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August 8, 2014

**By Email and Overnight Mail**

Hon. Randy Clark  
Supervisor of the Town of Cornwall  
and Members of the Town Board  
183 Main Street  
Cornwall, New York 12518

**Re: Cornwall Commons**

Dear Supervisor Clark and Members of the Town Board:

Thank you for allowing us to speak the other night at the Work Session. There were several issues we would all agree required clarification, and we again apologize if we went overboard at times during the evening. However, as you know, this Project and the Amatos have been before this Town for close to a decade. It is time to bring this Project to closure.

With that said, this letter is submitted to follow-up certain issues raised and discussed at your August 5<sup>th</sup> Work Session. We wish to reiterate the following key points:

**Board Should Adopt Resolutions 1 And 2 To Advance The Project**

- If the Town Board supports the proposed Zoning Amendment as a matter of policy, including bringing the Zoning Code into conformance with the Comprehensive Plan, and if the Board wants the Project to move forward efficiently, then you should adopt Resolutions 1 and 2 at your August 12<sup>th</sup> meeting.
- Resolution 1 would formally **introduce the Amendment, and refer it to the Planning Board** for its official report and recommendation under Zoning Code Section 158-43. That is something your Board clearly has expressed interest in receiving.
- By formally introducing the Zoning Amendment and referring it to the Planning Board, the **rezoning process would officially commence**. The Planning Board would have the

legal authority to review the Amendment, and provide your Board with its official recommendations regarding the proposed 65%/35% ratio of non-age-restricted and age-restricted housing in a PAC.

- Resolution 2 would **declare your Board's intent to serve as Lead Agency** under SEQRA for the environmental review of the proposed Zoning Amendment.
- By declaring your intent to serve as Lead Agency, the SEQRA process would officially commence, and the Planning Board would also have the legal authority to provide your Board with its official response as to which Board should serve as Lead Agency.
- Adoption of the Resolutions would **not result in a vote on the merits** of the proposed Zoning Amendment.
- We agree with your Board's counsel that the **Town Board should adopt the Resolutions together**. It would not make sense to adopt Resolution 1 and start the rezoning process, without also adopting Resolution 2 and starting the SEQRA process. The Resolutions go hand in hand, if you want the process to advance.

#### Town Board Can And Should Serve As Lead Agency

- **It is customary for a town board, as the legislative body, to serve as Lead Agency on a rezoning.** This Project cannot go forward without a rezoning. Typically, planning boards defer to the legislative body, especially where the key issue is a rezoning process.
- The rationale for your Board serving as Lead Agency is that the proposed Amendment is a **legislative action**. It requires your Board to make a **policy decision** whether the proposed ratio of non-age-restricted and age-restricted housing is appropriate for this site, and to **ensure conformance with the Town's Comprehensive Plan**.
- Your Board is just as equipped as the Planning Board to conduct the requisite SEQRA review. There is **not a "ball of wax" of SEQRA issues** remaining. The Project has undergone a full generic SEQRA review, and a full supplemental SEQRA review, which culminated in a Supplemental SEQRA Findings Statement in 2008. Every impact area regarding the overall Project was fully studied and mitigated by the Planning Board during the previous SEQRA reviews. Just because the Planning Board was Lead Agency in the past does not mean it must be Lead Agency now, or that it is best suited for this role with respect to the Zoning Amendment.

#### SEQRA Review For Zoning Amendment Does Not Require Supplemental EIS

- The only and very narrow legal question to answer under SEQRA at this juncture is **whether the proposed Zoning Amendment – which proposes only a change in the age of the Project's residents – presents any *new significant* adverse impacts that**

**were not previously studied in the 2008 Supplemental Environmental Impact Statement.**

- The primary SEQRA impact area that is implicated by the proposed change in the ages of the people living in the Project is the generation of new school-age children.
- The **physical layout of the Project has not changed**. Thus, there are no new significant impacts related to stormwater, traffic, community character, and the like, which might otherwise result if there were changes to building footprints and design, increases in impervious surfaces, introduction of new uses, higher density, etc.
- The Applicant's new professional planning consultant, AKRF, prepared and submitted to your Board a Full Environmental Assessment Form ("EAF") containing factual objective evidence – based on established methodology, not anecdotal or perceived evidence – that the proposed 65%/35% ratio would result in **125 school-age children**, who would be **phased into the School District** over the 7 to 10 year build-out of the Project. As such, the Project would result in **approximately 12 to 18 school kids entering the School District per year**. The School District has available capacity given **declining enrollments** of approximately 30-40 students per year. The Property taxes generated by the Project would far exceed the additional costs to the School District, resulting in approximately **\$2 million in net benefit** to the District.
- AKRF also provided your Board with technical evidence in the EAF that the proposed 65%/35% ratio would also **not result in any new significant impacts to sewer, water, traffic, or any other impact area**. Again, the standards and accepted methodologies for these technical analyses are **not based on the age of the user**, but rather depend on other metrics such as the number of units or bedrooms.
- Your Board will be able to review the EAF with **your own independent consultant** to verify the analyses and conclusions set forth in the EAF.
- The current proposal also has the added benefit to the Town and its constituents of, among other things, approximately **\$734,880.00 in recreation fees** to help pay for improvements to existing run-down recreational facilities, and/or to pay for new ones.
- The **EAF answered every question asked by the Planning Board** at its March 3, 2014 meeting with respect to the prior proposed zoning amendment (78%/22% ratio). The minutes of this March meeting were annexed to the Planning Board's attorney's letter to your Board, dated August 5, 2014.
- If the Planning Board was to serve as Lead Agency, the further "ping pong" and delays for what should be a cohesive review of this legislative action would be so onerous, convoluted and drawn-out that, despite these incontrovertible facts in the EAF regarding the potential impacts of the proposed Zoning Amendment, the **Project would be forced**

**to a complete halt.** It would be an unfortunate step in the long history of this Project, but one which would then require the Applicant to pursue its other available alternatives and probably lead to unnecessary contentiousness.

- There is **no need for a Supplemental Environmental Impact Statement to analyze the key issue regarding school-age children generation.** Nor is there a need for the Planning Board to take the lead on this issue. Your Board is certainly qualified to perform this focused task.

**Board Cannot Vote On Zoning Amendment Until After Public Hearing,  
And Opportunity For Independent Consultant To Advise The Board**

- By adopting Resolutions 1 and 2, and formally commencing the rezoning and SEQRA process, the Town Board can officially hire an independent consultant to review the proposal, and provide objective feedback to your Board.
- The Town Board would be positioned to formally adopt Lead Agency status within 30 days of circulating your intent to the Planning Board, assuming the Planning Board does not object.
- The Town Board would also be positioned at that time to schedule a Public Hearing on the Zoning Amendment.
- **Your Board cannot vote on the proposed Zoning Amendment without first conducting a Public Hearing,** as well as referring the Amendment to the Planning Board and County Planning.
- Once your Board has compiled all of the relevant evidence and data through the Public Hearing and referral processes, then you can deliberate and make an informed decision regarding the Zoning Amendment, and move this process forward to the next step.

**Applicant Not Withdraw Pending Subdivision And Site Plan Applications**

- To respond to the question presented by your Board's counsel, and to clarify the Applicant's position for the Town Board's and Planning Board's Record, the Applicant withdrew only the prior application for a Zoning Text Amendment, which was submitted in September 2012 in furtherance of the previously proposed unit mix of 78% non-age-restricted and 22% age-restricted.
- As the prior application for a Zoning Text Amendment was withdrawn, the Planning Board is no longer Lead Agency for that application. It no longer exists.
- In contrast, the **Applicant has *not* withdrawn its 10-lot Subdivision Application (for which the Planning Board has granted conditional final subdivision approval, with**

**extensions), or its Site Plan Application for Lot 10.** These applications are still before the Planning Board, even if they are on the proverbial back burner while the Applicant works to satisfy the conditions of final subdivision approval, and pursues the current Zoning Amendment to the PAC regulations before your Board.

- Even though the Applicant's Subdivision and Site Plan Applications are still pending, that does not mean that SEQRA is on-going before the Planning Board, or that the Planning Board is still Lead Agency for any aspect of the Project. **The Planning Board's SEQRA review for these actions has ended.** It ended in December 2008 with the Planning Board's adoption of a Supplemental SEQRA Findings Statement, at which time the **Planning Board's status as Lead Agency also ended.**
- The only action requiring SEQRA review at this time is with respect to the proposed Zoning Amendment.

We hope this is helpful for the Board. The rezoning and SEQRA processes are not as complicated as they seem. It is time for the Project to finally move forward, without needless controversy or delay.

Respectfully submitted,

ZARIN & STEINMETZ

By: 

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