIS; and

WHEREAS, the Town Board has reviewed detailed comments prepared by Town staff and the Town’s planning consultant and other consultants regarding the Second Revised Draft FEIS which identified (1) information that was missing, incomplete, inaccurate, and/or inconsistent (“Incomplete Information”), and (2) certain content that should be revised to either address the Incomplete Information or to more accurately reflect the Town Board’s views on the Modified Proposed Action (“Town Board Views”) and potential environmental impacts thereof; and

WHEREAS, the Town Board as lead agency is responsible for the adequacy and accuracy of the Final Environmental Impact Statement, regardless of who prepares it, pursuant to NYS Department of Environmental Conservation Rule 617.9(b)(8) (6 NYCRR §617.9(b)(8)); and

WHEREAS, the Town of New Castle must consider the need for a range of housing types including multifamily housing and affordable housing pursuant to Berenson v. Town of New Castle, 38 N.Y. 2d 102 (1975), the Westchester County Housing Opportunity Commission's 2005 Affordable Housing Allocation Plan, and the August 2009 Stipulation and Order of Settlement and Dismissal in U.S. ex. rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York, No. 06 Civ. 2860 (DLC) (S.D.N.Y.); and

WHEREAS, the Town Board believes the Second Revised Draft FEIS does not adequately address certain issues ("Issues") that are among the most important to the Town Board with regard to relevant environmental impacts of the Modified Proposed Action considering social, economic and other considerations including: (1) ensuring the Proposed Commercial Variance and Redevelopment and/or Proposed Commercial Rezoning and Redevelopment preserves the potential viability of the commercial use of the Property; (2) ensuring the Modified Proposed Residential Rezoning and Construction adequately incorporates a range of housing types including multifamily and affordable housing to affirmatively further fair housing in the region; and (3) ensuring the Modified Proposed Residential Rezoning and Construction is consistent with Town zoning, community character, the Town Development Plan, and other related issues relevant to a new residential community in the Town of New Castle; and

WHEREAS, the Town Board has discussed the Incomplete Information, the Issues, and the Town Board Views with Town staff and the Town's planning consultant, special counsel, and counsel; and

WHEREAS, the Town Board wants to work cooperatively with Petitioner to efficiently and expeditiously complete an adequate and accurate Final Environmental Impact Statement for the Modified Proposed Action and to ensure it properly addresses and presents the Town Board Views;

NOW THEREFORE, be it

RESOLVED, that the Town Board directs Town staff and the Town's planning consultants, special counsel, and counsel to prepare a list of Incomplete Information and to provide Petitioner with explicit instructions as to how the Incomplete Information can be completed or otherwise satisfied and how Petitioner must provide information to the Town Board for its review and approval in advance of preparing a revision to the Second Revised Draft FEIS; and be it further

RESOLVED, that the Town Board also directs Town staff and the Town's planning consultants, special counsel, and counsel to prepare explicit comments that instruct Petitioner how to revise the Second Revised Draft FEIS to address the Incomplete Information, the Issues and the Town Board Views, as expressed in the Town Board Work Session at which this resolution was adopted and otherwise known to them and appropriate; and be it further

RESOLVED, that the Town Board directs special counsel and counsel to discuss and otherwise coordinate appropriate next steps with Petitioner's counsel to implement the foregoing resolution; and be it further

RESOLVED, that Town staff and/or consultants, special counsel and counsel shall take all steps necessary to implement this resolution.

VOTE AYES ALL

Town Counsel Smith stated the Town Board received a memo from Joanne Meder, F. P. Clark, dated November 16, and he will present the points raised in the memo consistent with the discussion today and the resolution. This will be prepared for review by the Town Board and presentation to the applicant.

Town Counsel Smith said the Town Board also received a memo from Michael Galante, F. P. Clark, dated November 22. The Town Board asked that Mr. Galante attend the December 7 Work Session to discuss his memo.

Town Counsel Smith will try and reach out to the Chappaqua Volunteer Fire Department and the Chappaqua Volunteer Ambulance Corp. regarding their views.

Council Member Stout moved, seconded by Wolfensohn to adjourn the meeting at 9:20 a.m.

VOTE AYES ALL