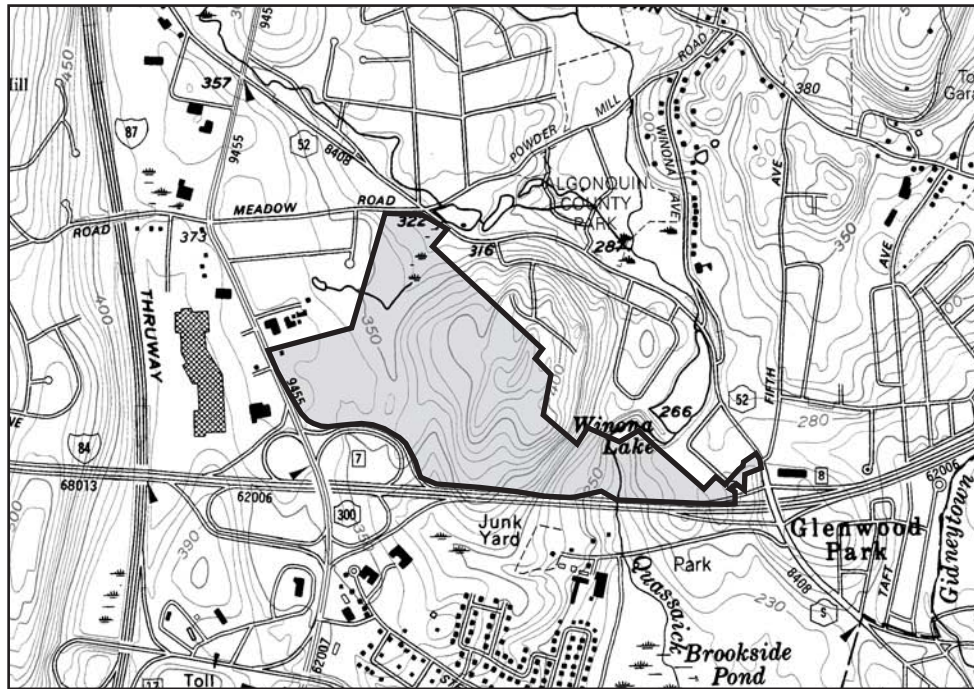


FINAL ENVIRONMENTAL IMPACT STATEMENT

VOLUME II



THE MARKETPLACE AT NEWBURGH

TOWN OF NEWBURGH
ORANGE COUNTY, NEW YORK

Prepared by:
Tim Miller Associates, Inc.

Project Sponsor:
Wilder Balter Partners, Inc.

Lead Agency:
Town of Newburgh Planning Board

March 15, 2007

THE MARKETPLACE AT NEWBURGH
FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS)
Volume 2 of 2 - APPENDICES

Project Description: The applicant proposes the construction of a commercial shopping center consisting of approximately 850,000 square feet on 127.6 acres of primarily vacant land within the Interchange Business (IB) zoning district opposite and east of the Newburgh Mall.

Location: The project site is located at the northeast quadrant formed by the intersection of NYS Route 300 with Interstate Route 84 in the unincorporated area of the Town of Newburgh, Orange County, NY. Access to the site would be via NYS Route 300 and NYS Route 52.

Tax Map Identification: (Tax Map/Block/Lot Numbers): 60/3/49.22; 60/3/49.1; 60/3/41.3; 60/3/48; 60/3/41.4; 60/3/49.21; 71/4/7; 71/4/8; 71/4/9; 71/4/10; 71/4/11-14; 71/5/9; 71/5/15,16; 97/1/13.3; 97/1/20.3.

Lead Agency and Contact Person: TOWN OF NEWBURGH PLANNING BOARD
c/o Norma Jacobsen, Planning Board Secretary
308 Gardnertown Road
Newburgh, NY 12550
(845) 564-7804

Project Sponsor: WILDER BALTER PARTNERS, INC.
570 Taxter Road, Sixth Floor
Elmsford, NY 10523
Contact: Bob Wilder
(914) 347-3333

FEIS Preparer: TIM MILLER ASSOCIATES, INC.
10 North Street
Cold Spring, New York, 10516
Attention: Tim Miller, AICP
(845) 265-4400

Lead Agency Acceptance Date: March 15, 2007

March 15, 2007

APPENDICES

Appendix A	Comment Letters
Appendix B	Public Hearing Transcripts
Appendix C	Updated Traffic Analyses
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APPENDIX A
Comment Letters

Letters of Comment Received in Response to Marketplace at Newburgh DEIS

Letter No.	From	Date
1	David Church, Commissioner of Planning, Orange County, Goshen, NY	July 21, 2006
2	Patrick J. Hines, Associate, McGoey, Hauser & Edsall, New Windsor, NY	September 11, 2006
3	William Schuster, Ph.D., Cornwall, NY	August 10, 2006
4	Lawrence G. Biegel, Environmental Analyst I, NYS DOEC, New Paltz, NY	June 8, 2006
5	Edwin J. Garling, Garling Associates, Goshen, NY	June 19, 2006
6	Anthony Marino, County Legislator, Town of Newburgh District # 17, NY	July 31, 2006
7	Mark C. Taylor, Attorney, New Windsor, NY	July 28, 2006
8	David Church, Commissioner of Planning, Orange County, Goshen, NY	July 28, 2006
9	Timothy P. Pillsworth, Chief, Winona Lake Fire Engine Co., Newburgh, NY	June 1, 2006
10	Glenn T. Boucher, NYS DOT, Poughkeepsie, NY	June 29, 2006
11	Darrin J. Scalzo, Division Permit Coordinator, NYS Thruway Authority, Suffern, NY	July 31, 2006
12	Eric L. Gordon, Keane & Beane, White Plains, NY	July 20, 2006
13	Eric L. Gordon, Keane & Beane, White Plains, NY	July 31, 2006
14	Nathaniel J. Parish, Parish & Weiner Inc., Elmsford, NY	July 31, 2006
15	Nathaniel J. Parish, Parish & Weiner Inc., Elmsford, NY	July 28, 2006
16	J. G. Barbour, Ecological Consultant, Saugerties, NY	July 21, 2006
17	Nancy Neuman, Sandstone Environmental Assoc., Highland Park, NJ	July 28, 2006
18	Katherine J. Beinkafner, Ph.D, Mid-Hudson Geosciences, Clintondale, NY	July 28, 2006
19	CEA Engineers, Monroe, NY	May 31, 2006
20	John Parker, Attorney for Save Open Space, Elmsford, NY	July 31, 2006
21	John Parker, Attorney for Save Open Space, Elmsford, NY	May 30, 2006
22	John Parker, Attorney for Save Open Space, Elmsford, NY	July 20, 2006
23	Sandra Kissan, Newburgh, NY	July 31, 2006
24	Jeanette V. Tully, Newburgh, NY	July 25, 2006
25	Diana Krautter, Newburgh, NY	June 1, 2006
26	Jeanette V. Tully, Newburgh, NY	June 2, 2006
27	Warren S. Craig	July 31, 2006
28	Dorothy and Al Schorno, Newburgh, NY	June 1, 2006
29	Sibylle M. Tulve, Newburgh, NY	July 24, 2006
30	Eleanor Doderer, Newburgh, NY	July 25, 2006
31	Michael E. Ghihas, Vaughn Ghihas, Newburgh, NY	July 25, 2006
32	The Torelli Family, Newburgh, NY	July 20, 2006
33	Patricia Randall, Newburgh, NY	July 27, 2006
34	Kate Lindemann, Newburgh, NY	July 27, 2006
35	Gloria Oehmne, Newburgh, NY	July 27, 2006
36	Sal & Josefa Mandarino, Newburgh, NY	July 22, 2006
37	Michael Murphy, Newburgh, NY	June 14, 2006
38	John Gebhards, Newburgh, NY	June 1, 2006
39	Lisabeth Stelz Riach, Newburgh, NY	July 31, 2006
40	Roberta Boyea, Newburgh, NY	July 30, 2006
41	Wendy Lofaro, Newburgh, NY	July 11, 2006
42	Muriel Mead	July 10, 2006
43	Laura Kohlmann, Newburgh, NY	May 29, 2006
44	Ross & Carolyn Topliff, Newburgh, NY	July 13, 2006
45	Wayne Booth, Newburgh, NY	March 30, 2006
46	Lisabeth Stelz Riach, Newburgh, NY	March 28, 2006
47	Christopher & Nicole Jones, Newburgh, NY	May 28, 2006



COUNTY OF ORANGE

DEPARTMENT OF PLANNING

EDWARD A. DIANA
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DAVID CHURCH, A.I.C.P.
COMMISSIONER

ORANGE COUNTY DEPARTMENT OF PLANNING
239 L, M OR N REPORT

This proposed action is being reviewed as an aid in coordinating such action between and among governmental agencies by bringing pertinent inter-community and countywide considerations to the attention of the municipal agency having jurisdiction.

Referred by: Town of Newburgh Planning Board

Reference/County ID No.: nbt-52-06m

County Tax ID: 60-3-49.22,49.21,49.1
49.3,48,41.4, parts of
71-5 and 97-1

Applicant: Wilder Balter Partners, The Market Place

Proposed Action: DEIS for Site Plan

Reason for Review: 500 ft from state highway (Rte 300 and Rte 52)

DEIS is received: May 31, 2006 (Written comment period ends July 31)

Comments:

This memo is in regard to the County Planning Departments review of the DEIS for the Newburgh Marketplace. These comments can be offered early in the Town's review process, along with further referrals related to this proposal which are also to be expected. In other words, this memo does not complete or satisfy the GLM 239 referral process for site plan review related to this proposal. This proposed development, "The Marketplace at Newburgh" is one of the largest single proposed developments in the Town's history, while it is within the priority growth boundaries as defined in the Orange County Comprehensive Plan and is an allowed type of use in the Town's IB (Interchange Business) zoning, serious consideration must be given to the various impacts which a development of this sort will create. There are similar large retail developments in the surrounding location catering to the community with similar uses. While we encourage new development of retail there are some considerations that the Planning department has pertaining to this proposal:

2.0-14¹. We encourage the "Lifestyle Center" concept as it promotes a downtown type concept for retail in a smaller, pedestrian friendlier type of environment. However, the development should be constructed this way throughout the entirety of the site, in keeping with the concept of "New Urbanism" or "Smart Growth." Parking should be placed in the rear of the structures with ample provisions for walking with benches; street furniture and places where people can relax, similar to the function of a town square, with pedestrian connectivity between buildings. The same buildings mentioned above should also be relocated and moved closer to the sidewalks, of the proposed main road that runs through the site, and the parking lots could be placed behind the buildings, and this would continue the main street planned for the "Lifestyle" section.

3-10-13

2-20-15

2-0-16

2-0-17

2-0-18
2-0-19

3-9-11


3-6-12

3-6-13

2. The proposed structures that are located closest to the residential neighborhoods off Hilltop Avenue should have more than a 50 ft buffer. These include the proposed retail buildings of c, l, d, and e. They are large structures that would need more buffering than the current zoning recommends (and that the applicant has provided in the site plan) to screen against these homes. Also as mentioned above, moving the buildings closer to the proposed main thoroughfare road would create a less noticeable buffer than if it were closer to the residential neighborhoods adjoining the site.
3. As recommended under "Design Guidelines for Highway Commercial Development" in the Orange County Comprehensive Plan and due to the enormous amount of proposed parking and impervious surface, trees should be placed between every ten or twenty parking spaces in the lots. This could help shade the parking lot in the summer and create less of a continuous expanse of asphalt.
4. We encourage the sidewalks that are proposed. However, it is unclear why some intersections and street connections do not have crosswalks beyond the lifestyle section periphery. Crosswalks should be installed all over the proposed development, and should incorporate raised or bricked speed tables for traffic calming measures.
5. Angled parking on one side of the street, or the complete removal of all parking is recommended for the "Lifestyle Section". This would create more of a traditional main street ambiance, or creating a pedestrian only section could also be a concept to explore. Wider sidewalks, as a result of parallel parking would create space for al fresco dining, cafes and other attractive amenities in popular main streets across the country.
6. Signage should be consistent in design and appearance.
7. While some neighbors may not prefer sidewalks, we recommend that if possible, sidewalks be connected to neighboring developments to the Marketplace site.
8. This proposed project will have regional significance and may require a mesoscale air quality analysis meeting NYSDOT's standards in order to determine whether NYSDOT may approve the proposed road and intersection changes which would enable construction of the entire proposed project. The applicant should consult with NYSDOT and report in the FEIS regarding the potential impacts on transportation conformity. See Section 9, page 1.1-31 of NYSDOT Environmental procedures manual entitled "Criteria for projects requiring a mesoscale analysis"
9. It is unclear whether any currently unprogrammed transportation plans will be programmed / completed in the applicants desired time frame.
10. We strongly support transit elements in any and all alternatives. Bus stops and convenient locations with pedestrian connectivity and with proper street furniture, signage and lighting is essential.
11. Orange County Department of Planning should be listed as an "interested agency" as opposed to a "involved" agency for SEQRA purposes.

County Recommendation: Advisory comments for DEIS only. No recommendations are being made for the site plan at this time.

Date: July 21, 2006
Prepared by: Blaine Yatabe, Planner


David Church, AICP
Commissioner of Planning



**McGOEY, HAUSER and EDSALL
CONSULTING ENGINEERS P.C.**

RICHARD D. MCGOEY, P.E. (NY & PA)
WILLIAM J. HAUSER, P.E. (NY & NJ)
MARK J. EDSALL, P.E. (NY, NJ & PA)
JAMES M. FARR, P.E. (NY & PA)

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**TOWN OF NEWBURGH
PLANNING BOARD
REVIEW COMMENTS**

PROJECT: MARKETPLACE
PROJECT NO.: 04-54
PROJECT LOCATION: SECTION 60 BLOCK 3 LOT 49.22 & Multiple Other Lots
PROJECT REPRESENTATIVE: TIM MILLER ASSOCIATES
REVIEW DATE: 11 SEPTEMBER 2006

- Attached, please find a follow up letter from Mr. William Schuster, Ph.D., This letter is a result of a field review performed on the project site on 1 September 2006 with Mr. Schuster, Steve Marino of Tim Miller Associates, an additional biologist from Tim Miller Associates and the undersigned. On 1 September 2006 the above referenced people spent approximately four hours reviewing the project site. The attached letter contains Mr. Schuster's summary of the field review. I am forwarding copies of the letter to Tim Miller Associates for their use in preparing the FEIS.

Respectfully submitted,

*McGoey, Hauser and Edsall
Consulting Engineers, P.C.*


Patrick J. Hings
Associate

REGIONAL OFFICES

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540 Broad Street • Monticello, New York 12701 • 845-704-2200 •

William Schuster, Ph.D.
131 Continental Road
Cornwall, NY 12518
845-534-4102

Memo To: Patrick J. Hines, McGoey, Hauser and Edsall
From: William Schuster, Ph.D.
Date: September 8, 2006
Subject: Town of Newburgh – Marketplace DEIS Review
Project #: 2004-54

This is a follow-up to my original August 10, 2006 review of the Draft Environmental Impact Statement for the project entitled The Marketplace at Newburgh, based on my field review of the site on September 1, 2006. My comments follow the same format of the seven issues addressed in that report. These comments are in addition to that first report and only replace those original comments where indicated.

1. Existing plant communities and types.

Community types on the project area are significantly more diverse than are listed in the DEIS and these should be better described and mapped. Wetlands A and B have different plant communities. The bulk of the site, listed in the DEIS as successional northern hardwoods, is mostly not northern hardwoods at all and ranges from disturbed lands inundated with invasives to mature oak-dominated hardwood forest.

To assess stand age I obtained increment cores from five large trees on the property as located on the attached map. The first core was too rotten to date, but the others yielded excellent samples with very clear ring patterns (samples have been mounted and preserved). The two trees successfully cored in the wetland B area indicate this section of forest is over 120 years old. The first core was from a 24.4 inch diameter northern red oak in which I recorded the formation date of the inner ring as 1891. I missed the center by a few rings and estimate the age of this tree to be 125 years. Trees of this age appear common in the area. The second tree was a 47.9 inch diameter white oak. I recorded a growth ring from 1923 on the inside of a sample ten inches deep and estimate the age of this tree as roughly 165 years. Trees of this large and old are present but uncommon on the site. The fourth tree I cored (the third good core sample) was in a hardwood stand in the south-central portion of the property. The tree was a 33.4 inch diameter chestnut oak. I took a 10.5 inch core which did not reach the center of the tree. I dated formation year of the earliest ring on this sample as 1894. Based on its diameter I estimate the age of this tree as 160 years and a number of trees around this portion of the site may be similarly old. Finally, I cored a representative canopy tree along the northern edge of the property to estimate average stand age adjacent to the nearby houses. It was a 25.6 inch diameter black oak. The core extended near to the center of the tree and had the inner ring date of 1934. I estimate the tree's total age as about 90 years, a rough approximation of the stand age in this area.

2. Wildlife resources including significance of Federal Jurisdictional Wetland and vernal pools.

The forested wetlands on the property are unlikely to contain endangered bog turtles or northern cricket frogs. More thorough work in other seasons, especially spring, would strengthen the DEIS species lists for the two significant wetlands, A and B.

3.3-46

I expect that the road and pond construction planned for the Wetland A area will impact and later restrict movement of wetland-dependent species. A significant area of adjacent upland should be preserved to enable critical seasonal movements. Ecological and hydrologic connectivity should be emphasized for long-term preservation and function.

3.3-47

Wetland B is a high quality, mature forested wetland, regardless of its lack of connection to other waterways. We located one spotted salamander, a species of special concern in New York State, and many redback salamanders. Many large trees of excellent habitat potential are distributed around the wetland. Wetland B appears to have value as habitat for native wetland species and groundwater recharge in addition to storage of stormwater runoff. The area was moist when we visited and is probably an important early season amphibian breeding habitat.

3.3-48

Wetland E is indeed a narrow floodplain corridor along Quassaick Creek. The most ecologically important feature of this area is probably the ecological continuity of the creek corridor. The proposed 40-foot arching culvert, if installed with proper methods and controls, should avoid impacting or restricting the creek and Wetland E. Despite the box culverts under Route 84 and the dam upstream, the Quassaick corridor remains moderately healthy and is an important biological corridor enhancing the long term environmental health of the area.

3.3-49

3. Methodologies utilized to document on-site vegetation and wildlife resources.

Vegetation description should be revised as suggested above.

I observed no areas outside of the wetlands that appear to function as vernal ponds in my four-hour visit.

3.3-50

The mapped wetlands are not all of the same type, each in fact is different, but apparently all are wooded or forested.

The DEIS remains incomplete in its list of wildlife species. My visit was not a full wildlife survey but did I observe animals, and record animal sign, present on this August afternoon: spotted salamander, redback salamander, garter (?) snake, whitetail deer, gray squirrel, chipmunk, white-footed mouse, groundhog, redtail hawk, robin, blue jay, crow, chickadee, downy/hairy woodpecker, turkey vulture.

3.3-51

There are large trees on the interior of the site that appear to be not mapped in the DEIS.

3.3-52

4. Impacts to Quassaick Creek. (No further comments.)

5. Impacts to threatened or endangered species.

I found a population of about 15 agrimony plants and collected specimens (these were examined fresh, dried, mounted and labeled and reexamined under microscope). I believe the population is non-endangered *Agrimonia pubescens*, due to hypanthium size and shape, lack of glands on abaxial leaf surfaces and inflorescence stalks, and an abundance of fine hairs on stems. I am consulting with another botanist to confirm this. This fact does not mean that there is no endangered beaked agrimony on the site.

3.3 53

There is *Carex* in the area in some of the wetlands. I did not find endangered *Carex amphibola* but this would have flowered and fruited earlier in the season.

3.3 54

I did not observe any Indiana bats, although I discovered a white footed mouse living under the loose bark of one large snag, highlighting the mammal-habitat functions of many of the large trees and snags. Some of the trees in the wetland B and other mature sections of the property could conceivably be summer roost trees for Indiana bats.

3.3 55

6. Impacts to Quassaick Creek regarding stormwater discharges, pollution, etc.

The large acreage of new impervious surface proposed to replace forested land remains an area of concern. Stormwater discharges could potentially cause flooding and scouring of the Quassaick if controls do not work optimally at all times. I strongly suggest incorporation of more infiltration area and semi-permeable surfaces. Groundwater recharge would benefit from this and vegetative filtering would enhance the ecology, reduce pollution, and increase the effectiveness of the stormwater management plan.

3.3 56

7. Evaluation to determine if additional surveys are warranted; i.e. reptiles and amphibians, migratory bird species concerns, critical environmental habitat issues such as vernal pools, etc.

I believe that the applicant has more recently accomplished additional survey work not represented in the DEIS that I reviewed (box turtles have been found, for example). That work and the findings of this September 1, 2006 site visit should be added to the report.

Since large areas of mature forest including many large trees and the area of wetland B are to be almost completely developed according to the plans, it would be desirable to have additional surveys conducted by mammal, amphibian, bird, and rare plant experts in the seasons in which key organisms can best be located and identified.

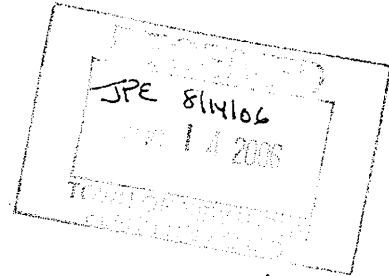
3.3 57

8. Other.

My original comments under "Other" from my report of August 10, 2006 still apply.

William Schuster, Ph.D.
131 Continental Road
Cornwall, NY 12518
845-534-4102

Memo To: Patrick J. Hines, McGoey, Hauser and Edsall
From: William Schuster, Ph.D.
Date: August 10, 2006
Subject: Town of Newburgh - Marketplace DEIS Review
Project #: 2004-54



It was my pleasure to evaluate for your office the Draft Environmental Impact Statement for the project entitled The Marketplace at Newburgh. You requested that I review the documents specifically with regard to seven issues. These issues and my comments follow below.

1. Existing plant communities and types.

Section 3.3 of the DEIS states that there are only two (2) community types on the project area, which is not correct. At least stream, floodplain forest, forested wetland, groundwater seep, disturbed areas, young successional forest, and upland oak forest communities are found on the site. From the data presented I would expect that vernal pools may also be present and it should be clearly documented if any shrub wetlands are present (transects quantifying canopy cover by species would clarify this). Former agricultural lands should be identified and shown on the community type map along with the areas that have been graded in the past ("culturally impacted" communities). The first cited community type is red maple/hardwood swamp, mapped as occupying all of the stream and wetland areas. This may be accurate but there was insufficient survey data to show that other wetland community types are not also present. The second cited community type is successional northern hardwoods occupying the remainder of the site, but appears to be a misclassification. Of the eight species that dominate successional northern hardwood forests, seven (aspen, white pine, paper birch, cherry, gray birch, green ash, elm) were not found in the tree survey or were only represented by a single individual. Oak forests of one or more types apparently dominate much of the site. The maturity of the forest stands should also be more carefully documented. Some sections are undoubtedly "successional" and the EIS extrapolates that the majority of trees are only about 30 -- 50 years old. But the tree survey identified approximately ten trees per acre larger than 18 inches in diameter. A significant number of these were very large trees from two to almost four feet in diameter. This indicates sections of the site are mature forest from 90 -- 150 years old. The community type work, classification, and mapping should be accomplished with greater deal to properly document the resources present.

2. Wildlife resources including significance of Federal Jurisdictional Wetlands and vernal pools.

The document says "only common species are expected to occur" but this highlights the fact that not enough survey work has been done to know one way or the other. I expect in an undeveloped area of 128 acres with high documented tree diversity (42 tree species documented in the tree survey) that careful studies would find uncommon, and potentially, rare wildlife species.

The fact that the field crews only documented 3 mammals, no reptiles, one amphibian, and 11 bird species highlights the cursory nature of the wildlife documentation to date. This does not constitute a "lengthy wildlife reconnaissance" as stated, and is inadequate to determine if wildlife "populations are sparse" as is also stated in the EIS.

A significant number of large, mature and "potential mammal habitat" trees were identified in the tree survey work to date. These should be identified on the remainder of the site (not just in the 200 foot boundary), and preserved wherever possible. The plans show no efforts to purposefully save or avoid the destruction of large trees.

Thorough amphibian and reptile species lists must be compiled for wetlands A and B. It is important to know what will be lost in directly impacted areas if the project proceeds and that the habitat requirements of those wetland species that will survive the initial construction will be met to ensure they will have viable populations after construction. Section 1.3.3 of the EIS states amphibian and reptiles are "limited in number" but insufficient data are presented to support this conclusion.

Federally protected wetland A appears to have high value but is proposed to be cut into four pieces by new roadways. A portion is proposed to be excavated and incorporated into a sediment trap in Phase 1 and other portions are to be filled and converted to roadway and embankment. This may cause wetland A to lose some of its species and function, regardless of other areas being converted to artificial wetlands. Other options for roadway layout should be considered, or perhaps the employment of large (40-foot?) arching culverts over the wetlands, such as is proposed for the Quassaick Creek crossing. The proposed culverts under the road and mitigation plans as described are unlikely to provide sufficient ecological connections (biologic, hydrologic) between the newly divided wetlands.

Due to the high concentration of mature trees, wetland B appears to be a high quality wetland, regardless of its presence or absence of hydrologic connections to other waters. More inventories should be accomplished so it is known exactly what will be lost along with this wetland. It is not clear that the primary function of this wetland is only the storage of stormwater runoff, as is stated in the DEIS. It may provide important animal habitat, water quality improvement, and groundwater recharge. Section 3.2-4 states that "based on seasonal observations this is generally a dry wetland". However data supporting this are not given and the statement seems at odds with the fact that it is underlain by a typical wetland soil type (Canandaigua silt loam).

The possible presence of state-threatened species such as wood turtles, box turtles, Jefferson salamanders and federally endangered northern cricket frogs and/or bog turtles should be assessed and discussed.

Many wetland species are seasonally dependent on adjacent upland areas, but the DEIS proposes that upland areas surrounding wetland A will be predominantly developed. Drier hilly areas currently in the immediate vicinity of wetland A are slated to be completely removed and replaced with artificial wetlands. Edges of the roadways and improvements will feature rip rap embankments, but these will not be suitable for travel or use by most wetland species. These features may endanger the future population viability of wetland species.

If the wetlands really are to be affected as proposed, much more than a 1:1 ratio of destroyed to recreated wetlands should be proposed since artificial wetlands are often not as functionally effective as native wetlands. I doubt seriously that with the current plan there will be a "net increase of wetland function and benefits to the site following construction" as is stated in the plan.

3. Methodologies utilized to document on-site vegetation and wildlife resources; i.e. times of surveys, documentations, field review methods, etc.

As far as I can determine the major wetlands were appropriately delineated by the Chazen companies in 2004 and by site visits by the US Army Corps of Engineers in 2004 and 2005. However vernal pools seem conspicuously absent and additional data should be gathered and/or presented to confirm only one wetland type (red maple hardwood swamp) is present.

Boundary tree surveys appear to have been appropriately accomplished in 2005. However I would recommend interior areas also be surveyed due to the significant number of large, mature trees identified in the boundary survey.

The vegetation and wildlife surveys (spring 2004, spring 2005, and July 26 2005 (looking for beaked agrimony and narrow leaved sedge) and October 5, 2005 (looking for Indiana bat habitat) appear to be insufficient to properly document the resources present. Thorough and more quantitative biological field surveys should be made in the spring, summer, and fall to properly document vascular plants, ferns, club mosses, mammals, amphibians, reptiles, and birds present. Species present at the site in these groups may only be discernable in a single season in some cases. Many species were undoubtedly missed and quantitative data were presented only for trees.

4. Impacts to Quassaick Creek.
See #6 below.

5. Impacts to threatened or endangered species including allegations received at public comment regarding two (2) endangered plant species identified in the Quassaick Creek biodiversity surveying.

Threatened and federally listed beaked (woodland) agrimony (*Agrimonia rostellata*) has been found near Quassaick Creek downstream toward the Hudson River and could be present at this site. The surveys to date do not seem thorough enough to determine this. The DEIS states that field crews found two individuals of agrimony in flower but could not tell the species for certain. Careful inspection of flowers and/or especially fruits of agrimony plants should be adequate to definitively identify the species. This should be carefully reexamined at an appropriate juncture (i.e. during late summer/early fall).

Federally listed narrow leaved sedge (*Carex amphibola*) has been found not far below this site in a wet, forested site near Quassaick Creek. A careful survey for this species on the forested wetland areas of this site should be conducted when the flowers and/or fruits would be present to enable unambiguous identification (i.e., moister and richer sections of the site, in or very close to the month of June in this area).

Federally listed Indiana bats have hibernacula in the region and have been documented in the summer as using this type of forest at locations within ten miles of the project site (they were found this summer in the Black Rock Forest in Cornwall). These bats roost under loose bark of large live and dead trees, such as occupy the site. The DEIS states that there are approximately 2000 trees greater than 12 inches in diameter and candidate trees are specifically shown in photos 7 and 9 of Appendix B. Potential use by this species should be more thoroughly evaluated and discussed. Its presence or absence should be investigated with on-site bat surveys and further habitat evaluations during the summer months. Plans that spare a larger number of large trees with loose bark could be beneficial in preventing the extinction of this species. Section 3.3-12 concludes the tree community is "not compatible" with summer roosting

of Indiana bats, but I disagree. At least 5% of the trees appear potentially suitable for roosting, and there is appropriate foraging habitat on the site.

6. Impacts to Quassaick Creek regarding stormwater discharges, pollution, etc.

Potential stream impacts are significant because portions of the property slated for development include a tributary of Quassaick Creek and a section of Quassaick Creek itself. In addition two State listed wetlands are downstream of runoff from the site, NB-28 (in Algonquin Park) and NB-29 (around Brookside Lake). On page 2-12 of the DEIS it states that the development of The Marketplace will not impact wetland NB-28, but such impact is a possibility since much of the site runoff will travel through this area and then proceed downstream. Further downstream, Brookside Pond and marsh (NB-29) in particular is a high quality wetland resource and significant habitat area for waterfowl and migrating songbirds. Disturbance of 108 acres of land and the presence of 19 acres of steep slopes indicate high potential for sedimentation of the creek and these protected wetlands during and after construction if any portions of the sedimentation plan do not function optimally. Safeguards should be added to the plan and monitoring and maintenance must be done frequently enough to prevent problems before they become major. Incentives for not discharging sediment and/or penalties for discharging sediment should be considered. 75 acres of new impervious surface replacing forested land is an area of concern. Stormwater discharges could potentially cause flooding and basin scouring downstream. Incorporation of more infiltration areas and vegetative filtering would benefit the ecology and would increase the effectiveness of the proposed sediment/erosion control/stormwater management plan.

Downstream impacts due to the stated, planned use of herbicides and pesticides and high pollutant loadings including hydrocarbons, metals, and roadsalt are expected from runoff over roofs, vehicle use areas, and asphalt. It seems insufficiently clear how the current plan will deal with these pollutant issues and it is somewhat disturbing that an increase in stream runoff of metals is projected.

The applicant should consider more forest preservation and/or planting more than 1000 trees (this is only 10 trees per acre) to avoid wetland and stream impacts after development. Salt runoff impacts to streams are already severe in this area. The DEIS says "strict guidelines" will be employed for use of salt. These guidelines, and the amounts and types of storage facilities should be given in the documents and shown on maps.

7. Evaluation to determine if additional surveys are warranted; i.e. reptiles and amphibians, migratory bird species concerns, critical environmental habitat issues such as vernal pools, etc.

The fact that significant natural resources are present (large, mature trees, diverse plant community, significant wetlands) means that more intensive plant and animal surveys should be accomplished to produce accurate documentation of the biota and communities present. Without this, potentially inaccurate conclusions appear to have already been drawn ("only common species are expected to occur", "populations are sparse"). It is still not clear what will be lost with the heavy development of this site and the data are too limited to know whether the primary mitigation strategy proposed (constructing wetlands) will significantly mitigate the impacts.

An evaluation of vernal pools in the springtime should be undertaken; none was apparent from the material in the EIS. I would expect a property of this nature to contain vernal pools, which often provide important biological and environmental services. Threatened and endangered species should be sought specifically in the seasons in which they can be located and identified. In light of the potential for Indiana bat use of the site, possible roost trees should be surveyed on the interior of the parcels (areas

not included in the previous tree surveys). The seep area (Wetland D) in particular should be checked for unusual biota, including endangered beaked agrimony and narrow leaved sedge.

8. Other.

The authors should note that this area is NOT within the Hudson Highlands (as is stated in section 3.1.1), whose northern terminus lies several miles to the south in Cornwall.

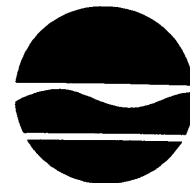
I note that non-native plant species are abundant, probably too abundant for overall environmental health, in the landscaping plan. Table 3.3-5 also includes several non-native species.

In the Appendix A SEQRA project information, Part 1. A. 15, it states no streams are present, but the site clearly includes an unnamed tributary of Quassaick Creek in the northwestern portion.

In section B. 5 of this document it says that no forest over 100 years old or important vegetation will be removed. The numerous large trees seem to conflict with this and tree ring samples should be obtained and analyzed to determine this.

Map scale appears incorrect on wetlands maps W1 and W2.

The applicant has an opportunity to better document the ecological and environmental resources, to improve the site design and mitigation plans, and to make this an ecologically enlightened development proposal. Alternative plans could include less impact to wetlands and high quality habitat areas and a higher proportion of native vegetation to provide climate control, visual appeal, screening, runoff infiltration, pollutant filtering, and habitat preservation for native species.



Denise M. Sheehan
Commissioner

New York State Department of Environmental Conservation

Division of Environmental Permits, Region 3

21 South Putt Corners Road, New Paltz, New York 12561-1620

Phone: (845) 256-3000 • FAX: (845) 255-3042

Website: www.dec.state.ny.us

June 8, 2006

NORMA JACOBSEN
TOWN OF NEWBURGH PLANNING BOARD
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

**RE: Draft Environmental Impact Statement
The Marketplace
DEC # 3-3346-00353**

Dear Ms. Jacobsen:

The enclosed revised comment letter (containing mostly grammatical corrections) supercedes the original. Please substitute this for the original and use the revised for appearance in the Final Environmental Impact Statement.

In addition, as a follow-up on item #3, staff have completed field investigations and found the on-site wetlands do not meet the criteria to be considered state-regulated.

If there are any questions, I can be reached at 256-3041.

Sincerely,

A handwritten signature in black ink that reads "Lawrence G. Biegel". The signature is written in a cursive, flowing style.

Lawrence G. Biegel
Environmental Analyst I
Region 3

LGB/lld

enc.

cc: M. Moran (w/enc.)
W. Rudge
D. Gaugler
P. Ferracane
W. Rosenbach
R. Stanton
Tim Miller Assoc.
US Army Corps of Engineers

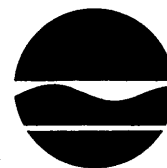
New York State Department of Environmental Conservation

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Denise M. Sheehan
Commissioner

May 23, 2006

NORMA JACOBSEN
TOWN OF NEWBURGH PLANNING BOARD
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

Re: **Draft Environmental Impact Statement**
The Marketplace
DEC # 3-3346-00353

Dear Ms. Jacobsen:

The Department has reviewed the above-referenced document for this proposed 850,000 square foot shopping center on 127.6 acres and wishes to offer the following comments:

1. We found it to be very well prepared, focused and with excellent, clear photos and graphics.
2. Departmental jurisdiction (Water Quality Certification, Dam Construction and SPDES (Stormwater) General Permit is correctly stated. However, see item #3 below.
3. The potential exists that the two larger on-site federal wetlands (9.7 and 4.36 acres, respectively) could cumulatively qualify for state regulation (over 12.4 acres), if interconnected and in certain proximity. Staff of our Bureau of Habitat is currently investigating this matter. If confirmed, a major re-configuration may be required as the filling of 1.76 acres of state-regulated wetland for a shopping center may not be acceptable and may not meet the applicable standards for permit issuance (Part 663.5(e)). Also, Article 24 regulates all disturbances within 100 feet of the boundary of a state regulated wetland. As indicated (p. 3.2-7), if found to be acceptable, on-site mitigation would be required but at a greater ratio than the Army Corps of Engineers ratio indicated (i.e., “two for one”) and with performance bonding.
4. As indicated (p. 3.4-6), a waiver will be required from our Division of Water from the maximum five acre soil disturbance limit at any one time normally needed to obtain the required coverage under the Department’s SPDES “General” permit for Stormwater Discharges. Such waivers are not readily granted, and are discouraged. Such a waiver would require intensive stormwater treatment measures which appear to be addressed in section 3.4 but must still meet DEC

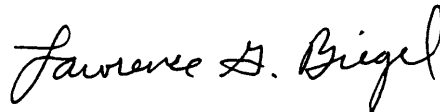
Norma Jacobsen
Page 2
May 23, 2006

approval. For guidance in this matter, our primary contact is Mr. Patrick Ferracane at our White Plains sub-office at (914) 428-2505.

5. Please ask the project sponsor to consult with our Division of Air Resources (contact: Robert Stanton at 845-256-3045) whether additional DEC approval is needed for the described on-site crushing of approximately 100,000 cubic yards of stone (p. 2-23).

Thank you for this opportunity to comment. If there are any questions, I can be reached at (845) 256-3041. Questions regarding stormwater management would best be addressed to Mr. Patrick Ferracane at (914) 428-2505.

Sincerely,



Lawrence G. Biegel
Environmental Analyst 1
Region 3

LGB/jjc

cc: M. Moran
W. Rudge
D. Gaugler
P. Ferracane
W. Rosenbach
R. Stanton
Tim Miller Assoc.
US Army Corps of Engineers

GARLING ASSOCIATES
301 MAIN STREET, SUITE A
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(845) 294-5835
FAX 294-5754
E-mail: garling@frontiernet.net

MEMORANDUM

TO: Town of Newburgh Planning Board and Consultants
FR: Edwin J. Garling, AICP
RE: Marketplace-Comments for meeting of June 29, 2006
DATE: June 19, 2006

We have reviewed the plans and DEIS and have a number of preliminary questions and concerns that have to be resolved within the SEQRA process. Some of our concerns are questions as to how the site will function as well as a few off site questions.

General Comments

Our preliminary question is the functioning of the Lifestyle Center or Village Center area. This is questioned relative to: 1) meeting the proposed town buffering requirements, 2) traffic coming into and through this area, 3) traffic leaving this area and 4) the separation of vehicular and pedestrian traffic. We-Bryant, Karen and I- believe this area will have to be entirely revised. However, we do like the idea of the alternate plan relative to less traffic on the main access within the center and the larger store as a focal point at the end. On the other hand, a pad site in front and all traffic going directly to the main street are not desirable.

With some final massaging, the big box buildings appear to function properly. However, the new regulations are going to impact buildings C, 1 and D. Whatever does occur, the buildings will be smaller and farther from the residences and would have a lesser impact. Basic traffic circulation would likely not be impacted. Building 2 needs more room in front of the main entrance area.

The retaining wall along the entrance road from Exit 8 and Route 52 is 65 feet high. However, as a driver approaches this area, Building E, which is likely to be around 30 feet tall, is 140 feet above the road where the road elevation is 270 feet. We will need some visuals of this area. Therefore, we favor the alternate access road.

How will lighting from the proposed gasoline station be screened from neighbors? That lighting impact is not shown on Sheet 1 of 2 for lighting and is not mentioned in the DEIS.

An off-site concern has always been the blind right turn onto I-84 westbound from Route 300 southbound with no deceleration lane. That is not addressed on the plan, but the new intersection design now under construction shown on DOT plans relocates that access 350 feet or more to the south with a separate right turn lane at a new signal. We feel the new interchange will benefit the area and should be referred to more specifically.

Brookside Avenue ends in a turnaround at I-84 and that end of the road will be eliminated. A new turnaround is now proposed north of the new access road. The turnaround should be shown on the landscape plan along with more landscaping to buffer residences now more exposed to both I-84 and the new access road to the Marketplace.

Buildings A and B will rise 70 to 80 feet above the westbound I-84 ramp at Exit 7 to Route 300. Based on the current plan with no additional setbacks there is no way to screen this structure which sits above a 20-25 foot wall.

How will the new 50 foot hill behind the houses on Route 52 be screened? Will the existing woods be fully protected from erosion and will the erosion controls work?

Alternatives must be discussed by the Planning Board prior to preparation of the FEIS. The alternatives and our comments are as follows:

1. **No action alternative**-Obviously, this is a SEQRA comparison alternative and not a realistic alternative.
2. **Access Road Realignment Alternative**-Shifting the road closer to I-84 and making it farther from residences has some real benefits for neighbors. This alignment eliminates a good deal of the blasting and wall.
3. **Buffer Alternative**-The newly proposed codes should be used. This alternative is likely to be part of the project and should be part of the FEIS, if not the DEIS.
4. **Alternative Lifestyle Center Design**-We favor some of the features of this plan, but do not believe that a "pad" site should be a part of the Lifestyle Center-the area should be fully integrated as a Main Street.

No landscape irrigation is proposed. How will plants survive the initial years of growth? Water will be trucked in for early growth of plantings.

Specific Comments on DEIS by page

Page 3.5-4 item 6, recommends the town examine whether residential uses such as senior and affordable housing are appropriate permitted uses in the IB District. We cannot say the board states they are not desirable at this point.

Page 3.5-4 This site has been in the county plan as a primary growth area since 1978.

Page 3.5-6 This section shall add that the glide slope of the primary runway 9-27 lies to the south of the site with a centerline directly over exit 8 at Route 52.

Page 3.5-7 Sign regulations should note that Route 84 and its ramps are considered fronting streets for the purposes of the sign regulation calculations.

Page 3.5-7 Setbacks and buffers should indicate that buffer revisions are being considered.

Review of wetland issues-do we pull in LMS or Leslie Dotson to review these items. This should be discussed by the Planning Board prior to closing out comments.

Page 3.5-8 Planning Board serves as the ARB

Page 3.5-9 Dumpster and Garbage not garage

Page 3.5-11 The last sentence of the first paragraph to be reviewed

Page 3.5-11 It is noted that adjacent residential areas could be impacted from noise of waste disposal equipment and vehicles. Snow clearing operations and roof top mechanical noises. Therefore, screening and hours of operation should address these issues.

Page 3.5-11 In the last paragraph eliminate the reference to suburban sprawl. A shopping center of 850,000 square feet on 127 acres without residences could be considered a form of suburban sprawl. Certainly, it conforms to the county and town plans which limit commercial development.

Page 3.5-14 At the end of the second paragraph, prior to the section on Environmentally Sensitive Areas, there should be a paragraph in regard to proposed changes to current buffer requirements. This statement will have to be added as part of the FEIS and/or the plans will have to be modified to address these requirements should they be adopted.

Page 3.5-15 Garbage-spelling under Dumpsters and Garage

Page 3.5.-16 Mitigation measures may be added or referenced to sections on noise and visual impacts.

Page 3.6-10 Projects proposed for development by 2008 under no-build conditions should include:

- projects at the Northeast Business Center
- Brighton Green-154 townhouses on Meadow Hill Road
- Golden Vista-senior housing
- Thruway-84 connection impacts
- Shayam and BC and N Carpets on Route 52
- 300 Realty on Route 300 north of Route 52

Page 3.6-16 Intersection 3 is the Newburgh Commons Driveway. Plans in past years called for this driveway to provide access to what is now the Marketplace site and to possibly be signalized. The report should discuss if this could be addressed today based on the proposed Marketplace plan and if not, why? In regard to the monitoring discussed on page 3.6-26, who would be responsible to monitor traffic and/or install the signal?

Page 3.6-17 Intersection 5 has always been considered a state issue beginning when Meadow Winds was approved. It is now ten years later and we will soon be close to build out along the Rt. 300 corridor in this area. At least by 2010-12 development along the corridor to Jeanne Drive will be complete. What has to be done to address this intersection?

Page 3.6.-25 In the discussion of the Route 52 Meadow Avenue improvements a parcel of land would be created for development and attached to the present gas station. Provision must either be made for this area to be open space or partial open space with any future commercial uses tied in with the gas station access points.

Page 3.6-1.8, item 3.6.17 We should request a visual SIM traffic movement presentation of traffic movements as we did with Pilot.

Page 3.7-1 The Marketplace is eligible for tax incentives over a ten year period whereby property taxes are only 50 percent the first year. The report should indicate what benefits are to be requested, that these figures represent current year tax rates projected beyond ten years and that sales tax benefits represent the current distribution formula. Also, what other impacts this project may have such as decreasing tax revenues from other sources (Newburgh Mall), increasing other tax revenues by encouraging development or obtaining a 485 b tax abatement are all speculative.

Page 3.7-7 How do we know that many construction workers will come from Newburgh and surrounding areas and how is "many" quantified? This could become a union issue or question if it is in the DEIS.

Page 3.7-8 Long Term Employment discusses 1,600 possible jobs with a variety (presumably) of skills, levels, part and full-time jobs, etc. While the employees are likely to come from four counties due to Newburgh's location, there should be some reference to bus service for employees from the City of Newburgh where unemployment levels are higher than the balance of the county. This would have little substantive impact on traffic, but it could impact parking.

Page 3.7-16 Mitigation measures for solid waste disposal could be supplemented with the comment that any exterior dumpster enclosure had to be designed to match the exterior material of the building it serviced and would be subject to architectural review by the ARB.

Pages 3.7.6, 3.7.7, 3.8 and 3.9 will be addressed by other consultants.

Page 3.10-8 and figures 3.10-9 and 3.10-10. The discussion and view of the proposed lifestyle center are very attractive, but certain items should be clarified and/or redesigned. Based on a considered evaluation of the plans we prefer the basic plan showing the traffic circle provided:

1. The arrow showing the view of figure 9 is shifted to depict the review more accurately.
2. The traffic in the circle is one way counterclockwise. This will make for fewer crossing movements. The parking in this area could also be angle parking.
3. The sidewalks must be at least ten feet wide and there should be roof overhangs for parts of all stores. Where any outdoor seating areas are located the sidewalk should provide for a walkway area at least ten feet wide beyond the seating area.
4. The buffer area along the road should be at least 50 feet wide, particularly along Route 300 with buffers of trees and walls or berms. The wall discussed in the plan should be shown.
5. The road through the site is merely a parking lot aisle and is too narrow to serve as a roadway. Either it must be wider or the parking must be angle parking and one way.

Page 3.10-9 No plastic insert slats. They are not pleasing and do not fit with this proposal. The architectural themes on prior pages do not match figure 9. Figure 9 shows the small store fronts and figures 11-13 are the big box buildings which are located opposite each other, but not shown on the plan in that fashion. Karen Arent should review these plans and we should discuss this at a work session prior to the preparation of an FEIS.

Marketplace entry signs should have one or two or no major retailer's names. Based on the plans, buildings A-E could all be major retailers and five names would be too many. Drawing 15 has nine names which is excessive. Newburgh Mall has no names on their pylon sign. This issue must be considered by the Planning Board in regard to the future architectural and site plan approvals. A determination should be made during the SEQRA process.

Pages 3.10-10 and 11 Before these mitigation measures are agreed to in any form we must address the issues of:

1. The access road from Route 52 at Exit 8 which must be the alternate closest to I-84
2. The type of fence along the Highland Avenue properties that will afford a reasonable sound barrier.
3. An alternate showing the proposed, expanded buffers that are likely to be adopted before this project is approved.
4. Public Hearing Comments
5. A meeting of the applicant's and town's consultants to develop a suitable design.

Pages 4-1 to 4-4 Item 4.2 does not address the greatest benefits which are the elimination of the 65 foot wall, removal of extra site material and visual impact approaching the site from Route 52 at Exit 8.

Pages 4-4 The buffer alternative should include the buffers currently being considered by the Town Board.

Page 4-5 and Figure 4-4 The alternate for the lifestyle center has some of the angle parking benefits discussed, but virtually all traffic to it from Route 300 must come down the main street and all exiting traffic goes past Building A. Both alternate lifestyle centers must be discussed at a meeting between consultants.

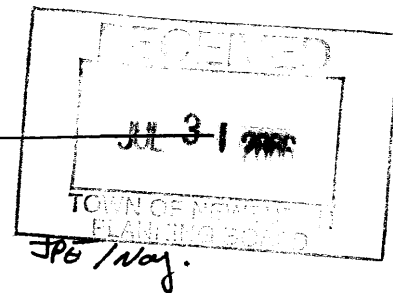


County Legislature

Anthony Marino, Minority Leader
17th Legislative District

1257 Union Avenue
Newburgh, New York 12550

Tel: (845) 291-4800 ☎ Fax: (845) 291-4809



July 31, 2006

John P. Ewasutyn, Planning Board Chairman
Town of Newburgh Planning Board
Town of Newburgh
308 Gardnertown Road
Newburgh, New York 12550

Re: The Marketplace

Dear Mr. Ewasutyn:

I want to place my concerns in writing and urge you and the entire Planning Board to totally turn down the Marketplace proposal. The size of this project will create chaos in the Town of Newburgh and will have a negative effect in so many areas of our community.

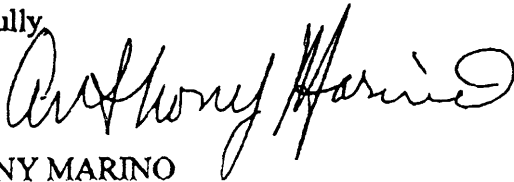
Of course, you have already heard all of the comments about the traffic jams it will cause, the noise, the pollution and displacement of Town of Newburgh residents who will have to relocate. I am concerned that it will destroy the Newburgh Mall and the residential areas behind Union Avenue down to Route 52. I'm sure traffic will increase on other highways in the vicinity of Route 52 as drivers try to find alternate ways to avoid the heavy traffic on Union Avenue. The heavy runoff water from the parking lot will create problems for Winona Lake which is presently in horrible shape. To destroy over 100 acres of wooded area for a parking lot and ugly box buildings will be a disaster for the wildlife and the ecology of that area.

I realize the developer is only concerned about his profit, but those of us who live in the Town of Newburgh are concerned about our quality of life. All of these issues will effect the quality of life in a negative way for all Town of Newburgh residents.

The amount of sales tax revenue that we could label new sales tax for Orange County and the Town of Newburgh will be very little. All the Market Place will be doing is taking sales tax from other parts of Orange County. The Town of Newburgh will thus receive a very small sales

tax increase to pay for the additional expenses this project will create. The decision the Planning Board makes will effect our Town negatively for many years. Those who say we need more stores in which to shop should move to Paramus if that's what excites them. This project is a disaster and I certainly will oppose it in every way I can as a County Legislator.

Respectfully,



ANTHONY MARINO
County Legislator, Town of Newburgh District #17

cc: Supervisor Wayne C. Booth
Town Board Members
Town Clerk
Town Engineer
Chief of Police

RIDER, WEINER & FRANKEL, P.C.

ATTORNEYS & COUNSELLORS AT LAW

655 LITTLE BRITAIN ROAD
NEW WINDSOR, NEW YORK 12553

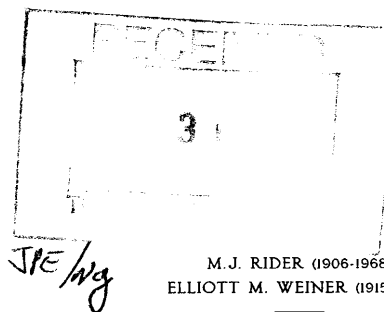
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M. J. RIDER (1906-1968)
ELLIOTT M. WEINER (1915-1990)

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July 28, 2006

BY HAND DELIVERY

John P. Ewasutyn, Planning Board Chairman
Town of Newburgh Planning Board
Town of Newburgh
308 Gardnertown Road
Newburgh, New York 12550

Re: "The Marketplace" DEIS

Dear John:

I write on behalf of the Town Board, in its capacity as an involved agency in the environmental review process for "The Marketplace" project, with the following limited comments on the Draft Environmental Impact Statement.

1. Groundwater. The Supervisor and Town Board have received numerous letters expressing concern with respect to potential impact of the large scale blasting, excavation and grading operations that are required for the project on the wells and septic systems of residents in the Hilltop, Fern, New and Laurel area. The DEIS offers only a limited treatment and conclusion that potential impact "is highly unlikely based on past experience in the region" which relies upon anecdotal interviews with health department representatives in three counties, rather than unbiased, expert hydrogeologic analysis. It also indicates the blasting contractor (rather than the developer) will have the responsibility to remedy any damages to private wells, but does not proffer preventative alternatives.

Town maps show the area within the boundaries of the Consolidated Water District. Accordingly, the area could likely be served with municipal water by a new lateral, without the need for a water district boundary extension or New York City approval. Town Engineer Osborne advises that the water pressure in the area is sufficient so that it is unlikely that a pump station would be required. In the event the Lead Agency determines it appropriate, the Town Board is amenable to the approval of a lateral water main extension to serve this area with both the dedicated facilities and the house connections to be either installed or paid for by the developer.

John P. Ewasutyn, Planning Board Chairman
July 28, 2006
Page -2-

2. Pedestrian Access. While the DEIS addresses pedestrian movement within the site to a certain degree, it fails to discuss pedestrian off-site access. It indicates only that pedestrian connections to Routes 300 and 52 will be provided if the Planning Board determines them desirable. The developer's traffic consultants may not have observed pedestrians or bicyclists along the State highway corridors, but the Supervisor and others have seen enough instances of dangerous attempts to cross the highways (Route 300 in particular) to believe that the pedestrian crossing issue must be addressed. NYS Route 9 for example has crosswalks at each intersection. Given the project's traffic impacts and proposed improvements, provisions should be made for crosswalks (or pedestrian bridges or tunnels) at or near critical state highway intersections. Future potential trail usage along Quassaick Creek should also be addressed.

Additionally, residents have expressed concerns to the Town Board that increased traffic along Powder Mill Road derived from the proposed NYS Route 52/Meadow Avenue intersection will present risks to children and other park users crossing from parking areas to play and field areas in Algonquin and Cronomer Hill Parks. If that intersection continues as an element of the site plan, provisions for safe pedestrian crossings and traffic calming to prevent speeding on the road sections used by park patrons should be provided as part of the mitigation measures.

3. Police and Emergency Services. The DEIS indicates that there will be a central, private security force for the Marketplace and security camera network. The Planning Board should ensure through appropriate findings and conditions that the representations in this regard continue to be honored and are not discontinued.

The DEIS also states that the Transportation Management Plan is expected to include "potential use of police or other manned traffic control at key internal and potentially some external intersections." The Town will require compensation for any such use of its police force in connection with traffic control, and a reimbursement agreement and performance security should be required to be in place prior to any final approval of the project. The State Police should also potentially be consulted or treated as an interested agency in this regard.

The fiscal analysis of the proportionality of the projected tax revenues to the demands

John P. Ewasutyn, Planning Board Chairman
July 28, 2006
Page -3-

The Marketplace will place on the Town's police force, Justice Court and emergency services is incomplete. While the applicant distinguishes Woodbury Commons as an anomaly, the Town is well aware of the demands that retail complex has placed upon the Town of Woodbury's police force, with reportedly just over a quarter of the department's calls for service, 71% of its arrests, and roughly 1/3 of its time in 2004 devoted to that shopping center. The Marketplace is also located near major interstate highways and is closer to residential neighborhoods. While the project may not create as great as on-site demands for service, assuming its current "market rate" retail format remains in place, there may be a greater need for community policing than in Woodbury, particularly if there is massing of buildings and improvements in close proximity to residential neighborhoods. The DEIS indicates that the Town will receive approximately \$271,359 in real property taxes at build out (including highway and not accounting for initial partial tax exemption) and \$278,000 in sales tax revenue (without analysis of how much of this will be as a result of business drawn from other Orange County retailers). Potential increases in Justice Court costs are ignored by the DEIS. The lead agency should require further analysis and give consideration to requiring the applicant to fund, at least during the initial 10 year period when the project will receive partial tax exemption, additional police officers and/or safety equipment and facilities for both the site's protection (the DEIS indicating that the Marketplace would benefit from patrols on bicycles, motorcycles and ATVs, an increase in the C line patrol from 3:00 p.m. to 11:00 p.m. and an on-site substation including a computer system, holding cell, booking area, live scan and desks) and community policing if the project is massed along the boundaries of residential neighborhoods without adequate buffering and/or barriers. Comments have been made by residents to the Town Board that the fence proposed by the applicant will be inadequate for both their protection and screening. Likely demands for on-site parking enforcement and Town staffing needs should also be addressed, and fire department and emergency medical service and funding requirements should be further reviewed.

4. The applicant should be cautioned that the Town Board is continuing with the implementation of recommended Zoning Code amendments under the recently adopted Comprehensive Plan Update which may have an effect on its project's layout and design

John P. Ewasutyn, Planning Board Chairman
July 28, 2006
Page -4-

Enclosed are minutes containing public comments made to the Town Board when it discussed this letter at its July 24, 2006 meeting.

Thank you for your consideration of these and the enclosed comments.

Very truly yours,



Mark C. Taylor, Attorney for the Town

MCT/sel

Enc.

cc: Hon. Wayne C. Booth, Supervisor
Town Board Members
Town Clerk
Town Engineer
Chief of Police
Michael Donnelly, Planning Board Attorney



COUNTY OF ORANGE

DEPARTMENT OF PLANNING

EDWARD A. DIANA
COUNTY EXECUTIVE

124 MAIN STREET
GOSHEN, NEW YORK 10924-2124
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www.orangecountygov.com/planning

DAVID CHURCH, A.I.C.P.
COMMISSIONER

ORANGE COUNTY DEPARTMENT OF PLANNING
239 L, M OR N REPORT

This proposed action is being reviewed as an aid in coordinating such action between and among governmental agencies by bringing pertinent inter-community and countywide considerations to the attention of the municipal agency having jurisdiction.

Referred by: Town of Newburgh Planning Board

Reference/County ID No.: nbt-52-06m

County Tax ID: 60-3-49.22,49.21,49.1
49.3,48,41.4,parts of
71-5 and 97-1

Applicant: Wilder Balter Partners, The Market Place

Proposed Action: DEIS for Site Plan

Reason for Review: 500 ft from state highway (Rte 300 and Rte 52)

DEIS is received: May 31, 2006 (Written comment period ends July 31)

Comments:

This memo is in regard to the County Planning Departments review of the DEIS for the Newburgh Marketplace. These comments can be offered early in the Town's review process, along with further referrals related to this proposal which are also to be expected. In other words, this memo does not complete or satisfy the GLM 239 referral process for site plan review related to this proposal. This proposed development, "The Marketplace at Newburgh" is one of the largest single proposed developments in the Town's history, while it is within the priority growth boundaries as defined in the Orange County Comprehensive Plan and is an allowed type of use in the Town's IB (Interchange Business) zoning, serious consideration must be given to the various impacts which a development of this sort will create. There are similar large retail developments in the surrounding location catering to the community with similar uses. While we encourage new development of retail there are some considerations that the Planning department has pertaining to this proposal:

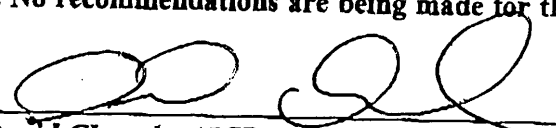
1. We encourage the "Lifestyle Center" concept as it promotes a downtown type concept for retail in a smaller, pedestrian friendlier type of environment. However, the development should be constructed this way throughout the entirety of the site, in keeping with the concept of "New Urbanism" or "Smart Growth." Parking should be placed in the rear of the structures with ample provisions for walking with benches; street furniture and places where people can relax, similar to the function of a town square, with pedestrian connectivity between buildings. The same buildings mentioned above should also be relocated and moved closer to the sidewalks, of the proposed main road that runs through the site, and the parking lots could be placed behind the buildings, and this would continue the main street planned for the "Lifestyle" section.

2. The proposed structures that are located closest to the residential neighborhoods off Hilltop Avenue should have more than a 50 ft buffer. These include the proposed retail buildings of c, l, d, and e. They are large structures that would need more buffering than the current zoning recommends (and that the applicant has provided in the site plan) to screen against these homes. Also as mentioned above, moving the buildings closer to the proposed main thoroughfare road would create a less noticeable buffer than if it were closer to the residential neighborhoods adjoining the site.
3. As recommended under "Design Guidelines for Highway Commercial Development" in the Orange County Comprehensive Plan and due to the enormous amount of proposed parking and impervious surface, trees should be placed between every ten or twenty parking spaces in the lots. This could help shade the parking lot in the summer and create less of a continuous expanse of asphalt.
4. We encourage the sidewalks that are proposed. However, it is unclear why some intersections and street connections do not have crosswalks beyond the lifestyle section periphery. Crosswalks should be installed all over the proposed development, and should incorporate raised or bricked speed tables for traffic calming measures.
5. Angled parking on one side of the street, or the complete removal of all parking is recommended for the "Lifestyle Section". This would create more of a traditional main street ambiance, or creating a pedestrian only section could also be a concept to explore. Wider sidewalks, as a result of parallel parking would create space for al fresco dining, cafes and other attractive amenities in popular main streets across the country.
6. Signage should be consistent in design and appearance.
7. While some neighbors may not prefer sidewalks, we recommend that if possible, sidewalks be connected to neighboring developments to the Marketplace site.
8. This proposed project will have regional significance and may require a mesoscale air quality analysis meeting NYSDOT's standards in order to determine whether NYSDOT may approve the proposed road and intersection changes which would enable construction of the entire proposed project. The applicant should consult with NYSDOT and report in the FEIS regarding the potential impacts on transportation conformity. See Section 9, page 1.1-31 of NYSDOT Environmental procedures manual entitled "Criteria for projects requiring a mesoscale analysis
9. It is unclear whether any currently unprogrammed transportation plans will be programmed / completed in the applicants desired time frame.
10. We strongly support transit elements in any and all alternatives. Bus stops and convenient locations with pedestrian connectivity and with proper street furniture, signage and lighting is essential.
11. Orange County Department of Planning should be listed as an "interested agency" as opposed to a "involved" agency for SEQRA purposes.

County Recommendation: Advisory comments for DEIS only. No recommendations are being made for the site plan at this time.

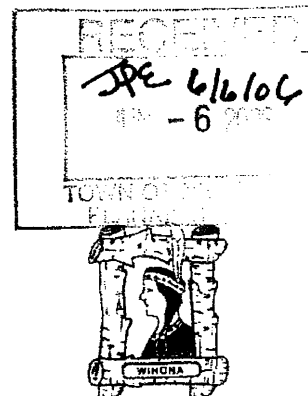
Date: July 21, 2006

Prepared by: Blaine Yatabe, Planner


David Church, AICP
Commissioner of Planning

Phone: 845-561-1151
 Fax: 845-565-3550

*Winona Lake
 Fire Engine Co. No. 2, Inc.*



PO BOX 7360
 NEWBURGH, NEW YORK 12550

www.winonalakefd.org

"FIREMANIC VOLUNTEERS FOR COMMUNITY SERVICE"

June 1, 2006

Mrs. Norma Jacobsen
 Planning Board Secretary
 Town of Newburgh Planning Board
 308 Gardentown Road
 Newburgh, NY 12550

Dear Mrs. Jacobsen,

We have received a copy of the updated traffic plan for the Market Place and have had a review meeting with Stephen Tedeschi at our station on May 30th. This letter should be considered as a formal response from an effected party noted in the Environmental Impact Study (EIS) in regard to the vast construction project that will change the landscape for the southern end of the Town of Newburgh.

- Sheet CP-1
 - In the past 10 years, there have been 4 new traffic lights installed on Route 300 between Route 52 and Route 17K. With each light, our response has been slowed and made more dangerous. With traffic backs-up between the signals on a regular basis, and our members are vastly delayed during their response to the station. The addition of an additional traffic light at the entrance to the Market Place and the south entrance to the Newburgh Mall on Route 300 should replace the existing light at the north entrance to the mall and CB Driscoll's. A service road (access thought he parking lot) needs to be constructed to service CB Driscoll's strip mall and Sherwood tile, and the existing entrances need to be closed. The north entrance to the Newburgh Mall needs to be reconfigured into right turn in/out only. This would replace an existing signal which has very limited value for the CB Driscoll's mall and no value to Sherwood Tile.

- All lights between Route 52 and Route 300 need to be interconnected for efficient traffic movement and reduce the back-ups we encounter everyday.
- Route 300 is not Steward Avenue, this naming should be corrected.
- Sheet CP-2
 - How much frontage is the Winona Lake Engine Company #2 expected to lose? We CANNOT lose any frontage to our apron. When our ladder is pulled from the bay, the front bumper is at the edge of the road while the rear is at the face of the building. With any loss of frontage will turn an already difficult working condition and make it unsafe. No loss of frontage will be accepted.
 - The traffic light at Powder Mill Road and Route 52 will need to have fire department control reconnected.
 - The grade differential between the apron and Route 52 cannot be made any larger. If greater, the apparatus will bottom out responding and returning to the station.
- Sheet CP-3
 - The intersection with Route 52 and Interstate 84 needs to be investigated to insure there cannot be an entrance to Interstate 84 directly, in place of placing traffic on secondary roads affecting residences and response.
 - The existing signals on Route 52 for Interstate 84 need to be interconnected with the new light on Route 52.
 - The lights on Route 52 need to be the primary direction, not Interstate 84 or the mall.

If you have any questions on this matter, please contact me at 541-2558.

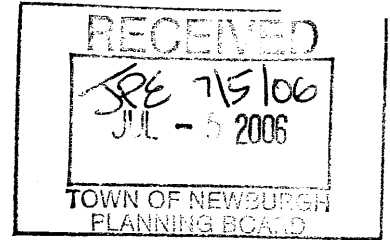
Sincerely,



Timothy P. Pillsworth
Chief



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
REGION EIGHT
4 BURNETT BOULEVARD
POUGHKEEPSIE, NEW YORK 12603
www.dot.state.ny.us



ROBERT A. DENNISON III, P.E.
REGIONAL DIRECTOR
June 29, 2006

THOMAS J. MADISON, JR.
COMMISSIONER

Ken Wersted
Creighton Manning Engineering, LLP
17 Computer Drive West
Albany, NY 12205

RE: Proposed Marketplace
Route 52, 300
Town of Newburgh, Orange County

Dear Mr. Wersted:

The Department is in the process of reviewing the plans and documents associated with the proposed Marketplace development in Newburgh. The following are preliminary in nature and should not be considered the Departments final comments.

1. The methodology utilized in the traffic impact study, including the existing traffic volumes, background growth rate of 1.5%, trip generation rates and no-build traffic volumes appear to be reasonable.
2. The Department suggests, in the interest of providing a conservative estimate, that a 15% pass-by credit be used to develop the build traffic instead of the proposed 25% pass-by credit.
3. A Synchro traffic simulation model, build and no-build, will be required for the entire impacted road network. This will help the Department evaluate the impacts of the project and the proposed mitigation.
4. The proposed access layout along Route 300 appears reasonable.
5. The intersection of Route 52, Site drive, Powder Mill Road and Meadow Avenue should be evaluated as a roundabout, as well as a signalized intersection (as proposed).
6. The proposed access drive at the intersection of Route 52 and 5th Avenue is a serious concern. The operation of the intersection and its proximity to the Exit 8 ramps will require significant, detailed review by the Department.

The Department will continue to provide comments and work with the involved agencies as this project progress thru the SEQR process.

If you have any questions, please contact me at (845) 575-6054.

Very truly yours,

Glenn T. Boucher
Civil Engineer II

GTB:lmI

cc : S.Zachariah-Carbone, Permit inspector, Res. 8-4
A. Shareef, Planning & Program Management
Town of Newburgh Planning Board
Philip Grealy, John Collins Engineers



New York State Thruway Authority

John L. Buono
Chairman

Nancy E. Carey
Board Member

John R. Riedman
Board Member

Michael R. Fleischer
Executive Director

New York Division
4 Executive Boulevard
Suffern, NY 10901

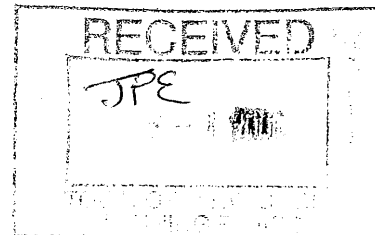
www.thruway.state.ny.us

Donald Bell, P.E.
Director of
Maintenance & Operations

Ramesh Mehta, PE
Division Director
Phone (845) 918-2500
Fax (845) 918-2594

July 31, 2006

Ms. Norma Jacobsen, Secretary
Town of Newburgh Planning Board
Town Hall - 308 Gardnertown Road
Newburgh, NY 12550



RE: Draft Environmental Impact Statement
The Marketplace at Newburgh
MP I-84 37.1 WB; Town of Newburgh

Dear Ms. Jacobsen:

We have received the DEIS documents for the subject proposed project and offer the following comments:

- 1) Traffic - The DEIS did not include any detail data in regards to the development of the arrival and departure patterns. Given the potential regional nature of this development, marketing data should be provided to substantiate the arrival and departure rates.

The distribution of generated traffic assumes that westbound traffic arriving from I-84 would be about the same for both I-84 Exit 7 (15%) and Exit 8 (14%). Given that I-84 Exit 8 (Route 52) is closer to the Market Place access drive (across from Fifth Avenue), the I-84 Westbound arrival rate may potentially be higher. This would result in additional traffic impacts to the Route 52/ I-84 ramp intersections. With the projected arrival rate of 14%, the queuing analysis (Table #3 in Appendix G) indicates that the queues will extend beyond the available storage lengths for certain movements at the Route 52/I-84 Eastbound and Westbound ramp intersections. This is also reflected in the higher volume/capacity ratio shown in the Build peak hour capacity analysis (Table 3.6-6).

Additional mitigation should also be developed to address the traffic impacts to the Route 52/I-84 intersections noted above. We will complete our review once the marketing data and additional analysis are provided to our office.

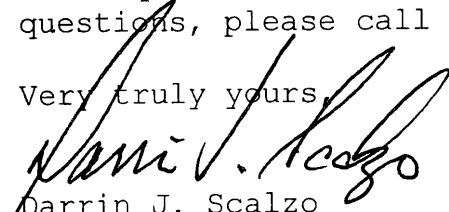
Ms. Norma Jacobsen, Secretary
Town of Newburgh Planning Board
July 31, 2006
Page 2 of 2

In regards to the I-84 Eastbound and Westbound Off-Ramps at Exit 8, the DEIS indicates that the propose mitigation plan will increase the length of the right turn lane for the I-84 Westbound Off-Ramp. To address the traffic impacts of the proposed development, the I-84 Eastbound Off-Ramp right turn lane also need to be lengthen and queue detectors need to be installed on both the I-84 Eastbound and Westbound Off-Ramps with interconnection to the traffic signals along Route 52 to address potential queues extending to the mainline of I-84.

- 2) Drainage - You will find attached the Thruway Authority's criteria for Hydraulic Design of New Facilities and Developments Utilizing Thruway (I-84) Drainage.
- 3) Signing - Any signing adjacent to I-84 must meet the Thruway's regulations for commercial signs adjacent to the I-84 property. Attached are the Thruway Authority's criteria for signage. You may also contact our Traffic Management (518-436-2794) office for any questions you may have.
- 4) Lighting - The Authority's design practice for non-lighted areas of the highway requires that site lighting from new developments must not increase the foot-candle magnitude more than one tenth (0.1) foot-candle above the existing foot-candle magnitude at the outside edge of the outside travel lane of our roadway.
- 5) Fencing - A 6 ft. chain link fence needs to exist between the facility and the I-84 mainline.

Thank you for the opportunity to provide comments. Should you have any questions, please call me at 845-918-2510.

Very truly yours,


Darrin J. Scalzo
Division Permit Coordinator

DJS:an
Attachments

cc: Mr. R. Mehta
Mr. W. Cheung
Mr. A. Shareef, NYSDOT Planning Group, Region 8
Mr. E. Garling, Garling Associates
Mr. P. Hines, McGoey, Hauser, & Edsall Consulting Engineers
Mr. K. Wersted, Creighton Manning Engineering, LLP

HYDRAULIC DESIGN OF
NEW FACILITIES AND DEVELOPMENTS
IMPACTING THRUWAY DRAINAGE

All projects that will alter stormwater runoff to New York State Thruway Authority lands shall be designed so that no increase in peak flows will occur. The criteria for this shall be the peak flows for 10, 25, and 50-year storms. Hydrologic and/or hydraulic computations shall be modeled using a method that is applicable to the size of the watershed involved. (Examples being the Rational Method, SCS TR-55 or TR-20 HEC-1, Dodson, Haestad).

In addition, any project down stream of Authority lands must not impede existing flows from the Thruway and be designed in such a manner as to accommodate the Thruway flows without flooding the project area.

To obtain Thruway approval the following materials are required:

1. Location map clearly showing project site, along with drainage basin schematic. All drainage basins must be clearly labeled.
2. Contoured site/drainage plans for pre and post-development including: flow direction arrows, Thruway structures affected, types of pipes, culverts or ditches, (with all pertinent dimensions, N-values, slopes and invert elevations).
3. Hydraulic computations and hydrographs for pre and post-development conditions for above storms. Standard backup data required includes but is not limited to: typical detention basin cross-section, emergency spillway configuration, maximum water surface elevations/volumes for each storm and outlet details (type of pipe, N-values, inverts, length, slope, inlet/outlet treatment and velocities).

Note that detention basins/structures should be designed to contain the 100-year storm without overtopping.

4. A detailed narrative and summary sheet, specific to the impact on the Authority, is required. This narrative must include a discussion of pre and post-development flows and exactly how those post-development flows will be held to pre-development levels. (This narrative must refer to specific pages in the drainage study.)
5. A statement signed by a licensed engineer, certifying that post-development peak flows will be at or below pre-development levels and there will be no detrimental effect on the Authority.

Thruway approval does not relieve the developer from meeting all local, county, state and federal regulations governing erosion/sediment control and all other water quality standards that may apply.

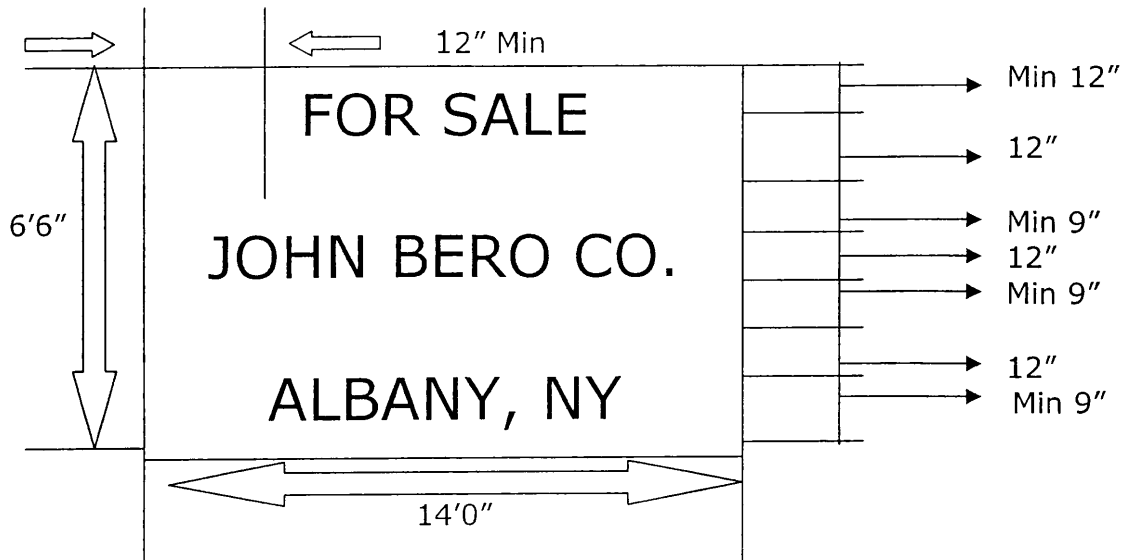


3/2005

NEW YORK STATE THRUWAY AUTHORITY BUREAU OF TRAFFIC ENGINEERING

GENERAL GUIDELINES PERTAINING TO ADVERTISING DEVICES

- I. These guidelines supplement section 361-a of the Public Authorities Law and Part 105 of the Rules and Regulations of the Thruway Authority.
- II. All advertising devices subject to a permit should be evaluated with respect to the following guidelines:
 - A. Normally, a limit of one sign for an individual property owner or individual business facing each direction of traffic.
 - B. Allowance of an additional entrance sign for a motel, gas station, shopping center, etc. when necessary to identify such entrance from the local highway.
 1. The legend on an entrance sign should be limited to no more than four lines or twelve words of copy, including the name of the business.
 2. A list of the individual businesses is not allowed on the shopping center entrance sign.
 - C. A street address or telephone number is not permitted.
 - D. A sign should usually consist of two colors, one for the legend and a contrasting color for the background. If it will not cause unreasonable distraction, a symbol, logo or additional colors may be allowed.
 - E. Outdoor advertising signs, displays and devices which include the steady illumination of sign faces, panels or slats that rotate or change to different messages in a fixed position, commonly known and referred to as changeable or multiple message signs, provided the change of one sign face to another is not more frequent than once every six seconds and the actual change process is accomplished in three seconds or less.
 - F. The sign and legend should be large enough to be seen and read within a reasonable and appropriate time. It should not be so large as to cause an unreasonable distraction or violate the natural scenic beauty or aesthetic features at its location
In general:
 1. The sign should not exceed 200 square feet in area nor 30 feet in any one dimension. The top of a sign should not be more than 40 feet above the Thruway road surface adjacent to its location. A sign on a building will be considered in relation to the size of the building.
 2. A typical layout for a sign with 12 inch capital letters is shown below:



The width of the sign can be approximated by multiplying the number of letters and spaces, including edge spaces, by the height of the letter, in inches. The interline spacing should not be less than $\frac{3}{4}$ of the average of the heights of the capital or uppercase letters in adjacent lines of letters. The spacing to the top and bottom borders should be equal to the average of the letter height of the adjacent lines of letters. The lateral spacing to the vertical borders shall be essentially the same as the height of the largest letters.

- III. Some advertising devices may be excluded from a need for a permit.
- A. An advertising device visible from a main roadway of the Thruway system may be excluded from a need for a permit when such device is:
1. Deemed incidental and not otherwise in non-conformance with section 361-a of the Public Authorities Law or Part 105 of the Thruway's Rules and Regulations.
 2. Among a multitude of devices oriented toward local highways and not causing an unreasonable distraction to Thruway travelers.
- B. An advertising device visible from an interchange roadway but not visible from a main roadway of the Thruway system may be excluded from permit requirement when such device is:
1. Deemed incidental and not otherwise in non-conformance with section 361-a of the Public Authorities Law or Part 105 of the Thruway's Rules and Regulations.
 2. Among a multitude of devices oriented toward local highways and not causing an unreasonable distraction to Thruway travelers.

SECTION 361-A, PUBLIC AUTHORITIES LAW

(Chapter 593, Laws of 1952, effective April 10, 1952, as amended by Chapter 316, Laws of 1961, effective April 6, 1961)

§361-a. Restriction and regulation of advertising devices

1. Except as otherwise provided in this section, the erection or maintenance of any advertising device located within six hundred sixty feet of the nearest edge of the right-of-way of the Thruway without a written permit therefore granted by the Authority pursuant to this section is prohibited.
2. The term "advertising device" as used in this section shall include any billboard, sign, notice, poster, display or other device intended to attract or which does attract the attention of operators of motor vehicles on the Thruway, and shall where so determined by the Authority, include a structure erected or used in connection with the display of any such device and all lighting or other attachments used in conjunction therewith.
3. The Authority may from time to time adopt, modify, amend or repeal regulations governing the issuance of permits or renewals thereof for the erection and maintenance of advertising devices. Such regulations shall be designed to effectuate the general purposes of this article and the specific objectives and standards hereinafter set forth:
 - a) To provide for maximum visibility along the Thruway system and connecting roads or highways;
 - b) To prevent unreasonable distraction of operators of motor vehicles;
 - c) To prevent confusion with regard to traffic lights, signs or signals or otherwise interfere with the effectiveness of traffic regulations;
 - d) To preserve and enhance the natural scenic beauty or the aesthetic features of the Thruway system and adjacent areas;
 - e) To promote maximum safety, comfort and well-being of the users of the Thruway.
4. To effectuate the purposes of this section, the Authority may limit the application of any regulation adopted; hereunder to exclude or include, in whole or in part.
 - a) Specified areas of the Thruway system based upon use, population density, nature of the surrounding community, special conditions prevailing therein, or such other factors as

may make differentiation or separate classification or regulation necessary, proper or desirable;

- b) Particular types of classes of advertising devices based upon size, design, lighting or such other factors as may make differentiation or separate classification or regulation necessary, proper or desirable;
 - c) The erection or maintenance of advertising devices on particular sections or portions.
5. Application for permits or renewals thereof shall be on forms prescribed by the Authority and shall contain such information as the Authority may require. A fee of ten dollars with respect to each advertising device shall be paid to the Authority with each initial application subject to a refund of one-half of this amount if the permit is not issued. Each permit shall be valid for a period not in excess of one year and may be renewed from time to time for such periods within thirty days of the expiration date thereof upon payment to the Authority of a fee of five dollars.
6. The permit or renewal thereof shall be revocable at any time on thirty days notice to the permittee in the event of a violation of the requirements of this section or any regulation lawfully adopted hereunder. Any advertising device erected or maintained after September first, nineteen hundred fifty-two in violation of this section of any regulation adopted hereunder is hereby declared to be, and is, a public nuisance and such device may be without notice be abated and removed by any officer or employee of the Authority, or upon request of the Authority, by any peace officer.
7. The Authority by regulation may exclude from the coverage of this section advertising devices which it finds do not interfere with safety on the Thruway system or contravene any of the other standards set forth in this section, including but not limited to:
- a) Advertising devices which are to be erected or maintained on property for the purpose of setting forth or indicating
 1. The name and address of the owner, lessee or occupant of such property, or
 2. The name or type of business or profession conducted on such property, or
 3. Information required or authorized by law to be posted or displayed thereon.
 - b) Advertising devices which are not visible from any traveled portion of the Thruway system;
 - c) Advertising devices indicating the sale or leasing of the property upon which they are placed;
 - d) Directional or other official signs and signals erected or maintained by the state or other public agency having jurisdiction.

8. Nothing in this section shall apply with respect to any property which is owned or leased by the State of New York or any agency thereof or with respect to which the State of New York or any agency thereof has or shall have a valid easement or covenant with the owner thereof concerning the restriction, removal or prohibition of advertising devices.
9. Nothing in this section shall be construed to abrogate or affect the provisions of any municipal ordinance, regulation or resolution which are more restrictive concerning advertising devices than the provisions of this section or of the regulations adopted hereunder.
10. Pending the assumption of jurisdiction over any section or connection of the Thruway system by the Authority, the superintendent shall have all powers and duties with respect thereto conferred upon the Authority by this section.

Part 105. ADVERTISING DEVICES

105.1 Statutory Reference

The erection or maintenance of any advertising device, located within 660 feet of the nearest edge of the right-of-way of the Thruway is prohibited pursuant to section 361-a of the Public Authorities Law.

105.2 Definitions

For the purposes of this Part, the following definitions shall apply:

- A. Advertising device shall include any billboard, sign, notice, poster, display or other device intended to attract or which does attract the attention of operators of motor vehicles on the Thruway, and shall include a structure erected or used in connection with the display of any such device and all lighting or other attachments used in conjunction therewith.
- B. Off-premises device shall include an advertising device displaying a message pertaining to a business or service not conducted or provided on the property on which the device is located.

105.3 Prohibited advertising devices

- A. The following are prohibited:
 1. Advertising devices which advertise activities that are illegal under Federal, State or municipal laws or regulation;
 2. Obsolete advertising devices;

3. Advertising devices not securely affixed in place;
4. Advertising devices which purport to be or are imitations of or resemble or are likely to be construed as official traffic control devices or railroad signs or signals, or which attempted to direct or regulate the movement of traffic, or which hide from view or interfere with the effectiveness of any official traffic control device or any railroad sign or signal;
5. Advertising devices which prevent the driver of a vehicle from having a clear and unobstructed view;
6. Advertising devices which contain, include or are illuminated by any flashing, intermittent or moving light or lights;
7. Advertising devices which permit beams or rays of light to be directed at any portion of the Thruway system, or which cause glare and tend to interfere with any driver's operation of a vehicle on the Thruway system;
8. Advertising devices which move or have any animated or moving parts;
9. Advertising devices on trees, rocks or other natural features;
10. Advertising devices which, based on established policy or in the judgment of the Thruway Authority, constitute a traffic hazard; and
11. Off-premises devices, except that the following off-premises devices may be permitted under this Part: devices located in areas within 660 feet of the nearest edge of the right-of-way which are zoned industrial or commercial under authority of State law and which lie within the boundaries of cities having a population greater than 250,000, provided that no off-premises advertising device shall be permitted to be maintained within 660 feet of the nearest edge of the Niagara section right-of-way within the city of Buffalo north to Elm Street.

B. Whenever an off-premises advertising device prohibited under subdivision (a) of this section, but lawful under prior law, is located in areas within 660 feet of the nearest edge of the right-of-way of Interstates 84 or 287, and construction of same at its present location commenced with respect to Interstate 85 on or before September 1, 1992 and with respect to Interstate 287 on or before April 1, 1991, the same may continue to be maintained, subject to permitting under the Part, for a reasonable period not to exceed the longer of two years from commencement of construction or the period which the owner of the advertising device can demonstrate is necessary to avoid substantial financial

loss. In determining what constitutes substantial financial loss, the Authority may consider such factors as initial capital investment, investment realization at the time of the permit application, life expectancy of the investment, the existence or non-existence of a lease obligation, and existence of a contingency clause permitting termination of the lease. Failure to apply for a permit under this Part shall constitute presumptive evidence that immediate removal of the off-premises advertising device will cause no substantial economic loss.

105.4 Exclusions

A. Excluded from these regulations are:

1. Advertising devices which are not visible from any traveled portion of the Thruway system;
2. Advertising devices for which the attraction is deemed incidental by the Thruway Authority;
3. Directional or other official signs and signals erected or maintained by the State or other public agency having jurisdiction; and
4. Information required or authorized by law to be posted or displayed thereon.

105.5 Permits

Application for a permit or renewal thereof for each separate advertising device shall be on forms adopted by the Thruway Authority and shall contain such information as the Thruway Authority may require.

105.6 Restrictions as to Thruway lands

Notwithstanding the purpose for which it may be erected or the persons to whom it may be visible, no advertising device shall be erected or maintained on lands under the jurisdiction of the Thruway Authority except devices by the Thruway Authority or with the consent of the Thruway Authority.

KEANE & BEANE, P.C.
446 HAMILTON AVENUE
WHITE PLAINS, NEW YORK 10601
(914) 946-4777
TELEFAX (914) 948-6868
www.kblaw.com

July 20, 2006

VIA FACSIMILE NO. 845\564-7802
AND FIRST CLASS MAIL

Mr. John P. Ewasutyn
Chairman of the Town of Newburgh Planning Board
and Members of the Planning Board
308 Gardnertown Road
Newburgh, New York 12550

Re: Town of Newburgh - Wilder Balter Partners – Marketplace Project
Route 300 - Sec. 60; Blk 3; Lots 49.22, 49.1, 41.3, 48 & 41.4

Dear Mr. Ewasutyn and Members of the Planning Board:

Keane & Beane, P.C. represents the Newburgh Mall (the "Mall") in regard to the above-referenced project. The Mall is again renewing its request that the Planning Board require the Applicant to allow the Mall and other interested parties reasonable access onto the Applicant's property to conduct an on-site inspection.

As you are aware, the Applicant has continually denied the Newburgh Mall, other neighboring property owners and other interested members of the public access to the site to conduct independent on-site investigations in regard to wetlands, drainage, the existence of possible rare and endangered species of animals and plants and several other issues. The Applicant's refusal to allow interested parties reasonable access to the site is preventing the Planning Board from taking the required "hard look" under SEQRA because the public has no way to confirm the Applicant's evaluations and findings.

There are three (3) specific issues that require further investigation, including a site visit, before any determination is made in regard to the Marketplace Project. The public has presented substantial evidence during the public hearing process that:

KEANE & BEANE, P. C.

Mr. John P. Ewasutyn
Chairman of the Town of Newburgh Planning Board
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- (1) the Applicant's wetlands designation may not be accurate and that the wetlands may fall within the New York State Department of Environmental Conservation's jurisdiction;
- (2) there may be rare and/or endangered species on the site; and
- (3) there may be important archeological and cultural resources on the site.

Reports from various experts which are now part of the public record confirm that there are substantial questions regarding the impact that the proposed project will have on wetlands, endangered species and archeological and cultural resources. These reports include:

- Wetlands Comments prepared by CEA Engineers, PC
- Report By J.G. (Spider) Barbour, Ecological Consultant; and
- Report by Hartgen Archeological Associates, Inc.¹

Where the proposed on-site inspection would produce relevant, probative evidence bearing on a disputed issue, there is no reasonable basis to deny the public access to a site. See Town of Northumberland v. Sterman, 246 A.D.2d 729, 731, 667 N.Y.S.2d 505 (3d Dep't 1998). The proposed on-site inspection will produce relevant, probative evidence regarding the wetlands, rare and endangered species and archeological and cultural resource issues. On the other hand, continuing to deny the public access to the site will make it impossible for the Planning Board to make a determination regarding the accuracy of the Applicant's findings in regard to these issues.

Denying the public access to the property also forecloses the right of the public to participate in the SEQRA process. The New York Court of Appeals has confirmed that public participation is an essential part of the SEQRA process. See Merson v. McNally, 90 N.Y.2d 742, 753-54, 688 N.E.2d 479, 665 N.Y.2d 605 (1997). "The environmental review process was not meant to be a bilateral negotiation between a developer and lead agency but, rather, an *open process that also involves other interested agencies and the public.*" Id. (emphasis added). Denying the public the right to conduct investigations and testing in regard to issues involving serious environmental impacts violates SEQRA and is a denial of the public's due process rights.

As lead agency, the Planning Board must require the Applicant to allow access to the site as part of the SEQRA process. The continued refusal to allow access to the site is preventing the public from properly participating in the SEQRA process. Therefore, we once again request that the Planning Board require the Applicant to allow a reasonable access to its property to conduct

¹ The reports from CEA Engineers, PC and J.G. (Spider) Barbour, were read into the record at the public hearing held in regard to the Marketplace Project. The report from Hartgen Archeological Associates, Inc., is attached.

KEANE & BEANE, P. C.

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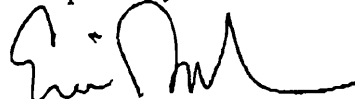
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period an additional sixty (60) days to allow any third party consultants given access to the site an appropriate period of time to prepare and submit written reports. The Mall further requests that the Planning Board read this letter aloud and address these issues at tonight's Planning Board meeting and include this letter as part of the public record.

Thank you for your consideration.

Respectfully submitted,



Eric L. Gordon

ELG/mc

Enc.

cc: Michael H. Donnelly, Esq.
Town of Newburgh Planning Board Attorney (via facsimile 845-294-6553)

Hartgen Archeological Associates, Inc.
Cultural Resource Specialists

1744 WASHINGTON AVENUE EXT. RENSSELAER, NEW YORK 12144
 Phone: (518) 283-0534 Fax: (518) 283-6276 Email: Hartgen@hartgen.com

July 18, 2006

Bernie Buller
 Parish, Weiner, and Maffia, Inc.
 101 Executive Boulevard
 Elmsford, New York 10523

Re: Proposed Market Place Shopping Center

Dear Mr. Buller,

A preliminary archeological site file search was conducted between July 12 and 13, 2006 for the Market Place project. Materials documenting all OPRHP and NYSM archeological sites, National Register properties, National Register eligible properties, buildings-structures that had been inventoried by OPRHP, and previous archeological surveys within one mile of the project area were gathered. The results are as follows:

OPRHP Archeological Sites Within Project Area: None

OPRHP Archeological Sites Within One Mile of the Project Area: Five

1. 07114.000137 - Mahood Outbuilding Foundation Site (19th century)
2. 07114.000023 - Gardner Mill Remains (18th century)
3. 07114.000022 - Historic Farm Foundations (19th century)
4. 07114.000035 - Skyer Farm Buildings, Equipment, and Remains
5. 07114.000024 - Ice House (prior to 1903)

NYSM Archeological Sites Within Project Area: None

NYSM Archeological Sites Within One Mile of the Project Area: None

National Register Listed Properties Within Project Area: None

National Register Listed Properties Within One Mile of the Project Area: Two

1. 90NR02306 - Silas Gardner House - 1141 Union Avenue
 - Eighteenth-century structure
 - Residence of one of the original settlers (a Tory during the Revolutionary War, assisted Tories and British in their escape to Canada and NYC)
 - Gardnertown named for Silas Gardner

2. 97NR01150 - Orange Mill Historic District - Powder Mill Road
- Located directly adjacent to the proposed shopping center project area
 - Site of the former black powder manufacturing complex and associated dwellings
 - District includes the archeological remains of the mill, worker housing, storage facilities, and office buildings
 - Dates of usage 1815-1908 (records show that the first milling enterprise, a saw mill, on this site began as early as 1790)

National Register Eligible Properties Within Project Area: None
National Register Eligible Properties Within One Mile of Project Area: None

Inventoried Buildings-Structures Within Project Area: None
Inventoried Buildings-Structures Within One Mile of Project Area: Seven

1. 07114.000088 - 25 Algonquin Drive
2. 07114.000091 - Fifth Avenue
3. 07114.000104 - Hudson Avenue
4. 07114.000103 - North Pierpont Road
5. 07114.000093 - 30 Pierpont Avenue
6. 07114.000151 - 6 Plattekill Turnpike
7. 07114.000122 - 15 Putnam Street


Previous Archeological Surveys Within Project Area: None
Previous Archeological Surveys Within One Mile of Project Area: Nine
 (Please see site file search results sheet for survey information.)

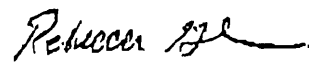
Thirteen historic maps were gathered showing the project area. These maps range in age from 1779 to 1946. A review of these historic maps revealed that there were no structures present within the project area between 1779 and 1946. However, there were numerous historic structures shown on the maps surrounding the project area.

Based upon the presence of five known archeological sites, a National Register Listed Property and a National Register Listed District (which is directly adjacent to the project area) all located within less than one mile from the project area, it is our opinion that a professional archeological investigation of this property is needed prior to any construction.

Please let us know if you need any more information regarding this project.

Sincerely,


 Karen Hartgen
 Principal Investigator
 Hartgen Archeological Associates, Inc.


 Rebecca Glazer
 Senior Research Associate
 Hartgen Archeological Associates, Inc.

KEANE & BEANE, P.C.

445 HAMILTON AVENUE
WHITE PLAINS, NEW YORK 10601
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TELEFAX (914) 946-6868
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July 31, 2006

**VIA EMAIL "PLANNINGBOARD@HVC.RR.COM"
AND FEDERAL EXPRESS**

Mr. John P. Ewasutyn
Chairman of the Town of Newburgh Planning Board
and Members of the Planning Board
308 Gardnertown Road
Newburgh, New York 12550

Re: Town of Newburgh - Wilder Balter Partners – The Marketplace at
Newburgh – Town Project No. 2004-54 - Sec. 60;
Blk 3; Lots 49.22, 49.1, 41.3, 48, 41.4 and Multiple Other Lots

Dear Mr. Ewasutyn and Members of the Planning Board:

Keane & Beane, P.C., represents the Newburgh Capital Group, LLC, which operates the Newburgh Mall (the "Mall") located on Route 300, Town of Newburgh, in regard to the above-referenced project. This letter is submitted on behalf of the Mall in opposition to The Marketplace at Newburgh proposed development project.

The Mall asserts that the Planning Board has not satisfied its obligation under SEQRA because it has failed to take a "hard look" at the various significant environmental impacts that will result if the site plan for The Marketplace at Newburgh is approved in its present form. The Mall also contends that further study is required in the form of a Supplemental DEIS in regard to a variety of issues for which new information has been submitted. Finally, the Mall again asserts that the Planning Board's and Wilder Balter Partner, Inc.'s (the "Developer") refusal to allow the Mall and other interested members of the public to conduct an on-site independent investigation is improper and violates SEQRA procedures and its constitutional right to due process.

A. The Planning Board Has Not Satisfied Its Obligations Under SEQRA

The intent behind SEQRA is to ensure that agencies "conduct their affairs with an awareness that they are stewards of the air, water, land and living resources, and that they have an obligation to protect the environment for the use and enjoyment of all future generations." ECL § 8-0103[8]. SEQRA regulations require the lead agency to "thoroughly analyze the

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identified relevant areas of environmental concern.” 6 N.Y.C.R.R. § 617.7(b)(3). The Planning Board’s review has not even come close to satisfying the “hard look” standard required under SEQRA. See Jackson v. N.Y.S. Urban Dev. Corp., 67 N.Y. 2d 400, 503 N.Y.S. 2d 298, 494 N.E. 2d 429 (1986) (lead agency must identify and take a “hard look” at areas of environmental concern). The following is a review of some of the environmental impacts that have not been properly investigated as part of the SEQRA review process:

1. Impact on Wetlands – The site currently has a least five (5) wetlands areas totaling almost twenty (20) acres, the largest of which the Developer contends is 9.7 acres. The Developer is going to obliterate much of the on-site wetlands in order to construct roads, a massive parking lot and the retail stores. The Developer has refused to allow any independent consultants access onto its property to confirm the wetlands designations; to determine whether the on-site wetlands fall within the jurisdiction of the New York State Department of Environmental Conservation; or to determine whether the on-site wetlands join other wetlands on neighboring properties.

One wetlands expert consultant who testified during the June 1, 2006 public hearing, CEA Engineers, PC (“CEA”), advised the Planning Board that:

Our review of the wetland sections of these documents and related maps and aerial photographs from other sources suggest that some changes to the delineation of on site wetlands may be warranted; however, no formal opinion about the accuracy of the onsite wetlands can be offered without site access and inspection of subject wetlands.

(Transcript of June 1, 2006 Public Hearing before Town of Newburgh Planning Board at pp. 28-32). In addition, even a cursory examination of the Developer’s wetlands designations reveals that it is highly likely that the Developer’s designation is inaccurate and that certain wetlands shown as isolated are actually connected. The potential adverse impact on wetlands is simply too great for the Planning Board to continue to ignore and further study and mitigation measures are required to preserve these important natural resources.

2. Excavation and Blasting – The Developer is proposing to excavate as much as 480,000 cubic yards of rock from the site, most of it through blasting. This is the equivalent to excavating a box the size of a football field that is twenty-eight (28) stories high.¹ The rock excavation, blasting and removal will have a major impact on local air quality and noise and will completely change the site’s landscape by wiping out all existing steep sloped areas. In addition, there is a substantial question regarding the impact the blasting will have on the neighbors’ well

¹ Drawing attached as Ex. “A”.

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water supplies. These substantial adverse impacts have not been properly examined or reviewed in the DEIS and require further investigation.

3. Traffic – A major area of concern for the public in general is the traffic that will be generated once the Marketplace at Newburgh opens. The Mall is especially concerned about the traffic impacts because the Developer has proposed placing the main entrance to The Marketplace at Newburgh directly across Route 300 from the main entrance of the Mall. As set forth in detail in the traffic report prepared by Nathaniel J. Parish, P.E., A.I.C.P., of Parish & Weiner, Inc., dated July 28, 2006, the proposed traffic mitigation plan is fatally flawed for a variety of reasons and does not sufficiently mitigate the major adverse traffic impacts that will be generated. (A copy of the traffic report prepared by Nathaniel J. Parish, P.E., A.I.C.P., dated July 28, 2006, is attached as Ex. “B”).

4. Destruction of Habitat and Impacts on Rare and Endangered – The Developer is proposing to put in 4,026 parking spaces and over half the site (64.4 acres) will consist of roads, buildings and paving parking areas. The Marketplace at Newburgh will wipe out the last virgin area in the central part of the Town of Newburgh, destroying trees, vegetation, wetlands and everything else in its path.

The DEIS is incomplete in regard to the impact that the destruction of this habitat will have on rare and endangered species of plants and animals. An independent expert, J.G. Barbour, has concluded that there is evidence that a number of rare and/or endangered animal and plant species could inhabit the proposed site. (A copy of the J.G. Barbour report, dated June 13, 2006, is attached hereto as Ex. “C”). The Developer’s refusal to allow entry onto the site by any third-parties or their consultants has made it impossible to confirm whether or not such endangered or rare animal and plant species exist and how they will be impacted by the proposed development. Mr. Barbour has also stated that the Developer’s evaluation of potential rare and endangered plants and animals species is completely inadequate and does not properly study these issues. (Id.)

5. Storm Water Drainage – The destruction of this site will have major impact on the drainage of storm water in the area. CEA reviewed the storm water management plan and found it to be inadequate in a number of ways. (A copy of the report relating to storm water drainage issues, dated May 31, 2006, is attached as Ex. “D”). For example, the DEIS fails to demonstrate that storm water run-off volume and storm water discharge for newly created detention basins will not adversely effect down stream structures or properties; there are no calculations presented in the DEIS or storm water management plan to demonstrate that the development will not create a change in upstream or downstream water surface evaluations; the Developer has not provided a number of other calculations and information required under the Town of Newburgh Town Code; and there are numerous other deficiencies in the proposed storm water management plan.

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6. Aesthetic Impacts – The construction of The Marketplace at Newburgh will undoubtedly have a severe impact on the aesthetic quality of the area. The wiping out of trees and vegetation and removal and reconfiguration of so much rock will change the landscape, in its entirety, forever. There is no way to minimize this impact to the surrounding property owners.

7. Archeological, Cultural and Historical Resources – The DEIS is completely devoid of any review relating to archeological, cultural or historical resources. There has also been no discussion regarding why such a review is unnecessary. Simply deferring analysis of this issue is not appropriate under the “hard look” standard required by SEQRA. See County of Orange v. Village of Kiryas Joel 11 Misc. 3d 1056, 815 NY.S. 2d 494, 2005 WL 3802969 (Sup. Ct., Orange Cty. 2005).

8. Alternatives – The DEIS currently under review lacks any reasonable alternatives. Pursuant to 6 NYCRR § 617.9(b)(5)(v), the EIS must contain:

A description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. ... The range of alternatives may also include, as appropriate, alternative:

- (a) cites;
- (b) technology;
- (c) Scale or magnitude;
- (d) design;
- (e) timing;
- (f) use; and
- (g) types of action.

ECL §§ 8-0109(2), 8-0109(2)(d) and 8-0109(4), each require a discussion of reasonable alternatives in the EIS. Discussion of alternatives has been characterized as the “heart of the SEQRA process.” Gerard Ruzow Weinberg, Environmental Impact Review In New York, § 5.14[1], p. 5-169 (Lexis Nexis 2005); see Shawangunk Mtn. Env'tl. Ass'n v. Planning Board of Gardiner, 157 A.D.2d 273, 557 N.Y.S.2d 495, 497 (3d Dep't 1990)(“One of the major purposes of any FEIS is to suggest and discuss alternatives to the proposed action so as to aid the public and governmental bodies in assessing the relative costs and benefits”). The failure to describe alternatives makes it difficult for the lead and involved agencies to make the necessary affirmative findings that among the reasonable alternatives, the selected action minimizes or avoids adverse environmental effects. 6 NYCRR § 617.11(c)(d)(5); Gerard Ruzow Weinberg, Environmental Impact Review In New York, § 5.14[1], p. 5-169 (Lexis Nexis 2005).

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The Developer presented four (4) supposed “alternatives” in the DEIS. These so-called “alternatives” were set forth in only four (4) pages of text in the DEIS. None of the alternatives presented were “reasonable alternatives” as required under SEQRA and none was presented in sufficient detail to permit the Planning Board to make a determination regarding their viability. Moreover, none of the alternatives addressed whether the project could be reduced in scale or magnitude, or whether alternative designs or uses were appropriate or feasible. See 6 NYCRR § 617.9(b)(5)(v)(c) (DEC regulations state that EIS may consider resolution in “scale or magnitude” of project). “Courts have struck down an EIS for failure to consider reasonable smaller sized projects.” Gerard Rusow Weinberg, Environmental Impact Review In New York, § 514[2][f], p. 5-174.8 (Lexis Nexis 2005, citing, Grape Hollow Residents Ass’n v. Beekman Planning Board, 1986/284 (Sup. Ct. Dutchess Cty. Oct. 16, 1986). In this case, the Developer has done everything possible to ensure that it has maximized the use of the site solely for retail development and has consistently refused to consider reduction of the size or scale of the project or propose alternative uses that may be more appropriate. Specifically, the Developer has refused to present alternatives for any use other than commercial retail development. The failure to consider such reasonable alternatives is improper and requires a rejection of the proposed project.

B. A Supplemental DEIS Is Required

Under SEQRA’s implementing regulations, the lead agency may require a supplemental EIS in regard to specific adverse environmental impacts not addressed or inadequately addressed that arise from: “(a) changes for the proposed project; (b) newly discovered information; or (c) a change in circumstances related to the project.” 6 NYCRR 617.9(7)(i); see Gerrard, Ruzow, Weinberg, Environmental Impact Review In New York, §3.09[4] (Lexis Nexis 2005) (“If the lead agency learns of important new issues about significant adverse environmental effects regarding the proposed action in the course of receiving public comments the lead agency must require the preparation of a supplemental DEIS in order to solicit additional public comment on the new issues”). In this case, there are a number of new issues requiring the submission of a supplemental DEIS and further public hearings, any one of which would invalidate the current DEIS on its own if not addressed.

1. Archeological, Historical And Cultural Resources

A supplemental DEIS is required because new information has been discovered relating to archeological, cultural and historical resources on the site. The Mall recently obtained a report from Hartgen Archeological Associates, Inc., stating that it is highly likely that the proposed site contains cultural resources and requires further investigation. (A copy of the report from Hartgen Archeological Associates, Inc., dated July 18, 2006, is attached hereto as Ex. “E”). Specifically, the Hartgen Archeological Associates, Inc. report states that:

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Based upon the presence of five known archeological sites, a National Register Lister Property and a National Register District, (which is directly adjacent to the project area) all located within less than one mile from the project area, it is our opinion that a professional archeological investigation of this property is needed prior to any construction.

The New York State Office of Parks, Recreation and Historic Preservation ("NYSOPRHP") in a letter to the Planning Board dated June 15, 2006, has also confirmed that "there is an archeological site in or adjacent to your [the Developer's] project area." (A copy of the letter from the NYSOPRHP, dated June 15, 2006, is attached as Ex. "F"). The NYSOPRHP report states that a Phase 1 archeological survey is warranted "to determine the presence or absence of archeological sites or other cultural resources in the project's area of potential effect." (*Id.*) The NYSOPRHP letter further states that "a determination regarding impact/effect will be provided only after ALL documentation requirements noted on any enclosures have been met." (*Id.*) Apparently, the Developer has also failed to consult with the New York State Historic Preservation Office ("NYSHPO") and submit the appropriate project review form required by NYSHPO.

6 NYCRR § 617.7(c)(v) lists "the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources of the existing community" as a significant adverse impact on the environment. The failure of the Planning Board to require further study regarding these issues when they have been made aware of the possible impacts is improper. See Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d 400, 426, 503 N.Y.S.2d 298, 494 N.E.2d 429 (1986)(lead agency has obligation under SEQRA to consider impact on archeological resources); McManus v. Planning Board of the Town of Orchard Park, 302 A.D.2d 985, 755 N.Y.S.2d 355 (4th Dep't. 2003)(failure to address possibility of destruction of archeological resources required reversal of determination under SEQRA); Application of County of Orange v. Village of Kiryas Joel, 11 Misc.3d 1056(A), 815 N.Y.S.2d 494 (N.Y. Sup. Ct. 2005)(Court held that deferral of identification of archeological sites does not satisfy the "hard look" required under SEQRA and defeats meaningful review under SEQRA). Therefore, the Mall respectfully requests that, based on this new information, a supplemental DEIS be prepared and that an archeological survey report be submitted to the NYSHPO as part of the SEQRA process.

Thus, no further action can be taken until after: (i) the appropriate archeological studies are completed; (ii) the appropriate agencies have evaluated and made a determination regarding the impacts on archeological, cultural and historical resources; (iii) a supplemental DEIS is prepared; and (iv) the public is provided an opportunity to comment regarding any reports and

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impacts. The Developer should be required to include the results from any testing and review as a part of a Supplemental DEIS.

2. Traffic

During the public hearing, the Planning Board was advised that the traffic study that the Developer submitted as part of the DEIS is woefully deficient for a variety of reasons. We trust that the traffic consultant employed by the Town has confirmed the assertions made during the public hearing by the Mall's expert consultant regarding the Developer's traffic study. There is no reason to continue to review the proposed project given this newly discovered information regarding to the accuracy of the traffic study included in the DEIS. See Oyster Bay Assoc., L.P. v. Town Bd. of Town of Oyster Bay, July 16, 2002 N.Y.L.J. 26 (Sup. Ct. Suff. Cty. 2002)(where Town Board believed that traffic study in DEIS did not adequately address certain issues, including holiday traffic, it should require supplemental EIS).

The Mall has also presented a traffic report prepared by Nathaniel J. Parish, P.E., A.I.C.P., which sets forth a technical review of the Developer's traffic study and confirms the multitude of inaccuracies and deficiencies in the traffic study contained in the DEIS. (See Parish Traffic Report, July 28, 2006, Ex. "B"). The Parish traffic report includes a plethora of new information regarding the actual state of the traffic conditions which requires further review by the Planning Board and other outside agencies to determine the actual traffic impacts that will result from the operation of The Marketplace at Newburgh.

Moreover, the Mall recently obtained a preliminary report from the State of New York, Department of Transportation, dated June 29, 2006, which confirms many of the findings in the Parish traffic report, including but not limited to the finding that the "pass-by" credit taken in the Developer's traffic study is much too generous. (A copy of the New York State Department of Transportation Preliminary Report, dated June 29, 2006, is attached as Ex. "G"). Therefore, a new traffic study must be conducted that relies on accurate information and a supplemental DEIS must be prepared to address this new information before the Planning Board makes any determinations relating to the traffic impacts.

3. Ecological Conditions

Another area in which the Planning Board was provided new information following its acceptance of the DEIS relates to the ecological conditions on the site. A recent report prepared by a consultant for an interested party demonstrates that the Developer's review of endangered species is flawed and fails to properly examine and evaluate the endangered species on the site. (Report of J.G. Barbour, dated June 13, 2006, Ex. "C"). This report also states that it is likely, based on conditions adjacent to the site, that a more detailed review will establish that there are endangered and/or rare species on the site that will be impacted by the development of The

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Marketplace at Newburgh. (*Id.*) A Supplemental DEIS is required to review the new information contained in the Barbour report in order to allow the Planning Board to take a “hard look” at the impacts the development may have on rare and endangered species.

Moreover, in a letter dated October 4, 2005, from Patrick Hines of McGoey, Hauser and Edsall, to the Planning Board, Mr. Hines advised the Town of Newburgh that the Town’s Consultants were not even going to be performing evaluations or field work relating to ecological conditions on the site until July or August 2006. (A copy of the letter from Patrick Hines to the Town of Newburgh, dated October 4, 2005, is attached as Ex. “H”).² The Mall is unaware of any studies relating to endangered species that have been made available to the public to date. Obviously, any information contained in such report would need to be the subject of a supplemental DEIS and further review by the Planning Board and the public.

C. The Public Has Improperly Been Denied Access To The site

The Mall also asserts that the Planning Board’s review is defective because the public has been denied a full and fair opportunity to participate in the SEQRA process and comment on the DEIS. Initially, the entire “public review process” has been nothing more than a sham. The Planning Board has done everything in its power to ensure that the public’s ability to review and comment on the proposed development project and plan is as limited as possible. For example, the DEIS was accepted as complete on May 4, 2006 and a public hearing was scheduled for June 1, 2006, less than thirty (30) days later. Allowing the public less than thirty (30) days to review a DEIS that is more than 2,000 pages long is preposterous. Furthermore, at the two public hearings that were held (both in the beginning of the summer), each member of the public was limited to three (3) minutes speaking time. Finally, once the public hearing was closed, the Planning Board only gave the public a month to prepare and submit written comments.

Under the Planning Board’s schedule, the public was given less than 90 days to obtain and review the DEIS, hire experts and prepare oral and written comments. This rush through the public review process is completely unacceptable when one considers that the Developer has had more than two (2) years to hire consultants, conduct studies, prepare reports and draft and revise the DEIS. In fact, this may very well be one of the fastest public review periods in the history of SEQRA for a project of this size, density and impact. Not surprisingly, the Developer and Planning Board have further limited the right of the public to participate in the public review process by refusing to allow the public reasonable access to the site to perform independent evaluations relating to a limited number of issues. This denial violates SEQRA and the right to due process.

² The date of this troubling to say the least as it was not received by the Planning Board until July 24, 2006. It is unknown whether the referenced studies were completed because the Planning Board has not released any reports prepared by its own consultants.

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Of all the statutory schemes and regulations enacted by the State Legislature and implemented by the New York State Department of Environmental Conservation, (“NYSDEC”) none mandates greater public involvement and public participation than the SEQRA process. The Environmental Assessment Form (“EAF”), the Draft Environmental Impact Statement, and the Final Environmental Impact Statement are documents that are subject to public scrutiny and public comment. The SEQRA regulations provide for a public scoping session and for public hearings on the DEIS. Public notices must be published in local newspapers at several stages of the SEQRA process. Clearly, the Legislative intent behind SEQRA is for the public to have a meaningful opportunity to participate in the review of a major land use proposal, subject to the requirements of SEQRA. Undoubtedly, the Developer’s proposal for The Marketplace at Newburgh pending before the Respondent Planning Board is such a major land use proposal. However, the Developer and the Planning Board have engaged in a consistent course of conduct which has denied the Mall and the public in general a meaningful right to participate in the SEQRA process, among other things, by denying the public access to the site which is undergoing SEQRA review by the Planning Board.

In the leading treatise on SEQRA, Environmental Impact Review in New York by Gerrard, Ruzow and Weinberg (Lexis Nexis 2005), it is stated at Section 3.09[1], p. 3-153, as follows:

In enacting SEQRA, the Legislature emphasized the importance of public participation in protecting the environment, stating that “[e]very citizen has a responsibility to contribute to the preservation and enhancement of the quality of the environment.” Accordingly, for those actions requiring the preparation of an EIS, the Legislature has carefully spelled out the important role that the public is to play under SEQRA.

The public has a formal right to comment as part of the SEQRA process. This right arises primarily in connection with the review of the DEIS.

This SEQRA treatise goes on to indicate in Section 3.10[5][a], at p. 3-169, as follows:

SEQRA is built around the concept of full public participation in agency decision-making. Accordingly, in addition to providing for the hearing itself, other provisions of the part 617 regulations address the need for such public participation in general. Lead agencies are enjoined to “make every reasonable effort to involve project sponsors, other agencies and the public in the SEQRA process.” The regulations encourage all agencies to “seek the advice and assistance of other agencies, groups and persons on SEQR matters”

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Courts will only uphold a SEQRA determination where the lead agency has made the public fully aware of the evaluation process and afforded the public a full and meaningful opportunity to participate in the process and criticize the project. Ecology Action v. Van Cort, 99 Misc. 2d 664, 417 N.Y.S.2d 165; see also Merson v. McNally, 90 N.Y.2d 742, 665 N.Y.S.2d 605 (1997) (SEQRA process “was not meant to be a bilateral negotiation between a developer and lead agency, but, rather, an open process that also involves other agencies and the public”).

The SEQRA treatise proceeds to indicate that “where an agency neglects to affirmatively solicit public participation, the courts are quite prepared to set aside its [a lead agency’s] determination”. For instances in Cilla v. Mansi, 2002 WL 11275122; 2002 N.Y. Slip. Op. 502208 (N.Y. Sup. Ct. 2002), a land use approval granted to a developer was vacated because technical information was first presented at the public hearing without the opportunity for the members of the public to analyze and rebut the information.

In the instant situation, the Mall and the public in general has been prevented from providing meaningful public comment to the Planning Board in regard to environmental issues of concern in the SEQRA process, including the nature and extent of protected wetlands on the site, the presence of endangered species and the presence of important archeological, cultural and historic resources on the site, simply because they have been denied access to the site.

New York State Department of Environmental Conservation (“NYSDEC”) regulations relating to the issuance of certain permits allow site access as a method of discovery in regard to the administrative proceedings relating to such permits. Specifically, 6 NYCRR § 624.7(c)(4) states that a party, with the permission of an Administrative Law Judge, may:

access real property in the custody or control of another for the purpose of conducting drilling or other sampling or testing. In such instance, all parties must be given notice of such activities and be allowed to observe and to take split samples or use other specified methods of verification.

In interpreting this section of the NYSDEC regulations, Administrative Law Judges have determined that access onto property should be allowed where “it would provide relevant and material information, since that is the well established standard for discovery.” Matter of Oneida-Herkimer Solid Waste Management Authority, DEC Project No. 6-30224-00009/00007 (May 8, 2002)

Similarly, the New York Courts have also found that access must be provided to members of the public pursuant to the same regulation where such access would produce relevant, probative evidence regarding a judiciable issues. Town of North Uumberland v. David Stern et al., 246 A.D.2d 729, 667 N.Y. S.2d 505 (3rd Dept. 1998). In Town of North Uumberland,

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the Court annulled the issuance of a permit to construct and operate a landfill because the objector Town was prevented access to the site to conduct its own soil tests. In overturning the issuance of a permit, the Court indicated as follows:

Inasmuch as there was every indication that the proposed testing would have produced relevant, probative evidence bearing on an adjudicable issue, and the Commissioner posited no reasonable basis for denying the Town the brief site access it sought for that purpose, his determination can not be said to have had a sound basis in reason (see, Matter of County of Monroe v. Kaladjian, 83 N.Y.2d 185, 189). Accordingly, it must be annulled, along with the decision granting the groundwater separation variance (and the permit, which depended thereon), and the matter remitted for redetermination of the groundwater safety issue after the Town is afforded access to the site to perform testing.

Town of North UMBERLAND, 246 A.D. 2d at 731, 667 N.Y.S. 2d. at 507.

It has been established through the reports presented to the Planning Board by J.G. Barbour, CEA and Hartgen Archeological Associates, Inc. submitted herewith (Exhibits "C", "D" and "E" respectively), that there are significant issues relating to wetlands, endangered species, archeological, cultural and historical resources and storm water drainage that require further investigation. Allowing the public and independent expert consultants access to site will undoubtedly produce material and relevant information and allow the public to prepare reports containing probative evidence for submission to the Planning Board during the public comment period regarding these particular issues.

To deny the public access to the site is to deny the public meaningful participation in the process that is mandated throughout the SEQRA statute and its accompanying regulations. Accordingly, the refusal of the Developer and the Planning Board to allow the public access to the site constitutes a violation of the requirements of SEQRA. As lead agency, the Planning Board must require the Developer to allow access to the site as part of the SEQRA process. The continued refusal to allow access to the site violates the Mall's due process rights and obliterates the public's ability to properly participate in the SEQRA process.

For all the reasons set forth above, the Mall respectfully requests that the proposed project cannot be approved in its present form. At the very least a Supplemental DEIS and further public comment and review is required before a FEIS can be developed.

KEANE & BEANE, P. C.

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Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric L. Gordon". The signature is fluid and cursive, with a large, sweeping "G" and "L".

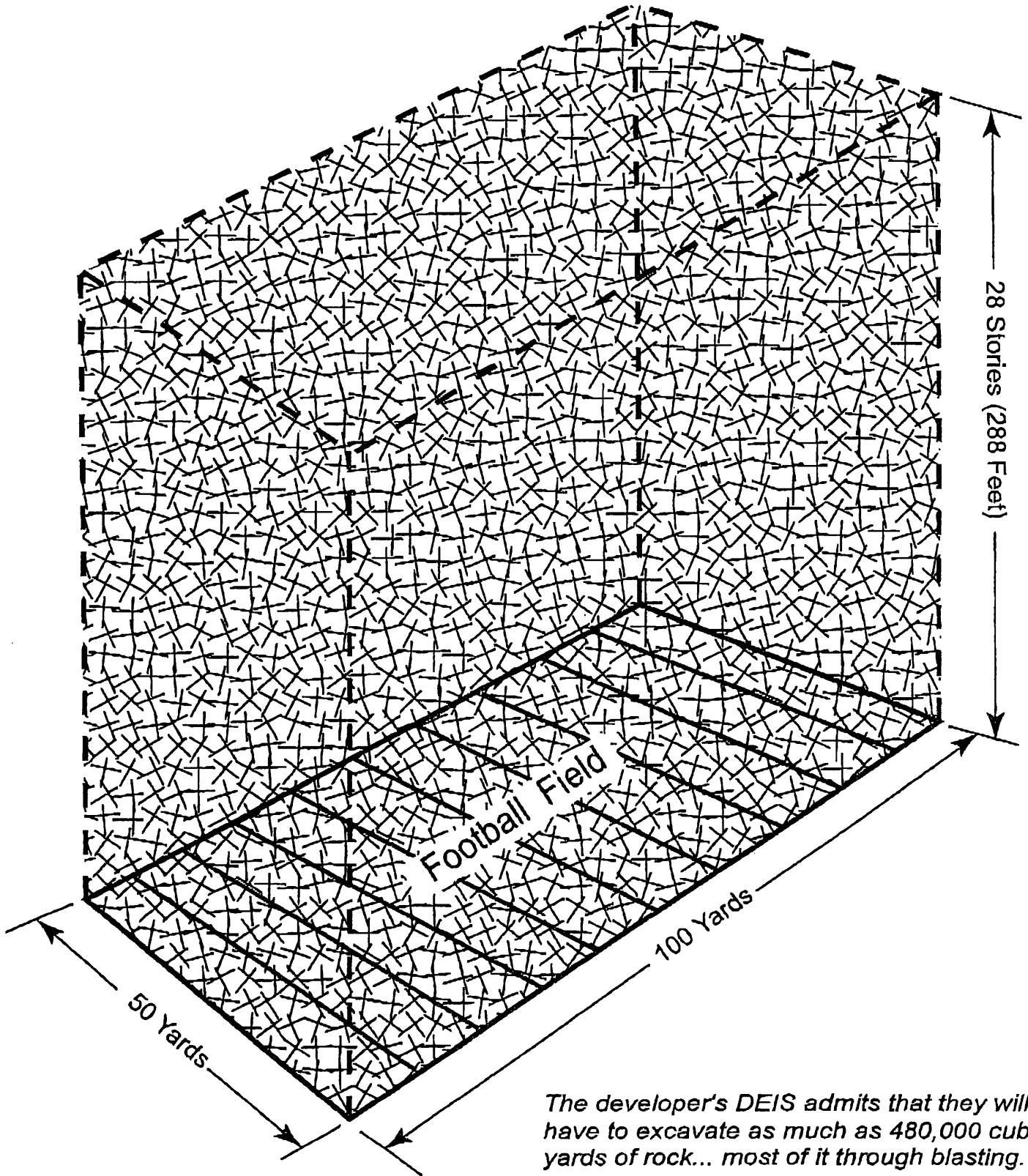
Eric L. Gordon

ELG/pe

Enclosures

cc: Newburgh Mall (via Federal Express w/enclosures)
Mr. Nat Parish (via Federal Express w/ enclosures)
Joel H. Sachs, Esq.

The Newburgh Marketplace Plan ROCK EXCAVATION



What does that mean?

If the rock to be taken out were to be put in a box surrounding the edges of a football field, that box would be the height of a 28 story building!

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Senior Consultants

George M. Raymond, A.I.A., A.I.C.P.
Richard Hyman, A.I.C.P.
John Sarna, P.E., I.T.C.

July 28, 2006

Mr. John P. Ewasutyn, Chairman
and Members of the Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, New York 12550

Dear Chairman Ewasutyn and Members of the Board:

I am writing as a consultant to Newburgh Capital LLC, the leasees of The Newburgh Mall. The comments which follow are with respect to the traffic impacts of The Marketplace at Newburgh, and are intended for the DEIS public hearing record.

The technical review was conducted by my colleague John Sarna, P.E., I.T.E., a traffic engineer with a long history of preparation of traffic impact studies for major development projects as well as extensive experience in the review of projects for public agencies.

As you will find in your review of these comments, the traffic study in this DEIS contained important errors and many deficiencies. As a result we anticipate that a properly performed study will reveal that a number of key intersections will operate at a Level of Service F, a condition of great congestion and long delays. These are conditions which are not acceptable and would make it impossible for your Board to reach the required finding that adverse impacts have been reduced to the maximum extent feasible.

Of particular concern to our client is that, when properly corrected, the analyses will show levels of service F, at The Newburgh Mall driveway and along other Rt. 300 intersections. There is no basis for your Board to accept this level of degradation of the area's traffic arteries.

It is important to focus on the assumptions in the DEIS that a number of mitigation proposals require physical improvements, and possibly land acquisition at intersections not under control of the applicant. Your Board and the public need to know that these improvements are feasible and that there is assurance that they will be installed before the project is operational. That information will need to be supplied in a Supplementary D.E.I.S.

It is unlikely that a corrected Traffic Analysis will find that all of the study intersections can be improved to operate at a satisfactory level of service. Accordingly, the only remaining

possible mitigation will be to require a sharp reduction in traffic generation through a reduction in the size of the project and/or introduction of land uses that have a lesser traffic generation. These alternatives should be examined in The Supplementary D.E.IS.

The review raises a number of questions covering both the completeness and the technical content of the DEIS. Because of the extensive nature of these comments, and because they may affect the findings and conclusions of the DEIS, these comments must be addressed in a Supplementary DEIS, prepared so that the Lead Agency, other involved agencies and the general public can review these changes and assess their impact on the project. This must be done prior to the preparation of the Final Environmental Impact Statement.

This review covers Section 3.6 – Traffic and Transportation – of the Draft Environmental Impact Statement for The Marketplace at Newburgh, dated April 4, 2006, prepared by Tim Miller Associates. The review covers the following sources.

- The text, tables and traffic figures from the DEIS Traffic and Transportation Section
- Appendix G of the DEIS, which includes the Traffic Impact Study (TIS), dated September 14, 2005, prepared by John Collins Engineers, P.C., including the Appendices and supporting material, taken from the Public Review link on the Tim Miller Associates website
- A CD titled “The Marketplace at Newburgh, Draft Environmental Impact Statement, 04/04/06,” which is understood to be an integral part of the DEIS.

Although the Traffic Impact Study forms the basis of the DEIS Traffic and Transportation Section, this review concentrates on the text portion contained in Section 3.6 of the DEIS.

This review is organized into two parts. The first part contains a short list, in condensed form, of the major comments contained in the review. The second part includes the detailed comments covering both the completeness and the technical accuracy of the DEIS.

PART 1 – MAJOR COMMENTS

- Generated traffic from the six “other potential” developments was not included in the 2008 No-Build or Build condition traffic volumes, thus understating the future traffic at many, if not all, locations.
- The pass-by factor for site-generated traffic has been incorrectly applied, resulting in an understating of traffic at the three intersections of the site access roads with the surrounding road system.
- Road improvements have been identified and incorporated into the analysis at a number of locations on the State highway system. There is no timetable given for these improvements, no documentation that the State is planning such improvements or has them on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for these improvements. The DEIS is not clear as to which, if any, improvements will be fully funded by the Applicant. Any improvements which are not

likely to be in place by the time that the development is opened should not be considered in the analysis.

- The existing road configuration has been incorrectly reported at two locations, and has been incorporated into the capacity analyses.
- At the intersection of Route 300 and the site access drive a nonconforming traffic signal operation has been incorporated into the capacity analysis.
- Trucks and other heavy vehicles were not counted separately during the traffic counts, and the effect of these heavy vehicles may not have been factored into the capacity analyses.
- The section on Peak Seasonal Traffic Conditions, Section 3.6.16, is incomplete, some of the referenced material in Traffic Appendix G, including the summary of the capacity analyses, appears not to have been included, and there are no documented conclusions. A Traffic Management Program is mentioned, but without description, and no details are given.
- The use of appendices to present data and other material is confusing. The DEIS contains eight Appendix sections, of which Traffic and Transportation is Appendix G, but the Traffic Impact Study also contains eight Appendix sections, including an Appendix G. In addition, some of the traffic appendices are found in Appendix G on the website, some on the CD, and some on both. {Note: In this review the appendices in the Traffic Impact Study are referred to as "Traffic Appendix."}

PART 2 – DETAILED COMMENTS

Existing Road Conditions

1. At the intersection of Route 300 and the Newburgh Mall South Driveway, the road inventory in the traffic analysis includes a southbound right turn lane. This lane does not currently exist.
2. At the intersection of Route 300 and Route 52, the capacity analysis includes a 10-foot wide eastbound right turn lane. This lane does not currently exist. There is a paved shoulder, but it is only 7½ feet wide, and is too narrow to accommodate either moving traffic or queues. Long single-lane queues were observed during a weekday mid-afternoon on this single-lane eastbound approach. The capacity analysis will have to be re-run here, and a poor level of service may result.

No-Build Condition

3. The No-Build and Build conditions timetable used in the traffic analysis assumes a project completion in 2008. This may be somewhat optimistic given the size and complexity of the project, and especially in view of the significant level of off-site roadway and operational improvements, most of which are on State highways, listed as required to mitigate project impacts. A "design" year of 2010 would be more realistic.

4. The traffic study, on page 3.6-10, lists six other potential developments in the area, but does not give their size (floor area), the amount of traffic estimated to be generated by these developments, or the distribution of this traffic to the road system. Without such information it is not possible to confirm that appropriate levels of traffic were added to the surrounding streets. Moreover, see the following comment.
5. The traffic study, on page 3.6-10, lists six projects which were included in the No-Build condition. However, it does not appear that traffic from any of these projects was actually included in the No-Build traffic projections. The No-Build volumes shown in Figures 3.6-5 and 3.6-6 are exactly six percent higher than the existing traffic volumes shown in Figures 3.6-3 and 3.6.4, and this represents only the background growth, four years (2004 to 2008) at 1.5 percent annually. This would mean that the projected volumes are understated in both the No-Build and Build condition at all intersections, or at least at all of the intersections along Route 300. The capacity analyses will have to be re-run for all of these intersections for both the No-Build and Build conditions, and with certain lane groups projected in the traffic analysis to operate at Level of Service E and /or with volume/capacity (v/c) ratios in excess of 0.95 at five of the intersections along Route 300, it is likely that some Level of Service F conditions will occur once the additional generated traffic from these developments is factored in.

Build Condition

6. The 25 percent pass-by percentage used in the analysis is too high. The ITE Trip Generation Handbook suggests, for an 850,000 SF shopping center, percentages of 21 percent for the weekday P.M. peak hour and 18 percent for the Saturday peak hour (see Figures 5.5 and 5.7 in the ITE Handbook).
7. The site-generated traffic estimates, shown in Table 3.6-5, include a 25 percent pass-by factor. It seems, however, that the pass-by factor has been incorrectly applied, and does not conform to the accepted methodology. It appears that the report has simply reduced the generated traffic across the board by 25 percent. The correct method, as set forth in the ITE Trip Generation Handbook, is to apply the full entering and exiting traffic volumes at all of the site driveway intersections, diverting the pass-by percentage traffic from the passing through movements. Since the pass-by factor was not correctly applied, the Build condition traffic projections at the three site driveway intersections are understated. Considering that Level of Service E conditions are projected on four lane groups at the intersection of the site driveway with Route 300, it is likely that a recalculation of the capacity analysis at this location will result in projected Level of Service F operations.
8. The directional distribution of the site-generated traffic needs more than the one sentence explanation on page 3.6-15. According to Figures 3.6-7,8, the distribution of traffic to and from The Marketplace at Newburgh is 21 percent to and from north of the site, 74 percent to and from south of the site (including I-84), and five percent to and from Newburgh Mall. The DEIS states that the traffic counts at the New burgh Mall driveways were used as one of the criteria in setting these distributions. However, according the counts at the Newburgh Mall (see Figures 3.6-3,4), the distribution traffic to and from the north should be higher. This is shown in the following comparison table.

COMPARISON OF DIRECTIONAL DISTRIBUTIONS

	The Marketplace At Newburgh	Newburgh Mall			
		Arrive		Depart	
		Weekday	Saturday	Weekday	Saturday
North	21%	24%	30%	34%	37%
South	74%	76%	70%	66%	63%
Newburgh Mall	5%				

Note also that because of the minor Newburgh Mall access to Meadow Avenue the north distribution could be slightly higher.

The directional distribution of site-generated traffic needs to be better documented.

- According to the directional distributions shown on Figures 3.6-7,8, The route 300 access drive would handle 61 percent of the arriving traffic and 53 percent of the departing traffic, while the Route 52/Fifth Avenue driveway would handle 27 percent of the arriving traffic and 34 percent of the departing traffic. The major reason seems to be that all of the traffic arriving on I-84 from the west is assumed to enter via the Route 300 driveway, while one half of this traffic is assumed to exit via the Route 52/Fifth Avenue driveway. This needs to be explained and justified.

Mitigation Measures

- The DEIS has identified a number of road improvement measures intended to mitigate the impacts of the additional site-generated traffic, as well as to address problem areas which already exist or will exist in the 2008 No-Build condition. Many of these measures have been assumed as being implemented in the 2008 No-Build and Build conditions. These include the following.
 - Route 300 and Newburgh Mall South Driveway – construct new access drive to The Marketplace at Newburgh, add turning lanes on Route 300, reconfigure the driveway to Newburgh Mall, possibly acquire additional right-of way on the southeast corner, install a traffic signal
 - Route 52 and Meadow Avenue/Powder Mill Road - construct new access drive to The Marketplace at Newburgh, relocate Meadow Avenue, add turning lanes, upgrade the existing signal installation
 - Route 52 and Fifth Avenue - construct new access drive to The Marketplace at Newburgh, construct northbound left turn lane on Route 52, reconfigure the Fifth Avenue intersection approach, install a traffic signal
 - Route 52 and I-84 Ramps – Widen the westbound exit ramp to provide a longer right turn lane, construct a right turn lane on the northbound Route 52 approach to the eastbound ramps, upgrade the existing traffic signals at both ramp intersections and interconnect them with the new signal at Fifth Avenue/access drive to The Marketplace at Newburgh

- Route 300 and Route 52 – Construct left turn lanes on the Route 52 eastbound and westbound approaches, construct a right turn lane on the Route 52 eastbound approach, possible property acquisition, upgrade the traffic signal
- Route 300 and Newburgh Commons Driveway - Install a traffic signal
- Interconnect the traffic signals along Route 300 between I-84 and Meadow Avenue/Meadow Hill Road
- Route 300 and Route 32 – Construct turning lanes and upgrade the traffic signal. (According to the DEIS these improvements are currently being completed. The DEIS should include an estimated date of completion).

Section 3.6 of the DEIS does not state which improvements are to be paid for by the Applicant. One would expect that the first three listed above, those involving the access drives into the shopping center, would be the total responsibility of the Applicant. For the other improvements (excluding the intersection of Routes 300 and 32), there is no indication as to who would be responsible and who would pay for them. There is no timetable given for these improvements, no documentation that the State is planning such improvements or has them on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for these improvements. All of these improvements are on State highways, and some may require property acquisition. Unless these improvements can reasonably be expected to be completed by the time that the shopping center is opened, they should not be included in any analyses of the Build conditions. The locations at which these conditions apply are discussed in further detail in the following Capacity Analysis section.

Capacity Analysis

11. Prevailing truck traffic does not seem to be taken into account. With a location on two state highways and near the interchange of two interstate highways, and with a nearby airport, a fairly high amount of truck traffic should be expected. The raw traffic counts do not show that any separate counts were made of truck traffic, and there is no indication as to what heavy vehicle percentage, if any, was used in the capacity calculations. If a default of two percent was used, it is probably too low, and the resultant calculations may show better operations than are likely to exist.
12. The intersections of Route 300 with Meadow Avenue, Route 52 and the Stop & Shop Driveway are analyzed with advanced (leading) protected green arrow phases on the Route 300 approaches. Field observations indicate that these are actually delayed (lagging) turn phases. (This may also be true at other intersections as well.) This may affect the results of the capacity analyses.
13. The capacity analyses at all of the signalized intersections assume full actuation. This needs to be confirmed. Some of them appear to be operating as semi-actuated installations.
14. At the intersection of Route 300 and the Newburgh Mall South Driveway/Marketplace Access Drive, the capacity analysis for the Build condition shows the thru eastbound movement (from Newburgh Mall) moving on the same signal phase as the opposing

westbound two-lane left turn exiting from The Marketplace. This appears to be a non-conforming operation. The New York State Department of Transportation generally does not permit a signal operation where a two-lane left turn operates in the same signal phase with an opposing through movement. Either a separate signal phase would have to be provided for the eastbound through movement, which would adversely affect the operation of the signal, probably moving it into Level of Service F operation, or the eastbound movement would have to be prohibited and the exit limited to right turns, as at present, in which case the eastbound through movement would have to be reassigned to a right turn at the north driveway and a left turn into The Marketplace access drive.

15. At the intersection of Route 300 and Route 52, the capacity analysis for the 2008 Build condition, summarized in Table 3.6-6, assumes that mitigation measures, including the provision of eastbound and westbound left turn lanes (as well as assuming a full operating eastbound right turn lane, which does not exist at present – see Comment 2 above) will have been implemented. Even with these improvements Level of Service F is projected for two lane groups in the weekday P.M. peak hour. Without the improvements, however, the capacity analyses, shown in Table 2 in Appendix G and in the capacity computation printouts, shows Level of Service F operations on several lane groups in both peak hours, as well as for the overall intersection in the weekday P.M. peak hour, and with volume/capacity ratios significantly over 1.0.

The DEIS, on page 3.6-26, reports that improvements at this intersection will be required regardless of the proposed development, and, on page 3.6-17, reports that the Town has identified this intersection as needing improvements to accommodate future traffic volumes. There is, however, no timetable given for these improvements, no documentation that the State is planning such improvements or has them on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for these improvements. (The Applicant apparently is not paying for them, only proposing a “fair-share” contribution.) Unless the DEIS can provide documentation that these improvements actually will be completed by the opening in 2008, the Build condition analysis without the improvements must be shown in Table 3.6-6 so that the actual operating conditions in 2008 are disclosed. The capacity analysis results including the improvements also can be shown, with the understanding that there is no commitment for these improvements.

16. At the intersection of Route 300 and the Newburgh Commons driveway, the capacity analysis for the 2008 Build condition, summarized in Table 3.6-6, assumes that the intersection will be signalized as a mitigation measure. As with the previous comment, however, there is no timetable given for this improvement, no documentation that the State is planning such an improvement or has it on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for this signal. Unless the DEIS can provide documentation that this signalization actually will be completed by the opening in 2008, the Build condition analysis without the improvements must be shown in Table 3.6-6 so that the actual operating conditions in 2008, which are projected as Level of Service F for the driveway approach, are disclosed.
17. At the intersection of Route 52 and the I-84 eastbound ramps, the capacity analysis for the 2008 Build condition, summarized in Table 3.6-6, assumes that the a northbound right turn ramp will be constructed as a mitigation measure. {Note: Table 3.6-6 and the text on page

3.6-18 refer to it as a “southbound” right turn lane; it should read “northbound.”) As with the previous comments, however, there is no timetable given for this improvement, no documentation that the State is planning such an improvement or has it on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for this improvement. Unless the DEIS can provide documentation that this improvement actually will be completed by the opening in 2008, the Build condition analysis without the improvement must be shown in Table 3.6-6 so that the actual operating conditions in 2008 are disclosed.

18. The report calls for the installation of a coordinated signal system along Route 300. This requires the same signal cycle lengths at all intersections. The cycle lengths in the capacity analyses along Route 300 range from 90 to 120 seconds
19. In Appendix G, the Level of Service Summary, Tables 2 and 2A, reports the Level of Service only on an approach and overall intersection basis. A longstanding directive from the New York State Department of Transportation requires reporting both Level of Service and volume/capacity ratio for each lane group. At some locations, notably the intersection of Routes 300 and 52 without mitigation, the Level of Service F operation on several lane groups is not disclosed in this table.

Other Comments

20. Accident Data. Other than a very brief description of the number of years of accident data collected and what appendix it is located in, there is no discussion of any kind regarding the relative safety record of roadways and intersections in the study area. For example, in 2000, at the intersection of Routes 300 and 32, there were 12 accidents of varying degrees of severity. It is not determined if this represents a particularly poor history (i.e., a hazardous intersection) or whether this location is typical of the safety record of similar locations (relative to number of lanes and traffic volume) throughout New York State. It is noted, however, that the accident rate for Route 300 in the study area has been generally well above the State wide average. A discussion of the accident history should be added, as should an evaluation of how this record may be impacted by the proposed project. This is particularly important at locations that have been identified as requiring/recommended for improvements.
21. Peak Seasonal Traffic Conditions. Section 3.6.16 is intended to cover conditions in the December pre-Holiday period. However, the following deficiencies are noted.
 - The referenced December 2003 counts cover only the intersections of Route 300 with Route 17K and Route 300 with the Thruway Exit 17/Unity Place.
 - The referenced copies of machine traffic counts, which were made in December 2004, apparently by John Collins Engineers, are found in Appendix F under the heading “NYSDOT Data.” The comparison of counted traffic volumes, referred to on page 3.6-27, is not found either in the text or in Traffic Appendix G.
 - Figures 2A and 3A contain the “regular” counts, not the December counts

- There is no documentation to support the claim that overall intersection traffic volumes are only slightly higher in December at the driveways of Newburgh Mall.
- The December analysis apparently uses the study's No-Build condition volumes and adds the projected December generated volumes from The Marketplace at Newburgh. Under this assumption the other shopping centers, and Newburgh Mall in particular, would have no December seasonal variations in traffic, a highly unlikely condition.
- The seasonal traffic figures in Appendix G cover only the revised intersections of Route 300 with I-87 and I-84. They do not cover any of the proposed site driveway intersections or any other intersections along Route 300.
- The results from the reported capacity analysis of December conditions are missing. Table 2A, referred to on page 3.6-28, is a comparative summary of the typical (non-December) capacity analyses for intersections 8-18 in the Existing, No-Build and Build conditions.
- Section 3.6.16 seems to minimize the conditions that would occur during the pre-Christmas shopping season. According to the ITE Trip Generation Handbook, Saturday peak hour volumes during the Christmas season run about 35 percent higher than the average Saturday volumes. Since Level of Service E on is projected several lane groups at the Route 300 access drive intersection and several other intersections under average conditions (and possibly at Level of Service F once the above corrections are made), it can be expected that unacceptable operating conditions will prevail during the Christmas season. The report text, on page 3.6-28, says only that "the intersections will experience longer peak hour delays and a traffic management program will have to be implemented to accommodate the expected future traffic volumes during these time periods." The report does not, and should, describe what kind of traffic management programs will, or can, be implemented. (Do they propose to close 35 percent of the stores?)

22. Traffic Simulation Analysis. Section 3.6.17 states that a Synchro/Sim traffic simulation was prepared "to evaluate the signal system operation and to define the signal timings and coordination for the existing and proposed traffic signals." The Synchro/Sim printouts are included in Traffic Appendix G; however, there is no discussion of these analyses in the main text, no explanation of the program or the methodology, and no conclusions presented as to what the results mean and whether an acceptable signal timing and progression can be established.

The Synchro/Sim traffic simulation also produced a Queue Length Summary Table, referred to in the text as Table Q-1, but designated as Table No. 3 in Traffic Appendix G. In this table it is noted that a number of calculated 95th percentile queue lengths are greater than the available queuing storage length. These instances should be identified, and measures to mitigate these conditions should be discussed.

At some new intersections the available storage lengths is reported as "N/A." For the Build condition these storage lengths can be obtained from the plans, and should be included in the Table 3.

23. Queue Lengths. The statement on page 3.6-25 that "...queue lengths and storage capacity at each intersection provides for a minimum of 15 vehicles" seems to be in error.

- At the intersection of Route 52 with relocated Meadow Avenue (Figure 3.6-14), the stacking distance between relocated Meadow Avenue and Route 52 is about 130 feet, which provides stacking for only six passenger cars (at an average queuing headway of 22 feet). The left turn lane from Route 52 westbound provides stacking for 10 cars.
- At the intersection of Route 52 with Fifth Avenue (Figure 3.6-15) , the northbound left turn lane on Route 52 is about 180 feet long, providing stacking for 8 cars. The Synchro/Sim traffic simulation, in Table 3, shows a 95th percentile Saturday queue length of 275 feet, or 13 cars.
- At the intersection with Route 300 opposite the Newburgh Mall driveway, the stacking lengths cannot be measured because Figure 3.6-13 does not cover enough area.

It should be particularly noted that the above stacking lengths are of necessity approximate because the distance keys (1"=?) have not been provided on Figures 3.6-13, 14 and 15, an absolute engineering drawing requirement.

Should your Board have any questions with respect to these comments we will be most happy to respond.

Respectfully submitted,



Nathaniel J. Parish, P.E., A.I.C.P.
For Parish Weiner, Inc.

cc: Supervisor Wayne Booth
cc: Members of Town Board
cc: Town Clerk, Andy Zarutskie
cc: Newburgh Capital Group LLC
cc: Keane & Beane, PC

J.G. (SPIDER) BARBOUR
ECOLOGICAL CONSULTANT
5 FISHCREEK RD.
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13 June 2006

To:

John L. Parker
Attorney-at-Law
565 Taxter Road, Suite 100
Elmsford, NY 10523

Marketplace at Newburgh Public Hearing Comments

In looking for a fitting analogy to what the developer's DEIS is trying to tell us about the Marketplace site, I thought of New York City's Central Park. Imagine a developer trying to convince New Yorkers, including the mayor and the Parks Commissioner, to allow a huge housing and commercial complex to be built in Central Park, arguing that the park is worthless as a natural area, since it is surrounded by apartment buildings, stores and skyscrapers. As to its wildlife habitat value, the park must also be worth little, since nothing but weeds and rats could possibly live there. Yet this is exactly what the DEIS says about the Marketplace site. I suspect that nothing could be further from the truth, but the truth is, we don't know. The developer's on-site biological survey tells us nothing useful, and twists the few facts we have to make its point about the site's worthlessness.

In 2003 there was a "bio-blitz" in Central Park. What's a bio-blitz? It's a bunch of biological experts – plant experts, bird experts, mammal experts, reptile and amphibian experts, insect experts – all getting together in one place for two days to try to find all the species they can. Guess how many species they found in Central Park? Over 800! Who would have thought there could be so many kinds of plants and animals in a city park entirely surrounded by streets, dense traffic, high buildings, and millions of people?

There has been nothing like a bio-blitz for the Marketplace site. The absence of necessary substantive investigation and evaluation regarding the ecological characteristics of the site renders its conclusions meaningless. From the evidence of the DEIS, the biological survey of the Marketplace site is one of the worst I have come across in over 25 years of biological consulting and survey work. I should point out that because I was denied access to the site, I cannot draw conclusions beyond those I have stated in this testimony. However, I have thoroughly analyzed and investigated the surrounding areas, which may be reasonably assumed to resemble the site.

My written commentary goes into more detail about the shortcomings of the developer's investigation of the site, analysis of information, and basic conclusions regarding the biology of the site. Here I would like to point out the most glaring problems.

No information is given as to who did the field survey, what methods were used, how much time was spent and when, or what the surveyors' credentials and qualifications are. This is an unacceptable omission entirely out of line with professional standards and practices. Besides, the town board, the concerned public and their chosen representatives have a right to know who performed this work.

Knowledge of the geography of the site – where the important habitats are located – is essential in reviewing any site plan. The standard procedure is to precisely map the habitats using GPS technology and GIS digital mapping. But the resulting maps are only as good as the groundwork that precedes them. I was stunned to see that in the DEIS, the habitat map for this project had only two habitat units: Northern Hardwoods and Hardwood Swamp. Other habitats are mentioned in the DEIS, including “isolated wetlands,” which could be vernal pools, a critical habitat for several rare salamanders. These are not mapped. The Quassaick Creek and its floodplain – known reservoirs of high biodiversity – are not mapped, though the creek is easily seen on the air photo in the DEIS.

One recent project of mine was a survey of the Quassaick Creek in 2003 and 2004 from the Hudson River in the City of Newburgh upstream to Algonquin Park across the street from the Marketplace site. My study was commissioned by the City of Newburgh and the Quassaick Creek Coalition, to provide supporting information for a planned urban park and trail system along the Quassaick Creek. I found the Quassaick Creek and its surroundings to be surprisingly rich in plant and animal species, even rare ones. I found two rare plants and a rare animal along the creek within the city itself. The situation was just like that of Central Park, as revealed by the Central Park bio-blitz.

Rare species issues are not addressed by the DEIS. The most important plants on the site were not identified to species, only to genus. The DEIS acknowledges that sedges (genus *Carex*) and an agrimony (genus *Agrimonia*) were found on the site during surveys conducted by the developer's consultant. These genera are significant because I found narrow-leaf sedge (NYS Endangered) and woodland agrimony (NYS Threatened) along the Quassaick Creek south of the site in 2003. Astonishingly, the consultant uses this failure to identify plant specimens to claim that no rare plant species occur on the site! Is the biological consultant deliberately not identifying plant specimens? Many plants require specialists to identify them, and in such cases, it is standard practice to call in these specialists to make accurate identifications. Obviously, this was not done.

Does this matter? Yes. It matters for two plants in particular, plants acknowledged in the DEIS to have been found on the Marketplace site. One was an agrimony; the other was a sedge. I found the rare woodland agrimony along Quassaick Creek in the heart of the City of Newburgh a few hundred feet from the Hudson River. I found the rare narrow-leaf sedge along Quassaick Creek less than a mile south of the Marketplace site. An agrimony and an unknown number (the DEIS doesn't say how many species) of sedges were found on the Marketplace site. The agrimony verdict: “probably” not woodland agrimony, but more likely downy agrimony, an unprotected species. “Probably” is not an acceptable scientific conclusion, particularly given the developers proposal which would remove the

entire site, through blasting and regrading, from a natural habitat to flat, featuresless imperious surface and big box retail. The sedge verdict: Except for the common tussock sedge, sedges were not identified to species, and are referred to as *Carex* spp. in the consultant's list of plant species found on the site. Yet they conclude that narrow-leaved sedge does not occur on the site. How and why? Because narrow-leaved sedge was "not identified on the site." to properly identify these species brings into question the thoroughness and validity of the entire section of the DEIS provided to the Board.

Perhaps most personally galling is this. The Marketplace DEIS refers to my Quassaick Creek study, but in what I see as an effort to condemn the Marketplace site as biologically worthless, it turns the main finding of my study on its head. My Quassaick Creek survey shows that jewels of biodiversity can be found in urban settings. The Marketplace DEIS contends that the existing development around the site isolates and degrades the site so much that development is the best possible use. This is in total disagreement with my conclusion that high biodiversity and urban development can and do exist side-by-side. The developer's is a self-serving conclusion that goes against what the real evidence proves about Quassaick Creek. Why should we conclude the opposite about the Marketplace site?

In summation, the DEIS has hardly any actual information on biological resources, and what it does provide is useless and falls far short of the basic requirements of State Environmental Quality Review. The developer has simply not addressed the issues. In terms of the biology of the site the DEIS provides no basis on which to make a decision regarding the Marketplace development proposal. Instead of conducting a bio-blitz, the developer's consultant has performed a bio-blip. Since the developer won't provide even the most basic information on biological resources, there is only one way to obtain this information. The town board should require the developer either to fund a thorough and professionally conducted study by qualified scientists, or to allow independent qualified scientists to study the site. SEQRA requires essential information on rare species and significant habitats be provided. The DEIS fails to do this. For these reasons, the DEIS is unacceptable. An independent biological study of the Marketplace site is needed, and should be required.

**Comments on The Marketplace at Newburgh
Draft Environmental Impact Statement
Prepared by: CEA Engineers, PC
May 31, 2006
CEA No. 06028**

CEA Engineers, P.C. (CEA) has reviewed the DEIS for The Marketplace at Newburgh and associated appendices along with the Storm Water Management Report and calculations. CEA's review was focused on wetlands and storm water management issues. CEA personnel were denied access to the site. As a result, all comments were based upon review of documents and photographs. The order of the comments is arbitrary and does not reflect the importance of any comment.

I. Wetlands

- 1) Our review of the wetland sections of these documents and related maps and aerial photographs from other sources suggest that some changes to the delineation of onsite wetlands may be warranted; however no formal opinion about the accuracy of the onsite delineation can be offered without site access and inspection of the subject wetlands.

II. Storm Water

- 1) Chapter 157-7, B of the Town of Newburgh code requires that stormwater management plans maintain the existing hydrologic characteristics of the watershed. The DEIS fails to demonstrate that stormwater runoff volume and the timing of stormwater discharge from the newly created detention basins will not adversely affect downstream structures or properties.
- 2) According to Town of Newburgh code Chapter 157-6, U, (8), structures which convey streams must be checked for capacity to carry 50 year flows. The DEIS indicates that the I-84 culvert will be reviewed in compliance with NYSDOT regulations, which are less stringent than those of the Town of Newburgh. No calculations are presented in the DEIS or Storm Water Management Plan that demonstrate the existing I 84 culvert is capable of carrying 50 year flows under post development conditions.
- 3) Town of Newburgh Code Chapter 157-5.E, (1) requires no change in upstream or downstream water surface elevations without agreement of the upstream and downstream property owners. No calculations are presented in the DEIS or Storm Water Management Plan that demonstrate through flood routing that no increase in water surface elevation will occur.

- 4) The applicant has not provided the "...profiles of the proposed drainage facilities, including their size and type of material" as required by Chapter 157-5, E, (4) of the Town of Newburgh code. We would request the necessary information be added for review.
- 5) Chapter 157-6, T of the Town of Newburgh Code requires that plans demonstrate safe overland conveyance of the one-hundred year storm through the development or site. The stormwater conveyance system was designed to convey a 25 year 24 hour storm event. The DEIS does not contain a demonstration that a 100 year storm event can be safely conveyed across the site.
- 6) The drainage boundaries shown for the site Drainage Areas are difficult if not impossible to read on drawings DA-1 and DA-2. The lack of clear drainage boundaries makes it extremely difficult for a professional to evaluate stormwater management for the site and makes it virtually impossible for the public to do so.
- 7) The Stormwater Management Plan describes Drainage Areas A and C as predominately consisting of Lawn/Landscaped areas. Drainage Areas A and C, as CEA is able to read the drainage area boundaries, appear to be predominately wooded. It appears that the areas of impervious cover and lawn/landscape areas are overstated. If so, the stormwater calculations for pre-development conditions would overstate the pre-development runoff because runoff rates (Curve Numbers) are higher for lawn/landscaped areas than for wooded areas. Because of the difficulty in reading drainage area boundaries, the amount by which predevelopment runoff may be overstated cannot be determine. We request the applicant provide drawings that clearly delineate drainage area boundaries and alter predevelopment runoff calculations if necessary.
- 8) As described in comment 7, above, the DEIS identifies Drainage Areas A and C as predominately consisting of Lawn/Landscaped areas. The pollutant loading analysis performed for pre-development conditions calculated the pollutant loadings from these areas assuming that the areas were predominately lawn/landscape rather than woods. Wooded areas were ignored in calculations of pollutant loadings. Lawns export significantly higher pollutant loads, particularly for nutrients (nitrogen and phosphorous) than do wooded areas. Lawns have runoff concentrations of 2.1 and 9.1mg/L for phosphorous and nitrogen respectively, while wooded areas have phosphorous and nitrogen runoff of 0.15 and 0.78 mg/L respectively.¹² Thus, by considering wooded areas as lawn/landscape, the DEIS grossly overstates the pre-development nutrient loadings from stormwater. Pre-development metals

¹ NYSDEC, "Reducing the Impacts of Stormwater Runoff from New Development" Division of Water, Bureau of Water Quality Management, April 1992.

² NYSDEC, "Stormwater Management Design Manual", Appendix A, 2001.

and sediment loadings are also overstated. For metals, the Metropolitan Washington Council of Governments document reports annual pollutant exports.³ Using the combination of impervious surfaces and lawn/landscape area a one acre zoned single family homes creates annual extractable Lead uncontrolled loading rates 9 times greater, extractable Zinc uncontrolled loading rates are 11 times greater, and sediment uncontrolled loading rates are 2 times greater than compared to a wooded area. The failure to consider pre-development pollutant export from wooded areas overstates the pre-development pollutant export and results in a false comparison with post-development conditions.

- 9) The Stormwater Management Plan states on page IV-3 that drainage area C-3 will direct its runoff to a "...sub-surface infiltration system..." Design Standards contained Chapter 157-6, B of the Town of Newburgh Code require that "Innovative stormwater management facilities may be proposed, provided that they are accompanied by detailed engineering plans and demonstrate performance capabilities that are acceptable to the Town Engineer." Infiltration systems are considered by the Town Code to be "innovative stormwater management facilities." The DEIS and supporting documents does not provide the required detailed engineering plans for the proposed system nor does it provide specific performance capabilities. We request the applicant provide such information. In addition, because use of infiltration systems is not allowed absent the approval of the Town Engineer, the DEIS should identify alternatives to infiltration for stormwater management.

³ MWCG, "Guidebook for Screening Urban Nonpoint Pollution Management Strategies", Metropolitan Washington Council of Governments, November 1979.

Hartgen Archeological Associates, Inc.
Cultural Resource Specialists

1744 WASHINGTON AVENUE EXT. RENSSELAER, NEW YORK 12144
 Phone: (518) 283-0534 Fax: (518) 283-6276 Email: Hartgen@hartgen.com

July 18, 2006

Bernie Buller
 Parish, Weiner, and Maffia, Inc.
 101 Executive Boulevard
 Elmsford, New York 10523

Re: Proposed Market Place Shopping Center

Dear Mr. Buller,

A preliminary archeological site file search was conducted between July 12 and 13, 2006 for the Market Place project. Materials documenting all OPRHP and NYSM archeological sites, National Register properties, National Register eligible properties, buildings-structures that had been inventoried by OPRHP, and previous archeological surveys within one mile of the project area were gathered. The results are as follows:

OPRHP Archeological Sites Within Project Area: None

OPRHP Archeological Sites Within One Mile of the Project Area: Five

1. 07114.000137 - Mahood Outbuilding Foundation Site (19th century)
2. 07114.000023 - Gardner Mill Remains (18th century)
3. 07114.000022 - Historic Farm Foundations (19th century)
4. 07114.000035 - Skyer Farm Buildings, Equipment, and Remains
5. 07114.000024 - Ice House (prior to 1903)

NYSM Archeological Sites Within Project Area: None

NYSM Archeological Sites Within One Mile of the Project Area: None

National Register Listed Properties Within Project Area: None

National Register Listed Properties Within One Mile of the Project Area: Two

1. 90NR02306 - Silas Gardner House - 1141 Union Avenue
 - Eighteenth-century structure
 - Residence of one of the original settlers (a Tory during the Revolutionary War, assisted Tories and British in their escape to Canada and NYC)
 - Gardnertown named for Silas Gardner

- 2. 97NR01150 - Orange Mill Historic District - Powder Mill Road
 - Located directly adjacent to the proposed shopping center project area
 - Site of the former black powder manufacturing complex and associated dwellings
 - District includes the archeological remains of the mill, worker housing, storage facilities, and office buildings
 - Dates of usage 1815-1908 (records show that the first milling enterprise, a saw mill, on this site began as early as 1790)

National Register Eligible Properties Within Project Area: None
National Register Eligible Properties Within One Mile of Project Area: None

Inventoried Buildings-Structures Within Project Area: None
Inventoried Buildings-Structures Within One Mile of Project Area: Seven

- 1. 07114.000088 - 25 Algonquin Drive
- 2. 07114.000091 - Fifth Avenue
- 3. 07114.000104 - Hudson Avenue
- 4. 07114.000103 - North Pierpont Road
- 5. 07114.000093 - 30 Pierpont Avenue
- 6. 07114.000151 - 6 Plattekill Turnpike
- 7. 07114.000122 - 15 Putnam Street

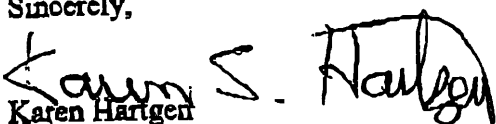
Previous Archeological Surveys Within Project Area: None
Previous Archeological Surveys Within One Mile of Project Area: Nine
 (Please see site file search results sheet for survey information.)

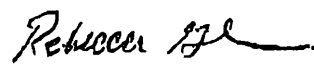
Thirteen historic maps were gathered showing the project area. These maps range in age from 1779 to 1946. A review of these historic maps revealed that there were no structures present within the project area between 1779 and 1946. However, there were numerous historic structures shown on the maps surrounding the project area.

Based upon the presence of five known archeological sites, a National Register Listed Property and a National Register Listed District (which is directly adjacent to the project area) all located within less than one mile from the project area, it is our opinion that a professional archeological investigation of this property is needed prior to any construction.

Please let us know if you need any more information regarding this project.

Sincerely,

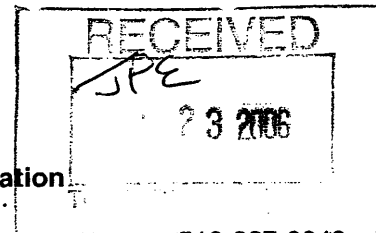

 Karen Hartgen
 Principal Investigator
 Hartgen Archeological Associates, Inc.


 Rebecca Glazer
 Senior Research Associate
 Hartgen Archeological Associates, Inc.



Bernadette Castro
Commissioner

New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189



518-237-8643

June 15, 2006

FILE COPY

Norma Jacobsen
Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, New York 12550

Re: CORPS PERMITS, DEC, DOT, FAA, SEORA
The Marketplace at Newburgh; 108 acre
development
NY 300 (Union Avenue); east of I-84 and 87
interch/Newburgh, Orange County
06PR02811

Dear Ms. Jacobsen:

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP) concerning your project's potential impact/effect upon historic and/or prehistoric cultural resources. Our staff has reviewed the documentation that you provided on your project. Preliminary comments and/or requests for additional information are noted on separate enclosures accompanying this letter. A determination of impact/effect will be provided only after ALL documentation requirements noted on any enclosures have been met. Any questions concerning our preliminary comments and/or requests for additional information should be directed to the appropriate staff person identified on each enclosure.

In cases where a state agency is involved in this undertaking, it is appropriate for that agency to determine whether consultation should take place with OPRHP under Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law. In addition, if there is any federal agency involvement, Advisory Council on Historic Preservation's regulations, "Protection of Historic and Cultural Properties" 36 CFR 800 requires that agency to initiate Section 106 consultation with the State Historic Preservation Officer (SHPO).

When responding, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Ruth L. Pierpont
Director

RLP:mam
Enclosure

ARCHEOLOGY COMMENTS
06PR02811

Based on reported resources, there is an archeological site in or adjacent to your project area. Therefore the Office of Parks, Recreation and Historic Preservation (OPRHP) recommends that a Phase 1 archeological survey is warranted for all portions of the project to involve ground disturbance, unless substantial prior ground disturbance can be documented. If you consider the project area to be disturbed, documentation of the disturbance will need to be reviewed by OPRHP. Examples of disturbance include mining activities and multiple episodes of building construction and demolition.

A Phase 1 survey is designed to determine the presence or absence of archeological sites or other cultural resources in the project's area of potential effect. The OPRHP can provide standards for conducting cultural resource investigations upon request. Cultural resource surveys and survey reports that meet these standards will be accepted and approved by the OPRHP.

Our office does not conduct cultural resources surveys. A 36 CFR 61 qualified archeologist should be retained to conduct the Phase 1 survey. Many archeological consulting firms advertise their availability in the yellow pages. The services of qualified archeologists can also be obtained by contacting local, regional, or statewide professional archeological organizations. Phase 1 surveys can be expected to vary in cost per mile of right-of-way or by the number of acres impacted. We encourage you to contact a number of consulting firms and compare examples of each firm's work to obtain the best product.

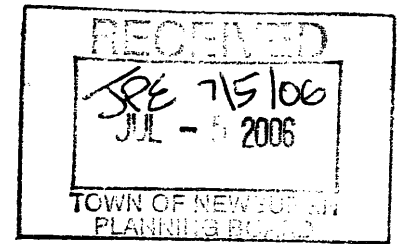
Documentation of ground disturbance should include a description of the disturbance with confirming evidence. Confirmation can include current photographs and/or older photographs of the project area which illustrate the disturbance (approximately keyed to a project area map), past maps or site plans that accurately record previous disturbances, or current soil borings that verify past disruptions to the land. Agricultural activity is not considered to be substantial ground disturbance and many sites have been identified in previously cultivated land.

Please also be aware that a Section 233 permit from the New York State Education Department (SED) may be necessary before any archeological survey activities are conducted on State-owned land. If any portion of the project includes the lands of New York State you should contact the SED before initiating survey activities. The SED contact is Christina B. Rieth and she can be reached at (518) 402-5975. Section 233 permits are not required for projects on private lands.

If you have any questions concerning archeology, please contact Michael Schifferli at 518-237-8643. ext 3281



FILE COPY



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
REGION EIGHT
4 BURNETT BOULEVARD
POUGHKEEPSIE, NEW YORK 12603
www.dot.state.ny.us

ROBERT A. DENNISON III, P.E.
REGIONAL DIRECTOR
June 29, 2006

THOMAS J. MADISON, JR.
COMMISSIONER

Ken Wersted
Creighton Manning Engineering, LLP
17 Computer Drive West
Albany, NY 12205

RE: Proposed Marketplace
Route 52, 300
Town of Newburgh, Orange County

Dear Mr. Wersted:

The Department is in the process of reviewing the plans and documents associated with the proposed Marketplace development in Newburgh. The following are preliminary in nature and should not be considered the Departments final comments.

1. The methodology utilized in the traffic impact study, including the existing traffic volumes, background growth rate of 1.5%, trip generation rates and no-build traffic volumes appear to be reasonable.
2. The Department suggests, in the interest of providing a conservative estimate, that a 15% pass-by credit be used to develop the build traffic instead of the proposed 25% pass-by credit.
3. A Synchro traffic simulation model, build and no-build, will be required for the entire impacted road network. This will help the Department evaluate the impacts of the project and the proposed mitigation.
4. The proposed access layout along Route 300 appears reasonable.
5. The intersection of Route 52, Site drive, Powder Mill Road and Meadow Avenue should be evaluated as a roundabout, as well as a signalized intersection (as proposed).
6. The proposed access drive at the intersection of Route 52 and 5th Avenue is a serious concern. The operation of the intersection and its proximity to the Exit 8 ramps will require significant, detailed review by the Department.

The Department will continue to provide comments and work with the involved agencies as this project progress thru the SEQR process.

If you have any questions, please contact me at (845) 575-6054.

Very truly yours,

Glenn T. Boucher
Civil Engineer II

GTB:lm1

cc : S.Zachariah-Carbone, Permit inspector, Res. 8-4
A. Shareef, Planning & Program Management
Town of Newburgh Planning Board
Philip Grealy, John Collins Engineers



McGOEY, HAUSER and EDSALL
CONSULTING ENGINEERS P.C.

RICHARD D. MCGOEY, P.E. (NY & PA)
WILLIAM J. HAUSER, P.E. (NY & NJ)
MARK J. EDSALL, P.E. (NY, NJ & PA)
JAMES M. FARR, P.E. (NY & PA)

4 October 2005

Town of Newburgh
308 Gardnertown Road
Newburgh, NY 12550

ATTENTION: John Ewasutyn, Planning Board Chairman

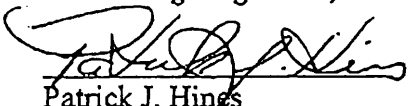
**SUBJECT: Town of Newburgh Market Place Ecological Survey Evaluation/Threatened
Endangered Species Review**

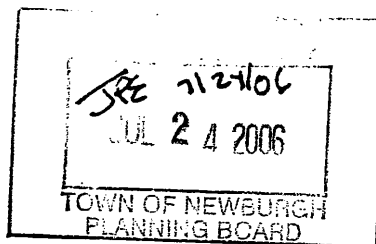
Attached, under cover of this letter, please find the CV for William Schuster. I have retained Mr. Schuster's services to evaluate the ecological surveys performed for the Market Place Mall. More specifically impacts to Quassaick Creek as identified in the Quassaick Creek bio diversity survey. Mr. Schuster is aware of the bio diversity survey which was undertaken. Mr. Schuster is currently the director of the Black Rock Forest Consortium and as you can see from his attached resume he is more than qualified to evaluate the ecological resources on the subject site.

Mr. Schuster has informed the undersigned that he would be performing his evaluation and field work during the last week of July, first week of August, and providing his response to this office soon thereafter. Mr. Schuster has been retained by this office with billing through our office to the Town Planning Board. I have provided Mr. Schuster with a hard copy of the DEIS as well as the website for the reports. In addition, I will be obtaining a copy of the public hearing transcripts which identifies the individual concerns received from the public.

Very truly yours,

McGoey, Hauser & Edsall
Consulting Engineers, P.C.


Patrick J. Hings
Associate
pjh:klh



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Parish & Weiner Inc.

PLANNING, DEVELOPMENT AND TRAFFIC CONSULTANTS

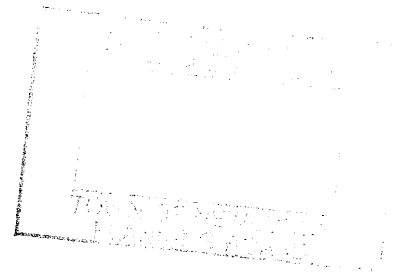
101 Executive Blvd., Elmsford, NY 10523

914-345-9230 212-594-6008 Fax: 914-345-8972
pwm101@verizon.net

Nathaniel J. Parish, P.E., A.I.C.P.
Michael Weiner, A.I.C.P. (1938-1995)
Bernard Buller, A.I.C.P.

Senior Consultants

George M. Raymond, A.I.A., A.I.C.P.
Richard Hyman, A.I.C.P.
John Sarna, P.E., I.T.E.



7/31/06

Mr. John P. Ewasutyn, Chairman
and Members of the Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, NY 12550

Dear Chairman Ewasutyn and Members of the Board:

Re: The Marketplace: DEIS public hearing comments

I am writing as a consultant to Newburgh Capital LLC, the lessees of The Newburgh Mall.

I am a licensed professional engineer in the State of New York and a full member of the American Institute of Certified Planners ("AICP"). For the past forty years I have been a principal and now President of the firm Parish & Weiner, Inc. and its predecessor firm. In that capacity I have prepared and supervised the preparation and review of planning studies for land development projects and environmental impact studies for those projects.

Since the enactment of the New York State Environmental Quality Review Act (SEQR) in 1976, I have, for over 100 projects prepared, supervised or reviewed environmental impact reports submitted in accordance with the SEQR part 617 regulations. The clients for these services have included: private and non-profit real estate developers proposing specific projects; governmental agencies proposing specific projects, and/or reviewing specific project proposals; neighborhood groups and/or individuals with concerns about specific projects proposed by other entities.

My professional resume is attached to those copies of this letter which are transmitted by fax and mail.

This letter is intended to summarize comments which I, and other experts, have submitted for the public hearing and for the public record, as well as several additional comments that are important and germane to your review.

My conclusion is that the errors and deficiencies of the DEIS, singly and collectively, are such that a supplementary DEIS and a subsequent public hearing must be required by your Board. The public hearing and review process has been flawed. The text and analysis of the DEIS are deficient and in error in a number of subject areas, and these are of such extent and importance that the public, interested parties, and involved agencies have been deprived of the opportunity to have accurate knowledge about significant impacts, and have also been provided with inaccurate and deficient analyses of evaluations of significant impacts.

The flaws in the public review process

The interested parties have been deprived access for the project site. Thus, they and their professional consultants have been unable to prepare a full evaluation of impacts on: wetlands, threatened endangered and rare species, storm water flow, cultural and archeological impacts.

Throughout the course of my preparation or review of more than 100 projects for which there have been DEQR submissions, I can recall no instance of a property owner or developer denying reasonable access to a property for the purposes of physical inspection by interested parties, their consultants, or the public at large. In fact, the contrary is normally true; the project developer's invite such an inspection as part of the public review process - obviously to establish that they have nothing to hide.

At the first public hearing, the local representative of the applicants was placed alone at a table in front of the lead agency, facing, and within several feet, of public hearing speakers. I noted his varying facial expressions. These, and his very presence, were obviously intimidating to some of the speakers. Others may have been discouraged from speaking. In all my over 35 years of attending public hearings, I have never witnessed a similar scenario.

Wetland Impacts

The DEIS informs that there are at least five wetland areas on the site and a number of water courses. The mitigation proposed for wetlands to be filled is inadequate in terms of the ratio of wetlands destroyed to wetlands purported to be added. There is insufficient data provided as to the potential for success of the new wetlands to be created.

A major wetlands area, Wetlands "B", with almost five acres of wetland area, is to be obliterated with no mitigation proposed. The DEIS asserts is that there is no governmental jurisdiction over this wetlands. As I discuss below, this conclusions needs to be reviewed. However, even if a thorough review and analysis affirms this conclusion, it does not relieve the Planning Board from its site plan and SEQR review functions which require that any impacts be mitigated to the

maximum extend possible. There is no justification for the removal of a five acre wetland without any mitigation. The one and only reason for its removal is the applicant's objective of maximizing development of the site. That is not a sufficient reason for the Planning Board not to require an alternate plan.

The conclusion that Wetland "B" is not a wetland under U.S. Army Corps of Engineers jurisdiction is apparently based on a prior interpretation of the Federal law. However, recent Supreme Court decisions are causing a review of previous jurisdictional determinations. A Corps of Engineer website, First Gov, last updated 7/18/2006, informs:

"in the wake of the recent Supreme Court decisions in United States v. Rapanos and United States v. Carabell, the U. S. Army Corps of Engineers and the Environmental Protection Agency are examining the methods in which we describe and document Jurisdictional determinations (JDs) pursuant to the Clean Water Act (CWA)."

The Planning Board must await a current determination as to whether, under the new rulings, Wetland "B" would fall under U. S. Army Corps of Engineers jurisdiction. If so, it would absolutely require a change in the plan inasmuch as there would be no basis for filling the wetland in order to construct the "Village Center shopping area" portion of the plan.

The applicant's failure to allow access to the site for physical inspection by consultants to interested parties makes it impossible to determine whether the applicant's assertions as to wetlands delineation and jurisdiction are accurate. There are substantial reasons for requiring such a review and these are discussed below.

The applicants presented Maps W-1 and W-2, Wetlands Survey map which purport to delineate wetlands found on the site by the applicants consultant Chazen Engineering and Land Surveying Co. P.C. and which note, in the DEIS text, the governmental entity, if any, assumed to have regulatory jurisdiction over those wetlands.

The delineation of wetlands boundaries are often subject to varying interpretations by professional wetlands experts, as are decisions on the matter of whether they should properly fall under governmental jurisdiction.

Therefore it is of utmost importance that interested parties are afforded the opportunity for their experts to either confirm or provide differing information with respect to these issues.

The easterly boundary of Wetlands "B" is within approximately 400 feet of the boundary of Wetlands "A" which is 9.69 acres, and also shown on map W-1.

If instead of being separated Wetlands "A" and "B" were to be connected, they would fall under New York State Department of Conservation ("DEC") jurisdiction as the total area would exceed

the D.E.C. 12.4 acre criteria. It is doubtful that the obliteration of Wetlands "B" would be permitted by D.E.C., and Wetlands "A" would be required to have a 100 foot surrounding buffer area, which would then require a major change in the project plan.

There is a possibility that Wetlands "A" and "B" should be delineated as one contiguous area. Spot elevations within a corridor between the two wetlands are within a 362-363 range. Spot elevations within Wetlands B are within a 365-369 range, and within Wetlands A they are within a 345-347 range. Thus, from these elevations, there is a basis for assuming water flow from Wetland B, through the corridor to Wetland A, and the possibility that the soil and wildlife species within the corridor provide a basis for the two wetlands to be delineated as one contiguous area. This hypothesis can neither be confirmed nor discounted without a physical examination of the site.

Wetlands survey Map W-1 shows Wetlands C, a 0.52 acre area identified as a federal ("COE) wetland, and a Wetlands Survey map W-2 identifies Wetland D, 1 0.06 acre wetland also identified as an COE wetland, and Wetland E, an area of 1.47 acres which is not identified as an COE wetland.

Wetlands Survey Map W-2 shows that wetlands "D" and "E" are connected by the Quassaick Creek and north of Wetlands E, the Quassaick creek connects with Winona Lake and north of Winona Lake the Quassaick creek continues for a long distance to the north.

The mapped connection of Wetlands "D", "E", the Quassaick Creek and Winona Lake raise a question as to whether the entire wetlands/watercourse/water body system should not be considered in its combined form as an aquatic system that falls within the jurisdiction of either COE or DEC, or both. A determination as to whether an interested party can confirm or discount this possibility cannot be finally determined without a physical inspection. If such a jurisdiction were to be established, there is a substantial question as to whether the road which is proposed to bisect the wetlands complex would be permitted. If not permitted the applicant's traffic plan will not hold up.

Comments on the project were prepared for the DEIS record by CEA Engineers PC, May 31, 2006, a prominent and highly respected engineering firm. On the subject of wetlands they concluded:

"Our review of the wetland section of these documents and related maps and aerial photographs from other sources suggest that some changes to the delineation of onsite wetlands may be warranted; however, no formal opinion about the accuracy of the onsite delineation can be offered without site access and inspection of the subject wetlands."

Storm Water Impacts

The report submitted by CEA Engineers PC ("CEA), documented the deficiencies in the storm water analysis in terms of the assumed design storm calculations, ground-cover assumptions, pre-development flow assumptions and the adequacy of the plan for avoiding downstream flooding impacts and degrading the water quality of off-site runoff.

In their review of storm water impacts CEA took issue with a number of DEIS assumptions. These assumptions can only be fully confirmed or required to be revised after a field inspection of the site. Among the issues that CEA found that required further field study:

- a. Drainage area boundaries
- b. Types of existing round cover; whether areas are lawn/landscaped areas or are wooded areas. The characterization is important as it affects assumption of calculations of the development site nutrient loading, and ultimately the calculations of the effectiveness of the water quality plan.
- c. The areas within which subsurface infiltration systems, an innovative storm water management facility are to be placed. If field inspection were to reveal that it is not likely that the areas suggested for these facilities will result in feasible treatment other solutions and their impacts would need to be considered.

Rare, Threatened and Endangered Species

This subject was almost totally ignored in the DEIS. This is confirmed by a letter from the McGoey, Hauser & Edsall, P.C. (“MHE”) the Board’s review engineers (1)

The MHE letter informs the Board that they have retained a consultant, William Schuster, to “evaluate the ecological resources on the subject site” It further informs that “..he would be performing his evaluation and field work during the last week of July, first week of August and providing his response to this office soon thereafter”. Thus this important information was not available for public review and comment when the public comment period ended on July 31st. It is obviously information which should have been in the DEIS.

The deficiency of the DEIS was noted by J. G. (Spider) Barbour (“Barbour”), a highly respected ecological consultant, in a comment paper on June 15, 2006, which is included in the public hearing record. Mr. Barbour had conducted a study of the Quassaick Creek, in 2003 and 2004, for the City of Newburgh and the Quassaick Creek Coalition. This creek flows adjacent to and within, a portion of the project area.

(1) The date of the letter is confusing. It is noted as 4 October 2005 on the firm’s letterhead copy, yet is stamped as having been received July 24, 2006 by the Town of Newburgh Planning board.

Barbours comments establish:

- a. That a detailed professional field study to determine whether there are or are not rare plant species was not performed in the DEIS.
- b. That there are rare species, woodland agrimony and narrow-leaf sedge in the vicinity of the project, raising the distinct possibility that they exist within the project itself.
- c. The possibility that isolated wetlands on the site could be vernal pools which are a critical habitat for certain rare salamanders.
- d. A field inspection is required in order to properly determine whether the site does or does not contain threatened, endangered or rare species or wildlife.

Obviously, the consultant now retained by MHE will be performing the field inspection and report preparation that should have been in the DEIS. But, without access to the site, the interested parties will have no way of determining whether the survey is complete and accurate.

The results of the Schuster survey must be reported in a Supplementary DEIS.

Cultural Archeological Resources

The New York State Office of Parks, Recreation and Historic Preservation Office (OPRHP) in a June 15, 2006 letter informed the Board that it would require a Phase I archeological survey. There was absolutely no information on the subject provided in the DEIS.

The OPRHP letter confirms the conclusions reached by Hartgen Archeological Associates, Inc. ("Hartgen") Cultural Resource Specialists, a firm which has performed many archeological and cultural resource studies throughout the Hudson Valley and the State of New York. They prepared a comment report, dated July 18, 2006, which has been transmitted for insertion in the public hearing records.

The Hartgen report summarizes its findings based solely on a preliminary archeological site file search. Customarily such a preliminary study would include a field review of the site, but that was not permitted by the applicant.

The Hartgen report concluded: "Based upon the presence of five known archeological sites, a National Register Listed Property and a National Register Listed District (which is directly adjacent to the project area) all located within less than one mile from the project area, it is our opinion that a professional archeological investigation of this property is needed prior to any construction.

It is my experience that this type of professional investigation always includes a field review of the site. If interested parties and the consultants are denied access to the site they would be unable to provide knowledgeable comments with respect to whatever conclusions are reached by the applicants consultants.

The Cultural Resources Survey, when completed, just be included in a Supplementary DEIS.

Traffic Impacts

My comment letter July 28, 2006 discussed in detail the major deficiencies of the DEIS Traffic studies. The incorrect assumptions of traffic to be generated, omission of "no build project traffic", incorrect assumptions as to existing physical conditions, permissible movements, and the total lack of information as to the feasibility and acceptability by the various governmental

jurisdictions of the various mitigation proposals - - singly and together, establish that this traffic report is neither a valid analysis of project impacts, nor a presentation of the mitigation which is required to address impacts.

Traffic is certainly one of the most critical impacts is a shopping mall of this mega-scale. The Board cannot continue to process this application until it and public are presented with a new traffic report. This must be done in the form of a Supplementary DEIS which the public can review and comment on.

Rock Excavation and Blasting

The DEIS informs that there will be a huge amount of rock excavation, in many areas of the site. The cut will exceed 40 feet and reach 50 feet or more. Virtually all of the trees on the site will be removed.

The DEIS does not adequately study blasting impacts on surrounding properties and their wells. It presents some text on blasting theory, and boiler plate language on presumed protection, but it does not contain an analysis of the expected impacts, the type of analysis normally provided by an experienced geological engineer.

The DEIS does not describe the air quality impacts of tree removal in an area in which increased vehicular travel will no doubt increase already high levels of air pollution. Air quality impacts of excavation and rock crushing are not examined.

The DEIS does not examine the huge and extended noise impacts during the excavation (blasting) rock crushing over an extended period of time.

Alternatives

One of the most critical deficiencies of this DEIS is its total failure to include a consideration of alternative plans which would address, or at least mitigate the major impacts that the proposed plan will generate. It is certainly customary and appropriate for a lead agency to require an applicant to present and analyze plans which will have a lesser adverse impact, particularly where, as in this case, the impacts will be most severe.

The obliteration of a five acre wetland, the denuding of all of the trees and vegetation within an almost 200 acre site, the excavation of 40 feet of rock within many portions of the site, and the severe traffic congestion which will occur at many intersection proximate to the site -- singly and together require the presentation and consideration of alternatives which will sharply reduce the scale of the proposal and/or provide a mix of land uses which will have lesser impacts.

The developer does not have an inherent right to develop the site to 100% of its theoretical zoning capacity. That is the maximum permitted development. But, it is within the Planning Board's site plan and SEQR review functions to require the developer to consider and present lesser impact plans - - and for the Board to ultimately determine which of those plans will best address the public interest and have the least adverse impacts on the

neighborhood. Thus far, the Board does not have those alternatives, and it must obtain them and present them for public review in a Supplementary DEIS.

I will be happy to address any questions that the Board may have.

Respectfully submitted,

Nathaniel J. Parish, P.E., A.I.C.P.
Parish & Weiner Inc.

Cc: Supervisor Wayne Booth
Members of Town Board
Town Clerk, Andy Zarutskie
Newburgh Capital Group LLC
Keane & Beane, PC

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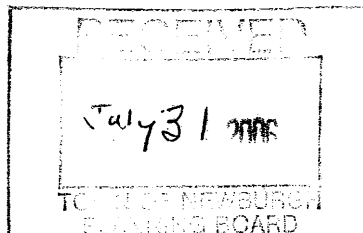
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John Sama, P.E., I.T.E.



JPE/NS

July 28, 2006

Mr. John P. Ewasutyn, Chairman
and Members of the Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, New York 12550

Dear Chairman Ewasutyn and Members of the Board:

I am writing as a consultant to Newburgh Capital LLC, the leasees of The Newburgh Mall. The comments which follow are with respect to the traffic impacts of The Marketplace at Newburgh, and are intended for the DEIS public hearing record.

The technical review was conducted by my colleague John Sama, P.E., I.T.E., a traffic engineer with a long history of preparation of traffic impact studies for major development projects as well as extensive experience in the review of projects for public agencies.

As you will find in your review of these comments, the traffic study in this DEIS contained important errors and many deficiencies. As a result we anticipate that a properly performed study will reveal that a number of key intersections will operate at a Level of Service F, a condition of great congestion and long delays. These are conditions which are not acceptable and would make it impossible for your Board to reach the required finding that adverse impacts have been reduced to the maximum extent feasible.

Of particular concern to our client is that, when properly corrected, the analyses will show levels of service F, at The Newburgh Mall driveway and along other Rt. 300 intersections. There is no basis for your Board to accept this level of degradation of the area's traffic arteries.

It is important to focus on the assumptions in the DEIS that a number of mitigation proposals require physical improvements, and possibly land acquisition at intersections not under control of the applicant. Your Board and the public need to know that these improvements are feasible and that there is assurance that they will be installed before the project is operational. That information will need to be supplied in a Supplementary D.E.I.S.

It is unlikely that a corrected Traffic Analysis will find that all of the study intersections can be improved to operate at a satisfactory level of service. Accordingly, the only remaining

possible mitigation will be to require a sharp reduction in traffic generation through a reduction in the size of the project and/or introduction of land uses that have a lesser traffic generation. These alternatives should be examined in The Supplementary D.E.IS.

The review raises a number of questions covering both the completeness and the technical content of the DEIS. Because of the extensive nature of these comments, and because they may affect the findings and conclusions of the DEIS, these comments must be addressed in a Supplementary DEIS, prepared so that the Lead Agency, other involved agencies and the general public can review these changes and assess their impact on the project. This must be done prior to the preparation of the Final Environmental Impact Statement.

This review covers Section 3.6 – Traffic and Transportation – of the Draft Environmental Impact Statement for The Marketplace at Newburgh, dated April 4, 2006, prepared by Tim Miller Associates. The review covers the following sources.

- The text, tables and traffic figures from the DEIS Traffic and Transportation Section
- Appendix G of the DEIS, which includes the Traffic Impact Study (TIS), dated September 14, 2005, prepared by John Collins Engineers, P.C., including the Appendices and supporting material, taken from the Public Review link on the Tim Miller Associates website
- A CD titled “The Marketplace at Newburgh, Draft Environmental Impact Statement, 04/04/06,” which is understood to be an integral part of the DEIS.

Although the Traffic Impact Study forms the basis of the DEIS Traffic and Transportation Section, this review concentrates on the text portion contained in Section 3.6 of the DEIS.

This review is organized into two parts. The first part contains a short list, in condensed form, of the major comments contained in the review. The second part includes the detailed comments covering both the completeness and the technical accuracy of the DEIS.

PART 1 – MAJOR COMMENTS

- Generated traffic from the six “other potential” developments was not included in the 2008 No-Build or Build condition traffic volumes, thus understating the future traffic at many, if not all, locations.
- The pass-by factor for site-generated traffic has been incorrectly applied, resulting in an understating of traffic at the three intersections of the site access roads with the surrounding road system.
- Road improvements have been identified and incorporated into the analysis at a number of locations on the State highway system. There is no timetable given for these improvements, no documentation that the State is planning such improvements or has them on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for these improvements. The DEIS is not clear as to which, if any, improvements will be fully funded by the Applicant. Any improvements which are not

likely to be in place by the time that the development is opened should not be considered in the analysis.

- The existing road configuration has been incorrectly reported at two locations, and has been incorporated into the capacity analyses.
- At the intersection of Route 300 and the site access drive a nonconforming traffic signal operation has been incorporated into the capacity analysis.
- Trucks and other heavy vehicles were not counted separately during the traffic counts, and the effect of these heavy vehicles may not have been factored into the capacity analyses.
- The section on Peak Seasonal Traffic Conditions, Section 3.6.16, is incomplete, some of the referenced material in Traffic Appendix G, including the summary of the capacity analyses, appears not to have been included, and there are no documented conclusions. A Traffic Management Program is mentioned, but without description, and no details are given.
- The use of appendices to present data and other material is confusing. The DEIS contains eight Appendix sections, of which Traffic and Transportation is Appendix G, but the Traffic Impact Study also contains eight Appendix sections, including an Appendix G. In addition, some of the traffic appendices are found in Appendix G on the website, some on the CD, and some on both. {Note: In this review the appendices in the Traffic Impact Study are referred to as "Traffic Appendix."}

PART 2 – DETAILED COMMENTS

Existing Road Conditions

1. At the intersection of Route 300 and the Newburgh Mall South Driveway, the road inventory in the traffic analysis includes a southbound right turn lane. This lane does not currently exist.
2. At the intersection of Route 300 and Route 52, the capacity analysis includes a 10-foot wide eastbound right turn lane. This lane does not currently exist. There is a paved shoulder, but it is only 7½ feet wide, and is too narrow to accommodate either moving traffic or queues. Long single-lane queues were observed during a weekday mid-afternoon on this single-lane eastbound approach. The capacity analysis will have to be re-run here, and a poor level of service may result.

No-Build Condition

3. The No-Build and Build conditions timetable used in the traffic analysis assumes a project completion in 2008. This may be somewhat optimistic given the size and complexity of the project, and especially in view of the significant level of off-site roadway and operational improvements, most of which are on State highways, listed as required to mitigate project impacts. A "design" year of 2010 would be more realistic.

4. The traffic study, on page 3.6-10, lists six other potential developments in the area, but does not give their size (floor area), the amount of traffic estimated to be generated by these developments, or the distribution of this traffic to the road system. Without such information it is not possible to confirm that appropriate levels of traffic were added to the surrounding streets. Moreover, see the following comment.
5. The traffic study, on page 3.6-10, lists six projects which were included in the No-Build condition. However, it does not appear that traffic from any of these projects was actually included in the No-Build traffic projections. The No-Build volumes shown in Figures 3.6-5 and 3.6-6 are exactly six percent higher than the existing traffic volumes shown in Figures 3.6-3 and 3.6.4, and this represents only the background growth, four years (2004 to 2008) at 1.5 percent annually. This would mean that the projected volumes are understated in both the No-Build and Build condition at all intersections, or at least at all of the intersections along Route 300. The capacity analyses will have to be re-run for all of these intersections for both the No-Build and Build conditions, and with certain lane groups projected in the traffic analysis to operate at Level of Service E and /or with volume/capacity (v/c) ratios in excess of 0.95 at five of the intersections along Route 300, it is likely that some Level of Service F conditions will occur once the additional generated traffic from these developments is factored in.

Build Condition

6. The 25 percent pass-by percentage used in the analysis is too high. The ITE Trip Generation Handbook suggests, for an 850,000 SF shopping center, percentages of 21 percent for the weekday P.M. peak hour and 18 percent for the Saturday peak hour (see Figures 5.5 and 5.7 in the ITE Handbook).
7. The site-generated traffic estimates, shown in Table 3.6-5, include a 25 percent pass-by factor. It seems, however, that the pass-by factor has been incorrectly applied, and does not conform to the accepted methodology. It appears that the report has simply reduced the generated traffic across the board by 25 percent. The correct method, as set forth in the ITE Trip Generation Handbook, is to apply the full entering and exiting traffic volumes at all of the site driveway intersections, diverting the pass-by percentage traffic from the passing through movements. Since the pass-by factor was not correctly applied, the Build condition traffic projections at the three site driveway intersections are understated. Considering that Level of Service E conditions are projected on four lane groups at the intersection of the site driveway with Route 300, it is likely that a recalculation of the capacity analysis at this location will result in projected Level of Service F operations.
8. The directional distribution of the site-generated traffic needs more than the one sentence explanation on page 3.6-15. According to Figures 3.6-7,8, the distribution of traffic to and from The Marketplace at Newburgh is 21 percent to and from north of the site, 74 percent to and from south of the site (including I-84), and five percent to and from Newburgh Mall. The DEIS states that the traffic counts at the New burgh Mall driveways were used as one of the criteria in setting these distributions. However, according the counts at the Newburgh Mall (see Figures 3.6-3,4), the distribution traffic to and from the north should be higher. This is shown in the following comparison table.

COMPARISON OF DIRECTIONAL DISTRIBUTIONS

	The Marketplace At Newburgh	Newburgh Mall			
		Arrive		Depart	
		Weekday	Saturday	Weekday	Saturday
North	21%	24%	30%	34%	37%
South	74%	76%	70%	66%	63%
Newburgh Mall	5%				

Note also that because of the minor Newburgh Mall access to Meadow Avenue the north distribution could be slightly higher.

The directional distribution of site-generated traffic needs to be better documented.

9. According to the directional distributions shown on Figures 3.6-7,8, The route 300 access drive would handle 61 percent of the arriving traffic and 53 percent of the departing traffic, while the Route 52/Fifth Avenue driveway would handle 27 percent of the arriving traffic and 34 percent of the departing traffic. The major reason seems to be that all of the traffic arriving on I-84 from the west is assumed to enter via the Route 300 driveway, while one half of this traffic is assumed to exit via the Route 52/Fifth Avenue driveway. This needs to be explained and justified.

Mitigation Measures

10. The DEIS has identified a number of road improvement measures intended to mitigate the impacts of the additional site-generated traffic, as well as to address problem areas which already exist or will exist in the 2008 No-Build condition. Many of these measures have been assumed as being implemented in the 2008 No-Build and Build conditions. These include the following.

- Route 300 and Newburgh Mall South Driveway – construct new access drive to The Marketplace at Newburgh, add turning lanes on Route 300, reconfigure the driveway to Newburgh Mall, possibly acquire additional right-of way on the southeast corner, install a traffic signal
- Route 52 and Meadow Avenue/Powder Mill Road - construct new access drive to The Marketplace at Newburgh, relocate Meadow Avenue, add turning lanes, upgrade the existing signal installation
- Route 52 and Fifth Avenue - construct new access drive to The Marketplace at Newburgh, construct northbound left turn lane on Route 52, reconfigure the Fifth Avenue intersection approach, install a traffic signal
- Route 52 and I-84 Ramps – Widen the westbound exit ramp to provide a longer right turn lane, construct a right turn lane on the northbound Route 52 approach to the eastbound ramps, upgrade the existing traffic signals at both ramp intersections and interconnect them with the new signal at Fifth Avenue/access drive to The Marketplace at Newburgh

- Route 300 and Route 52 – Construct left turn lanes on the Route 52 eastbound and westbound approaches, construct a right turn lane on the Route 52 eastbound approach, possible property acquisition, upgrade the traffic signal
- Route 300 and Newburgh Commons Driveway - Install a traffic signal
- Interconnect the traffic signals along Route 300 between I-84 and Meadow Avenue/Meadow Hill Road
- Route 300 and Route 32 – Construct turning lanes and upgrade the traffic signal. (According to the DEIS these improvements are currently being completed. The DEIS should include an estimated date of completion).

Section 3.6 of the DEIS does not state which improvements are to be paid for by the Applicant. One would expect that the first three listed above, those involving the access drives into the shopping center, would be the total responsibility of the Applicant. For the other improvements (excluding the intersection of Routes 300 and 32), there is no indication as to who would be responsible and who would pay for them. There is no timetable given for these improvements, no documentation that the State is planning such improvements or has them on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for these improvements. All of these improvements are on State highways, and some may require property acquisition. Unless these improvements can reasonably be expected to be completed by the time that the shopping center is opened, they should not be included in any analyses of the Build conditions. The locations at which these conditions apply are discussed in further detail in the following Capacity Analysis section.

Capacity Analysis

11. Prevailing truck traffic does not seem to be taken into account. With a location on two state highways and near the interchange of two interstate highways, and with a nearby airport, a fairly high amount of truck traffic should be expected. The raw traffic counts do not show that any separate counts were made of truck traffic, and there is no indication as to what heavy vehicle percentage, if any, was used in the capacity calculations. If a default of two percent was used, it is probably too low, and the resultant calculations may show better operations than are likely to exist.
12. The intersections of Route 300 with Meadow Avenue, Route 52 and the Stop & Shop Driveway are analyzed with advanced (leading) protected green arrow phases on the Route 300 approaches. Field observations indicate that these are actually delayed (lagging) turn phases. (This may also be true at other intersections as well.) This may affect the results of the capacity analyses.
13. The capacity analyses at all of the signalized intersections assume full actuation. This needs to be confirmed. Some of them appear to be operating as semi-actuated installations.
14. At the intersection of Route 300 and the Newburgh Mall South Driveway/Marketplace Access Drive, the capacity analysis for the Build condition shows the thru eastbound movement (from Newburgh Mall) moving on the same signal phase as the opposing

westbound two-lane left turn exiting from The Marketplace. This appears to be a non-conforming operation. The New York State Department of Transportation generally does not permit a signal operation where a two-lane left turn operates in the same signal phase with an opposing through movement. Either a separate signal phase would have to be provided for the eastbound through movement, which would adversely affect the operation of the signal, probably moving it into Level of Service F operation, or the eastbound movement would have to be prohibited and the exit limited to right turns, as at present, in which case the eastbound through movement would have to be reassigned to a right turn at the north driveway and a left turn into The Marketplace access drive.

15. At the intersection of Route 300 and Route 52, the capacity analysis for the 2008 Build condition, summarized in Table 3.6-6, assumes that mitigation measures, including the provision of eastbound and westbound left turn lanes (as well as assuming a full operating eastbound right turn lane, which does not exist at present – see Comment 2 above) will have been implemented. Even with these improvements Level of Service F is projected for two lane groups in the weekday P.M. peak hour. Without the improvements, however, the capacity analyses, shown in Table 2 in Appendix G and in the capacity computation printouts, shows Level of Service F operations on several lane groups in both peak hours, as well as for the overall intersection in the weekday P.M. peak hour, and with volume/capacity ratios significantly over 1.0.

The DEIS, on page 3.6-26, reports that improvements at this intersection will be required regardless of the proposed development, and, on page 3.6-17, reports that the Town has identified this intersection as needing improvements to accommodate future traffic volumes. There is, however, no timetable given for these improvements, no documentation that the State is planning such improvements or has them on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for these improvements. (The Applicant apparently is not paying for them, only proposing a “fair-share” contribution.) Unless the DEIS can provide documentation that these improvements actually will be completed by the opening in 2008, the Build condition analysis without the improvements must be shown in Table 3.6-6 so that the actual operating conditions in 2008 are disclosed. The capacity analysis results including the improvements also can be shown, with the understanding that there is no commitment for these improvements.

16. At the intersection of Route 300 and the Newburgh Commons driveway, the capacity analysis for the 2008 Build condition, summarized in Table 3.6-6, assumes that the intersection will be signalized as a mitigation measure. As with the previous comment, however, there is no timetable given for this improvement, no documentation that the State is planning such an improvement or has it on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for this signal. Unless the DEIS can provide documentation that this signalization actually will be completed by the opening in 2008, the Build condition analysis without the improvements must be shown in Table 3.6-6 so that the actual operating conditions in 2008, which are projected as Level of Service F for the driveway approach, are disclosed.
17. At the intersection of Route 52 and the I-84 eastbound ramps, the capacity analysis for the 2008 Build condition, summarized in Table 3.6-6, assumes that the a northbound right turn ramp will be constructed as a mitigation measure. {Note: Table 3.6-6 and the text on page

3.6-18 refer to it as a “southbound” right turn lane; it should read “northbound.”) As with the previous comments, however, there is no timetable given for this improvement, no documentation that the State is planning such an improvement or has it on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for this improvement. Unless the DEIS can provide documentation that this improvement actually will be completed by the opening in 2008, the Build condition analysis without the improvement must be shown in Table 3.6-6 so that the actual operating conditions in 2008 are disclosed.

18. The report calls for the installation of a coordinated signal system along Route 300. This requires the same signal cycle lengths at all intersections. The cycle lengths in the capacity analyses along Route 300 range from 90 to 120 seconds
19. In Appendix G, the Level of Service Summary, Tables 2 and 2A, reports the Level of Service only on an approach and overall intersection basis. A longstanding directive from the New York State Department of Transportation requires reporting both Level of Service and volume/capacity ratio for each lane group. At some locations, notably the intersection of Routes 300 and 52 without mitigation, the Level of Service F operation on several lane groups is not disclosed in this table.

Other Comments

20. Accident Data. Other than a very brief description of the number of years of accident data collected and what appendix it is located in, there is no discussion of any kind regarding the relative safety record of roadways and intersections in the study area. For example, in 2000, at the intersection of Routes 300 and 32, there were 12 accidents of varying degrees of severity. It is not determined if this represents a particularly poor history (i.e., a hazardous intersection) or whether this location is typical of the safety record of similar locations (relative to number of lanes and traffic volume) throughout New York State. It is noted, however, that the accident rate for Route 300 in the study area has been generally well above the State wide average. A discussion of the accident history should be added, as should an evaluation of how this record may be impacted by the proposed project. This is particularly important at locations that have been identified as requiring/recommended for improvements.
21. Peak Seasonal Traffic Conditions. Section 3.6.16 is intended to cover conditions in the December pre-Holiday period. However, the following deficiencies are noted.
 - The referenced December 2003 counts cover only the intersections of Route 300 with Route 17K and Route 300 with the Thruway Exit 17/Unity Place.
 - The referenced copies of machine traffic counts, which were made in December 2004, apparently by John Collins Engineers, are found in Appendix F under the heading “NYSDOT Data.” The comparison of counted traffic volumes, referred to on page 3.6-27, is not found either in the text or in Traffic Appendix G.
 - Figures 2A and 3A contain the “regular” counts, not the December counts

- There is no documentation to support the claim that overall intersection traffic volumes are only slightly higher in December at the driveways of Newburgh Mall.
- The December analysis apparently uses the study's No-Build condition volumes and adds the projected December generated volumes from The Marketplace at Newburgh. Under this assumption the other shopping centers, and Newburgh Mall in particular, would have no December seasonal variations in traffic, a highly unlikely condition.
- The seasonal traffic figures in Appendix G cover only the revised intersections of Route 300 with I-87 and I-84. They do not cover any of the proposed site driveway intersections or any other intersections along Route 300.
- The results from the reported capacity analysis of December conditions are missing. Table 2A, referred to on page 3.6-28, is a comparative summary of the typical (non-December) capacity analyses for intersections 8-18 in the Existing, No-Build and Build conditions.
- Section 3.6.16 seems to minimize the conditions that would occur during the pre-Christmas shopping season. According to the ITE Trip Generation Handbook, Saturday peak hour volumes during the Christmas season run about 35 percent higher than the average Saturday volumes. Since Level of Service E on is projected several lane groups at the Route 300 access drive intersection and several other intersections under average conditions (and possibly at Level of Service F once the above corrections are made), it can be expected that unacceptable operating conditions will prevail during the Christmas season. The report text, on page 3.6-28, says only that "the intersections will experience longer peak hour delays and a traffic management program will have to be implemented to accommodate the expected future traffic volumes during these time periods." The report does not, and should, describe what kind of traffic management programs will, or can, be implemented. (Do they propose to close 35 percent of the stores?)

22. Traffic Simulation Analysis. Section 3.6.17 states that a Synchro/Sim traffic simulation was prepared "to evaluate the signal system operation and to define the signal timings and coordination for the existing and proposed traffic signals." The Synchro/Sim printouts are included in Traffic Appendix G; however, there is no discussion of these analyses in the main text, no explanation of the program or the methodology, and no conclusions presented as to what the results mean and whether an acceptable signal timing and progression can be established.

The Synchro/Sim traffic simulation also produced a Queue Length Summary Table, referred to in the text as Table Q-1, but designated as Table No. 3 in Traffic Appendix G. In this table it is noted that a number of calculated 95th percentile queue lengths are greater than the available queuing storage length. These instances should be identified, and measures to mitigate these conditions should be discussed.

At some new intersections the available storage lengths is reported as "N/A." For the Build condition these storage lengths can be obtained from the plans, and should be included in the Table 3.

23. Queue Lengths. The statement on page 3.6-25 that "...queue lengths and storage capacity at each intersection provides for a minimum of 15 vehicles" seems to be in error.

- At the intersection of Route 52 with relocated Meadow Avenue (Figure 3.6-14), the stacking distance between relocated Meadow Avenue and Route 52 is about 130 feet, which provides stacking for only six passenger cars (at an average queuing headway of 22 feet). The left turn lane from Route 52 westbound provides stacking for 10 cars.
- At the intersection of Route 52 with Fifth Avenue (Figure 3.6-15), the northbound left turn lane on Route 52 is about 180 feet long, providing stacking for 8 cars. The Synchro/Sim traffic simulation, in Table 3, shows a 95th percentile Saturday queue length of 275 feet, or 13 cars.

- At the intersection with Route 300 opposite the Newburgh Mall driveway, the stacking lengths cannot be measured because Figure 3.6-13 does not cover enough area.

It should be particularly noted that the above stacking lengths are of necessity approximate because the distance keys (1"=?) have not been provided on Figures 3.6-13, 14 and 15, an absolute engineering drawing requirement.

Should your Board have any questions with respect to these comments we will be most happy to respond.

Respectfully submitted,



Nathaniel J. Parish, P.E., A.I.C.P.
For Parish Weiner, Inc.

cc: Supervisor Wayne Booth
cc: Members of Town Board
cc: Town Clerk, Andy Zarutskie
cc: Newburgh Capital Group LLC
cc: Keane & Beane, PC
cc: Robert Dennison III, P.E., NYSDOT

**J.G. BARBOUR
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**COMMENTS ON MARKETPLACE MALL
DRAFT ENVIRONMENTAL IMPACT STATEMENT**

21 July 2006

The following comments reflect my review and analysis of the "Terrestrial and Aquatic Ecology" section (3.3) of the Draft Environmental Impact Statement for The Marketplace At Newburgh development site.

I am an independent ecological consultant with 30 years experience as a biologist in New York State, and 20 years experience in the Hudson Highlands region. In 2003-04 I conducted a biodiversity study of the Quassaick Creek corridor, which included Algonquin Park adjacent to the Marketplace site. (See attached resume.) The conclusions I have reached in regard to the developer's DEIS and the quality of the Marketplace development site are essentially a continuation of my assessment of the Quassaick Creek corridor.

In my opinion the developer has presented a highly inaccurate assessment of the environment of the Marketplace development site. My review of the project DEIS leads me to conclude the following:

The developer's DEIS does not provide information sufficient to determine whether or not expected rare and protected species, or suitable habitat for such species, could occur on the site. Five factors explain this failure:

1. substandard and incomplete on-site survey work,
2. faulty analysis of on-site conditions relevant to predicting the potential for the occurrence of rare species,
3. failure to identify plants and animals to the species level or to provide voucher specimens for independent experts to examine and identify,
4. inadequate habitat mapping, and
5. misinterpretation of data (including data from my Quassaick Creek study).

I must emphasize that in my judgment some of the conclusions presented in the DEIS betray the intent to paint a picture of the Marketplace site as degraded, isolated, and poor in habitat value, when the best available evidence indicates that this is not so.

In my judgment the science reflected in the DEIS is so poor that we can have no confidence in any statement contained therein.

In looking for a fitting analogy to what the developer's DEIS is trying to tell us about the Marketplace site, I thought of New York City's Central Park. Imagine a developer trying to convince New Yorkers, including the mayor and the Parks Commissioner, to allow a huge housing

and commercial complex to be built in Central Park, arguing that the park is worthless as a natural area, since it is surrounded by apartment buildings, stores and skyscrapers. As to its wildlife habitat value, the park must also be worth little, since nothing but weeds and rats could possibly live there. Yet this is exactly what the DEIS says about the Marketplace site. I suspect that nothing could be further from the truth, but the truth is, we don't know. The developer's on-site biological survey tells us nothing useful, and twists the few facts we have to make its point about the site's worthlessness.

In 2003 there was a "bio-blitz" in Central Park. What's a bio-blitz? It's a bunch of biological experts - plant experts, bird experts, mammal experts, reptile and amphibian experts, insect experts - all getting together in one place for two days to try to find all the species they can. Guess how many species they found in Central Park? Over 800! Who would have thought there could be so many kinds of plants and animals in a city park entirely surrounded by streets, dense traffic, high buildings, and millions of people?

There has been nothing like a bio-blitz for the Marketplace site. The absence of necessary substantive investigation and evaluation regarding the ecological characteristics of the site renders its conclusions meaningless. From the evidence of the DEIS, the biological survey of the Marketplace site is one of the worst I have come across in over 25 years of biological consulting and survey work. I should point out that because I was denied access to the site, I cannot draw conclusions beyond those stated here. However, I have thoroughly analyzed and investigated the surrounding areas, which may be reasonably assumed to resemble the site.

THE TERRESTRIAL AND AQUATIC ECOLOGY ANALYSIS IN THE DEIS FALLS FAR SHORT OF THE BASIC REQUIREMENTS OF SEQRA.

1. Substandard and incomplete on-site survey work.

For on-site surveys, the DEIS gives no description of survey methods, and no details about time spent (just the adjective "lengthy"). Some dates are given in tables but no narrative or table of all survey dates and times is provided, nor any textual or tabular account of survey locations.

More egregiously, no information is given as to who did the field survey, what methods were used, how much time was spent and when, or what the surveyors' credentials and qualifications are. This is an unacceptable omission entirely out of line with professional standards and practices. Besides the town board, the concerned public and their chosen representatives have a right to know who performed this work, and when the work was performed.

2. Faulty analysis of on-site conditions relevant to predicting the potential for the occurrence of rare species.

Rare species issues are not adequately addressed by the DEIS. In my view the developer's consultant has actually circumvented these issues. The most important kinds of plants on the site were not identified to species, only to genus. These genera are significant because I found narrow-leaf sedge (*Carex amphibola*, NYS Endangered) and woodland agrimony (*Agrimonia rostellata*, NYS Threatened) along the Quassaick Creek south of the site in 2003.

Astonishingly, the consultant uses this failure to identify plant specimens to claim that no rare plant species occur on the site! The DEIS states that "Site walks conducted during spring through fall of 2005 did not identify any specimens of either species on the project property." Of course they didn't! The necessary identifications of specimens were not performed; plant specimens were determined only to genus, not to species. It is not even clear in the DEIS whether or not any voucher specimens of *Carex* or *Agrimonia* species were collected. The only statement I found regarding specimens was this: "No specimens of narrow-leaf sedge (*Carex amphibola*) were found either on the property or along adjacent areas of Quassaick Creek." The DEIS similarly skirts the question of the possible occurrence of woodland agrimony. An agrimony was found but it was "probably [downy agrimony] *Agrimonia pubescens*." This is a speculation, not an identification!

Let me shed some light on this situation by reference to standard professional methods. In any plant survey, voucher specimens are collected, not necessarily for all species, but for the following: locally uncommon species; rare species, provided the number of individuals is high enough that the population is not threatened by removal of an individual or two; and (especially relevant here) species that are difficult to identify by botanists who are not experts in a particular group of plants. Even if a botanist is an expert, a voucher specimen should be collected so that other experts can examine the specimen, students can learn the plant's salient characters, and many other reasons important to science. Many plants that unspecialized biologists routinely encounter require specialists to identify them, and in such cases, it is standard practice to call in these specialists to make accurate identifications. Obviously, this was not done in the case of the Marketplace plant survey.

There is no mention in the DEIS of voucher specimens of unidentified *Carex* or *Agrimonia* (or other genera, for that matter), nor who determined whatever plant specimens (if any) were collected. It cannot be concluded that a species does not occur if voucher specimens are not identified to species. If there are voucher specimens from the Marketplace survey, the DEIS should say so, and in line with standard professional practice, these specimens should be made available to other botanists for examination and independent determination.

Again and again the DEIS reflects bad science or non-science. Consider sedges. Except for the common tussock sedge (*Carex stricta*), all sedges are lumped together as *Carex* spp.! There is no way to tell how many species of sedges were found on the site. Other plant groups that were not determined to species were bulrushes (*Scirpus*) and flatsedges (*Cyperus*). There are a number state endangered and threatened species in each of these genera, some reported from Orange County. For example, NYNHP database contains records of Georgia bulrush (*Scirpus georgianus*), Houghton's flatsedge (*Cyperus houghtonii*) and redroot flatsedge (*C. erythrorhizos*) from within 10 miles of the Marketplace site.

In regard to agrimories, the agrimony found on the site could be any one of five species, and in my opinion probably *not* downy agrimony. Downy agrimony is an uncommon species in my experience. In Orange County it appears to be less common than woodland agrimony. In 15 years of botanical surveys in the Hudson Highlands, I have encountered downy agrimony only once in New York, in Rockland County. The cautionary "probably [downy agrimony]" of the DEIS provides no confidence whatever that woodland agrimony does not occur on the site, or that the

plant(s) observed by the surveyors were not woodland agrimony. As with narrow-leaf sedge, it can only be concluded that the occurrence of woodland agrimony is a strong possibility.

I was involved in the review of the DEIS for the Sterling Forge development project in Sterling Forest. That DEIS also had a very poor plant survey, though I would say better than the Marketplace survey. Specimens were determined to species level, though not all were correct, and questions of identification still remain because specimens were not subjected to independent examination. The lead agency [Town of Tuxedo] required the developer to perform a second botanical survey. The same should be required for Marketplace Mall.

Now we come to animals. Of 96 animal taxa determined "likely to occur" on the site, only 15 were observed. Both are indications of an inadequate survey. Certainly more animal species than 15 must occur on the site. As with plants, in some groups identification is only to genus. A notable example is "warbler (*Dendroica*)" in the animal species list. There are 17 species in the genus *Dendroica*, and *Dendroica* is not the only genus of warblers; there are 11 additional genera and a total of 28 species of warblers in eastern North America (Peterson 1980). Identification to species is absolutely essential since only species, not genera, have rarity/protected status. Additionally, the narrative account of mammals observed on site (p. 3.3-9) and the list of "Project Site Wildlife" (Table 3.3-3) do not correspond. Eastern chipmunk, gray squirrel and eastern cottontail are mentioned in the text, but in the table are not indicated by an asterisk as occurring on the site.

It appears that no specific surveys were performed for ecologically significant plant and animal groups such as breeding birds, reptiles, breeding amphibians, fish (in Quassaick Creek), small mammals including bats, dragonflies and damselflies (Odonates) or butterflies. There is only the statement that wetlands on site are "likely to provide habitat for amphibians." These wetlands are poorly described and there is reason to doubt that some are depicted on maps, particularly those described as "isolated." These isolated wetlands are likely vernal pools, important breeding habitats for amphibians, including several rare species.

As with rare plants, issues regarding rare animal species are inadequately addressed. Cooper's hawk (Special Concern) is on the list of potentially occurring animals, but its New York State rarity status is not given or acknowledged. There is no analysis of the potential impacts on Cooper's hawk, nor is there a description and assessment of on-site features and conditions that could support Cooper's hawk. There appears to have been no search for Cooper's hawk nests on the site or in the vicinity of the site during the species' breeding season. The New York State Legislature recently upgraded standards of protection of Special Concern species.

In summary, the possibility remains that narrow-leaf sedge, woodland agrimony, additional rare sedge species, rare species in other plant groups, and a number of rare animal species might occur on the site. With so many possibilities for rare species occurrences, it is likely that at least one or more rare species does occur on the site. Therefore it would be irresponsible and against SEQRA requirements to accept the Marketplace DEIS as accurate and complete.

Furthermore one could reasonably ask, did the developer's consultant deliberately not identify plant specimens, or is this failure merely a lack of scientific professionalism? "Probably" is not an acceptable scientific conclusion, particularly given the developer's proposal, which would remove

the entire site, through blasting and leveling, from a natural habitat to a flat, featureless impervious surface and big box retail.

3. Failure to identify plants and animals to the species level or to provide voucher specimens for independent experts to examine and identify.

It is standard practice in scientific reports to use universally accepted common names for biological species. In Table 3.3-3 non-standard common names are used (e.g. "New York weasel" for longtail weasel, "common shrew" for masked shrew). "Cottontail rabbit," a non-standard common name, is used in the table, while the standard "eastern cottontail" is used in the text. This may seem a minor quibble, but science-based studies should use a single, well-accepted, standard common name in all mentions of a species.

4. Inadequate habitat mapping.

Knowledge of the geography of the site - where the important habitats are located - is essential in reviewing any site plan. The standard procedure is to precisely map the habitats using GPS technology and GIS digital mapping. But the resulting maps are only as good as the groundwork that precedes them. I was stunned to see that in the DEIS, the habitat map for this project had only two habitat units: Northern Hardwoods and Hardwood Swamp. Other habitats are mentioned in the DEIS, including "isolated wetlands," which could be vernal pools, a critical habitat for several rare salamanders. These are not mapped. The Quassaick Creek and its floodplain - known reservoirs of high biodiversity - are not mapped, though the creek is easily seen on the air photo in the DEIS.

In my study of the Quassaick Creek corridor I gathered and analyzed detailed data about past and present land use and biodiversity, and supplemented existing data with detailed observations obtained in the field throughout the 2003 growing season. The Marketplace site is located along the Quassaick Creek corridor, so that the information and conclusions of my study may fairly apply to the site. However, such a comparison cannot substitute for on-site surveys by independent qualified scientists.

The DEIS states that "4.88 acres of isolated wooded wetlands, which are not regulated by any agencies, will be filled . . ." (p. 3.3-13). Any of these wetlands could be important breeding sites for amphibians, including blue-spotted salamander (*Ambystoma laterale*) and Jefferson salamander (*A. jeffersonianum*), both listed as Special Concern in New York. These isolated wooded wetlands are commonly known as "vernal pools" or "intermittent woodland pools." Herpetologists, wildlife biologists and wetland scientists these wetlands critical habitat for many animal species. Though not protected in New York at present, NYSDEC has requested that the New York State legislature act to protect vernal pools throughout the state. Vernal pools are protected in the state of Massachusetts. What does the DEIS say about these potentially critical habitats? Only that they are unregulated, and will be filled! This is hardly science! Moreover, the locations of these pools in the landscape context of the site are not shown on the habitat map in the DEIS.

Regarding resources for turtles, no mention is made of turtle nesting sites. With two Special Concern turtle species probably occurring on the site (eastern box turtle has been observed just

outside the site boundary and wood turtle is known from Quassaick Creek in the City of Newburgh), nesting habitat is a crucial issue. A search for potential turtle nesting areas should have been performed in late spring, nests searched for in season, and any turtle species using these sites identified. Similarly, a breeding bird survey should have been conducted in the nesting season (March-June, to include Cooper's hawk). Potential nesting sites for these species should be mapped using GPS and GIS technologies.

Survey results and conclusions of the developer's consultant are highly questionable. An accurate assessment of the habitat value and rare species potential of the Marketplace site is not possible using only the information provided in the DEIS. The habitat maps in the DEIS are inadequate for interpretation by anyone unfamiliar (or perhaps even familiar) with the site. There is a pressing need for additional on-site surveys by qualified independent biologists with field experience in the region of the site, expertise in habitat assessment and rare species biology, and strong species identification skills.

5. Misinterpretation of data (including data from my Quassaick Creek study).

The DEIS cites Barbour 2004, the Quassaick Creek Biodiversity study, but reverses the logical interpretation of a major finding of that study. In this study I emphasize the correct implication of this finding: the surprisingly high biodiversity (including 2 rare plants and a rare animal) for a historically disturbed wild ecosystem in an urban setting. Even though it cites my Quassaick study, the Marketplace DEIS states flatly that the site has little or no potential for the occurrence of rare species because it is located in an urban, developed context, describing it as an isolated " 'island' or 'sink'" (p. 3.3-13).

The DEIS (p. 3.3-13) states that "the site does not support known threatened or endangered species or State-listed species of special concern." There is not sufficient evidence, neither from existing sources of information, nor from on-site surveys, to support this negative conclusion. Absence of woodland agrimony and narrow-leaf sedge has not been demonstrated (see 1 b above), nor has absence of wood turtle. Box turtle must certainly occur on the site, since I found one within a few meters of the site boundary along the edge of NYS Rt. 84, and neighbors have reported seeing box turtles on and near the site.

Also on page 3.3-13 is the statement that the site is "cut off by previous development" from neighboring undeveloped areas such as Algonquin Park and wild lands surrounding Brookside Pond, despite the continuity of waterways and stream corridors (including road underpasses) in the Quassaick Creek watershed. This is simply not true.

Another questionable statement in the DEIS (again on p. 3.3-13) is that development won't affect known rare plant occurrences and their habitats (and by extension, other significant habitats and species) downstream simply because of distance, when it is commonly known and repeatedly demonstrated that impacts such as pollution, turbidity, nutrient load, etc. can be transported any distance downstream, and rapidly.

The DEIS claims that the site is poor foraging habitat for wood turtle (p. 3.3-13) because of the lack of fields, with no supporting citation. In fact wood turtle forages quite successfully in many types

of habitat, including forests, wetlands and brushy areas (Klemens 1993). The species has been found to use forested habitats near streams or at considerable distances from streams.

Summary Remarks

One recent project of mine was a survey and study of the Quassaick Creek in 2003 and 2004 was commissioned by the City of Newburgh and the Quassaick Creek Coalition, to provide supporting information for a planned urban park and trail system along the Quassaick Creek. I followed the creek from the Hudson River in the City of Newburgh upstream to Algonquin Park across the street from the Marketplace site. I found the Quassaick Creek and its surroundings to be surprisingly rich in plant and animal species, even rare ones. I found two rare plants and a rare animal along the creek within the city itself. The situation was much like that of Central Park, as revealed by the Central Park bio-blitz. I was not the only surveyor; I included information from previous studies and observations of other researchers and reliable observers.

The Marketplace DEIS refers to my Quassaick Creek study, but in what I see as an effort to condemn the Marketplace site as biologically worthless, it turns the main finding of my study on its head. My Quassaick Creek survey shows that jewels of biodiversity can be found in urban settings. The Marketplace DEIS contends that the existing development around the site isolates and degrades the site so much that development is the best possible use. This is in total disagreement with my conclusion that high biodiversity and urban development can and do exist side-by-side. The developer's is a self-serving conclusion that goes against what the real evidence proves about Quassaick Creek. Why should we conclude the opposite about the Marketplace site?

The DEIS has hardly any actual information on biological resources, and what it does provide is useless and falls far short of the basic requirements of sound science and State Environmental Quality Review. The developer has simply not addressed the issues. In terms of the biology of the site, the DEIS provides no basis on which to make a decision regarding the Marketplace development proposal. Instead of conducting a bio-blitz, the developer's consultant has performed a bio-blip. We still know nothing about the site's biology except what we can glean from scientifically sound and adequate studies of surrounding areas. To any observer the site remains a biological black hole.

In conclusion I emphasize again that the DEIS for the Marketplace site displays a lack of scientific expertise, professionalism and objectivity. I feel qualified in this conclusion because in my career of 25 years I have tried my best to adhere to professional standards; to perform the most thorough field surveys I could, given existing constraints; to present a complete and accurate account of my activities and methods; to present my results with clarity, accuracy and detail; and to perform objective analyses of existing data.

ADDITIONAL ON-SITE INVESTIGATION AND ANALYSIS IS MANDATORY.

Since the developer won't provide even the most basic information on biological resources, there is only one way to obtain this information. The town board should tell the developer either to fund a thorough and professionally conducted study by qualified scientists, or to allow independent

qualified scientists to study the site. SEQRA requires essential information on rare species and significant habitats be provided. The DEIS fails to do this.

For these reasons, the DEIS is unacceptable and inaccurate. The Planning Board must reject the DEIS. An independent biological study of the Marketplace site is greatly needed, and must be required.

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RESUME (March, 2006)

JAMES G. (SPIDER) BARBOUR (ECOLOGIST, BOTANIST, RARE SPECIES SPECIALIST)

AREAS OF EXPERTISE IN NATURAL HISTORY

General ecology; natural history of Northeast North America; New York State rare plants, amphibians, reptiles, butterflies and moths, dragonflies and damselflies; vernal pool ecology and quality assessment; wetland delineation, quality assessment and characterization; floristic surveys; community ecology, descriptions and mapping; site assessment for biological resources, biological survey project planning and design.

RECENT AND CURRENT CONSULTING AND CONTRACT WORK (2001-05)

Town of New Paltz, 2006: Interim Wetlands Inspector.

Hudsonia, Ltd. 2005-06: Biological Inventory of Stone Church Site (Dutchess County Land Conservancy), Town of Dover, Dutchess County, New York.

Hudsonia, Ltd. 2005-06: Biological Inventory of New Croton Reservoir, Westchester County, NY (New York City Department of Environmental Protection).

Scenic Hudson, Inc. 2005-06. Environmental Assessment of Kingston Landing development site, City of Kingston, Ulster County, NY.

Matthew D. Rudikoff Associates, Inc. 2005: Invertebrate Survey of Carvel Property, Towns of Pine Plains and Milan, NY.

Town of Cornwall, 2004-05. Biodiversity Inventory of Angola Road Park, Town of Cornwall, Orange County, New York.

Hudsonia, Ltd. 2004: Rare Plant Survey at the proposed "Dover Knolls" Development Site, Town of Dover, Dutchess County, New York.

City of Newburgh Department of Engineering and Quassaick Creek Coalition 2003-2004: Quassaick Creek Estuary Preserve and Trail Project Biodiversity Survey and Natural Resources Inventory and Assessment.

Hudsonia, Ltd., Annandale, NY. 2001: Cerulean Warbler survey on Schodack Island, Hudson River Estuary, Town of Stuyvesant, Columbia County, NY. Community survey and mapping of Fishkill Ridge, Town of Fishkill, Dutchess

County, N.Y. 2001: Assessment of proposed logging sites in Town of Woodstock, Ulster County, NY.

Hudsonia, Ltd., U.S. Forest Service & NYSDEC. 2001-02. ECOMAP of New York Hudson Highlands. Vegetation analysis and cover type determination for ecological units (mapped polygons); writing of ecological unit descriptions; coordination and integration of information sources (National Vegetational Classification System, New York Natural Heritage Program Ecological Communities, DEC Forest Types, Society of American Forester Forest Types).

Hudsonia, Ltd. 2003: RamsHorn-Livingston Sanctuary Management Plan for Audubon New York and Scenic Hudson Land Trust, Inc. Harlem Valley Supplement to Manual of Biodiversity in the Hudson Valley. Biodiversity inventory of Martin Van Buren Historic Site, Kinderhook, NY.

Harlem Valley Rail Trail Association. 2002. Herpetological survey of Harlem Valley Rail Trail corridor, Dutchess and Columbia Counties, N.Y. (with Peter C. Wary).

New York Natural Heritage Program, Albany, N.Y. 2001. Community surveys and mapping of Hudson Highlands State Park, Camp Smith, and Peekskill Hollow and associated uplands, Putnam County, N.Y. Community survey and mapping of Pound Ridge area, Westchester County, N.Y. Rare butterfly surveys in southeastern New York. 2003: Rare Plant surveys in Clarence Fahnestock State Park and Wonder Lake State Park.

New York State Museum, Albany, NY. 2002-2003. Floristic Survey of Sterling Forest State Park and Schunnemunk Mountain; Hudson Highlands Region Flora Project.

U.S. Department of the Army. 2003: Supplementary Survey of Rare Plants of the West Point Military Reservation.

U.S. Department of the Army. 2002: Survey of Lepidoptera of the West Point Military Reservation.

Small consulting jobs: site assessments, environmental impact assessment and reviews of environmental documents for various projects.

OTHER RECENT CONSULTING AND CONTRACT WORK

Black Rock Forest Conservancy. 1996-98. Rare plant survey.

Environmental Design and Research, P.C., Syracuse, NY, 1998. Habitat assessment and rare species surveys for Orange and Rockland Utilities project sites.

Harlem Valley Rail Trail Association. 1999-2000. Biological survey of Harlem Valley Rail Trail corridor, Dutchess and Columbia Counties, NY; development of interpretive and educational materials.

Hudson River Foundation, 1985. Butterfly Survey of Tivoli North Bay, Annandale, NY.

Hudsonia, Ltd., Annandale, NY, 1982-present. Field Ecologist. Approximately 75 biological surveys of large and small land areas, rare plant and animal surveys in New York, Massachusetts, Connecticut and New Jersey; conducted field surveys, prepared reports and maps, plant and animal lists.

Metropolitan Conservation Alliance. 2000. Biological surveys in Wallkill River drainage, Orange and Ulster Counties, NY

New York State Museum, Albany, 1992-present. Field Botanist. Floristic Surveys of West Point Military Academy and Bear Mountain/Harriman/Storm King State Parks, Sterling Forest State Park (1998-2000); collected, identified (in part) and databased voucher specimens.

New York Natural Heritage Program, Latham, NY, 1988, 1992-present. Field Ecologist. Rare Species and Community Surveys of New York State Wildlife Management Areas (1994-97); conducted field surveys, filled out standard NHP forms, wrote reports, prepared community maps from air photos and ground-truthing. Rare species surveys and ecological community mapping along Appalachian Trail corridor (1999). Rare species surveys and ecological community mapping in the Hudson Highlands: Orange, Rockland, Dutchess and Putnam counties, NY (2000).

Palisades Interstate Parks Commission, 1996. Preliminary Butterfly Survey of Bear Mountain/Harriman Parks. Communities Inventory and Management Advisory Plan for Trailside Museums Area. 1998-99: Reconnaissance and habitat assessment of Fort Montgomery Site. Inspections and impact assessments of proposed hiking trails in Hudson Highlands parks, 1996-2000. Ecological surveys and impact assessment of proposed hiking trails in Sterling Forest State Park.

U.S. Army (West Point Military Academy), 1993-present. Consulting Ecologist and field surveyor (Rare Plants, Community Ecology, Butterflies, vernal pool inventory, moths); conducted surveys, GPS-located rare plant locations, prepared reports and maps.

Saratoga Associates, Saratoga Springs, NY, 1991-93. Consulting Ecologist (Karner Blue Butterfly).

EDUCATION

B.S. Zoology
Ohio University
Athens, Ohio

Graduate Studies:
Entomology, Cornell University, Ithaca, NY

Plant ecology and taxonomy, wetland delineation, animal ecology, Hudsonia, Ltd., Annandale, NY

Wetland Delineation Certificate, Rutgers University.

Mycology (fungi study): Institute for Ecosystem Studies, Millbrook, NY

Botanical Studies: White Creek Field School, White Creek, NY

PUBLICATIONS

Mitchell, R.S., J.G. Barbour, J. Focht and D. Werier. 2003. A Catalog of Hudson Highlands Plants and their Habitats: A Report to Sponsoring Agencies and Institutions. New York State Museum, Albany, NY. 292 p.

Barbour, J.G., R.S. Mitchell, J. Focht and D. Werier. 2002. Plants of the Western Hudson Highland, Sterling Forest, Schunnemunk Mountain & Vicinity: Ninth Report: The New York State Museum, Palisades Interstate Parks Commission and Office of Parks, Recreation and Historic Preservation. Botanical Research Report #2001-1. The New York State Museum, Albany, NY. 87 p.

Barbour, S. and Anita F. Barbour. 1991. Wild Flora of the Northeast, with, Overlook Press, New York, NY. 200 p.

Barbour, S. (contributing author). 1997. American Nature: Our Intriguing Land and Wildlife. Readers Digest General Books. Readers Digest Association, Inc. Pleasantville, NY, Montreal. 336 p.

Woodstock Times, 1977-present: "Nature Walk" feature articles with drawings and photographs by Anita F. Barbour, humor pieces, music and book reviews, news articles; also worked as proofreader and editor 1981-88.

Catskill Center for Conservation and Development Monthly: Feature articles on Natural History of the Catskills 1980-89; editor 1984-85.

Natural History articles in Hudson Valley Calendar, UpRiverDownRiver, Natural History and other publications 1980-present.

Hudsonia, Ltd.: Habitat and species accounts in Kiviat & Stevens. 2001. Manual of Biodiversity in the Hudson Valley Greenway Corridor. Hudsonia, Ltd. & NYSDEC.

Barbour, S. & E. Kiviat. 1988. Preliminary ecological survey of a pitch pine-scrub oak stand, Birch Hill Manor development site, Town of Beekman, Dutchess County, New York. Report to Enviroplan Associates, Inc., 5 p.

Barbour, S. & E. Kiviat. 1989. Blanding's turtle and bog turtle habitat assessments, Carpenter Road Estates Site, Town of East Fishkill, Dutchess County, New York. Report to E.W. Builders, Inc., 12 p.

Barbour, S. & E. Kiviat. 1990. Greene County proposed landfill sites at Cornwallville, New York: Biological Assessment. Report to the town of Durham and the Association for the preservation of Durham Valley, 37 p.

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- Barbour, S. 1995. (Wetland boundary reconnaissance) Town of Ramapo. Report to the Palisades Interstate Parks Commission, 3 p.
- Barbour, S., R. E. Schmidt & G. Stevens. 1995. Biological reconnaissance of the Little Beaverkill, Esopus Creek drainage, Ulster County, New York. Report to the Woodstock Land Conservancy, 32 p.
- Barbour, S. 1996. Ecological reconnaissance and assessment of proposed NYNEX and Putnam County construction sites on lands of Fahnestock State Park, Putnam County, New York. Report to New York State Office of Parks, Recreation and Historic Preservation, 6 p.
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- Plus numerous articles in newspapers and magazines on natural history subjects.

Website: Spider and Anita's Nature Walk.
<http://www.spiraclemusic.com/~spider/html>

EDUCATOR

Hudsonia, Ltd., Annandale, NY, 1989-present. Courses in Hudson Valley Natural History.

Bard College, Annandale, NY., 1989, 91. Masters in Environmental Science Program, Guest Instructor in Ecology of the Hudson Valley (Erik Kiviat, Instructor).

Woodstock Children's Center, Woodstock, NY., 1988-92. Natural History studies for elementary school students.

Kingston City Schools, Kingston, NY., 1990-94. Teacher Education Program. Plant identification for elementary school teachers.

Woodstock University (Private Adult Education Service), 1988-90. Courses in Natural History of the Catskills.

Catskill Center for Conservation and Development, 1983-89. Courses in Natural History of the Catskills.

Devereux School, 1998. Ecology demonstrations for special education students.

Bear Mountain League of Naturalists, 1996-2006. Field courses in butterflies, insect ecology, sedges, plant ecology, community determination and mapping methodology, general natural history.

Exhibit L

Comments on the Marketplace at Newburgh, Environmental Impact Statement, Prepared by:
CEA Engineers, PC, May 31, 2006, CEA No. 06028.



July 28, 2006

Mr. John P. Ewasutyn, Chairman
Town of Newburgh Planning Board and
Members of the Planning Board
308 Gardnertown Road
Newburgh, NY 12550

Re: DEIS for Marketplace at Newburgh

Dear Mr. Ewasutyn:

Sandstone Environmental Associates, Inc., has reviewed the air quality and noise sections of the DEIS for the Marketplace at Newburgh on behalf of Save Open Space, a group of local residents and neighbors concerned with the impacts of the proposed project. This review includes Volume 1 of the DEIS, as well as Appendices H (noise) and I (air quality). Our review evaluated the scopes of work, methodologies, and conclusions for the air quality and noise analyses. Based on our review, we feel that these sections of the DEIS are not representative of current industry standards and will require additional information and revision before you could rely upon them to make a decision regarding potential air quality and noise impacts.

Sincerely,

Sandstone Environmental Associates, Inc.
Nancy Neuman, President

REVIEW OF AIR QUALITY ANALYSES NEWBURGH MARKET PLACE

SUMMARY OF FINDINGS

The analyses and conclusions set forth in the DEIS for the air quality analysis fall short of the requirements for a study of an 850,000 sq. ft. shopping center, and the modeling of pollutant concentrations for the proposed action contains serious errors that substantially understate the pollutant concentrations that would occur under Build Conditions. In general, the DEIS and appendices lack descriptive text and documentation that would enable the reader to determine whether the data sources and methodologies comply with EPA, NYSDOT, and NYSDEC procedures for environmental analysis. Because protocols established by these agencies guide the analyses, there should be no such concerns. *What has been provided in the DEIS and Appendix shows deficiencies and some serious errors that make evaluation of the potential impacts impossible until the DEIS has been revised.* Of the problems found in the modeling and presentation of results, the items listed below are of particular concern:

- the lack of any apparent analysis to support the conclusions that parking lots and stationary sources for this 850,000 sq. foot development would have no impact on surrounding residents and Algonquin Powder Mill Park,
- computer printouts in the appendix that indicate higher 8-hour CO concentrations from traffic volumes than those shown on the tables in the text, and
- apparent mistakes in the computer modeling of pollutant concentrations from traffic that include, among other things, CO emission factors that are approximately 3% of what they should be. Thus, the CO concentrations for the project may be much higher than shown in the tables and text.

Because the identified mistakes and deficiencies call into question the validity and accuracy of the entire air quality study, the Board should not rely upon the DEIS to form conclusions about the potential air quality impacts associated with the proposed action.

This review provides a summary description of the project, a discussion of the air quality elements that should be included in an EIS for an 850,000 sq. ft. shopping center, and a list of comments and questions keyed to the pages of the DEIS.

INTRODUCTION

Wilder Balter Partners, Inc., proposes to construct a commercial shopping center of approximately 850,000 sq. ft. on 127.6 acres of primarily vacant land within the Interchange Business (1B) zoning district opposite and east of the Newburgh Mall. The project is located at the northeast quadrant formed by the intersection of NYS Route 300 with Interstate Route 84 in the unincorporated area of the Town of Newburgh, Orange County, NY. Access to the site would be via NYS Route 300 and NYS Route 52.

The shopping center would be open seven days per week, Monday through Sunday, with hours of 9 am to 10 pm during weekdays and Saturdays and 10 am to 8 pm on Sundays. Restaurants

would likely be open later, which may result in some retailers remaining open later. Retailers may also have expanded hours during the holiday season. Delivery of goods to the tenants can be expected to occur anytime during a 24-hour period, with most deliveries occurring during off-peak traffic hours.

A DEIS for the project was prepared and submitted for approval on April 4, 2006. A public hearing was held on June 1, 2006, and a second public hearing was held on June 30, 2006. The public comment period originally was to end on July 5, 2006, but was extended to July 31, 2006. Save Open Space, a group of concerned local residents and neighbors of the proposed site requested that Sandstone Environmental Associates, Inc. (SEA) review the EIS to determine whether the technical work for air quality and noise sections is sufficient according to industry standards, and whether the work as submitted to the Planning Board will allow them to take the "hard look" at these issues as required by the State Environmental Quality Review Act

Sandstone Environmental Associates reviewed the available EIS documents pertinent to the Marketplace at Newburgh development. This includes Volume 1 of the DEIS, as well as Appendices H (noise) and I (air quality). Portions of Appendix G (Traffic) also were reviewed. This document presents our comments regarding the scope of work, evaluation criteria, methodology, and conclusions for the air quality and noise analyses.

AIR QUALITY REVIEW

Scope of Work and General Content

The scope of work for air quality should include analyses of pollutants from different types of activities, as required by the NYS Environmental Quality Review Act (SEQRA). For a shopping center such as the Marketplace at Newburgh, these analyses typically would include:

- microscale (intersection scale) modeling of CO from traffic,
- microscale modeling of PM10 and PM2.5 from traffic,
- microscale modeling of CO, PM10, and/or PM2.5 from parking lots or garages,
- modeling of SO2, NO2, PM10, and PM2.5 from stationary sources (i.e., fuel combustion for heating and hot water in the proposed buildings), and
- similar modeling for the construction phase activities on-site.

Air Guide 26 is a publication by the New York State Department of Conservation (NYSDEC) that describes the methods and evaluation criteria to be used for air quality analyses. The Environmental Procedures Manual by the New York State Department of Transportation (NYSDOT) also provides guidelines for air quality analysis, and it includes data on pollutant emissions from trucks and cars. In some cases, a screening analysis can be carried out rather than full-scale modeling of pollutants. The screening analyses look at threshold values for traffic volumes or pollutant emissions to determine whether a significant adverse impact is likely. If the calculations show that the project will not reach the threshold criteria, then no detailed modeling is required. NYSDEC also considers some of the screening procedures developed by the New York City Department of Environmental Protection (NYCDEP) to be acceptable.

In evaluating the potential impacts of a project, the analyses should focus on the future Build Conditions with the project in place. Some evaluation criteria look at the total resulting pollutant concentrations and compare them with an absolute standard such as the National Ambient Air Quality Standards. De minimis criteria, on the other hand, look at the differences between No Build and Build Conditions.

Consultants who prepare air quality studies for EISs typically include the evaluation criteria to be used, summary tables of traffic or other data, descriptions of the analysis methods and assumptions, tables comparing No Build and Build Conditions, and appendices with documentation of the results in the form of computer input and output files, spreadsheet calculations, and other pertinent technical information. This is done so that review agencies can review the work and ensure that: 1) it is accurate; and 2) it was carried out according to industry standards.

As stated previously, the analyses and methodologies set forth in the DEIS fall short of the requirements noted above, and it also contains errors in the modeling of air pollutant concentrations. In general, the DEIS and appendices lack descriptive text and documentation that would enable a reader or review agency to determine whether the data sources and methodologies comply with EPA, NYSDOT, and NYSDEC requirements. Specific comments are presented in the sections below. Some comments are typical for a DEIS, as they identify discrepancies between a table and its text, or they recommend minor editorial changes to clarify the work that was done. Other comments are not typical for a DEIS. Items of particular concern to the validity and accuracy of the entire air quality study are:

- the lack of any apparent analysis to support the conclusions for parking lots and stationary sources for this 850,000 sq. foot development
- computer printouts in the appendix that indicate higher 8-hour CO concentrations than those shown on the tables in the text, and
- apparent mistakes in the computer modeling of pollutant concentrations from traffic that include, among other things, some CO emission factors that are only 3% of what they should be.

Background Air Quality DEIS Section

p.3.9-1 The second paragraph should include Algonquin Powder Mill Park among the sensitive receptors within _ mile of the proposed action.

p.3.9-1 The second paragraph should note whether the Newburgh Mall, which is in the vicinity of the site on the other side of Route 300, is considered a stationary source of air pollution.

p.3.9-1 The third paragraph should include PM2.5 among the pollutants monitored within Région 3. The reference to total suspended particulates should be deleted, as this pollutant is not monitored in Region 3.

p.3.9-2 The last sentence in the first paragraph should state that Orange County is also in nonattainment of PM_{2.5}. Delete the reference to carbon monoxide, as the county is not designated as nonattainment for CO.

p.3.9-3 Table 3.9-2 should indicate the averaging periods and the year in which the concentrations were monitored. For the FEIS, the table should be updated with 2005 data.

p.3.9-3 Table 3.9-2 should include nitrogen dioxide, which is a criteria pollutant with NAAQS.

p.3.9-3 Please correct Table 3.9-2 to should show that the units for inhalable particulates, lead, and PM Sulfate, Nitrate are millionths of a gram ($\mu\text{g}/\text{m}^3$), not grams (g/m^3).

p.3.9-3 The first paragraph also should discuss PM₁₀ and PM_{2.5}, which are pollutants associated with vehicular exhaust from diesel-powered vehicles.

General Please provide a clear indication of the impact criteria to be used in evaluating air quality. The use of the National Ambient Air Quality Standards is implied, but NYSDEC's de minimis criteria for evaluating significant impacts from PM_{2.5} are not mentioned anywhere in the report.

Microscale Carbon Monoxide Analysis

p.3.9-4 The CO emission factors used for the analysis require description of the modeling and/or methodology used to determine them. Please provide discussion and documentation of the emission factors mentioned in the second paragraph. Specifically:

- Do the emission factors represent MOBILE6.2, which is the model currently required for CO analysis? If not, please revise the analysis to include MOBILE6.2.
- Was the most current (June 2004) version of the Environmental Procedures Manual used to obtain emission factors? If not, please revise the analysis accordingly.
- What peak traffic hour do the emission factors represent?
- What type of roadway and/or functional class do the emission factors represent? It seems unlikely that all roadways in the study area would have the same functional class, in which case different emission factors for each type of roadway should be calculated.
- What vehicular mix was used to calculate the composite emission factors?
- What is the source of the vehicular mix that was used?
- Do the emission factors assume that all of the roadway links in the study area have the same vehicular mix? If so, this seems unlikely, and emission factors should be calculated for different vehicular mixes.
- What vehicular speed was assumed in calculating the composite emission factors?
- What is the source of the speed that was assumed?
- Do the stated emission factors assume that all of the vehicles are traveling at the same speed on all of the roadway links in the study area? If so, this seems unlikely, and emission factors should be calculated for multiple speeds.

p.3.9-4 The third paragraph states that three worst-case intersections were selected, but does not document the rationale for their selection. Please include a table(s) showing volumes, intersection delay, and levels of service for the intersections in the study area for Existing, No Build, and Build Conditions.

p.3.9-4 The last paragraph does not explain why the weekday PM and Saturday peaks were selected for analysis. Do they represent a worst case? Please state the rationale for their selection.

p.3.9-4 Was CAL3QHC used to model the CO concentrations? If so, please state this in the last paragraph.

p. 3.9.4 The last paragraph does not provide a description of the modeling methodology. Did the modeling include roadway links extending to 1,000 feet along each leg of the intersection, which is the industry standard? If not, please revise the modeling. Were receptor points placed along each leg of the intersection at 20-foot intervals for 100 feet in each direction in order to determine the worst-case receptor point? If not, please revise the analysis.

p.3.9-5 Please indicate the units (e.g., ppm) for the CO concentrations in Table 3.9-3.

p.3.9-5 The source of the background concentrations in Table 3.9-3 has not been provided. Please describe how they were obtained/derived and whether the method was approved by NYSDOT or NYSDEC.

p.3.9-5 The text in the first paragraph states that the worst-case 8-hour concentration is 4.0 ppm, but Table 3.9-3 shows a concentration of 4.1. Please revise the text or table accordingly.

p.3.9-5 et al The information in Tables 3.9-3, 3.9-4, and 3.9-5 does not correspond with the CAL3QHC printouts in Appendix I. Based on the printouts, the maximum predicted concentrations in the table should be higher, and some of the worst-case receptors are different. No printouts were provided for NYS Route 52 @ 5th Avenue Access, so they could not be compared with the table. Please include the additional printouts and correct the table and text to show the higher CO concentrations.

p.3.9-5 The text in the first paragraph states that the worst-case 1-hour concentration is 5.7 ppm. Please indicate how much of this is background and how much is the modeled concentration.

p. 3.9-8 Please indicate the source of the 2008 CO background concentrations, as they are identical to those for 2004, which seems unusual. Were the NYSDOT procedures for calculating future background values used?

p.3.9-11 Please provide an appendix with a description and calculations of how the parking analysis was prepared. Include the emission factors, incoming and outgoing volumes, lot dimensions, receptor locations, and formulas.

Appendix I Please review the coordinates and inputs for the CAL3QHC modeling. The following were noted as possible problems that would require substantial revisions to the modeling and conclusions:

- Some receptor points (e.g., Receptors 22 and 23 for Route 300 at Site Access) appear to be too far from the roadways. Receptors should be placed at mid-sidewalk and just beyond the mixing zone.
- The roadway links apparently extend only 500 feet from an intersection in each direction, whereas the CAL3QHC manual recommends 1,000 feet.
- The idle emission factors for CO of (e.g.) 1.99 gm/hr and 2.80 gm/hr shown on the printouts are much too low, especially given the representative emission factors of 126.15 gm/hr and 76.80 gm/hr referenced on page 3.9-4. As a result, the maximum predicted CO concentrations are underestimated.
- Saturation flow rates of (e.g.) 3445 vehicles per hour shown on the printouts are much too high. According to the CAL3QHC manual, saturation flow rate should represent vehicles/hour/lane, not the total for multiple lanes on a link. Since a volume of approximately 2000 vehicles per hour is considered to be the capacity of a lane under LOS A, the values that exceed this number are incorrect. As a result, the maximum predicted CO concentrations are underestimated.

Microscale PM10 and PM2.5 Analysis

p.3.9-6 Please indicate the MOBILE6.2 vehicular mix used to derive the PM10 and PM2.5 emission factors.

p.3.9-6 Please indicate whether the CAL3QHCR model was run with 5 years of meteorological data, which is standard procedure for this type of analysis.

p.3.9-6 et al Please provide more information on NYSDEC's background concentrations for Tables 1 through 8, as they are higher than the monitored concentrations shown in Table 3.9-2.

p.3.9-6 et al Please provide documentation (e.g., input and output files) for the CAL3QHCR runs for Tables 1 through 8 for Existing, No Build and Build Conditions. The tables should be numbered consecutively for the FEIS.

p.3.9-6 et al Change Tables 1 through 8 for Existing, No Build and Build Conditions to show they represent the CAL3QHCR model.

p. 3.9-9 Please indicate the source of the 2008 PM10/2.5 background concentrations, as they are identical to those for 2004.

p.3.9.11 Standard protocol calls for a neighborhood scale analysis of PM2.5 as well as an intersection analysis. Please provide a neighborhood scale analysis as well as discussion of

NYSDEC's de minimis criteria for PM2.5 for both intersection and neighborhood scales of analysis.

p.3.9-12 The results of the modeling for PM10 and PM2.5 are the same for Build as for No Build. Given the volume of additional traffic, this seems questionable. Please provide information on the model inputs and outputs, including vehicular mix, volumes, and emission factors.

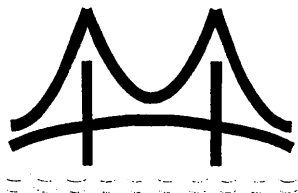
Stationary Source Fuel Combustion

p.3.9-14 The second paragraph dismisses the potential for impacts due to the HVAC pollutant emissions from the proposed 850,000 sq. ft. shopping center without providing any quantifiable basis for this decision. Please provide a quantifiable analysis, including fuel types and a description of methods that would form the basis for conclusions about the HVAC emissions.

Construction Activities

p.3.9-14 What is the length of the construction period for the proposed action? Detailed analysis of annual fugitive dust, SO2, NO2, PM10, and PM2.5 should be carried out for the construction equipment, rock crushers, on-site trucks, and worker vehicles to ensure that the annual emissions would not violate state and federal de minimis standards.

p.3.9-15 Due to the project's location in a nonattainment area for ozone and PM2.5, construction equipment should be equipped to use low-sulfur fuel and be fitted with devices to reduce nitrogen oxide emissions.



MID-HUDSON GEOSCIENCES
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rockdoctor@optonline.net
July 28, 2006

Mr. John Ewasulyn
Chairperson, Planning Board
Town of Newburgh
Newburgh, NY

**RE: Review DEIS for Proposed Marketplace Mall
in Town of Newburgh, Orange County, NY**

Dear Chairman Ewasutyn and Associates,

Summary

The environmental impacts described here have not been identified and fully characterized in the DEIS. Specifically those impacts include:

- (1) Changes in Groundwater Budget associated with Development: Significant Reduction in Recharge and Comparable Increase in Stormwater Runoff,*
- (2) Stormwater Pollution from Parking Lots and*
- (3) Potential Blasting Damage to Water Supply Wells, Buildings and Structures, and Groundwater Contamination with Perchlorate.*

As part of their work, the Town of Newburgh Planning Board should require the applicant to investigate these impacts and revise the text of chapters 3 and 5 accordingly.

Groundwater and Recharge

The DEIS (page 3.4-6) discusses the project impacts on groundwater by saying that "On-site groundwater is not intended to be used, wither for potable water or for irrigation." Under mitigation measures (page 3.4-13) the following statement is provided:

"Since no impact to on-site groundwater resources is proposed, no mitigation is offered. Potential impacts to off-site groundwater wells is viewed as being highly unlikely, based on past experiences in the region. Nonetheless, should such impacts occur, potential mitigation measures could include the deepening of existing wells, drilling of new wells, repair or improvement of existing well casings or connection to the existing municipal system. Any such measures would be coordinated with the Town of Newburgh and the Orange County Department of Health, and implemented at no cost to the affected party."

The premise that there will be no impact on groundwater is false and misleading. The information

provided in the DEIS points to destruction of the local recharge area for the water wells supplying the homes located northeast of the project on the following streets: Hilltop Avenue, New Street, Fern Avenue, Brookside Avenue, and Wintergreen Avenue.

The author(s) of the water resources section demonstrates little understanding of local geology or hydrogeology. On page 3.4-3, a false statement is made: "Bedrock wells are installed into metamorphic gneiss and granitic rocks found locally." On page 3.3-1, a similar, but true statement is made: "The site is underlain by the Normanskill Formation which is described as shale, argillite, and siltstone." If the author(s) can't identify the correct bedrock type at the project site, what credibility do they have with more complicated issues?

On page 3.4-4, there is a statement: "Groundwater flow direction on the site is not known but is expected to generally flow towards the east and north toward Quassaic Creek and Winona Lake." That expectation points to groundwater flow toward the homes on the streets mentioned above, using groundwater from wells in the bedrock aquifer.

A review of Figure 3.1-2 "Existing Topography" shows a hill in the middle of the project site reaching an elevation of 440 feet. It is confusing to interpret the topographic map because it does not have the customary annotation of contour interval and labels on the contour lines. The area above the 380-foot elevation has been colored blue shown here on Figure 1. The blue area is significant because it is part of a groundwater recharge area for the bedrock aquifer supplying the homeowner wells to the north and east. In other words, rainfall and snowmelt infiltrate into the ground and eventually enter the cracks, fractures, and other openings in the sedimentary bedrock. Then the groundwater flows downgradient to neighboring wells. When wells begin to pump, a cone of depression develops and expands, increasing the hydraulic gradient, thereby increasing flow from the recharge area. The area above 380 feet was chosen because that would be at or above the elevation of the water table in the vicinity of the houses to the north on Hilltop Avenue, assuming the land surface is about 400 feet and the water table is 20 feet below.

In discussion of stormwater management (page 3.4-8), a statement is made that: "Stormwater volumes... are expected to increase due to increases in impervious surfaces." Therefore, it follows that as runoff is increasing, infiltration will be decreasing with project development. Recharge of groundwater will be significantly less over the aquifer recharge area by replacing open land with buildings and parking lots. The effect of dramatically reduced recharge will have an increasing impact over time. As usage of water is not offset by recharge on the hill, the water table will decline. At some time in the future, there may not be adequate groundwater to sustain domestic use in the 28 homes north and east of the proposed Marketplace project.

The DEIS completely ignores groundwater conditions beneath the project area and its significance as a recharge area. As proposed, the project will ultimately lead to the destruction of the bedrock aquifer supplying nearby homes. The applicant has not addressed the potential impact upon local groundwater recharge. The DEIS has not even determined the depth to groundwater at any location on the 127-acre site. The DEIS should provide quantitative information on this unidentified environmental impact. To avoid the slow decline in water table and disruption of domestic water usage at 28 homes in

the area, if the project is approved, the marketplace developers should pay the cost to connect those homes to municipal water supply lines.

Blasting and Potential Damage to Wells and Dwellings

The applicant has addressed the potential damage of blasting to wells and dwellings. The existing language from the DEIS is quoted here and some recommendations are made address unmentioned potential groundwater contamination and legal protection for the homeowners.

Legal Protection Necessary for Homeowners from Potential Blasting Damage

The DEIS (page 3.1-10) states:

“At least 30 days before the initiation of blasting, the blasting contractor must notify, in writing, all residents and owners of existing dwellings located within 500 feet of the permit area as to how to request a pre-blasting survey. Any resident or owner of a dwelling within 500 feet of the permit area may request a pre-blast survey. The request must be made in writing directly to the Town Engineer, who shall promptly notify the applicant. The survey will include inspection of foundations, exposed walls... In locations where existing wells will also be monitored, the condition of the well, depth of casing, and depth to water elevation will also be measured and recorded.”

Also the DEIS (page 3.1-15) states:

“While there is potential for impacts on nearby private wells, any documented impact to private wells will be remedied by the blasting contractor and the developer. Remedies may ... include filters for turbidity, ...If pre-blasting yield is affected, remedies may include deepening or replacing affected well...”

These promises in the DEIS must be formalized in a legally binding document to protect the property of the homeowners. Also, only 20 of the 28 wells are included in the 500-foot radius. It is recommended to include all 28 wells in the pre-blasting survey, unless individual owners decline the inspection and guarantee. In a legal format, the Marketplace project owes the homeowners a guarantee for a safe water supply with respect to both quantity and quality.

Potential Groundwater Contamination from Blasting Agents

Blasting agents commonly contain a chemical known as “perchlorate.” In the process of blasting bedrock, perchlorate can and has become a groundwater contaminant by escaping into bedrock fractures from the boreholes used to place the charge. The large volume of bedrock to be blasted on the site and the proximity of the water table in the area increase the likelihood of potential contamination from the

use of perchlorate.

In August 2005, the Massachusetts Department of Environmental Protection issued a draft report "The Occurrence and Sources of Perchlorate in Massachusetts." Blasting agents were found to be the most prevalent source of perchlorate contamination in groundwater. The following paragraphs are extracted from that report to explain the origin and toxicological effects on humans.

"The large-scale production of perchlorate salts began in the 1940s for military purposes, and in the following decades, for use as a solid oxidant in rockets and missiles. The two most common salts are ammonium and potassium perchlorate. To this day, the defense industry and NASA remain the largest users of perchlorate in the United States. According to the Department of Defense, perchlorate is currently used in over 250 types of munitions."

"Perchlorate is of concern because of its toxicity. It interferes with iodide transport into the thyroid gland, decreasing the availability of iodide needed for the synthesis of thyroid hormones, and thus has the potential to affect metabolism and normal growth and development, which could result in brain damage. The impacts of disrupting thyroid hormone synthesis are greatest on pregnant women and their developing fetuses, infants, children, and individuals who have low levels of thyroid hormones."

Potential Well Damage from Blasting

As addressed in the DEIS in response to citizen concerns, there is a potential for well damage from blasting. Some background information is provided here indicating that there is potential for damage to neighboring wells from blasting bedrock on the marketplace site.

In July 2002, a study of citizen complaints with respect to blasting in four states (KY, WV, VA, TN) indicated 96 out of a total of 960 complaints were concerned with water quantity and quality. The alleged complaints of damage to domestic water well systems accounted for 14% of the complaints. Note: some complaints were in more than one category. The following addresses the types of problems encountered:

"Scientific studies have determined that there is an extremely low probability of causing damage to a domestic water well by blasting activities associated with mining, quarrying or road construction. When a water well is damaged by mining activity, quarrying or road construction, it is almost always caused by an interruption of the aquifer--either by draining the aquifer, or cutting off the recharge to the aquifer as a result of the mining excavation. Problems with the quality of well water are almost always the result of an increase in dissolved solids at the well from groundwater percolating through the rubble zone of the backfill area."

*Limitations of Distance from Structures for Blasting
And Construction of Bedrock Cliff Demonstrates Developer's Negligence*

For protection from mechanical damage, some municipalities limit blasting to a distance of 80 feet or more from an existing dwelling or structure. Some of the homes on Hilltop Avenue seem to be well within that distance from the potential site of blasting to form the 30-foot vertical cliff, which will be blasted out of bedrock in their backyards? According to the plan, the cliff will be at least 450 feet long behind buildings B and D. Such an escarpment will be an attractive nuisance to teenagers and rock climbers, as well as a backyard hazard for the homes on Hilltop. To create such a hazard is negligent on the part of the developer and should not be allowed as part of the site plan.

Soil and Bedrock Conditions

The proposed Marketplace site has very thin soil cover overlying bedrock. A review of Table 3.1-2 entitled "Soil Characteristics and Limitations" for uses such as roads, buildings and landscaping indicates the following:

- | 66% of soils are classified as having "severe" limitations
- 27% as "moderate," and
- 6% as "slight."

The limitations include very thin soil, shallow depth to bedrock, steep slopes, wetness, and frost action. By those standards and common sense, this site is not a good building site. To blast a hill to smithereens and grade the rock pile to make a level building area shows disregard for the land and no imagination to work with existing site conditions. This site plan calls for "engineering" 108 out of 127 acres and that "engineering" is mostly blasting and rock moving.

Stormwater Runoff Calculations

There seems to be a serious error somewhere in the stormwater runoff and recharge calculations. Provisions to document baseline parameters of potential contaminants and a future sampling program should be planned and implemented.

Erroneous Recharge Rate Used in Calculations

On page 3.4-2, the last paragraph refers to flow rates calculated from precipitation values from Dutchess County, whereas on page 3.4-5, Table 3.4-3 references Orange County. In either case, too much of the precipitation is attributed to recharge. In paragraph 2 on page 3.4-5, the estimated current recharge rate of 25 percent is too high (even though it is labeled "conservative"); it is more likely in the range of 10 to 17 percent based on USGS and USDA studies of local glaciated terrain. Using Gerber's estimate of 0.35 gpm per acre with 6.8" of rainfall per year and 5 inches for drought, the range would be 10 to 14 percent. Using Snavely's estimate of 5 to 8 inches per year, recharge would be 10 to 17 percent. As a result current runoff would be in the closer to 85 percent than 75 percent.

The discussion in paragraph two of page 3.4-5 seems to make the assumption that the recharge rate will remain the same post-development as pre-development. With the increase in impermeable surfaces such as parking lots and buildings, there will have to be much more runoff after development, because there is nowhere for water to infiltrate into the soil. In reality, recharge will be on the order of 5 percent and runoff about 95 percent.

When comparing pre- and post-development peak flow rate (cuft/sec) shown in Table 3.4-4, if the runoff volume is increasing by 10 to 20 percent, it would seem that the flow rate would also increase. What explanation can be offered for the decrease in peak flow rates shown by comparison of pre-and post development peak flow rate in Table 3.4-4?

In Table 3.4-5, it appears that the stormwater volumes are greater post-development when compared with pre-development. However, the more infrequent events (100- and 50-year) seem to not have as great a change as the more frequent (2- and 10-year). Is there an explanation for this apparent inconsistency?

Site-Specific Stormwater Contaminant Loadings Should be Measured, Not Estimated

On pages 3.4-8 to 3.4-9, there is a discussion of estimating pre-development loadings of phosphorous, nitrogen, total suspended solids, metals, and bacteria in stormwater runoff. Rather than estimating pollutant concentrations with no real site-specific data, sampling of stormwater runoff and laboratory analysis will provide baseline measurements before development. After development, annual sampling can be used to demonstrate variations from baseline. Computer generated estimates will not protect the public from future contamination. With baseline and annual sampling, the actual pollutants will be known and mitigation actions implemented. The post-development analyses can compare samples taken as runoff into treatment basins and with samples taken from discharge after treatment.

A discussion on pages 3.4-5 and 3.4-6 considers roadway and parking lot contaminants found in runoff, including hydrocarbons and metals. The last sentence at the top of page 3.4-6 states: "These types of potential impacts require appropriate mitigation design to limit impacts to existing water quality."

Where is the relevant discussion of such mitigation design or mitigation measures? Instead of modeling or calculating loadings as discussed on page 3.4-9 paragraph 3; again, concentrations of hydrocarbons, suspended sediments, phosphorus, nitrogen, bacteria, and metals should be measured with laboratory analysis in samples from before and after treatment to demonstrate that the design works.

List of Adverse Environmental Effects in DEIS is Grossly Deficient

The purpose of an EIS is to identify and characterize potential environmental impacts resulting from the proposed project. Once the true impacts are defined, then it is the job of the lead agency to evaluate the positive and negative effects of the project to ascertain if the positives outweigh the negatives or *vice versa*.

This review of the Marketplace DEIS finds three unreported areas of adverse environmental effects, which cannot be avoided if the project is implemented (DEIS Section 5.0). The applicant has not identified them as impacts. Those unlisted impacts affect onsite and offsite conditions for both short-

term and long-term time frames. The three unlisted impacts include changes in groundwater budget, stormwater pollution, and potential blasting damage.

Those omissions are gross and will have deleterious effects on environmental conditions not only on the 127-acre site, but also in the surrounding neighborhood. As Lead Agency, the job of the Town of Newburgh Planning Board is to require the applicant to evaluate those impacts. Without honest scientific characterizations of environmental conditions, such a project should be rejected outright with issuance of a positive declaration by the Lead Agency.

Groundwater Budget:

Significant Reduction in Recharge and Comparable Increase in Stormwater Runoff

Comparing post-development with pre-development, a significant reduction (80 percent) in groundwater recharge will occur over 108 acres of the Marketplace site, while an equivalent increase in stormwater runoff. For the project area and downgradient areas such as Quassaic Creek, Algonquin Park, and Winona Lake; the water budget will be impacted by reduced groundwater contribution to the bedrock aquifer. The decline in water table in homeowner wells will be closest to the project; while reduced groundwater flow to downgradient surface water resources will be an impact farther away from the project. The change in water budget will forever change the fresh water habitat of the Quassaic drainage. Changes will be most pronounced during times of drought, when groundwater discharge is essential to maintain baseflow in the Creek.

Stormwater Pollution

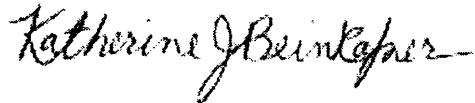
Stormwater runoff will be polluted with parking lot and roadway contaminants including hydrocarbons, lead, zinc, copper, chromium, nickel (page 3.4-6), phosphorus, nitrogen, round salt, total suspended solids, metals, and bacteria (page 3.4-9). Polluted runoff will degrade the water quality of the Quassaic creek and connected water bodies.

Potential Blasting Damage

These impacts are “potential” meaning there will be no way of predicting whether they will or will not occur. They are included here because they have happened in the past and can happen in the future. Measures can be taken to reduce the likelihood of such damage, but the project developer can not assure the public that they will not happen until after the blasting is completed and no damage is observed or detected.

Such potential blasting damage can be attributed to three areas: (1) Potential mechanical damage to water supply wells by bedrock failure reducing groundwater flow or mechanical damage to pump, conductor pipe, pressure tank or other hardware. (2) Potential contamination of groundwater in 28 domestic water supply wells by perchlorate from blasting agents. (3) Potential structural damage to nearby homes from blasting.

Yours truly,

A handwritten signature in black ink that reads "Katherine J. Beinkafner". The signature is written in a cursive style with a horizontal line at the end.

Katherine J. Beinkafner, Ph.D.
Certified Professional Geologist #6611

Attachment: Figure 1. Groundwater Recharge Area

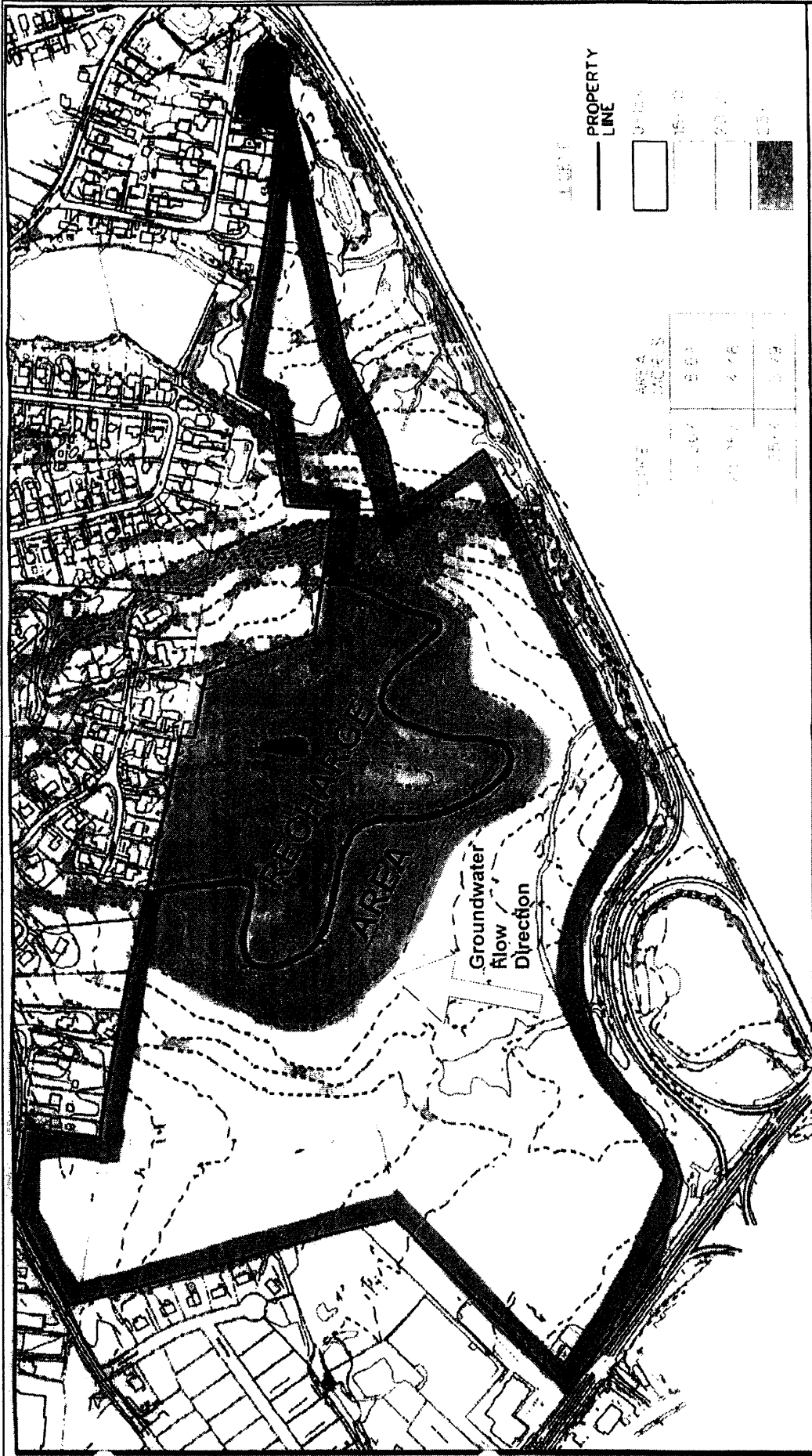


Figure 3. 1-2: Existing Topography
The Marketplace at Newburgh
Town of Newburgh, Orange County, New York
Source: Dunney, Tung, Schwilke

Figure 1. Groundwater Recharge Area for Bedrock Aquifer
Mid-Hudson Geosciences Review of Marketplace DEIS, July 28, 2006



**Comments on The Marketplace at Newburgh
Draft Environmental Impact Statement
Prepared by: CEA Engineers, PC
May 31, 2006
CEA No. 06028**

CEA Engineers, P.C. (CEA) has reviewed the DEIS for The Marketplace at Newburgh and associated appendices along with the Storm Water Management Report and calculations. CEA's review was focused on wetlands and storm water management issues. CEA personnel were denied access to the site. As a result, all comments were based upon review of documents and photographs. The order of the comments is arbitrary and does not reflect the importance of any comment.

I Wetlands

- 1) Our review of the wetland sections of these documents and related maps and aerial photographs from other sources suggest that some changes to the delineation of onsite wetlands may be warranted; however no formal opinion about the accuracy of the onsite delineation can be offered without site access and inspection of the subject wetlands.

II Storm Water

- 1) Chapter 157-7, B of the Town of Newburgh code requires that stormwater management plans maintain the existing hydrologic characteristics of the watershed. The DEIS fails to demonstrate that stormwater runoff volume and the timing of stormwater discharge from the newly created detention basins will not adversely affect downstream structures or properties.
- 2) According to Town of Newburgh code Chapter 157-6, U, (8), structures which convey streams must be checked for capacity to carry 50 year flows. The DEIS indicates that the I-84 culvert will be reviewed in compliance with NYSDOT regulations, which are less stringent than those of the Town of Newburgh. No calculations are presented in the DEIS or Storm Water Management Plan that demonstrate the existing I 84 culvert is capable of carrying 50 year flows under post development conditions.
- 3) Town of Newburgh Code Chapter 157-5.E, (1) requires no change in upstream or downstream water surface elevations without agreement of the upstream and downstream property owners. No calculations are presented in the DEIS or Storm Water Management Plan that demonstrate through flood routing that no increase in water surface elevation will occur.

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July 31, 2006

VIA HAND DELIVERY

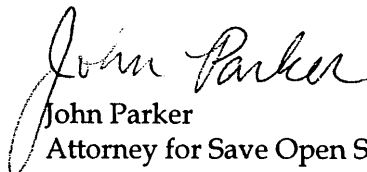
Mr. John P. Ewasutyn
Chairman
Town of Newburgh Planning Board and
Members of the Planning Board
308 Gardnertown Road
Newburgh, NY 12550

**Re: Draft Environmental Impact Statement
Marketplace at Newburgh, Town of Newburgh
Blk 3; Lots 49.22, 49.1, 41.3, 48 & 41.4**

Dear Mr. Ewasutyn and Members of the Planning Board:

I represent Save Open Space ("SOS"), which is comprised of a number of local residents, and on their behalf submit into the public record these written comments on the Draft Environmental Impact Statement for the above referenced project.

Respectfully submitted,


John Parker
Attorney for Save Open Space

WRITTEN COMMENTS OF

JOHN L. PARKER, ESQ.

SUBMITTED ON BEHALF OF

SAVE OPEN SPACE
NEWBURGH, NEW YORK

ON THE

**DRAFT ENVIRONMENTAL IMPACT STATEMENT
MARKETPLACE AT NEWBURGH**

PRESENTED TO THE

TOWN OF NEWBURGH PLANNING BOARD

JULY 31, 2006

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INTRODUCTION.

The written comments on the Draft Environmental Impact Statement for the Marketplace at Newburgh ("Marketplace" or the "Applicant's project") project are submitted on behalf of Save Open Space, an unincorporated association of local citizens and residents that live nearby and adjacent to the proposed site and that are concerned with preserving open space in their community, and with the environmental impacts associated with projects like the Marketplace at Newburgh.

These comments specifically address issues raised by the *Draft Environmental Impact Statement*, Marketplace at Newburgh, April 4, 2006. ("Marketplace DEIS" or "DEIS").¹ These comments are to be incorporated into the public record and to be fully addressed according to the provisions of New York State law and regulation by the Town of Newburgh Planning Board ("Planning Board") which is the 'lead agency' for this project. As submitted, the document is over 2,000 pages, and represented a daunting challenge to the community to address issues covered by the DEIS. For a variety of reasons set forth herein, SOS and their members have been denied the right to meaningfully participate in the review process for the proposed project.

At the May 4, 2006 meeting of the Planning Board, the revised Draft Environmental Impact Statement for the proposed Marketplace at Newburgh was accepted. In January of 2006, and at various working sessions thereafter, the Applicant worked with the Planning Board and their consultants to address issues that the Planning Board had identified as deficient in the DEIS submitted to them in 2005. At that meeting, a Public Hearing was scheduled for June 1, 2006, less than thirty days after acceptance of a voluminous document. *The Public was given less than thirty days to read, review, analyze and prepare testimony on the substantive merits of the DEIS, even though the applicant was given over four months to revise the DEIS it already submitted to the Planning Board, so that the Board would accept it as complete.*

During the June 1, 2006 Public Hearing, representatives of SOS and other members of the community argued for additional time for public comment and review of the extensive DEIS. See Transcript of June 29, 2006 Public Hearing before the Town of Newburgh Planning Board. Despite the size of the document, testimony of members of the public was limited to

¹ The DEIS was prepared by Tim Miller Associates, Inc. for project sponsor Wilder Balter partners, Inc. for the lead agency, Town of Newburgh Planning Board, April 4, 2006.

three minutes each. At the close of the June 1, 2006 Public Hearing, with a number of signed up witness yet to testify, the Planning Board scheduled another public hearing for June 29, 2006. See Transcript of June 29, 2006 Public Hearing before the Town of Newburgh Planning Board. At that meeting, the Planning Board informed the public that the close of public comments on the DEIS was schedule for July 31, 2006. *The entire public review of the DEIS did not last as long as the amount of time that the Applicant had to revise the DEIS it had previously submitted to the Board.*

THE PROPOSED PROJECT.

The Marketplace is a project proposed by Wilder Balter Partners, Inc., for a series of buildings totaling 850,000 square feet of retail space on an approximately 123-acre site bordered by Routes 300, 52 and Interstate 84. The members of SOS have a variety of concerns with this project, which amongst others include the fact that over 100 acres of Newburgh will be obliterated, demolished and permanently destroyed for its construction; traffic patterns will dramatically change, bringing more congestion and pollution to the local area; the drinking water supply of adjacent property owners may be severely negatively impacted by construction and may be rendered unusable; and that an ecologically important area will be lost forever when the project is completed.

LEGAL REQUIREMENTS OF STATE ENVIRONMENTAL QUALITY REVIEW ACT.

The State Environmental Quality Review Act was passed to require government to take a 'hard look' at the environmental impacts before undertaking any action on projects like the proposed Marketplace at Newburgh. Environmental Conservation Law ("ECL") Article 8. The law and regulations broadly define "environment" for the purposes of the review of the project.

Environment means the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archaeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.

6 NYCRR § 617.2 (l). The Environmental Impact Statement ("EIS") is the mechanism of the environmental review and it is required to "systematically consider significant adverse

environmental impacts." 6 NYCRR § 617.2(n). The purpose is to facilitate "the weighing of social, economic and environmental factors early in the planning and decision-making process."² *Id.* The DEIS must "assemble relevant and material facts upon which an agency's decision is to be made. It must analyze the significant adverse impacts and evaluate all reasonable alternatives." 6 NYCRR § 617.9(b)(1). An EIS is required to be understandable and accessible by members of the public and must address "those potential significant adverse environmental impacts that can be reasonably anticipated and/or have been identified in the scoping process." 6 NYCRR § 617.9(b)(2).

The Planning Board as lead agency is required, as a matter of law, to respond to and address substantive comments made by members of the public. 6 NYCRR § 617.9(8). The legal responsibilities of the Planning Board with respect to the review of the EIS are substantial, with the state law making clear that the "lead agency is responsible for the adequacy and accuracy of the final EIS, regardless of who prepares it." 6 NYCRR § 617.9(8).

At the end of the EIS process, the lead agency is required to review all documents submitted by the Applicant for the project, address the substantive issues raised in the public comments submitted by members of the public and make detailed findings. State law requires specified findings be made by the lead agency for this project which include:

- (1) consider the relevant environmental impacts, facts and conclusions disclosed in the final EIS;
- (2) weigh and balance relevant environmental impacts with social, economic and other considerations;
- (3) provide a rationale for the agency's decision;
- (4) certify that the requirements of this Part have been met;
- (5) certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

² *Environmental impact statement (EIS)* means a written "draft" or "final" document prepared in accordance with sections 617.9 and 617.10 of this Part. An EIS provides a means for agencies, project sponsors and the public to *systematically consider significant adverse environmental impacts, alternatives and mitigation*. An EIS facilitates the weighing of social, economic and environmental factors early in the planning and decision-making process. *Emphasis added.* 6 NYCRR § 617.2(n).

6 NYCRR § 617.11(d). It is upon the complete environmental review that is contained in the Final EIS, and these findings made by the lead agency, that the ultimate decision of whether or not to approve the project as proposed will be made.

PROCESS OF REVIEW OF THE MARKETPLACE DEIS HAS BEEN FLAWED.

From the 2,000 plus pages of the DEIS submitted by the Applicant, it is clear that considerable time and resources by the Applicant went into the presentation to the Planning Board. In fact, between January and May, the Applicant was able to carefully and methodically address the concerns raised by the Planning Board. The Planning Board made it clear that the Applicant would have to address these concerns or it would not accept the DEIS. Now, even though the Applicant had almost five months to address the Planning Board's concerns and revise its DEIS accordingly, the public is given less than a month to review, analyze and prepare public testimony at the only Public Hearing on this application. Despite the potentially significant impacts identified in the scoping sessions, and in the DEIS, which was revised before acceptance, the public received little time to review a document for a project that if accepted will impact their lives forever.

There are a number of concerns with the public review process for the DEIS for this project. These issues were specifically raised in a letter to Chairman Ewasutyn on May 30, 2006, a copy of which is attached hereto as Exhibit A.³ The series of events of particular concern regarding the process are as follows:

On March 12, 2006 the Town Board and Planning Board received a letter from a number of members of SOS requesting that the Town officials implement basic procedural safeguards to protect local residents from construction impacts of the Marketplace project. Amongst other things, the letter emphasized the need for disinterested third parties to be made available to monitor and evaluate impacts of the proposed project, should it be approved and should construction move forward. There was no response.

On April 19, 2006, my clients asked the Planning Board that the public comment period on the DEIS "be no less than 90 days, and the Public Hearing be scheduled no earlier than 60 days after the start of the public comment period."

³ These issues were raised to the Planning Board by citizens and their representatives in testimony at the public hearings on June 1 and June 30, 2006.

On May 4, 2006, the Planning Board met to accept the DEIS from the Applicant, Wilder-Balter Partners. At that meeting, Counsel for other concerned neighbors attempted to address the Board, on the record, regarding the timing of the Public Hearing for the application. There was no such discussion, and the hearing date was set for June 1, 2006.

The Applicant's proposal, for 850,000 square feet of retail space, will have a dramatic and severely adverse impact on the neighboring property owners, many of whom are my clients. The lack of a proper public comment process exacerbates the impacts because the public loses the right to adequately communicate their concerns to the Planning Board in person, not just in a written document that may not carry the same weight or force or impression of oral testimony.

REASONABLE ACCESS TO THE PROPOSED SITE WAS DENIED BY THE APPLICANT, AND THE ISSUE WAS NOT ADDRESSED BY THE PLANNING BOARD.

Our experts have indicated that site access by them is necessary to fully and independently assess, analyze and address claims made by the Applicant regarding important environmental issues in the DEIS. The public's concerns about the review of the DEIS are further complicated by the Applicant's repeated refusal to grant site access to these retained experts. The Applicant was asked on March 7 and again on May 24 to allow members of the public and their consultants reasonable on-site access for the purpose of independent review of statements made in the DEIS. Letter of John Parker, Attorney for SOS to Larry Wolinsky, Attorney for Applicant, March 7, 2006, attached hereto as Exhibit C. On March 6, and by letter of confirmation on March 13, the Applicant again denied such requests. Letter of Larry Wolinsky, Attorney for Applicant to John Parker, Attorney for SOS, March 13, 2006, attached hereto as Exhibit E. Following another conversation on the site access issue on May 24, the Applicant again denied the request for reasonable site access. Other neighbors were similarly denied access. Letter of John Parker, Attorney for SOS to Larry Wolinsky, Attorney for Applicant, May 30, 2006, attached hereto as Exhibit D.

The denial of these requests for reasonable site access is inconsistent with the SEQRA. The reason given by the Applicant for such denial was simple; we were told that "no right of access will be granted no matter who your consultants may be." We sought access because of the variety of issues that require a 'hard look' as part of the EIS review process. These are issues

that deserve a thorough, careful, meaningful and objective evaluation by independent experts not hired by the Applicant. By the end of May it became clear that experts could not render conclusions about the veracity and accuracy of the statements and analysis in the DEIS without on-site inspection. As one of our experts has acknowledged in their attached written comments, the review they were able to perform – documentary – rendered a professional determination with respect to wetlands on the project site not possible without access and on-site review.⁴

PUBLIC COMMENT PROCESS HAS BEEN DEFICIENT AND RENDERS FURTHER REVIEW BY THE PLANNING BOARD ILLEGAL.

As SOS made clear to the Planning Board in May and in testimony in June, the non-responsive tone it has taken with respect to local citizens' request for a reasonable time period for DEIS review, the need for adequate time for public testimony and its failure to require the Applicant to grant reasonable on-site access for third party review raises significant legal questions about the validity of the process. Transcript of June 1, 2006 Public Hearing before the Town of Newburgh Planning Board at page 28 – 32, 38 – 43; Transcript of June 29, 2006 Public Hearing before the Town of Newburgh Planning Board at page 181 – 186, 189 – 195. SEQRA regulations require the lead agency to respond to the substantive comments raised by the public during the public hearings and comment period. 6 NYCRR § 617.9(8). The denial of the Applicant to allow reasonable on-site inspection of statements in the DEIS, and the failure of the Planning Board to respond to our requests for on-site inspections renders the public incapable of the opportunity to develop and present substantive comments to the lead agency for their response. If the public cannot offer comment that is thorough, reasonable and well-founded, the spirit and letter of the SEQRA have been violated. As the Courts have made clear, there must be the opportunity for a 'hard look' at the environmental impacts of proposed projects, and to have the public as a participant in that process. Ecology Action v. Van Cort, 99 Misc. 2d 664, 417 N.Y.S.2d 165; See also Merson v. McNally, 90 N.Y.2d 742, 665 N.Y.S.2d 605 (1997). The public is a full partner in SEQRA process, and as a result, the procedural and substantive requirements must be met for the process to be legal valid.

⁴ The review on these issues was further complicated because the on-line posted documents were not fully functional and incomplete – maps were incorrectly scanned and the posted files could not be printed to allow a full review of the larger comprehensive maps. Telephone calls to Tim Miller Associates resolved these issues on Thursday, May 25, 2006.

The public has been substantially prejudiced by the current truncated public review process and the failure of the public to gain access to the site for objective review of the Applicant's DEIS. There was no legal restriction or impediment to the Planning Board granting SOS and members of the public adequate time for a full and thorough review of the DEIS and reasonable site access. ECL Art. 8. Nonetheless, experts and consultants for members of the public were not given the right to access the proposed Marketplace site at any time. Despite the clear procedural and substantive requirements of SEQRA, the Applicant offered no legal basis why it denied site access, and the Planning Board remained silent, allowing the public's right to have meaningful comment end with the public comment close date of July 31st. Denying the ability of local concerned residents and neighbors to fully participate in that carefully defined process renders it incomplete and meaningless on key issues covered in the DEIS, as SOS clearly demonstrates herein.

THE MARKETPLACE DEIS IS INADEQUATE AS A MATTER OF LAW.

DEFICIENCIES IN MARKETPLACE DEIS

AIR QUALITY

There has been no question that a commercial project of almost a million square feet, because of the traffic it would draw from the local and surrounding communities, could have a potentially significant environmental impact to the air quality of the neighborhood, the Town and the entire region. The DEIS does not dispel that initial concern. As the Board is well aware, Orange County is located in an area of New York that routinely suffers from air quality problems and is frequently in violation of Clean Air Act standards. These air quality problems affect children and adults alike, from asthma to chronic bronchitis to cardiovascular disease, and compromise our ability to enjoy our everyday lives. There are thousands of people whose health conditions are exacerbated by these air quality issues. See American Lung Association, State of the Air Report 2005, attached hereto as Exhibit F; See also American Lung Association website at www.stateoftheair.org, visited on July 28, 2006. Car and truck traffic to and from the proposed Marketplace site is a major source of these air quality problems. The Marketplace at Newburgh DEIS indicates that up to 2,500 cars per hour will be added to local roadways during peak hours. This dramatic increase in traffic and local roadway congestion will add to the air

quality problems in and around Newburgh. The DEIS fails to adequately address this important environmental impact as required by SEQRA.

The air quality analysis presented in the Applicant's DEIS is inadequate because the results presented contain significant errors, and the methodology used to reach such conclusions is difficult if not impossible to determine. Detailed comments on the air quality analysis which sets forth in great detail the problems, and sets forth numerous questions which must be addressed by the Board and the Applicant, is attached hereto. Letter of Nancy Neuman, President Sandstone Environmental Services to John Ewasutyn, Chairman, July 28, 2006 at 1 ("Neuman Air Quality Analysis"), attached hereto as Exhibit G. As our expert has concluded, "The analyses and conclusions set forth in the DEIS for the air quality analysis fall short of the requirements for a study of an 850,000 sq. ft. shopping center, and the modeling of pollutant concentrations for the proposed action contains serious errors that substantially understate the pollutant concentrations that would occur under Build Conditions." Neuman Air Quality Analysis at 1. The detailed seven page analysis is critical of the analyses presented to the Board for key pollutant measurements and its methodology, stating that

the DEIS and appendices lack descriptive text and documentation that would enable the reader to determine whether the data sources and methodologies comply with EPA, NYSDOT, and NYSDEC procedures for environmental analysis.

Neuman Air Quality Analysis at 1. Our expert concludes that

What has been provided in the DEIS and Appendix It shows deficiencies and some serious errors that make evaluation of the potential impacts impossible until the DEIS has been revised. Of the problems found in the modeling and presentation of results, the items listed below are of particular concern:

- the lack of any apparent analysis to support the conclusions that parking lots and stationary sources for this 850,000 sq. foot development would have no impact on surrounding residents and Algonquin Powder Mill Park,
- computer printouts in the appendix that indicate higher 8-hour CO concentrations from traffic volumes than those shown on the tables in the text, and
- apparent mistakes in the computer modeling of pollutant concentrations from traffic that include, among other things, CO emission factors that are approximately 3% of what they should be. Thus, the CO concentrations for the project may be much higher than shown in the tables and text.

Because the identified mistakes and deficiencies call into question the validity and accuracy of the entire air quality study, the Board should not rely upon the DEIS to form conclusions about the potential air quality impacts associated with the proposed action.

Neuman Air Quality Analysis at 1. Thus, based upon what has been presented in the DEIS to the Board on the air quality issue is completely inadequate and cannot form the basis of the conclusions necessary under SEQRA.

NOISE

The human perception of sound is greatly impacted by their surroundings. In this case, the approximately 123 acres of hilly natural woodlands attenuates significant amounts of sound, and in fact, acts as a natural buffer to the communities directly adjacent to the proposed site. This is particularly true in the spring, summer and fall, when the deciduous trees are covered with foliage. Natural woodland absorbs sound, and it cannot be replaced by walls or fences, as proposed here, in terms of noise reduction. Normally, several hundred feet of woodlands can reduce traffic noise by 5 decibels or more, which would be clearly perceptible to a human standing on the site, or on these adjacent properties owned by SOS members and local residents. The woodlands are a particularly important noise and visual buffer to the adjacent community because of the car and truck traffic on Interstate 84 and the congested traffic conditions on Route 300. To a certain extent, the woodlands also buffer the noise generated by overflight of aircraft to nearby Stewart Airport. Removal of the trees, destruction of the gentle hillside for a flat ready to construct site, and replacement of the dense woodlands with large buildings and paved parking lots that will reflect the noise rather than absorb it, will dramatically increase the sound of nearby highways and roads at adjacent homes, and magnify it by 5 decibels or more because sound will reflect and move quickly through the site that offers no meaningful noise buffering mitigation. This is in addition to the impact from any noise levels emanating from the site itself after the shopping center has been constructed. It is quite clear that there are significant noise impacts to the nearby and adjacent neighborhoods and communities compared to how these areas currently exist with the proposed site undisturbed.

The experts raised a variety concerns with the DEIS noise analysis. Specifically, the problems are the lack of state of the art modeling of noise levels for the proposed action, coupled with a lack of documentation for the assumptions about equipment noise. Detailed

comments on the noise analysis which sets forth in great detail the problems, and sets forth numerous questions which must be addressed by the Board and the Applicant, is attached hereto. Letter of Nancy Neuman, President Sandstone Environmental Services to John Ewasutyn, Chairman, July 28, 2006 at 1 ("Neuman Noise Quality Analysis"), attached hereto as Exhibit G. These problems result in "conclusions may understate the noise levels that would occur under Build Conditions." Neuman Noise Quality Analysis at 1. *"What has been provided in the DEIS and Appendix H shows deficiencies that make evaluation of the potential impacts impossible until the DEIS has been revised with appropriate computer modeling of roadway impacts."* Neuman Noise Quality Analysis at 1. The specific concerns set forth in our experts report include:

- The lack of computer modeling with the FHWA's TNM model to determine the impact of noise levels from new access roads. Noise levels have simply been assumed based on assumptions about speeds and mixtures of trucks on other roadways that may not adequately represent the traffic and topography at the site.
- The assumptions about the efficiency of various fences and walls to reduce noise without adequate modeling to determine the length and height of such a barrier. Furthermore, these barriers may not mitigate noise levels at second-floor bedroom windows.
- The lack of documentation in the form of manufacturers' specifications regarding noise levels from HVAC units, trash compactors, and other equipment. Standard procedure is to provide information about actual types of equipment showing noise levels at distances of 7 or 23 meters.
- The lack of information on how many pieces of noisy equipment (specifically, rock drills) would be present during construction phases and for how long. This could be very significant, as contractors typically employ multiple rock drills to maintain the project schedule.

Noise Quality Analysis at 1. Therefore, the Board should not rely upon the DEIS's noise analysis conclusions to determine the severity of the noise impacts on the local community associated with the proposed action, significant additional work by the Applicant is necessary before any such conclusion can be reached.

TRAFFIC

There is public comment before the Board that addresses how the Applicant's traffic analysis methodology is fatally flawed. The project, when completed, will result in a dramatic increase in traffic during peak hours of the day and an increase traffic congestion and an

increase in air pollution in an area already failing to meet all Clean Air Act requirements because of, amongst other things, heavy car and truck traffic.⁵ The evidence in the record establishes that for a variety of fundamental reasons, from basic assumptions to signalage mitigation proposals, the entire traffic analysis needs to be re-done and re-submitted to the Board. Transcript of June 29, 2006 Public Hearing before the Town of Newburgh Planning Board at page 147 to 151. As the Planning Board is well aware, traffic has been viewed as one of the potentially significant adverse environmental impacts of the proposed project since the beginning of the SEQRA review.

The proposed mitigation, even if it were considered technically possible which expert testimony in the public record shows it is not, relies upon remedies that the Town, nor the developer have jurisdiction to implement. These remedies include revised signage and road lane usage and signalage that is the legal responsibility of the State of New York Department of Transportation. In addition, the Applicant's proposed traffic measures include physical improvements in a variety of areas and potentially may require the purchase of additional properties. Thus, the Planning Board is left in a situation where it cannot adequately determine the extent of the significant adverse environmental impacts of the proposed Marketplace because the DEIS is fatally flawed, and it cannot certify the mitigation presented is sufficient for approval of the process because it is no position to know whether the identified improvements can or will be made because it is up to a New York State agency, the DOT, to implement many of the extensive proposed mitigation measures.

The expert testimony presented on the Traffic issue to the Board at the June 29, 2006 public hearing also illustrate the need for a Supplemental DEIS. The comments made on the record that day indicate that the traffic analysis presented to the Board by the Applicant were so fundamentally flawed as to render them meaningless. The importance of the traffic analysis component to the EIS, and the Board's legal responsibilities on this issue is manifest, and the legal requirements for an SEIS are met and such request be granted by the Planning Board granted. 6 N.Y.C.R.R. § 617.7(c)(1)(v). To satisfy the "hard look" and public participation requirements, the re-submission of a new traffic analysis should be considered newly discovered evidence, and the public should be given the full and fair opportunity demanded by SEQRA for public review and comment. 6 NYCRR § 617.3, 617.9.

⁵ Please see the Air Quality Analysis.

WETLANDS

The public has been denied access to the site of the proposed Marketplace, rendering objective, thorough and firsthand analysis of the on-site wetlands conditions impossible. Our wetlands expert reports, in full

Our review of the wetland sections of these documents and related maps and aerial photographs from other sources suggest that some changes to the delineation of onsite wetlands may be warranted; however, no formal opinion about the accuracy of the onsite delineation can be offered without site access and inspection of the subject wetlands.

Comments on the Marketplace at Newburgh, Environmental Impact Statement, Prepared by: CEA Engineers, PC, May 31, 2006, CEA No. 06028 ("Carpenter Environmental Comments"), attached hereto as Exhibit L.

TERRESTRIAL AND AQUATIC ECOLOGY: ENDANGERED AND THREATENED SPECIES ARE LIKELY ON-SITE.

SOS retained J.G. Barbour, an environmental scientist who conducted, in 2003 - 2004, a comprehensive ecological survey of Quassaick Creek. Mr. Barbour reviewed the Terrestrial and Aquatic Ecology section of the DEIS.⁶ He noted that

In summation, the DEIS has hardly any actual information on biological resources, and what it does provide is useless and falls far short of the basic requirements of sound science and State Environmental Quality Review. The developer has simply not addressed the issues. In terms of the biology of the site, the DEIS provides no basis on which to make a decision regarding the Marketplace development proposal. Instead of conducting a bio-blitz, the developer's consultant has performed a bio-blip. We still know nothing about the site's biology except what we can glean from scientifically sound and adequate studies of surrounding areas. To any observer the site remains a biological black hole.

⁶ DEIS § 3.3.

Comments on Marketplace Mall Draft Environmental Impact Statement of J.G. Barbour, Ecological Consultant ("Barbour Ecological Comments"), July 21, 2006 at 7, attached hereto as Exhibit K.

A major fallacy in the reasoning of the DEIS is that because there are highways and developments around the site, it is of no environmental value – under this reasoning, nothing, almost no single site left in this county will be of value should someone decide to develop it. The ultimate irony is that under this reasoning, the ecological and environmental value of Central Park in New York City must be judge similarly. Mr. Barbour noted this in his comment about how the DEIS attempts to distort the findings of his Quassaick Creek Study, noting that

The Marketplace DEIS refers to my Quassaick Creek study, but in what I see as an effort to condemn the Marketplace site as biologically worthless, it turns the main finding of my study on its head. My Quassaick Creek survey shows that jewels of biodiversity can be found in urban settings. The Marketplace DEIS contends that the existing development around the site isolates and degrades the site so much that development is the best possible use. This is in total disagreement with my conclusion that high biodiversity and urban development can and do exist side-by-side. The developer's is a self-serving conclusion that goes against what the real evidence proves about Quassaick Creek. Why should we conclude the opposite about the Marketplace site?

Barbour Ecological Comments at 7. The Planning Board must note that the site is rich in biodiversity and is likely home to at least two rare plant species: the narrow-leaf sedge and the woodland agrimony. These same species have been found on adjacent property, and are found on the Endangered and Threatened Species lists in New York State. Finally, Mr. Barbour comments that an independent on-site survey is necessary. He notes

The town board should tell the developer either to fund a thorough and professionally conducted study by qualified scientists, or to allow independent qualified scientists to study the site. SEQRA requires essential information on rare species and significant habitats be provided. The DEIS fails to do this. For these reasons, the DEIS is unacceptable, and should not be accepted. An independent biological study of the Marketplace site is greatly needed, and must be required.

Barbour Ecological Comments at 7. Thus, as is the case with the Applicant's wetlands analysis, on-site inspection and verification by the public is required for a thorough review consistent with the requirements of SEQRA.

GEOLOGICAL IMPACTS: BLASTING IMPACT RISKS TO LOCAL DRINKING WATER NOT MITIGATED.

The Applicant proposes to demolish through extensive blasting on-site major portions of the approximately 123-acre lot adjacent to a residential neighborhood which contains 28 private homes. The blasting on a dramatic amount of on-site bedrock will potentially significantly adversely impact members of SOS and nearby neighbors in a number of ways, including: blasting damage during constructions to homes and foundations, blasting damage to drinking water wells and septic fields, short term, and long term impacts to groundwater recharge because the blasting will result in the regrading and dramatic alteration of the physical characteristics (gentle woodland hills) to flat and impervious buildings and parking lots, and contamination of the remaining drinking water supply by blasting agents. As the DEIS notes, "there is potential for impacts to nearby wells," during the blasting of some 480,000 cubic feet of bedrock to level the middle of the site. This assertion demonstrates a significant understatement. We had a licensed professional geologist examine all aspects of blasting impacts on the surrounding community, and her detailed comments for the Board are attached hereto. Letter of Katherine Beinkafner, Ph.D, Mid-Hudson Geosciences to John Ewasutyn, Chair, July 28, 2006 ("Beinkafner Geosciences Comments"), attached hereto as Exhibit J.

One of the most glaring deficiencies of the DEIS is its failure to address the potential impacts of the dramatic on-site blasting to all potentially impacted groundwater wells. There is no rationale or justification for such omission. All 28 residential wells within the 500-foot radius of the blasting site must be included in the DEIS, not the mere 20 wells identified by the developer. As early as March 2006, members of SOS brought to the attention of Town officials, that there is a need for adequate legal and financial safeguards to be put into place, as necessary mitigation, should the proposed project be approved. Town officials did not respond to the request that their drinking water be protected for several months. Letter of John Parker, Attorney for SOS to Wayne Booth, Supervisor, Town of Newburgh, June 26, 2006, attached hereto as Exhibit H. The Supervisor finally offered a response to the March request by the end of July. Letter of Wayne Booth, Supervisor, Town of Newburgh to John Parker, Attorney for SOS, July 17, 2006, attached hereto as Exhibit I. As it stands, the DEIS mentioning that the blasting contractor will be liable for damages is not an adequate mitigation plan for a project

that could potentially destroy drinking water and septic fields for adjacent property owners. At a minimum, before construction commences, should the project be approved, there needs to be detailed and comprehensive contingency plans and mitigation strategy in place for dealing with a drinking water emergency.

The DEIS also fails to address the projects impact to local groundwater.

The premise that there will be no impact on groundwater is false and misleading. The information provided in the DEIS points to destruction of the local recharge area for the water wells supplying the homes located northeast of the project on the following streets: Hilltop Avenue, New Street, Fern Avenue, Brookside Avenue, and Wintergreen Avenue. . .

On page 3.4-4, there is a statement: "Groundwater flow direction on the site is not known but is expected to generally flow towards the east and north toward Quassaic Creek and Winona Lake." That expectation points to groundwater flow toward the homes on the streets mentioned above, using groundwater from wells in the bedrock aquifer.

Beinkafner Geosciences Comments at 2. There are also significant impacts to the overall 'budget' of water on the proposed site, and its impact off-site, neither of which are addressed. Ms. Beinkafner states:

Significant Reduction in Recharge and Comparable Increase in Stormwater Runoff

Comparing post-development with pre-development, a significant reduction (80 percent) in groundwater recharge will occur over 108 acres of the Marketplace site, while an equivalent increase in stormwater runoff. For the project area and downgradient areas such as Quassaic Creek, Algonquin Park, and Winona Lake; the water budget will be impacted by reduced groundwater contribution to the bedrock aquifer. The decline in water table in homeowner wells will be closest to the project; while reduced groundwater flow to downgradient surface water resources will be an impact farther away from the project. The change in water budget will forever change the fresh water habitat of the Quassaic drainage. Changes will be most pronounced during times of drought, when groundwater discharge is essential to maintain baseflow in the Creek.

Stormwater Pollution

Stormwater runoff will be polluted with parking lot and roadway contaminants including hydrocarbons, lead, zinc, copper, chromium, nickel (page 3.4-6), phosphorus, nitrogen, round salt, total suspended solids, metals, and bacteria (page 3.4-9). Polluted runoff will degrade the water quality of the Quassaic creek and connected water bodies.

Beinkafner Geosciences Comments at 7. The potential blasting damage includes:

Such potential blasting damage can be attributed to three areas: (1) Potential mechanical damage to water supply wells by bedrock failure reducing groundwater flow or mechanical damage to pump, conductor pipe, pressure tank or other hardware. (2) Potential contamination of groundwater in 28 domestic water supply wells by perchlorate from blasting agents. (3) Potential structural damage to nearby homes from blasting.

Beinkafner Geosciences Comments at 8.

Based upon the DEIS review, our geological expert concludes that

The environmental impacts described here have not been identified and fully characterized in the DEIS. Specifically those impacts include:

- (1) Changes in Groundwater Budget associated with Development: Significant Reduction in Recharge and Comparable Increase in Stormwater Runoff,*
- (2) Stormwater Pollution from Parking Lots and*
- (3) Potential Blasting Damage to Water Supply Wells, Buildings and Structures, and Groundwater Contamination with Perchlorate.*

As part of their work, the Town of Newburgh Planning Board should require the Applicant to investigate these impacts and revise the text of chapters 3 and 5 accordingly.

Beinkafner Geosciences Comments at 8. Ms. Beinkafner also agrees with SOS and local neighbors of the project with regard to the need for legally enforceable safeguards and formalized mitigation measures for the local residents should damage occur to their wells. These areas have not been addressed in any legitimate and adequately protective way. The failure to address these mitigation measures renders the Geological and blasting areas of the DEIS legally inadequate.

STORMWATER MANAGEMENT PLANS VIOLATE TOWN CODE.

There have been historic rainfalls in and around Orange County and the Hudson Valley these past several weeks. In fact, they have caused extensive property damage and even loss of life. The project dramatically changes the existing site, replacing gently sloping forest with a flattened 'table-top' like site for the construction of big box retail. With the site being lowered by up to thirty feet on one side and raised by thirty feet on another, the run-off of water during rainstorm events will be significantly altered, and the Town and State law requires that it be

adequately addressed. The stormwater issue is particularly important, because the water is going to end up in nearby Quassaick Creek and Winona Lake. The stormwater plan, for a variety of reasons, is not adequate and fails to comply with Town Law. These defects mirror the fundamental inaccuracies with the DEIS identified in the geologic review.

Without proper stormwater management, pollutants and toxins from the site can seep into the aquifer and impact the drinking water supply for area residents. Contrary to Chapter 157-7, B of the Town Code, the DEIS fails to demonstrate that the site will "maintain existing hydrologic characteristics of the watershed," and that stormwater "will not adversely affect downstream structures or properties." Carpenter Environmental Comments at 1. For example, contrary to Town Code, Chapter 157-6, the DEIS fails to demonstrate stormwater management in the face of a hundred-year flood event. Carpenter Environmental Comments at 2. The stormwater management plans in the DEIS also fail to demonstrate that "through flood routing that no increase in water surface elevation will occur," which is necessary to comply with Town Code provisions Chapter 157-5.E(1) that require no change in upstream or downstream water surface elevation without agreement of the upstream and downstream property owners. Carpenter Environmental Comments at 2. The Marketplace at Newburgh proposal calls for massive and irreversible changes to the site, through extensive blasting and regrading of features to maximize buildable strip mall and big box areas. These changes exact a heavy price in terms of what will happen on-site and off-site during rain events. The Applicant has failed to demonstrate, as they must under Town law, how the stormwater management plan will comply with provisions of Town and State law.

THE DEIS FAILS TO ADEQUATELY CONSIDER ALTERNATIVES TO THE PROPOSED MARKETPLACE PROJECT.

Amongst other requirements, the DEIS must analyze and consider alternatives to the action it seeks approval for, including the alternative of 'no action.' SEQRA clearly requires the DEIS to "evaluate all reasonable alternatives." 6 NYCRR § 617.9(b)(1). The regulations require detailed consideration of feasible and reasonable alternatives that must include

(v) a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The range of alternatives

must include the no action alternative. The no action alternative discussion should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed action. The range of alternatives may also include, as appropriate, alternative:

- ('a') sites;
- ('b') technology;
- ('c') scale or magnitude;
- ('d') design;
- ('e') timing;
- ('f') use; and
- ('g') types of action. For private project sponsors, any alternative for which no discretionary approvals are needed may be described. Site alternatives may be limited to parcels owned by, or under option to, a private project sponsor;

6 NYCRR § 617.9(b)(5)(v). The alternatives, excluding the option of 'doing nothing' does NOTHING to change this outcome. The alternatives presented in the DEIS, which include an increase in buffer areas between adjacent community homes from 50 to 75 feet in the blast zone, and an increase of building setback from 100 to 120 feet in some locations, do not meet this standard. These alternatives do nothing to change the scale, magnitude or design or use of the proposed Marketplaces project, as the regulations suggest must be considered. The end result of these alternatives is the same - the proposed site is destroyed for the same amount of commercial construction. As the Applicant has made clear, the long-term impacts of their project is the 'loss of 108 acres of existing topography for the project they chose to build.' Alternatives Analysis, DEIS Section 4. In this case, the proposed Marketplace will cause many significant adverse environmental impacts, and the failure of the Applicant to consider the types of alternatives renders the DEIS inadequate as a matter of law.

There were attempts by the community to reach out to the Applicant regarding alternatives to their proposal. There is no discussion in the DEIS of proposals made by elected officials, including Congressman Maurice Hinchey's Office, for reasonable alternatives that include mixed land uses and that would lessen the significant adverse impacts on the existing community in direct contrast to the Marketplace as currently proposed. There is no discussion or indication why this well-known alternative was not considered in the DEIS, nor any basis for why the Applicant could not have considered such an alternative as reasonable. The legal implications for the Applicant's failure to consider reasonable alternatives also includes another dimension: by failing to consider any other proposed project, the Applicant which brings

considerable sophistication and resources to the project, cannot argue that mitigating the impacts of its proposed project is either not practicable or feasible.

**THE NUMEROUS INADEQUACIES AND A SIGNIFICANT OMISSION REQUIRE A
SUPPLEMENTAL EIS BE PREPARED FOR THE MARKETPLACE PROJECT.**

On July 20, 2006 SOS wrote to the Board to request that it consider requiring a Supplemental Environmental Impact Statement ("SEIS" or "Draft SEIS") for the proposed Marketplace application. Letter of John Parker, Attorney for SOS to Chairman Ewasutyn and Members of the Planning Boards, July 20, 2006. The grounds for such a request include newly discovered historical and archeological information, traffic information, and newly discovered information that would result from an on-site wetlands and endangered species analysis.⁷ That request also included a request that the public comment period be extended beyond the July 31, 2006 deadline if a final decision on the SEIS request could not be made by the close of public comments. In that request, SOS noted that at the Public Hearing on June 29, 2006, Nathaniel Parish requested that the Board consider requiring a SEIS.⁸ The Chairman indicated that such a request could be considered. Such request met SEQRA legal requirements for the SEIS and should be granted.

The SEQRA regulations set forth the grounds upon which the lead agency can require a Supplemental EIS. These regulations, in full, state:

(7) Supplemental EISs.

(i) The lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from:

- ('a') changes proposed for the project; or
- ('b') newly discovered information; or
- ('c') a change in circumstances related to the project.

(ii) The decision to require preparation of a supplemental EIS, in the case of newly discovered information, must be based upon the following criteria:

⁷ See Traffic Section.

⁸ Transcript of June 29, 2006 Public Hearing before the Town of Newburgh Planning Board at page 257, li 1 - 20.

- (a) the importance and relevance of the information; and
- (b) the present state of the information in the EIS.

(iii) If a supplemental is required, it will be subject to the full procedures of this Part.

6 N.Y.C.R.R. § 617.7(c)(1)(v). The purpose of the EIS process is to facilitate “the weighing of social, economic and environmental factors early in the planning and decision-making process.” 6 NYCRR § 617.2(n). This was not done in this case. There is no timing requirement or restriction with respect to requiring a SEIS. The newly discovered archeological and historic information was uncovered on July 18, 2006, and thus timely with respect to the currently pending DEIS review.

DEC regulations make clear that granting such a request for a Supplemental DEIS also necessarily triggers the full public comment and hearing requirements of SEQRA. 6 N.Y.C.R.R. § 617.7(c)(1)(v). As was previously determined by this Board, the significance and size of the project and the considerable public interest required public hearings. The same situation and facts exist for public comment and hearing on the Supplemental DEIS. Therefore, we also request that the Board reopen the public comment period for further public hearings to address issues raised once the Supplemental DEIS is completed.

NEW INFORMATION: HISTORICAL AND ARCHEOLOGICAL RESOURCES

As the attached letter makes clear, Hartgen Archeological Associates, cultural and historical experts, their investigation has revealed that New York State and Federal National Historical registries show numerous historical buildings existed within one mile of the proposed project site. SEQRA requires, amongst other things, careful consideration and a hard look at potentially significant adverse environmental impacts. At the heart of this inquiry of significance is consideration of “the impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character.” 6 NYCRR § 617.7(c)(1)(v). Archeological and historical resources are key components of the ‘environment’ that SEQRA seeks to protect, as in fact, are included in its definition. 6 NYCRR § 617.2(l). The Draft Environmental Impact Statement does not include any analysis of “historical” or “archaeological” resources, nor does it include any discussion of why such an analysis should not be required under the plain language of SEQRA. To the

contrary, based upon the review of available documentary evidence, the Hartgen investigators concluded that

Based upon the presence of five known archeological sites, a National Register Listed Property and a national Register Listed District (which is directly adjacent to the project area) all located within less than one mile from the project area, it is our opinion that a professional archeological investigation of this property is needed prior to any construction.

Letter of Karen Hartgen, Principal Investigator, Hartgen Archeological Associates, Inc. to Bernie Buller, Parish, Weiner, and Maffia, Inc., July 18, 2006, attached hereto as Exhibit M.

On the date of the close of the public comment period, we learned that the Office of Parks, Recreation and Historic Preservation concluded on June 15, 2006 that

there is an archeological site in or adjacent to your project area. Therefore, the Office of Parks, Recreation and Historic Preservation (OPRHP) recommends that a Phase 1 archeological survey is warranted for all portions of the project to involve ground disturbance, unless substantial prior ground disturbance can be documented.

Letter of Ruth L. Pierpont, Director, NYS Office of Parks, Recreation and Historic Preservation to Norma Jacobsen, Town of Newburgh Planning Board, June 1, 2006, attached hereto as Exhibit N. Absent such documentation in the DEIS, and without conducting the necessary Phase 1, discussion or analysis of potentially significant adverse impacts to the historical and archeological resources on the proposed site, renders the Draft EIS as submitted to the Board legally inadequate. Further, the DEIS without reference to the potential for significant adverse impact to the historical and archeological impacts on the site has prevented the public from having any public comment on the substantive aspects and findings on this issue during the public hearings, contrary to the public participation requirements of SEQRA.

The newly discovered evidence easily meets the criteria for requiring a SEIS. The regulations require such decision based upon "(a) the importance and relevance of the information; and (b) the present state of the information in the EIS." 6 NYCRR § 617.7(c)(1)(v). In this case, the proposed project calls for the obliteration and destruction of almost the entire site -- approximately 108 acres of an approximately 123-acre site. This will be accomplished by blasting approximately 480,000 cubic feet of bedrock from the center of the site, effectively removing about 30 feet from one side of the site and repositioning it and raising the other side

by about the same 30 to 40 feet. It is unfathomable how any person could argue that the extent of the destruction of the site may not have a potentially significant adverse environmental impact on whatever historical or archeological resources may be currently found there. The answer to what historical or archeological resources are on-site is unknown, because the Applicant failed to include such analysis and review, contrary to the significance determination criteria of SEQRA in its submissions to the Planning Board. Therefore, and for these reasons, the SEQRA SEIS criteria are clearly satisfied, and such review should be required by the Planning Board.

WETLANDS AND ENDANGERED AND THREATENED SPECIES.

The wetlands and endangered species analyses in the DEIS are inadequate. Our experts in these areas conclude that an on-site inspection and analysis is absolutely necessary in each of these areas. As the Planning Board is well aware, the Applicant refused to grant the public the right of reasonable public access for the purposes of evaluation and review of its DEIS submission. Such denial goes against the fundamental purpose and legal requirements of SEQRA for a full, fair and thorough environmental review of the proposed action. ECL Art. 8, 6 NYCRR § 617.3, 617.9. Most importantly, and irrefutably, is the requirement that the Board take a look at the potentially significant adverse environmental impacts at the earliest possible time in the review. 6 NYCRR § 617.2(n). Endangered species were found nearby, and coupled with wetlands issues, are perhaps interchangeable on this site. Requiring such a Supplemental DEIS on these issues also meets the criteria because a more thorough analysis particularly for endangered species will be 'newly discovered' evidence that meet the "(a) the importance and relevance of the information; and (b) the present state of the information in the EIS" criteria of the regulations. 6 NYCRR § 617.7(c)(1)(v). At present, the Planning Board has been duly informed of the independent expert analysis VOID on these issues, and on-site access is necessary for compliance with SEQRA. Thus, care and thoroughness is not only prudent, it is legally necessary to meet the mandates of SEQRA, and requiring a Supplemental SEIS will accomplish that goal.

CONCLUSION

The Applicant submitted a two thousand-page DEIS to the Planning Board last fall. This year, the Planning Board gave the Applicant over four months to review and revise the DEIS it previously presented to the Board before it was determined to be complete. The public comment period for this proposed project was about three months. Despite the unreasonable and unfair time frame set for the public comment period, my clients have worked very hard to understand and participate in the environmental review process for this project. These efforts have been frustrated by very short public testimony timeframes for the witnesses, and their substantive comments were further undermined by the inability to independently and objectively evaluate the content of documents submitted to the Board by the Applicant. The Applicant refused to allow site access to the public, and the Planning Board did not intervene. These significant problems undermine the purposes and intent of SEQRA and have resulted in an environmental review that does not comply with State Law.

The public record shows that there are serious problems with the DEIS, including its methodology and its conclusions. The Planning Board must require that New York environmental law be fully and completely complied with for the Marketplace at Newburgh application. The Planning Board must remember the very real and potentially significant adverse environmental impacts that will result from the approval of the proposed project. The project will result in a massive amount of destruction during on-site construction, and there will be havoc wreaked upon the local community during operation of the Marketplace because of dramatically increased traffic in an already congested area and the increased pollution and other problems associated with it. Not only will invaluable open space be lost forever, but in the process many long-time and hard-working residents of the Town will also have their lives changed in dramatic ways -- some may even lose their potable water supply and there are no adequate safeguards that address that issue.

For these reasons set forth herein, the Planning Board must acknowledge that the DEIS is inadequate in a number of key areas. These areas include: air quality, noise, endangered and threatened species, wetlands, geological - groundwater and blasting impacts, traffic, stormwater management and historical and archeological resources. In addition, the Applicant submitted a DEIS with glaring omissions and deficiencies. These are areas that legally require

the Planning Board to immediately commence a Supplement EIS for historical and archeological resources, and the traffic, wetlands and endangered and threatened species issues. The SEIS must include the full procedural protections afforded to the public by the procedural requirements for public comments in the SEQRA regulations.

As we have presented in our public comments, the Planning Board is legally responsible for the adequacy, accuracy and content of the Environmental Impact Statement it will certify. The competency and validity of the Applicant's conclusions in the DEIS have been reviewed and directly criticized by experts in their respective field. If the project is approved and construction and blasting begin, these important environmental issues that are required to be addressed and protected under state and federal law will be no more. There will be no going back if the Board grants approvals to this project and construction commences -- the environment and community will be forever negatively impacted and the documents before the Board make that clear. Clearly basing such an important decision on the submitted and legally inadequate and deficient DEIS is a result contrary to SEQRA. The Planning Board is legally responsible for preventing such a result.

ATTACHMENTS

Exhibit A

Letter of John Parker, Attorney for SOS to Chairman Ewasutyn and Members of the Planning Boards, May 30, 2006.

Exhibit B

Letter of John Parker, Attorney for SOS to Chairman Ewasutyn and Members of the Planning Boards, July 20, 2006.

Exhibit C

Letter of John Parker, Attorney for SOS to Larry Wolinsky, Attorney for Applicant, March 7, 2006.

Exhibit D

Letter of John Parker, Attorney for SOS to Larry Wolinsky, Attorney for Applicant, May 30, 2006.

Exhibit E

Letter of Larry Wolinsky, Attorney for Applicant to John Parker, Attorney for SOS, March 13, 2006.

Exhibit F

American Lung Association, State of the Air Report 2005.

Exhibit G

Letter of Nancy Neuman, President Sandstone Environmental Services to John Ewasutyn, Chairman, July 28, 2006 at 1 ("Neuman Air Quality Analysis").

Exhibit H

Letter of John Parker, Attorney for SOS to Wayne Booth, Supervisor, Town of Newburgh, June 26, 2006.

Exhibit I

Letter of Wayne Booth, Supervisor, Town of Newburgh to John Parker, Attorney for SOS, July 17, 2006.

Exhibit J

Letter of Katherine Beinkafner, Ph,D, Mid-Hudson Geosciences to John Ewasutyn, Chair, July 28, 2006.

Exhibit K

Comments on Marketplace Mall Draft Environmental Impact Statement of J.G. Barbour, Ecological Consultant, July 21, 2006.

Exhibit L

Comments on the Marketplace at Newburgh, Environmental Impact Statement, Prepared by: CEA Engineers, PC, May 31, 2006, CEA No. 06028.

Exhibit M

Letter of Karen Hartgen, Principal Investigator, Hartgen Archeological Associates, Inc. to Bernie Buller, Parish, Weiner, and Maffia, Inc., July 18, 2006.

Exhibit N

Letter of Ruth L. Pierpont, Director, NYS Office of Parks, Recreation and Historic Preservation to Norma Jacobsen, Town of Newburgh Planning Board, June 1, 2006.

Exhibit A

Letter of John Parker, Attorney for SOS to Chairman Ewasutyn and Members of the Planning Boards, May 30, 2006.

JOHN L. PARKER
Attorney-at-Law

565 Taxter Road, Suite 100
Elmsford, NY 10523

(914) 347-2290
(914) 347-2331 fax
parkerjlp@yahoo.com

May 30, 2006

VIA FACSIMILE AND FED EX

Mr. John P. Ewasutyn
Chairman
Town of Newburgh Planning Board and
Members of the Planning Board
308 Gardnertown Road
Newburgh, NY 12550

**Re: Marketplace Project, Town of Newburgh
Blk 3; Lots 49.22, 49.1, 41.3, 48 & 41.4**

Dear Mr. Ewasutyn and Members of the Planning Board:

I represent a number of local residents, known collectively as Save Open Space (SOS), in regard to the above-referenced project. I am writing to advise the Planning Board of our concerns with the public review process for the Draft Environmental Impact Statement (DEIS) for this project.

On March 12, 2006 the Town Board and Planning Board received a letter from a number of members of SOS requesting that the Town officials implement basic procedural safeguards to protect local residents from construction impacts of the Marketplace project. Amongst other things, the letter emphasized the need for disinterested third parties to be made available to monitor and evaluate impacts of the proposed project, should it be approved and should construction move forward. There was no response.

On April 19, 2006, my clients asked the Planning Board that the public comment period on the DEIS "be no less than 90 days, and the Public Hearing be scheduled no earlier than 60 days after the start of the public comment period." At the time of the letter to the Planning Board, it was unclear when the DEIS would be accepted, and the letter was submitted at that time to give the Board sufficient time to consider its requests. There was no reply.

On May 4, 2006, the Planning Board met to accept the DEIS from the applicant, Wilder-Balter Partners. At that meeting, Counsel for other concerned neighbors attempted to address the Board, on the record, regarding the timing of the Public Hearing for the application. Such a discussion was not allowed, without discussion as to the reasons why, and the Board promptly scheduled a public hearing on Marketplace application for June 1, 2006.

The applicant's proposal, for 850,000 square feet of retail space, will have a dramatic and severely adverse impact on the neighboring property owners, many of whom are my clients. The scope and scale of the project implicate many potential impacts, on: traffic, wetlands, open space, the drinking water supply, construction impacts, threatened species and the very character of the area, which will forever be changed. From the 2,000 plus pages in the DEIS submitted by the applicant, it is clear that considerable time and resources went into the presentation to the Planning Board. In fact, between January and May, the applicant was able to carefully and methodically address the concerns raised by the Planning Board. The Planning Board made it clear that the applicant would have to address these concerns or it would not accept the DEIS. Now, even though the applicant had almost five months to address the Planning Board's concerns and revise its DEIS accordingly, the public is given less than a month to review, analyze and prepare public testimony at the only Public Hearing on this application. Despite the potentially significant impacts identified in the scoping sessions, and in the DEIS, which was revised before acceptance, the public gets little time to review a document for a project that if accepted will impact their lives forever.

The public's concerns about the review of the DEIS are further complicated by the applicant's repeated refusal to grant site access to local residents' retained experts. On March 7, and again on May 24, we requested site access for such experts and were denied. Other neighbors were similarly denied access. It is hard to imagine how reasonable site access for the purpose of environmental study analysis is impermissible. We have been given no real explanation except that we were told that "no right of access will be granted no matter who your consultants may be." The potentially significant impacts to the local wetlands and other habitat, as well as neighboring homeowners' potable drinking water at least deserve a thorough, careful, meaningful and objective evaluation by folks not directly involved in the approval process. As one of our experts has acknowledged in the review they were able to perform, that a professional determination with respect to wetlands on the project site cannot be reached without access and on-site review.¹

As lead agency, the Planning Board is legally responsible for the State Environmental Quality Review (SEQRA) it oversees. The non-responsive tone it has taken with respect to local citizens' request for a reasonable time period for DEIS review, and its failure to require the applicant to grant reasonable on-site access for third party review raises significant legal questions about the validity of the process. The spirit and letter of the law, as the Courts have made clear is for agencies to take a 'hard look' at the environmental impacts of proposed projects, and to have meaningful public participation and mitigation of those impacts. The public is a full partner in SEQRA process, and the reason that the procedural and substantive requirements must be met. SEQRA is a procedural and substantive statute and denying the ability of local concerned residents and neighbors to fully participate in that carefully defined process renders it incomplete and meaningless.

¹ The review on these issues was further complicated because the on-line posted documents were not fully functional and incomplete - maps were incorrectly scanned and the posted files could not be printed to allow a full review of the larger comprehensive maps. Telephone calls to Tim Miller Associates resolved these issues on Thursday, May 25, 2006.

Exhibit B

Letter of John Parker, Attorney for SOS to Chairman Ewasutyn and Members of the Planning Boards, July 20, 2006.

JOHN L. PARKER
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July 20, 2006

VIA FACSIMILE AND CERTIFIED U.S. MAIL

Mr. John P. Ewasutyn
Chairman
Town of Newburgh Planning Board and
Members of the Planning Board
308 Gardnertown Road
Newburgh, NY 12550

**Re: Marketplace Project, Town of Newburgh
Blk 3; Lots 49.22, 49.1, 41.3, 48 & 41.4**

Request for Supplemental Environmental Impact Statement

Dear Mr. Ewasutyn and Members of the Planning Board:

I write regarding the Draft Environmental Impact Statement currently being considered by the Board for the above referenced application. I represent Save Open Space, a group of local residents and adjacent property owners greatly concerned with the proposed project's impacts.

I write to ask that you consider requiring, at tonight's working session and public hearings or a soon thereafter as is possible, a Supplemental Environmental Impact Statement ("SEIS" or "Draft SEIS") for the Marketplace application. If a final decision cannot be made regarding this and other similar requests, we ask that the deadline for public comments on the DEIS be suspended until such final decision can be made by the Board. As you will recall, at the Public Hearing on June 29, 2006, Nathaniel Parish requested that the Board consider requiring a SEIS.¹ The Chairman indicated that such a request could be considered. We believe that the below discussed newly discovered archeological and historical information justifies a Supplemental DEIS for the proposed project, and that such a request is also justified for other areas covered by the submitted DEIS. We therefore, ask the Board to grant our request for a SEIS.

The SEQRA regulations clearly set forth the grounds upon which the lead agency can require a Supplement EIS. These regulations, in full, state:

(7) Supplemental EISs.

¹ Transcript of June 29, 2006 Public Hearing before the Town of Newburgh Planning Board at page 257, li 1 - 20.

(i) The lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from:

- ('a') changes proposed for the project; or
- ('b') newly discovered information; or
- ('c') a change in circumstances related to the project.

(ii) The decision to require preparation of a supplemental EIS, in the case of newly discovered information, must be based upon the following criteria:

- ('a') the importance and relevance of the information; and
- ('b') the present state of the information in the EIS.

(iii) If a supplement is required, it will be subject to the full procedures of this Part.

6 N.Y.C.R.R. § 617.7(c)(1)(v). The purpose of the EIS process is to facilitate "the weighing of social, economic and environmental factors early in the planning and decision-making process." 6 NYCRR § 617.2(n). This was not done in this case. There is no timing requirement or restriction with respect to requiring a SEIS. The newly discovered archeological and historic information was uncovered on July 18, 2006, and thus timely with respect to the currently pending DEIS review.

Based upon a review of the record and the Draft EIS, the request for a Supplemental DEIS should be granted. DEC regulations make clear that granting such a request for a Supplemental DEIS also necessarily triggers the full public comment and hearing requirements of SEQRA. 6 N.Y.C.R.R. § 617.7(c)(1)(v). As was previously determined by this Board, the significance and size of the project and the considerable public interest required public hearings. The same situation and facts exist for public comment and hearing on the Supplemental DEIS. Therefore, we also request that the Board extend the public comment period beyond the currently scheduled close date of July 31, and schedule further public hearings to address issues raised once the Supplemental DEIS is complete.

NEW HISTORICAL AND ARCHEOLOGICAL INFORMATION

We have obtained a letter from Hartgen Archeological Associates, cultural and historical experts. It indicates that their investigation has revealed that New York State and Federal National Historical registries show numerous historical buildings existed within one mile of the proposed project site. SEQRA requires, amongst other things, careful consideration and a hard look at potentially significant adverse environmental impacts. At the heart of this inquiry of significance is consideration of "the impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character." 6 NYCRR § 617.7(c)(1)(v). The Draft Environmental Impact Statement does not include any analysis of "historical" or "archaeological" resources, nor does it include any discussion of why such an analysis should not be required under the plain

language of SEQRA. To the contrary, based upon the review of available documentary evidence, the Hartgen investigators concluded that

Based upon the presence of five known archeological sites, a National Register Listed Property and a national Register Listed District (which is directly adjacent to the project area) all located within less than one mile from the project area, it is our opinion that a professional archeological investigation of this property is needed prior to any construction.

Letter of Karen Hartgen, Principal Investigator, Hartgen Archeological Associates, Inc. to Bernie Buller, Parish, Weiner, and Maffia, Inc., July 18, 2006. There is also no documentation in the DEIS that there has been compliance with New York State Preservation Office review requirements. Absent such documentation, discussion or analysis of potentially significant adverse impacts to the historical and archeological resources on the proposed site, the Draft EIS as submitted to the Board is legally inadequate.

The newly discovered evidence easily meets the criteria for requiring a SEIS. The regulations require such decision based upon "(a) the importance and relevance of the information; and (b) the present state of the information in the EIS." 6 NYCRR § 617.7(c)(1)(v). In this case, the proposed project calls for the obliteration and destruction of almost the entire site -- approximately 108 acres of a 120 acre site. This will be accomplished by blasting of approximately 480,000 cubic feet of bedrock from the center of the site, effectively removing about 30 feet from one side of the site and repositioning it and raising the other side by about the same 30 to 40 feet. It is unfathomable how any person could argue that the extent of the destruction of the site may not have a potentially significant adverse environmental impact on whatever historical or archeological resources may be currently found there. The answer to what historical or archeological resources are on-site is unknown, because the Applicant failed to include such analysis and review, contrary to the significance determination criteria of SEQRA in its submissions to the Board. Therefore, and for these reasons, the SEQRA SEIS criteria is clearly satisfied, and the request should be granted.

TRAFFIC

The expert testimony presented to the Board at the June 29, 2006 public hearing also illustrates the need for a supplemental DEIS. The comments made on the record that day indicate that the traffic analysis presented to the Board by the applicant were so fundamentally flawed as to render them meaningless. The evidence in the record establishes that for a variety of fundamental reasons, from basic assumptions to signalage mitigation proposals, the entire traffic analysis needs to be re-done and re-submitted to the Board. Transcript of June 29, 2006 Public Hearing before the Town of Newburgh Planning Board at page 147 to 151. As you know, traffic has been viewed as one of the potentially significant adverse environmental impacts of the proposed project since the beginning of the SEQRA review. The importance of the traffic analysis component to the EIS, and the Board's legal responsibilities is manifest, and the legal requirements for an SEIS are met if such request is granted. 6 N.Y.C.R.R. § 617.7(c)(1)(v). To satisfy the "hard look" and public participation requirements, the re-submission of a new traffic analysis should be considered newly discovered evidence, and the public should be given the

full and fair opportunity demanded by SEQRA for public review and comment. 6 NYCRR § 617.3, 617.9.

WETLANDS AND ENDANGERED SPECIES.

The wetlands and endangered species analyses in the DEIS are inadequate. As the Board is well aware, the applicant refuses to grant the public the right of reasonable public access for the purposes of evaluation and review of its DEIS submission to the Board. Such denial goes against the fundamental purpose and legal requirements of SEQRA for a full, fair and thorough environmental review of the proposed action. ECL Art. 8, 6 NYCRR § 617.3, 617.9. Most importantly, and irrefutably, is the requirement that the Board take a look at the potentially significant adverse environmental impacts at the earliest possible time in the review. 6 NYCRR § 617.2(n). Therefore, we request that the Board require a Supplemental DEIS for these issues as well, and demand that the Applicant grant the public the right to reasonable access and inspection so that the review is meaningful and legally valid.

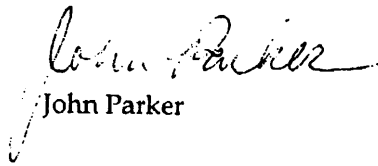
The evidence of potentially significant problems with these provisions of the DEIS was presented to the Board at each of the public hearings. The competency and validity of the conclusions of the ecological assessment were directly criticized. Each time, experts have told the Board that a full assessment of the adequacy and accuracy of the Applicants documents is not possible without site access to independently view and evaluate the site and the applicant's documents based upon first hand observation and analysis. Transcript of June 1, 2006 Public Hearing before the Town of Newburgh Planning Board at page 28 - 32, 38 - 43; . Transcript of June 29, 2006 Public Hearing before the Town of Newburgh Planning Board at page 181 - 186, 189 - 195. If the project is approved and construction and blasting begin, these important environmental resources that are required to be addressed and protected under state and federal law will be no more. Clearly, such a result is contrary to SEQRA. Endangered species were found nearby, and coupled with wetlands issues, are perhaps interchangeable on this site. Requiring such a Supplemental DEIS on these issues also meets the criteria because a more thorough analysis particularly for endangered species will be 'newly discovered' evidence that meet the "(a) the importance and relevance of the information; and ('b) the present state of the information in the EIS" criteria of the regulations. 6 NYCRR § 617.7(c)(1)(v). At present, the Board has been duly informed of the independent expert analysis VOID on these issues, particularly for wetlands, and further on-site access will provide for third party analysis on these key issues. Thus, care and thoroughness is not only prudent, it is legally necessary to meet the mandates of SEQRA, and requiring a Supplemental SEIS will accomplish that goal.

For the following reasons, and on the preceding topics, we respectfully submit that a SEIS be required for the Marketplace project. The public, and my clients have worked very hard to understand and participate in the environmental review process for this project, and have had those efforts frustrated by the inability to independently and objectively evaluate the content of documents submitted to the Board by the Applicant. Not only are the documents legally inadequate for omission of important historical and archeological information and required analysis as set forth above, the submission has effectively stifled and rendered meaningless public participation under SEQRA for areas identified in the process as potentially significant and adverse to the community, such as wetlands. As we have presented in our public

comments, the Planning Board is legally responsible for the adequacy, accuracy and content of the Environmental Impact Statement it will certify. We ask that these requests be granted. There will be no going back if the Board grants approvals to this project and construction commences -- the environment and community will be forever negatively impacted and the documents before the Board make that clear.

Thank you for your prompt consideration of these requests.

Respectfully submitted,



John Parker

Cc: Michael H. Donnelly, Esq.
Planning Board Attorney
(845) 294-6553

Bernadette Castro, Commissioner
State Historic Preservation Office
New York State Office of Parks, Recreation & Historic Preservation

Denise Sheehan, Commissioner
New York State Department of Environmental Conservation

Marc Moran, Regional Director, Region 3
New York State Department of Environmental Conservation

Exhibit C

Letter of John Parker, Attorney for SOS to Larry Wolinsky, Attorney for Applicant, March 7, 2006.

JOHN L. PARKER
Attorney-at-Law

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parkerjlp@yahoo.com

March 7, 2006

Larry Wolinsky, Esq.
Jacobowitz & Gubits, LLP
158 Orange Avenue
Walden, NY 12586

Dear Mr. Wolinsky:

I am writing to follow-up our conversation yesterday regarding the environmental review process for your client's proposed Marketplace at Newburgh project.

As you know, I represent a number of local homeowners who are interested in actively participating in the SEQRA process for the project. I contacted you to request that your client consent to an on-site walk through and review by my clients and their consultants, as part of the SEQRA process. While you informed me that your client would not consent to such an on-site review, you indicated that such review might be acceptable to your client pending review of a list of our consultants. Such a denial of access as part of environmental review is regrettable. Please note that while it is not possible for me to provide such consultant information to you at this time, we look forward to continued discussions regarding gaining access to the site as part of the ongoing review of the project.

We also discussed the likely date that your client would provide a revised Draft Environmental Impact Statement to the Board. While such date is unknown at this time, I look forward to you providing me with such information, via email, as soon as possible.

Regards,

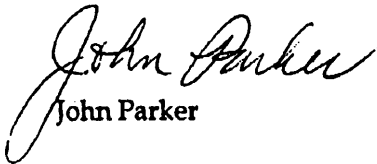

John Parker

Exhibit D

Letter of John Parker, Attorney for SOS to Larry Wolinsky, Attorney for Applicant, May 30, 2006.

JOHN L. PARKER
Attorney-at-Law

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Elmsford, NY 10523

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VIA FACSIMILE AND U.S. MAIL

May 30, 2006

Larry Wolinsky, Esq.
Jacobowitz & Gubits, LLP
158 Orange Avenue
Walden, NY 12586

Re: Marketplace at Newburgh

Dear Mr. Wolinsky:

I am writing to follow-up our conversation of Wednesday, May 24, 2006 regarding access, by my client's experts, to the proposed Marketplace at Newburgh project site, as part of the environmental review process. As you will recall I represent Save Open Space, which is comprised of a number of local neighboring residents.

I had previously made such a request for site access on March 7, 2006. By letter of March 13, 2006 you confirmed to me that "no right of access will be granted no matter who your consultants may be."

While you indicated to me during our May 24, 2006 conversation that your client had not changed their position, you have not confirmed that with me as you have indicated you would. As I have not received a reply over the past week, I will take you at your word that your client does not plan to grant a right of access to the Marketplace site for our consultants.

If I am in error, please advise.

Regards,



John Parker

Exhibit E

Letter of Larry Wolinsky, Attorney for Applicant to John Parker, Attorney for SOS, March 13, 2006.

GERALD N. JACOBOWITZ
DAVID B. GUBITS
JOHN H. THOMAS JR.
GERALD A. LENNON
PETER R. ERIKSEN
HOWARD PROTTER
DONALD G. NICHOL
LARRY WOLINSKY
ROBERT E. DINARDO
J. BENJAMIN GAILEY
MARK A. KROHN*
JOHN C. CAPPELLO
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JOHN S. HICKS*
PAULA ELAINE KAY*
IRA J. COHEN*

* Of Counsel

March 13, 2005

John L. Parker, Esq.
565 Taxter Road, Suite 100
Elmsford, New York 10523

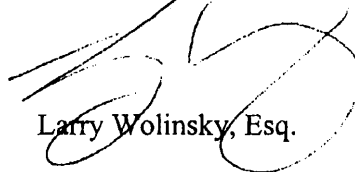
**Re: The Marketplace
Our File No.: 68-26**

Dear Mr. Parker :

I am receipt of your letter dated March 7. Just so there is no misunderstanding, my client's position is that no right of access will be granted no matter who your consultants may be. However, as a courtesy to you, I will ask my client whether there is any change in position once you disclose your consultant list to me. The likelihood is that the position will not change.

I am still not aware when the DEIS will be resubmitted. I suggest your client periodically check with the Town.

Very truly yours,



Larry Wolinsky, Esq.

LW:je

cc: Robert Wilder

Exhibit F

American Lung Association, State of the Air Report 2005.



AMERICAN LUNG ASSOCIATION
State of the Air 2005

NEW YORK

See table notes.


High Ozone Days Particle Pollution Groups At Risk

Defend the Clean Air Act and protect public health.

How's Your Air?
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State of the Air 2005 Home
The Full Report
Health Effects
Tips to Protect Yourself
Best and Worst Cities
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Tell a Friend
How You Can Help

For the Press



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www.lungusa.org



County	Total Pop	Under 18	65 & Over	Pediatric Asthma	Adult Asthma	Chronic Bronchitis	Emphysema	Cardiovascular Disease	Diabetes
<u>ALBANY</u>	297,845	63,383	41,796	5,394	18,028	9,513	3,607	79,413	15,934
<u>BRONX</u>	1,363,198	398,624	137,053	33,923	74,590	37,475	12,572	295,378	57,960
<u>BROOME</u>	199,360	42,798	32,658	3,642	11,960	6,486	2,635	56,017	11,325
<u>CHAUTAUQUA</u>	137,645	31,022	21,604	2,640	8,162	4,420	1,782	38,108	7,698
<u>CHEMUNG</u>	90,413	20,574	14,025	1,751	5,333	2,893	1,162	24,982	5,028
<u>DUTCHESS</u>	290,885	67,875	34,893	5,776	17,234	8,953	3,237	73,307	14,616
<u>ERIE</u>	941,293	214,319	147,580	18,239	55,400	30,159	12,179	261,229	52,586
<u>ESSEX</u>	38,992	7,928	6,294	675	2,363	1,291	523	11,227	2,257
<u>HAMILTON</u>	5,278	931	1,058	79	328	190	86	1,758	359
<u>HERKIMER</u>	63,704	14,056	10,464	1,196	3,785	2,081	860	18,277	3,687
<u>JEFFERSON</u>	114,651	28,462	13,179	2,422	6,663	3,360	1,155	26,746	5,258
<u>KINGS</u>	2,472,523	641,968	293,886	54,631	140,808	72,803	26,120	594,812	117,631
<u>MADISON</u>	70,182	15,701	8,853	1,336	4,232	2,200	810	17,976	3,631
<u>MONROE</u>	736,738	177,694	96,384	15,122	42,994	22,734	8,573	190,091	38,067
<u>NASSAU</u>	1,339,463	313,905	200,222	26,713	78,237	42,687	17,129	369,834	74,422
<u>NEW YORK</u>	1,564,798	276,547	194,576	23,534	98,617	50,526	17,474	406,506	79,642
<u>NIAGARA</u>	218,150	49,943	33,157	4,250	12,855	6,980	2,797	60,297	12,137
<u>ONEIDA</u>	234,373	52,071	37,475	4,431	13,893	7,554	3,057	65,414	13,171
<u>ONONDAGA</u>	460,517	111,529	62,723	9,491	26,788	14,220	5,434	119,498	23,964
<u>ORANGE</u>	363,153	97,610	36,237	8,307	20,617	10,494	3,586	83,795	16,573
<u>OSWEGO</u>	123,495	29,754	14,089	2,532	7,281	3,744	1,330	30,314	6,049
<u>PUTNAM</u>	99,550	24,424	9,833	2,078	5,831	3,028	1,058	24,659	4,896
<u>QUEENS</u>	2,225,486	495,635	288,717	42,179	132,445	69,174	25,266	571,487	112,995
<u>RENSSELAER</u>	154,007	34,761	20,375	2,958	9,185	4,842	1,818	40,386	8,084
<u>RICHMOND</u>	459,737	110,380	53,798	9,393	26,930	14,025	5,051	115,251	22,859
<u>SAINT LAWRENCE</u>	111,655	23,717	14,838	2,018	6,824	3,527	1,298	28,789	5,791
<u>SARATOGA</u>	209,818	48,006	24,556	4,085	12,485	6,517	2,351	53,589	10,656
<u>SCHENECTADY</u>	147,289	34,018	23,660	2,895	8,613	4,723	1,934	41,218	8,309
<u>STEBEN</u>	99,012	23,466	14,844	1,997	5,772	3,146	1,266	27,282	5,492
<u>SUFFOLK</u>	1,468,037	364,637	176,032	31,031	84,906	44,577	16,341	369,325	73,492
<u>ULSTER</u>	181,111	39,298	23,897	3,344	10,921	5,784	2,177	48,469	9,699
<u>WAYNE</u>	93,728	23,557	11,698	2,005	5,400	2,870	1,082	24,117	4,827
<u>WESTCHESTER</u>	940,302	229,081	130,086	19,495	54,329	29,209	11,330	248,777	49,792
TOTAL:	17,316,388	4,107,674	2,230,540	349,562	1,013,809	532,185	197,080	4,418,328	878,887

**Learn about Air
In Your Region**

Several cities in the region rank among the most polluted in the nation. Both ozone and short-term particle pollution was generally worse than in the 2004 report in counties in New York. Some counties in New Jersey recorded increases in the number of ozone and particle pollution days over the 2004 report while others showed decreases, though their grades remained generally stable. Puerto Rico has historically had good air quality. [Find out more.](#)



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fresh air.**

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American Lung
Association.**

**Save someone's
life today.**

American Lung Association State of the Air: 2005 NOTES

- (1) Total population represents the at-risk populations in counties with ozone or PM 2.5 pollution monitors; it does not represent the entire states' sensitive populations.
- (2) Those under 18 and those 65 and over are vulnerable to ozone and particle pollution and are therefore included.
- (3) Pediatric asthma estimates are for those under 18 years of age and represent the estimated number of people who had asthma in 2003 based on national rates (NHIS) applied to county population estimates (US Census).
- (4) Adult asthma estimates are for those 18 years and older and represent the estimated number of people who had asthma during 2003 based on state rates (BRFSS) applied to county population estimates (US Census).
- (5) Chronic bronchitis estimates are for adults 18 and over who had been diagnosed with this disease within 2003 based on national rates (NHIS) applied to county population estimates (US Census).
- (6) Emphysema estimates are for adults 18 and over who have been diagnosed with this disease within their lifetime based on national rates (NHIS) applied to county population estimates (US Census).
- (7) People with Cardiovascular (CV) diseases are at risk from particle pollution, though they are not at risk from ozone. CV disease estimates are based on American Heart Association estimates of cardiovascular disease applied to county populations.
- (8) Diabetes estimates are for adults 18 and over who have been diagnosed with this disease within their lifetime based on national rates (NHIS) applied to county population estimates (U.S. Census).
- (9) Adding across rows does not produce valid estimates, i.e. summing pediatric and adult asthma and/or emphysema and chronic bronchitis.

More about [Methodology](#).

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The information contained in this American Lung Association® website is not a substitute for medical advice or treatment, and the Lung Association recommends consultation with your doctor or health care professional.

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Improving Life, One Breath at a Time

Exhibit G

Letter of Nancy Neuman, President Sandstone Environmental Services to John Ewasutyn, Chairman, July 28, 2006 at 1 ("Neuman Air Quality Analysis").

Exhibit H

Letter of John Parker, Attorney for SOS to Wayne Booth, Supervisor, Town of Newburgh, June 26, 2006.

JOHN L. PARKER
Attorney-at-Law

565 Taxter Road, Suite 100
Elmsford, NY 10523

(914) 347-2290
(914) 347-2331 fax
parkerjlp@yahoo.com

VIA FACSIMILE AND CERTIFIED MAIL

June 26, 2006

Wayne Booth
Town of Newburgh Supervisor
1496 Route 300
Newburgh, NY 12550

Re: Marketplace at Newburgh

Dear Supervisor Booth,

I am the attorney for Save Open Space (SOS), a local group of citizens and neighbors living adjacent to the proposed Marketplace at Newburgh site. SOS members are very concerned about the potentially significant adverse impacts upon them and their property if the above referenced project is approved. I write to follow-up to a letter that one of the members of SOS, Lisabeth Stelz Riach, wrote to your office on March 28, 2006 requesting that the Town take all necessary steps to safeguard and protect them and their neighbors' homes. Please find that letter attached hereto. Despite the potentially serious impacts of the proposed project upon the homes of these Newburgh residents, there has been no response from your office or from any member of the Town Board to the letter in the three months since it was delivered.

As you know, the Planning Board conducted a public hearing on the Marketplace at Newburgh application on June 1. Because of overwhelming public interest and the potentially significant impacts on the environment that may result from this project, a second hearing was scheduled for June 29. It is important to note that not one Town official testified about the potential impacts of the proposed project on their constituents. This fact, along with the non-responsiveness to the reasonable and forthright requests made by my clients months ago, raises questions about whether the elected Town officials will get involved in the process to help protect and ensure, to the maximum extent possible, the public health and safety of local residents.

The proposed Marketplace at Newburgh, if approved, will result in a number of important environmental impacts, particularly to the adjacent homes and property of my clients. The proposed Marketplace at Newburgh project will destroy the entire 100 plus acre site to create a predominately level site onto which the developer proposes to build, amongst other things, a mall and a number of big box stores. According to the developer's Draft Environmental Impact Statement (DEIS), the construction of the Marketplace will involve the excavation of as much as 480,000 cubic yards of rock, mostly through blasting. It is impacts from this blasting and construction activity that directly threatens the residential wells and septic systems of 26 residences located on Fern Avenue, Hilltop Avenue and New Street. The applicant has not and

cannot rule out impacts to these properties private wells. The potential seriousness of these impacts on my clients' homes by this construction process may require costly and time-consuming corrective action to restore the basic necessities of potable water and proper septic and / or sewage services. The destruction of the potable water supplies may well render their residences unlivable. Therefore, adequate financial and other safeguards, objectively and independently administered, must be put into place and required of the developer prior to the approval and construction of the project.

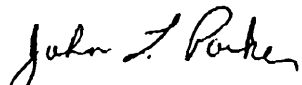
As I am sure you will agree, it is not unreasonable that my clients are very concerned that Town officials have not responded to them, and are not actively participating in the debate about proper mechanisms to protect their homes. It is equally unreasonable and unacceptable for them to be placed in a wait-and-see position, without implementation of clearly defined and adequate protections, to know whether they will have water to drink after the massive blasting operations commence, and then if they do not, to be forced into potentially costly and/or time consuming legal processes to address their damages because what has been proposed by the developer / applicant is plainly inadequate. The developer of the Marketplace has no right to destroy the viability and usefulness of the homes and properties of their future neighbors -- *particularly when such possibilities have been identified and can be adequately addressed even before the project application review process has concluded.*

Please advise if you or members of the Town Council will participate in the Public Hearing process before the Planning Board on this application, and whether a response will be forthcoming to the March letter. We welcome the opportunity to meet with you and your staff regarding the important environmental issues at stake in this case, and to work constructively in a process with the Council and Board that involves full and fair community participation to put into place necessary and clearly defined safeguards. The environmental consequences of this project are irreversible and the time to act is now, without further delay. These issues are of critical importance to my clients, and as good and decent law abiding and taxpaying residents of the Town of Newburgh, they deserve to have their concerns fully responded to and fully and adequately addressed by their elected Town officials.

We ask that you take all possible steps at this time to safeguard and address the public health and safety concerns of your Newburgh neighbors, and to work diligently to make sure these concerns are fully brought before the Planning Board.

I look forward to your timely reply.

Regards,


John Parker

Cc: Town Council

John Ewasutyn
Chairman
Town of Newburgh Planning Board

Lisabeth Stelz Riach
106 Fern Avenue
Newburgh, New York 12550-3019
(845) 561-5096
(914) 213-7770
isdeirinne@msn.com

March 28th, 2006

Wayne Booth
Town of Newburgh Supervisor
1496 Route 300
Newburgh, New York 12550

Dear Supervisor Booth,

I am a local resident who believes my home will be impacted by the proposed **Marketplace Mall**. My well and septic system may potentially suffer direct and significant adverse impacts during construction of this project. These potential impacts may severely impact my ability to live in and enjoy my home.

While the Town is currently considering the environmental impacts of this project, and I understand that no decision has been made with respect to its approval, I would respectfully request the following safeguards be put in place to address some of the direct construction impacts as part of that environmental review, and afterwards should the project be approved.

**BASIC SAFEGUARDS AND PROCEDURES TO PROTECT LOCAL RESIDENTS
FROM CONSTRUCTION IMPACTS OF THE MARKETPLACE AT NEWBURGH
PROJECT.**

RESIDENTIAL WELL / SEPTIC SYSTEM EXPERT

A disinterested, third party expert in the field of residential wells and septic systems should be commissioned and/or retained by the Town to study and ascertain the current status of the wells and septic systems of all the residences located on Fern Avenue, Hilltop Avenue and New Street.

There should be a mechanism where I, along with the Town and the Developer and other interested parties, can have input into the selection of the expert, and such person should only be hired when there is agreement by all parties involved;

The expert's responsibilities must include the filing of a report with the Town indicating the current status and potential vulnerabilities of these well and septic systems to the types of construction proposed, and distribution of such report to all interested parties that request it;

The Developer, Balter/Wilder, or any other entity or company they do business as, must obtain and maintain an appropriate financial vehicle, such as a bond, surety or adequate and sufficient insurance for any potential impacts to homeowners' residences, where they are named as the responsible party for any and all damages incurred during or after the construction of the Marketplace Mall. Further, a bond should be held by the Town of Newburgh to accomplish this task, for a sufficient time period so that the Homeowner's property is covered and protected, without the need to pursue costly and time-consuming litigation;

There should be a mechanism, should damages occur at any point during the construction of the proposed project, that addresses and corrects these impacts -- such as timetable, methodology and detailed accounting -- agreed to by all parties and written into the FEIS.

There should be a mechanism, should damages occur subsequent to the construction of the proposed project that are attributable to construction or its effects, that addresses and corrects property impact issues, that is -- agreed to by all parties

BLASTING EXPERT

Additionally, a disinterested, third party expert in the field of residential construction, particularly the impacts of blasting on foundations and longevity of homes should be made available at no charge to all residences of the aforementioned streets as well as the greater Winona Lake area, the Laurelcrest sub-division and Brookside Avenue. Again, I would respectfully request that this issue be bonded through the Town of Newburgh, with the ultimate responsibility for any damages resting solely with the Developer Balter/Wilder.

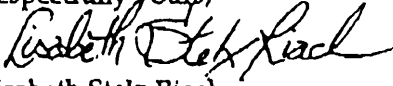
MONITORING SCHEDULE TO PRESERVE AND PROTECT DRINKING WATER

A monitoring schedule should be developed and put in place to track the impacts of the proposed project on water quality and quantity and known contaminants and/or pollutants associated with this type of commercial land use that will affect our only source of potable water -- our well systems. This schedule should commence prior to construction, and remain in effect during the duration of the operation of the proposed project. The Developer, Balter/Wilder must be held accountable for any and all remediation and/or mitigation issues associated with these impacts to the water quality.

The local residents in all named areas in this letter should be duly protected from any damages relative to or as a result of construction and operation of the proposed project, especially one of this size, scope and magnitude. It is my opinion Mr. Booth, that you as the Town of Newburgh Supervisor, must aggressively assume the leading role of protecting these citizens through the mechanisms suggested in the context of my letter.

Thank you for your attention to this request and for your service to our Town. I look forward to your timely response.

Respectfully yours,



Lisabeth Stelz Riach

cc:

Town Council : George Woolsey, Gil Piaquadio, Derrick Benedict,
Elizabeth Greene and Mark Taylor, Esq
Town Clerk : Andrew Zarutskie
Town Engineer : James Osborne
Planning Board : Chairman John Ewasutyn, Kenneth Mennerich,
Clifford Browne, J. Leo Glynn, Joseph Profaci, Frank Galli,
Edward O'Donnell and Michael Donnelly, Esq
ZBA : Chairwoman Grace Cardone, Ron Hughes, Ruth Eaton
James Marley, Robert Kunkel, John Mc Kelvey and
Caroline Martini, Esq

John Parker, Esq

pm/LSR

Exhibit I

Letter of Wayne Booth, Supervisor, Town of Newburgh to John Parker, Attorney for SOS, July 17, 2006.



TOWN OF NEWBURGH

1496 Route 300, Newburgh, New York 12550

WAYNE C. BOOTH
Supervisor

845-564-4552
Fax 845-566-9486

July 17, 2006

John L. Parker, Esq.
565 Taxter Road, Suite 100
Elmsford, NY 10523

Re: Marketplace at Newburgh

Dear Mr. Parker:

I am in receipt of your letter of June 26, 2006.

In response:

1. Your letter is premature. The comment period on the Marketplace DEIS does not expire until the end of this month. The Newburgh Town Board, in its capacity as an involved agency, is reviewing the DEIS and will be considering comments to the Planning Board, the lead agency in the SEQR process. The fact that I and other elected officials of the Town have not individually pandered to our constituents during the public hearing process and at our Board meetings should not be mistaken for a lack of attention, but rather should be recognized as a careful, measured and unified approach by the Town Board to the SEQR procedures.
2. Your letter is unfounded. I was present during both public hearings on the Marketplace DEIS and am deeply concerned with the potential impacts of the project on our residents and taxpayers. The letter you enclosed from Lisabeth Stelz Riach is in fact one of many identical form letters I received which carried a tight-knit, if not lawyerly, imprint. I typically promptly respond to constituents' communications expressing individual concerns or requesting assistance with problems. When an orchestrated campaign which has sought outside professional assistance and counseling from governmental officials who do not represent our community attempts to portray itself as an uncoordinated collection of individuals, however, I "am sure you will agree, it is not unreasonable" for me to exercise caution and await contact by the organization's leadership and the hired professionals directing and guiding that campaign. Clearly, your client's members should look to its leaders and professionals for an explanation for

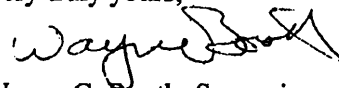
John L. Parker, Esq.
July 17, 2006
Page -2-

the failure to follow up directly with me for a period of 3 months rather than pointing an accusatory finger. This matter is too serious for us to engage in charades.

3. You letter is objectionable and unconstructive. As an elected official serving a community of over 30,000, I have dealt with myriad issues of importance to our residents on a daily basis first as Town Clerk and for the past 4 ½ years as Supervisor. Receipt of a critical, accusatory and rhetorical letter such as yours, which continues the attempt to cast this as a dialogue with individual constituents rather than the organization you represent, leads me to surmise that you are less interested in developing constructive solutions to the legitimate issues presented by the Marketplace project that protect our residents than in engaging in the posturing that inevitably leads to the courts and judge imposed decisions, as well as the political venue. I hope I am wrong in this and will await reasonable, written suggestions from you as to how the Town Board may act within its authority to address the legitimate concerns with blasting, wells, drinking water and septic systems. As a capable attorney, I am sure you can research reasonable measures adopted by other New York municipalities in similar circumstances which have withstood challenge. Absent such evidence of positive intent, I do not believe a meeting would be fruitful.

As I indicated, the Town Board and our staff continue to work on comments and recommendations to the lead agency.

Very truly yours,



Wayne C. Booth, Supervisor

WCB/cm

cc: Town Board
Town Clerk
Town Engineer
Town Attorney
Planning Board Chairman
Lisabeth Stelz Riach

Exhibit J

Letter of Katherine Beinkafner, Ph,D, Mid-Hudson Geosciences to John Ewasutyn, Chair, July 28, 2006.

Exhibit K

Comments on Marketplace Mall Draft Environmental Impact Statement of J.G. Barbour,
Ecological Consultant, July 21, 2006.

Exhibit M

Letter of Karen Hartgen, Principal Investigator, Hartgen Archeological Associates, Inc. to Bernie Buller, Parish, Weiner, and Maffia, Inc., July 18, 2006.

Hartgen Archeological Associates, Inc.
Cultural Resource Specialists

1744 WASHINGTON AVENUE EXT. RENSSELAER, NEW YORK 12144
Phone: (518) 283-0534 Fax: (518) 283-6276 Email: Hartgen@hartgen.com

July 18, 2006

Bernie Buller
Parish, Weiner, and Maffia, Inc.
101 Executive Boulevard
Elmsford, New York 10523

Re: Proposed Market Place Shopping Center

Dear Mr. Buller,

A preliminary archeological site file search was conducted between July 12 and 13, 2006 for the Market Place project. Materials documenting all OPRHP and NYSM archeological sites, National Register properties, National Register eligible properties, buildings-structures that had been inventoried by OPRHP, and previous archeological surveys within one mile of the project area were gathered. The results are as follows:

OPRHP Archeological Sites Within Project Area: None

OPRHP Archeological Sites Within One Mile of the Project Area: Five

1. 07114.000137 - Mahood Outbuilding Foundation Site (19th century)
2. 07114.000023 - Gardner Mill Remains (18th century)
3. 07114.000022 - Historic Farm Foundations (19th century)
4. 07114.000035 - Skyer Farm Buildings, Equipment, and Remains
5. 07114.000024 - Ice House (prior to 1903)

NYSM Archeological Sites Within Project Area: None

NYSM Archeological Sites Within One Mile of the Project Area: None

National Register Listed Properties Within Project Area: None

National Register Listed Properties Within One Mile of the Project Area: Two

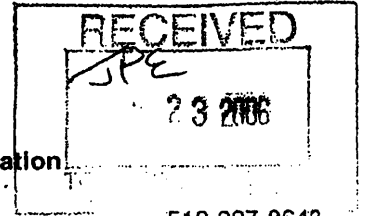
1. 90NR02306 - Silas Gardner House - 1141 Union Avenue
 - Eighteenth-century structure
 - Residence of one of the original settlers (a Tory during the Revolutionary War, assisted Tories and British in their escape to Canada and NYC)
 - Gardnertown named for Silas Gardner

Exhibit N

Letter of Ruth L. Pierpont, Director, NYS Office of Parks, Recreation and Historic Preservation to Norma Jacobsen, Town of Newburgh Planning Board, June 1, 2006.



New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189



June 15, 2006

FILE COPY

Norma Jacobsen
Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, New York 12550

Re: CORPS PERMITS, DEC, DOT, FAA, SEORA
The Marketplace at Newburgh; 108 acre
development
NY 300 (Union Avenue); east of I-84 and 87
interch/Newburgh, Orange County
06PR02811

Dear Ms. Jacobsen:

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP) concerning your project's potential impact/effect upon historic and/or prehistoric cultural resources. Our staff has reviewed the documentation that you provided on your project. Preliminary comments and/or requests for additional information are noted on separate enclosures accompanying this letter. A determination of impact/effect will be provided only after ALL documentation requirements noted on any enclosures have been met. Any questions concerning our preliminary comments and/or requests for additional information should be directed to the appropriate staff person identified on each enclosure.

In cases where a state agency is involved in this undertaking, it is appropriate for that agency to determine whether consultation should take place with OPRHP under Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law. In addition, if there is any federal agency involvement, Advisory Council on Historic Preservation's regulations, "Protection of Historic and Cultural Properties" 36 CFR 800 requires that agency to initiate Section 106 consultation with the State Historic Preservation Officer (SHPO).

When responding, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Ruth L. Pierpont
Director

RLP:mam
Enclosure

ARCHEOLOGY COMMENTS
06PR02811

Based on reported resources, there is an archeological site in or adjacent to your project area. Therefore the Office of Parks, Recreation and Historic Preservation (OPRHP) recommends that a Phase 1 archeological survey is warranted for all portions of the project to involve ground disturbance, unless substantial prior ground disturbance can be documented. If you consider the project area to be disturbed, documentation of the disturbance will need to be reviewed by OPRHP. Examples of disturbance include mining activities and multiple episodes of building construction and demolition.

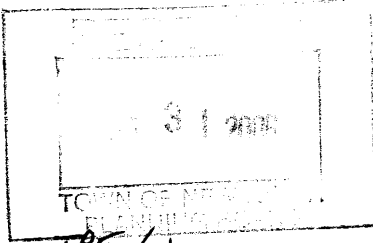
A Phase 1 survey is designed to determine the presence or absence of archeological sites or other cultural resources in the project's area of potential effect. The OPRHP can provide standards for conducting cultural resource investigations upon request. Cultural resource surveys and survey reports that meet these standards will be accepted and approved by the OPRHP.

Our office does not conduct cultural resources surveys. A 36 CFR 61 qualified archeologist should be retained to conduct the Phase 1 survey. Many archeological consulting firms advertise their availability in the yellow pages. The services of qualified archeologists can also be obtained by contacting local, regional, or statewide professional archeological organizations. Phase 1 surveys can be expected to vary in cost per mile of right-of-way or by the number of acres impacted. We encourage you to contact a number of consulting firms and compare examples of each firm's work to obtain the best product.

Documentation of ground disturbance should include a description of the disturbance with confirming evidence. Confirmation can include current photographs and/or older photographs of the project area which illustrate the disturbance (approximately keyed to a project area map), past maps or site plans that accurately record previous disturbances, or current soil borings that verify past disruptions to the land. Agricultural activity is not considered to be substantial ground disturbance and many sites have been identified in previously cultivated land.

Please also be aware that a Section 233 permit from the New York State Education Department (SED) may be necessary before any archeological survey activities are conducted on State-owned land. If any portion of the project includes the lands of New York State you should contact the SED before initiating survey activities. The SED contact is Christina B. Rieth and she can be reached at (518) 402-5975. Section 233 permits are not required for projects on private lands.

If you have any questions concerning archeology, please contact Michael Schifferli at 518-237-8643. ext 3281



JPC/Way

Sandra Kissa
 1261 Union Ave.
 Newburgh, N.Y.
 12550

Chairman of the Planning Bd.
 Members of the Planning Bd.
 Town of Newburgh
 308 Gardnertown Rd.

July 31, 2006

Gentlemen:

One of the most deficient portions of the DEIS for the Marketplace place is its discussion of the project's economic impacts. A much more detailed and comprehensive study must be done of its fiscal impacts.

This needs to be done for the following alternatives: 'no-build', the proposed project, and an intermediate level of development of the site.

If this is not done, the DEIS will be legally deficient. Furthermore, it will not be possible to determine if the project is a benefit to the town and its residents.

Sincerely,
 Sandra Kissa

RECEIVED

JUL 3 1 2006

**Jeanette V. Tully
23 Patton Road
Newburgh, NY 12550-2532**

To: The Planning Board of the Town of Newburgh

Date: July 25, 2006

**CC: Wilder Balter Partners, Inc. – Attn: Robert Wilder, Jr.
Wayne Booth - Town of Newburgh Supervisor**

Re: The Proposed Marketplace

I have previously submitted my comments regarding the proposed project: The Marketplace. However, after attending last night's Town Board's meeting, I have some further comments.

Access to the Property by Experienced Environmental and Animal Groups
This issue was brought up at the Planning Board's hearings on the matter of the Marketplace at the Meadow Hill School, and at our Town Board meetings.

I feel access should be granted to people that are knowledgeable in vegetation, forestry and animal housing. A couple of names were mentioned at the previous meetings but one remained in my brain computer: Mr. Barber. Access to the property by a non-affiliated person will give an unbiased report. However, if access is not granted, I recommend that in order to protect the wildlife on this land that the developer and the Town of Newburgh make arrangements for the animals to be trapped in a safe kindly manner. Then they can be brought to other locations where there is forestry so they can live.

We must save the animals.

On road behind the Pepsi Company/NYS Garage I was very surprised one day when I saw a "white owl." I immediately contacted an authority on owls and was told yes, white owls are out during daylight hours. First a surprise to see the owl during the day and that it was completely white. And, it was noted in the records that a white owl appeared at the time/day I saw it.

From the window at the back of my house last year I could see a "hawk" on the top of a tree that spent a couple of days with us and it was a wonderful experience for someone that has lived here only 5-1/2 yrs. (moving from Flushing, NY).

No fences separate the homes behind my house, in the evenings it is enjoyable to see Jackrabbits running and playing. Our neighbors' grandkids think it's wonderful; I do too, as well as the other adults.

Last year we had over 50 turkeys walking from one wooded area on Patton Road to the other side. What a sight!

Two years ago of all places on South Street coming from Rt. 52 in the Town to the City line, at the property on the left I saw 12 pheasants. I parked on the side of the street to watch them, simply beautiful.

Three weeks ago when my husband and I were coming back on Rt. 52 to our home, the car in front of us slowed down, to us for no apparent reason. We waited and one "baby duck" passed by. It might sound corny, but I could have cried. On a road that in the past couple of years has seen death and injuries due to speeding cars and has crosses behind the barriers, a wonderful part of our lives was present on that day.

Each year since I moved to Newburgh, around this time of year, humming birds stop by the pinwheel on the edge of my porch. So far I have seen black and green species, a wonderful experience, I am a lucky person.

I think I have made my point. Don't you think so?

Lifestyle Center

The developers refuse to tell the public what will be going into this center. Since they know most of the big box stores planning to move into the Marketplace, it's not clear why such a mystery prevails.

If the rumor is true that the developers feel the LC would be a meeting place for residents to spend time at, what will we there. As one resident said at the meeting the other night we do not need a center to visit and talk with other residents. I ask what will be in the center, tables, chairs, restrooms, food counters, ATM, computer game machines, a lottery ticket sale booth, etc.?

If the developers are peace-loving people and want to create a center that is tranquil, they should open a museum/art center close to the main hub of our Town.

My main point, what will be in the Lifestyle Center?

Homeowners who will have the Marketplace in their backyards

Many people in our town, like myself will only be inconvenienced with heavy traffic, blocked roads due to emergency vehicles responding to an accident, which means additional time shopping and getting home. I will try and get out in the least congested time of day. I did this when I lived in Flushing, NY to avoid the traffic.

However, if this project goes through as designed or scaled down, the homeowners should be informed every step of the way regarding the comprehensive work on this land, demolition of trees etc. and the building phase. A committee of 10 homeowners should be involved on a regular basis, having a committee will avoid homeowners making several phone calls to the Town's departments and the developer each day.

Homeowners should be given an umbrella insurance policy to cover any damage or inconvenience to their daily lives, as well as possible overnight hotel stays if the electricity or water is not available.

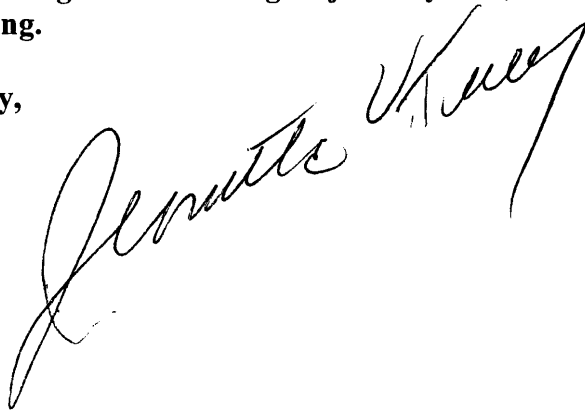
They should also be covered up to five year after the Marketplace is open for business.

I feel with the tax breaks the Marketplace will receive for 10 years and the rents they will be charging the stores, this request is not unreasonable.

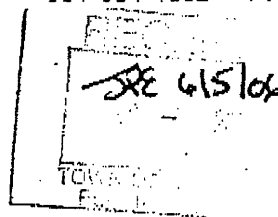
I want to thank you for reviewing my comments as well as those of other residents.

The Planning Board is doing its job very well, and I am confident you will do the right thing.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Huey". The signature is written in a cursive style and is positioned to the right of the word "Sincerely,".

Diana Krautter
48 Wintergreen Avenue
Newburgh, New York 12550
June 1, 2006



Town of Newburgh Planning Board
1496 Route 300
Newburgh, NY 12550

I'd like to tell you why I think this 128 acre Marketplace project will be an excellent, beneficial, and worthwhile asset to the town of Newburgh and its residents:

Well, let's see now, how will this large mega mall really enhance our lives ... there must be some good reason:

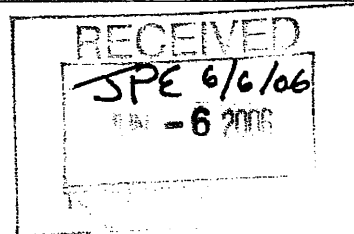
- Gosh, adding hundreds and hundreds of more cars to our roads, along with more traffic lights ... that doesn't seem like a great benefit.
- And, to think just how much more air pollution these cars and trucks will bring ... that's not good stuff.
- Humm, the Marketplace would bring light pollution too: I remember some years ago having to drive miles and miles away just to find some real darkness so I could enjoy the activities of a meteor shower. Will the Marketplace even affect my looking at the stars at night?
Never have I understood why buildings and parking lots have to be so well lit at night – is that to keep the thieves away, or help them find what they're looking for? To me, it's a waste of electricity!
- Shortly before buying my house in Newburgh many years ago, I walked around my new street at 9 o'clock at night just to see if I could hear those wonderful night sounds I was used to hearing in the summer — tree frogs, crickets, and big old daddy bullfrogs croakin' away on humid nights. I love these sounds of nature and was afraid they might not be here. To my surprise, all that nightly music is here today.
- But wait, now that over 100 acres of natural woodland habitat will be destroyed along with its vernal pools and wildlife, there won't be any natural, earthy sounds, just roaring diesel delivery trucks at the Marketplace ... oh, another minus!
- The more I think about all this, ladies and gentlemen, I'm realizing that I can't think of one single benefit the Marketplace will bring to the town of Newburgh, to the folks that make their homes here, their children, or the existing businesses.

More traffic, more pollution, more housing, more of this, more of that, destroying open space, destroying our environment – all in the name of progress? Nonsense!

Let the Newburgh Town Planning Board find the Marketplace an unsuitable, undesirable, unacceptable project as planned for Rt. 300 — right across the street from the already existing Newburgh Mall.

Thank you,

Diana Krautter
Diana Krautter



**Mrs. Jeanette V. Tully
23 Patton Road
Newburgh, NY 12550-2532**

To: The Planning Board of the Town of Newburgh

Date: June 2, 2006

**CC: Wilder Balter Partners, Inc. (Attn: Mr. Robert H. Wilder, Jr.)
Town of Newburgh Supervisor Wayne Booth**

Re: The Marketplace

I was in attendance at last night's meeting at the Meadow Hill Elementary School, I prefer to submit my comments as I am doing now.

My suggestions and concerns:

Homeowners - Foremost, I feel the homeowners that are directly involved, close to The Marketplace's parking areas should be issued some legal agreement by the Wilder Balter Partners, Inc. to repair any damage or interruption of water supplies or contamination that might occur at the time of excavation, during the building of The Marketplace structures, roads, landscaping and five (5) years after completion.

Rather than have the homeowners' insurance carriers paying or refusing to pay for damages, or even canceling their homeowners insurance, the homeowners should have a recourse if need be.

Fire Lane - I notice in the plans on display there is no FIRE LANE on any of the routes where traffic will increase, mainly - Rt. 300. The traffic lane on Rt. 300 before proceeding down to Rt. 52 narrows into ONE LANE, and the other LANE is for a left hand turn. DOT should be permitted to purchase some land on both sides of Rt. 300 from I-84 just passed Rt. 52 to add some extra traffic lanes.

Overhead Walkway - from the Newburgh Mall to The Marketplace. This will give people a walkway and provide access to both shopping centers, thus not needing to take their cars from one location to the other. The walkway will lessen some of the traffic congestion, and it will insure the welfare of the Mall, rather than have it abandoned by the stores because of the competition of The Marketplace.

Jeanette V. Tully

Page 2

Miscellaneous: Someone last night suggested a bus service from the City of Newburgh to The Marketplace. There is a bus service that runs from the City and make stops at all the stores in the Town of Newburgh. There happens to be a regular schedule. His intention was for the people from the City to get to the stores for employment purposes. People wanting to work can do this now. The speakers intention was that jobs will be available. Many of our stores in the hub of Town have a need now to fill jobs in their stores.

Any construction, blasting and work by any developer's workers should be done with all precautions and professionalism and I do expect this from The Marketplace.

Because of the huge project and the number of homes adjacent to the project I emphatically ask that Wilder Balter Partners, Inc. form a committee of at least ten (10) homeowners so that in good faith they can discuss the work as it is progressing. I suggest this because there will be many issues as the construction is being done. Otherwise, homeowners will be phoning and actually bog down the developer, and it will be very frustrating for them not to be able to talk to someone.

At last nights meeting you heard from various homeowners, some not close to the parking lots gave pros and cons about The Marketplace. I feel it's imperative and in good faith by the developers to have a committee of the homeowners.

Many people who spoke last night and others in the audience might have to wait in traffic for a while, but the homeowners adjacent to The Marketplace will bear the burden of the construction. As you can see from my address I am not one of the homeowners nearby, I will only have to deal with the increased volume of traffic.

Kindly add my suggestions and comments to the others you will receive and heard last night.

Thank you for your time and consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Jeanette V. Tully". The signature is written in black ink and is positioned below the typed name and closing.

31,2006

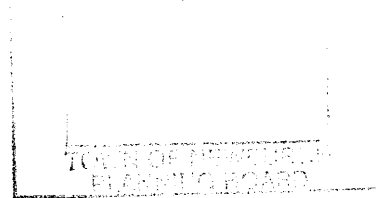
An Open Letter to the Members of the Newburgh Town and Planning Boards.

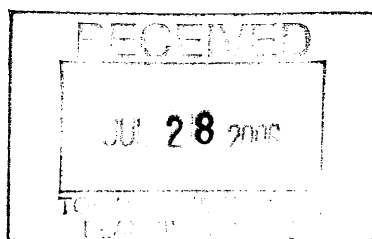
First, thank you for giving some of your family time to the people of the town. I commend you for your many hours..

My question to you is, before voting for a project, as a group, do you ask yourselves ,do we have adequate water, sewer, schools, police, fire protection and the big item, highways? On top of that, our air quality is awful. How will we breathe? Next, who is going to pay for all the upgrades that are necessary?

Just a few facts: the water contains brown, mud like particles. I don't drink it. The sewer is over capacity and needs a big rebuild or we need a new one. The schools are at or over capacity and they need help or we need new ones. The traffic is over capacity, the air quality is bad and getting worse, and the cost of gasoline and heating fuels will hurt a lot of seniors and young couples just starting out. Your vote is important for the people. Please, each of you, get back to feeling for the people. WW2 veteran and town taxpayer since 1948, Warren S Craig. July 31, 2005

Warren S. Craig July 31 2006





133 Gardnertown Rd.
Newburgh, N.Y. 12550

JPE/My June 1, 2006

To: Town of Newburgh Planning Board
From: Dorothy and Al Schorno
Subject: Proposed Marketplace Mall - Town of Newburgh

Yesterday afternoon, May 31, 2006, at approximately 4:30 I got on Union Avenue off 17K, and headed home. It was a few minutes after 5PM that I arrived at Citizen's Bank to make a night deposit. It took 30 minutes to go from 17K to the Bank. The traffic was terrible, and it was becoming worse.

What will the traffic be like when and if the Marketplace Mall is open. With the estimated 2500 cars per hour entering the already heavy traffic area, we will be faced with a nightmare. In an emergency, the Police, the Ambulance Corp and the Fire Companies will be unable to reach the troubled area in time to handle the emergency. All day long our Town of Newburgh and surrounding area residents will be plagued with heavy traffic, which will lead to Road Rage and many, many accidents. This reason alone is sufficient to deny the developers the right to proceed with the Marketplace Disaster.

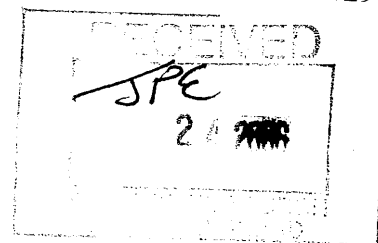
The Planning Board must not sit by idly and approve this project. Our residents include people who moved to this area loving the quiet, peaceful and beautiful Country, which is slowly become an area of concrete and metal and crowded roads. We want to leave our children and future generations with somewhat of a picturesque area of trees, flowers, grass and beautiful views, not commercial structures. Enough of the Town of Newburgh's beauty has been scarred with some poorly planned growth of undesired structures.

For many years, local residents at times would walk thru the wooded area, where the Marketplace Mall Developers want to destroy and replace with more unneeded structures. To see the deer, the wild turkeys, squirrels, and many other God's creatures being forced off their property to make way for this new disaster is sickening. After the Marketplace would be finished, the developers will just leave and continue to make their fortunes without any thoughts whatsoever, of the damage they did to our Town of Newburgh, which will never be the same should our Town Board Members not think of our Town First, but succumb to the few rich developers.

AL SCHORNO - DOROTHY SCHORNO

Dorothy Schorno
Al Schorno

Sibylle M. Tolve
107 Highland Avenue
Newburgh, NY 12550



July 24, 2006

Mr. Chairman and Members of the Planning Board:

According to the air quality section of the developer's DEIS statement, there is a paragraph that states:

"Ozone is a regional constituent that is affected largely by changes in the transportation system that are much larger than those associated with the proposed project. Ozone concentrations in the project area will not be meaningfully affected by the proposed project and no further analysis for ozone is warranted." (underlining is mine)

This is only one example of the Marketplace developers' utter lack of concern and complete disregard for the people who reside in the Town of Newburgh. It underscores the "profit at any cost" mindset of the developer over the need for a rational analysis of the benefits versus the harm generated by this proposed uncontrolled growth.

As a retired Science teacher, I wholeheartedly disagree with simply brushing most of these issues to the side as being of no, or minor, consequence. We have arrived at a time where it is of absolute importance that we, as a society, address major environmental problems, many of which are relevant here.

There are many issues that need to be addressed. However, rather than devote a lengthy paragraph for each, I will simply list some of my concerns and follow each with a simple statement as to why it is of concern.

Trees

- Act as filters to remove harmful substances from the air
- Lessen noise from highways
- Return oxygen to the atmosphere
- Are most beneficial when mature, not newly planted
- Prevent creation of "heat islands" which result in adverse local weather conditions
- Benefits provided by 120+ acres of trees will be lost

Blasting

- Potential hazard to existing wells and septic systems
- Potential destruction of the aquifer supplying these wells
- Potential damage to buildings and foundations near blasting site
- Additional pollutants to air and surrounding community from "fallout"

Wetlands

- Help control flooding
- In conjunction with trees, they improve water quality
- Home to numerous reptiles and amphibians

Air Quality

- Studies seem incomplete (methodology not adequately explained)
- Pertinent pollutants not adequately addressed
- According to American Lung Association, Orange County already has “dirty” air
- Increased traffic results in increased ozone making the problem worse
- Carbon-based emissions increasing nationally due primarily to trucking

Traffic

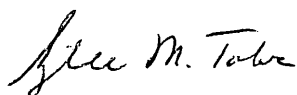
- Roads already heavily congested
- 2500 more cars per hour projected for peak shopping times
- Increased number of traffic lights resulting in more emissions as cars idle in “stacking” lanes
- Ripple effect as drivers find alternate routes through residential areas

Additionally, the inflexibility of the developer in allowing experts onto the site to verify the accuracy of the claims made in the DEIS is a great source of concern. What is the developer trying to hide? I urge the Planning Board to insist that independent experts be allowed onto the site to ascertain that unique flora and fauna are not being jeopardized by this project. There is a great deal of biodiversity in this area and it would be an unforgivable shame to destroy these habitats without knowing what exists on the land.

Finally, it behooves the Planning Board to view the Marketplace Mall development as only one of very, very many projects in our area. It appears that there have been multiple and various projects, both residential and commercial, proposed and approved, within only a few miles of each other on the Route 300 corridor and connecting roads. Have you looked at the strain that this will put on the Town’s ability to provide its current residents with the level of service that we have a right to expect? Consider the fire, police and ambulance personnel and their ability to adequately respond in an area that is so grossly congested.

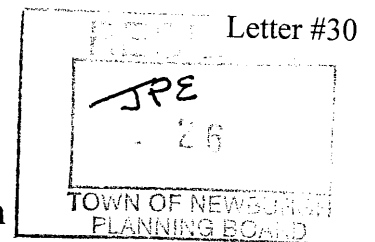
Consider the detrimental effects of a project of this size and scope. Consider whether a project that is less harmful to the environment might not be a better fit for our community. Consider the legacy that will be left to our children once the harm is done. You, the Planning Board, are the presumptive stewards of our community. My final question is: How do you plan to protect us, the current residents of the Town of Newburgh?

Sincerely,



Sibylle M. Tulve

DEIS PUBLIC COMMENTS ---MARKETPLACE MALL
 Town of Newburgh Planning Board Mr. John Ewasutyn Chairman
 July 25, 2006



Gentlemen:

According to the DEIS, the Marketplace is anticipated to employ 1,600 people. In my experience, I believe the bulk of the positions would be in the sales, security and maintenance sector.

US Labor Dept. Labor Statistics May 05 Employment and Wage Estimates in N Y state, annual salaries in these occupations range from \$15,950 to \$26,000. Considering the average price of a home in the Town of Newburgh, one would assume most of those employed at the Marketplace would be unable to afford to reside in the Town of Newburgh.

- How will jobs of this nature benefit residents of the TON?
- Expert testimony at Public Hearings has demonstrated revenue will not be all new sales revenue, but transferred from other existing locations. If W/B revenue predictions assume all revenue will be new money, isn't this estimate inaccurate for new revenue for the TON?
- Will the tax benefits at maximum even begin to cover the additional costs to taxpayers?

Sen. Wm. Larkin, chairman of the Senate Gaming Comm. has said he is in favor of Video Lottery Terminal gambling and likes the location of Rte. 84 and the Thruway in the Town of Newburgh

- How can we be assured this location will not be used for gambling?

Once this project is completed and no additional opportunities exist for the developer, is it feasible to think they will be here when the **Existing Environmental Problems Are Made Worse?** What if business expectations aren't forthcoming? Is this then going to be a hangout and an area for crime and shoplifting? Woodbury Commons accounts for 71% of the arrests in the Town of Woodbury. The DEIS specifically states the mall **"will increase the demand for police services in the town."** Of the taxes projected by the developer, the full amount will not be realized for 10 years, assuming no tax abatements are given, and the economy will not experience a significant downturn. Even retailers such as Wal Mart are experiencing significant economic consequences.

- How can the developer guarantee that this project will be fully rented to desirable tenants and not become a **mammoth, empty GHOST TOWN or an area for crime to thrive?**

The Town of Newburgh has in excess of 30,000 residents, of which approximately ½ are registered voters. It appears approximately 50 % would have to travel either Route 52, Route 300 or the Route 17K corridor to get to and from their homes. **THIS IS A MAJOR TRAFFIC CORRIDOR.** Traffic will simply be shifted from one major intersection to secondary roads.

- How will simply making minor road widening, restriping and resignaling prevent additional road congestion, traffic delays, additional pollution on secondary roads? Who will pay to improve secondary roads, already experiencing increased traffic, if an additional 2,500 cars per hour are put on these roads during peak hours? , Mr. Nate Parish, expert traffic attorney, has stated the signaling is not in compliance with the DOT requirements.
- Our town government states that they are very concerned about quality of life issues. I would ask them to consider how sitting in extended traffic delays for most times one would travel this already congested traffic corridor would improve one's QUALITY OF LIFE?

According to the DEIS the project site is currently served by Consolidated Water and Crossroads Sewer Dist., therefore, no extension of water and sewer is necessary. I believe this statement fails to take into account all of the other future Town building projects. When these infrastructure limits are reached, new construction will then be critical for the TON.

- Will Town residents and taxpayers ultimately bear the financial and environmental burdens both predicted and unknown as a result of this project, long after the developers have ended their responsibility?

As you are aware, Winona Lake's dam needs to be repaired. With the increase of impervious surfaces, increased rainfall and development, the dam is no longer able to handle the added runoff. The Winona Lake Homeowners Assoc. 6/23/06 has sent an email of issues affecting the Lake, many of which directly relate to the increased water flow as a result of the construction of the Marketplace, such as: The creek is cutting into the earthen dam with possible subsequent undermining of the dam. The bridge abutments have to be removed to help the flow.

A buttress needs to be constructed across from the spillway to direct the increased water flow. The entire lake needs to be dredged. At this time 25' from shore the lake needs to be eight feet deep.

- If two detention ponds will be sufficient for the runoff, why then are all these demands being made for Winona Lake? Could Winona Lake become another detention pond? If drainage in this area is poor, how will the Lake handle additional and projected increases already at unprecedented levels, considering the recent record rainfalls?

Since this is one of the largest commercial projects ever to come to the TON, I respectfully ask the Town Planning Bd. to call for an independent 3rd party review of traffic, air quality, ecology, water and runoff.

The DEIS presently represents the opinions of the developer and their consultants. Is this not a conflict of interest? If the DEIS is inaccurate, and questions have been raised about its' accuracy, can the TON and its' residents be sued? Can this Town afford a lawsuit, considering that already sufficient information seems to be available to open this project for further discussion, rather than approval at this time? **I would like to remind you that during the first contract of the I-84/I-87 Interchange 17**

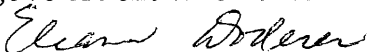
Reconstruction, a chemical disposal area was found, necessitating the closing down of the project temporarily. This area is in close proximity to the proposed Marketplace.

There has been expert testimony of various disciplines disputing the findings of the DEIS. I feel it would be irresponsible, immoral and perhaps even illegal to disregard these conflicting opinions without valid scientific data, observation and interpretation by independent experts.

- How can a valid, scientific, bias-free ecological evaluation be made of the property, if no experts other than those employed by the developer are allowed access to the specific property?

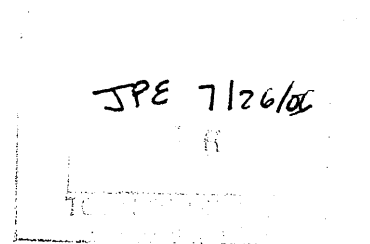
If this project moves forward as is, without additional research and scrutiny, it will then be too late to say, we could have done it differently. I believe it is incumbent upon the TON Planning Board and the Town Board to say now decisively, there is insufficient information in critical areas to move this project ahead as proposed. I believe this project deserves no less than a Supplemental DEIS to be put in place to answer all these questions.

We speak of the importance of quality of life issues for Town residents. I would like to ask, how much importance is being reflected by our Town government when these very issues are seemingly ignored by this proposal?


Eleanor Doderer

83 Wintergreen Ave. Newburgh, NY 12550

July 25, 2006



Old Town Hall
 Planning Board Office
 308 Gardnertown Road
 Newburgh, NY 12550

TO WHOM IT MAY CONCERN:

Our understanding as to the duties of the Town Planning Board are the HEALTH, SAFETY and WELFARE of the Town of Newburgh. With the thought in mind that the duty of the Town Planning Board is (as we were told) for the HEALTH, SAFETY and WELFARE OF THE TOWN, we request that you refer back to this paragraph with regard to the Market Place as this letter continues.

We have adjoining land to the proposed Market Place which is a 3-lot subdivision approval with conditions set by the Newburgh Planning Board. It states that an interlocking block retaining wall has to be constructed on **one** of the three lots **prior** to any of these lots having a home built on them. This, I might add, was something that our surveyor, Jim Raab, was totally unaware of and since we are laymen, we did not understand this decision by the Town. Too, we were required to put up a \$10,000 landscaping fee of which we have done. This fee was in addition to thousands of dollars paid to the Town for meetings and fees required by the Town, etc. The Town took several years to come to this unfair decision/approval.

At the Winona Lake Association meeting on June 28, Mr. Wilder (from the Market Place) stated that an 8 foot wooden fence would be built and a 35'-50' barrier would be placed between the Market Place and all adjoining properties. This will most definitely not provide us with the HEALTH, SAFETY and WELFARE of the Town as it is your duty to protect us.

The Market Place should be required to put up an interlocking block retaining wall as the Town demanded from us **or** something as substantial for the HEALTH, SAFETY and WELFARE of the Town. **We are not the threat** to the area that the **Market Place is**.

The Market Place landscaping should protect us from soil erosion of the land, water in basements, noise, security, resale value, etc. for all Town neighbors as their wall should.

Please refer back to our unfair landscaping fee of \$10,000. We insist that the Newburgh Planning Board, in the name of HEALTH, SAFETY, WELFARE and SECURITY of the Town of which is your job to protect us by charging comparable landscaping fees to the Market Place. If the fee charged to us of \$10,000 for our small 2.7 acre 3-lot subdivision, then over 100 acres owned by the Market Place should be scrutinized and charged

accordingly in order to protect us from soil erosion of the land, water in basements, noise, security, resale value, etc., for all Town neighbors.

Due to the fact that it has taken the Town Planning Board several years (far too long a period of time) for our unfair and small 3-lot subdivision decision, therefore, much more time and consideration should be given to the enormous Market Place approval.

There should be – **MOST DEFINITELY** – another open meeting for the public as soon as possible.

We hope that the Town Planning Board will **reconsider** tying up all 3 lots because of 1 lot. The fact remains that whoever purchases the lot that requires this retaining wall cannot build without a Permit; therefore, why should the two lots remaining (of which has nothing whatsoever to do with this retaining wall on our 3rd lot) be held up due to the Town's unfair and unjust decision. One lot should have absolutely nothing to do with the other since the Town has total control in that no-one can build on this lot of which requires a retaining wall without a Permit.

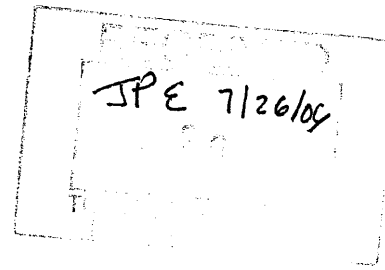
Extremely concerned for our area (as the Town should be),

Michael E. Lukas 331 Frozen Ridge Road
Vaughn Lukas Newburgh, N.Y. 12550

CC: Town Supervisor
SOS

Town of Newburgh Planning Board
Old Town Hall – Planning Board Office
308 Gardnertown Rd.
Newburgh, NY 12550

7-20-06



Letter #32

Dear T.O.N. Planning Board members,

This letter is written to you to voice support for the Marketplace Mall project. The positive economic benefits of this project far outweigh the potential impacts this project may pose on the area.

The Marketplace Mall project is exactly where it needs to be – at the intersection of two major interstates. The property is zoned for this use and has been marketed for sale for over 5 years. The growth on this corridor is expected and welcomed by many residents of the T.O.N. and Orange County.

The number of jobs to be created as well as the sales tax revenue that a facility like this generates is an extreme positive, especially in Orange County, where the county portion of the sales tax is partially distributed down to the municipalities. This sharing of sales tax revenue, as well as the property taxes to be generated, will help continue to balance the tax burden shared by T.O.N. residents and businesses alike. There is no better place where these burdens are shared equally in the entire region. This tax burden balance helps make the T.O.N. a more affordable place to live and work.

The T.O.N. Planning Board's ability is to make sure that this project meets all of the requirements set by the Town and the State. While this letter is written to voice support for the Marketplace Mall project, it is also written to be part of the public record show that the known positive aspects of this development far outweigh the potential negative aspects that may exist.

We would like to commend the T.O.N. Planning Board for showing considerable expertise on past commercial development and we know that you will use the same policies and procedures that you have used previously. We also understand the size and scope of the Marketplace Mall project has caused additional steps to be taken by both the developer and the T.O.N. These steps will insure the project will be planned and developed correctly – at a location that is zoned properly and allows this type of development to occur. Right where it needs to be.

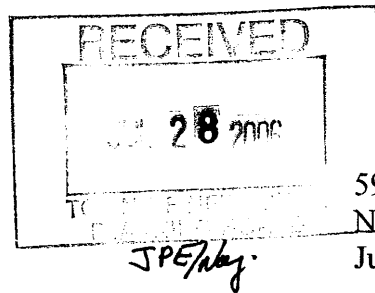
Regards,

A handwritten signature in black ink, appearing to read "Michael T.", written over a horizontal line.

The Torelli Family
Michael, Christopher, Carman & Adrienne
12 Valentine Rd.
Newburgh, NY 12550

The Anderson Family
Paul, Christine & Nicolas
8 Stori Rd.
Newburgh, NY 12550

The Anderson Family
Richard, Kristy, Katie & Jack
34 Adonna Dr.
Newburgh, NY 12550



59 Wintergreen Ave.
Newburgh, NY 12550
July 27, 2006

Mr. John P. Ewasutyn, Chairman
Newburgh Planning Board
308 Gardnertown Road
Newburgh, NY 12550

Dear Chairman Ewasutyn:

As a town of Newburgh resident of 42 years, I have had many concerns about the proposed Marketplace Mall, and I thank you and the Planning Board for the opportunity to express my concerns.

1. **Traffic** – Traffic at peak hours, and sometimes at “off” hours is horrendous now. What will it be like if the Marketplace, with 2,500 cars per hour predicted to be on Union Avenue, and Route 52, is allowed? Will emergency services be able to Respond on time?
2. **Air Quality** – The developer has proposed that many trees will need to be cut down; trees that now buffer some of the noise from airplane traffic and Route 84 and filter some of the ozone and other particles will be gone with the wind! And the air itself would add to the breathing problems of anyone with asthma or related respiratory problems.
3. **Schools** – Schools are crowded now. Some workers at this mall will probably be local. Some workers, and possibly CEO’s and/or managers, may come from other areas, possibly with children who will further crowd our schools. I do not see that situation helping to lower our school taxes, especially when “X” numbers of possible children could be living in the new developments now being built.

I have many more concerns which I will not go into, as many of them were mentioned at the last two public meetings; however, I wish to say a few words about water and blasting.

It has been said that blasting, if permitted as presently proposed, could possibly destroy, or seriously compromise the wells of people on Hilltop Avenue, plus the septic tanks of the general area. If these wells are not destroyed, their water levels could be lowered, which could be a great concern, especially in a drought year!

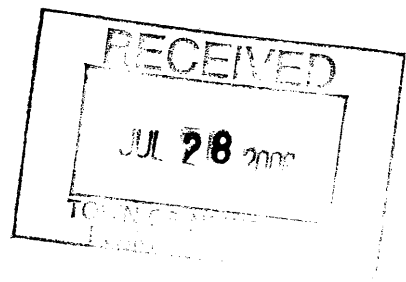
After blasting, if my information is correct, much of the area that was blasted will be black-topped. That area now absorbs rain water. Where will the runoff go if blacktopping is allowed? Probably into the cellars of the people living on the West side of Wintergreen Avenue. I do not think that blasting or blacktopping should be allowed as

presently projected by the developer. Destroying peoples' only water supply would be a tremendous hardship for them. I would like to respectfully suggest that a supplemental DEIS be issued. This mall will probably eventually be built in some form. I only ask that you, as Chairman, and the rest of the Planning Board go over the concerns voiced at the last two public meetings, and read the letters I'm sure you are receiving. Please do not vote "Yes" on the DEIS until you are sure that the peoples rights are not being taken away and their quality of life is not destroyed, not only here in the general area of the proposed mall, but for the whole Town of Newburgh.

Sincerely,

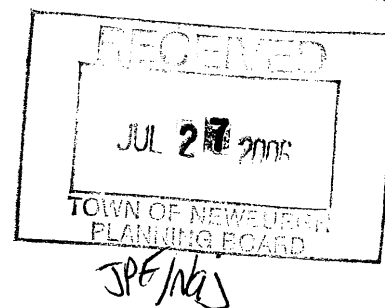
A handwritten signature in cursive script that reads "Patricia Randall". The signature is written in black ink and is positioned to the right of the typed name.

Patricia Randall



Do not vote for the Marketplace Mall. Look around every strip mall and the Newburgh Mall have empty stores. Some doors at the strip Mall by Medicus next to Charter One have never even been occupied. No need - save water and trees and a lot less construction problems and traffic problems too. Truly no need for it. Thank you.
North Meadows Hill Res.

12 Victory Court
Newburgh, New York 12550
July 27, 2006



Newburgh Planning Board
Newburgh, New York 12550

Dear Readers:

First, I want to thank you for your service to the town. Your decisions have direct influence on our quality of life and taxes and so your work is very important.

Second, my purpose in writing is to address the development called The Marketplace. As stated at meetings for the Town Master Plan, I believe that well planned commercial development offers benefits to the Town.

I realize that the land for this proposed development is the last large parcel on the Rt. 300 strip between Rt. 52 and Rt. 84. It should be developed.

The land has a number of specific features unlike other large parcels on the Rt. 300 corridor between Rt. 17K and Rt. 52. It is contiguous to a well established residential community where a number of homes are not on town water and sewer, they have wells and septic. It also has physical features unlike surrounding properties, specifically a deep and large rock formation in addition to wetlands.

I was rather neutral towards the proposed Marketplace Mall - until I read the DEIS statement. As a DEIS document, the submitted statement has numerous serious problems that need to be corrected before any judgement could be made about the proposed developments.

1. The documents contains contradictions! When I first read it, I thought that perhaps my mind had wandered when reading but careful rereading showed that the author actually offers contradictory statements! These need to be clarified before any decision can be rendered since the contradictions mean that the Planning Board can not know what it is that the developers mean or intend.

2. The document makes numerous sweeping empirical claims BUT offers no empirical evidence to support these claims. Examples:

Water

One of the concerns about the development plan is that as rendered, is that it requires extensive blasting. There is concern about area wells. After all if even one septic is cracked by blasting, multiple wells could become contaminated. In addition there are concerns about the water table, actually well shafts themselves etc.

A. The DEIS statement says that it is 'rare' that any harm has come to wells as a result of such blasting. BUT there is no evidence offered to support this claim. In fact, the term 'rare' is vague.

Is it rare because such blasting so near wells and septic systems is so rarely done, that even 100% damage would count as 'rare'? Or is it that the company the developers plan to use has done hundreds of such blastings and can show that only 1-2% have resulted in damaged septic systems, well shafts, water table etc.

B. The document claims that despite clear cutting, removal of a deep rock formation, blacktopping and using NACL to control ice [a high polluting deicer] there will be no negative effect on the water table. BUT there are no scientific studies offered in evidence for this claim. Where are the computer simulations by a hydrologist? Where are geological or hydrological studies?

C. The document claims that there are no rare or protected species. That is an empirical claim. BUT where is the scientific evidence offered to support this claim. What studies were done? By whom? When were they done? [A winter or late Fall study would be hard pressed to document certain species of plants or wildlife].

D. And what is very troubling to me is the claim that the developer will not allow hydrologist or other technical/scientific professionals on the site to check the claims in the DEIS statement. A company that will not provide evidence documented by reliable sources AND who will not allow other scientific or technical persons onto the site should not be allowed to go ahead until these things are provided.

Security.

The entire preplanning marketing for this project has emphasized that it is to be upscale and unlike the Newburgh Mall. And yet when it comes to security needs, the developer uses the Newburgh Mall as a comparative site.

Now we all know that the more upscale a mall, the greater is need for police services. Criminals are attracted to the 'better haul'.

The DEIS states that Woodbury Commons should not be used for comparison since that mall is so much larger. But the Marketplace is 1/4 the size of the current Woodbury. Why not use 25% of that mall's statistics? OR since the proposed Marketplace IS the same size as the original WC, why not offer historical data. This is a very important issue. There will be no tax benefit to the Town if this proposed Mall, like Woodbury Commons, uses up all the taxes generated [or even exceeds those revenues] by its NEED for town services.

If our police department is tied up at the Marketplace, we could find an outbreak of crime along Rock Cut or in Balmville or Criminals take advantage.

Also, the document states that individual stores will provide their own security. But there is no statement that this will be a requirement for rental. This needs to be addressed so we are not in the position of giving an approval to a development but then finding that the developer is not requiring tenants to do the things claimed in the DEIS statement.

DEIS statements about security are wide ranging and upbeat. However, the data to support the claims is either unrelated to the actual claims or is insufficient. The Planning Board needs to ask for better data before action on this proposal. There also needs to be some realism and be sure that ALL police services are included in any report of potential use of services. WCommons, for example, makes demands on the Town of Woodbury Police to direct traffic on major shopping days. Such things need to be factored into the security part of this plan OR it needs to be agreed in writing that the Marketplace will pay for all security related to traffic during heavy shopping times.

Traffic.

Many people have spoken about traffic and I am not going to detail issues here. But I do note that there are some clarifications needed for the Planning Board to make any decisions.

A. What was the 'clock' used to estimate the average number of vehicles per hour? Was it a 10 hour clock, a 12 hour clock or a 24 hour clock? This is very important since if the clock was 12 or 24 hours, then the average number of cars per hour during will be much higher during actual shopping times than the numbers offered.

B. In the auto count, I do not see anything that addressed the practical aspects of exiting onto Rt. 300 from this proposed mall.

- currently cars traveling North on Rt. 300 are often halted by the Newburgh Mall traffic light. When this happens in late afternoon, the cars on Rt. 300 are often backed up as far as the South edge of where the Exxon gas station used to be. This would leave very little, if any, room for cars to exit the Mall! And as I understand it, a timing of the lights to allow those cars to exit would mean that the cars halted at the proposed new light at Marketplace would be backing up past the Rt. 84 exit so that cars would not be able to leave the exit ramp onto 300.

- all the major Orange County Malls [Woodbury, Galleria etc.] have 1 exit onto a 6 lane highway. This allows better flow of traffic and in the case of Woodbury requires fewer security officers to be deployed during peak shopping times. Is the Marketplace going to pay for the widening of Rt. 300 to 6 lanes? Should this high traffic proposal be delayed until such a road way exists? Why is the Marketplace not planning to use a single entrance and exit off Rt. 84 which is wider. It would be easy to add a 2nd lane to the exit ramp and allow it to swing around directly into the Mall.

- the use of a Rt. 52 entrance for shoppers [an not just emergency vehicles] is going to burden side streets North of Rt. 52; stop lights will be needed at Gardnertown and Gidney etc. since these areas are already overburdened.

- since Rt. 300 and Rt. 9W are the only direct N-S corridors through the Town and into New Windsor, adding traffic to Rt. 300 will mean that more drivers from the North, will use 9W...and that will result in more traffic opting to use Balmville and Grand Ave as alternatives. Has anyone explored a Rt. 84 connection for such a high traffic development?

Now, this is a long letter. There are other issues raised by the DEIS statement but I shall not include them here. I trust that others will address them..

Necessary Actions

I again repeat that I am NOT opposed to commercial development. But based on the contradictions, the lack of empirical evidence and gaps in evidence, the Planning Board need to require:

1. that the developer resolve the contradictions in the DEIS statement
2. that the developer provide adequate empirical evidence for each empirical claim made
3. that the developer allow access to the property by technical and scientific person who wish to check the accuracy of the developers claim.
4. that the developer clarify what will be required of potential tenants concerning their provisions for security, trash etc.

Without requiring these things before rendering a your final decision would be a failure of your fiduciary duty to the Town and its citizen. Since I believe that you ARE well intentioned and work hard at your job, I believe that you will either require the developer to meet those 4 items before you render a final decision OR you will reject the proposed development proposal out of hand.

Thank you,



Kate Lindemann



204212
Gloria Oehme
25 Patton Rd.
Newburgh, NY 12550

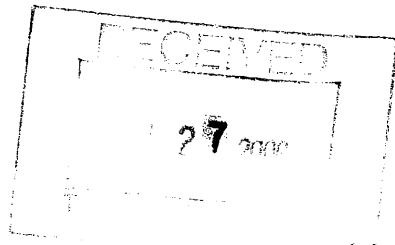
27 JUL 2006 PM 3 T



Old Town Hall
Planning Board Office
308 Parkertown Road
Newburgh, New York
12550

RECEIVED
JUL 28 2006
TOWN OF MEADOW BROOK
PLANNING BOARD

Attention Planning Board
I've lived on Meadow Hill since 1975. I have seen a huge growth come to our area. Mainly in traffic. One can sit on 300 inches one way up to 17K for the light by Nissan a good 15 min. Why? would we want more traffic? We need traffic lights that give "arrows" from the 52 + 300 coming up to Stop & Shop so badly. Our needs are heavy and we don't need a Marketplace Mall.
Thank you! Gloria Oehme



John Ewasutyn
Chairman, TON Planning Board

July 22, 2006

Mr. & Mrs. Mandarino
15 Starrow Dr.
Newburgh, NY 12550

Dear Mr. Ewasutyn,

The intent of this letter is to request that a Supplemental DEIS be prepared and submitted by Balter-Wilder on the project known as The Marketplace Mall at Newburgh. At the very least, the DEIS in its present form is unacceptable and should not go forward as it now stands.

The hearings recently held on the proposed development clearly illustrated the need for further scrutiny of the existing document. Expert, contradictory testimony was offered through a variety of sources on issues as varied as air pollution, water pollution, geological factors, traffic issues, taxes, blasting, safety issues and a host of others. Similarly, residents addressed issues as broad as loss of habitat as it pertains to wildlife, noise abatement, water sources and pollution, highway/road safety, viewshed issues, need for additional police and fire services, and potential damage to personal property. Destruction of wetlands was of special concern to many as well.

The existing DEIS did not offer a range of realistic solutions to existing problems with the development plan. It took the position of "either/or" which clearly, the public realizes, is not the case. Further, because so much of the information in the DEIS is in direct contradiction to known experts in their field, there must be some means for experts to access the property in question and make unbiased evaluations of existing conditions. One has to evaluate the submission of a report of true negative impact by a company or individual hired by the developer to move forward their multi-million dollar project.

This builder is not showing good faith by any stretch of the imagination, by not allowing other experts to access this property, and by taking much from the Town of Newburgh and by proposing to give it little in return. It is up to the officials of this town to be good stewards of the land, to look after its use and future impact, and to act with consideration and conscience towards to all creatures, human and otherwise, that abide in it and around it.

Respectfully,


Sal & Josefa Mandarino



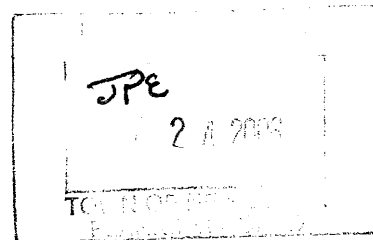
Michael Murphy 6 Hilltop Ave., Town of Newburgh, NY 12550 Ph. 562-0627

June 14, 2006

To: The Town of Newburgh Planning Board Members
The Town of Newburgh Council and Supervisor

Subject: Buffer Zones

Ref: Marketplace Mega-Mall Project – Town of Newburgh



My name is Michael Murphy.

Buffer Zone: An area designed to buffer and protect against sight, sound and damaging effects.

One buffer zone designation cannot fit all circumstances in a town.

We have been residents of #6 Hilltop Ave., a residential area of approximately twenty five homes, for the past fifty-five (55) years. We raised our three children and enjoyed a very peaceful lifestyle.

Our residential area that abuts the one hundred plus acres of the Marketplace project is going to be subjected to extensive blasting in our immediate area. They will be blasting a total of 480,000 cubic yards of material.

This extensive blasting in our immediate area will be putting our wells, our sole source of water in grave jeopardy.

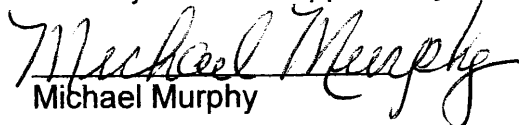
All of the homes have been here for a approximately fifty years. Most all of the homes have plaster walls and block foundations that are subject to possible severe damage. Many of these homes are actually resting on the same ledge that they are blasting.

Also, the trees in the buffer area should remain standing. They will give us some privacy, block out the parking lot illumination and also to absorb the noise from unloading docks.

Members, please save our wells, save our homes, save our way of life.

I'm sure this board recognizes their responsibility to protect these residents who have made this town what it is today.

Thank you for the opportunity to express the residents' concerns.


Michael Murphy

Michael Murphy 6 Hilltop Ave., Town of Newburgh, NY 12550 Ph. 562-0627

July 29, 2006

To: The Town of Newburgh Planning Board Members
The Town of Newburgh Council and Supervisor Wayne Booth

Subject: My testimony/comments of 6/26/06 – Town of Newburgh Planning Board
Hearing

Ref: Marketplace Mega-Mall Project

As a resident of a 25 home residential development for 55 years – my issue is the Town of Newburgh's 50 foot buffer zone.

In my opinion one buffer zone designation does not fit all situations.

We are a residential area that is dependent on private individual wells and septic systems as opposed to residential areas with town water and sewer.

We are in need of an extended and effective buffer to protect our properties.

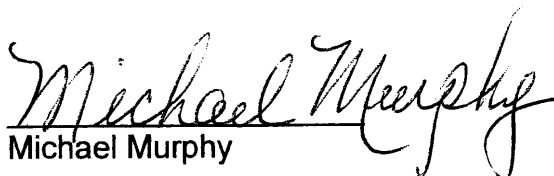
The developer has offered us an unacceptable 75 foot buffer in the past. However, we are sure our Town Planning Board will recognize their responsibility to protect its citizens and provide us with an adequate and effective buffer in lieu of the fact that extensive blasting in our immediate area is planned by the Marketplace developers.

My question to the Board is:

Who will be responsible in the event that any damage what-so-ever is experienced by our homeowners – short term and long term?

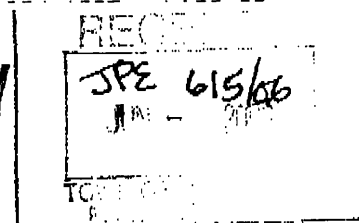
We also strongly suggest that if this happens a stop work order be issued on this project.

Since acceptable drinking water in Orange County is becoming a major issue – we hope that you will give our interest your sincere consideration.


Michael Murphy

John Gebhardt
48 Wintergreen Avenue
Newburgh, New York 12550

FILE COPY



June 1, 2006

Town of Newburgh Planning Board
308 Gardnertown Rd.
Newburgh, NY 12550

Re: Marketplace DEIS Comments

Dear Chairman Ewasutyn and Planning Board Members:

Quality of Life in the Town of Newburgh

Even though little is written specifically in our zoning codes about the Quality of Life in the Town of Newburgh, this is really the essence of why we have planning boards, and town codes and regulations. Often there is much interpretation allowed and I suggest that the planning board should give preference to the Quality of Life of our citizens rather than to the profit that can be made by an individual or development firm. The greater good should be served for the largest number of people. When the two are compatible, then we have the capitalistic market place working at its best.

There are a number of aspects of the Marketplace project that certainly do not serve the general public good that I would like to comment on.

Air Pollution

The Times Herald-Record reported on April 29, 2006 that the "Ozone levels (for Orange County) get an "F" from American Lung Association."

The DEIS states that "ozone and smog are known lung and eye irritants" (that means asthma and emphysema) but that ozone is being addressed at the State and Federal levels," therefore, "no further analysis for ozone is warranted."

Does this mean that the Town has no responsibility to participate in the reduction of ozone causing pollutants in order to protect the health of our citizens?

This project was originally promoted to be one to draw shoppers from miles around, however, regarding air quality, the DEIS states "it (the Marketplace) will not result in a significant increase in vehicle miles traveled on a regional basis." Therefore, it is claimed that considerations of the impact of ozone produced by the project is not warranted. When considered with all of the other development taking place in the area that also brings in additional traffic, this increased pollution may be significant. We need to know. As the Marketplace is the largest, by far, of the developments being built along the Rte. 300 corridor, I ask the planning board to require, as is provided for by the SEQRA process, that the Marketplace developer do an accumulative impact study

of the traffic, its related pollution and potential health impact on our citizens. Then, you as the lead agency, have information to evaluate if our quality of life is impacted.

Traffic

Other than the above reference of the impact that additional traffic will have on our physical health, I'll leave to others the detail discussion of the financial cost of lost productivity, who will pay for the obvious upgrade in transportation services and the potential delays in emergency services, not to mention the mental health aspect of being stuck in traffic jams. All of these need to have real answers, not just a "they will be taken care of" kind of reply.

Biodiversity

The Quassaick Creek is designated in the Orange County Open Space Plan as an area of significant wildlife biodiversity. The 128 acres of this project are a vital part of this biodiversity corridor. This development plan has certainly taken no concern for the wildlife that currently live in this portion of the Quassaick Creek corridor. The Marketplace plan is so lacking in consideration for any wildlife that it will totally eliminate any existing habitat on over 100 of the 128 acres, leaving only a portion of the wetlands intact. Based on the inadequacy of the analysis of the "Terrestrial and Aquatic Ecology" there seems to be little desire to truly know what species will be impacted. I request that to meet the requirements of SEQRA the developer be required to complete additional detailed surveys of the flora and fauna of these wetlands and forest that take into consideration the seasonal variations. Only when an appropriate evaluation of this habitat is completed will the Planning Board have the information to determine the proposed development's probable impact on the species that are found to live in these woods.

Wetlands

The wetlands are a critical habitat for many of the woodland species that use both the wetlands and the upland forest. By eliminating the forest around the wetlands you cut off the supply of clean fresh water to the wetlands and eliminate the upland habitat required by many species. This project will do just that. Of a total of 16.1 acres of wetlands, 6.64 acres (40%) of the wetlands, will either be filled or significantly impacted. The project calls for mitigation for this by building new artificial wetlands of only 1.79 acres. Normally, there are at least two acres built for each one acre of wetland destroyed, however in this case the Army Corps of Engineers have granted that 4.88 acres of wetlands don't count. Tell that to the frogs and salamanders who have their homes there. If the developer is truly allowed to destroy 6.64 acres of wetlands, then it should be required to mitigate by constructing at least 14 acres of wetlands.

Alternatives

Other than the "No Action Alternative" that leaves the tract as is, the other alternatives, Access Road Realignment Alternative, the Buffer Alternative and the Alternate Life-Center, provide little meaningful relief from the maladies of the proposed design, e.g. too much traffic, pollution, stormwater impact, habitat destruction, etc. These alternatives are only minor tweaks, not significant alternatives. The developer refused to consider a more

significant and meaningful alternative, a project that could truly serve the Town of Newburgh such as a New Urban design that could mean less traffic and pollution, more area left in the natural state but perhaps less profit for the developer. **The Town Planning Board should require that it be given the opportunity to evaluate such an alternative given the possibility that many of the highly negative aspects of this project might thusly be avoided.** The Final DEIS should contain an evaluation of this alternative.

Accumulative Impacts

With the rapid rate of development along Route 300 and Route 52, no one knows what the true impact will be when all is "built out." Are we just to sit back and die the death of one thousand cuts? Or should we know when to put the breaks on development before we all go over the proverbial cliff? With all due respect, this sounds like the responsibility of the planning board. We **MUST** have an idea of what the accumulative impacts of this rampant development will be. When the mega-project comes along, such as is the Marketplace, it is then time to say wait, we can not evaluate this project in a vacuum. We need to have information as to how the Town will be able to deal with the services and negative impacts on an accumulative basis. **Please require as part of the Final DEIS a comprehensive accumulative impact section that will give you the details needed to do your job of protecting our quality of life.**

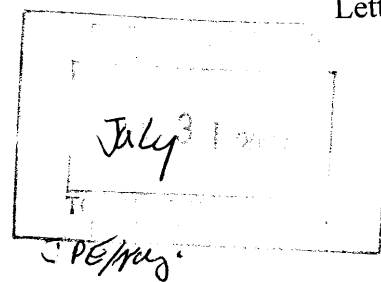
Request for additional time for review

Even though many people are being heard here tonight, the time frame that has been allowed for review of this large Marketplace DEIS has been unusually short. I respectfully request that the public hearing time be extended to allow for further review of this application.

Sincerely,


John Gebhards

Lisabeth Stebi Riach
 106 Fern Avenue
 Newburgh, New York 12550-3019



July 31st, 2006

Town of Newburgh Planning Board
 Mr. John P. Ewasutyn, Chairperson
 308 Gardnertown Road
 Newburgh, New York 12550

RE : The Marketplace at Newburgh

Dear Chairman Ewasutyn and Members of the TON Planning Board;

Having attended the two Public Hearings on the DEIS for the Marketplace, as well as independently reviewing the document at length over the course of several months, it is my opinion that the document is incomplete and I am left with serious questions regarding its accuracy. It is my hope that this Board will have the courage, innovation, foresight and ability to act strategically to prevent irreparable damage to our community as well as recognizing your role as environmental stewards.

I am concerned about several issues, some of which I have briefly summarized below but are not limited to :

Endangered & Threatened Species : the 120 acre site could potentially be home to two rare plant species yet the DEIS fails to identify the plants.

Traffic Studies : at best, the studies provided are questionable and rather jaded. At the very minimum, the applicant should be mandated to fund an independent study by a consultant of the Town's choosing to more thoroughly study the traffic impact - particularly at ingress and egress points.

Buffers : as currently presented, there is no real buffer to the surrounding residential community to speak of. The developer has chosen to allow only the bare minimum as required by current zoning laws. While I comprehend his development rights, it appears the rights of the residences abutting the property have no safeguards in place to ensure the preservation of the quality of life they have come to know as well as their safety; an eight foot wooden fence is nothing more than an insult to the neighboring community.

Site Plan : there appears to be no relationship between the "Town/Village/Lifestyle Center" and the balance of the project. The ambiguity of this portion of the project is less than satisfactory and suspicious. The anchor stores offer no continuity between the various buildings - shoppers will be required to navigate through a sea of cars and roadways. As currently designed, much of this project is not 'pedestrian friendly'.

Stormwater Management : Balter/Wilder has not sufficiently proved that the stormwater will not adversely affect downstream structures or properties or impact the Quassaick Creek.

Blasting : as a homeowner whose only source of potable water is a well, the potential for serious negative impacts has not nearly sufficiently been addressed. Furthermore, I have written each and every member this Board summarizing my concerns and suggested remedies but alas, NO response. It is my belief that this Board must diligently find solutions to protect my home and my rights prior to this project proceeding.

The hearings on the Marketplace clearly identified the need for further investigation. The contradictory expert opinion proffered during the proceedings indicates the need for unbiased experts to be granted the right to access the site to insure all issues are addressed. Without such, assessment of the validity of the documentation can not occur. It appears necessary that this Board must at this time require a Supplementary EIS to address all the issues brought to light during the Public Hearings. Anything less renders the SEQRA process questionable.

The developers of the Marketplace have not thus far shown good faith - their manner and/or 'offers' to certain segments of the surrounding community are questionable and could be interpreted or give the appearance of being rather unethical. If the firm of Balter/Wilder are truly 'conscientious' builders and hope to be here for the long term they have entered our community with less than acceptable tactics.

In summation, I believe under your guidance Mr. Ewasutyn, the Planning Board of the Town of Newburgh has the ability to affect significant and positive measures to ensure - should this project move forward - that all threats to our environment, quality of life, etc. will be addressed and ultimately solved. It is my hope that your Board will continue to develop constructive, meaningful and sustained dialogue with the citizens of this community on all projects.

Thank you for your service and commitment to our Town.

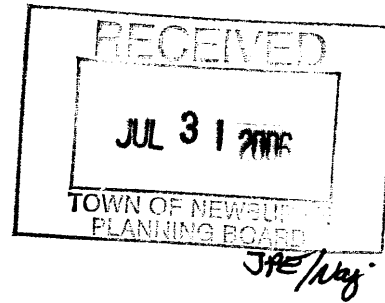
Respectfully,



Lisabeth Stelz Riach

July 30, 2006

Mr. John P. Ewasutyn
Chairman
Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, NY 12550



Dear Mr. Ewasutyn and Members of the Planning Board:

I have owned my home at the foot of Waring Road in the Town of Newburgh since 1981. Through the years I have never felt the need to get involved in the decisions of the Town or the Planning Board...until now. I am writing this letter to voice my opposition to the proposed Marketplace Mall to be built near my home. This project is so wrong for our town in so many ways. If this project goes ahead as outlined, it will change the character of our town forever in a negative way.

Air quality – Our son has asthma, so the quality of the air is important to me. Cutting down all those trees and replacing it with pavement so that people can drive their air polluting vehicles to stores will not help the quality of air in the Town of Newburgh, much less Orange County, where we already have been given a failing grade..

Noise quality – When the trees were taken down to build Stop and Shop years ago, we began to hear the traffic on the Thruway. We live about a mile from that development. The Marketplace is closer to our home. When the top of the hill is blasted away and the trees are replaced with big box stores and pavement, removing our natural sound barrier to Route 84, we will have no more peace.

Environmental issues – Can we really rely on the validity of the DEIS when the developer will not allow experts on the site to verify the information contained? A third party, impartial expert(s) should be allowed onto the site to substantiate the findings of the DEIS. Where will all the wild life that inhabits that area go? How much wetlands will really be affected? What type of plant life will be destroyed?

Traffic – Where can we begin? The DEIS does not take into account on the traffic problems that will occur because of other development projects in the works in the town. The DEIS is only regarding this one development. This project will have a devastating effect on traffic. We live and make use of Cronomer and Algonquin Parks. Our son as well as our neighbors children participate on town organized sports programs on these premises. The increased traffic on Powder Mill Road will become a safety issue for our children.

It is dangerous now at times to try and cross from one park to the other, what will happen when the traffic is potentially increased on this road by 600 cars per hour? With some of the other developments that are proposed for the town, especially on Gardnertown Road, this 600 car per hour figure could be much higher.

Two weeks ago my family tried to go from our home to Route 207 on a Saturday afternoon. A trip that would have taken 10 minutes a few years ago now took us 30 minutes. We do not have the infrastructure to handle all the traffic. A prime example is the effect of the existing developments on Route 52 west of Union Avenue to the traffic at the corner of Union Avenue and Route 52. That intersection, as well as the intersection of Route 84 and Route 52, is now virtually impassable during rush hour. This will not get better with the new proposed mall.

Emergency service response time will be greatly reduced. Volunteer ambulance workers and firemen will find that it takes longer to get to the ambulance corp. and the firehouse before they are deployed to the emergency. With the reduced number of volunteers, this will be an added deterrent. If the town is unable to get qualified volunteers, emergency service personnel would have to be hired, thus putting a drain on the taxpayers.

Flooding and water run off – With some of the storms we have been experiencing lately, the park near my home has been flooded. With pavement on the top of the hill, there will be nowhere for the water to be absorbed on the top of the hill. With excess rainfall, where will this water go and who will be impacted?

Blasting – What will be the effects to the residents near the proposed Marketplace? With blasting being allowed to within 50 feet of their homes, there is sure to be long term effects to their wells, foundations. This doesn't even cover the short term effects such as air and noise pollution.

The negative aspects of this project far outweigh any perceived positives. This will not bring high paying jobs to a great many of our town residents. I have worked in the retail sector for the last thirty years, both in retail stores and more recently, in a retail corporate environment. I can tell you that the trend for the smaller chains has been to have the majority of their staff made up of part time workers so the retailers do not have to pay for expensive benefits. Management frequently does not reside in the town in which they work. For the big box retailers, management is made up of seasoned veterans from other areas that have a proven track record and are willing to relocate to new markets.

This will not bring to our town the tax benefits that some people are estimating. It is a known fact that the developers will be able to petition for tax abatements, and probably will get them. It may bring tax revenue from residents in surrounding towns, but many of these residents would have shopped in

Middletown, so there would be no additional tax benefit to the County, and thus no additional benefit to the Town of Newburgh. The taxes will just be moved around. In fact, any tax revenue that the town receives would probably be more that used up in the additional drain on our police and judges.

All common sense screams that this is not the type of development that this town needs. Just because it was decided years ago that this piece of land should be developed on this type of scale, does not mean that it is right for the town now. Do we really want to lose the charm of this town? You can easily drive to other shopping Meccas (Middletown, Poughkeepsie, Paramus, New Jersey), sit in traffic and see that they appear to have lost their individuality and appeal.

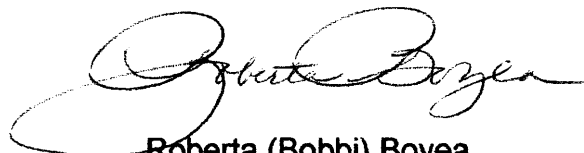
I would not be so vehemently opposed to this project if they were just proposing a much more scaled down town center type of mall that only had access from Union Avenue. Some other type of development, such as single family housing, that would not bring the amount of traffic onto Route 52 and would not involve decimating the land, could be proposed for the rest of the unused portion of this site. This revised development would not have as much of an adverse effect on the town and its residents. However, the way this project is proposed, with two exits onto Route 52, the impact on (more than) the local residents will be devastating.

I ask that you please enter the above comments into record for the Marketplace DEIS.

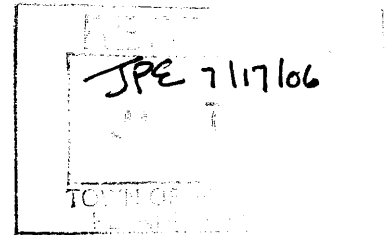
In conclusion - I know that this is not an easy decision on your part and have confidence that you will, first and foremost, keep the interests of the Town of Newburgh residents in mind.

If we don't stand for something, we will fall for everything.

Respectfully,

A handwritten signature in cursive script, appearing to read "Roberta Boyea". The signature is written in black ink and is positioned above the printed name and address.

Roberta (Bobbi) Boyea
43 Waring Road
Newburgh, NY 12550



Wendy Lofaro
15 Brookside Ave
Newburgh NY 12550

July 11, 2006

Re: The MarketPlace Mall

Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, NY 12550

To Whom It May Concern:

Orange County has the worst air pollution in NYS, having been given an "F" by the American Lung Association. The worst of that pollution is from the emissions given off by cars. 2500 more cars an hour from the Marketplace Mall will make things even worse for people who have asthma and other lung problems. People like me. If you have never had trouble breathing, you wouldn't understand what it is like not to be able to take your next breath. Try breathing through a straw. Now try pinching the straw....next...put some cotton in your mouth. I have severe persistent asthma. It requires that I take three medications daily, an injection of medication every two weeks, and an allergy injection every month. Who is going to pay for my extra medical bills for trips to the Emergency Room, or extra medication because the air I will be breathing will be even worse? Who is going to protect my family and me from the extra pollution emitted from all those cars?

Some residents of the Town have criticized me because they think the only reason I am against this mall is because it is directly in my back yard. When asked if they would like it in their back yard, however, they immediately say "NO."

My back yard resides at 15 Brookside Avenue. It is a pretty quiet cul-de-sac that consists of only residential homes, no businesses. My back yard is quiet where I can sit outside reading or watching my son play. Occasionally I have wildlife visitors in my yard, such as deer and turkeys. I do hear traffic from I-84, but I don't see it.

If the Marketplace access road is put in behind my house, my life and home will change completely. I will no longer have the house in the middle of the block, but will be the third from the end. I will no longer have the wooded area behind my house that now provides a buffer from I-84. Instead, I will have an 8 foot high wooden fence that is totally unacceptable because it will not keep out noise, and can be easily broken. Who will be responsible for maintaining this fence when a car or the wind knocks it down? If the developer is acting in good faith, as some of my neighbors have previously stated, why is the developer putting up such an inexpensive fence? There will also be a great deal of trash along the access road that will find its way into my back yard. Who will be responsible for cleaning that up?

I bought my house on Brookside Avenue because I have always loved this area. I grew up on Wintergreen Avenue where my parents still reside. Now I have decided to raise my own family here. If the Marketplace Mall is developed and there is an access road behind my property, the value of my home will decline. So will the quality of our lives.

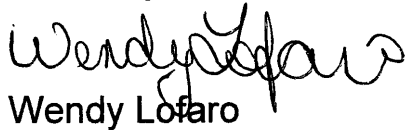
The developer has also offered money to repair the lake. Some of my neighbors insist that the developer is doing this in good faith. Most of those neighbors are the ones who reside directly on the lake. If the developer of the Marketplace is doing this to help the community, why did he make conditions for getting the money? One of the conditions is that 12 people from the Winona Lake Homeowner's speak in support of the Marketplace at the Public Hearing. That doesn't sound like "good faith" to me. This "good faith" offer sounds like they want something in return! By agreeing to accept this offer, I would feel that I were making a deal with the devil.

I suppose that I am meant to be bubbling with joy that I would be able to walk out my front door and admire my view of the lake. But in my back yard I will have lost everything. My family's privacy will be destroyed. No more quiet family time in my back yard. Instead, I will have an ugly, cheap fence to hide the cars (but not the noise) that will increasingly pollute my air. No more turkeys or deer to watch, but there will be tons of filthy trash. Instead of darkness to see the stars every night, there will be bright florescent lighting to help the burglars find my house. My quality of life will be forever impacted because the Town of Newburgh Planning Board and other town officials were afraid to say no to the developers of the Marketplace.

The developer should be liable for any damage that my property will incur because of this huge project. What if my foundation, walls or windows break from the blasting, are they going to cover the expenses to repair my home?

What about all the dust that will be raised during construction?? Do you or the developer know what it is like to wonder if you will be able to take your next breath or when your last might be? Asthma has forever changed my life. Making it through one day without an asthma attack is a good day for me. What is the developer going to do to help me to continue having a good day?

Sincerely,

A handwritten signature in black ink that reads "Wendy Lofaro". The signature is written in a cursive style with a large, stylized "W" and "L".

Wendy Lofaro

CC: Town of Newburgh Town Board

To John Ewaszyk -

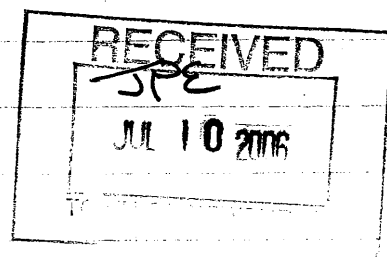
What about the animals?

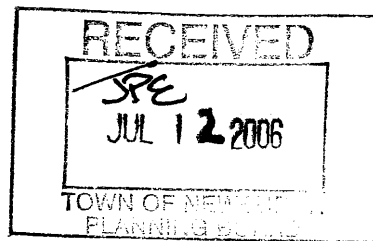
Do any of you whose pushing for that enormous destruction of the woods where that mall would be, between Rt 300 & Rt 52 even think of the thousands (maybe even millions) of animals living in those woods?

Please don't allow that to go forward. I'm not a fanatic about animals but imagine the horror they would go through.

Sincerely
Muriel Head
845 236 7089

(Former Brookside Ave resident)





18 Wintergreen Avenue
Newburgh, NY 12550
May 29, 2006

Town of Newburgh Planning Board
Town of Newburgh Town Board
Consultants

Comments Concerning the Draft Environmental Impact Statement for the Proposed
“Marketplace at Newburgh.”

Dear Supervisor Booth, Mr. Ewasutyn, Members of the Town Board, Town Planning Board, and Consultants:

This letter is for inclusion into the records of the Public Hearing for the DEIS for the “Marketplace at Newburgh” that will take place on June 1, 2006.

I have been a resident and homeowner in the Town of Newburgh residing at 18 Wintergreen Avenue for the past 25 years. I appreciate the opportunity to express the many concerns I have regarding the proposed “Marketplace at Newburgh.”

The Draft Environmental Impact Statement (DEIS) for the Marketplace states on page 1-10 that “the site does not support known threatened or endangered species or State-listed species of special concern.” While the Marketplace DEIS references the *2004 Quassaick Creek Biodiversity Study* written by John G. Barbour, Mr. Barbour himself disagrees with their findings. Mr. Barbour, in his report to the Town Planning Board, criticizes the “poor environmental work” and “faulty, unsupported, and negatively biased ecological analysis” found in the Marketplace DEIS.

On June 23, 2005, Save Open Space sent a letter to the Town of Newburgh Planning Board and Town Board requesting that a comprehensive ecological study be done based on the *2004 Quassaick Creek Biodiversity Study*. The letter was to alert them to the possibility of narrow-leaf sedge (*Carix amphibole*), an S1 Endangered species, and woodland agrimony (*Agrimonia rostelatta*), a NYS Threatened plant species, existing on the Marketplace site. The letter also noted a possible vernal pool on the site near the corner of Route 52 and Meadow Avenue. I would also like to add that the Eastern Box turtle (a NYS special concern species) is not uncommon in the neighborhoods adjacent to the site, because my own son once tried to keep one as a pet, and I know others who have also found them in the area.

Based on Mr. Barbour’s report on the Marketplace DEIS, I would like to request that the Town Planning Board, at the developer’s expense, complete a new, independent, ecological study of “Terrestrial and Aquatic Ecology.” I further request that the Town Planning Board engage Mr. Barbour to complete the study, as he is familiar with the area and an expert on the plants in question.

One question I had as I read the Marketplace DEIS was, "How will this project benefit the citizens of our Town?" As a resident who lives near the site, it is clear to me that this project will not benefit my neighborhood. It has already caused a number of residents to sell their properties in an attempt to get the most out of them before the project comes in and devalues the homes in the area. The project will also denude 108 acres of forest that our children loved to play and hike in, add 2500 cars per hour to our roads (further impacting our air quality which is already graded by the American Lung Association as an "F"), blast 480,000 cubic yards of rock from a hillside (possibly destroying our wells), add more runoff to our streams, and more garbage to our roads. It will also apparently add vermin to our back yards, as there is a management plan in the DEIS for "pest control."(1-26)

To look further than my own backyard, and answer my question, "How will this project benefit the citizens of our Town?" I looked up the information on taxes. It is estimated that the Marketplace at Newburgh will produce \$467.5 million in retail sales (3.7-6). It will generate \$40.64 million in annual real estate and sales tax (3.7-1). Of that, the Town of Newburgh will receive an estimated \$270,000 in sales tax revenue (3.7-6), and \$242,583 in property tax revenue (3.7-5), for a grand total of \$520,583 in annual tax revenues. How will \$520,583 benefit the citizens of our town? Will it offset the increase in police needed for the increase in crime? Let's take a look at the Town of Woodbury. The Town of Woodbury receives \$862,720 in annual tax revenue generated by Woodbury Commons. Of that amount, \$820,000 is used by the Police Department in the Town of Woodbury. Although only 25% of the police calls come from the Commons, **71% of the arrests in the Town of Woodbury are generated by those calls.** (www.recortonline.com, 2/6/05 article "Is Common worth cost?")

How will the Marketplace at Newburgh benefit the citizens of our Town? Some will say that the Marketplace will bring 1600 new jobs to the area. The mean household income in 2000 in Orange County was \$52,085. What will be the mean income for jobs generated by the Marketplace at Newburgh? Even if the average job is greater than minimum wage, we are still talking less than \$20,000 per year, and that is not a living wage in Orange County. Again, how will the Marketplace at Newburgh benefit the citizens of our Town?

The Marketplace at Newburgh will clearly not help our roads. Although the Marketplace DEIS calls for many changes in the roads bordering the site (Routes 300 and 52, Meadow Avenue and Fifth Avenue), the "improvements," by their own calculations, will be nullified by the addition of 2500 cars per hour entering and exiting these areas. Route 52 is a direct service corridor to St. Luke's Cornwall Hospital. Both the Winona Lake Fire Department and the Town of Newburgh Volunteer Ambulance Corps (TONVAC) are located on Route 52. Bjorn Haugland, the president of the TONVAC, states that it is currently very difficult to get to calls through the traffic on Route 52. How can the addition of 1100 cars per hour on this road be mitigated by adding multi-lane approaches that only queue 15 cars at each intersection? (1-20) How will this project benefit the citizens of our Town if the ambulance and fire crews are delayed in getting to us in times of emergency?

Another area of concern that I have is the current Town of Newburgh water supply. We know that the Town of Newburgh currently taps into the Delaware Aqueduct for part of its water supply. We also know that the Delaware Aqueduct has some major leaks (sprouting around 30 million gallons per day) that are in need of repairs that could take up to one year to complete, and will require the shutting down of the Delaware Aqueduct (www.recordonline.com 8/12/04, 5/1/05). What is the plan for the Town of Newburgh to supply water to its residents and all the new projects that are in the planning stages when the Delaware Aqueduct is shut down and all we have for water is Chadwick Lake? Again, how will the Marketplace, which will require 117,000 gallons of water per day, benefit the citizens of our Town?

Last, but not least, is the question of the buffers. While this may seem like a problem solely related to the residents adjacent to the Marketplace at Newburgh, it is a concern that every person who lives in the Town of Newburgh should have. While the Town of Newburgh accepted the new Comprehensive Town Plan, the laws pertaining to buffers between commercial and residential areas have not yet been enacted. The current vegetative buffer for the Marketplace is for 50 feet. While there is a buffer alternative that calls for 75 feet (1-34), even this is not enough. The Marketplace DEIS calls for a fence to be placed at the top of a berm, but neglects to mention who is responsible for maintaining the fence. 50 feet between the back of one's yard and the beginning of an 850,000 square foot shopping center is not acceptable. The Marketplace at Newburgh should be required to follow the buffer guidelines that are being proposed under the new Comprehensive Town Plan.

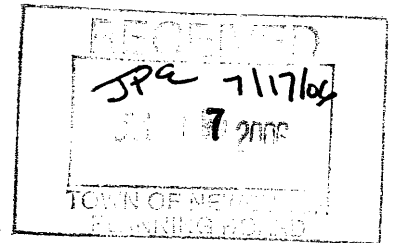
How does a shopping center of this magnitude benefit the citizens of our Town? IT DOES NOT BENEFIT OUR TOWN. It is the wrong project, in the wrong place, and of the wrong size for our Town. Instead of mitigating everything around this project to make the area fit the project, the project should be mitigated to fit the Town.

Respectfully submitted by,

Laura Kohlmann

Laura Kohlmann

30 Algonquin Drive
Newburgh, NY 12550-2613
July 13, 2006



Letter #44

Mr. John P. Ewasutyn
Planning Board Chairman
Town of Newburgh Planning Board
308 Gardnertown Rd.
Newburgh, N.Y. 12550

Dear Mr. Ewasutyn,

Ref.: Public Comments on The Marketplace at Newburgh

We wanted to start by thanking you for the time invested by yourself and the other Planning Board members and consultants for the Town of Newburgh in considering the public comments on this important project.

In addition to the verbal comments we offered at the public hearing, which are attached to this letter, we have some additional comments to add.

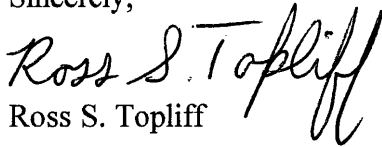
- 1) We have heard differing opinions on the pay range that employees of the various stores etc. in this project can expect to receive. Please ask the project planners to provide some actual data on pay rates for similar jobs in the Newburgh area.
- 2) What is a typical ratio of supervisor to employees for these retail positions?
- 3) The tax payments to the Newburgh School District and Orange Lake Fire District are certainly attractive. Will the developers be requesting and granted tax abatements (as is typical) that will reduce these payments for up to ten years? What is the expected abatement rate and period?
- 4) Little was said about the influx of jobs during construction. Do we have any assurances that the developers will give preference to hiring local construction personnel before bringing in outside workers? This would keep more of the pay for these personnel in the local economy.
- 5) Will the developer sign contracts to make the changes to Routes 52 and 300 stated in the DEIS, subject to NYS DOT approval for the changes?
- 6) What is the expected sales tax revenue impact of stores leaving the Newburgh Mall and relocating to the Marketplace Mall? This will certainly decrease the anticipated increase in sales tax receipts for all municipalities.
- 7) We did not find rainfall estimates for the severe weather events that will tax the retention pond system. Do they include some estimates of the flooding that may

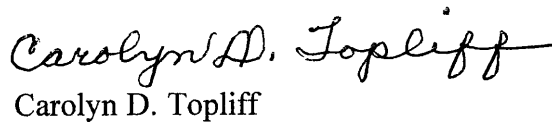
result if we receive 6 - 10 inches of rain in less than 12 hours as has happened twice in the last 15 - 20 years. This happened most notably with Hurricane Floyd. All indications are that severe weather is getting worse. We cannot rely solely on rainfall estimates from the past 100 years when these are dumping increasing amounts of rain as time progresses.

- 8) On a quality of life aspect, we always enjoy hearing the Spring Peepers in the wetlands next to the intersection of Rt. 52 and Meadow Ave. This is the only place we know of in this area where the Spring Peepers are heard. While Spring Peepers are not an endangered species, we will really miss hearing them when they are displaced, as we feel certain they will be, by the expected construction.
- 9) If this project is built on any scope, does the town have any means of requiring that the developers use "green" technology as part of the HVAC systems? Various studies have shown that this technology can more than pay for itself in reduced heating and cooling costs. It will also slow water run-off from the roofs of the buildings using plants as part of this technology.
- 10) Carolyn is subject to bouts of bronchitis when her immune system gets weakened. Her doctors told her that high air pollution levels aggravate this condition. This is one reason we feel so very strongly about the loss of the 100 acres of trees planned for this project. Losing their air-purifying abilities on top of the added pollution from the buildings and additional traffic will certainly increase the extent of these bouts and resulting health care costs. You heard similar comments from other speakers during the public hearing.

After attending the regular Planning Board meeting on July 6th, we gained a better appreciation for the work of this group. Thanks again for your time and efforts.

Sincerely,


Ross S. Topliff


Carolyn D. Topliff

Mr. Planning Board Chairman, members of the planning board, and guests:

My name is Ross Topliff. I have lived at 30 Algonquin Drive in Newburgh for over 23 years and in the area for almost 30 years. I am a practicing chemical engineer and recognize that some commercial development is necessary to balance the drain on services required by residential development.

However, I am opposed to the Marketplace at Newburgh in its current scope. I believe that it is much too large for this area. I would like to address two specific issues - wetlands and emergency response.

As most or all of you know, wetlands must be 12.5 acres or more to be protected according to federal and New York State laws. The largest wetlands in the proposed development area (near the intersection of Route 52 and Meadow Ave.) is 9.7 acres, slightly too small to be automatically protected. You may also be aware that the NYS Assembly has repeatedly passed a bill to reduce the size of protected wetlands to one acre or larger. This bill has stalled due to the efforts of the State Senate leadership, despite sufficient support to pass the bill.

The DEIS addresses the value of this wetland with its many types of plants and wildlife. Earlier speakers added their observations regarding additional wildlife they believe inhabits this area. These wetlands also provide a very valuable flood control function for storm runoff.

Part of the wetlands regulations is a provision to protect smaller areas that are of "unusual local importance". Based on the information I have found, I believe that these wetlands can be protected based on this provision. There is certainly adequate evidence of the local importance of these wetlands, so that they should be protected using this provision.

My second concern is for the emergency response personnel for the Winona Lake Engine Co. # 2 and the Town of Newburgh Volunteer Ambulance Corp.

The DEIS and others have mentioned provisions that the designers made to assist vehicle response from the stations to the incident scene. However, they neglected to make any provision to assist the members traveling to the stations. Since all members of both organizations are volunteer, they are seldom at the station when a call for assistance is received. No matter how good the response for vehicles leaving the stations, the vehicles cannot respond until after those members arrive.

I am a former 10-year member of the Winona Lake Engine Company, including 4 years as a firematic officer. I have seen the delayed response of fire apparatus when heavy traffic impedes members responding to a call. The increased traffic envisioned in the DEIS is a 30% increase in traffic past the Winona Lake and ToNVAC stations. This will inevitably lead to further delays in members arriving at the station.

Delayed responses will just as surely result in increased damages resulting from fire emergencies. Increased damages will result in higher insurance claims and therefore premiums for homeowners and businesses. Delayed response by emergency medical personnel can mean the difference between life and death.

Increasing development, whether residential or commercial, leads to increased calls for assistance. Already, WLEC averages approximately 1 call per day compared to approximately 4 per week 15 years ago. Increased calls for assistance result in more stress upon these volunteer members. I believe everyone is well aware that fewer and fewer people are available today to serve in these very important volunteer positions. I was told by one long-term member that often WLEC can barely bring enough members to the station to fill a minimal response for many calls. I feel certain that this is a major factor behind WLEC arranging for automatic mutual aid response with its sister Orange Lake Fire Company for many calls.

As the Town of Newburgh continues to grow with fewer people able to volunteer their time, the day may not be too distant when paid firefighters will be necessary. This would be a huge additional expense for the town and its taxpayers, if that day finally arrives.

In summary, I recognize that this planning board is working hard to look out for the best interests of our town. I present these two concerns for incorporation in the final plan:

- 1) The wetlands in the area of the proposed Marketplace development, particularly along the Route 52, Meadow Avenue intersection can and should be protected under the "unusual local importance" clause in both the federal and state wetlands regulations.

- 2) This development, along with the many others in town, will increase the stress on our volunteer medical responders and firefighters. The significantly increased traffic along Route 52 will cause increased delays in members traveling to their stations in response to calls for emergency assistance. Is the cost of these delays more than compensated by the benefits of this development?

While some commercial development is needed, I firmly believe that the proposed Marketplace Mall is too much for this area.

Thank you.

Mr. Planning Board Chairman, members of the Planning Board, and guests -

My name is Carolyn Topliff. I reside at 30 Algonquin Drive in the Town of Newburgh, where I've lived for the past 23 years. I am opposed to the Marketplace Mall.

I have watched the vast amounts of development take place in this town. This is the first time I've spoken out in opposition.

I am extremely concerned about many, many issues regarding the Marketplace mall. I am going to focus on one aspect of the environmental impact – the mass destruction of the trees and the significant negative impact that will have on our air quality. Trees act as natural air filters. Foliage plants and trees may be the best means of improving outdoor air quality. They are capable of removing gaseous and particulate pollutants from the air, reduce energy expenditures, lower air temperatures, and make our community a more attractive and healthier place to live.

According to the Virginia Cooperative Extension at the Va. Polytechnic Institute and State University, one tree releases about 100 gallons of water into the air each day. An acre of trees can absorb the carbon dioxide produced by 50 cars driven for 12 hours. Therefore, removing 100 acres of trees eliminates **5000** vehicles worth of carbon dioxide removal. Putting this another way, removing these 100 acres of trees removes the purification capacity for 60,000 hours of vehicle operation.

According to the recent air quality reports issued by the American Lung Association, Orange County again received a failing grade for air quality based on high ozone levels primarily from car emissions. The Marketplace Mall ensures even more traffic in addition to removing the air purification resulting from the loss of these trees.

I have witnessed the raping of the land of valuable and beneficial trees in the name of development. I am concerned about the impact this will have on us and future generations.

Trees and dirt absorb heat. Blacktop and buildings radiate heat back into the air raising ambient temperatures. This will further worsen air pollutant levels, especially ozone.

I pose this question for the Planning Board and developers:

What will be the impact on air pollutant levels in this busy, congested area as a result of removing over 100 acres of trees in addition to the increased 2500 cars per hour and added emissions from the buildings? The DEIS states there will be no negative impact to air quality as a result of this development. The facts I present show that this statement cannot be true.

If we don't give some serious thought to the negative impacts of this Mall on our community before it's too late, then who will? If not now, when??



105 Fern Avenue
Newburgh, New York 12550
March 30th, 2006

Wayne Booth
Town of Newburgh Supervisor
1496 Route 300
Newburgh, New York 12550

Dear Supervisor Booth,

I am one of the approximately 23 local residents whose home will be impacted by the proposed **Marketplace Mall**, and may have **potentially direct and significant adverse impacts during its construction**. These potential impacts may severely impact my ability to live in and enjoy my home.

While the Town is currently considering the environmental impacts of this project, and we understand that no decision has been made with respect to its approval, I would respectfully request the following safeguards be put in place to address some of the direct construction impacts as part of that environmental review, and afterwards should the project be approved.

BASIC SAFEGUARDS AND PROCEDURES TO PROTECT LOCAL RESIDENTS FROM CONSTRUCTION IMPACTS OF THE MARKETPLACE AT NEWBURGH PROJECT.

RESIDENTIAL WELL / SEPTIC SYSTEM EXPERT

A disinterested, third party expert in the field of residential wells and septic systems should be commissioned and/or retained by the Town to study and ascertain the current status of the wells and septic systems of the residences located on Fern Avenue, Hilltop Avenue and New Street.

There should be a mechanism where I, along with the Town and the Developer and other interested parties, can have input into the selection of the expert, and such person should only be hired when there is agreement by all of the parties involved;

The expert's responsibilities must include the filing of a report with the Town indicating the current status and potential vulnerabilities of these well and septic systems to the types of construction proposed, and distribution of such report to all interested parties that request it;

The Developer, Balter/Wilder, or any other entity or company they do business as, must obtain and maintain an appropriate financial vehicle, such as a bond, surety or adequate and sufficient insurance for any potential impacts to homeowners' residences, where they are named as the responsible party for any and all damages incurred during or after the construction of the Marketplace

cc:

Town Council: George Woolsey, Gil Piaquadio, Derrick Benedict, Elizabeth Green and Mark Taylor, ESQ

Planning Board: Chairman John Ewasutyn, Kenneth Mennerich, Clifford Browne, J. Leo Glynn, Joseph Profaci, Edward O'Donnell, Frank Galli and Michael Donnelly, ESQ

Town Engineer: James Osborne

Town Clerk: Andrew Zarutskie

Town ZBA: Chairwoman Grace Cardone, Ron Hughes, Ruth Eaton, James Manley, Robert Kunkel, John McKelvey and Caroline Martini, ESQ

Mall. Further, a bond should be held by the Town of Newburgh to accomplish this task, for a sufficient time period so that the Homeowner's property is covered and protected, without the need to pursue costly and time-consuming litigation;

There should be a mechanism, should damages occur at any point during the construction of the proposed project, that addresses and corrects these impacts – such as timetable, methodology and detailed accounting – agreed to by all parties and written into the FEIS.

There should be a mechanism, should damages occur subsequent to the construction of the proposed project that are attributable to construction or its effects, that addresses and corrects property impact issues, that is – agreed to by all parties

BLASTING EXPERT

Additionally, a disinterested, third party expert in the field residential construction, particularly the impacts of blasting on foundations and longevity of homes should be made available at no charge to all residences of the aforementioned streets as well as the greater Winona Lake area, the Laurelcrest sub-division and Brookside Avenue. Again, we would respectfully request that this issue be bonded through the Town of Newburgh, with the ultimate responsibility for any damages resting solely with the Developer Balter/Wilder.

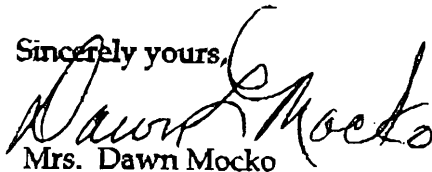
MONITORING SCHEDULE TO PRESERVE AND PROTECT DRINKING WATER

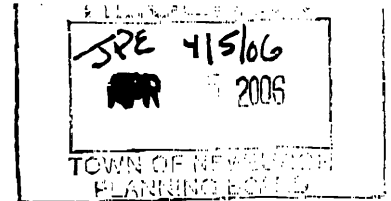
A monitoring schedule should be developed and put into place to track the impacts of the proposed project on water quality and quantity and known contaminants and/or pollutants associated with this type of commercial land use that will affect our only source of water – our well systems. This schedule should commence prior to construction, and remain in effect during the duration of the operation of the proposed project. The Developer, Balter/Wilder must be held accountable for any and all remediation and/or mitigation issues associated with these impacts to the water quality.

The local residents in all named areas in this letter should be duly protected from any damages relative to or as a result of construction and operation of the proposed project, especially one of this size, scope and magnitude. It is my opinion Mr. Booth, that you as the Town of Newburgh Supervisor, must aggressively assume the leading role of protecting these citizens through the mechanisms suggested in the context of this letter.

In advance, thank you for your prompt attention to this request. I anticipate your prompt response.

Sincerely yours,


Mrs. Dawn Mocko



8 Hilltop Avenue
Newburgh, New York 12550
March 31st, 2006

Wayne Booth
Town of Newburgh Supervisor
1496 Route 300
Newburgh, New York 12550

Dear Supervisor Booth,

I am a local resident whose home will be impacted by the proposed Marketplace Mall, and may have potentially direct and significant adverse impacts during its construction. These potential impacts may severely impact my ability to live in and enjoy my homes.

While the Town is currently considering the environmental impacts of this project, and we understand that no decision has been made with respect to its approval, I would respectfully request the following safeguards be put in place to address some of the direct construction impacts as part of that environmental review, and afterwards should the project be approved.

BASIC SAFEGUARDS AND PROCEDURES TO PROTECT LOCAL RESIDENTS FROM CONSTRUCTION IMPACTS OF THE MARKETPLACE AT NEWBURGH PROJECT.

RESIDENTIAL WELL / SEPTIC SYSTEM EXPERT

A disinterested, third party expert in the field of residential wells and septic systems should be commissioned and/or retained by the Town to study and ascertain the current status of the wells and septic systems of the residences located on Fern Avenue, Hilltop Avenue and New Street.

There should be a mechanism where I, along with the Town and the Developer and other interested parties, can have input into the selection of the expert, and such person should only be hired when there is agreement by all of the parties involved;

The expert's responsibilities must include the filing of a report with the Town indicating the current status and potential vulnerabilities of these well and septic systems to the types of construction proposed, and distribution of such report to all interested parties that request it;

The Developer, Balter/Wilder, or any other entity or company they do business as, must obtain and maintain an appropriate financial vehicle, such as a bond, surety or adequate and sufficient insurance for any potential impacts to homeowners' residences, where they are named as the responsible party for any

and all damages incurred during or after the construction of the Marketplace Mall. Further, a bond should be held by the Town of Newburgh to accomplish this task, for a sufficient time period so that the Homeowner's property is covered and protected, without the need to pursue costly and time-consuming litigation;

There should be a mechanism, should damages occur at any point during the construction of the proposed project, that addresses and corrects these impacts -- such as timetable, methodology and detailed accounting -- agreed to by all parties and written into the FEIS.

There should be a mechanism, should damages occur subsequent to the construction of the proposed project that are attributable to construction or its effects, that addresses and corrects property impact issues, that is -- agreed to by all parties

BLASTING EXPERT

Additionally, a disinterested, third party expert in the field residential construction, particularly the impacts of blasting on foundations and longevity of homes should be made available at no charge to all residences of the aforementioned streets as well as the greater Winona Lake area, the Laurelcrest sub-division and Brookside Avenue. Again, I would respectfully request that this issue be bonded through the Town of Newburgh, with the ultimate responsibility for any damages resting solely with the Developer Balter/Wilder.

MONITORING SCHEDULE TO PRESERVE AND PROTECT DRINKING WATER

A monitoring schedule should be developed and put into place to track the impacts of the proposed project on water quality and quantity and known contaminants and/or pollutants associated with this type of commercial land use that will affect my only source of water -- my well system. This schedule should commence prior to construction, and remain in effect during the duration of the operation of the proposed project. The Developer, Balter/Wilder must be held accountable for any and all remediation and/or mitigation issues associated with these impacts to the water quality.

The local residents in all named areas in this letter should be duly protected from any damages relative to or as a result of construction and operation of the proposed project, especially one of this size, scope and magnitude. It is my opinion Mr. Booth, that you as the Town of Newburgh Supervisor, must aggressively assume the leading role of protecting these citizens through the mechanisms suggested in the context of my letter.

Thank you for your attention to this request.

Yours Sincerely,



Mrs. Arthur J. Bernard

cc:

Town Council: George Woolsey, Gil Piaquadio, Derrick Benedict, Elizabeth Green and Mark Taylor, ESQ

Planning Board: Chairman John Ewasutyn, Kenneth Mennerich, Clifford Browne, J. Leo Glynn, Joseph Profaci, Edward O'Donnell, Frank Galli and Michael Donnelly, ESQ

Town Engineer: James Osborne

Town Clerk: Andrew Zarutskie

Town ZBA: Chairwoman Grace Cardone, Ron Hughes, Ruth Eaton, James Manley, Robert Kunkel, John McKelvey and Caroline Martini, ESQ

Lisabeth Stelz Riach
106 Fern Avenue
Newburgh, New York 12550-3019
(845) 561-5096
(914) 213-7770
isdeirinnme@msn.com

March 28th, 2006

Wayne Booth
Town of Newburgh Supervisor
1496 Route 300
Newburgh, New York 12550

Dear Supervisor Booth,

I am a local resident who believes my home will be impacted by the proposed **Marketplace Mall**. My well and septic system may potentially suffer direct and significant adverse impacts during construction of this project. These potential impacts may severely impact my ability to live in and enjoy my home.

While the Town is currently considering the environmental impacts of this project, and I understand that no decision has been made with respect to its approval, I would respectfully request the following safeguards be put in place to address some of the direct construction impacts as part of that environmental review, and afterwards should the project be approved.

BASIC SAFEGUARDS AND PROCEDURES TO PROTECT LOCAL RESIDENTS FROM CONSTRUCTION IMPACTS OF THE MARKETPLACE AT NEWBURGH PROJECT.

RESIDENTIAL WELL / SEPTIC SYSTEM EXPERT

A disinterested, third party expert in the field of residential wells and septic systems should be commissioned and/or retained by the Town to study and ascertain the current status of the wells and septic systems of all the residences located on Fern Avenue, Hilltop Avenue and New Street.

There should be a mechanism where I, along with the Town and the Developer and other interested parties, can have input into the selection of the expert, and such person should only be hired when there is agreement by all parties involved;

The expert's responsibilities must include the filing of a report with the Town indicating the current status and potential vulnerabilities of these well and septic systems to the types of construction proposed, and distribution of such report to all interested parties that request it;

The Developer, Balter/Wilder, or any other entity or company they do business as, must obtain and maintain an appropriate financial vehicle, such as a bond, surety or adequate and sufficient insurance for any potential impacts to homeowners' residences, where they are named as the responsible party for any and all damages incurred during or after the construction of the Marketplace Mall. Further, a bond should be held by the Town of Newburgh to accomplish this task, for a sufficient time period so that the Homeowner's property is covered and protected, without the need to pursue costly and time-consuming litigation;

There should be a mechanism, should damages occur at any point during the construction of the proposed project, that addresses and corrects these impacts -- such as timetable, methodology and detailed accounting -- agreed to by all parties and written into the FEIS.

There should be a mechanism, should damages occur subsequent to the construction of the proposed project that are attributable to construction or its effects, that addresses and corrects property impact issues, that is -- agreed to by all parties

BLASTING EXPERT

Additionally, a disinterested, third party expert in the field of residential construction, particularly the impacts of blasting on foundations and longevity of homes should be made available at no charge to all residences of the aforementioned streets as well as the greater Winona Lake area, the Laurelcrest sub-division and Brookside Avenue. Again, I would respectfully request that this issue be bonded through the Town of Newburgh, with the ultimate responsibility for any damages resting solely with the Developer Balter/Wilder.

MONITORING SCHEDULE TO PRESERVE AND PROTECT DRINKING WATER

A monitoring schedule should be developed and put in place to track the impacts of the proposed project on water quality and quantity and known contaminants and/or pollutants associated with this type of commercial land use that will affect our only source of potable water -- our well systems. This schedule should commence prior to construction, and remain in effect during the duration of the operation of the proposed project. The Developer, Balter/Wilder must be held accountable for any and all remediation and/or mitigation issues associated with these impacts to the water quality.

The local residents in all named areas in this letter should be duly protected from any damages relative to or as a result of construction and operation of the proposed project, especially one of this size, scope and magnitude. It is my opinion Mr. Booth, that you as the Town of Newburgh Supervisor, must aggressively assume the leading role of protecting these citizens through the mechanisms suggested in the context of my letter.

Thank you for your attention to this request and for your service to our Town. I look forward to your timely response.

Respectfully yours,



Lisabeth Stelz Riach

cc:

Town Council : George Woolsey, Gil Piaquadio, Derrick Benedict,
Elizabeth Greene and Mark Taylor, Esq
Town Clerk : Andrew Zarutskie
Town Engineer : James Osborne
Planning Board : Chairman John Ewasutyn, Kenneth Mannerich,
Clifford Browne, J. Leo Glynn, Joseph Profaci, Frank Galli,
Edward O'Donnell and Michael Donnelly, Esq
ZBA : Chairwoman Grace Cardone, Ron Hughes, Ruth Eaton
James Marley, Robert Kunkel, John Mc Kelvey and
Caroline Martini, Esq

John Parker, Esq

pm/LSR

C.D. Jones Traffic Study 28 May 2006 (Sunday of Memorial Day)
 Intersection of Powder Mill Road and Gardnertown Road (near Locust Lane)

Automobile counts were only counted FROM each direction and not TO any particular direction. Clearly, the most traffic went to and from Powder Mill Road and to and from east Gardnertown Road.

NUMBERS
28 May 2006
5:30 p.m. to 6:30 p.m.

From Powder Mill Road	151 autos
From East Gardnertown Road	164 autos
From West Gardnertown Road	59 autos
From Locust Lane	<u>6 autos</u>
	380 autos at this intersection per hour (at a slow time period)

If the new Marketplace Mall brings an extra 2500 autos per hour to our area, this is how it will effect the Powder Mill/Gardnertown Road intersection.

2500 Extra Cars per hour DIVIDED BY the 3 major entrance/exits to the mall.
 2500/3= 833 autos per intersection (one of these intersections is Powder Mill Road and Rt. 52).
 At the Powder Mill Road and Rt. 52 intersection, travelers can go one of 4 routes out of the mall. If we DIVIDE 833/4=208 cars will use Powder Mill Road one way or the other. As Powder Mill Road terminates at the other end on Gardnertown Road, 208 vehicles per hour will be traveling on that end as well. Now, this means that instead of 380 autos per hour (at a slow time period), we (the people of the Town of Newburgh) will have to put up with 588 autos per hour (either traveling through or living here).

TO REITERATE:

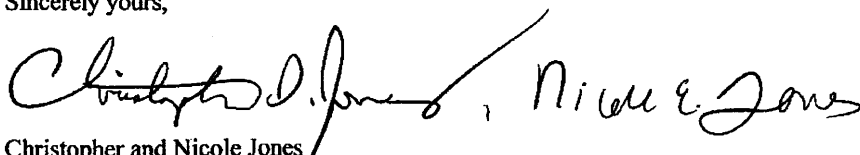
The numbers post Marketplace Mall at the Powder Mill/Gardnertown Road intersection are:

	PRE-MALL		POST-MALL		TOTALS
From Powder Mill Road	151 autos	+	104	=	255
From East Gardnertown Road	164 autos	+	104	=	268
From West Gardnertown Road	59 autos			=	59 (This number will increase drastically because anyone living north of The Marketplace will drive this way to avoid it)
From Locust Lane	<u>6 autos</u>				<u>6</u>
	380				588 autos per hour

588 autos per hour is a low estimate. This short study was taken between 5:30 and 6:30 p.m. on the Sunday evening of Memorial Day weekend. If the stores are marketing Memorial Day like any average business, this traffic will even be greater. Plus, this time period does not reflect peak time periods of weekdays. Also, this is just one intersection not completely adjacent to the proposed The Marketplace. Please note that The Marketplace will greatly (and negatively) affect the residents of the Town of Newburgh.

Planning is your job. Do not let the people of the Town of Newburgh down with poor planning. These are among many issues the Marketplace Mall will influence. Listen to the people of Newburgh and let the open space between the Newburgh Mall and Route 52 rest. Thank you.

Sincerely yours,



Christopher and Nicole Jones

