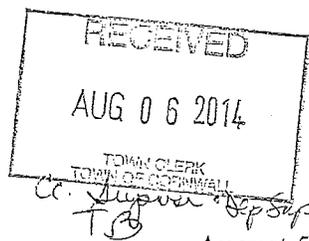


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August 5, 2014

VIA E-MAIL AND FIRST CLASS MAIL

Town Board
Town of Cornwall
183 Main Street
Cornwall, New York 12518

Re: Cornwall Commons – PB#: 06-19
Our File No. 00254 - 53632

Dear Supervisor Clark and Town Board Members:

At Monday night's meeting, the Cornwall Planning Board authorized me to send this letter to respond to your informal referral regarding the Cornwall Commons project. Specifically, the Town Board seeks the Planning Board's informal opinion regarding (1) who should be lead agency for the SEQRA review and (2) what are the significant planning, design and engineering issues that they foresee if the project is amended as presently proposed.

Regarding SEQRA lead agency, the Planning Board notes that it has served as lead agency on this project since it was first proposed. Now the applicant seeks to change the Planned Adult Community (PAC) project to allow non-age-restricted housing, currently at a ratio of 65% non-age-restricted housing to 35% age-restricted. This change requires both a zoning amendment and site plan approval. 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).

The proposed zoning amendment would affect the entire lot 10 development, consisting of 158.994 acres. This exceeds the Type I threshold. 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).

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Marianna R. Kennedy
Gary J. Gogerty
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Timothy P. McElduff, Jr.
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The Planning Board previously served as lead agency, overseeing the environmental review for the Cornwall Commons project. 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.

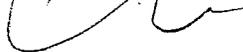
SEIS Findings Statement at page 3. As part of the SEIS review, the Planning Board considered an engineered site plan for the lot 10 PAC development, but at that time the applicant did not request and the Planning Board did not grant site plan approval. That remains the case today.

In December 2013 the Town Board referred the prior proposal of 78% non-age-restricted housing to the Planning Board. At that time, the Planning Board circulated its intent to re-establish lead agency, and, following no objection from any other potential lead agency, became lead agency for the proposed amended project. The Planning Board sees no reason to change that determination at this juncture, regardless of the ratio of non-age-restricted to age-restricted housing units proposed. Given the Planning Board's prior reviews of this project, the Planning Board believes that remains best-suited to evaluate the potential environmental impacts associated with any revised proposal.

Lastly, in regards to the Town Board's request for any planning concerns regarding the revised 65% - 35% proposal, the Planning Board refers the Town Board to the minutes of the Planning Board's meeting for March 2014. There was an extensive discussion at that meeting regarding the 78% - 22% proposal that evening, although no action was taken. A copy of the relevant portion of the minutes is enclosed for your convenience.

Thank you.

Very truly yours,



DOMINIC CORDISCO

DRC/rb/375135

Enclosure

cc: Renata McGee, Town Clerk
Cornwall Planning Board
Leslie Dotson, AICP
Mark Edsall, P.E.
Gary Vinson
Diane Hines, Planning Board Clerk
Michael Zarin, Esq., Co-Counsel for the Applicant

CORNWALL COMMONS LOT #10

MR. NOVESKY: Cornwall Commons, I will say that this evening we want to come out of this meeting with one of three results. One, I'd like the board to discuss and resolve whether or not you're going to declare negative dec, two, positive dec or three, a specific request for very, very specific information. So we have those three options to pursue and with that, we'll go into discussion. Leslie, do you want to make a comment?

MS. DOTSON: Right, counsel may want to modify that a little bit, it may be that there's a fourth option which is, you know, either requesting additional information or requesting time to examine some information that you have in more detail. In any case, I had given you some comments that kind of flesh out some of the remarks that I made to you in January.

MR. NOVESKY: Does everyone have a copy of Leslie's note?

MR. BRODMERKEL: I didn't receive it until I got here tonight.

MS. DOTSON: Yes, I do apologize for that.

MR. BRODMERKEL: That's not good.

MR. NOVESKY: I will take some responsibility for asking Leslie to put suggestions in writing prior to this evening and that was this afternoon I think because I think having it in front of you may be beneficial.

MS. DOTSON: This is to an extent something that had been discussed perhaps in less detail but it was something that had been discussed in January, just felt it might be appropriate, that's one of the things the chairman suggested that putting it in writing might assist.

MR. NOVESKY: Let's be clear about one thing so we don't get into all sorts of crazy stuff tonight. The purpose of our discussion tonight is a request by the town board as to a recommendation with regard to a zoning change. That really is the general purpose of our discussion. We're not discussing approving the project in terms of site plan or anything else. We're

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talking about making a recommendation to the town board. So although questions may pertain to Cornwall Commons as we move along and specific site issues, SEQRA and so forth, we're here to respond to a town board request. Secondly, in order to move forward with that response, we must as per Dominic's recommendations at the prior meeting or at the January meeting we must resolve the SEQRA issues going in prior to making that recommendation to the town board. If we decide that a negative dec is appropriate, it would be my opinion basically recommending to the town that the zoning change occur. So we'll keep that in mind in our discussions as well with that. Leslie?

MS. DOTSON: Right, okay. In any case as we discussed in January, they made a very large middle, you know, inch thick document which the board had in PDF form and I was fortunate enough to have in paper form. I had noted that I felt that there was some conclusory statements in that I did specifically object to the use of the term market rate as it was used there pretty much throughout that submission, including the proposed revisions to the developer's agreement with the town because I believe that they are using the term market rate to describe non-age restricted housing as opposed to the way typically the term is used to speak to affordable versus non.

MR. NOVESKY: I agree to being confused maybe Gerry can clarify that eventually the reference to market rate housing?

MR. JACOBOWITZ: We'll clarify.

MS. DOTSON: I think that I, that was really very important because after all, there's language in the town's current comprehensive plan that speaks to housing affordability and particularly housing affordability for seniors so--

MR. BRODMERKEL: They have agreed.

MS. DOTSON: Right, so I was just trying to give background. I also have some other comments with respect to the matter of comprehensive plan compliance. I did have some thoughts to share, one of the things as you noticed with the previous presentation is that people like to give you an idea as to where they believe their proposal fits in with the comprehensive plan recommendations. There are about 17 different

comprehensive plan recommendations, in some cases, there may be ones that weren't mentioned that may have an application. The reason I mention that is because again the question of housing affordability is something that the plan did mention both to seniors and to the question of the population in general. So there are three specific recommendations that were made within the comprehensive plan and I do think it's important for me to mention them as possibilities. The reason being is that the town board has several options here, it can choose to act on what the applicant has provided for it, it can choose to not act at all on it or it can choose to make some additional suggestions. So I think it's appropriate for the broader issue of some other recommendations that exist within the comprehensive plan to be at least brought to the table. I also did speak to some of the questions about some implications that I was perceiving in the submission with respect to the current demographic mix within the town. I had the sense that they were implying that the existing demographics within the town were the result of something specific on behalf of the town and in fact the demographics that we have now are very consistent with the demographics from your previous plan. I mean, there is a demographic bubble, we tend to have a slightly older age group within the town and slightly, wealthier age group within the town. In any case, I can't say what the town board is going to choose to do with respect to this but it's something that deserves to be looked at. I also had some concerns with respect to the proposed amendment to the developer's agreement. I think it contains some specific language about unrestricted recreation fees not to exceed 2,000 per unit, that's actually the town's current recreational fee but given the fact that this could have a long, long buildout it just seemed to me that it would be more protected to the town to have it float. So unless of course they're planning on paying the entire set of recreation fees up front in which case that would be the same with any other subdivision that wouldn't apply but to the extent that they're expecting to try to pay the fees on a per phase basis, I think it's best to speak to that.

MR. BRODMERKEL: If I'm correct, you're taking most of what you're talking about from the update of the submission by the applicant for the change of the law?

MS. DOTSON: Right, yes.

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MR. BRODMERKEL: Thank you.

MS. DOTSON: Right, they pulled that out and gave you a separate submission but that was in that inch thick submission from December.

MR. NOVESKY: Thank you, Leslie. Mark?

MR. EDSALL: My comments are rather short because I'm going to stay focused on what's actually before you tonight, tonight having the benefit of Dominic's memo and input and guidance is a decision on how to proceed with SEQRA. I have many comments that may develop as the law becomes further reviewed or if in fact there are any other changes to the site plan or once you have made a determination how to proceed on SEQRA we'll begin to review any additional detailed information the board may ask for. Given the fact that you are at a procedural step there really are no documents that I needed to review for tonight.

MR. NOVESKY: Thank you, Mark. Dominic?

MR. CORDISCO: Yes, just to take a step back for a moment, back in January, the planning board expressed its intent to serve as SEQRA lead agency and cause notice to be sent out to all the other involved and interested agencies that had previously been part of the review process for the Cornwall Commons project. And apart from the correspondence from New York City DEP which seemed to be mistaking the project for a new project and commenting on possibility of actually using New York City water supply for the project that there was no, there was no objections to the planning board assuming position of lead agency. So as of this time more than 30 days has passed so let the record reflect the fact that the planning board is now lead agency for the environmental review.

MR. NOVESKY: So for the record--

MR. CORDISCO: The next step in your environmental review is processing of the application to amend the zoning to go from 100 percent age restricted project to one that's only 22 percent age restricted so to make a determination under SEQRA of its significance. And that means that you have the responsibility to determine whether or not there are potential significant adverse impacts associated primarily with the change that's proposed, also in light of the prior

review that was undertaken and concluded in 2008 whether or not that needs to be updated. So whether or not there's the potential for significant adverse impacts or there are not or as Leslie mentioned whether or not you would like additional information or additional time to review the information that's in front of you. Those are the four options that the board and the board itself has to determine what, how it would like to proceed.

MR. NOVESKY: Dominic, there's been some question in terms of the implements of Fair Housing Act on this whole ordeal, could you elaborate a little bit on that?

MR. CORDISCO: There was a legal issue that was raised by an attorney from Rhinebeck, George Rodenhausen, he's a land use attorney, very knowledgeable land use attorney. But in this instance in January of 2013 so well over a year ago, Mr. Rodenhausen wrote a letter to the town board raising a number of concerns regarding the proposal to amend the zoning. And one of his concerns was in connection with potential impacts of the Fair Housing Act which prohibits discrimination of providing equal opportunities for anyone to purchase housing. And there are exemptions to that rule for age restricted homes and I believe that Mr. Rodenhausen's opinion was is that the concept of having one lot, lot ten be both 22 percent age restricted and 78 not age restricted would violate the Fair Housing Act. I also believe, Mr. Jacobowitz, that you actually responded in that in writing to the town board. But that's a legal issue that has been now briefed as it were in a sense that there's been an issue that was raised by the Hudson Highlands Land Trust who Mr. Rodenhausen was working on behalf of and the applicant. It's perhaps an issue that's not fully resolved but it is out there to answer your question.

MR. NOVESKY: Are you satisfied with its current status for us to move forward despite it?

MR. CORDISCO: I think that to be quite honest I think it's a side issue in connection with the proposed zone change because if there, it would seem to me and I don't want to jump ahead but it would seem to me there's a possibility of how the zoning amendment could address that should the zoning amendment move forward. In other words, the senior housing could be located on its own sub lot which would seem to address the Fair Housing concerns. It's always the potential for the

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project to be a condo in which case senior housing component of the condominium could be its own separate sub condominium, its own phase of the condominium which would also seem to me to address that concern but I'm, like I said, I'm getting ahead of myself with the devil's in the details and we're not at the details, we're at the concept stage of whether or not there are any impacts associated with the proposed zoning change that you would need to evaluate. And then bear in mind that the ultimate goal here is that the town board in December referred to you for your opinion as to whether or not the zone change should proceed so you're building your record and you're also building a basis to actually render that opinion.

MR. NOVESKY: Right, thank you, Dominic. Okay, board?

MR. KLOSKY: So Dominic help me understand the, if we were to find that there was the potential for significant adverse effects then the next step would be a Supplemental Environmental Impact Statement or new Environmental Impact Statement?

MR. CORDISCO: It would be a supplemental is my recommendation, if that's the decision that the board intends to go with. And there would be actually a Draft Supplemental Environmental Impact Statement then which would need to be created in such a way that it was evaluating the difference between what came before and what's proposed now and what needs to be updated. And that would be prepared by the applicant. It's not a board document, it doesn't become a board document until much later in the process. But the initial document itself would be prepared by the applicant and then reviewed for adequacy by the board. And of course the applicant drives that process because the applicant decides to either prepare a supplemental or not. And in which case if they don't prepare the supplemental, the board has no obligation to continue with its review but if they do then you have an obligation to review.

MR. NOVESKY: Specific areas.

MR. KLOSKY: So since the preparation of the last Supplemental Environmental Impact Statement, Old Forge Hill Road has become inoperative, there have been changes to our sewage treatment plant brought on by both age, it's been six years since the last official report my recollection, I think that's right 2008 was when we closed out the last study and the--

MR. NOVESKY: Last what?

MR. KLOSKY: In 2008 was when the last Supplemental Impact Statement was closed out, I believe. Since that time, we have had some difficulties to include Hurricane Sandy, is that right, Mark?

MR. EDSALL: Irene.

MR. KLOSKY: Yes, Irene, I get the two, they were in such rapid succession sometimes, Sandy took my roof, I think it was Irene that sent the water over the dam. There's also as part of this proposed zoning change will considerably change the density of the population inside the lot ten development, specifically the PAC would have included I would guess no more than two persons per home or in general two persons per home. Now we're talking about at market rates adding children to that mix which could increase the population significantly that would lead to increased traffic on 9W as school children would be moving back and forth there'd be bus traffic in and out of there, it would change the demands on the recreational facilities quite significantly. We already have significant issues with both our lacrosse and our soccer programs in town due to inadequate space we're borrowing space basically from the school board on a regular basis, it's traditional for soccer players in Cornwall to be recognizable by the scars on their knees because they have played behind Cornwall-on-Hudson Elementary School which leads to five years year olds basically bleeding as they come off the court. I don't think much of that in terms of the community's provision for our kids, the demand versus capacity ratios for essentially all services demanded by lot ten would increase. So there would be increasing demand in terms of traffic, in terms of sewage, in terms of the water as we convert from a PAC to market rates. I also have seen a number of statements in terms of the predicted number of school children and predicted benefits to our tax rolls that was part of the submissions that have been made over the last couple years, they are not part of a formal Environmental Impact Statement but informal materials coming from the developer. It seems to me that a very smaller or in the predicted number of school children versus the actual number of school children, right, so this is all statistics and predictions and if the guess is wrong and we generate even 10 to 15 percent more children than are predicted

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in the submissions thus far, we go into a net negative rather than a net positive benefit to the community from that. And so I'd like to dig into those numbers considerably, considerably more deeply and that would require a Supplemental Environmental Impact Statement. Lastly, it has been my observation that this town has pursued residential development as its principal means of growth. It seems to me irrational to believe that further residential development will dig us out of our existing tax problems. I believe the site is currently zoned as PIO or PAC, both of those are highly beneficial to our tax base, I will need to see considerably more information before I'm convinced that we can go forward with this particular project without seeing significant detriment rather than advantage to our tax rolls so that's why I believe that we should have a Supplemental Environmental Impact Statement associated with this zoning change.

MR. NOVESKY: Thank you, Led.

MR. GOLD: Nice thing about following Led there's very little left to say because he pretty much hit every point that I have concerns about. In addition to that, we were presented with a tremendous amount of information from the general public and I think Gary this is in not a criticism, it's just there's a lot of information that I have not had a chance to read and review so I'm not comfortable proceeding to conclusion without having had a chance to review that information to see what my friends and neighbors have to say about this project.

MR. NOVESKY: So you're not comfortable taking a position really?

MR. GOLD: Well, I agree with Led that further environmental review is absolutely necessary.

MR. NOVESKY: Are you suggesting a supplemental?

MR. GOLD: I am.

MR. BISCHOFF: I agree with the fact that there needs to be more done on the environmental impact, you know, mainly our school systems recreation, basically everything Led said in a ball is where I feel to a T, just about to a T.

MR. NOVESKY: Kenn?

MR. BRODMERKEL: You're not going to believe this but I might disagree with Led on a point or two. My understanding if I remember correctly and I'm old and feeble so I forget a lot, is the, and in this the red line thing mention of three bedroom, my understanding there were not supposed to be any three bedroom, is that correct?

MR. JACOBOWITZ: I don't know what you're referring to red line.

MR. BRODMERKEL: In the law changes, there's a section here that mentions three bedroom. My understanding when you spoke was there will be no three bedroom, is that correct? Which one is correct?

MR. JACOBOWITZ: There are no three bedroom in the detached homes, in the multiple residences, there may be some in the chart but I'm doing that from memory but none in the single family detached.

MR. BRODMERKEL: Relax back there, you will not get a chance to talk, sit on your hands, it's easier.

MR. JACOBOWITZ: Let me check it and answer.

MR. BRODMERKEL: Please, I think that's relevant. When we were presented, when you presented this and Leslie went through it, one of the things that I was very specific about asking Leslie was the credibility of the numbers we got and credibility of the company that put it together. But Leslie stood behind the company and their credibility as to the numbers that we received and I was very pointed in asking about that. So I must assume that the numbers we got were credible, this is what our professional is telling us.

MR. NOVESKY: Which numbers are you referring to?

MR. BRODMERKEL: The population and the increase in the number of children, the increase in the number of people that would take place here.

MR. NOVESKY: Leslie, you have a response?

MS. DOTSON: Just I think what Led's asking for and this is actually quite commonly done in environmental review procedures is to do what's called you didn't have the right term for it but it's a sensitivity

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analysis to look to say there may be some factors that cause the numbers to be different I've heard that in some communities there are higher than normal school children generations. So it's often very instructive, boards often like to have a sensitivity analysis that incorporates what I understand Led to be asking for to look to see like well, if we're off by 10 percent or by whatever then that's going to totally tip everything into the wastebasket. If that's the case that's an important thing to know.

MR. BRODMERKEL: What I hear you saying is any statistics we get we've got to apply a factor to and it could go higher, could go higher and could go higher, we have to work with what we've been given. And since it was provided by experts that you gave credibility to we have to have a starting point, that's all I'm saying. Could it go higher, could the birth rate go up, it has not been in this town it has not been going up, it's been going down which is not to say we shouldn't look at it again, I'm not going to argue with you, just making a point that you know this was asked. The other item that was raised and I'm surprised you guys didn't get onto it for maybe the traffic difference between having more people with children versus without children as far as leaving time when going to work, I heard about business and school kids but leaving time I don't know if there's anything significant there because one of the things I have to say is people who are 55 and older go to work every day so I don't know how much of an impact there is from that and the number of school children.

MR. NOVESKY: Kenn, pertaining to that traffic thing if I might when was the last traffic study done and projections on this project, Leslie?

MS. DOTSON: 2008, there was a letter that was submitted, no, I'm sorry, the actual traffic study was 2006, you're right.

MR. JACOBOWITZ: There's a supplemental as part of the materials you received.

MR. CORDISCO: There was an update.

MS. DOTSON: There was an update.

MR. CORDISCO: From Phil Greeley.

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MS. DOTSON: That I'm not clear whether it was looked at, I looked at Phil Greeley's memo and I looked at the table and I have some concerns with it.

MR. NOVESKY: I'm sorry for interrupting, Kenn, we'll talk about that.

MS. DOTSON: That's not really my typical bailiwick to look at but I, it seemed that there were some possible inconsistencies between the actual table data that he provided and some of the conclusions.

MR. NOVESKY: Let me get back, go ahead, Kenn.

MR. BRODMERKEL: The last thing I want to mention is the sewage problem, the whole town has a sewage problem, the town board's going back to when I was in office I think that Mark's company was preparing an analysis at that time telling us we had a problem and now I'm talking 18 years ago or something like that. And the town hasn't reacted and my understanding is that we, the town has agreed to provide sewage for this facility or somebody has, am I correct?

MR. GOLD: Dominic, is the sewage issue still up in the air?

MR. CORDISCO: There is a developer's agreement between the town board and well of course on behalf of the town and Cornwall Commons where there was an agreed upon payment for the reservation of sewer capacity for the project. And that reservation had a time period associated with it. That time period by the terms of the original developer's agreement has appeared to expire but there's a subsequent developer's agreement, there was an amendment which I only was reviewing late today and it's unclear to me the exact status of that. And that's not to cause any dispersions or questions in regards to this, it may very well have been extended and I can provide that update further to the board once I've had an opportunity to review that with Steve Gaba, the attorney for the town board.

MR. BRODMERKEL: Dominic, are you done? I'm sorry.

MR. CORDISCO: Yes.

MR. BRODMERKEL: My point in bringing this up is the town has responsibilities to people that want to do things in this town and they have promised to do if

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they don't do them the town is liable for not doing their job.

MR. NOVESKY: Dominic?

MR. CORDISCO: Well, you know, as I mentioned, there is a reservation of sewer capacity but there are certainly a number of things that have occurred since that 2005, reservation of sewer capacity in connection with the town's sewage treatment collection system and plans. So the potential for further analysis there or for at least an understanding that there is sufficient capacity in order to accommodate the construction and buildout of this project I think is a question that could be evaluated further. But it may be answered by the fact that yes, there is an obligation to provide the capacity but just because there's an obligation to provide the capacity it doesn't mean the capacity is there or in light of what's going on now with the Department of Environmental Conservation requiring further upgrades to the town's sewage treatment plant and collection system it has to be seen I think in the context of that as well because that could potentially impact the ability for the capacity.

MR. BRODMERKEL: If we went by that, my understanding and the, if the town wants to do it that's their business would have to put a freeze on all new buildings because of the sewage problem so until they do something like that then we proceed.

MR. CORDISCO: Right, but the town board right now like is in the middle of negotiating with the Department of Environmental Conservation regarding a series of significant capital improvements that the Department of Environmental--

MR. BRODMERKEL: With significant finds.

MR. CORDISCO: Capital improvements is my position, my recommendation to the town board but in any event, I'm getting ahead of myself but in any event that's a process while there might be legal obligations to provide capacity, also has to be physical capacity to provide and that's part of the process that's going on so it's difficult to answer the question conclusively but it's certainly a question or issue regarding sewer capacity that could benefit from further analysis.

MR. NOVESKY: Well, let me ask the question then Leslie

generally on the based on the concerns that have been raised by some of the board would you, is there a comfort level with a negative dec? Is there a comfort level with a positive dec or comfort level with lack of information rather than a supplemental?

MS. DOTSON: I believe I understood Led to have outlined an argument for a positive declaration. He's described what he believes to be significant potential concerns that would benefit from being looked at in the context of a Supplemental EIS and, you know, to the extent that it would be all in one cohesive document and would address some of the new issues that have been brought up, such as the sewage treatment issue discussed tonight and it wouldn't be kind of balkanized like some of the other material that you have before where it's kind of--

MR. KLOSKY: Inaccessible to the public because of the format.

MR. CORDISCO: It was posted on the website.

MR. KLOSKY: It's not particularly coherent if I was a member of the public just encountering this project for the first time I would have a hard time plowing through that because--

MS. DOTSON: Balkanized, it's not in the kind of accessible format that the Supplemental EIS would be.

MR. NOVESKY: With that and with that being on the floor, Gerry, maybe if you can take five minutes to respond if you feel this could be responded to please do?

MR. JACOBOWITZ: Okay, I think so, there's been an awful lot said.

MR. NOVESKY: You have the floor for how's five minutes?

MR. JACOBOWITZ: Okay, thank you. Gerry Jacobowitz, Jacobowitz and Gubits, attorneys for Cornwall Commons and here present is Crissy Amato, who's with the principal company, Cornwall Commons. Dominic did a very simple, clear explanation of how you deal with SEQRA. I got it tonight when I walked in, I've read it, it sounds like it's a fair and accurate statement. I'll look at it more carefully. But basically, the

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expression of identification of issues does not mean that there is to be a positive declaration because it's not just what someone thinks may be an issue, it has to have substance behind it so that you can fairly say there is a significant adverse environmental impact, that's the standard. And if you don't have that, you don't have a basis for a positive declaration. And so just listening to the litany of ideas that have been thrown out, most of them do not meet that standard. Whether any of them do, too difficult to try to answer shooting from the hip and I assume for those issues you're going to get your consultants to take a, take a look at them to advise you whether or not it is a significant adverse environmental impact. The bottom page one of Dominic's memo to you categorizes the three sources for identifying any potential and then goes on to describe what significance means and certain things may have happened but they don't rise to the level of magnitude that justifies it and there are other standards to be applied. So the fact that the bridge is out on Forge Hill Road may very well have absolutely nothing to do with our project and the issue of the Irene storm I think our drainage plan that has been looked at 18 ways coming and going by every breathing, walking engineer in the neighborhood provides you with assurance that our drainage is not a problem. And we don't control Irene and whatever happened with Irene wasn't related to us and our property isn't going to relate to an Irene storm based on the studies we have given you. Traffic impact we anticipated that and as part of the materials that have been here at the town for more than two years there's an updated report from the traffic engineers that we hired that are credible, reliable and competent. Their report was acceptable on the initial EIS, we see no reason why their report would not be entitled to the same credibility. Recreational facilities, I don't know what that means, we'll have on-site recreational facilities. We also have agreed to pay to the town a significant amount of money for the town to use as they wish for their recreational needs. The issue of school children impact, we have given detailed analyses that are part of the papers that you have here in the Town Hall that should be part of the package you all got back in I think December. And we have heard nothing from any authoritative source other than the self-serving declaration of the school representative that those numbers are not correct. And we have submitted them for your edification and for your consultants to review and analyze and guide and we have had nothing back

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saying that those numbers are erroneous. And there's a couple other things that were mentioned by Mr. Klosky that for the most part are subject to the same kind of comment I'm giving. The point I'm trying to make is that there has to be a rationale, an analysis done to determine whether or not any of these events that are identified in your mind or in your imagination or in fact do constitute a significant adverse environmental impact. It's, we have no problem with somebody saying hey, we should think about this, we agree. Everything should be thought of, everything should be considered and analyzed so that when we get done we have a project that is going to be successful and is going to be a credit to the community. Nobody is selling anything other than that. But to throw out a whole bunch of concerns without having them subjected to the detailed analysis that must be done under SEQRA I don't think is a proper way of going about it. So the question then becomes what do we do next? Because obviously there are two people who, or three of the board who want to consider these things and you're entitled to it, that's your job, that's why you get the big bucks so that you give it the time, attention and analysis thinking and importance that it should have. You have consultants that are very experienced in these things. So I think the proper thing to do is subject to this shopping list that's been generated from your comments and observations to that scrutiny and then we'll deal with it and if any of them result in supporting a legal conclusion that they will create a significant adverse environmental impact different than whatever has already been addressed cause you know you have addressed lots of impacts, many, many impacts to get to this point and you have addressed them and there's findings and there's things in there that say we must do to mitigate those impacts, so you have to have other impacts, ones we didn't already tell you how we're mitigating. And for that there's got to be a recent analysis because to subject us to a Supplemental Environmental Impact Statement which can have glibly been stated as quick as a wink is unfair, unnecessary and very well may be illegal. We don't want to get to that point. We want to work together but we're not going to lay down and die and let you go force us to do a Supplemental Environmental Impact Statement if it's not justified. If it is justified, we have a track record of doing things here in the town. Now I think we're in the 13th year of this project so you have no reason to think we won't do what we need to do. But we're not going to do something we don't need to do

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because that's unfair.

MR. NOVESKY: Thank you.

MR. BISCHOFF: I do believe that Led made very valid comments and all of them are very valid. To also state that it is not a significant change what you're proposing is a complete 180 of what was approved. You're essentially changing, going from a 55 and older community to a 70 I'll call it 80-20 just for round numbers that's a complete opposite direction.

MR. JACOBOWITZ: That doesn't mean that's a change that creates a significant adverse environmental impact. You're right, there is a change, we can't say there's no change, there is a change but the question is is it, is that change creating significant adverse environmental impacts? That's the test, that's the question. And while you may feel gee, it sounds like it, that's not quite enough for us to be able to deal with and for you to impose that on us. So we're willing to discuss it, we're willing to say well, why do you think that change is a significant change, tell us what it is about that and then we can deal with it to see whether we already have taken care of it in our mitigation and findings we already, this board already adopted or we have to make some other accommodation.

MR. NOVESKY: Thank you, Gerry.

MR. JACOBOWITZ: That's the point, we're not saying there's no change.

MR. NOVESKY: Dominic?

MR. CORDISCO: One important clarification is that take a step back for a second, in order to make a negative declaration, for instance, in order to make a negative declaration the board must find that there are no significant adverse impacts. However, in order to make a positive declaration and require a Supplemental EIS the board has merely to find and identify the potential for significant adverse impacts. You don't have to determine when you're making this decision that there are significant, significant adverse impacts. You're determining the potential, the fact that there may be significant adverse impacts that have to be further evaluated. That's the purpose of it, so you're not automatically saying if you make a positive declaration that there is an adverse impact from traffic. You're

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saying that there may be an adverse impact from traffic that has to be further evaluated and I think that I, that's an important clarification.

MR. NOVESKY: Thank you, Dominic?

MR. KLOSKY: Correct, it was my understanding that we're before making a positive or negative dec to determine the potential for impacts rather than to clarify the actual, whether what those impacts are in fact the purpose of SEQRA is to make a determination as to the significance of those impacts and that's why I'm eager to get on with the SEQRA process as proposed. The zoning change proposed I agree with Richie is large scale, this is a significant change in the zoning for that piece of property. It has been PIO for a long time, we changed from PIO to allow this PAC idea to come forward with the idea that it may meet some of the same requirements in our master plan for growth of our tax base. I see the property as being one of the premier sites in our community for development as planned industrial or office. And so if it were to return to commercial property I think that would be to the benefit of the town as well. So, I mean, that's how I see it right now, that's why I think we need to plunge into a formal SEQRA process so that we can clarify the thoughts of this board and thoughts of the town board on this proposed change which is large scale.

MR. GOLD: One other point that needs to be made especially in light of what Dominic just pointed out some of the data's changed, some of it hasn't been studied in six years or more in addition to some of the things that you pointed out just the time that's elapsed warrants revisiting some of the data that was evaluated in preparing the 2008 FEIS. Thank you.

MR. NOVESKY: Well, it appears that at least three members of this board are substantially secure in wanting or requesting a Supplemental EIS.

MR. KLOSKY: So would I then move that we instruct our attorney to prepare a positive declaration, is that the correct next step, Dominic?

MR. CORDISCO: Yes, if you declare a positive declaration notice would be prepared and that notice would be prepared by both myself and by Leslie and then would be circulated to all the other involved and

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interested agencies.

MR. BRODMERKEL: Has it been seconded? No, we're not up to that point, it hasn't been seconded, I want to communicate.

MR. GOLD: It's now been seconded.

MR. BRODMERKEL: Now, couple things you're stressing the things you're stressing we stressed them before we worked together, we made demands on the applicant and made them come forth. For a lot of years we beat on him, okay, and I thought we did a pretty credible job. They came back with this change, I do not consider it a significant change concept, maybe the fact that there will be less old people and more young people that's a conceptual change. But the impact with the number of people, the traffic and the other things is not significant and that's what we're supposed to be looking at. So if you see a significant change, communicate it to me, I'd be glad to know about it because maybe I don't know these things.

MR. NOVESKY: I think if I may answer that, Kenn, what you're suggesting is the potential of a significant change and I'm not sure that--

MR. KLOSKY: Right, hence the need to pursue SEQRA and additionally I regard the addition of over, I mean, it would be over 100 kids to the school district, that's a significant change.

MR. BRODMERKEL: Do you remember the number?

MR. KLOSKY: It's 100 and gosh it's been--

MR. GOLD: It's 152 I believe it was.

MR. CASHMAN: It's 148 to 152.

MR. BRODMERKEL: Over an eight year buildout.

MR. KLOSKY: That's a significant change.

MR. BRODMERKEL: I would ask one thing, I think there's questions we have to have answered, one of the things I just heard mentioned was there was a more recent traffic study than I was aware of, traffic study that was done two years ago and I was not aware of that so that could answer some of the questions that you

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gentlemen raised, should we not look at that a little more closely before we do take an action, maybe we should hold it over until next month?

MR. NOVESKY: I do think some of the points that Led raised pertained to he viewed as potential significant changes in the use of the property and its recreational resources and so forth, those were the issues. The question is--

MR. KLOSKY: I'm satisfied with it, that's my duty, right, is to review all the materials that come to me which I believe I have done diligently and to come to a conclusion, that's what I've done. I've reviewed the material diligently and I have come to the conclusion I believe there's the potential for significant environmental impacts with this change, hence Supplemental Environmental Impact Statement.

MS. AMATO: I just want to clarify one thing, when you said specifically the water and the sewer and that there would be additional people, additional children will change when you guys reviewed the plan and when the EIS and Supplemental were done all of the records that were done, all of the consultants' reports it verified those things were not done based on, were not done based on two people living in a house, they were based on families. So they've done water capacity, sewer capacity is done by the number of bathrooms in a house, it's not done by the number of perceived flushes so somebody's who's 50 years old you may perceive flushes the toilet, uses more water those studies, those consultants do all the environmental impact reviews based on families. So it's already been reviewed as if there were families living in these two bedroom houses, whatever size units, that's how it was reviewed in the past. So yes, there's a difference in terms that there will be some children versus 55 plus people but the recreation, for example, we were asked to do an updated recreation plan which we have, I think which was included in your packet which clearly states that there is sufficient recreation on site, if not more recreation on site for the use of not just 55 plus but for children. We've gone back to update each of the consultants that did the original DEIS, the difference is that the people buying the units will be potentially younger versus older. But all the other impacts were reviewed based on families.

MR. BISCHOFF: We're purely going on the basis of a

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potential, not individual services. If you look at the school potentially you're looking at increased students which I don't think was ever accounted for in the initial.

MR. NOVESKY: I have a motion on the floor, by the way, this is a discussion subject to that motion so you can respond to that, Crissy, if you'd like.

MS. AMATO: I'm sorry?

MR. NOVESKY: Did you want to respond to what Richie was talking about?

MS. AMATO: About the school-aged children?

MR. BISCHOFF: Purely just going on the sense that that's not, we're not looking at individual services saying this is going to impact garbage this way, it's a generalized potential for everything, school children being one potential.

MR. JACOBOWITZ: What's the change in the project, the environmental affect of this project by having school-aged children, not that there will be more children, what's the environmental impact from having those children? That's where there is no connection.

MR. NOVESKY: If I may, in this particular case directing towards what Dominic's comment was potential impacts we need to make sure that we insert the concerns of potential.

MR. JACOBOWITZ: What's the potential impact of having children?

MR. CORDISCO: Yes, if I may in the memo that I had prepared to the board, I had, there's a long list of criteria contained in the SEQRA regulations that set forth the criteria for making this decision that is in front of you right now. And so the potentials that you're looking at potential substantial adverse change in environmental conditions such as air quality, water quality or quantity of traffic and noise levels the next one down these are bulleted items that are on the last page of my memo.

MR. NOVESKY: This is you're quoting from 617?

MR. CORDISCO: Correct, creation of a material conflict

with a community's current plans or goals as officially approved or adopted, that's relating to the comprehensive plan and the question is whether or not the proposed zoning amendment is consistent with the comprehensive plan. The third bullet down is the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources or of existing community or neighborhood character, fourth one is the substantial change in the use or intensity of use of land. And the last one and this is important if I my emphasize, 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.

MR. KLOSKY: I will say I have considered Dominic's memo in detail prior to making my motion.

MR. NOVESKY: Well, I will say that the fourth point in the memo where he does talk about the change in recreational changes potentially, motion on the floor, any other comments?

MR. BRODMERKEL: I'd just like to say one more time that the board consider getting this information if it's out there before we make this decision.

MR. NOVESKY: I will ask the persons that made the motion if you would like to--

MR. KLOSKY: Well, as I said before, I have reviewed the materials which are before the board after this time I believe that SEQRA is the right process to pursue a change of this scale. And I see the potential for adverse, significant adverse impacts under the zoning change as proposed.

MR. NOVESKY: With that, I will call a vote on the motion. All in favor?

ROLL CALL

MR. GOLD AYE
MR. BISCHOFF AYE
MR. KLOSKY AYE
MR. BRODMERKEL NAY
MR. NOVESKY NAY

MR. CORDISCO: Your vote is no against the motion for

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significant--

MR. BRODMERKEL: Dominic, question, there's only five of us here tonight, do we need four in favor to pass this?

MR. CORDISCO: Correct, the vote fails.

MR. NOVESKY: We'll take it to the board next month.

MR. BRODMERKEL: Yes.

MR. NOVESKY: Any other questions?

MR. KLOSKY: So what's the next step?

MR. NOVESKY: We'll revisit the issue next month.

MR. BRODMERKEL: Hopefully, we'll get everybody here, you have to have four votes in favor of this to have it pass, we had a majority but not four.

MR. CORDISCO: Is there, if I may suggest one of two things, if there's any additional information that you'd like the applicant to provide perhaps you should identify that now so it could be submitted and secondly, the SEQRA regulations provide for recommendation that this decision that you're supposed to make is supposed to be done within 20 days of you being confirmed as lead agency. So you're confirmed as lead agency tonight under the SEQRA regulations, you're supposed to make a decision as to whether or not to pos dec or negative dec or ask for additional information within 20 days, it would be appropriate to ask the applicant to at least extend that time to the next meeting so that there's no, well, there's while there's no default provisions here in SEQRA just that you're working towards that process in light of the fact that there's notwithstanding there's 20 day time period under SEQRA. So my recommendation is that the applicant would--

MR. NOVESKY: My position on this is that I really do require consistent with what Led suggested at the beginning of the meeting more time to review the data that has come in and we'll cite there are several memos and things that I want to go through in great detail and I ask the applicant to allow for an extension of that to next month and we'll revisit the vote.

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MR. CORDISCO: Does the applicant agree?

MR. JACOBOWITZ: Let me ask you a question, Dominic, if they ask for more information within the 20 days doesn't that get them the extension?

MR. CORDISCO: That does.

MR. JACOBOWITZ: We don't have to agree to anything. Ask us a question for more information and that gives you the extension.

MR. CORDISCO: Well, they haven't asked you for more information.

MR. JACOBOWITZ: Yes, they did. I thought that that's what Mr. Brodmerkel was saying, he said could we, why can't, he said to his board why can't we ask them for more information about these things? And I'm taking that as being what the board wants, particularly since the chairman said he'd like time to review things so if you ask us a question within 20 days you get your extension, right?

MR. CORDISCO: They haven't asked for any additional information from you yet so if they want to ask for additional information.

MR. JACOBOWITZ: Ask, ask.

MR. NOVESKY: If you feel more comfortable, I'll ask one or two questions for the record so, so there's a requirement, I'd like an update to the information related to the traffic flow, I'd like information related to the potential of the children in the schools, I'd like some, well, let's start there.

MR. BRODMERKEL: There was a traffic study done, it was not available that I'm aware of.

MR. NOVESKY: Updated information related to?

MS. DOTSON: May just be that the information in there from 2010 you're asking for that to be updated, it's been photocopied so many times, it may just be what I think is possibly inconsistency, it's just that I can't read the numbers.

MR. JACOBOWITZ: It's not legible?

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MS. DOTSON: Yeah.

MR. JACOBOWITZ: We'll get you a legible copy.

MS. DOTSON: So but anyway--

MR. BRODMERKEL: Specifically, I would like to see the latest traffic study, if I saw it, I don't ever remember seeing it. And I'm pretty sure I didn't get to see it for whatever reason. The other thing was I would like if you could do me this favor provide me with the section that you gave us regarding the school and the number of children, I'll tell you that I didn't save all 800,000 pages that was submitted.

MR. JACOBOWITZ: You need not ask it as a favor, you're entitled to it as a board member to do your job. We're more than happy to try to accommodate reasonable requests.

MR. NOVESKY: Well, it's imperative that I get a better understanding of some of the numbers and I will have that for the next meeting.