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NEW YORK, NEW YORK 10022

May 5, 2015

**VIA EMAIL**

Mr. Norm Fontaine, Chairman  
Town of Amenia Planning Board  
Town of Amenia Town Hall  
4988 Rt. 22  
Amenia, New York 12501

**RE: SILO RIDGE RESORT COMMUNITY**

Dear Chairman Fontaine and Members of the Planning Board:

This letter supplements my letter, dated September 18, 2014, and published on the Planning Board's website as Public Comment No. 4 (the "Sept 18<sup>th</sup> Letter"). Defined terms used in this letter continue to have the same definitions as defined in the Sept 18<sup>th</sup> Letter.<sup>1</sup>

I have reviewed the responses provided by the Applicant as Vol. V, and limit my remarks to comments contained in the section designated "2.0-Silo Ridge Response to Public Comments", dated January 31, 2015, that was apparently provided by VHB on behalf of the Applicant (the "SR Response").<sup>2</sup> In general, the SR Response has provided a response to the comments, but does not address the underlying concerns nor provide answers to the critical issues raised.

**Response A-2.a-b: (Finance and Applicant's Ability to Fulfill its Obligations to the Town)**

Inherent in any application is the belief and conclusion that a counterparty can fulfill its obligations. The underlying concern is the justification and support to assure the Town the Applicant can fulfill the many promises and undertakings that it will develop, finance, construct, market, operate and manage Silo Ridge in accordance with SEQRA, other laws and its Application. Those concerns are not addressed in the SR Response. On the one hand the Applicant indicates it does not have any obligation to provide financial or other information about the Applicant, its parties or partners. On the other hand, it happily provides conclusory

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As footnoted in the Sept 18<sup>th</sup> Letter, I am a record holder of property adjacent to Silo Ridge, but did not receive any written notice of the Meeting, as required. I indicated at the Meeting, and in the Sept 18 Letter, and want to reiterate here that I am not waiving, but reserving any rights I may have to object to the lack of such required notice by attending or providing comments at the Meeting or undertaking to provide the Sept 18<sup>th</sup> Letter or the following written comments.

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Parenthetically, I note that while the SR Response attempts to respond to the comments provided both orally and in writing, the captions confusingly identify the comments as Written Comments reflected in a letter of a certain date, when such original comments were actually provided orally at a different time. See e.g., Comment A.2.b at 2PC-3PC.

information that one of the parties has an extensive record of successfully developing properties. Applicant cannot have it both ways. Having opened the door by providing cursory information

about how long ago the principal shareholder started the company, the number of properties it has developed, number of customers it has, and historical gross number of sales, the Planning Board and Town have every right to seek more complete, highly relevant information as to the Applicant's ability to fulfill its obligations.

In **Response J.2.a-b**, Applicant indicates that financial problems that reportedly occurred at another project were the result of the general economy and the fact that its partner had a minority interest and therefore did not control the other property. Does the same partner also have a minority interest in Silo Ridge and therefore again lacks control? Having received conclusory statements in the face of reported problems at other projects, the Planning Board certainly has the legal obligation to take a **hard look, if not look harder**, into these details in connection with Silo Ridge.

#### **Response D.10: (Water)**

The concern raised in the Sept 18<sup>th</sup> Letter was the potential impact of water drawdown in the vast amounts projected by Silo Ridge on the water supply to the Hamlet and Town, and the fact that the monitoring wells outside the Property were not positioned to address that vital concern. The SR Response also does not address that concern. The SR Response was that the wells in the Hamlet "are farther than 2,500 feet from the Silo Ridge supply wells, outside the range of potential water-level drawdown effects from the Silo Ridge supply wells based on the 72-hour pumping test results." The purpose of the inquiry was to focus attention on the fact that monitoring wells were not placed within the water-sensitive Hamlet and that there was no evidence from the Groundwater Test that the water supply to the Hamlet and its various homes and businesses would NOT be impacted. A conclusory statement that any monitoring wells in the Hamlet or Town would be farther than 2,500 feet and therefore outside the range of drawdown effects is not proof of that fact, and there is no basis to reach that conclusion based on the Groundwater Test that lacked any monitoring wells within the Hamlet.

#### **Response F.4.a-c: (Green Buffer)**

Applicant refers to its Response G.7 which in turn refers to Appendix O of the Addendum to the EAF, dated February 17, 2015. Appendix O is a Memorandum, dated February 5, 2015, of the DelBello law firm that serves as outside counsel to the Applicant. Until then, Applicant had pending a request for a waiver of Subsection G of the Town Code Sec. 121-14.1. Counsel for the Applicant has evidently now taken the tack that the waiver was originally granted, and "Because the plan for that portion of the Modified Project is the same as the current approved plan, a new waiver is not required." DelBello Memorandum at 9. This is a self-serving opinion of Applicant's counsel. There is no legal or other precedent of any type cited for this legal conclusion, and the issue should be addressed independently by counsel for the Planning Board. Intellectually, such a conclusion is comparable to saying that after significantly changing the design of a vehicle from an SUV to a tractor-trailer, the fact that the bumper for the SUV was originally approved, no further review or approval is necessary for safety, style or usability as redesigned as a truck.

Lost in the analysis is that the so-called Vineyard Cottages and bar/restaurant were originally approved for development in **Phase 3** of the Silo Ridge Project. From the beginning the original applicant and the current Applicant have recognized and admitted that the development north of Rt. 44,

embracing the so-called Vineyard Cottages (which has no vineyard and are not cottages), does not comply with the TND principles of the Town Code. The original approval recognized that point and, consistent with public comments for the original project, granted approval for development **only after substantial completion of the Phase 1 and Phase 2 construction.** **In the professional world, timing is a critical and substantial aspect of most, if not all, decisionmaking.<sup>3</sup> Changing the timing of these projects to Phase 2 from Phase 3 is undeniably a material and substantial change from the plans and Findings Statement originally approved six years ago.**

The projected development of a 5,000 sq. ft. structure with considerable parking, along with the construction of 19 units in an approximately 10-acre lot, north of Rt. 44 constitute larger projects by themselves than virtually any other project ever allowed in the Town. Its impact on adjacent landowners including my family has enormous material ramifications. Understandably, any original approval for the Silo Ridge project was based on the tacit understanding and agreement that such large undertakings by a then (and still) unknown entity should be allowed very cautiously and only after substantial compliance with the TND principles applicable to Silo Ridge. By Applicant's own admission, the Silo Ridge project has significantly and materially changed in size and scope and the development north of Rt. 44 is clearly integral to the overall changes.

#### **Response I.2: (Wastewater Discharge)**

Probably the most important environmental and practical concern is with respect to water as outlined in the Sept 18<sup>th</sup> Letter. The SR Response to this concern is to reiterate that the WWTP has been relocated to the southern portion of Silo Ridge, will comply with NYSDEC standards and will be reviewed by the NYSDEC. However, this misses the point: Water is the biggest issue for the Hamlet and Town. As lead agency, the Planning Board should carefully scrutinize any plans that threaten the wellbeing of the Town. This is not a delegable duty. The NYSDEC may not be concerned about the trout-capability of the Cascade Amenia Brook, but much of the tourism income to the Town from anglers and the downstream impact on the welfare of the residents of Wassaic depend on the members of the Planning Board serving in their fiduciary capacity as guardians for the Town in considering this matter.

#### **Response J.1: (Fiscal Analysis)**

VHB on behalf of the Applicant has attempted to respond to the four points raised, but has failed to address the substance of the issues.

***No Sensitivity Analysis:*** The entire financial projections for the project are based on the underlying assumption that **ALL** of the units are sold. As originally stated in the Sept 18<sup>th</sup> Letter, there is no analysis addressing the realistic issue if **LESS THAN ALL** of the units are sold. This directly affects the financial assumptions that the Planning Board and Town are making and paints an unrealistically rosy picture without foundation. Notwithstanding declaratory statements to the contrary, no sensitivity analysis addressing this issue has been provided.

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I understand it's also important when locking horse barns as well.

**No Capital Budget:** Applicant and its consultant admit that public services will incur “increased demands”, but simply dismiss the issue, because “discussions” with service providers have

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indicated no capital expenditures are expected. Have the Planning Board consultants been asked to consider this issue? Have they confirmed this conclusion? Is this the basis on which the Planning Board is taking a hard look?

**No Contingency/Reserve Funds:** Rather than address the issue, Applicant has addressed the illustration provided in my comment. Regarding the illustration of the WWTP, the Applicant cites various equipment matters and contends that there is significant redundancy. What is missing is the cost of replacement or how it will be paid for either in the ordinary course of business or on an emergency basis. Who will continue to pay upon abandonment or bankruptcy of the operators? Who will pay for fully depreciated assets as the original and backup equipment wears out? Just as stuff flows downhill, there is likely to be a rainy day.

**No Project Reserves:** The inquiry was related to the financing of Silo Ridge project as a whole. “If the project is expected to cost nearly \$600 million, is that amount already funded? If not, how does the Applicant expect to pay for its project, and how realistic are its projections? What assurances are there that the project will be completed? For example, the prior applicant admitted at one point in the SEQRA process that it had operated a money-losing golf course, and had to cease its golf course operation. Is the Town depending upon solely the experience of Discovery to ensure continued operations?”

Applicant has responded by referring to the bonding obligations of the sewage works corporation. This does not address the issue and it is unclear how the Planning Board has addressed it, if at all.

**Response L.3.a-b: (Notice)**

An engineer from VHB has responded that notice was given in accordance with applicable law. Is this the type of legal opinion on which the Planning Board wants to rely?

This letter addresses only the SR Responses to the Sept 18<sup>th</sup> Letter and oral comments previously made. However, it highlights some of the continuing deficiencies in the SEQRA process and some of the areas that should be examined by the Planning Board. Simply providing a response does not examine or address or answer the underlying issues, and it is incumbent on the Planning Board to address them for the welfare of the Town.

With kind regards,

B. Wu