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**Via Email**

Town of Vestal Town Board  
W. John Schaffer, Supervisor  
Jason Ellis, Councilman  
Patty Fitzgerald, Councilwoman  
Sue Messina, Councilwoman  
John Fletcher, Councilman  
605 Vestal Pkwy  
West Vestal, NY 13850

Re: Local Law A of 2021 “Rezoning Bunn Hill Road and Jenson Road”  
Bunn Hill Road, Vestal, New York

Dear Town Board of the Town of Vestal:

This office represents Friends for Responsible Vestal Zoning, a group of neighbors, residents, and interested members of the community in the Bunn Hill Road area (the “Neighbors”), that oppose the Proposed Planned Development District (“PDD”) at 833, 817, 813, 803, and 791 Bunn Hill Road, Vestal, New York and 161 unit apartment complex proposed to be built there (“the Project”), the approval of which is the subject of the proposed Local Law A of 2021 “Rezoning Bunn Hill Road and Jensen Road.” Although we had planned on getting these comments to the Board well in advance of tonight’s meeting, a complete reversal in approach by the applicant necessitated changes to these comments, delaying submission. We urge the Board to carefully read and consider these objections and weigh them in the context of this change in approach by the applicant.

Friends for Responsible Vestal Zoning urges the Town Board to deny the application for a PDD and Local Law A of 2021. The Project is not appropriate for the proposed location along Bunn Hill Road. Moreover, the PDD application has not been subjected to the necessary integrated site plan review, constitutes impermissible spot zoning, and is incompatible with the purpose of the PDD zoning.

### **No Integrated Site Plan Review**

The Town of Vestal Code provides that the planned development district is “for the purpose of promoting integrated site planning of tracts of land ten (10) acres or more in area.” Vestal code § 24-531. The Code sets out a process by which the Town Planning Board performs an initial review of the application for zoning change and makes its recommendation to the Town Board. In this case, the Planning Board has submitted a recommendation letter that is internally inconsistent and demonstrates that the Planning Board failed to perform the requisite “integrated site plan review.”

The Planning Board held several meetings on the proposed PDD and by letter dated August 26, 2020, recommended that the Town Board “approve with stated conditions.”<sup>1</sup> While the Planning Board recommends that the Town Board approve the PDD with conditions, the Planning Board’s recommendation letter sets forth numerous “concerns” that “require resolution” before the PDD can be approved. This recommendation is contradictory and demonstrates that the Planning Board is not recommending approval of the application in its current state. Moreover, the concerns needing further resolution – traffic, internal circulation, setbacks, and harmony with adjacent properties – are the very standards and objectives of site plan review under the Vestal Code. *See* Vestal code § 24-86(a). The Planning Board letter thus demonstrates that it did not perform the requisite thorough integrated site plan review called for in § 24-531.

The Planning Board’s stated concerns and recommended conditions present further contradictions. None of the proposed conditions directly address any of the “concerns” raised and in some cases contradict those concerns. For example, the Planning Board notes a concern regarding setbacks and proposes a fifty (50) foot wooded buffer. This, however, was not included within the proposed conditions and instead the Planning Board proposed requiring compliance with the “conceptual layout of the project as set forth in the general development plan.” Obviously, the conceptual layout did not include a 50’ wooded buffer and inclusion of such buffer would necessitate a significant alteration of the general development plan, likely including reduction from the 161 proposed units. Thus, the Planning Board’s recommendations

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<sup>1</sup> We note that the Planning Board’s August 26, 2020 letter was issued without a formal public vote pursuant to the Open Meetings Law. On August 4, 2020, the Planning Board closed its meeting on a motion to adjourn after the Chair “stated that the Board has read all submitted letters, and they will be discussed. The Board will let everyone know when they issue a recommendation to the Town Board, but are in need of more time to think and discuss the matter.” Despite this statement, no further discussion was held during an open meeting, and no vote was issued at an open meeting of the Planning Board prior to issuance of the letter to the Town Board.

demonstrate the need for a thorough integrated site plan review process prior to approval of the PDD and actually weigh in favor of denial of this incomplete application.

The inadequate site plan review arose from the Applicant's attempt to segment the review of the PDD and Project. By urging the Town Board to resolve these issues, the Planning Board effectively acknowledged that a more detailed site plan review would follow consideration and adoption of a PDD, as set forth in Section 13 of proposed Local Law A. This is not sufficient to support adoption of the PDD. A thorough site plan review is necessary to approve the PDD, but the Planning Board was not presented with sufficient information to complete such a review. Thus, the Planning Board's letter is not in fact a recommendation of approval but instead supports denial.

It is noteworthy that despite repeated assertions before the Planning Board that review of the PDD application did not require a full review of the development project, the Application has now acknowledged the legitimacy of the concerns raised in this office's letter of March 2020. However, Applicant's recognition that it cannot segment the review of the PDD and Project under either SEQRA or the Town Code, coming *after* the Planning Board completed its lengthy but limited review and this Board's approval of the Notice of Public Hearing, is a day late and a dollar short. The acknowledgement of the segmentation issue and attempt to correct it through the submission of a long Environmental Assessment Form ("EAF") for the entire Project demonstrates that the Applicant has circumvented the spirit, if not the language, of the PDD review procedure by failing to present the full details to the Planning Board. This belated recognition denied the Planning Board the opportunity for a thorough site plan review, and thus denied the Town Board a meaningful recommendation from the Planning Board. The proper course of action at this juncture is for the Town Board to return the application to the Planning Board for a thorough site plan review. Moreover, holding the required public hearing on the PDD prior to completing the SEQRA review, including the necessary Environmental Impact Statement ("EIS"), deprives the public of the opportunity to review any documents and materials that come from that process.

**The Planning Board's concerns are well-founded and remain unresolved.**

In responding to the Planning Board's concerns, the Applicant represents that various meetings took place and presents alleged comments and opinions of various county and town officials. However, Applicant fails to provide any written statements from these individuals and merely asks the Town Board and the public to accept their representations and interpretations of what those comments were. As discussed below, at least one of those officials took issue with the characterization of his statements and opinions as set forth in Appellants' responses. The Applicant's responses fail to provide substantive and meaningful information addressing the concerns.

## **Fire and Safety**

In response to the Planning Board's concerns regarding firetruck access, the Applicant describes a meeting with the fire chief and adjustment to the driveway connections. There is nothing in the documentation from the Chief. Moreover, there is no description or explanation as to the changes made to address the issue of firetruck access.

## **Sewer and Water**

The Project proposes connecting to public sewer and water, however, neither currently exists at the site. In order to provide such services, a requirement under the Town Code for such a development, the Applicant proposes to pay for the expansion of the piping. The Planning Board raised concerns regarding the capacity of the public water and wastewater systems to accommodate the size of the proposed project. Applicant again describes meetings with public officials, including Scott Groats, the Town Water & Wastewater Superintendent, and asserts that these officials have confirmed sufficient capacity. Applicant provides no written statement from the Superintendent for the Town Board or the general public to consider. Moreover, the Applicant does not provide any data regarding the calculation of the water and wastewater quantities for the Project or the current capacity of the existing Town infrastructure, nor any indication that this information was provided to the Town Water Superintendent. Furthermore, it is our understanding that the Town's wastewater treatment facilities are operating under a Consent Order with the New York State Department of Environmental Conservation ("DEC"); however, there is no indication that DEC has been provided relevant information to evaluate the proposed additions to capacity and no statement from the DEC regarding whether the addition of such large quantities of wastewater pose any issues or additional requirements under the Consent Order.

The Applicant's response does not address and resolve the Planning Board's concerns, instead, the Applicant asks this Board to accept its assertions without data or statement by the relevant decision-makers. However, the impacts necessitated by construction of public sewer connections and the significant water withdrawal necessary for the Project further demonstrate the inappropriate nature of the proposed PDD and Project at the planned location.

Moreover, the current application does not clearly explain and address the complications raised in order to provide connections to existing public water and sewer systems. The proposed water access comes from the Jensen Road side of the property, which necessarily would require the piping to cross the stream crossing the property and require easements that do not appear to currently exist. In terms of sewer system infrastructure, the Applicant advises that the County has denied using the roadway for placement of such a system due to road clearing concerns in winter. While Applicant describes placement of the system within the "right of way", it fails to

acknowledge that this “right of way” is on Vestal resident’s yards. There is no discussion of the impacts to these residents; however, it is our belief that placement of such infrastructure will require or result in damage to or removal of old growth trees along Bunn Hill road on private property (within the right of way). The Town Board should protect the property of its existing residents instead of providing a benefit to this developer at the expense of long-time Vestal residents.

### **Sidewalks and Transportation**

Applicant acknowledges the Planning Board’s concern regarding the lack of sidewalks along Bunn Hill Road, but instead of addressing this concern in a meaningful way simply states that sidewalks will not be built and bus service will be provided. The Project is proposed at a location that significantly limits the means of access for the 700+ potential student residents. Not only is the site not suitable for pedestrian access, but the lack of sidewalks also makes the location inaccessible for bicycles, limiting these residents to vehicular transportation. The location of the site contradicts the County’s comprehensive plan that seeks to promote a “complete streets” approach allowing all modes of transport.

The project also presents significant problems for bus service as acknowledged by both the County GML § 239 and the Planning Board recommendation. Applicant describes a discussion with Greg Kilmer, Commissioner of Public Transportation, and suggests that contrary to Mr. Kilmer’s statements in the County GML § 239, Mr. Kilmer sees no problems with public transportation access to the site. However, after receiving the Applicant’s response, this office contacted Mr. Kilmer. Applicant’s characterizations of the limited discussion with Mr. Kilmer do not appear to accurately reflect Mr. Kilmer’s position. Mr. Kilmer advised that following his discussion with Applicant, he would not be revising his comments as reflected in the GML § 239.

Mr. Kilmer continues to believe that in the absence of significant (and unlikely) alteration to Bunn Hill Road (e.g., widening, flattening the slope) the site is not accessible for a 40 foot transport bus and reiterates that no current bus routes service this location. Mr. Kilmer expressed concerns regarding the sufficiency of Applicant’s proposed 14 passenger van option given the capacity of the Project and the need for students to arrive on campus at similar times. The size of the project and potential service needs, in Mr. Kilmer’s estimation, are more akin to urban route levels, however, the location and access roads are rural routes, generally reflecting much lower capacity levels. The lack of public bus routes raises significant concerns for this Project, which clearly is designed to accommodate students from Binghamton University.<sup>2</sup> Parking on-campus

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<sup>2</sup> While the Applicant questionably asserts that this Project will also attract young professionals, it does not dispute that students are a significant part of its anticipated tenants. We submit, however, that the Project design is not

is severely limited. Without pedestrian, bicycle, or public transport options to the Property, the need for the residents to drive to campus creates clear impacts to area traffic and parking that are not adequately accounted for in the current design. The inability to provide for safe, alternative transportation to and from the site weighs significantly against the appropriateness of the proposed location for the Project.

### **Traffic**

The Applicant has provided a limited and inadequate traffic study evaluating the impacts of the change in traffic to the community that will result from this Project. While the Traffic Impact Assessment Study dated January 10, 2020, asserts that the Project will include only minimal traffic impacts, these conclusions are contradicted by the SEQRA regulations,<sup>3</sup> the study's own findings, and comments of Commissioner Kilmer. The study identified several significant issues:

- The Project of 161 apartment units exceeds the threshold estimates (150 apartments) for a significant impact from such as outlined in the SEQRA Workbook<sup>4</sup>;
- The traffic impact study anticipates and projects greater than 100 actual vehicle trips per hour at peak times, exceeding the threshold for a significant impact as outlined in the SEQRA Workbook;
- The Project doubles the number of vehicles passing the site and substantially increases all traffic on Bunn Hill Road by greater than 50%; and
- The study notes that increased traffic from the proposed Project will degrade several traffic intersections with Level of Service just meeting the “acceptable” standard to below “acceptable” levels.<sup>5,6</sup>

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likely to attract large numbers of young professionals. The County Comprehensive Plan notes that young professional expressed interest in locations that provide “places to gather, socialize, and network which are not related to the bar scene.” This Project neither provides such services nor is located in proximity to such locations, necessitating young professionals traveling into Binghamton and its “bar scene” for such networking.

<sup>3</sup> As discussed below, we reserve the opportunity for full comment on impacts under SEQRA, but raise the SEQRA regulations to highlight the complete inadequacy of the current traffic study.

<sup>4</sup> Department of Environmental Conservation, Question D2-Project Operations-Full EAF (Part 1), Full Environmental Assessment Form (FEAF) Workbook, Answering Question D.w.j, available at <https://www.dec.ny.gov/permits/91660.html> (last accessed December 29, 2020).

<sup>5</sup> Department of Environmental Conservation, Question 13 – Impact on Transportation – Full EAF (Part 2), Full Environmental Assessment Form (FEAF) Workbook, available at <https://www.dec.ny.gov/permits/91776.html> (last accessed December 29, 2020) (discussing significant impacts from traffic increases that affect the Level of Service).

<sup>6</sup> While the Study suggests a change in light timing could improve this issue, it leaves that to the New York State Department of Transportation (“DOT”) “periodic[] review”. There is no demonstrated interaction with DOT on this issue.

The Applicant's traffic study acknowledges impacts to several intersections. However, Commissioner Kilmer confirmed the statements in his response to the County GML § 239 that even those characterizations of use levels and impacts conflict with his department's experience pertaining to access to and from campus. Additionally, given that Bunn Hill Road does not have adequate shoulders or lighting to allow for safe pedestrian or bicycle passage, it is safe to assume that almost all residents would utilize private vehicles for transportation. Reasonable and legitimate concerns regarding the significant impact of traffic to and from the site remain unanswered.

The conclusions of the current traffic study are contrary to the SEQRA guidance, facts, and common sense. It fails to address the actual impacts of the number of units, residents and consequent traffic flow on the rural residential area surrounding Bunn Hill Road. The significant impacts from traffic as part of the development Project support denial of the PDD and the proposed development.

### **Setbacks**

In its response to the Planning Board's concern regarding the separation of the Project from other properties in the RR, the Applicant provides the setbacks from property lines to the nearest buildings. However, only the Western measurement meets or exceeds the Planning Board's recommendation of a 50' buffer. Most significantly, the buffer between the property and Bunn Hill Road is just 32 feet. The property is incongruent with the properties in the RR district and the lack of substantial buffer fails to address both the significant visual and noise impact from the Project.

### **The Application for a PDD constitutes improper spot zoning.**

The Planning Board also acknowledged this office's concern that approval of the PDD and project constitutes impermissible spot zoning. Applicant cites to no law, authority, or guidance for the proposition that because this is a PDD it cannot/does not constitute spot zoning. It simply asks the Town Board to accept its assurance even after its repeated and erroneous denials of segmentation. Contrary to Applicant's assurances, this Project and PDD is a glaring example of illegal spot zoning.

There has been some misinformation regarding the application that because this is a PDD "overlay district" it is not a zoning change or subject to spot zoning. There is no such per say distinction in the law. Moreover, the assertion that this is not a zoning change and that the zoning remains the same is clearly incorrect and contradicted by the Town Code and the proposed Local Law. Section 24-531 of the Town Code provides for the "[e]stablishment of a planned development district . . . by amendment to this chapter" referring to "Chapter 24-Zoning." The Public Hearing scheduled for January 13, 2021 is being held pursuant to § 24-36 for "rezoning" amendments. The proposed Local Law "A" of the Year 2021 is entitled "A Local

Law **Rezoning**” the properties. It further provides that “The Town of Vestal Zoning map is hereby amended **by changing** [the properties] **from** RR – Rural Residential District **to** PDD – Planned Development District.” In short, the proposed PDD is a zoning change and subject to the prohibitions of spot zoning.

“Spot zoning is the singling out of a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners” Star Property Holding, LLC v. Town of Islip, 164 A.D.3d 799 (2d Dept. 2018); Rotterdam Ventures, Inc. v. Town of Rotterdam, 90 A.D.3d 1360 (3d Dept. 2011). “In evaluating a claim of spot zoning, courts ‘may consider several factors, including whether the rezoning is consistent with a comprehensive land use plan, whether it is compatible with surrounding uses, the likelihood of harm to surrounding properties, the availability and suitability of other parcels, and the recommendations of professional planning staff.’” Rotterdam Ventures, Inc. v. Town Bd. of Town of Rotterdam, 90 A.D.3d 1360, 1362, 935 N.Y.S.2d 698 (2011).

New York Town Law requires changes to zoning regulations must be made “in accordance with a comprehensive plan.” Town Law § 263. “A municipality that engages in spot zoning fails to satisfy the statutory requirement, since it is not acting in accordance with a comprehensive plan.” Little Joseph Realty, Inc. v. Town Bd. of Town of Babylon, 52 A.D.3d 478, 479, 859 N.Y.S.2d 696, 697 (2008). The Court of Appeals has explained that,

A “comprehensive plan” may be discerned from an examination of all evidence of the municipality’s land use policies. “Zoning legislation is tested not by whether it *defines* a well-considered plan, but by whether it *accords* with a well-considered plan for the community.” The essential purpose of the requirement that rezoning be in accordance with a comprehensive plan is to guard against ad hoc zoning legislation affecting the land of a few without proper regard to the needs or design of the community as a whole. A municipality may change its zoning ordinance, however, to promote the general welfare and to respond to changed conditions in the community. The question is whether the change “conflict[s] with the fundamental land use policies and development plans of the community.”

Gernatt Asphalt Prod., Inc. v. Town of Sardinia, 87 N.Y.2d 668, 684–85, 664 N.E.2d 1226, 1236 (1996) (internal citations omitted).

The proposed PDD and Project is wholly inconsistent with the Town’s comprehensive zoning plans to date. The proposed PDD is markedly different from the approved RR District uses and clearly inconsistent with the uses in the RR District. Town Code § 24-2 provides that the purpose of the Town’s zoning is “to encourage the most appropriate use of land, conserve the value of property, and promote the health, safety, morals and general welfare of the community.” Of note, multiple family dwellings, as proposed for the Project, are prohibited in the RR District

even by special permit. While the Town Zoning Code focuses its minimums on the property frontage, the RR District in effect requires lot sizes greater than 1 acre per dwelling. The Project proposes 161 dwellings on just 47 acres, more than four (4) times the density of the zoning code. The Zoning Code explicitly provides that “[t]he town finds that it is desirable to limit and regulate the construction in rural residential areas.” Vestal Zoning Code § 24-183. The Code provides several concerns from the lack of public water and sewer, “the lack of permeable soil . . . in rural residential areas,” steep gradients, drainage hazards, and the costs and difficulty of providing emergency vehicles, especially in bad weather. Id. The Town has clearly established a plan of focusing development along the parkway and off the hills. This was specifically noted in the Town’s unadopted 2003 Comprehensive Plan. The Town Zoning Map places most of the hills, including Bunn Hill, within the Rural Residential District for this reason.

The proposed zoning change would be for the benefit of one property owner and is not part of a larger comprehensive plan to serve the general welfare of the community. To the contrary, the change would be to the detriment of the surrounding properties and community as demonstrated by the numerous impacts set forth in the EAF. While the Town has approved other PDDs, such approvals have consistently focused upon properties along Vestal Parkway or Route 28, not within the RR District.

In addition to being clearly inconsistent with the Town’s zoning plans, the Applicant has not demonstrated any benefits for the greater Vestal community that would support the drastic change in the zoning for the properties. Furthermore, the proposed PDD is inconsistent with the Broome County Comprehensive Plan recommending development that encourages “complete streets” and “flexible housing options”. Similarly, the Project develops a housing style that the 2017 Broome County Housing Study determined already exists in excessive numbers. The zoning change is not compatible with the existing community, which is made up of single-family homes. Finally, Broome County Planning has recommended denial of the Project.

In sum this is not a proper PDD application but a classic case of spot zoning, attempting to avoid the existing prohibitions in the zoning code. The Town Board should, therefore, deny the PDD application

**The Town Board should deny the Application, eliminating the need for further SEQRA review**

The Applicant’s letter dated December 28, 2020, requests the Town Board identify the application as a Type I action under SEQRA. The Applicant is correct that to approve the PDD and Project, the Town Board would need to identify this as a Type I action under SEQRA. However, the Town Board may, as is appropriate here, deny the application for a PDD without proceeding to SEQRA.

New York courts and the DEC's SEQRA Handbook explain that denial of a Project as incompatible with the municipalities' approval standards does not require a complete SEQRA review. See, e.g., Cappelli Assocs. v. Meehan, 247 A.D.2d 381, 382 (2d Dept. 1998); NYSDEC, The SEQRA Handbook, Chap. 4, § D, Question 8 (4<sup>th</sup> Ed. 2020). While the Town Board must comply with SEQRA and conduct a full environmental assessment if it proceeds towards possible approval of the PDD, we encourage the Town Board to deny the PDD as incompatible with the Town's zoning plans and not in the best interests of the Town and its residents, ending this process here.

**The application requires full compliance with review under The State Environmental Quality Review Act**

The Public Notice for Proposed Local Law A notes that the Town Board will review the environmental significance of the proposed Local Law as part of the public hearing. It is our understanding, however, that in light of the Applicant's last minute acknowledgment that the application requires a designation as a Type I action, the Town Board cannot proceed with the environmental review at the Public Hearing as it must first send out lead agency notice under SEQRA and identify other involved agencies. A Type 1 action requires identification of a lead agency [6 NYCRR § 617.6(b)(2)] and a coordinated review process with other involved agencies [6 NYCRR § 617.6(b)(3)]. The long EAF submitted from the Applicant identifies at least the following agencies as interested and involved agencies that should receive notice: the Town of Vestal Planning Board; the County Planning Department; the DEC; and the US Army Corps of Engineers. However, errors in the Full EAF submitted by Applicant require that document be corrected prior to sending to other interested and involved agencies.

**Errors in the EAF**

A Type 1 action requires the preparation of a full (long-form) EAF in connection with the determination of significance. 6 NYCRR § 617.6(a)(2). The long form EAF recently submitted by the Applicant includes several errors:

- The EAF indicates that the site is not covered by a municipal comprehensive plan. While the Town of Vestal does not have a written comprehensive plan, the properties are included in Broome County's comprehensive plan.
- In D2(e), the Applicant indicates that run-off will be contained through detention ponds; but in D1(h) states that no water impoundments will be created. The Applicant's provided diagram shows two detention basins consistent with its answer to D2(e). Thus, the Applicant's answer to D1(h) is incorrect and incomplete.
- In D2(m) the Applicant indicates there will be no increase in noise above ambient levels during either construction or occupancy. Given the size and location of the Project within the RR District, it is incredible that a 700+ resident development

- will not increase the level of noise either during the extensive construction process or upon full build out. A noise study should be required.
- Finally, in E2(o) and E2(p), the EAF states that there are no endangered, threatened, or species of special concern on the property or that the property contains habitat for such species. The Applicant,'s ecological study however, has identified an endangered, a threatened, *and* a species of special concern that may use the property for habitat. Thus, contrary to the EAF the property apparently does provide habitat for an endangered, a threatened, and a species of special concern that need to be evaluated and considered.

The purpose of the EAF is to inform the involved agencies of the potential environmental impacts associated with the Application. To do so, the EAF must be accurate and complete. The above inaccuracies and errors necessitate correction of the EAF before it and the notice of lead agency are sent to the interested and involved agencies.

**The Application requires a Positive Declaration of environmental significance and an Environmental Impact Statement**

Once the appropriate corrections are made to the EAF, it is patently clear that the Application requires a positive declaration of environmental significance and preparation of an Environmental Impact Statement (“EIS”). Procedurally, SEQRA requires the preparation of an EIS for any action that “may have a significant effect on the environment.”<sup>7</sup> ECL § 8-0109(2). An EIS is intended to provide detailed information about the effect which the proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake or approve such action. Town of Henrietta v. Dep’t of Env’tl. Conservation of New York, 76 A.D.2d 215, 220, 430 N.Y.S.2d 440 (4th Dep’t 1980). “The threshold at which the requirement that an EIS be prepared is triggered is relatively low: it need only be demonstrated that the action may have a significant effect on the environment.” Chinese Staff & Workers Ass’n v. City of New York, 68 N.Y.2d 359, 364-65, 502 N.E.2d 176 (1986). An action or project which has been listed as a Type I action “carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS.” 6 NYCRR § 617.4(a)(1).

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<sup>7</sup> SEQRA expansively defines “environment” as “the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.” ECL § 8-0105(6).

Given the numerous detrimental impacts highlighted in the EAF and in both 2019 and 2020 County §239 reviews, a positive declaration of environmental significance and an EIS are clearly necessary for this Application. Given the recent turnaround in the applicant's position and the latest submission of the full and still incomplete EAF, we reserve further comment at this juncture and request the opportunity to provide a more thorough analysis of the potential impacts of environmental significance from this Project supporting a positive declaration of environmental significance, the need for preparation of an EIS, and the environmental reasons to deny the proposed PDD. However, several areas of environmental concern as discussed above, including but not limited to traffic, community character, and sewer and water, demonstrate justification for a positive declaration of environmental significance and requisite EIS.

### **General Municipal Law §239 Recommendation of Denial**

A prior version of this Project was presented and referred to the Broome County Department of Planning and Economic Development (the "County") for review and comment in accordance with General Municipal Law §239. The prior County GML §239 review recommended denial of the project on several grounds including:

- The project is not compatible with surrounding uses
- The project will create traffic issues for the community
- The Project raises significant DPW issues – sewer; traffic volume, stormwater management are all inadequate. There has not been a full Stormwater Pollution Prevention Plan ( SWPPP) submitted; and
- The Project is inconsistent with the Broome County 2013 Comprehensive Plan and the 2017 Broome County Housing Study

In March 2020, the County issued an updated GML §239 response that continues to recommend that the project be denied, by and large as a consequence of these same negative impacts on the community.

The Legal Notice for Local Law A makes no reference to the County 239 review. The Town Board must review the County's GML § 239 response. In fact, the County's recommendation of denial prohibits the Town Board from approving the PDD and future Project except by a supermajority of the Town Board, meaning a vote of 4 of the 5 members of the Town Board. General Municipal Law § 239-m (5). The issues identified in the County GML §239 review weigh heavily against approval and in favor of denying the PDD. Notably, the County's objections overlap with the Planning Board's list of concerns requiring resolution prior to PDD approval. The Applicant's responses on these issues are inadequate and do not negate these concerns. Thus, both the County GML § 239 review and Planning Board letter clearly support denial of the PDD application.

**Conclusion**

The current application has several serious flaws under SEQRA and Town Zoning. The County properly recommended denial of the Project, and the Town Board will be well advised to follow that recommendation.

Thank you for your time, attention, and consideration of this matter. I request that this letter be included in the record of public comments regarding Local Law A of 2021, that I provided an opportunity to speak to these issues at the public hearing. I further ask to reserve the opportunity to comment on the environmental issues surrounding this project in the upcoming SEQRA review.

Thank you for your time and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Meave M. Toohar". The signature is fluid and cursive, with a large initial "M" and "T".

Meave M. Toohar

Cc: David Berger, Esq., via email  
Client