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September 18, 2014

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:

On behalf of my Mother, Mrs. Arlouine Wu, and myself, I am respectfully submitting the following written comments in connection with (1) the Amended special permit/Master Development Plan for the Silo Ridge Resort Community ("Silo Ridge"), (2) Site plan approval for the first phase of the development of Silo Ridge ("Phase 1"), (3) Preliminary subdivision approval and the Amended Environmental Assessment Form, (4) Amended and Restated Findings Statement, and (5) special permits and waivers in connection therewith, including the waiver of Subsection G of the Town Code § 121-14.1 that requires a minimum 100' buffer zone between property in the Resort Development Overlay and residential property outside the RDO (the "Green Buffer").¹

As a preliminary matter, while I favor the cluster development components of Silo Ridge, I believe the Town of Amenia Planning Board ("Planning Board") should ensure there will be no harm to the Town or its residents with respect to two critical environmental matters: (1) Water, both consumption and runoff, and (2) Viewshed, both toward and from Delavergne Hill, as a result of the development of Silo Ridge. I also believe the Planning Board should ensure that there will be no harm to us who are uniquely positioned as adjacent property owners by requiring compliance with the 100' Green Buffer.

I am confident the Planning Board knows it should take a "hard look" at the documents submitted by Silo Ridge Ventures, LLC (the "Applicant") supporting the Silo Ridge project. However, I respectfully submit the Planning Board has a fiduciary obligation to take a **harder look** at any alteration of these two environmental factors, because any materially adverse impact on these two environmental components, in my view, will irreparably harm the essential character, if not existence, of the Town that cannot be recovered from the proposed increase in tax receipts. To clarify my comment at the Meeting, and to reiterate my appeal to the Planning Board, there is no mitigation possible if the Town's wells run dry or the County-wide famous views from Delavergne Hill are lost.

¹ As addressed at the public meeting held on September 4, 2014 (the "Meeting"), 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 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 following written comments.

1. WATER IS THE MOST CRITICAL ENVIRONMENTAL FACTOR TO AMENIA

Consumption.

As the Planning Board undoubtedly knows, Amenia is unique in that it historically already suffers from an inadequate water supply in the Hamlet area. On information and belief, few commercial operations can exist along Mechanic Street, and homes within the Hamlet periodically are without adequate potable water for periods of time especially during dry spells in the summer months. Therefore, from any perspective, legal or otherwise, I believe this is the most critical consideration for the Planning Board for the survival of the Town.

The Applicant has revised its Master Development Plan ("MDP"), and now contemplates using approximately 128,000 gallons per day ("gpd") of water.² This is an increase from its original proposal of 120,000 gpd of nearly **7%**, notwithstanding that the Applicant proposes to *reduce* the number of residences or units in Silo Ridge. In most areas of commerce and governmental regulation, including law, accounting, securities, banking and finance, a change of 5% or more requires special consideration and explanation. Given the critical aspect of this factor to the health and welfare of Amenia, the impact of this factor and common sense demands that the Planning Board be completely satisfied that the proposed Silo Ridge project does not adversely affect the Town.³

More importantly, the Amended and Restated Findings Statement discloses that under existing conditions, the aquifer under Silo Ridge is used to support the irrigation ponds and the daily water usage is estimated at **300,000 gpd** during peak summer months.⁴ This is an amount far exceeding the proposed 128,000 gpd estimated to be needed in the revised MDP for all of Silo Ridge following completion of the project. These vast inconsistencies in water usage clearly require further investigation to protect this critical interest of the Town.

I note the Applicant has provided for the first time a report entitled, "Groundwater Exploration and Pumping Test Program", dated August 2014 ("Groundwater Test"), that was conducted for Silo Ridge (Online Document "L"), and has provided an updated redlined copy of a report entitled, "Water Budget Report for the Combined Irrigation Pond", dated August 21, 2014 ("Water Budget Report") revised from June 6, 2008 (Online Document "M"). I do not believe these documents were originally available for public inspection online before the Meeting⁵. More importantly, even if these documents were available, I am, and I'm sure the Planning Board should be, astonished that such a critical document addressing the water resources would only be submitted for the Planning Board's initial review just days before the Meeting at which the Applicant is seeking final Planning Board approvals. There is a difference

² MDP at 29.

³ The MDP also indicates that "The total target yield of water to be developed is approximately 255,000 gpd (177 gpm)."³ This is an ambiguous sentence. If it refers to the amount of water available, this is an increase of 15,000 gpd or >6% increase from the Applicant's original projections. Fewer units do not result in increased capacity. Clearly, in the absence of any recent study as to the water capacity of the aquifer(s) in Amenia, attention should focus on the rationale for believing there has been an increase in the projected "yield".

⁴ Amended and Restated Findings Statement dated January 8, 2009 as amended March 20, 2014 at 29

⁵ My attempts to access them online resulted in 404 error messages (i.e., error code meaning webpage not found).

between "hard look" versus first time, last-minute glance, and I appeal to the Planning Board to look harder and longer at these reports.

Groundwater Test

Six wells were tested by pumping water for a 72-hour period from June 10th through June 12th, 2014.⁶ Of these, two had generators fail or malfunction multiple times and one had electrical wiring shortages. In a majority of the wells, the amount of water pumped had to be reduced and was stable for less than the full testing period. One well took more than 11.5 days to recover, and one well had a drop in water level of more than 400 feet. Other onsite monitoring wells were used to detect decreases in water levels and ranged from no discernible drawdown to decreased levels of 175 feet. Four off-site wells were monitored, two south of the Hamlet (the closest being the Sheriff's Substation), and two west of the Hamlet (just off of or going up Delavergne Hill). No wells were monitored within the central Hamlet area.

- **Well 1** did not have any reduction in flow, but the water level decreased 87.5 feet and "did not recover rapidly after shut down of the pumping test."⁷ In fact, after **11.5 days** following the test Well 1 recovered to only 91% of its pre-test water level.
- **Well 2** was tested at 220 gpm initially, but had to be reduced to 150 gpm, because "based on the trend of water-level drawdown in the well it was determined that a rate reduction was necessary."⁸ The total water draw-down level **fell 211 feet** following the 3-day test.
- **Well 9**⁹ did not have any reduction in flow, but the water level decreased 102.86 feet, and did not recover fully until sometime the following week.
- **Well 11** was initially adjusted to pump 65 gpm. For inexplicable reasons, "A rate adjustment was completed at 23:45 on June 9 to maintain the 65 gpm pumping rate in the well."¹⁰ The total water level **fell 404.87 feet** following the 3-day test, but recovered "rapidly". The level also dropped 60.81 feet as a result of pumping **Well 31**.
- **Well 25** was tested at 39 gpm, but was reduced to 33 gpm after 2.5 hours of pumping, "based on the trend of water-level drawdown in the well it was determined that a rate reduction was necessary."¹¹ The total water draw-down level fell 23.39 feet after the test and recovered "rapidly".
- **Well 31** was initially tested at 200 gpm, but was reduced to 158 gpm the next day. The total water-level fell 83.1 feet and recovered "rapidly".

Four of the six wells were tested for water quality and separately disclosed (1) Giardia, (2) Coliform, (3) TDS concentrations, (4) 2-ethylhexyl-contaminant, and (5) total iron and manganese in excess of standards.

In summary, I submit that the Applicant is relying on a Groundwater Test that demonstrated sufficient water available on the Silo Ridge project site, but did not assess whether it would have a direct adverse environmental impact on the available water supply to the Hamlet.

⁶ Well 31 was tested separately the following week.

⁷ Groundwater Test at 11.

⁸ Id.

⁹ I didn't forget how to count. This is the numbering designation used in the Groundwater Test.

¹⁰ Groundwater Test at 13.

¹¹ Id.

Additionally, in the absence of updated information about stream flow and about the underlying aquifers in Amenia, the Applicant is necessarily still relying on an assessment of stream flow that was developed in the 1960's.¹² The Planning Board should very carefully assess whether it is appropriate to approve one of the largest development plans in Dutchess County that potentially affects every aspect of the Town on the basis of this Groundwater Test alone.

Runoff

Other residents of the Town may be more qualified to address this issue, and a number of residents addressed this matter at the Meeting. I have only two points I will summarize here.

1. *Wastewater discharge.*

Until now, the expectation was that the Wastewater Treatment Plant would recycle treated wastewater either onto the Silo Ridge golf course or into the irrigation ponds that are now contemplated to be combined. However, according to the Water Budget Report at p.10:

"The discharge of treated wastewater effluent to the onsite irrigation pond and overflow into the NYSDEC regulated wetland AM-15 is no longer proposed. The onsite treated wastewater will likely be discharged into a tributary of the Ten Mile River which flows along Route 22 to the east of the project site." (Emphasis added.)

The reference is to the Amenia/Cascade Brook that the NYS DEC characterizes as a Class C (Ts), meaning the quality of water supports trout populations and spawning. Given that the modified size of the tank for treating wastewater is 400,000 gal., and the average projected outflow is estimated to be 115,000 gpd, I submit this discharge will likely have a dramatic negative impact on this tributary to the Ten Mile River which provides tremendous fishing opportunities and recreation to the general public. In my view, providing fishing opportunities in the Ten Mile River and its tributaries offer an untapped source for inviting additional tourism and commercial revenues to the Town if properly promoted. Discharging vast amounts of wastewater to pollute the tributaries and Ten Mile River will likely destroy the quality of water and the resultant fishing opportunities for everyone.

2. *Solid waste treatment*

I cannot find the method how the Silo Ridge project will handle the solid waste from 224 units and attendant commercial establishments that comprise the project. To me, this is an essential factor that may very significantly and adversely affect the Town. For these reasons I urge the Planning Board to engage a careful review of this environmental factor before providing any approvals to the modified plans.

¹² As reflected in the original DEIS at 3.13-8. The study was by Ayer & Pauszek, entitled, "Streams in Dutchess County" 1968. Notwithstanding my comment at the Meeting that the information derived from a 1950's study, the length of time since the report was prepared is at least 46 years ago or nearly half a century, when the water demands of the Town were substantially less with fewer homes, and when the Silo Ridge property was a farm with approximately 200 cows using less than an estimated 5,000 gpd. (according to an immediate family member of the former owners who grew up on the farm.)

2. THE VIEWSHED TOWARD AND FROM DELAVERGNE HILL DEFINES AMENIA

Obscured and Obstructed Views

During my several decades in Amenia, the largely unobstructed panoramic views at the top of Delavergne Hill and along the road have received universal praise, as well as recognition in the Town Code and Comprehensive Plans with a designated Overlay. References throughout the Silo Ridge project identify these views and "viewshed" as a defining characteristic of the Town. All marketing materials and presentations I have seen, including the one provided at the Meeting, appear to begin with a photograph of an unobstructed view from Delavergne Hill. There may be more than one definition of "viewshed". For purposes here, I define it as the unobstructed panoramic view from the ground immediately in front to the sky above. In my opinion, a view that allows a person to see only the top of distant hills and the sky, or conversely just allows a person to see the immediate ground but nothing in the distance, does not comply with the terms and spirit of the viewshed to be preserved.

To my knowledge, no study has been conducted by, or on behalf of, the Planning Board to ascertain what impact the actual foliage development of the Silo Ridge project will have on these views and viewshed. However, what was repeatedly expressed at the Meeting, and what is undoubtedly apparent to anyone recently traveling along Delavergne Hill, is that the Applicant has transplanted numerous large trees, has moved tons of soil to create a berm alongside the road and has proposed the addition of foliage that at some points largely obscure, and at other critical points along the hairpin curve, completely obstruct the viewshed to all travelers other than possibly commercial drivers riding in tall trucks.

I respectfully submit that the protected viewshed from Delavergne Hill should not be obscured nor obstructed in any material respect. **Additionally, the Planning Board should condition any approvals or waivers on continuing compliance with such an unqualified obligation.**

Winery Restaurant, Parking Lot and Decorative Grapes

Inherent in this viewshed are the panoramic views not only toward the south, but also toward the southeast and east from Delavergne Hill. A principal for the Applicant has indicated publicly and privately that they do not intend to build a "Winery Restaurant" complete with its "decorative grapes".¹³ However, this massive structure with parking for 37 vehicles and proposed planting of dozens of trees remains under consideration by the Planning Board and is reflected in the MDP, amended Environmental Assessment Form, Amended and Restated Findings Statement and in all plans and tables submitted in connection with the Silo Ridge project. I respectfully submit that obscuring or obstructing the signature viewshed of Amenia with a 5,000 sq. ft. commercial structure with sufficient parking and movement for 37 vehicles and overwhelming planting of trees is entirely contrary to the legal obligation to protect one of the most important viewsheds in Dutchess County on Delavergne Hill and to retain the rural character of the Town. Again, regardless of the structures and parking lot(s), the proposed

¹³ Addendum to the Environmental Assessment Form, dated March 19, 2014, as amended August 20, 2014 ("EAFAddendum") at 7.

planting of trees should be restricted to "decorative trees" that do not grow above the height of any structure and do not obscure or obstruct priceless public views.

Vineyard Cottages

Allowing the proposed construction of 19 so-called "Vineyard Cottages" overlooking Amenia and highly visible wherever looking up at Delavergne Hill from the east or south is also contradictory to the lawful obligation to preserve this critical viewshed and the rural character of the Town.

This facet of the Modified MDP is as large, if not larger, than most developments proposed in the Town, and is completely contrary to the intent of the Town's local laws for the careful development within Town limits. At least one expert for the Applicant, if not the Applicant itself, has admitted that this aspect of the Silo Ridge project does not conform with the TND principles for the Resort Development Overlay.¹⁴ On information and belief, I believe the Planning Board has not considered this aspect of the Modified MDP. In fact, according to the EAF Addendum:

"The proposed MDP represents a more compact development that emphasizes walkability, and is sensitive to the visual character of the site." EAF Addendum at 1.

Clearly, the Vineyard Cottages component of the Silo Ridge project is contradictory to this representation by the Applicant.

As this aspect of the Silo Ridge project has not been considered by the Planning Board, but forms an integral part of the application for an Amended special use permit/master development plan approval pursuant to Town Code § 121-18C(3), I submit that this component should be removed from the Modified Project and revised MDP, and should not be approved at this time as part of its application.¹⁵ Equally clear is that approval by the Planning Board of aspects of the Modified Project, as reflected in the revised MDP and accompanying documents, without any consideration by the Planning Board, would be without any justification and, in my view, likely considered arbitrary and capricious.¹⁶

The fact that the Winery Restaurant and Vineyard Cottages were originally accepted and approved more than six years ago, or that those components are part of a later Phase III of the Modified Project should be irrelevant.

Although there may be certain individuals who have remained with one party that is the same, the Applicant is otherwise a different entity than the applicant that obtained approval in 2008. As the Applicant essentially admitted at the Meeting and elsewhere, the Modified Project significantly differs from the original Approved MDP. Accordingly, as mentioned above, in the absence of any substantive consideration by the Planning Board of these two highly significant

¹⁴ Memorandum of Amanda DeCesare on behalf of VHB Engineering, Surveying & Landscape Architecture, P.C. dated June 2, 2014 and *revised August 26, 2014* at 6. (Online Document "T"). I respectfully submit that this document dated after the stated date when all documents were deemed "complete" renders suspect the process as to what documents have been timely submitted and could be timely reviewed.

¹⁵ This point applies with equal force to inclusion of the so-called "Winery Restaurant" discussed above.

¹⁶ *Id.*

aspects of the Modified Project, the amended MDP should be approved, if at all, **only after removing those components from the project.**

By approving those components as part of the amended special permit/Modified MDP approval process, the Planning Board is inviting the Applicant at a later time to argue that any reduction or elimination of the Winery Restaurant or Vineyard Cottages entitles it to a multimillion dollar reduction in the assessed values for the Silo Ridge project. Such a tax reduction will, without question, adversely affect the amount of tax revenues which the Town may at that point desperately anticipate.

3. GREEN BUFFER

Included in the matters to be approved is a waiver of subsection C of Town Code § 121-18 with respect to the minimum width of buffer from any existing residential use not within the RDO District. This concerns the 100' Green Buffer that is intended to protect adjacent landowners and is vital especially to my Mother, a full-time resident for more than 30 years.

The issue concerns the construction of a major road between Rt. 44 and the Winery Restaurant to the Vineyard Cottages, and the construction of a number of multiple story residences immediately next to our property. This Green Buffer requirement has always been intended to protect adjacent homeowners from significant economic loss in the market value of their property value by requiring neighbors to check their development plans for the community good.

The property in question is a 5.5 acre lot that has been approved for development by the Town and Planning Boards when my Mother first purchased the property over 30 years ago. As I have admitted before, this property constitutes her principal asset to protect her against the vagaries of an increasingly challenging economy, and to provide her financial reinforcement should she need to sell it. Given her advanced age, her dependency on a fixed income and our contributions to the community, as well as the fact that there are other means of access available to reach the Vineyard Cottages from Route 44 and other sites for the Applicant to construct units, I appeal to the Planning Board on her behalf to require the Applicant to modify its plans to comply with the Green Buffer requirements to ensure that there will be less of an economic loss to her from constructing homes and a road so close to our property line.

On information and belief, the Applicant has already encroached on the Green Buffer and has a shed beside the home formerly owned by the Millers. Moreover, on information and belief, the Applicant has continuously used the former Miller residence as a commercial office contrary to the RA zoning and 210 residential land use classification for the property. Accordingly, I submit that enforcement of the Green Buffer is essential to prevent further encroachments that already may adversely affect the economic value of our adjacent property on which my Mother depends.

FISCAL ANALYSIS

Much has been made about the enormous boost to tax revenues that will inure to the Town as a result of the construction of the Silo Ridge project. In support of this argument, the Applicant has submitted a document designated as Appendix K: Fiscal Resources K1 Updated

Fiscal Analysis and dated June 11, 2014 ("Fiscal Analysis"). As someone who has been a professional in corporate finance as a lawyer and for over 10 years much of which was as the manager of public finance for one of the largest banks in the world, please allow me to address just a few assumptions that underlie the Fiscal Analysis for your consideration.

1. **No Sensitivity Analysis of Reduced Sales**

Throughout the Fiscal Analysis, there is an explanation of various scenarios at different sales prices. However, the Fiscal Analysis is completely devoid of any sensitivity analysis of various scenarios **if fewer than all of the units are sold**. Most, if not all, of the projected tax revenues are based on the assumption that all of the units have been sold.

In support of the claimed assumptions, the author relies on the history of a principal partner of the Silo Ridge project, Discovery Land Company LLC ("Discovery") which claims responsibility for more than a dozen projects for high-end second home buyers. However, many, if not most, of those projects have been in vacation locations such as at or near beaches, or near large lakes or at winter ski destinations where the principal **pre-existing** economic driver is tourism. One such project is The Hills at Southampton located in East Quogue, New York. For inexplicable reasons, a fiscal analysis of that project is included with the Fiscal Analysis, but there is no indication that The Hills is completed, or has sold all of its units or has been successful.

2. **No Capital Budget**

The Fiscal Analysis provides various hypotheticals attempting to address increased expenditures if some or all of the future owners of units reside full time in Amenia, and have school-aged children who attend the local schools. The projections appear to assume that no capital expenditures will be necessary because the current school system is operating under capacity. However, additional students may require significant capital expenditures, especially with respect to science labs, audio visual language facilities, athletic facilities and transportation vehicles. Each component may also need additional personnel with the associated personal service and nonpersonal service (i.e. benefits) costs.

Similarly, each department of the Town has been approached, but there is no evidence that any capital budget has been established for equipment. If there is more congestion, more complaints and more activities within the Town, as anticipated, consideration will have to be given to creating local law enforcement facilities, hiring personnel and expending for attendant infrastructure, facilities, vehicle and equipment costs. More personnel may become necessary to handle municipal tax bill issues, and local government-citizenry interaction. Capital expenditures may become necessary for increased sanitation, highway and fire equipment and associated FTE personnel. Any of these costs alone, or when aggregated, will likely far exceed the anticipated \$989,655 to \$1,020, 192 in additional annual tax revenues projected to be received by the Town, and again **assume sales of all units in the Silo Ridge project**.

3. **No Contingency/Reserve Funds**

Stuff flows downhill, and there are no contingency funds if events occur at the Silo Ridge project that directly impact the Town. One easy example is if the WWTP suffers an outage, or

failure. Given its elevation above the center of Town, any event that stops the plant from operating properly may have a devastating impact on the living conditions within the Hamlet that will necessitate emergency action and extraordinary expense.

4. No Project Reserves

I am unaware of any information that the Planning Board may have reviewed to address how the Silo Ridge project will be financed. 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. In at least one case, it has been reported that Discovery sold its interests in a project.¹⁷ Additionally, it has also been reported that Discovery has not had complete success in at least one project.¹⁸ How will reclamation expenses, if any, be paid for? Assuming municipal responsibility for essential services including water and wastewater management if the Silo Ridge project collapses, how will the Town afford these increased costs?

CONCLUSION

The prospects of a competent cluster development which comprises the core of the Silo Ridge project is an exciting dream for the Applicant, and, in many ways, may be for the Town. My concerns, identified at the Meeting, are that we are entirely dependent upon the members of an untested partnership to ensure that the Applicant's dream has a successful and happy ending, and does not amount, upon realization of a partially constructed project, to a colossal nightmare that destroys Amenia's unique character and visual charm and bankrupts its finances.

Removing those elements that obscure and obstruct the priceless views of Delavergne Hill will go a long way to allay our fears. Requiring compliance with the Green Buffer will shift more of the economic risk back to the Applicant and away from us and similarly situated adjacent landowners. Perhaps, most importantly, confirming through an independent stream and aquifer study that there is no potential for an adverse impact to the Town with respect to the scarce water supply or from the location of the wastewater treatment plant is a task that I implore each and every member of the Planning Board to undertake and to ensure.

With kind regards,
Bart Wu

¹⁷ A project named Cordevalle in Silicon Valley, CA which Discovery apparently sold in 2007 to a foreign investor.

¹⁸ E.g., One such project named Spanish Oaks in Austin, TX allegedly defaulted on its obligations and was foreclosed in 2010.