

## MEMORANDUM

**To:** Town of Cornwall Planning Board  
**From:** Dominic Cordisco, Esq.  
**Date:** December 30, 2013  
**Re:** Cornwall Commons Town Board Referral  
**File:** 54601.19

---

## BACKGROUND

The Town Board has referred the zoning amendment proposed by Cornwall Commons LLC (“CCLLC”) for the Cornwall Commons project. The Cornwall Commons site is currently zoned for a Planned Adult Community (“PAC”), and has been the subject of prior SEQR reviews. Although the overall site has received conditional final subdivision approval for the ten-lot bulk subdivision, CCLLC has not obtained site plan approval for the PAC development, to be located on proposed lot 10 of the subdivision.

Nonetheless, in December 2008 the Planning Board completed a Supplemental Environmental Impact Study (SEIS) review under SEQR to evaluate:

The overall development of the entire project site and the remaining lots within the Planned Adult Community in a manner consistent with the Planning Board’s Lead Agency Generic SEQR Findings Statement adopted April 15, 2003. The intent of this review is to determine the level of consistency of the overall subdivision and the PAC development with the Generic SEQR Findings Statement.

SEIS Findings Statement at page 3. As part of the SEIS review, the Planning Board considered an engineered site plan for the lot 10 PAC development, but at that time the applicant did not request and the Planning Board did not grant site plan approval. That remains the case today.

Since that time, CCLLC has pursued the outside agency approvals associated with the lot 10 PAC development. In 2012, CCLLC also requested that the Town Board consider a zoning amendment that would allow the conversion of the PAC to a Planned Residential Development (“PRD”) to permit up to “78% market rate units, which would have no age requirements, and no less than 22% age restricted units.” Proposed Introductory Local Law, Redline Version, included as Attachment 4 in CCLLC’s

submission. This proposed zoning amendment has been the subject of several meetings and informal public comment sessions.

### **TOWN BOARD REFERRAL**

In December 2013, the Town Board referred the proposed zoning amendment to the Planning Board for its review and comment. Town Zoning Law § 158-43 sets forth the procedure and substance for this process. Unless the Town Board consents to more time, the Planning Board should make its report to the Town Board within 45 days of the referral. Given that the Planning Board did not receive CCLLC's submission until December 18, 2013, it would appear that — without an extension of time — the Planning Board has until February 1, 2014 to render its report to the Town Board. After that time, the Town Board could act on the proposed zoning amendment without waiting further. Of course, the Planning Board could request more time to , which the Town Board could grant.

Town Zoning Law § 158-43 requires that the Planning Board comment on several specific aspects and potential impacts of the proposed zoning amendment. These are:

- (1) Concerning a proposed amendment to or change in text of the chapter:
  - (a) Whether such change is consistent with the aims and principles embodied in the chapter as to the particular districts concerned.
  - (b) Which areas, land uses, buildings and establishments in the Town will be directly affected by such change and in what way they will be affected.
  - (c) The indirect implications of such change in its effect on other regulations.
  - (d) Whether such proposed amendment is consistent with the aims of the Comprehensive Development Plan of the town.
- (2) Concerning a proposed amendment involving a change in the Zoning Map:
  - (a) Whether the uses permitted by the proposed change would be appropriate in the area concerned.
  - (b) Whether adequate public school facilities and other public facilities and services, including roads, exist or can be created to serve the needs of any additional residences or

other uses likely to be constructed as a result of such change.

- (c) Whether the proposed change is in accord with any existing or proposed plans in the vicinity.
- (d) The effect of the proposed amendment upon the growth of the Town as envisaged by the Master Plan.
- (e) Whether the proposed amendment is likely to result in an increase or decrease in the total residential capacity of the Town and the probable effect thereof.

In order to make the above comments, the Planning Board must evaluate whether the information supplied to date by CCLLC provides a sufficient basis for the Board's report, or whether it needs additional information.

## **SEQR**

Given that the Town Board referred the proposed zoning amendment to the Planning Board, it would be appropriate at this juncture for the Planning Board to consider the proposed zoning amendment in the context of SEQR. A zoning amendment is an action subject to environmental review under SEQR. Indeed, the adoption of "changes in the allowable uses within any zoning district, affecting 25 or more acres of the district" is a SEQR Type I action. 6 NYCRR § 617.4(b)(2). A Type I action is "more likely to require the preparation of an EIS than Unlisted actions," and further "carries with it the presumption that it is likely to have a significant adverse impact on the environment." 6 NYCRR § 617.4(a).

CCLLC's proposed zoning amendment would affect the entire lot 10 development, consisting of 158.994 acres. This exceeds the Type I threshold. As a result, a full Environmental Assessment Form ("full EAF") must be submitted by CCLLC. In my materials, an "EAF Addendum" was included but there was no full EAF to go with it, Part I of which must be completed by the applicant. Speaking of which, the EAF Addendum — and much of the remainder of CCLLC's submittal — contains many conclusory opinions that the proposed zoning amendment will have no environmental impact and thus will not require any further environmental review. With all respect to the applicant, that will be a decision to be made by the SEQR lead agency.

The Planning Board functions as an advisory agency to the Town Board for the proposed zoning amendment, but it also is an involved agency given that the Planning Board will have to consider for approval the site plan for lot 10. That will be so regardless of whether any final, adopted zoning amendment allows for a change in use with or without any physical changes to the site plan. As a result, the Planning Board is an agency that has "jurisdiction by law to fund, approve or directly undertake an action", which makes it an Involved Agency under SEQR. 6 NYCRR § 617.2(s).

The Planning Board previously served as SEQR lead agency for the Cornwall Commons project. There has been no indication that the Town Board intends to undertake lead agency responsibility for the proposed zoning law amendment and any associated project changes. Clearly, the prior SEQR review did not include the potential for lot 10 to be developed with 78% market rate units. In such circumstances, where changes are proposed to a project previously the subject of a SEQR review, the SEQR regulations allow for the re-establishment of lead agency. 6 NYCRR §617.6(b)(6).

The fundamental policy of SEQR is to inject environmental considerations directly into governmental decision making at the earliest opportunity and to the fullest extent possible through strict compliance with SEQR's mandates. Where a single project is comprised of several components, each requiring review and approval from a different agency, the review of the potential environmental impacts of that project must, in most cases, be coordinated and no agency may undertake, fund or approve any portion of the project until there has been compliance with the requirements of SEQR.

There are at least three separate components to this matter. First, you must issue a recommendation to the Town Board. Next, the Town Board may, in its discretion, adopt a zoning amendment to allow a conversion of a portion of the PAC to market rate units. Third, you—if the Town Board amends the zoning—will review a site plan for the site. Under the rules outlined above, no discrete component of the application may be acted upon until there has been compliance with the requirements of SEQR. This would mean that you may neither issue your recommendation nor approve a site plan and the Town Board may not amend the zoning until SEQRA has been completed.

This rule is perhaps SEQR's most crucial mandate: no discrete action in regard to a project may be taken by any agency having approval authority over an aspect of a project until the lead agency has completed environmental review through either issuance of a negative declaration or the completion of an environmental impact statement and issuance of SEQR Findings. The decision by an agency to act prior to full environmental review is called segmentation and, when impermissible, constitutes a violation of SEQR. The rule prohibiting impermissible segmentation is designed to prevent, among other things, a premature agency action which, although not legally conclusive as to other agencies might well be practically determinative.

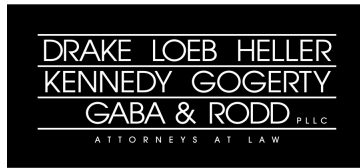
While your recommendation to the Town Board may not be practically determinative of the action — given that it is only a recommendation — the Town Board's potential zoning amendment would practically determine the nature of the lot 10 development; left unresolved would be only the site plan details. Thus, before the Town Board acts, SEQR must be completed.

The Planning Board would be well-suited to serve as SEQR lead agency given that it served as SEQR lead agency for Cornwall Commons as a Planned Adult Community. In any event, SEQR must be completed prior to the Town Board taking action on any proposed zoning amendment, should the Town Board exercise its legislative discretion to do so.

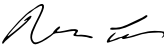
## RECOMMENDATIONS

I recommend that the Planning Board consider taking the following steps:

1. Consider whether you wish to re-establish yourselves as SEQR Lead Agency;
2. If so, request that the applicant submit a full EAF;
3. Request that should the applicant submit a full EAF, that it revise the “EAF Addendum” to make it clear that the statements within are the applicant's opinions; and
4. Send a letter to the Town Board to advise that the Planning Board has commenced its review but has requested that the applicant submit a full EAF and the Planning will need more time to review it and comply with SEQR prior to making its report and recommendation.



## MEMORANDUM

**To:** Town of Cornwall Planning Board  
**From:** Dominic Cordisco, Esq.   
**Date:** February 21, 2014  
**Re:** Cornwall Commons – SEQR Determination of Significance  
**File:** 53632

---

### SEQR PROCESS – DETERMINATION OF SIGNIFICANCE

The Planning Board previously circulated a notice declaring its intent to serve as SEQR Lead Agency. That notice period has passed and no other agency has challenged the Planning Board's intent. As a result, the Planning Board can now confirm its status as Lead Agency. The next step is for the Planning Board to make a determination of significance. Essentially, the Board must determine whether there are potential environmental impacts that have not been fully identified, evaluated and mitigated. This is called the determination of significance.

The Cornwall Commons site is currently zoned for a Planned Adult Community ("PAC"), and has been the subject of prior SEQR reviews. In December 2008 the Planning Board completed a Supplemental Environmental Impact Study (SEIS) review under SEQR for the proposed PAC development. In 2012, CCLLC requested that the Town Board consider a zoning amendment that would allow the conversion of the PAC to a Planned Residential Development ("PRD") to permit up to "78% market rate units, which would have no age requirements, and no less than 22% age restricted units." Proposed Introductory Local Law, Redline Version, included as Attachment 4 in CCLLC's submission."

Within twenty (20) calendar days of its establishment as Lead Agency, the Lead Agency must make its Determination of Significance. If the lead agency finds that it does not have sufficient information to make this determination, it may request that the applicant provide it. The lead agency must make its determination within twenty 20 days of receipt of all the information it reasonably needs.

The lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from:

- (a) changes proposed for the project; or
- (b) newly discovered information; or
- (c) a change in circumstances related to the project.

Essentially, a positive declaration would require the applicant to prepare a Supplemental EIS (SEIS) to evaluate the significant adverse environmental impacts of the project, should the Board determine that such impacts may occur. The decision to require preparation of an SEIS, in the case of newly discovered information, must be based upon the following criteria:

- (a) the importance and relevance of the information; and
- (b) the present state of the information in the EIS.

The Determination of Significance is the Lead Agency's decision whether or not the proposed action, in this case, a Type I Action, is likely to have a significant adverse impact upon the environment, or not. Because this is a Type I Action, the Lead Agency only has two options: (1) if the Lead Agency finds one or more significant adverse environmental impacts, it must prepare a positive declaration identifying the significant adverse impact(s) and requiring the preparation of a SEIS; or (2) if the Lead Agency finds that the action will have no significant adverse impacts on the environment, no EIS is necessary and the lead agency must prepare a negative declaration.

The term "significance" under the SEQOR regulations is subjective. In short, two (2) key characteristics of possible impacts that should be considered in determining significance are "magnitude" and "importance". Magnitude assesses factors such as severity, size or extent of an impact. Importance relates to how many people are going to be impacted or affected by the project; the geographic scope of the project; duration and probability of occurrence of each impact; and any additional social or environmental consequences if the project proceeds (or doesn't proceed). Generally, bigger impact (larger "magnitude") projects are more likely to need more detailed analysis. The characteristic of "importance" requires us to look at an impact in relation to the whole action. The short or long term or cumulative nature of the impacts also need to be considered.

The factors the Lead Agency must consider in making a determination regarding significance include:

- Identifying all relevant environmental impacts;
- thoroughly analyzing these potential impacts, and
- providing a written explanation of its reasoning in concluding that the proposed action may cause, or will not cause, significant adverse environmental impacts.

A legally sufficient Determination of Significance shows that the Lead Agency has in its possession -- and can demonstrate that it has considered -- at least the following:

- the entire action;
- the environmental assessment form (EAF);
- any other information provided by the applicant, including the underlying application;
- the criteria for determining significance found in NYCRR § 617.7(c); and
- any input from involved and interested agencies, and the general public.

Unsupported statements such as “the action will not have a significant impact” or “no significant impacts were identified in the EAF”, are assertions that are not legally sufficient for a negative declaration. Such statements must be supported with adequate detail to explain why there will be no significant impacts.

NYCRR § 617.7(c) sets forth the criteria for determining significance: Bear in mind that what the Board must evaluate are the impacts that might result from the change from a PAC to a non-restricted market rate development. The following list is illustrative, not exhaustive, and includes the criteria that might be most relevant to the Board’s review:

- a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
- the creation of a material conflict with a community's current plans or goals as officially approved or adopted;
- the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;
- a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;
- changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment.

In addition, the significance of a likely consequence (i.e., whether it is material, substantial, large or important) should be assessed in connection with:

- (i) its setting (e.g., urban or rural);
- (ii) its probability of occurrence;
- (iii) its duration;
- (iv) its irreversibility;
- (v) its geographic scope;
- (vi) its magnitude; and
- (vii) the number of people affected.





**GARLING ASSOCIATES**  
COMMUNITY AND DEVELOPMENT PLANNERS

TO: Town of Cornwall Planning Board

FROM: Leslie Dotson, AICP

DATE: March 3, 2014

RE: Cornwall Commons: SEQR Determination and Submittal Comments, Zoning  
Amendment

---

As I had noted to the Planning Board at its January 6, 2014 meeting, the applicant is seeking an amendment to the Town Code amending the PRD zoning requirements as affects Cornwall Commons. As part of this requested amendment, he has also proposed some changes to the Developer's Agreement with the Town. As Dominic has reminded you, you have specific obligations of what to address under the Cornwall Code in reporting to the Town Board on the request, and Dominic has also reminded you of your SEQR obligations, where you have circulated to re-confirm your SEQR Lead Agency status on the project.

Under SEQR, the Planning Board as Lead Agency has the option to either issue a Positive Declaration, a Negative Declaration/Consistency Determination, or to ask for further information in order to render your decision. Dominic has advised on that process, and I wanted to speak to some particulars in the submission which relate to your decision, as well as that of the Town Board.

As I had stated in January, because this is a legislative action from the Town Board, the Town Board has several options: it could approve the request, it could deny it, it could choose not to take action, or it could take the course of modifying the proposed local law.

At your January meeting, I had expressed some reservations objecting to certain language that I felt was conclusory or potentially misleading within the applicant's submittal. I am submitting more specific comments on this below, and also commenting about some environmental review issues in the applicant's submittal.

---

1. I object to the term "market rate" as used throughout the applicant's submission, including in the proposed amended recitals for revisions to the developer's agreement with the Town. "Market rate" as used in the submission is being used to describe "non-age-restricted" housing as compared to "age-restricted housing." This is misleading and confusing. Typically the term "market rate" has a particular connotation as to affordability and adjustments to housing costs for affordability. In this case, at least as I understand it, there are no proposed affordability concessions or adjustments being made to any part of the housing element of the project, either for the age-restricted units or the un-restricted units. This is an important distinction to draw, and an important point on which to call for clarity, given the fact that the Town's current Comprehensive Plan does include language regarding housing affordability and in particular, housing affordability for seniors. The Town Board has been asked to make a legislative decision on a zone change providing for a change in the zoning, and it is always possible that they may opt to request some alterations

---

Post Office Box 108, Pine Bush, New York 12566

Leslie Dotson: Voice and Fax: (845) 361-1090 • email: ldotson@hvc.rr.com

Edwin Garling: Voice and Fax: (845) 294-5835 • email: egarling@ymail.com

to the project regarding unit affordability, consistent with the language in the Comp Plan. By using the term “market rate” when it is simply describing non-age-restricted housing, the submission only serves to cloud the discussion. The term “market rate” should only be used with respect to restrictions relating to housing affordability, not age restrictions or lack of the same.

2. With regard to the matter of Comprehensive Plan compliance, I have several thoughts and concerns. The text of the applicant’s submittal acknowledges that there may be some age-qualified residents who prefer not to reside in the proposed age-restricted component of the site. This helps to demonstrate why the town’s demographics are what they are: people choose to live in a specific municipality for many reasons that are not specifically limited to zoning. Zoning is not prescriptive and provides for a variety of uses.

Growth and demographics within the town are not wholly under the control of the Comprehensive Plan or zoning. As clearly acknowledged in the Plan, there are many trends and factors that are entirely outside the influence of the Town that affect its growth and development, or lack of the same, and on its demographics. Local, regional, state and national economic conditions affect growth and demographics, and the physical topography and the cost to purchase and develop the steeper more rural areas of the town also affect its demographics. This has always been the case.

I perceive an implication in the applicant’s submittal that the Town has established a deliberate policy over the years that has resulted in its current demographic mix that more heavily represents an older and wealthier population, or perhaps that this is a new condition that has recently developed. Neither is the case. Simply describing current population facts, figures and trends does not necessarily mean that they resulted from a deliberate policy, any more than (for example) the City of Newburgh deliberately planned the loss of the 19<sup>th</sup> Century industries that fueled its earlier prosperity. The fact is that in the year 2000, the largest age cohort in the Town was 35 to 55 years old, and those 60 years and older were 15.4% of the population, higher than the countywide proportion at the time. This is not a new trend, and in fact the 2005 Plan stated that it was clear that the needs of an aging population would require attention over the next several years, one of the very points that was used to support the original PRD designation that was sought by the project sponsor. Furthermore, the fact that young adults are locating elsewhere may not be a trend that will be reversed simply by providing a large volume of market-rate unrestricted units. There are already subdivisions within not only Cornwall but also many other towns throughout the county that are simply being carried over at preliminary or conditional final approval, unbuilt and unsold, because there is no market for them: economic uncertainty and lack of job opportunities that would provide young adults with the financial security to purchase a home is a real factor affecting the real estate market, and this is not under the control of the Town. Approvals do not guarantee either a market or an absorption rate, for any type of land use development, whether commercial or residential, whether age-restricted or not.

There are multiple objectives set forth in the land use and housing component of the 2011 Plan Update. The Town may determine that it would prefer to emphasize some objectives over others. For example, from Section 9.1.2.1 of the Plan, objectives include the following:

- Reevaluate the Town Zoning Code’s provisions regarding senior citizen housing in general, with an eye towards encouraging more affordable senior citizen housing units through measures such as mandating a number of permanently affordable units in any senior citizen housing development.
- Consider a local law providing for Incentive Zoning “Community benefits or amenities” including open space, housing for persons of low and moderate income, parks, elder care, day care or other specific physical, social or cultural amenities, or cash in lieu thereof, of benefit to the residents of the community authorized by the Town Board.
- Enact a local law providing for a density bonus or some other incentive for providing permanently “affordable” senior housing units for which there is a need, with requirements for sufficient parking.

It may be possible that a mix of housing including some guaranteed affordable housing for both seniors and the unrestricted units might be more in line with the Town’s preference. While the Town’s Comprehensive Plan certainly opens the door to alter the PRD zoning restrictions, it does not necessarily mean that the door is opened strictly to what the applicant has proposed. The applicant’s submission contains a number of conclusory statements with regard to the partial elimination of the senior-only restrictions that may not reflect what the Town of Cornwall prefers to take towards this site. Indeed, some of the language in the applicant’s submission (see “Market” section in Att.2 Exh B) may suggest that market rate pricing may not be the ideal way to go.

Further concerning me is that the applicant’s submission draws a comparison between the number of units per acre that is incorporated in Cornwall Commons and the *maximum* number of units possible in a senior citizen housing area according to Section 158-24 of the code. This is not an equivalent comparison. The specific bedroom count limits, unit occupancy limits, building height and other dimensional limits of the code restrict a senior citizen project to something that is not comparable to the kinds of units that are being proposed in Cornwall Commons. Senior citizen housing under 158-24 at the maximum density levels will not result in single family detached housing or even semi-detached housing.

3. In other areas of concern, the proposed amendment to the Developer’s Agreement contains language that the unrestricted units’ recreation fees are not to exceed \$2,000 per unit, which is the Town’s current rec fee. The Town should consider modifying this to refer to the current rate at the time of payment, given that the actual construction date and the year in which the fees might be paid is uncertain, and it would be more protective to the Town to have it float. Whether all of the fees are to be paid for the entire project at the time of land use approval, or whether an arrangement is made to pay fees on a per-phase basis, in the event that fees increase it is appropriate that these should as well.

---

**GARLING ASSOCIATES**  
**P.O. Box 108**  
**PINE BUSH, NEW YORK 12566**  
**(845) 361-1090**

**PROJECT ANALYSIS**

**MUNICIPALITY:** Town of Cornwall

**OUR PROJECT NO:**

**TOWN PROJECT NO.** 06-19

**PROJECT NAME:** Cornwall Commons

**LOCATION:** Rt. 9W

**TYPE OF PROJECT:** Request to Town Board for Changes to PRD zoning for PAC

**DATE PREPARED FOR:** January 6, 2014

**Reviewing Submission:** Cornwall Commons PB Package December 18, 2013

**REVIEWING PLANNER:** Leslie Dotson, AICP

**PROJECT SUMMARY:**

**Approval Status:** See attached project timeline for summary of all approvals and SEQR activity from 1999-2000 to date

**SEQR Status:** See attached project timeline for summary of all approvals and SEQR activity from 1999-2000 to date

**Other Approvals Required:** For this referral, Town Board approval is required, as this is a legislative action

**OCPD Referral Required:** Yes: X (but by TB, not PB) No: Referral Made: TB matter  
OCPD Report:

**Special Considerations:**

**Zone/Utilities:** PRD central water and sewer

**COMMENTS AND RECOMMENDATIONS:**

1. The Town Board has referred a request by the sponsor of Cornwall Commons for an amendment to the PRD ("Planned Residential Development") District, which provides for Planned Adult Communities (PACs) as special permit uses. Dominic Cordisco has already capably summarized the background behind the current referral from the Town Board, the status of the project before the Planning Board, and the specific aspects of the town's zoning law that are to be addressed as part of the referral, so I will not repeat that here.

Dominic's memo has set forth what options exist for the Planning Board procedurally from this point. It is important to remember that the request before the Town Board, which has been referred to you, is one seeking legislative action by the Town Board. In the context of your actions, please note that the Town Board has several options of how to respond to the request: it could approve the suggested local law; it could deny it; it could simply fail to take any action, or it could take still another course such as modifying the local law to read differently than suggested by the project sponsor. As a legislative board, the Town Board has wide latitude to act, or not to act, within the context of NY State Town laws and consistent with SEQR.

In the context of the preceding paragraph, I must say that I find some of the

language in the applicant's submittal to be conclusory, particularly as to its view on consistency with the 2012 Comprehensive Plan, and it tends to frame the discussion as though there is one way to zone so as to be consistent with the Comprehensive Plan, that being to adopt what the applicant has requested. This is not the case, and both Planning and Town Boards need to understand this. While the Town Board may ultimately choose to adopt the requested zoning, it does have other options. And there are provisions of the Comprehensive Plan, not cited or referenced in the applicant's submission, that could bring the zoning for the area in a very different direction indeed. Consider the following four out of nineteen Land Use and Housing Plan objectives, from page 62 of the adopted Plan:

- "Eliminate multiple dwellings as permitted uses in the SR-2 District, and consider permitting multiple dwellings in the SLR District and the PRD district on a limited basis or as a so-called "floating zone."
- "Reevaluate the Town Zoning Code's provisions regarding senior citizen housing in general, with an eye towards encouraging more affordable senior citizen housing units through measures such as mandating a minimum number of permanently affordable units in any senior citizen housing development."
- "Consider a local law providing for Incentive Zoning "Community benefits or amenities" including open space, housing for persons of low and moderate income, parks, elder care, day care or other specific physical, social or cultural amenities, or cash in lieu thereof, or benefit to the residents of the community authorized by the Town Board."
- "Consider floating zones could be used in the Planned Development and the SR-1 and SR-2 areas. Floating zones are intended to create flexibility from the rigid controls of traditional zoning. A floating zone is a district which, until it is applied to a particular parcel of land, will appear only in the regulations and not on the zoning map."

The applicant's submission frames the question in a particular way, as though the Town must speak to issues that justify any change in zoning that might reduce (or otherwise affect) the number of units at the site.<sup>1</sup> The Town need not limit itself to considering a "reduction", rather it can consider the entire layout of the project and the elements therein, as well as its relationship to the Land Use and Housing objectives of the Comprehensive Plan as well as other objectives of the Plan. Indeed, the Town could conceivably consider shifts in the project if it wished, in order to provide for affordable senior citizen housing units or possibly some non-age-restricted moderate income housing units. The submittal tends to use "market" units as identical with "non-age-restricted,"<sup>2</sup> which could tend to confuse matters.

There are some comparisons within the submission with which I take issue, such as where the PRD density is compared with senior housing development density as possible in the SR-1/SR-2 districts. It is important to be careful when considering and comparing one type of land use to another to realize the limits affecting such a comparison. For example, in the case of senior housing developments pursuant to Section 158-24 of the Cornwall Code, among other things they are limited to a

---

<sup>1</sup> JG letter to Town Board 4-19-13, page 8

<sup>2</sup> Att. 2 page 4

maximum of 10 2-bedroom or 11 1-bedroom units per acre, and there are other restrictions on the unit height that strongly affects a potential layout promoting attached units/multiple dwellings. I could go into greater detail, but in the interests of brevity will confine myself to the general observations set forth in this item.

2. It should be noted that any amendment to the PRD zoning affecting a PAC (Planned Adult Community) would also require an amendment to the special permit previously granted to the project. Note also that the Town Board is the agency authorized to grant a PAC special permit under the zoning, at least as the zoning is currently structured. It may also require an amendment to the Developer's Agreement – that is a legal matter that would require further advice from counsel, and I mention this incidentally.
3. To aid both the Town Board and the Planning Board, I have prepared and attached a summary timeline of the Cornwall Commons from its initiation. Because of the number of years that have passed since its inception, the tremendous volume of materials in the project files, and the number of actions both by the Town Board and Planning Board over that time (not to mention previous actions in the Town of New Windsor), I felt it was important to have a summary of the project timeline. Both Town Board and Planning Board members have changed over the project's lifespan, and it is important for everyone to have a means to reference what has happened and what actions were taken by both boards during that timeframe. It is instructive to consider that the Town's vision for the area changed from industrial to a vision that permitted the sponsor's proposal for a PAC over the course of time.
4. I believe that there are other permitting matters that are outstanding for this project. As I understand it, the fire district boundaries within the site have not yet been modified.

---

### Cornwall Commons Project Timeline

- 1999-2000: Cornwall Commons first proposed in 1999-2000, with property in both New Windsor and Cornwall. At the time it was zoned PIO (Planned Industrial Office) for the 143 acres in Town of Cornwall, and R-3 Residential for the 52.8 acres in New Windsor. At that time, a single family residential subdivision of approximately 64 lots was proposed in New Windsor, which would have required a second access road to serve the major subdivision. This is why the looped access road in Cornwall had been proposed as part of a 2-lot subdivision. The Cornwall subdivision as then proposed was purely incidental as it related to lots that would have been defined by the placement of the road.
- 1999: At the time of initial application (1999), the applicant had sought zoning amendments from both Cornwall and New Windsor to create a new mixed-use planned development zone, with the expressed intent of providing for a transitional use between the existing residential neighborhood to the west/southwest of the property, and Rt 9W which had appeal for retail and service uses.
- 2000: The initially requested zoning amendment was rejected by the Cornwall Town Board in February of 2000. Following that rejection, the applicant modified the original request to exclude the zone change request, and to proceed under the then-current zoning in both towns looking at a reasonable worst-case of what was possible under each municipality's zoning at the time, and evaluated in a Generic Environmental Impact Statement (GEIS). The plan was also changed to a five-lot industrial subdivision in the Town of Cornwall. The Town of Cornwall Planning Board served as SEQR Lead Agency for the GEIS with no objection from any other Involved Agency.
  - Other than the pending 69 single family detached residential lots, alternative land uses considered in the GEIS included the as-of-right single family detached residential subdivision in the Town of New Windsor, as well as a "planned unit development"<sup>1</sup> and senior citizen housing<sup>2</sup> that reportedly were permitted in New Windsor. In Cornwall, the GEIS considered an as-of-right PIO development of 1 million square feet of mixed use industrial, as well as other uses that at the time required a zoning amendment. At the time (2002-3), the Town Board had established a Master Plan Committee.
  - The Planning Board's Lead Agency GEIS SEQR Findings (April 2003) had identified practical considerations that would affect site development, such as the possible need to provide for cross-easements among the commercial lot owners to provide for grading and stormwater management. With regard to habitat disturbance issues, the GEIS Findings had identified some overall protection guidelines, including that the PB was to encourage protection in its detailed site plan review, and noting that the PB may comment to the Town Board or Master Plan Committee to the extent that the then-current zoning may affect the ability to shift development so as to protect site features. GEIS Findings noted that other uses that might be implemented on site could reduce

---

<sup>1</sup> 10 single family detached homes and 180 2-bedroom attached units generating 78 school children

<sup>2</sup> 230 2-bedroom senior housing units generating no school children

potential for land disturbance while preserving fiscal benefits for municipality; should be considered by Master Plan Committee and Town Board.

- o July 2003: Cornwall Planning Board granted preliminary subdivision approval to Cornwall Commons 5-lot industrial subdivision. The 5 proposed lots in the PIO district in the Town of Cornwall met the bulk requirements for several use groups, though Findings noted that uses were limited due to the wide yard setback requirements in the PIO.
- o August 2003: New Windsor Planning Board granted preliminary approval to a 65-lot single family residential subdivision.
- November 2003: The Town Board adopted the 2003 Comprehensive Plan modifying the Cornwall 1992 Plan; among many changes, it recommended the Cornwall Commons parcel and others be zoned in a manner which would permit Planned Adult Communities.
- 2004: In February 2004, the Cornwall Town Board decided to review the Town's 2003 Comprehensive Plan.
- Jan 2004 – Subdivision plan application revised to 7 lots from 5 and shift loop road slightly.
- February; March 2004: Cornwall Commons submitted amended application for special use permit for PAC w conceptual site plan and 7-lot subdivision. Planning Board did not review this as it was not then allowed under zoning.
- April 2005: Cornwall Town Board adopted revised January 2005 Comprehensive Plan modifying the Town's 2003 Comp. Plan, changing some of the acreage requirement recommendations in the ARR, changing restrictions on warehouse units, eliminating some strip commercial area recommendations on Rt. 94, refining the medium/higher density residential area recommendations, and providing for Planned Adult Communities (PACs) to a new Planned Residential Development (PRD) zoning districted area and also proposing only one such area within the Town. The Town Board determined to provide only for one PAC to determine its full impact before any additional such projects were proposed.
- 2005: Town Board received application for Cornwall Commons PAC.
- April 2005: Developers Agreement between Cornwall Commons and Town of Cornwall signed. Agreement notes that 2003 Comprehensive Plan provided for Cornwall Commons as a PAC and that the Town is considering amending the Town's Comprehensive Plan also providing for a Cornwall Commons PAC, but that present zoning does not provide for a PAC. Agreement notes what the Developer intends to construct as part of the Cornwall PAC and further notes that he has applied to the New Windsor PB for a 65 lot single family residential subdivision of its New Windsor property. Town Board agreed that if the New Windsor property were annexed to Cornwall "under the present zoning" it would qualify for "the development of, among other uses, a senior citizen project with a maximum density of ten units per acre<sup>3</sup>". The agreement

---

<sup>3</sup> It is unclear to the Town's Planner where this comes from. Reportedly the New Windsor R-3 zoning at the time permitted an as-of-right 65 single family dwellings, as the site had received preliminary approval for in New Windsor, but could in the alternative be approved for a senior citizen development. If the land were annexed as PIO, the zoning of the Cornwall Commons site at the time, there would be no entitlement for residential use whatsoever, as the PIO permitted nothing more than caretaker dwelling units accessory to a permitted industrial use. If it were annexed as the Cornwall R-3 District that adjoined the PIO, it could be eligible for a special permit to



states the developer's desire to have the Town provide sewer capacity for the New Windsor property and references a sewer agreement dated July 10, 2003 with Cornwall, New Windsor, and the developer regarding the sale of sewer capacity to the New Windsor property.<sup>4</sup>

Developer's Agreement sets forth the developer's obligations and Town's commitments and runs with the land as a title encumbrance binding both sides. Terms of the Developer's Agreement are that<sup>5</sup>:

- o (1) the Town must enact zoning amendments under which the property will be zoned CPD (Commercial Planned Development) which will allow a PAC conforming to an attached list of conditions by special permit.
- o (2) Local law enacting the said zoning to be introduced on or before May 9 2005, public hearing in June 2005 and action taken in or before July 2005, approximately.
- o (3) If condition 2 is not fulfilled by end of 2005, Developer may terminate agreement but retain its rights under the 2003 sewer agreement.
- o (4) Developer agrees that if and when PAC zoning is enacted, any PAC thereon shall be constructed only according to provisions of the Cornwall Zoning Code, provided that in no event shall the PAC development of the Cornwall property exceed 425 units with an additional 65 dwelling units for a total of not more than 490 units on the property, with the maximum development density of the property not to exceed 3 residential units per gross acre, except as otherwise provided.
- o (5) The commercial uses will not be deducted from the total, or if a deduction is made, it will not preclude construction of 490 residential units.
- o (6) Site specific plan for the Commons will include 45,000 sq ft. of retail plus one or more pad sites, an 80 bed congregate care facility, a hotel-motel, and one or more standalone office buildings not exceeding a total of 50,000 sq ft of office space, plus if the Developer determines there is adequate market demand, up to another 35,000 sq ft of office space on the second floor the retail or office uses.
- o (7) Developer acknowledges the mutual goal of developing commercial tax ratables on the property and agrees that if/when the project receives final site plan approval and special permit, it will record a declaration of covenants and restrictions limiting the development of those commercially designated sites in the Commons to commercial

---

be developed as Senior Citizen Housing, at up to 10 or 11 senior housing units per buildable acre. The inclusion of this "whereas" provision seems to suggest the possibility that the sponsor intended to preserve the options then available to it under the New Windsor zoning, though it makes no sense that it referred to the "present Town of Cornwall zoning" which was at the time PIO. Since the Town of Cornwall did not adopt a zoning amendment until 6/13/2005 (disposition list, LL3 of 2005), the zoning at the time was PIO. I think the wording may simply have been due to an awkward choice of language. "Present zoning" likely referred to the PAC zoning that was simultaneously planned to be applied to the then-Cornwall property.

<sup>4</sup> The Developer's agreement references a dispute existing between the parties as to the validity of the 2003 Sewer Agreement, but notes the Town of Cornwall's intent and willingness to provide sewer capacity for the development of the New Windsor property and also the Cornwall property already in the town's sewer district, and references a desire to have an agreement with the Town of Cornwall to provide sewer capacity for the proposed use of the New Windsor property.

<sup>5</sup> Provisions summarized/condensed by Leslie Dotson for brevity

uses, enforceable only by the Town Board and waivable or modified only by the consent of the Town Board in its sole discretion.

- o (8) Developer to be wholly and solely responsible for all costs associated with providing and constructing central sewer service to the property.
- o (9) Developer to pay Town \$200,000 for the Town to reserve sewer capacity for its use for 5 years from date of final approval of Commons first section or for 7.5 years from date of the developer's agreement, whichever is sooner based on the agreed estimate provided by Town Engineer. Money to be paid one half at time of final PB land use approval and signing of final plat. The balance to be divided by the number of units and paid upon C of O for each unit. No tapping fees to be allowed, but Developer to reimburse Town for engineering review, inspection & approval.
- o (10) Developer to begin & pursue to completion proceedings for annexation of New Windsor property.
- o (11) Action on item 10 to be taken by July 15, 2005.
- o (12) If annexation petition denied or not approved by end of 2005, then Town is to tender an Intermunicipal Agreement.
- o (13) If annexation petition not approved by end of 2005, or Town fails to tender the Intermunicipal Agreement or if New Windsor does not execute it, the 2003 sewer agreement is to be deemed valid and binding on Town subject to payment of \$100,000 per item 17.
- o (14) If New Windsor lands are annexed to Town, Town shall zone them CPD and allow a PAC by special permit. If New Windsor property is annexed and Town does not zone it to permit a PAC or change the Senior Housing Regulations from 55 to 62 years of age, then the development of the New Windsor property may consist of 65 detached dwellings or a senior citizen housing project at the Town of Cornwall permitted maximum density of 10 units per acre.
- o (15) If New Windsor property annexed, then Town shall take appropriate action to provide central sewer service to it, such as enlarging the existing sewer district, water, fire and ambulance districts.
- o (16) Developer to be wholly responsible for all costs for constructing and providing central sewer service to New Windsor property.
- o (17) Developer to pay Town \$100,000 in consideration of Town agreement to provide sewer service to New Windsor property, paying one half at time this agreement executed and one half at time of building permit for connecting to Town sewer system. Engineering costs to be reimbursed.
- o (18) Town shall authorize appropriate applications for sewer, water, access issues to NYS DEC, NYSDOH, OCDOH, NYCDEP, NYSDOT
- o (19) Town acknowledges pending Town application to NYSDEC for sewer main extension signed by former Supervisor; to be confirmed as needed.
- o (20) On determination of Planning Board that money in lieu of parkland dedication should be paid, rec fees shall be set at not more than 33% of the rec fee for comparable dwellings not in a PAC prevailing at the time of PB approval, provided that based on

what the PAC is providing (swimming pool, tennis courts, club house, walking trails) the Town stipulates that the rec fees shall not exceed \$1,000 per unit and not less than \$666.66 per unit. Congregate care and hotel/motel units to be excluded from any fee requirements.

- (21) This agreement to supercede all others. Any change to this agreement or waiver must be in writing and signed by both parties.
- (22) Language used in this agreement deemed to be language chosen to express the parties' mutual intent, with no rule of strict construction to apply.
- (23) In case of legal challenge by third party, Developer shall indemnify Town and hold harmless for all expenses and legal fees arising from same.
- June 2005: Town Board zoning amendments LL3 2005 adopted, provides for PAC, among other changes.
- October 2005: Cornwall annexed the Cornwall Commons lands from New Windsor. Entire site now located in Town of Cornwall, and that annexed land was then zoned consistent with the adjoining PRD district on Cornwall Commons lands allowing a PAC.
- June, 2006: Town Board issues special permit for Planned Adult Community (PAC) concept for Cornwall Commons, finding the development of a PAC to be consistent with the GEIS & Findings.
- 2006: Subdivision proposal was changed to a 10-lot subdivision. Public comment and Orange County Planning Department (OCPD) recommended a Supplemental EIS (SEIS) to be prepared to address the 10-lot subdivision and the overall site development. July 2006 OCPD modified its recommendation to state that it would accept submittal of an SEIS as part of the first site plan or other permit application submitted to the Town following preliminary subdivision approval, with such condition to be stated in writing.
  - September 2006: the Planning Board issued a detailed determination of consistency with the previous GEIS Findings<sup>6</sup> and granted preliminary subdivision approval to the 10-lot subdivision. Stormwater management provisions ensuring that any cross-easements needed for maintenance and access across lots are part of plan; site plans must conform to Findings, among other specific provisions. Final plan must show all easements for water lines, sewer, utilities, etc in order to ensure that the utilities will be provided for.
- November 2006: Cornwall Commons formally presented concept layout plan to Planning Board for the residential lot 10 of the PAC, site plan application to Planning Board. Process of scoping a Supplemental EIS for the PAC site plan began, in accord with the conditions of the Planning Board's earlier preliminary subdivision approval.
- December 19, 2007: ACOE (US Army Corps of Engineers) Jurisdictional Determination letter issued, good for up to 5 years.
- January 2007: Planning Board approved a scope for Draft Supplemental EIS (DSEIS) for the PAC.
- October 2007: draft SEIS submitted to Planning Board; changes requested.
- June 16, 2008: Planning Board accepted DSEIS

---

<sup>6</sup> A traffic study update and cultural resources analysis was submitted as part of the updated plan and was considered in the PB's consistency determination.

- July 7, 2008: Planning Board held joint public hearing for site plan and SEQR on DSEIS; Final SEIS response to comments deemed needed. 28-foot wide internal roads on lot 10 to be provided.
  - November 6, 2008: Planning Board filed Final SEIS as response to comments on DSEIS.
  - December 1, 2008: Planning Board Lead Agency Supplemental SEQRA Findings Statement adopted for the Lot 10 site plan.
- 
- 2010: Town Board decided to review Comprehensive Plan; established Committee
  - March 13, 2012: Town Board adopted Comprehensive Plan Update
- 
- 2012: Cornwall Commons requested to modify the project and the zoning so as to eliminate the senior citizen occupancy restrictions in some of the PAC, with no change to the layout or the unit count.
  - October 16, 2012 - ACOE (US Army Corps of Engineers) Jurisdictional Determination extended for another 5 years.
  - December 2013: Town Board referred Cornwall Commons' zoning amendment request to Planning Board



**McGOEY, HAUSER and EDSALL  
CONSULTING ENGINEERS P.C.**

RICHARD D. McGOEY, P.E. (NY & PA)  
WILLIAM J. HAUSER, P.E. (NY & NJ & PA)  
MARK J. EDSALL, P.E. (NY, NJ & PA)

**MAIN OFFICE**  
33 AIRPORT CENTER DRIVE  
SUITE 202  
NEW WINDSOR, NEW YORK 12553

(845) 567-3100  
FAX: (845) 567-3232

WRITER'S EMAIL : MJE@MHEPC.COM



**TOWN OF CORNWALL**  
**PLANNING BOARD**  
**REVIEW COMMENTS**

**PROJECT NAME:** CORNWALL COMMONS SITE PLAN  
(REQUEST FOR MODIFICATIONS TO PAC ZONING LAW)  
**PROJECT LOCATION:** CORNWALL COMMONS PROPERTIES – ROUTE 9W  
SECTION 9 – BLOCK 1 – LOT 25.2  
**PROJECT NUMBER:** 06-19  
**DATE:** 6 JANUARY 2014

1. This appearance is pursuant to a referral from the Town Board for a review and report in connection with requested zoning amendments to the current PAC zoning law. Given this scope, and the lack of submitted technical information and any updated site or subdivision plans, our engineering review is limited. The great majority of information submitted is in support of the proposed zoning change, and the ongoing reviews of the proposed code change, which our office has not been involved in at all, to date.
2. In reviewing the information submitted, my attention was noted to several items which I will point out here for future review and consideration:
  - The documents note that *“the road width in the multiple family and attached single family dwellings section will be 26 feet”*, which is, based on my recollection, inconsistent with the representations of the project developer during prior reviews wherein the representation was made the roads would be equivalent to Town road construction.
  - The documents state that *“adequate sewer capacity at the Town of Cornwall treatment plant on Shore Road has been reserved for the project by way of a Developer’s Agreement forged between the sponsor and the Town Board”*; given the current condition of the wastewater plant and enforcement activities by the NYSDEC, the Town Board should further evaluate the current status of this item.
3. We have coordinated with the Attorney for the Planning Board with regard to procedural matters, and have provided input directly to him over the last weeks.

Respectfully Submitted,

Mark J. Edsall, P.E., P.P.  
Engineer For the Town

**REGIONAL OFFICES**

- 111 WHEATFIELD DRIVE • SUITE ONE • MILFORD, PENNSYLVANIA 18337 • 570-296-2765 •
- 540 BROADWAY • MONTICELLO, NEW YORK 12701 • 845-794-3399 •



**McGOEY, HAUSER and EDSALL  
CONSULTING ENGINEERS P.C.**

RICHARD D. MCGOEY, P.E. (NY & PA)  
WILLIAM J. HAUSER, P.E. (NY & NJ & PA)  
MARK J. EDSALL, P.E. (NY, NJ & PA)

MAIN OFFICE  
33 Airport Center Drive  
Suite 202  
New Windsor, New York 12553

(845) 567-3100  
fax: (845) 567-3232

writer's email : mje@mhepc.com

ACEC Member

**TOWN OF CORNWALL  
PLANNING BOARD  
REVIEW COMMENTS**


**PROJECT NAME:** CORNWALL COMMONS SITE PLAN  
(REQUEST FOR MODIFICATIONS TO PAC ZONING LAW)  
**PROJECT LOCATION:** CORNWALL COMMONS PROPERTIES – ROUTE 9W  
SECTION 9 – BLOCK 1 – LOT 25.2  
**PROJECT NUMBER:** 06-19  
**DATE:** 3 MARCH 2014

1. This appearance is pursuant to a referral from the Town Board for a review and report in connection with requested zoning amendments to the current PAC zoning law. The matter was recently reviewed at the 6 January 2014 meeting and subsequently the Town Board by resolution granted the Planning Board additional time to consider the proposal and prepare a report.

It is my understanding the Attorney for the Planning Board has prepared a memorandum addressing the SEQRA procedural aspects to be considered, and that is the primary purpose for this meeting appearance.

2. At this time there are no plans or submitted technical information which require our office's review. We will be available to review any such documents submitted in the future, and will assist and coordinate with the procedural aspects of this proposal as requested.

Respectfully Submitted,



Mark J. Edsall, P.E., P.P.  
Engineer For the Town

REGIONAL OFFICES

- 111 Wheatfield Drive • Suite One • Milford, Pennsylvania 18337 • 570-296-2765 •
- 540 Broadway • Monticello, New York 12701 • 845-794-3399 •