



To: Town of Amenia Planning Board

Date: May 30, 2015

Memorandum

Project #: 29011.00

From: Amanda DeCesare, P.E.

Re: Silo Ridge Field Club – Response to Public Comments (Bart Wu)

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At the request of the Town of Amenia Planning Board, the Applicant was asked to provide responses to public comments received from Mr. Bart Wu on May 5th, 2015. The Applicant has made a diligent, good faith effort to distinguish substantive comments from broad general statements and personal opinions about the desirability or potential impacts of the project, and to respond to all substantive comments directed to the principal applications currently before the Planning Board. The Applicant offers the following responses to the comment memorandum titled "Silo Ridge Resort Community" dated May 5th, 2015 submitted by Mr. Bart Wu.

1. 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"). 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.

*Comment noted.*

2. **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 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.

*Comment noted. As previously noted in Responses m-11-29A and m-12-PHT of the September 16, 2008 FEIS and in Response A-2.a-b of the Applicant's January 28<sup>th</sup>, 2015 Response to Public Comments, "There is no legal basis for a Planning Board (or Lead Agency) to require financial pre-qualification from an Applicant, either in SEQRA or otherwise. Generally, the Planning Board's land use authority is confined to regulating uses, not users. SEQRA does not modify or expand this authority."*

*The Town is, however, authorized to require, and the Applicant will provide, appropriate security for the completion of certain project improvements.*



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3. 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.

*Comment noted. See response 2, above.*

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

The concern raised in the Sept 18th 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.

*The Well Monitoring Program completed during the 72-hour pumping test was designed in accordance with accepted hydrogeological well testing procedures to determine the extent of potential drawdown and yield impact from pumping of the proposed Silo Ridge wells on other nearby wells. The Well Monitoring Program collected water-level data from a total of 31 wells located at varying distances (from 40 feet to 2,500 feet) and directions from the proposed supply wells to determine the direction and extent of drawdown in the aquifer. The variable distance of the monitoring wells from the onsite supply wells was used to complete a distance drawdown assessment. Figures showing the extent of the water-level drawdown impact as a result of pumping are included in the report of LBG, the Applicant's consultant.*

*The results of the Well Monitoring Program showed that water-level drawdown decreased with increasing distance from the supply wells and that the water-level drawdown effects were limited to within the Silo Ridge property. This data indicates that wells located outside of the range of water-level drawdown effects, such as those in the Hamlet, will not be adversely affected by pumping at Silo Ridge. The tests conducted and the conclusions reached based on the data collected are standard hydrogeological well testing procedure for determining aquifer effects and potential impacts to existing wells and were done in accordance with industry standards and New York State well testing guidelines.*

5. **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



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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, decision making. 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. It's 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.

*As the commenter acknowledges, special use permit/master development plan approval of the Vineyard Cottages and Winery Restaurant was granted by the Planning Board in 2009, and is still currently in effect. The grant of that approval necessarily includes the waivers necessary to achieve the approved master development plan. The conceptual plan for these project components has not materially changed, and there is therefore no basis for reconsideration of the prior approval. Design issues will be reviewed by the Planning Board in conjunction with a future application for site plan approval of these components.*

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

Probably the most important environmental and practical concern is with respect to water is outlined in the Sept 18th 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 Ameniam Brook,



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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.

*The Planning Board is not delegating its duty as lead agency by relying on the expertise of coordinate governmental agencies with respect to aspects of the project in the jurisdiction of those agencies. In fact, under SEQRA regulations, "each agency involved in a proposed action has the responsibility to provide the lead agency with information it may have that may assist the lead agency" in reaching its determinations (See 6 NYCRR § 617.3(e)). Furthermore, "SEQR does not change the existing jurisdiction of agencies nor the jurisdiction between or among state and local agencies." (See 6 NYCRR § 617.3(b)). NYSDEC is the governmental authority with jurisdiction over the discharge of the water and the protection of the water courses. The Applicant made every effort to not to discharge the water into the Cascade Amenia Brook, but NYSDEC is adamant. This discharge location is the same as required by NYSDEC for the current approved plan.*

### 7. **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 18th 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.

*The Applicant disagrees with this comment. A sensitivity analysis was performed for fiscal impacts assuming residential market values are 50% less than proposed (Tables 10 through 14) and 25% less than proposed (Tables 15 through 19). This is an industry standard analysis and provides an indication of impacts with much lower total market value and, thus, tax ratables similar to what would happen if fewer units were sold. Additionally, the sensitivity analysis performed in September 2013 and revised December 2014 provides a comparison of the 2009 Approved MDP and the Modified Project; of which the sensitivity analysis performed as part of the Silo Ridge Resort Final Environmental Impact Statement (FEIS) was accepted as complete on September 16, 2008. Therefore, it was critical to perform the same analysis and provide results utilizing the already reviewed and accepted approach in order to have a fair comparison of the two projects.*

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 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?

*Comment noted. The fiscal analysis includes an analysis of the capital budget. In fact, the original fiscal analysis was performed using the Burchell Per Capita Method – refer to FEIS Volume IV: Appendix H – Fiscal Impact Analysis. After a thorough review of the fiscal analysis by the Hudson Group and the Planning Board, it was determined that interviewing the service providers to research the potential impacts on public facilities and services was the*



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*preferred approach as it provided a more realistic capital budget. It should be noted, that both the Burchell Per Capita Method and interviewing the affected providers are both acceptable SEQRA methodologies.*

*As part of the addendum to the EAF, an update to the fiscal analysis was performed utilizing the already reviewed and accepted approach in order to have a fair comparison of the 2009 Approved MDP and the Modified Project*

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.

*In accordance with New York Transportation Corporations Law § 119(1), NY Transportation Corporations Law Section 119 requires the sewage works corporation to provide a bond or other security to the Town guaranteeing the operation and maintenance of the system for at least five years. The security must be in the amount of the estimated cost of the operation and maintenance over that period, less the estimated revenues to be received during that period from the properties served. In addition, the stock of the corporation must be placed in escrow, with title to pass to the Town in the event of abandonment or discontinuance.*

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.

*Comment noted. Please see responses to comments 2 and 3 above. Additionally, please see notes below.*

*1- In accordance with Section 105-28.A(1)(a) of the Town Subdivision Regulations, the Applicant will provide a performance bond covering "the full cost of completing" the following improvements:*

- a. Roads and parking areas including pavement;*
- b. Road signs and posts;*
- c. Road lighting in the road right-of-way, and in parking areas;*
- d. Concrete sidewalks in the road right-of-way;*
- e. Monuments or other acceptable markers suitably placed and installed;*
- f. Water supply system improvements, including wells, water tank, water treatment facilities, and distribution pipes; Stormwater management/drainage pipes and structures; and*
- g. Landscaping in the SPO District "green buffer" (1) to screen the wastewater treatment plant and golf maintenance facility, and (2) at the north and west ends of "Snowy Owl Court" abutting golf hole 1.*



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2- In accordance with § 105-28.A(1)(a) of the Town Subdivision Regulations, the Applicant will deposit cash in an escrow account maintained by the Town<sup>2</sup> to cover the "cost of reclamation of areas to be excavated or graded," including seeding and other means of erosion control for all disturbed land (the "Reclamation Security"). The Applicant will also deposit in an escrow account maintained by the Town the amount of \$30,000, to cover survival of plantings on littoral shelves for a period of two (2) years (the "Wetland Planting Security").

3- As for the golf course work, in August, 2014, the Applicant and the Town entered into a Security Agreement and License securing reclamation of golf course work. The existing Security Agreement and License can be amended to cover this reclamation work

4- In accordance with New York Transportation Corporations Law § 119(1), the Applicant will provide a performance bond covering completion of construction of the wastewater treatment plant and sewage-works system<sup>3</sup> (the "Sewage-Works Bond").

5- As required by Transportation Corporations Law § 119(2), the Applicant will also provide a separate bond or other security acceptable to the Town Board to cover estimated operation and maintenance costs less estimated revenues, for the first five years of operation of the sewage-works corporation.

### 8. **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 18th 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.

*Comment noted. Notice of the public hearing was given in compliance with applicable law. The Planning Board has been engaged in a thorough and rigorous review – under both the Town Zoning Law and SEQRA - of all issues presented by the proposed project, including consideration of over 1,000 comments from the public and its consultants, and three public hearing sessions.*