TOWN BOARD SPECIAL MEETING
JANUARY 29, 2009

PUBLIC HEARING

INTRODUCTORY LOCAL LAWS 1 AND 2 OF 2009 AMENDING CERTAIN CODE CHAPTER REGARDING VARIOUS ZONING RELATED MODIFICATIONS AND AMENDING THE TOWN ZONING MAP

PRESENT:

Douglas Bloomfield	Supervisor	Louis Cappella	Councilman
Kenneth Newbold	Councilman	George Lyons	Councilman
Philip Canterino	Councilman		

ALSO PRESENT:

Dennis Caplicki	Town Attorney
Edwin Garling	Planner
Richard Golden	Planning Board Attorney
Valma Eisma	Town Clerk

Supervisor Bloomfield opened the meeting at 7:35 p.m. and asked Councilman Newbold to lead the Pledge of Allegiance. The Supervisor read the published Public Hearing Notice, and explained that in the Comprehensive Plan of 2004 there was a caveat that stated it was incumbent upon the Town Board, to review the Comprehensive Plan and our Local Code and Zoning Map to see if it was working, every three years. He said the Board started to work on this in 2007, through 2008, and are now concluding it.

Supervisor Bloomfield stated the first thing on the agenda this evening is to accept the summary of findings and he asked Attorney Caplicki to explain and lead the process. Attorney Caplicki explained this is the last step in the SEQRA process. He said at the Board's direction the findings were prepared and attached to the Resolution that is before the Board this evening. He said the Findings are a summary of the work that was done in connection with the DGEIS, which is the Draft Generic Environmental Impact Statement, and the FGEIS, which is the Final Generic Environmental Impact Statement. He said the summary attached explains what the Board has been doing in terms of this examination for the last eighteen months to two years. He said the summary refers to the efforts and mitigation measures that were considered and how the Board came to it's final decisions in regard to the Comprehensive Plan and the two local laws; one of which amends the Zoning Maps and one which amends the text of the Zoning Law. He said it is appropriate at this time, prior to the Public Hearing on the Local Laws, to adopt the Findings.

TOWN OF GOSHEN
RESOLUTION

ADOPTION OF STATE ENVIRONMENTAL QUALITY REVIEW FINDINGS STATEMENT WITH RESPECT TO COMPREHENSIVE PLAN UPDATE AND ASSOCIATED TOWN AND ZONING CODE AMENDMENTS

INTRODUCED BY: Councilman Kenneth Newbold
SECONDED BY: Councilman George Lyons
Date of Adoption: January 29, 2009

At a meeting of the Town Board of the Town of Goshen, County of Orange, State of New York, held at Town Hall in said Town on the 29th day of January, 2009;

WHEREAS, the Town Board of the Town of Goshen has prepared a Comprehensive Plan Update and Associated Town and Zoning Code Amendments with respect to the Zoning Code of the Town of Goshen, and

WHEREAS, the Town Board of the Town of Goshen has made certain findings with respect to the facts and conclusions of the draft and final Generic Environmental Impact Statement with respect to the Town of Goshen Comprehensive Plan Update and Associated Town and Zoning Code Amendments,

NOW, THEREFORE, BE IT RESOLVED, that the annexed findings are hereby made and adopted by the Town Board of the Town of Goshen with respect to the Town of Goshen Comprehensive Plan Update and Associated Town and Zoning Code Amendments.

Upon Roll Call Vote:

Supervisor, Douglas Bloomfield	AYE	Councilman, Philip Canterino	AYE
Councilman, Louis Cappella	AYE	Councilman, Kenneth Newbold	AYE
Councilman, George Lyons	AYE		

Vote: Resolution carried by a vote of 5 to 0.

Councilman Newbold made a Motion to open the Public Hearing on Local Laws 1 and 2 of 2009 Amending Certain Town Code Chapters Regarding Various Zoning Related Modifications and Amending the Town Zoning Map. The Motion was seconded by Councilman Lyons. Motion carried unanimously.

Attorney Caplicki explained this was the Public Hearing on Local Laws One and Two of 2009, one contains the map changes the Board has made over the last eighteen months. He said two contains the text changes in regard to the Code and the incorporation of those map changes and modifications of the zoning in various locations of the Town. He stated the Public Hearing is for anyone wanting to comment on the laws, (the text of the Laws have been available in the Town Clerk's office and on the Town's web sit for some time for the public's review) to speak.

Supervisor Bloomfield asked for comments.

Steven E. Rieger spoke on behalf of Rieger Homes, Inc., stating he owns a project that is now before the Planning Board. He said he would like to say he appreciates certain modifications that have been made to the proposed action with regard to permitted density standards for open space development in the RU district, where site specific hydrologic studies have been performed. However, we wish to comment on the new requirement for the provision of affordable housing units equal to 10% of the units in the RU district for projects of 10 units or more.

He said let us state unequivocally that we do not oppose doing our fair share to meet the needs for affordable housing. However, we have the following observations.

1. Affordable housing is a community obligation and the costs should be borne by the community. In many municipalities this obligation is met by requiring that builders of new neighborhoods provide affordable units, but the cost is counterbalanced by a density bonus of additional market rate units to cushion the additional costs to the landowners and the builders. Otherwise the cost is unfairly borne only by the landowners, builders and residents of the new neighborhoods. Previously, the Town required the provision of affordable units only in districts which would be developed in a high or medium density manner, such as hamlet and planned adult community districts. These districts, by their nature, have been zoned with a density that takes into account the requirement for affordable housing. RU open space development is a very different type of development with different costs and a much lower rate of return. The application of your existing Section 97-24 to RU open space development is unworkable for many reasons.

2. Large lot single family housing is, by nature, not the most "affordable" housing. As we all know, single family housing is relatively expensive to own when compared to other housing types for many categories of expenses ranging from utility costs to lawn maintenance, snow plowing to interior maintenance, property taxes to roof and boiler repairs. Section 97-24 requires that the affordable units must be at least 80% of the size of the market rate units, unless otherwise determined by the Planning Board. If our community, Youngs Grove, averages homes of 3,000 square feet, then our affordable units would be at least 2,400 square feet. This is a large home, by definition, and would be very expensive to own and maintain.

3. The construction of these homes will be very costly, placing an unnecessary burden on the land owners and builders, to build homes that will be unnecessarily expensive for the homeowners to live in. There are more creative and efficient ways to meet the affordable housing needs. First, affordable housing should be provided in dense communities where the costs of land, roads and infrastructure per unit are much less. Second, affordable housing should be multi-family in nature, driving down the cost of construction and occupancy. Third, if the Board believes that affordable housing should be located in open space developments, it should be provided in duplex or two-family homes, designed to fit into the neighborhood, or in accessory apartments in single family homes, reducing the costs of development, construction, maintenance and occupancy. This alternative could also provide affordable rentals, which is also a needed housing product in the Town of Goshen.

4. Due to the unprecedented historical collapse of the financial and housing markets, the needs for some types of affordable housing have changed dramatically. With regard to the upper end of the income range of those eligible for affordable housing, who we assume will be those considered for single family housing, there are and for some time are likely to be considerable market choices available. We question whether those families who can afford a market rate home will be attracted to affordable housing units where they cannot build up equity over time, as resale prices are set by the Town Board to exclude appreciation other than inflation. There

may be few families with the appropriate credit scores, financial ability and interest to purchase these homes.

5. The Planning Board is given discretion to waive subdivision, recreation and other fees related to affordable housing units. This should be mandatory.

6. Initial sales prices are also set by the Town Board. Some certainty needs to be provided to allow a builder to determine whether his project is financially viable.

We believe that this new requirement for the RU district is not thoroughly considered, lacks needed flexibility to adjust to changes in housing needs and is of very questionable viability. We ask that you reconsider the matter in its entirety so that the end result is workable for the landowner and builder and workable for the families targeted. We are more than willing to work with you to try to develop a viable program. Thank you.

Kenneth Cerullo, Esq.. stated he was a representative of Owens Road Associates, a 39 Lot subdivision application, commonly know as Goshen Meadows. He said he respectfully asked that a letter written by his attorney be put into the record. He said the letter was written on January 29, 2009, to the Town Board. He presented the letter to the Board. The letter is as follows:

To: Town Board January 29, 2009
Town of Goshen

Re: Comments on FGEIS-Town Comprehensive Plan

Sir/Madam:

Please know we have been retained by Owens Road Associates, LLC, who is pursuing a 39 lot subdivision application, commonly know as Goshen Meadows(a/k/a Owens Road), before the Town of Goshen Planning Board.

The property is located in the RU Zoning District and is subject to the AQ6 Aquifer Overlay District. As some of you are already aware, the records of the Town reflect a long and detailed history of review of this application by the Town and its consultants.

In this matter, the applicant already complied with the current requirements of the Town's existing water testing protocols. It is our understanding, from documents contained within the Town's records, that the existing water testing protocols were based, in part, on detailed testing and analysis conducted by the Town and its consultants prior to the adoption of the existing Comprehensive Plan in 2004.

It is also our understanding, again based on documents contained within the Town's records, that the FGEIS and the proposed comprehensive plan rely on studies and data that were in existence when the 2004 Comprehensive Plan was adopted.

In short, the proposed revisions to the water testing protocols are not based upon any studies and/or data that were not in existence when the 2004 Comprehensive Plan was adopted.

This is significant because the proposed revisions to the water testing protocols are clearly more stringent and exacting that those followed by the Orange County Department of Health, which has statutory responsibility for the availability of drinking throughout the County of Orange. Moreover, the proposed revisions exceed what is recommended by the New York State

Department of Health, which has extensively studied and analyzed the necessary and appropriate requirements that are applicable to residential developments.

Because the proposed revisions to the water testing protocols are not based upon any new studies and/or data, it seems the same are being arbitrarily imposed on residential developments.

The imposition of unnecessary and/or excessive requirements is an impediment to providing more affordable housing with our communities, which is a well documented problem in Orange County, and is a particular problem in the Town of Goshen, where land values tend to be higher. It seems the FGEIS does not take into account the deterrent these excessive requirements will have on the desirability of developers to pursue residential projects in the Town of Goshen, and there is also no analysis of these excessive requirements on the ability to encourage the development of affordable housing in the Town of Goshen.

Equally troubling is the fact that all persons, including developers, are entitled to be free from unnecessary and arbitrary government regulation and requirements. There is no basis in the FGEIS to support the imposition of new water testing protocols. Hence, the imposition of these requirements on Goshen Meadows is arbitrary and capricious.

In fact, Goshen Meadows recently conducted a full course of water testing in accordance with the presently applicable water testing protocols, and the results were completely favorable to the proposed development of the property.

In view of all of the foregoing, the Town is respectfully asked not to act in an arbitrary and capricious manner. We ask that the Town not adopt new water testing protocols, and if it elects to do so, then to exempt all projects that have favorable results under the existing water testing protocols.

Very truly yours,
Blustein, Shapiro, Rich
& Barone, LLP

By: Gardiner S. Barone

Attorney Cerullo asked that the letter be marked received, the Town Clerk received and signed and dated the letter.

Jayne E. Daly, Esq. said she was representing Epic Orange LLC, the developer of the Hendler property in the Town of Goshen. She said she had submitted her letter to the Board earlier and she would just like to go over the highlites, which she proceeded to do. Her letter submitted is as follows:

January 29, 2009

Hon. Douglas Bloomfield, Supervisor
And Members of the Town Board

Re: Proposed Zoning and Map Amendments, Comprehensive Plan and FGEIS

Dear Supervisor Bloomfield and Members of the Board:

I, along with Henry Hocherman and Adam Wekstein of Hocherman, Tortorella and Wekstein, LLP, represent Epic Orange LLC, the developer of the Hendler property in the Town of Goshen. On numerous occasions since July 2, 2007, we have submitted letters to the Board on behalf of our client expressing our opposition to the proposed Introductory Laws, revisions to the Comprehensive Plan and inadequacies of the Scope and DGEIS. In my letter of July 12, 2007 and again in a letter signed by Hocherman and Wekstein dated September 25, 2007, we urged the Board to consider incorporating a "grandfathering" provision which would make the adoption of the proposed changes inapplicable to our client's project (and others similarly situated) given that the project as proposed is a fully conforming PAC and subdivision which has completed the SEQRA process and received preliminary approval.

Although we disagree with much of the analysis and many of the conclusions contained in the Final Generic Environmental Impact Statement (FGEIS), we were very pleased to note that in the interest of fairness and in response to public comment, the Board has determined that there is a need to incorporate a grandfathering provision for "all projects having received Preliminary Approval or Conditional Preliminary or Final Approval from the Town of Goshen Planning Board … prior to the effective date of Local Law #1 of 2008." (FGEIS, January 12, 2009 at page 7). Accordingly, the Board has identified eight projects that have received such approvals and "are permitted to proceed under the then-existing zoning as a result of this determination." (FGEIS at 8). The list of projects includes the "Hendler Subdivision (5 units), but makes no reference to the proposed Planned Adult Community (161 units) which was part and parcel of the same application and which we submit should also be grandfathered as it meets the criteria set out by the Board for the exemption, as more specifically described below.

As way of background, on December 1, 2004, more than five years agog, Epic Orange LLC submitted an application to the Planning Board to construct a single project, which included a Planned Adult Community, originally proposed at 167 units and an 8 unit single-family open space subdivision. This proposal was submitted only months after the 2002 moratorium was lifted and the zoning on the property changed fro SR-8, high density residential to CO.

The Following is a brief Synopsis of the history and milestones achieved with regard to this project during the past five years. A more detailed summary is provided in our letters of July and August, 2007. At all times during this extensive review process, the subdivision and Planned Adult Community were treated as a single project by the Town and the applicant.

- February 3, 2005: Planning Board adopted a Conservation Analysis Findings Statement identifying primary and secondary conservation areas:

- June 16, 2005: Planning Board declared its intent to be lead agency under SEQRA

- September 1, 2005: Planning Board assumed Lead agency status and adopted a Positive Declaration requiring a full environmental impact analysis.

- October 6, 2005: Public Scoping Session was held and a final scope for the Draft Environmental Impact Statement was adopted;

- March and April, 2006: 72 hour pump tests on the proposed water supply wells Were conducted in accordance with the Town's water protocol and pursuant to an aquifer testing plan approved by the Town's hydrogeologist, which demonstrated that there was sufficient water available to meet the needs of the project without impacting nearby wells or surface water resources.

- July, 2006: DEIS was submitted for review by the Board and its consultants;

- October, 2006: DEIS was accepted as complete and ready for public review;

- December, 2006 and January, 2007: A public hearing was held on the DEIS, site plan, special permit and subdivision applications;

- June 7, 2007: FEIS submitted for Board review;

- August 2, 2007: FEIS adopted by Lead Agency;

- October 4, 2007: Finding Statement adopted by the Planning Board; and

- December 6, 2007: "Resolution of Conditional Preliminary Subdivision Approval And Associated Status of the Planned Adult Community Site Plan and Special Permit for Hendler" (the Resolution") was adopted by the Planning Board. Copy attached.

As is evidenced by this extensive review process, the applicant has worked diligently with the Planning Board on this application from shortly after the PAC legislation was adopted in 2004, up to the time of the moratorium imposed by Local Law #1 of 2008. in addition to expending a tremendous amount of time and energy on the review process, the applicant has incurred over $600,000 in expenses in conjunction with the processing and review of this application.

It is our view that the Hendler project, which includes both the five unit subdivision and Planned Ault Community site plan with special permit, should be exempt from the provisions of the proposed regulations for the following reasons.

1. **The Hendler project meets the criteria utilized to identify the other projects that the Board has determined are eligible for exemption.** The FGEIS included the following language with regard to the grandfathering provision:

"Exemption – As part of the public review process on the DGEIS, several comments were made regarding the fairness of mandating that all applications currently before the Town of Goshen Planning Board for the residential development of 20 or more units be subject to the proposed Zoning and Town Code Amendments regardless of the time and/or money spent in good faith by a project applicant. The Town has explored recognizing an exemption to allow projects that have reached a certain point in the regulatory process to proceed under the existing zoning, rather than having to comply with any amendments adopted at the conclusion of the process. The Town Board has determined that all projects having received Preliminary Approval or Conditional Preliminary Approval or Final Approval from the Town of Goshen Planning Board (see DGEIS Table 1: Town of Goshen Proposed Development Projects) prior to the effective date of Local Law #1 of 2008 entitled "Local Law Instituting a Moratorium on Certain Residential Subdivision and Zoning Approvals in the Town of Goshen," having properly requested all extensions of any

such approval, may proceed under the zoning regulations existing or applicable at the effective date of Local Law #1 of 2008."

The Hendler project was clearly subject to the restrictions imposed by Local Law #1 of 2008 which applied to any "residential unit development project(including PACs) of twenty (20) or more units or lots." The Hendler PAC was also listed as project #16 on Table 1 of the DGEIS, July 2008, entitled "Town of Goshen Proposed Development Projects". The Language of the grandfathering clause applies to any project having received a preliminary or conditional preliminary approval, as well as those projects having received final approval from the Planning Board. The Town of Goshen Code, however, does not include a provision for preliminary approvals of site plan applications, conditional or other wise. Preliminary approvals may only be given to applications for subdivision approval under the Code. Accordingly, on December 6, 2007, the Resolution adopted by the Planning Board used the Term "Associated Status" with reverence to the PAC, rather than preliminary conditional approval. This term, "Associated Status", is not defined by New York State Law or The Town of Goshen Code, nor is it a term commonly used by Planning Boards.

Despite the semantics, however, the language of the resolution itself provides clear evidence that the Board was granting a form of conditional preliminary approval for the PAC. Throughout the document, the Resolution makes reference to conditions which must be met "prior to Final Approval of either the subdivision or the PAC." (Resolution, December 6, 2007, Condition #9, pp. 11-12). In addition, the Resolution provides that "the specific location and orientation of the proposed residential structures", which is the essence and function of a site plan.

In addition to the clear language and intent of the Resolution, New York State Town Law Sec, 274-1 (8) requires that the authorized Board, in this case the Planning Board, make a determination with regard to a site plan application within 62 days of the required public hearing. SEQRA however tolls this timeframe until the adoption of the Findings Statement. As the Planning Board adopted its Findings Statement on October 4, 2007, it was required by law to make a determination on the application within 62 days and accordingly, on December 4, 2007, the Planning Board adopted a Resolution. Under New York State law, as well as Section 97-76F of the Town of Goshen Code, it is well established that the Planning Board is authorized "to review and approve, approve with modifications or disapprove site plans". It may also "impose such reasonable conditions and restrictions as are directly relate4d to and incidental to a proposed site plan." (Town Law Sec. 274-a (4). It is clear from the language of the Resolution that the site plan was not disapproved. Therefore, it must have either been approved or approved with modifications. We submit that despite the use of the term "Associated Status, " the Board in fact granted preliminary conditional approval of the entire Hendler application, not just the subdivision, by the adoption of its Resolution on December 4, 2007.

2. **To subject the handler project to the proposed regulations while exempting other similarly situated projects is a violation of the applicant's right to equal protection under the law.** Under the due process clause of both the New York State and Federal Constitutions, municipal officials must treat all persons similarly situated alike. The test for "similarly situated" asks "whether a prudent person, looking objectively at the incidents, would think they are roughly equivalent." Bower Associates v Town of Pleasant Valley et al., 2 NY3rd617 at 631 (2004). It is clear that the Hendler application has achieved the "rough equivalency," if not the label, of preliminary conditional approval, the standard by which the other applications were determined to be exempt from the application of the proposed legislation. Accordingly, it is only appropriate that the handler Planned Adult Community be included in the list of projects that are exempt from the proposed new regulations and denial of such would constitute selective enforcement and purposeful discrimination by the Town Board. Masi Mgmt., Inc. v Town of Ogden, 189 Misc. 2d 881,905 (1991). Purposeful discrimination with

the intent to cause injury subjects the Town Board to sanctions under 42 USC 1983 for violating the applicant's right to due process.

Exempting the Hendler project would also be beneficial for the Town. Given the fact that both the 2004 and proposed Comprehensive Plan identify the need to provide housing for seniors (55 and up) and the fact that no other Planned Adult Community application has been approved by the Planning Board, without the Hendler project, the Town will necessarily delay the development of any housing units of this type, including the proposed 24 units of affordable housing, for at least another three years. In addition, and as more fully described in our previous letters, the project will provide almost $96,000 in tax revenue to the Town, with little or no impact on municipal services along with over $400,000 in net revenue to the Goshen Central School District. In these uncertain and trying economic times, a project that helps alleviate the tax burden imposed on residents of a community makes an important a contribution to the Town.

We trust that the Town Board will seriously consider the important issues raised herein and ask that in the interests of fairness and justice the entire Hendler project, including the Planned Adult Community, be exempt for the proposed regulations.

Respectfully submitted,

Jayne E. Daly, Esq.

Ms. Daly questioned the term "associated status" and she had never heard of an "Associated Status" and said it is not a term used or found in Town Law or in your code. She said, be it as it may, it was used to identify where the site plan application was at that time, and I would propose that it is the equivalent of a preliminary conditional approval. She said if an "Associated Status" is not a conditional approval, it is hard to figure out what it is. She stated "if it looks like a duck, and it quakes like a duck, it's a duck, even if you put lipstick on it.".

Ms. Daly said the down side of not accepting the PAC, is that they have spent a lot of money on lawyers and on lawsuits, and to go through the legal process to try to protect the legal rights. She said she would rather see the money spent on the project. She said some Boards feel that legal fees are borne by Municipal Insurance Company, so it is really not something that the tax payers are directly impacted by, but that is not the case, and this week the Town of Montgomery handed my client a check for over $500,000.00, which was court awarded legal fees for their Comprehensive Plans failures under court review. She said she believed in this Board having worked with a number of you for many years. She said she believed the Board would do the right thing and she asked that they include the PAC as part of the exemptions under the new provisions.

John Lupinski said he lived on a farm on the corner of Maple Avenue and Houston Road and his family has been on that farm for about seventy years. He said however, whether you have been on a piece of property for seventy years or seven years or seven days, you are afforded due process. He said he sits on the Planning Board also, and the old zoning code, the one you are revising now, allows for 50% of the land to be open, which most of the applicants have done. He said this results in the lots being created are still one to two plus acres in size, and he said he feels very strongly that this question of affordability in the RU Zone should be revisited. He said Mr. Reiger spoke very eloquently about the markets and the interest rates and the peoples ability to afford affordable housing and what constitutes affordable housing will probably change over

time. He said we realize we need affordable housing, but I think the issue should be revisited and looked at a little more thoroughly. Thank You.

Mac Makuen said he and his brother own a farm on Route 17A, just outside of Goshen and they have been in the process for about five years, working on a PAC also. He said he had people very interested in it, and we believed it was a good project. He said, just as the woman who spoke before him said, it is a good project for the community. He said it is a good money project, and a good friendly project for the community. Our Builder was interested in a mini type community, with a lot of things that people could do there and it is a low impact on traffic. He said the site is an entity to itself, it is protected on three sides by hills and it is a nice site. He said what you have done by changing your zoning is taking our PAC out of the CO and will make it difficult for us to put our PAC on the site. We spent a lot of money on plans that would serve our community, you have not given the PAC a chance. He said we don't have anything to compare it to, all you do is zone the PACs out. He said I don't think you have been fair and you have not given it a chance.

With no further comment from the public, Councilman Newbold made a Motion to close the Public Hearing. The Motion was seconded by Councilman Lyons. Motion carried unanimously.

Time: 8:15 p.m.

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Valma Eisma, Town Clerk