

## FINDINGS STATEMENT

### State Environmental Quality Review Act

Pursuant to Article 8 of the New York Environmental Conservation Law - the State Environmental Quality Review Act (SEQRA), and its implementing regulations at 6 N.Y.C.R.R. Part 617, the Town of Newburgh Planning Board, as Lead Agency, makes the following findings:

- Name of Action:** The Marketplace at Newburgh
- Description of Action:** Preliminary site plan approval to facilitate development of a retail use on approximately 128.1± acre site. The applicant proposes to develop a IB Interchange Business zoned site on the northeast corner of Routes 84 and 300 opposite the Newburgh Mall with 850,000 square feet of commercial floor area.
- Location:** The proposed development is located on NYS Route 300 (Union Avenue) north of the junction with US Interstate Highway 84 in the Town of Newburgh, Orange County, New York.
- Lead Agency:** Town of Newburgh Planning Board  
Newburgh Town Hall  
Town of Newburgh Planning Board  
308 Gardnertown Road  
Newburgh, NY 12550  
Contact: John Ewasutyn, Chairman  
(845) 564-7804
- SEQRA Classification:** Type I
- Date Final EIS Filed:** March 15, 2007
- Date Findings Adopted:** May 3, 2007

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## I. INTRODUCTION

### A. Development Concept

WB Interchange Associates, LLC (the “Applicant” or “Project Sponsor”), proposes to construct an 850,000 square foot open air shopping center development, The Marketplace at Newburgh (the “Project” or “Marketplace”) on a 128.1± acre property (the “Project Site”) located at the northeast quadrant formed by Interchange 7 of Interstate Route 84 (I-84) with New York State Route 300 (Union Avenue). The Project Site consists of 19 tax lots: 60/3/49.22; 60/3/48; 60/3/49.1; 60/31/41.3; 60/3/41.4; 60/3/49.21; 97/1/13.3; 71/5/9; 97/1/20.3; 1/4/11-14; 71/5/16; 71/4/7; 71/4/9; 71/4/10; 71/4/8, 71/5/15, as well as 4 parcels owned by the New York State Department of Transportation.

All of the retail buildings, parking and stormwater facilities shall be constructed in the IB (Interchange Business) zoned portion of the property that includes ninety-eight percent (98%) of the Marketplace site. The proposed use, a shopping center, is a permitted use in the IB zone and a use subject to site plan review by the Newburgh Planning Board. A 3.2-acre area of the project on the easterly edge of the site is zoned “R-3” Residential and is proposed to be developed as an entrance that would connect from NYS Route 52 at 5th Avenue to the main road bisecting the Marketplace. This proposed access from Route 52 would be constructed on lands owned by the applicant, WB Interchange Associates, LLC, adjacent to residential development on Brookside Road and Wintergreen Avenue, or closer to I-84 through a portion of the land controlled by the New York State DOT along US Highway 84. The EIS included correspondence from the DOT indicating a willingness to allow such access as a means of mitigating other potential impacts, as discussed below.

The Marketplace open air retail center development would contain two shopping formats. The area closest to Route 300 would support approximately 200,000 square feet of single-level retail space and would contain higher end, smaller shops (under 20,000 square feet) with an emphasis on clothing, dry goods, specialty shops, and restaurants designed in a neighborhood or village setting. This lifestyle center component will include pedestrian access, brick-paver walkways, landscaping, and a mix of small shops with varied facades to provide a lower scale, enhanced visual appeal from Exit 7 on I-84 and from Route 300.

The remainder of the site would be occupied by larger retail tenants housed in attached buildings or in a standalone format, totaling up to 650,000 square feet of gross floor area.

Vehicular access to the Marketplace would be via three access roads. All three of these access roads are required to support the site plan as currently proposed. One access road would intersect with NYS Route 300 at the existing intersection of Route 300 with the Newburgh Mall’s southerly access driveway. The road is designed as a boulevard road for approximately 2,500 feet of its length. At the boulevard’s intersection with Route 300, the road has been designed with six lanes, fully signalized and coordinated with other signals on Route 300 to maximize the level of service for vehicles on Route 300. Four lanes will provide egress from the site, with a right turn lane, a through lane and two left turn lanes onto Route 300. The ingress will have two lanes entering, with a third lane splitting off to access the lifestyle center. This access boulevard would be reduced to two lanes approximately 1,500 feet into the Marketplace site, past the lifestyle center as it bisects the proposed buildings and parking areas in the central and eastern portion of the development. A sidewalk is proposed along this entrance connecting Route 300 to the interior site sidewalk system.

Additional access would be provided from Route 52 at two locations; across from Fifth Avenue, in the vicinity of Exit 8 from I-84, and at the existing five-way intersection at Meadow Avenue, Powder Mill Road, Innis Avenue and Route 52. A sidewalk connection from the interior of the site is also proposed to extend out to Route 52 at the Powder Mill Road intersection.

Access from Route 52 at Fifth Avenue was originally proposed (as the DEIS action) to remain on lands owned or controlled by the applicant. During discussions with the Planning Board, its consultants, and adjacent property owners, concerns were raised that this proposal, while feasible, resulted in potential impacts which would require additional mitigation measures and/or consideration of alternative designs to alleviate these concerns. These potential impacts included additional wetland and watercourse crossings, an increase in noise and decrease in air quality due to access road proximity to nearby residences, and additional site grading and clearing due to site topography and road alignment. In order to reduce these potential adverse impacts along the access road from Route 52 and Fifth Avenue, an alternative was presented in the DEIS, and further refined in the FEIS, that relocated a major portion of this access road onto adjacent lands that are currently controlled by the New York State DOT. This alternative has the following mitigating effects:

- 1) reduced traffic noise;
- 2) the stream crossing as now proposed results in reduced stream and less wetlands disturbance;
- 3) the road is shorter and has less tree and property disturbance;
- 4) improved air quality to sensitive receptors nearby; and
- 5) reduced requirements for retaining walls (visual impacts).

Therefore this alternative is now being considered as the primary action. The applicant has received correspondence from the DOT (dated 6/28/05, and included with the EIS) in support of this proposal and expressing a willingness to sell, convey by easement or lease a portion of the DOT parcel to enable the applicant to construct the access road as shown in this alternative plan.

Another significant modification involves the re-alignment of the five way intersection at Route 52 and Meadow Avenue. Based on comments from the Town's traffic consultant and the New York State DOT, the applicant is now proposing the construction of a roundabout at this location. The use of the roundabout, as shown on the revised site plans, creates smoother traffic flow and reduces wetland impacts in that area.

#### Applicability of Findings to Future Site Plan Modifications

These Findings are applicable to both the Project plans and all alternatives as set forth in this SEQRA process. The project as proposed is expected to be built as a single phase project. The Planning Board acknowledges that retail users have varying needs as market conditions change and consumer buying habits change. In this regard, minor modifications that may be requested for the site plan in the future are not likely to require further SEQRA review, within the limits of applicable and prevailing law, so long as these modifications:

- 1) do not result in any more building square footage or impervious surfaces on the site than that amount reviewed in these proceedings;
- 2) do not permit any use on the site other than those allowed by current zoning and reviewed during these proceedings; and

3) do not decrease buffers from outside property lines or increase the disturbance envelope of the grading plan reviewed herein; and

4) do not reduce the number of access points below the 3 currently proposed; and

5) do not reduce the size of the Lifestyle Center component of the project below 100,000 square feet.

## **B. Procedural History and SEQRA Review**

The Town of Newburgh Planning Board (the “Planning Board”), as SEQRA Lead Agency, has conducted a site specific environmental review of the Project. This document is the Lead Agency’s Findings Statement required pursuant to 6 N.Y.C.R.R. §617.11.

On October 14, 2004, a full Environmental Assessment Form (EAF) application for the proposed Project (initially referred to as Crossroads at Newburgh), was submitted to the Town of Newburgh Planning Board (the “Planning Board,” the “Board”). The Planning Board determined that the proposed activity was a Type I action and the Board established itself as lead agency on December 9, 2004.

On February 10, 2005, in cooperation with all other involved agencies and interested parties and subsequent to a public scoping meeting held on January 13, 2005, the Planning Board adopted a final scoping document designating the potentially significant environmental impacts to be addressed in the Draft Environmental Impact Statement (“DEIS”) for the Project. The accepted scope outlining the information to be covered in the DEIS is provided in Appendix A of the DEIS. The DEIS was originally submitted to the Town of Newburgh on November 23, 2005. Based upon comments received from the Lead Agency, the applicant submitted a revised DEIS to the Planning Board on January 3, 2006; additional revisions were made and the DEIS submitted again on April 4, 2006. On May 4, 2006, the Planning Board accepted the DEIS as complete with respect to its scope, content and adequacy and issued a Notice of DEIS Completion and Notice of Public Hearing and caused the DEIS to be filed with all involved agencies. The Planning Board conducted a Public Hearing on the DEIS on June 1, 2006. This hearing was continued on June 29, 2006, and the open public comment period was extended to July 31, 2006. The primary concerns that generated comments to the DEIS included the overall amount of grading and disturbance on the site, blasting impacts on residences and drinking water wells, visual impacts and proximity to existing residences, the amount of proposed impervious surface, loss of vegetation and wildlife habitat, development on steep slopes, and traffic resulting from the Project and potential traffic impacts to Routes 52 and 300. Since the review of the DEIS, the applicant has modified the proposed project and the Site Plan by incorporating elements of several of the alternatives discussed in the DEIS.

A Final Environmental Impact Statement (“FEIS”) was prepared and accepted by the Board as complete on March 15, 2007. A Notice of Completion and the FEIS was filed with all involved agencies on March 26, 2007. The FEIS was made available for consideration by the public and all involved agencies from March 15, 2007 until May 3, 2007, when these Findings were issued.

Subsequent to circulation of the FEIS, the Planning Board received comment letters from Keane and Beane, representing the Newburgh Mall, and John Parker, representing Save Open Space (SOS). The Planning Board has also received a letter from Hudson Highlands Environmental Consulting commenting further on behalf of SOS. Each of these letters together with their

attachments and/or enclosures have been reviewed by the Planning Board and its consultants and have been taken into consideration in the preparation of these findings.

The Planning Board acknowledges that advisors to SOS have expressed disagreement with certain methodologies and information contained in the Draft and Final EIS. While the Planning Board appreciates the information and perspectives provided—indeed, the receipt of this information has assisted the Planning Board in taking the requisite hard look at the potential environmental impacts of this project—it stands by the DEIS and its FEIS. The Draft and Final EIS was prepared by experienced and reputable parties with known expertise in their fields of specialization. Moreover, the Planning Board has retained its own experts to review the Draft and Final EIS and make sure that applicable rules, regulations, procedures and methodologies were closely followed. These experts provided input and advice to the Planning Board in reaching its various SEQRA determinations.

These Findings represent the Planning Board's deliberations and conclusions based on a thorough review of the entire record, including input from the public, involved agencies and interested parties. In this regard the Planning Board has considered the relevant environmental impacts, and weighed and balanced relevant environmental impacts with social, economic and other considerations, as required by the New York State Environmental Quality Review Act.

### **C. Site Characteristics**

The site is located in the unincorporated area of the Town of Newburgh, Orange County, New York. The project site is bounded generally by the Interchange 7 off-ramp and roadway of I-84 to the south; NYS Route 300 (Union Avenue) to the west; Meadow Avenue, NYS Route 52 (South Plank Road) and Hilltop Road to the north; and, NYS Route 52 to the east.

The project site has frontage on NYS Route 300 to the west, Meadow Avenue/NYS Route 52 to the north, and NYS Route 52 to the east. The majority of the site (97%) is presently vacant and there are no existing roads and drives internal to the site. The vegetative cover of the undeveloped portions of the property is wooded. The major vegetative communities on the project site are successional hardwood forest and red maple hardwood swamp. A small portion of the site consists of five (5) single family residences along Route 52 and Brookside Avenue. These homes will be demolished and that area will support one of the access drives to the site.

A small portion on the easterly edge of the project site includes several tax lots on which buildings are currently situated. There is one, 1-acre commercial parcel on NYS Route 300 (Newburgh tax map designation of Section 60, Block 3, Lot 41.3) where a former Exxon gas station has been completely demolished and removed, including removal of all underground tanks, lines, paving curbs, the building and building foundation. The site has been regraded. Remediation of a 17-year oil spill has been completed recently as a result of actions by the developer. More than 3,000 cubic yards of contaminated soil have been removed off site and new fill has replaced the excavated material. Monitoring wells have been installed that are monitored quarterly. The NYS DEC receives the quarterly monitoring report data for their review as part of the overall clean up of the formerly contaminated site.

The topography of the site rises from southwest to northeast and crests at an elevation of approximately 425± feet above mean sea level (msl). Generally, the southwest corner of the site adjacent to the off-ramp from I-84 westbound is at an elevation of 350± feet msl. The elevation of the site then decreases traveling east toward Winona Lake and Quassaic Creek. The creek

elevation is approximately 220± feet msl. East of Quassaic Creek, the site rises more gradually and flattens out at an elevation of approximately 270 ± feet msl approaching NYS Route 52.

Approximately 10.9 acres of wetlands on the subject site are regulated by the United States Army Corps of Engineers pursuant to Section 404 of the Clean Water Act. The on-site, ACOE-regulated wetland extends from the intersection of Meadow Avenue/NYS Route 52 into the site approximately 1,000 lineal feet. A jurisdictional determination was provided by the U.S. Army corps of engineers dated November 30, 2005. The current site plan shows approximately 1.05 acres of this regulated wetland would be disturbed. An individual Section 404 Permit from the Army Corps of Engineers is required prior to this disturbance. The creation of compensatory wetlands will, almost certainly, be a condition of that permit.

Isolated wetlands on the subject site reviewed by the ACOE and deemed to not fall under ACOE jurisdiction total approximately 4.9 acres.

Quassaic Creek has a stream corridor crossing in the easterly section of the property that the applicant is proposing to span. There is a small portion of the 100-year Federal Emergency Management Agency (“FEMA”) mapped flood plain along the banks of the Quassaic Creek that is narrow due to the steep banks of the creek and extends, for the most part, less than 20 feet on either side of the creek. No development apart from the stream crossing culvert is proposed for areas within the 100- year flood plain. A permit must be obtained from the town of Newburgh flood plain administrator for any grading or construction within the 100 year flood plain.

#### **D. Detailed Development Description**

The purpose of the Project is to make available a centralized first class shopping opportunity to the Newburgh region of Orange County while providing access to the major street and highway corridors existing alongside the property frontage. The concept to be developed is known as an Omni Center, or large scale open air center, within the retail industry. This concept unites a lifestyle center atmosphere of small shops in a re-creation of a main street setting with adjacent power center anchor stores of large format retailers. The plans submitted with the EIS shows the most likely final layout and sizes of buildings, although minor revisions may be made prior to final site plan approval, as described below.

##### **1. Building Layout**

Buildings will be oriented along the periphery of the project site, with the parking and drive aisles located centrally within the site. A cluster of eight (8) buildings, containing up to 200,000 square feet, will comprise the “Lifestyle Center” which is located just east of NYS Route 300 and north of the I-84 westbound off-ramp at Exit 7. The location of the “lifestyle center” buildings have been revised from the original proposal, based on comments from the Board and the Public Hearing, and are now oriented to create a “main street” feel to the center. Parking would be provided both in front of and behind the commercial buildings.

The remainder of the retail center will have stand alone, large-format retail tenants.

To the east of the lifestyle center and along the site’s southerly boundary, two buildings would have a combined footprint of approximately 190,000 square feet. Immediately to the east, a smaller building would have a 30,000 square foot footprint. A standalone building with a 150,000 square foot building footprint is proposed along the northerly property boundary of the site. A fourth building would consist of three separate retail spaces with an aggregate 267,500 square

feet. In total, the larger format tenants would comprise up to 650,000 square feet of gross floor area.

Three buildings adjoin residential properties and a vacant parcel to the north of Building E is located between the northerly residential neighborhood.

## 2. Floor Area

The site plan for the Marketplace at Newburgh illustrates a layout encompassing 850,000 square feet. Of this total, approximately 200,000 square feet gross leasable area (GLA) would be contained in the lifestyle center, and 650,000 square feet GLA would be constructed on the remainder of the site.

## 3. Building Use

Within the lifestyle center, it is expected that there would be a combination of uses that could include but would not be limited to cafes, restaurants, retail stores, banks, active recreation uses (e.g. fitness club), and personal service establishments. The remainder of the site would be developed with large-format retail uses that create a draw to support smaller formatted stores.

## 4. Drainage

The Applicant's engineer has prepared a Stormwater Management Report for the proposed Marketplace at Newburgh, developed in accordance with applicable town and New York State Department of Environmental Conservation (NYSDEC) guidelines, including the New York State Stormwater Management Design Manual and the New York Guidelines for Urban Erosion and Sediment Control to meet NYSDEC stormwater treatment criteria.

The primary treatment for runoff discharging from the Project will be through newly constructed stormwater detention/water quality basins (i.e. micropool extended detention ponds). These basins total approximately 4.5 acres in two basin systems, which will be landscaped in a naturalistic manner to be integrated with and function as created wetlands. Controlled outlet structures from the basins will extend the discharge duration from the basins to 24 hours or more. Stormwater runoff for the entire site will be collected in a subsurface closed drainage system and conveyed to the stormwater basins for ultimate discharge from the site at two design points described in the Stormwater Pollution Prevention Plan. The last pond in either series of basins is designated as a P-3 "micropool extended detention pond" per the NYSDEC Design Manual. The applicant has also dedicated two large parking lots as areas of pervious pavement for added infiltration of stormwater flows and to assist in the recharge of private wells serving single family homes to the north.

Bankside discharge points and velocity dissipaters will be structured so as to protect stream side banks and vegetation. Some of the post-development stormwater will continue to occur as sheet runoff from undisturbed and protected areas of the site, in a manner similar to existing conditions on the property.

## 5. Parking Layout

The proposed project would include 3,727 parking spaces conforming to the Town of Newburgh zoning requirements. A total of 47 handicapped parking spaces will be included to meet all



applicable requirements. All parking areas will be paved with asphalt, and would be maintained in order to prevent potholes and to retain clarity of required markings as per the zoning law.

Parking areas would be landscaped in conformity with Section 185-13 of the Town zoning law that proscribes a ratio of tree plantings to parking space allotments. The current proposal exceeds the requirements of this section.

## 6. Landscaping Plan

Landscape plantings will include street and parking lot trees and shrub plantings, building foundation plantings, storm water management plantings, plantings around the bases of signs or other site features to compliment the landscape, plantings to screen potentially objectionable views and to replace plants lost due to clearing the site for development. Other non-impervious surfaces would be maintained as lawn, meadows and wooded areas.

Trees along streets and parking lots will be deciduous shade trees. These plantings will be supplemented with lower shrub bed and/or perennial bed plantings in portions of boulevard and parking lot islands. Foundation plantings will consist of a mix of deciduous and evergreen trees, shrubs and perennials.

Plants utilized to screen potentially objectionable views will include a mixture of deciduous and evergreen trees and shrubs, with a higher concentration of evergreen plant material than in other areas to provide a more effective year round effect. These plantings will be employed around the perimeter of the site to screen parking areas, refuse storage areas, the rear of buildings, and other potentially objectionable views from the public.

On the shared property line between the rear yards of homes on Hilltop Avenue and nearby buildings, there will be particular emphasis on landscape treatment by providing a new vegetation edge along the limit of disturbance line, adding to the existing visible screen between residents and the shopping center. The vegetation edge will also contain a ten foot high barrier fence for additional screening, security and sound attenuation. A maximum distance of ten feet from the grading limits shown on the FEIS site plans are to be held as the limits of disturbance for all site construction. Any deviation from this line will require review by the Planning Board and site plan amendment.

The evergreen plantings at the top of the stone embankment will consist of various evergreen trees on the Hilltop side, planted in a double staggered row, with lower trees and shrubs at the edge of the existing woods to soften the view from residences. A ten-foot high, barrier fence will be placed at the top of the rock cuts and in the proposed 75 foot setback from the property line. As many trees as possible would be saved and then plantings made in those areas where tree removal has created a need for supplementary plantings. An alternative plan was also provided with the EIS, showing compliance with the proposed updated buffer requirements which will be implemented. A 100 foot minimum buffer is shown on this alternative plan.

On some sections of the site where there are no buildings to screen, visual disturbance will be diminished by blending landscaping and fencing. The planting line will continue at the top of slopes with a visually unobtrusive black vinyl coated chain link security fence designed to blend into the forest. The shopping center side of the fence would be planted with evergreen materials, near the top of the bank, for maximum screening effect.

The landscape design re-vegetates the developed site with many trees, shrubs and perennial plantings. A total of more than 1,500 trees will be planted. These plantings will be in the form of both complimentary and screening landscape treatments.

## 7. Lighting Plan

The fixtures chosen to light the parking lots utilize a flat glass lens with the lamp completely recessed into the housing that reduces glare to maintain “dark sky” compliance. The site plan for the Marketplace has been designed to use the large retail structures on the north side of the site to block traffic noise and light pollution.

For the more heavily trafficked pedestrian areas, a carriage type fixture will be used to compliment the architecture and landscape design. It is also expected that decorative, lower-height, pedestrian-scale lighting will be used to accentuate the architectural design within the lifestyle center to enhance the area’s village ambiance. Close attention was paid to the layout of the fixtures to maintain lighting uniformity that reduces hot spots and dark spots. The results of the lighting analysis show a uniform distribution of light that makes for a safe and inviting environment.

The lighting plan has been designed to avoid spill-over along the site’s northerly border abutting a residential neighborhood located along Hilltop Avenue.

At the boundary of the Hilltop Avenue residences, the foot-candle level will be zero (0). All lighting nearest the Hilltop Avenue residences will have shields to provide security for the rear of the buildings while, at the same time, eliminating lighting spillover onto the adjacent residential properties. A vegetative buffer and a ten foot high barrier fence is proposed for this area. However, the lighting plan was developed assuming a “worst case scenario” with no vegetation and no fence. However, there will be vegetation and fencing to further mitigate lighting effects at the property line.

## 8. Revised Project Layout

The final revised Site Plan (presented in FEIS Volume 2) incorporates several features investigated during the SEQRA analysis that are proposed to further mitigate several of the identified potential adverse impacts. These include:

- The southerly relocation of the access road to Route 52 at Fifth Avenue as presented in Alternative 2 of the DEIS and described on Page 3 of this Findings Statement;
- The plans have been revised to include a 100 foot buffer and 150 foot setback in accordance with the recently adopted zoning amendment regarding buffering and setbacks of commercial projects from residential zones. This will buffer the residents of Hilltop Avenue from the project with a greater separation distance than previously required and provide for vegetative screening to block the new buildings, once constructed, and any construction activities that could be seen.
- Adjustments to the internal road layout to decrease impacts to regulated wetlands by 0.70 acres (from 1.75 acres to 1.05 acres), and;
- Layout revisions for the Lifestyle Center to utilize a “Main Street” design concept.

## **E. Required Permits, Approvals and Review by Other Agencies**

The following agencies are Involved Agencies under SEQRA, and have approval authority over various aspects of this proposal:

Town of Newburgh Planning Board: Site Plan Approval.

Newburgh Town Board: Abandonment of existing Town roads/Dedication of new Town roads.

Town of Newburgh Engineer: (1) Sewer main extension, (2) Stormwater Management Plan approval.

Town of Newburgh Water Department: (1) Sewer and water connections, (2) Water main extension, (3) Hydrant locations and (4) Fire system.

Town of Newburgh Building Inspector: (1) Blasting Permit, (2) Clearing and Grading Permit, (3) Permit to Conduct Work in Floodplain; (4) Demolition Permits.

Town of Newburgh Architectural Review Board: Architectural review.

City of Newburgh: (1) sewer flow approval.

New York State Department of Health: Orange County Department of Health: Water and sewer connections.

New York State Department of Environmental Conservation: (1) SPDES General Permit No. GP-02-01, (2) Water Quality Certificate, (3) Air Discharge Permit.

New York State Department of Transportation: Highway Work Permit (including traffic signal warrants).

New York Thruway Authority: Highway Work Permit for interchange improvements and I-84 signage review.

US Army Corps of Engineers: Individual Section 404 Wetlands Permit.

In addition, the application was referred to the Orange County Department of Planning for review pursuant to Section 239 of the New York State General Municipal Law.

## **II. IMPACTS, MITIGATION MEASURES AND SPECIFIC FINDINGS:**

The DEIS and FEIS include an environmental evaluation of the following resource issues:

- Geology, Soils and Topography
- Wetlands
- Terrestrial and Aquatic Ecology
- Water Resources
- Zoning and Surrounding Land Use
- Traffic and Transportation
- Community Services and Socioeconomics

- Noise Quality
- Air Quality
- Visual Quality
- Cultural Resources
- Alternatives

#### **A. Geology, Soils and Topography**

Impacts to the geology, soils and topography of the Project site will occur because approximately 108 acres of the 127.6 acre site must be disturbed to accommodate the Project. Approximately 19.6 acres of the site will remain undisturbed. While grading will occur on the majority of the site, the site development and grading plan was developed to minimize impacts the wetlands in the western and northern portions of the site and steep slopes in the eastern portion of the site, in the area of the South Plank Road (NYS Route 52) easterly access drive. Grading is required to build the internal road network, install site utilities, prepare level areas for retail building pads and related parking areas and to construct the proposed stormwater management facilities.

Cut and fill is required to accommodate construction of the proposed building pads, associated parking areas, and site access roadways. In general, the hillsides in the northeastern portion of the site will be excavated or cut, while areas with lower elevations in the southwest portion of the site will be filled. Due to the known presence of rock outcrops and the proposed grading required, blasting will be required for the proposed development. Material which is blasted will be processed onsite by a portable rock crusher and used as aggregate and or fill. Based on preliminary estimates, the total amount of material to be moved by blasting could range between 420,000-480,000 cubic yards. As described above, the areas of greatest material removal will occur on the hillside at the eastern and northeastern portions of the site. The project engineer has developed a plan identifying areas of potential blasting. The Project has been designed to be a balanced cut and fill project and the developer expects that there will not be a need import or export any "fill material".

The deepest cut occurs in the proposed parking area to the north and east, where the existing grade would be lowered by up to 30 feet in some areas. Maximum grade elevations would be made along the southerly property line adjacent to I-84, where an average rise of 30 feet would be made across a similar 450 lineal-foot distance.

Areas that would not be graded include wetlands in the northwest corner of the site and areas adjacent to the South Plank Road (NYS Route 52) and Meadow Avenue access drive.

The soils on the Project site are common in Orange County. The on-site soils were mapped according to soil classifications in the United States Department of Agriculture Soil Conservation Service's (USDA SCS) *Soil Survey of Orange County, New York*.

Impacts to geology, soils and topography will be minimized by implementation of the detailed Sediment and Erosion Control Plan developed specifically for this Project. The Erosion Control Plan will provide both temporary controls during the construction period and permanent controls that will be in place and functioning at the completion of construction. During construction, the Plan will minimize the potential for soil erosion from areas exposed during construction and prevent sediment from reaching the down-gradient wetlands and watercourses through the use of silt fence barriers, sediment traps and other erosion control measures. All soil erosion and

sedimentation control practices will be installed in accordance with the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activities (Permit No. GP-02-01), the Town of Newburgh Municipal Code and best management practices of the Orange County Soil Conservation Service. Compliance with all provisions of this plan (except as modified in the field by mutual agreement shall be a condition of any approval granted to the Developer and shall be a required SEQRA mitigation measure.

The erosion and sediment control measures will be installed according to construction drawings prior to any construction that will result in disturbance of soils. Both temporary and permanent erosion control facilities and activities will be applied over the duration of project related activities on the site. A plan for phasing and sequencing of site construction has been prepared and is included in the Erosion Control Report (Appendix C of the DEIS). A total of five phases are proposed. Each phase will stand alone with regards to erosion controls, use of best management practices and site stabilization. The applicant has petitioned the DEC to waive the standard five acre minimum disturbance area in order to complete site work in a shorter period of time, allowing for a shorter duration of exposed soils and unstabilized areas.

The first phase in the construction process will be to establish erosion controls, including the excavation and construction of all required sediment basins. The two sediment basins constructed will be used to capture and detain stormwater runoff. Additionally a stabilized access road and an on-site rock crushing facility will be setup during this phase.

All erosion control measures will be maintained in good condition and left in place until permanent vegetative cover is established. The measures will be monitored during construction by the project engineer, the DEC under the stormwater permit and representatives of the Town. Pursuant to the Erosion Control Plan, the area of soil disturbance will be minimized to the greatest extent practicable in accordance with the conditions of the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activities. Following construction, erosion will be averted by the established vegetation and by the stormwater management facilities for the Project.

To help ensure that proposed plantings will survive and thrive, an adequate landscape plan that addresses soil preparation for all areas of the site will be submitted.

**Finding:** The Planning Board finds that, although there will be changes to the geology, soils and topography that are inherent in the construction of the proposed Project, impacts from construction will be temporary and will be minimized by implementation of limitations on site disturbance and compliance with the detailed Sedimentation and Erosion Control Plan and Phasing Plan for the Project prepared in accordance with NYSDEC requirements. A water quality certification permit must be obtained prior to any construction activity occurring on the site. Disturbance on the site will be limited to five acres at any time unless a waiver is obtained from the NYSDEC. Strict compliance with any special conditions required by the NYSDEC must occur to minimize grading impacts

The project sponsor will post an erosion control inspection security with the Town of Newburgh for periodic site review regarding compliance with the erosion and sediment control plan and activities on the project site

## **B. Wetlands**

Approximately 10.9 acres of wetlands on the subject site are regulated by the United States Army Corps of Engineers (USACE). The NYS DEC has made a written determination dated

June 8, 2006 that none of the site wetlands are state regulated; and, according to criteria provided in Title 6 of NYS Environmental Conservation Law, has determined that none of the wetlands are “wetlands of unusual local importance.” All wetland disturbance will be the direct result of road and infrastructure construction; no buildings or parking lots will be constructed within the regulated wetlands. The current site plan, which includes revisions to the road location in order to minimize wetland impacts and separate grading limits from the wetlands where possible, shows approximately 1.05 acres of federally regulated wetland would be disturbed. In order to mitigate this loss of wetlands, 2.17 acres of mitigation wetlands will be constructed in several different locations of the site, as described in Section 3.2 of the DEIS and FEIS. Wetland plant species that are common on the site will be used where appropriate to eventually create wooded wetland habitats in these areas. Additionally, the proposed stormwater detention basins will be planted to function as wetlands and these ponds will become a *de facto* part of the adjacent existing wetland regime.

Wetland A, located on the northern portion of the site, is USACE regulated and will be impacted by construction of the site access road. The Project will not result in any long-term modifications to the functions of Wetland A. Several revisions were made to the plan during the SEQRA process, and wetland disturbance was minimized. Wetlands B and C are isolated and therefore are not USACE regulated. They function primarily for storage and infiltration of stormwater runoff, and somewhat as habitat for wetland species, and are in areas that will be filled during development. The mitigation for loss of this function will be the creation of stormwater basins, with naturalistic landscaping that will be integrated with and function as wetlands. Additional mitigation is provided that increases the mitigation ratio for the loss of wetlands acreage on the site.

Potential impacts to the wetlands and their associated habitat will also be minimized and/or avoided by implementation of the Erosion Control Plan for the Project.

The stormwater management practices for the Project are based on the NYSDEC standard methods of design for compliance with Clean Water Act regulations for water quality and quantity. The FEIS demonstrates that the proposed stormwater management measures will promote the removal of pollutants to the maximum extent practicable prior to discharge. Treated water at the design discharge points will meet or exceed the most stringent standards of the NYSDEC Design Manual.

**Finding:** The Planning Board acknowledges comments from the public regarding concerns about habitat values, particularly in wetlands, and “presumed” threatened or endangered species. No such species have been found on the subject site however, and the Planning Board finds that sufficient field work has been conducted to support this determination. In addition, input from expert agencies reveals no record of the site being actively used by such species.

The Planning Board finds that impacts to wetlands on the Project site are unavoidable, and will be appropriately minimized and/or mitigated by the Project’s design, the Erosion Control Plan and the stormwater management practices to the maximum extent practicable. The construction of more than two acres of new wetland areas, properly designed, constructed and monitored, will offset the loss of wetland function.

### **C. Terrestrial and Aquatic Ecology**

Two major plant communities, successional hardwood forests and red maple hardwood swamps, predominate at most of the Marketplace at Newburgh site. These habitat types are not unique to the area or the region. Within these major communities, smaller units of more diverse habitats were observed.

The successional hardwood community is a hardwood or mixed forest that occurs on sites that had been cleared for farming, logging or otherwise disturbed in the past. This ecosystem type is recognized as being globally and locally secure.

The overstory community in the drier upland areas of the site is composed primarily red, white, chestnut, and black oaks, red and sugar maples, with tulip poplars, hickories, and some other species. The majority of the trees in the upland forests on the site are in the 8-16 inch diameter class. Old field stone walls are common across the property. Occasional large trees (up to 36 inches or more in circumference) are found along walls and former fence rows. They also occur in the western, southeastern and upper ridge sections. These areas show less disturbance than areas in the western and central parts of the site which include several old homestead foundations in areas of previous development. Power line easements transect the property from north to south on the eastern half and from the northeast to the southeast on the western half. All-terrain vehicle paths are scattered throughout the property.

The overstory community in the wetlands is composed of red maple and other successional hardwood species. Understory shrubs include abundant Tartarian honeysuckle and multiflora rose. Many of the shrub and herb species present indicate recent disturbance and early stages of succession to a more mature forest. The forest is more mature around the area of wetland B.

As recently as 1963 nearly half of the site was still open with some parts beginning the transition from agricultural fields to second growth woodland. Work that had begun to create the I-84 corridor along what is now the south end of the site served to isolate the property from other undeveloped lands and the wetlands located south of the highway right-of-way.

There is a distinct area of early successional forest located in the southwestern portion of the site that is a more recently disturbed area. This forested community is dominated by early successional shrubby vegetation.

There are other recent areas of disturbance, on the western boundary fronting NYS Route 300, that have artificial fill, including rock and soil piles and anthropogenic waste (e.g. oil tanks, waste plastic and metal). Clearings along the woods here are associated with areas colonized by invasive, non-native plants.

The DEIS provides the detailed topographic mapping, aerial photos, survey data and resource inventories (including lists of various plant and wildlife species identified on the site) as requested by the project Final Scope in compliance with Part 617 (SEQRA) of NYS Environmental Conservation Law. Requests to the NYS DEC Natural Heritage Program and the USFWS returned natural resources database search results stating that neither agency has known records for any protected species or resources on the site, although the USFWS has indicated that the Indiana bat is known to be seasonally present within this vicinity in Orange County. During 2006, the site was also visited by Pat Hines, the Planning Board Engineer, and by Dr. William Schuster who has been retained as an environmental consultant for the Town Planning Board. Observations of wildlife habitat, wildlife inhabitants, forest structure, tree age and vegetative communities were made during the visit.

Habitat evaluations for the Indiana bat were conducted during summer months as well as winter months. No Indiana bats were found on site. The DEIS provides a detailed habitat analysis and reasons for the conclusion that Indiana bats are unlikely to use this site. Subsequent site walks confirmed that the limited number of trees on the site that might provide preferred Indiana bat habitat are primarily located within dense stands of second growth forest rather than along edges with sun penetration, which is described to be the preferred habitat for roosting bats. This condition was noted by Dr. Schuster, the Town's consultant, during the site walk.

Notwithstanding the fact that Indiana bats are unlikely to use the site, the Planning Board has requested and the applicant has agreed to institute a pre-construction confirmatory protocol whereby it will contract with a knowledgeable specialist acceptable to the Town's environmental consultant to specifically designate any trees within the limits of disturbance that may have significant potential for Indiana at use. In the event specific trees are identified, the applicant will then follow appropriate Fish and Wildlife Service recommended measures to prevent potential adverse impacts. This typically requires that individual trees most likely to support bats will be felled outside of the bat roosting season (which is generally May 15 through August 15) to ensure that trees will not be cut down while being used by Indiana bats. This protocol will provide further confirmation of the conclusions in the EIS and insure that no potential habitat is disturbed at a time when Indiana bats might potentially be present.

Based on continuing discussions with the Town and its consultants and public comments received during the EIS review process, the applicant continued to make site observations of site vegetation and wildlife after the DEIS surveys were completed, with specific protocols for species of special concern. Bird surveys, surveys for pool breeding amphibians and continued site evaluations for animal and plant species were conducted throughout the public hearing process and the preparation of the FEIS. The additional surveys resulted in the observation of additional plant, bird and wildlife species as reported in the FEIS. Three of the species observed are state-listed species of special concern: box turtle, wood turtle and sharp-shinned hawk. Despite this state listing, none of these species is afforded specific legal protection under NYS or Federal environmental law.

Amphibian breeding surveys were conducted as part of continuing site surveys within the site wetlands in April of 2006. Areas with potential vernal pool hydrology had been identified in Wetlands A and B.

Evening surveys were conducted on March 25, April 1 and April 8, 2006. In Wetland B pockets of water were observed but no breeding amphibians were identified. During subsequent site walks, the pockets were found to be dry in early and mid-May, indicating that the hydroperiod for these pools was not long enough in 2006 to sustain egg laying, hatching and larval development. It is noted however, that one young-of-the-year individual spotted salamander was observed in Wetland B during a site walk on September 1, 2006, in the post-breeding season. In Wetland A, a single pair of adult spotted salamanders was observed on the evening of April 1, 2006. Calls of wood frogs and spring peepers were also noted, although no breeding individuals were observed. On April 8, 2006, spermatophores were observed attached to submerged leaves, but no individual salamanders, egg masses or larvae were observed.

Based on these surveys, the Planning Board concludes that while some breeding by vernal pool amphibians was observed on the site (in Wetland A), the breeding appears to occur at a low level and the site does not appear to be an important breeding habitat for the observed species. It is noted that the three species observed, spring peepers, spotted salamanders and wood frogs, are not state-listed species of concern. It is also noted that the portion of Wetland A



where the salamanders were observed will not be disturbed as part of this proposal. The revised site plan proposed by the FEIS further reduces wetland impacts compared to the DEIS proposed plan and saves additional area adjacent to the wetland from encroachment. In accordance with the recommendations of the Town's expert the applicant has incorporated into its wetland-mitigation proposal for loss of wetland habitat, a commitment to do spring vernal pool surveys in April/May of 2007 to further confirm the inventory of species that may be utilizing wetlands on site. In the unlikely event that any State listed species of special concern are observed on site in areas that are proposed for disturbance, then prior to disturbance these will be captured and relocated to appropriate, protected and not-to-be-disturbed areas in wetland A.

In response to further public comment, the FEIS also included results of onsite searches for the following two rare plant species that had been identified in other, off-site downstream, sections of the Quassaic Creek corridor during a previous survey conducted for the City of Newburgh:

**Beaked agrimony (*Agrimonia rostellata*):** Plant specimens of the genus *Agrimonia* have been observed at five locations across the property, with from 3 to 12 or more plants observed at each location. A total of about 45 plants were noted. Three locations were along the southern portion of the property along existing trails near the Route 84 off ramp; the other two sites were adjacent to Wetland A in the northwest part of the property. The specimens observed were field-identified to be not consistent with the botanical description of *Agrimonia rostellata*. Sample specimens were collected from the southern portion of the site in September 2006 by Dr. William Schuster and were compared under microscope to herbarium specimens of four agrimony species on loan from the Brooklyn Botanic Garden. The samples were determined to be *Agrimonia pubescens* based on characteristics of the mature hypanthia and inflorescences. Notwithstanding the fact that *Agrimonia rostella* is unlikely to be located on the site the Town's expert has requested and the applicant has agreed to institute a pre-construction confirmatory protocol whereby additional site surveys will be conducted in potential habitat areas within the areas to be disturbed during appropriate seasons in 2007.. In the unlikely event that the additional survey reveals beaked agrimony in areas proposed for construction, the individuals will be preserved if at all possible, or else will be carefully excavated with a large root ball during a period suitable for transplanting, and replanted outside of the limits of disturbance in appropriate habitat areas.

**Narrow-leaved sedge (*Carex amphibola*):** None of the specimens of sedges observed on the site have been noted to have the vegetative characteristics of *Carex amphibola*. To fully identify many sedge species, specimens must be observed during flowering and/or fruiting seasons. Notwithstanding the fact that *Carex amphibola* is unlikely to be present on site, the Town's expert has requested and the applicant has agreed to institute a pre-construction confirmatory protocol whereby additional observations will be made at locations of suitable habitat within the proposed limits of disturbance to further confirm that the *Carex* species is not present on the Project site. In the unlikely event that *Carex amphibol* is found on site within the proposed limits of disturbance, the individuals will be preserved if at all possible, or else will be carefully excavated with a large root ball during a period suitable for transplanting, and replanted outside of the limits of disturbance in habitat areas with similar light and hydrologic characteristics.

There will be a loss of habitat at the Project site. The Project will impact approximately 108 acres of the 127.6 acre site. Approximately 15.8 acres of the site will remain undisturbed in areas to avoid to the extent practicable the wetlands in the western and northern portions of the site and the steep slopes in the eastern portion of the site, in the area of the South Plank Road (NYS Route 52) easterly access drive. Undisturbed wooded blocks as large as 4.5 acres will be preserved. Combined with the proposed stormwater basins, wetland mitigation areas and

vacant off site parcels, approximately 52.5 acres of open space will remain in the immediate area of the project site following development. The largest area of contiguous open space will be at least 17.5 acres.

A total of 1.05 acres of regulated wetlands will be filled to create roads and building pads for the Project. This loss will be mitigated with the creation of 2.17 acres of additional wetlands in several different locations across the site, as described in Section 3.2 of the DEIS and FEIS. Wetland plant species that are common on the site will be used to eventually create wooded wetland habitat. 4.88 acres of unregulated wetlands will also be filled. Mitigation for loss of these areas will be the creation of stormwater basins, with naturalistic landscaping that will be integrated with and function as wetlands. Large culverts will be installed to connect the proposed mitigation wetlands with the existing site wetlands to allow movement of amphibians and reptiles between these areas. Final design of the culverts will be prepared for final site plan approval in consultation with Town consultants.

The various on-site surveys conducted by the Applicant's consultants over the past three years and documented in the DEIS and FEIS have characterized the site as primarily comprised of species typically encountered in the suburban woodlands, fields and forested wetlands of Orange County. During repeated site visits by the Applicant's ecological consultants over three years,, (and most recently by the Town's consultants) no threatened, endangered or rare plants were observed on the Project site.

Wetland A and the Quassaic Creek corridor, which were found to support several species of amphibian and two species of turtles, will be largely unaffected by the development proposal. The Board and its consultants have concluded that neither the agrimony nor the sedge species, historically identified within the downstream Quassaic Creek corridor, were found on the project site. However, as described above, a commitment has been made by the Applicant to conduct additional onsite confirmatory searches within the proposed limits of disturbance in appropriate habitats for the rare agrimony and sedge species during the plant's flowering and fruiting seasons prior to construction. This measure was developed in consultation with Dr. William Schuster on behalf of the Town. The town engineering and environmental consultants will review the design of the proposed Quassaic Creek culvert prior to final site plan approval. The wetland crossing culvert will be designed to leave the existing stratum within the crossing to facilitate animals crossing under the access drive. Retaining walls will be designed and constructed along the site grading/wetland interface to provided a barrier and define the wetland areas. The walls will be designed with review and input from the towns consultants

The Erosion Control Plan will also minimize or avoid impacts to soils and thus downstream water resources and wetlands as more fully described in Section II.A, above. The FEIS demonstrates that the proposed permanent stormwater management measures will promote the removal of pollutants to the maximum extent practicable prior to discharge. The stormwater management practices for the Project are based on the NYSDEC standard methods of design for compliance with Clean Water Act regulations for water quality and quantity control. Treated water at the design discharge points will meet or exceed the most stringent standards of the NYSDEC Design Manual.

**Finding:** The Planning Board again acknowledges comments from the public regarding concerns about habitat values and the potential presence of threatened or endangered species or species of special concern. Three species of special concern, two turtle species and one bird species, were identified during extensive field review. A mitigation plan has been devised to protect any individual specimens of species of special concern located during construction,

combined with barrier fencing along the flood plain and jurisdictional wetland. However, no threatened or endangered species have been found on the subject site. Moreover, most of the subject site has been farmed or otherwise disturbed in the past and has undergone substantial transition in the past 75 years.

The Planning Board is charged with evaluating impacts and to mitigate those impacts to the maximum extent practicable. This task involves balancing the objective of the applicant against the significance of the impact and the feasibility of mitigation. The Planning Board finds that impacts to terrestrial and aquatic ecology have been appropriately minimized or avoided by (1) the project design, (2) implementation of the extensive physical and operational measures for the Project, and (3) the Erosion Control Plan and stormwater management practices for the Project, and that the proposed mitigation measures and project benefits mitigate the potential adverse impacts to the maximum extent practicable.

#### **D. Water Resources**

The Marketplace development would introduce 75 acres of impervious surfaces to the Town that will increase stormwater runoff to downstream receiving water bodies, including Quassaic Creek, the pond within Algonquin Park, and Upper and Lower Winona Lake. State law and the Town of Newburgh Code (Chapter 157, Stormwater Management) require that appropriate mitigation measures be taken to handle the increases in runoff rate and volume. The runoff from impervious surfaces also poses a potential increase in road and vehicle-related contaminants in the stormwater. These types of potential impacts similarly require state and Town mandated appropriate mitigation designs to limit impacts to existing surface water quality in receiving water bodies.

The Project must comply with the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activities, GP-02-01. A Stormwater Pollution Prevention Plan (SWPPP) for the Project was developed and included in the EIS. The stormwater management practices are based on NYSDEC standard methods of design for compliance with Clean Water Act Phase II regulations for stormwater quality and quantity. The proposed measures will promote the removal of pollutants to the maximum extent practicable, and the treated stormwater at the design discharge points will meet or exceed the most stringent standards of the NYSDEC Design Manual. The proposed stormwater management system is designed to assure that the stormwater runoff in the post-development condition will not significantly alter the pre-development quantitative stormwater conditions. Pollutant loading calculations demonstrate that post-development pollutant loading will be less than for the development without a SWPPP, for suspended sediments, phosphorus, nitrogen, bacteria and metals.

During construction, the regrading and stockpiling of soil materials will create the potential for erosion and resulting sedimentation of downstream areas. During construction, a comprehensive Erosion Control Plan will be implemented to mitigate potential impacts to receiving wetlands and streams. The Erosion Control Plan is more fully described in Section II.A, above.

Concerns were expressed during the public hearing that the proposed site blasting will potentially impact the nearby residences as well as existing water supply wells in the area. The applicant will be held responsible for any impacts to wells. If well yields or quality are impacted from the construction and development of the Marketplace, it would be the responsibility of WBP to mitigate this impact. 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 applicant would include this representation in an agreement with the Town Planning Board or Town Board and provide a bond to guarantee and secure performance of the agreement by the applicant. The details of such an agreement, i.e., pre-construction monitoring of those wells belonging to residents that might be interested in this program, duration of the agreement, and which of the alternative mitigation measures might be most suitable on an individual basis, will be developed with the Planning Board and Town Engineer as the process moves forward.

The protocol contemplated hereunder will include at least the following provisions:

- Identification of those wells belonging to residents that might be affected by construction blasting activities;
- Notification to the owners of those properties identified of the remediation offered under the protocol;
- Pre-construction studies of the wells of all property owners agreeing to be covered by the protocol [Wells within 500 feet of areas of proposed blasting will be located and surveyed (size, location, depth), if they are not buried, with permission of property owners];
- Installation (for those property owners opting in) of data loggers in the wells to ascertain pre-blasting, blasting and post blasting operating conditions. [Data loggers measures the static water level in the well and is the best evidence of potential geologic changes that would affect increasing or decreasing flows into the wells]. The information from the data loggers will be downloaded weekly by a hydrogeologist and the results will be provided to the town on a weekly basis.
- The Developer's contract with its blasting contractor shall specify maximum peak particle velocity permitted at the property line. [Maintaining peak particle velocity at under 2 inches per second, has been found by Federal Agencies, to provide ample protection to structures as a result of blast vibration]. Seismographs will be set up at the property line to monitor blasting vibration and the results of seismograph data will be submitted to the town engineer and retained hydrogeologist on a weekly basis.
- Before blasting begins the Developer shall either locate and obtain the right to utilize a suitable well within the neighborhood or shall drill an acceptable well on its own site, which well shall be utilized for emergency connections of any neighboring well determined to have been adversely affected by blasting activities.

- A well driller will be on-call during periods of blasting that occurs within 500 feet of the residential property line of the Marketplace site. In the event of a well failure, the well driller will initially tie in to the designated operating well within the neighborhood, or on the subject site, the distressed residential water supply. This will provide a water supply within 12 to 24 hours of any impact. The well driller will then pull the pump on the affected well and drill the well deeper, or alternatively drill a new well on the affected property and tie it into the residential home, at no cost to the residential well owner.
- In the event that an acceptable water supply cannot be found onsite, the Developer will develop an alternative water supply offsite with appropriate easements and extensions to the affected property owner. If this option is non-workable the Developer will pay for the costs to extend town water to the affected site. A bond will be placed with the town covering the costs of that extension.
- Appropriate and acceptable durational limitations for performance and bonding shall be included in the protocol.

Regarding the potential impact to the recharge of local wells, the applicant demonstrated that sufficient recharge area remains available following construction to reasonable expect that there will be no impacts to well yields. As part of the mitigation proposal for this project, the applicant is including the use of pervious pavement in those parking areas immediately to the east and west of Buildings C and D, an area of more than four acres. Final design, maintenance plan and cross section of the pervious pavement will be reviewed and approved during the final site plan review.

Provisions will also be made to allow for the infiltration of stormwater into the landscaped islands to provide water to trees and shrubs within these islands. This will be accomplished with slotted curbing, infiltration areas along the upgrade curbs of islands, use of PVC piping to convey water through solid curbing, or other similar method. Final design of this feature, including soil mixtures, plant details and other details will be reviewed by the Town's consulting landscape architect prior to final approval.

**Finding:** The Planning Board finds that impacts to water resources will be appropriately minimized or avoided by (1) the Project's design and operation which minimizes disturbance to wetlands, (2) extensive physical and operational mitigation measures for the Project which protect water resources, and (3) preparation and implementation of the Stormwater Prevention and Pollution Plan that complies with the SPDES General Permit for Stormwater Discharges from Construction Activity GP-02-01, and (4) the requirement that the final stormwater management plan conform to Chapter 157 of the Town of Newburgh Code, and(5) the implantation of the blasting protocol and compliance with the Towns blast ordinance

## **E. Zoning and Surrounding Land Use**

### Conformance with the Town of Newburgh Zoning Code

The Marketplace Project commercial developments are located in the IB (Interchange Business) Zoning District in the Town of Newburgh. Most of the Project site, including a majority of the land proposed for development, is zoned IB and is compatible with the uses proposed by the Marketplace project consisting of retail stores and service-oriented businesses.

The DEIS further indicates that the proposed Project is not expected to threaten the public health, safety and general welfare or the general comfort and convenience of the public and surrounding neighborhood. The proposed site plan for the Project conforms with the area, setback and bulk control requirements of the Zoning Code.

The only portion of the Project development that is proposed to be located outside of the IB Zoning District is a section of the access road.

Future subdivision of the parent parcel may be necessary to accommodate the needs of individual retailers. Such subdivisions must appear in front of the Planning Board and conform to all zoning requirements of the Town of Newburgh, or obtain variances from the Zoning Board of Appeals. All future subdivisions will be subject to further environmental review if necessary.

#### Conformance with the Town of Newburgh Comprehensive Plan Update

The October 2005 Town of Newburgh Comprehensive Plan Update recommends more intense development in the areas that can support higher density, where transportation corridors and public utilities are available, while planning to “protect and enhance the existing community character” and preserving open space in the more rural and environmentally sensitive areas of the Town. The proposed Project furthers these objectives.

The Town of Newburgh Comprehensive Plan further recommends that development should assist in addressing traffic and safety concerns along those corridors identified as “major corridors of concern.” The Marketplace would result in improvements to the local transportation network, especially along NYS Route 300 and NYS Route 52.

The Marketplace would be consistent with the Town’s objective to avoid suburban sprawl and preserve the rural character of the outlying areas by concentrating nonresidential development in proximity to the I-84/I-87 interchange area, an area within the growth boundary of the Plan Update. Lastly, the Marketplace’s lifestyle center would create a focal point for social activity within the Town.

#### Conformance with the Orange County Comprehensive Plan

The Project site is located in a “Priority Growth Area” under the Plan. Priority Growth Areas are described by the Plan as “general areas of preference for future development to maximize efficiency of infrastructure and services and to minimize open space losses” while maintaining enough growth in the tax base to help fund the increasing demands for services without raising taxes. The proposed commercial uses at the Marketplace development are compatible from a land use perspective with the existing commercial uses along NYS Route 300 as well as Interstate 84 to the south and the NYS Thruway interchange less than ¼ mile south of the proposed Marketplace entrance.

The proposed project would be consistent with the County’s land use objectives of concentrating development in areas well served by utility and transportation infrastructure. The

project site is located within the County's "Interchange" area defined as an area with proximity to major interchanges, and intended for retail, distribution and commercial uses. Locating commercial developments on this site relieves pressure to place retail uses on secondary state, county, and local roads thereby reducing impacts on areas less suited for commercial development. The project site is also located strategically between the Newburgh City Area and Stewart International Airport transportation hubs.

**Finding:** The Planning Board finds the Project site is specifically zoned for the proposed commercial and retail use, and is located in a "Priority Growth Area" under the County Comprehensive Plan. Therefore, the Project conforms to the land use plans recommended by both the Town of Newburgh and Orange County.

## **F. Traffic and Transportation**

The Project site is located on the east side of NYS Route 300 and north of Exit 7 of I-84. There presently is no vehicular access to the Project site. The Project access will be from Route 300 and from two locations on Route 52.

A *Traffic Impact Study* for the Project was conducted, which assessed the effects associated with the development of this Project along with the effects of background traffic increases. To account for other potential background developments in the area, the 2004 existing traffic volumes were increased by a factor of 1.5 percent per year to project traffic volumes to 2008. In addition, peak hour traffic volumes from the following proposed projects/developments were added to the projected traffic volumes (or were accounted for as part of projected background traffic increases):

- ◆ Target Store - Route 17K (previous K-Mart location)
- ◆ Hilton Garden Inn - Route 300
- ◆ Newburgh Retail at NE corner of Route 17K and NYS Route 300
- ◆ Britain Commons - Little Britain Road (NYS Route 207)
- ◆ WalMart Expansion - Route 300 south of 17K
- ◆ Hess Mart - Route 17K
  - ◆ 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

This study, dated September 2005, was conducted by John Collins Engineers, P.C. and included in the DEIS. Supplemental analyses of various technical comments are contained in the FEIS including a sensitivity analysis relative to the pass-by traffic expected at the site. Additionally, a SYNCHRO/SIM traffic analysis has been prepared for the area roadway networks and has been submitted to the Town and its traffic consultant for review.

The *Traffic Impact Study* evaluated existing and future traffic conditions at fifteen intersections that are located in proximity to the proposed Marketplace development. The locations of the fifteen intersections are:

- (1) Route 300 (Union Avenue) and Newburgh Mall Southerly Driveway (Proposed Site Access)
- (2) Route 300 (Union Avenue) and Newburgh Mall Northerly Driveway
- (3) Route 300 (Union Avenue) and Newburgh Commons Driveway
- (4) Route 300 (Union Avenue) and Meadow Avenue/Meadow Hill Road
- (5) Route 300 (Union Avenue) and NYS Route 52
- (6) NYS Route 52 and Meadow Avenue/Powder Mill Road (Proposed Site Access)
- (7) NYS Route 52 and Fifth Avenue (Proposed Site Access)
- (8) NYS Route 52 and I-84 Westbound on/off Ramps (Exit 8)
- (9) NYS Route 52 and I-84 Eastbound on/off Ramps (Exit 8)
- (10) Relocated Meadow Avenue & Site Access Drive (Proposed Site Access)
- (11) NYS Route 300 and I-84 Exit 7 Ramp WB
- (12) NYS Route 300 and I-84 Exit 7 Ramp EB
- (13) NYS Route 300 and Route 32
- (14) NYS Route 300 and Route 17K
- (15) NYS Route 300 and Thruway Exit 17 Ramp/Unity Place
- (16) NYS Route 300 and Newburgh Towne Center Shopping Center Driveway.

Three new improved, interconnected and coordinated signalized access points are proposed to be created to serve the Marketplace in addition to Route 52 and I-84 Ramp improvements with signal coordination. These three access points will be sufficient to handle up to 850,000 square feet of development without adverse impacts to the local traffic network:

- NYS Route 300 (Union Avenue) and the Main Access across from Newburgh Mall
- NYS Route 52 and Meadow Avenue
- NYS Route 52 and 5th Avenue

Individually, these three access points are expected to have capacity to support 450,000 square feet (Route 300/Exit 7 access), 250,000 square feet (Route 52 at Fifth Avenue/Exit 8), and 150,000 square feet (Route 52 at Powder Mill and Meadow Avenue). It is proposed at this time to construct the Union Avenue access first, followed by the Exit 8 access and then the Meadow Avenue access, in that order. Regrading and paving on Route 52 will be completed to the south of the existing traffic signal at Meadow Avenue to alleviate an existing drainage problem at that location.

Based on the analyses contained in the traffic study, the proposed Marketplace at Newburgh will generate 2,047 new trips during the PM peak hour, and 2,738 new trips during the Saturday peak hour. The distribution of this peak hour traffic is projected to be 59 percent at the NYS Route 300 entrance, 29 percent at the Route 52/5th Avenue entrance, and 12 percent at the Meadow Avenue/Route 52/Powder Mill Road entrance.

With the increased volumes, two of the three intersections will experience longer peak hour delays during the holiday peak seasons and a traffic management program will have to be implemented to accommodate the expected future traffic volumes during these times. However, the John Collins Traffic Study shows that with the Marketplace fully built out (850,000 square feet), none of the project entry points will operate at a Level "D" or lower during peak traffic periods. A traffic management plan will be implemented prior to the issuance of any certificates of occupancy and will be developed in coordination with local, county and state highway officials and the Town of Newburgh police.



A review of the analysis indicates that with the completion of the following improvements, acceptable Levels of Service will be obtained and the proposed Marketplace at Newburgh will not result in a significant negative impact on traffic operations in the area. Except as noted, the applicant will perform and/or fund the proposed improvements. Final approval for all traffic improvements to the surrounding State roads will come from the New York State DOT and the New York State Thruway Authority, as needed under their respective jurisdictions. If the DOT/Thruway alters the final mitigation measures outlined here in any significant respect then, at the time of final approval, the applicant must return to the Planning Board for site plan amendment. The DOT/Thruway will ultimately determine requirements for traffic monitoring and timing of improvements.

1. An analysis of the proposed access to Union Avenue resulted in a driveway design shown on the site plan that will consist of four exiting lanes and two entering lanes and should align opposite the Newburgh Mall South Driveway approach. A separate right turn lane will be provided on the northbound and southbound approaches and signalization will also be provided. With these improvements, the intersection will be able to adequately accommodate the additional traffic generated by the Marketplace at Newburgh and the level of service will not decline in this location. Given the existing traffic volumes on Route 300, it may be necessary to signalize this intersection during the construction stages to allow for adequate construction traffic access. This determination will be coordinated with the NYSDOT, the Town, and the on-site contractor/developer.

2. The intersection of NYS Route 52 and Meadow Avenue/Powder Mill Road currently experiences significant peak hour delays and congestion primarily due to the lack of separate turn lanes. Improvements will be required at this intersection regardless of the proposed development. The current proposal involves the re-alignment of the five way intersection at Route 52 and Meadow Avenue. Based on comments from the Town's traffic consultant and the New York State DOT, the applicant is now proposing the construction of a roundabout at this location. The use of the roundabout, as shown on the revised site plans, creates smoother traffic flow, reduced delays, and reduces wetland impacts in that area. This intersection improvement will be performed independent of the site access connection. If the site access road cannot be built concurrent with the roundabout, not more than 700,000 square feet of retail space may be built using the accesses to the site from Union Avenue and Route 52 at Fifth Avenue and a site plan amendment must be filed. Approval of this amendment is required before commencing with a two access, 700,000 SF site development.

3. East of the intersection of Route 52 and Powder Mill Road, is the Algonquin Park which includes ball fields and tennis courts on either side of Powder Mill Road. As a pedestrian recreational area, it is important to ensure pedestrian access and safety. Therefore, traffic calming improvements will be designed and implemented on Powder Mill Road in the area of the park.

4. A new access drive will be constructed opposite 5th Avenue. This driveway will consist of two exiting and one entering lane and a traffic signal will be installed to control traffic movements. In addition, due to the significant through volumes along NYS Route 52, NYS Route 52 will be widened to provide a separate left turn lane northbound to accommodate traffic entering and exiting the site. Signal timings at this driveway will be subject to NYS DOT approval and may be subject to peak period restrictions, resulting in the metering of traffic exiting the site, in favor of increased traffic flow on Route 52.

5. The existing traffic signals at the Exit 8 I-84 ramps will have to be upgraded and interconnected with the signal at Fifth Avenue and the proposed NYS Route 52 driveway access. In addition, the I-84 westbound off ramp will have to be widened to include additional length on the right turn lane approaching the NYS Route 52 intersection and back-of-queue detectors. The southbound approach of Route 52 will be widened to provide a separate right turn lane.
6. The New York State Department of Transportation recently completed improvements including the provision of separate turn lanes and upgraded signalization at the intersection of NYS Route 300 and NYS Route 32. No additional improvements are necessary.
7. Associated with the construction of the site access and new signalization, the adjacent existing traffic signals along NYS Route 300 will have to be interconnected. These include the intersections of NYS Route 300 at Route 52, Stop & Shop Plaza, Meadow Avenue/Meadow Hill Road, the existing Newburgh Mall north driveway, the proposed Newburgh Mall south driveway/site access, and coordination with the planned new signalization of the I-84 exit ramps.
8. The Newburgh Commons Driveway (the adjacent shopping center including *C.B. Driscoll's*) connection to Union Avenue presently experiences long delays, and operates at Level "F" for traffic exiting on Route 300 southbound. It is recommended that the intersection be monitored for potential signalization. The applicant has agreed to provide a right of way on the north side of the outbound access road to Route 300 up to the adjacent shopping center (CB Driscoll's) property line. This may be used at some point in the future for access to and from the Newburgh Commons site to the proposed light at Route 300.
9. The intersection of NYS Route 52 and NYS Route 300 has been identified as an existing constrained intersection. Improvements will be required at this intersection regardless of the proposed development. The Developer shall make a fair-share contribution towards these improvements. In order to assist the Town in urging the NYS DOT to improve the intersection, the applicant has agreed, not later than one year after issuance of the first building permit for the project, to carry out an additional traffic study and to prepare design and construction plans for the needed intersection improvements and to deliver the same to the Town. In addition, the Developer agrees to contribute toward the construction of such improvements, provided that its total contribution (cost of the study and construction drawings plus a cash contribution) does not exceed the sum of \$50,000.
10. All of the study area intersections requiring signal coordination, upgrades, and or modifications will also include the installation of emergency vehicle pre-emption along with the necessary in-vehicle equipment.

With completion of improvements as described, the traffic impacts of the proposed Marketplace at Newburgh will have been mitigated to the maximum extent practicable. The provision of multiple access points to the Marketplace also provides better overall emergency access for the area since it provides alternate routes for emergency vehicles. Traffic on Route 52 will still have to stop just north of the Meadow Avenue intersection for emergency vehicles entering and leaving the firehouse, but this should be less of an issue than currently exists as a result of the "traffic calming" effect of traffic through the roundabout.

In addition, the applicant shall deposit with the Town the sum of \$30,000, which the Town shall use to implement a traffic monitoring program that will monitor site traffic generation at each of the site access roads in order to verify that actual project generated traffic volumes and distributions are consistent with the EIS projections. If, for example, it is found that more project generated traffic is using a particular access point than previously anticipated, it may be necessary to re-evaluate those approved mitigation measures such as signal timing, lane configuration and directional signage as they specifically relate to the project site. If this analysis reveals inadequacies in the present mitigation plan, alternative or additional mitigation measures may be necessary in order to adjust actual project generated traffic volumes and distributions to bring the same into conformance with EIS projections. This program shall include the following, but may be modified if necessary as the project progresses:

- Check existing traffic volumes and distributions after the opening of approximately 400,000 SF, and after the opening of approximately every 225,000 SF after that, and concluding no sooner than a year after the entire project is complete and open.
- Record hourly traffic volumes on each site driveway and turning movement counts during the PM and Saturday peak hours.
- Determine the existing trip generation rate of the open and operating square-footage and driveway distributions and compare with the EIS projected traffic volumes or the ITE equivalent trip generation for the operating square-footage, recognizing that a 10% variation in site generated traffic at any particular site entrance shall be considered reasonable and shall not require additional study or mitigation.
- Determine the adequacy of the proposed geometric improvements compared to the actual trip generation and distributions.
- Recommend alternative or additional mitigation measures if deemed necessary. Any alternative or additional mitigation measure shall be instituted on-site unless it is determined that on-site mitigation is not possible. In no event shall any mitigation required hereunder cause the applicant to construct on or off site traffic improvements greater than what is necessary to address the excess traffic actually generated from the Project or to bring project traffic distributions back to those levels projected in the EIS.
- Summarize the monitoring program results and provide the report to the Town, NYSDOT, Thruway Authority, and applicant.

To address concerns expressed during the public hearing regarding potential traffic problems during the holiday season, the applicant is proposing a traffic management plan. As part of the traffic management plan, the Applicant will work with the Town of Newburgh to provide traffic management such as alternate route signing, temporary restriction of certain turning movements and if necessary coordination with the Town of Newburgh Police Department. The Marketplace will also consider using off-duty Town of Newburgh police officers for traffic control during peak shopping seasons. Periodic emergency management meetings will be held before and after peak events to discuss performance and possible improvements to the plan. If the Transportation Management Plan coordinated with the Town Board requires the occasional use of Town Police, the management company for the Marketplace will be responsible for compensating the Town. The details of this arrangement will be finalized with the Town Board prior to final approval.

Access by public buses to two internal bus stops is envisioned for the Marketplace. Correspondence from the Orange County Planning Department confirmed that the County is supportive of the inclusion of public transportation opportunities to Marketplace, although specific comments from the County will not be provided until the detailed site plan design has been reviewed by the Town.

Internal traffic will use the through road from Route 300 to Route 52 at Fifth Avenue, with a new intersection connecting the Meadow Avenue access. This new intersection will be signalized when internal traffic volumes warrant this type of traffic control. A traffic signal maintenance company will be on retainer to adjust signal timings, replace signal indications, and perform any additional maintenance deemed necessary by the developer and or the Town. Replacement of the traffic signal equipment, including its entirety at the end of its design life, is the responsibility of shopping center owner. The site will also be monitored for additional signalization and/or traffic calming measures as site build-out occurs. This monitoring may be initiated by the center owner or by the request of the Town. Any analysis, results, and proposed modifications must be reviewed and approved by the Town prior to implementation.

**Finding:** The Planning Board finds that with implementation of the highway improvements identified as mitigation measures in the *Traffic Impact Study*, the traffic impacts from the Project will be mitigated to the maximum extent practicable.

## **G. Community Services and Socioeconomics**

### Taxes

Tax revenues to the various taxing jurisdictions into which the Project falls will take the form of increased property tax and increased sales tax revenues. The additional permanent jobs that are added to the local economy by the Project will also add to the income tax revenues of the State and Federal governments.

The DEIS calculates a total projected increase in property taxes of \$2.5 million above existing site-generated revenues, a tax increase from \$136,637 to \$2,636,391 based on 2005 tax rates. The Project will provide a benefit of approximately \$1.9 million in tax revenues to the Newburgh Enlarged City School District without creating any burden on school services. Taxes would also accrue to the Town of Newburgh, Orange County, Orange Lake Fire District, Goodwill Fire District and the affected sewer and water districts. The projected revenues presented in the DEIS are based on current tax rates. With no changes in assessments, these rates are likely to increase over time.

Future sales taxes generated by the Project's retail centers are expected to be on the order of magnitude of \$40 million to New York State, Orange County and the Metropolitan Commuter Transportation District. Based on recent sales tax-revenue sharing from the County, the Town would receive approximately \$278,000 from this magnitude of revenue.

As described below, no significant adverse impacts are anticipated as a result of the Project related to community service providers. Incremental costs associated with additional calls to these service providers would be expected to be offset by the taxes generated by the Project. The Project is not expected to result in adverse population or socioeconomic impacts. Estimated local property taxes and sales tax revenues will result in fiscal benefits for local taxing jurisdictions. No significant adverse impacts to community services or the Town or Village tax

base are anticipated. Therefore, no mitigation measures are proposed related to taxes and fiscal conditions.

### Employment

#### *Short-term Employment*

The Project is expected to directly and indirectly generate short term employment for construction workers from the Town and the immediate region. Based on Urban Land Institute estimates, it is expected that the project would generate up to 1,000 person-years of construction employment

#### *Long-Term Employment*

Based on Urban Land Institute estimates, the Project is projected to provide 1,600 long-term employment positions.

No adverse impacts on area employment are anticipated. Therefore, no employment-related mitigation measures are proposed for the Project.

### Community Services

#### *Police Protection*

The Project is served by the Town of Newburgh police. There will be a central, private security force for the Marketplace and a security camera network on the property. Additionally, the Project would contribute approximately \$271,000 annually in property tax revenues to the General/Highway funds to offset costs associated with additional demands for police services.

#### *Fire Protection*

The Project site is principally within the Orange Lake Fire District and is serviced by the Winona Lake Engine Company. A limited amount of land (0.2 acres) is located in the Goodwill Fire District. The project would not result in an increased demand to this District given the size of this parcel and its proposed limited use as a roadway segment of the easterly drive. The proposed Project has been designed to comply with all applicable codes and regulations related to fire prevention and protection. The Fire District has requested and been granted the future provision of traffic signal preemption devices at the proposed signalized intersection of Route 52 and Powder Mill Road that is in the proximity of the Winona Lake firehouse, as was originally proposed under the realigned Meadow Avenue improvement. Given the current proposal for the installation of a roundabout at the Route 52/Meadow Avenue/Powder Mill Road intersection, signal preemption will not be required. However, signal preemption will be included at the other signalized intersections discussed at I-84 Exit 8 and along Route 300.

The Marketplace development would increase property tax revenues that would accrue to the Orange Lake Fire District. Specifically, the project is expected to generate \$88,357 annually, representing a nine percent (9%) increase in tax revenues to the district. This additional revenue would provide capital for increased appropriations for additional equipment, if required in the future.

According to Orange Lake Fire District Chief Hager, the project would place limited demand on the District, and more specifically, the Winona Lake Fire Engine Company 2. According to the Fire Chief, there is sufficient fire fighting equipment and vehicles between the two companies in the Orange Lake Fire District to provide fire protection to serve the Marketplace. Response time to the site is expected to be less than five to seven minutes.

#### *Ambulance Services*

The Town of Newburgh Volunteer Ambulance Corps (TONVAC) provides emergency medical services in the community, and would provide service to the proposed Marketplace development. Mobile Life Support Services, Inc., a private commercial paramedic service located on Kingsley Place in the City of Newburgh, acts as backup service to TONVAC.

The majority of calls that TONVAC responds to at existing commercial developments results from vehicular accidents at access points. The agency responds occasionally to emergency medical situations within commercial facilities. Like these other commercial developments in the Town, it is expected that the project would result in a limited increase in responses to traffic accidents.

As TONVAC is not anticipated to be impacted, no mitigation measures are proposed.

#### Solid Waste

The Town does not provide solid waste services to commercial properties. The businesses at Marketplace will make appropriate arrangements with private carters for disposal of solid waste. Dumpster and solid waste storage areas for the Project will be sited and screened to avoid visual impacts, as regulated by Town Code, Chapter 95, Dumpsters and Garbage. Individual retailers will be responsible for pest management, which typically includes contracting with a pest management company that will regularly spray and bait the area around dumpsters. The Marketplace management company will be responsible for pest management at the Lifestyle Center.

Based on industry standards, the project would generate 21,250 pounds (10.6 tons) of solid waste per day. Recycling is mandatory in Orange County and the Town of Newburgh and specific portions of the waste must be recycled to comply with these waste reduction regulations.

#### Water and Sewer

The DEIS takes into account all the known and pending projects serviced or to be serviced by these utility districts. The Crossroads Sewer District will receive and the Consolidated Water District will receive additional revenues from the project as well as income from user fees that would be expected to offset the additional expenses incurred by the Districts.

The Town Engineer has stated there is sufficient capacity available for water and wastewater demands of the Project, taking into consideration other pending projects. Due to the user fee structure of the Districts' budgets, it is not anticipated that the Districts' residents would bear any costs associated with water demand, increased sewage generation, or infrastructure improvements associated with the Marketplace. All new water mains on site and appurtenances will be installed at no cost to the water district. All work will be done in accordance with the

standards and specifications of the Town of Newburgh and the Orange County Department of Health.

The project would generate 105,200 gallons per day of domestic sewage - the two million gallon per day expansion of the Newburgh wastewater treatment plant can accommodate this additional flow.

Water demand would total 117,000 gallons per day - the Town has a surplus of 1.5 million gallons per day of water, indicating that there is adequate supply to address demand introduced by the Marketplace.

As no adverse impacts relating to water services or to wastewater treatment services are anticipated, no mitigation measures are proposed.

#### Repairs to personal or real property

As a condition of final approval of the Project, the applicant will enter into an agreement with the Town Planning Board or Town Board regarding repair or damage to personal or real property of adjacent homeowners caused by construction of the Marketplace.

**Finding:** For the above reasons, the Planning Board finds the Project will have significant benefits and not cause any significant adverse impacts to community services or socioeconomics. If any detrimental impacts do occur to surrounding residents, it will be the applicant's responsibility to fix any problems directly related to the construction of this project.

## **H. Noise**

### Construction Noise

Ambient daytime noise levels will increase in the vicinity of the Project site during Project construction. It is anticipated that existing residences on abutting properties will experience temporarily elevated noise levels at occasional periods during construction of the Project. The level of impacts from construction noise sources depends on the type and number of pieces of construction equipment being operated, as well as the distance from the construction site. The noisiest period of construction will occur as site grading and rock crushing is being undertaken, and when concrete and building materials are trucked to the site and being installed. The site plan has been developed to create a cut and fill balance, utilizing onsite crushed rock, so that no off site fill material will need to be brought to the site. The applicant has committed to locating rock crushing operations a minimum of 1,000 feet from sensitive receptors (i.e., residential homes), where the generated noise is expected to be lower than Town requirements.

Mitigation of construction-related impacts will include sequencing the construction within a short two to three year timeframe, limiting all construction access to the NYS Route 300 access, providing onsite parking for all construction vehicles and employees, limitation of construction to the hours of 7 AM to 7 PM and the installation of sound barrier fencing as soon in the process as grading and blasting allow. Final barrier design plans will be submitted during the site plan review and are subject to Town approval. To assure conformance with the noise regulations an environmental site monitoring program will be established by the Town and reimbursed for by the applicant to monitor noise to ensure that appropriate noise levels are being maintained. This program will include:

- Measure and report on construction noise levels at various sensitive receptors at least twice per month, except during times of inactivity.
- Measure and report on noise levels during rock crushing operations.
- Measure distance from rock crushing operations to verify 1000' buffer to sensitive receptors.
- Verify compliance with work hour restrictions.
- Verify construction access is only via NY Route 300.
- Measure and report on noise levels from rooftop HVAC Units.
- Visually inspect all constructed noise attenuating devices or appurtenances including roof top measures.

It is understood that the construction schedule and order of proposed operations has not been determined, therefore, this monitoring program may be modified if necessary. These results will be submitted to the applicant for review and information. Levels exceeding acceptable ranges, as determined by the Town, may require immediate or short-term mitigation at no cost to the Town.

### Operational Noise

Noise levels in and around the project will increase with the addition of traffic to local roads due to the Project. The composition of the peak hour traffic is expected to remain substantially similar to the predominately passenger vehicle traffic that presently exists on the studied roads. Increased traffic entering and exiting the site via Routes 300 and 52 will cause the greatest potential noise increases. Moving the Route 52 access road to the I-84 DOT property will decrease the impact at this access point to an imperceptible level over the existing noise level. The noise studies revealed that at expected traffic speeds of 30 mph or less on the Marketplace roadways, the existing traffic noise from I-84 (at speeds of 60 – 70 mph) will continue to be the predominant noise source in this area. Signage limiting internal speeds to 25 mph will be posted.

Normal operations at the Project site will create noise primarily from the rooftop HVAC equipment on each building, from customer car traffic on the site, and from truck circulation and loading on the site. Of these, truck traffic would create the greatest noise. It is proposed to limit truck access to the site to the Route 300 access, avoiding truck traffic in close proximity to Hilltop Avenue and Brookside Avenue. The applicant has committed to exploring other options for noise attenuation from the rooftop and compactor units, including prefabricated sound barriers designed specifically for rooftop HVAC units. It is understood by the applicant that noise attenuation options will require approval from the Town during site plan approval and be held to the standards specified in the Town noise policy. A secondary benefit of these barriers would be to attenuate HVAC noise that would reach the second story windows of nearby residences.

The site has setbacks from adjacent roadways and residential properties. The site characteristics, along with building setbacks, access road locations, and 10-foot tall sound barrier fence adjacent to the Hilltop Avenue and Brookside Avenue residences will further minimize or reduce noise impacts. Therefore, the normal operations of the Project site is not expected to increase the ambient noise levels in excess of the Town Code's noise thresholds and NYSDEC Federal guidelines at the property line. With the ten foot high barrier fence, rooftop HVAC, and compacting operations attenuation, the study finds that noise levels in this area should not exceed present levels.



Members of the public complain that the proposed measures in the FEIS will not fully prevent noise impacts—both construction phase and on an operational basis—to surrounding properties. This may well be true. However, it is the aim of SEQRA to avoid significant environmental impacts where possible and to mitigate those impacts to the maximum extent practicable where avoidance is not possible. Complete avoidance is not possible in regard to noise impacts. The analyses submitted by the applicant have, however, been thoroughly reviewed by experts retained by the town, and said experts have concluded that the project will operate consistent with local noise codes, given the mitigation measures proposed for the project.

**Finding:** For the above reasons, the Planning Board finds that any noise impacts from construction activities will be temporary and intermittent. Mitigation measures have been identified which will minimize those temporary impacts to the maximum extent practicable. The permanent use and operation of the Project site have been mitigated to the maximum extent practicable and will not result in noise that will exceed Town Code provisions governing commercial and residential land uses.

## **I. Air Quality**

The Project site is located in the NYSDEC Region 3, Hudson Valley Air Quality Control Region. Based on 2004 data, available at the time of the analyses, all criteria air quality contaminants in the vicinity of the Project site have achieved acceptable levels within Orange County. Newburgh/Orange County is located within an 8-hour moderate non-attainment area for ozone.

### Construction Related Impacts

Temporary impacts on local air quality are expected to occur during the construction of the Project due to mobile source emissions of construction vehicles and equipment. The project is located in a nonattainment area for ozone and PM<sub>2.5</sub> and the NYSDEC Division of Air Resources has been contacted for review of construction equipment emissions requirements. Construction equipment will be maintained in proper operating condition.

The rock processing operation will require permitting from the NYS DEC Division of Air Resources due to its duration. Permitting will include specifications for dust control and particulate emissions. The operation will conform to 40CFR60 requirements for “Nonmetallic Mineral Processing.”

Construction activities will be limited to a specific construction schedule. Construction activities on the Project site are expected to result in the release of fugitive or airborne dust. Dust control measures will be provided as needed throughout the construction period, including (a) minimizing the extent of soil that is left unvegetated at any one time; (b) the use of fast-germinating seed or other temporary cover on exposed soil surfaces; (c) spraying water on exposed areas used for construction traffic when needed; (c) spraying water on areas of conveyance and screening during rock processing operations; and (d) covering construction vehicles used to transport soil or demolition debris.

### Vehicle Related Impacts

Based on the screening analysis performed as part of the EIS, the project does not have potential for creating significant impacts on a regional basis and therefore does not warrant a mesoscale analysis for nitrous oxide, ozone or volatile organic compounds.

Carbon monoxide (CO) is the primary pollutant studied at the local scale for impacts of vehicle emissions. The Air Quality study for the Project was analyzed for the 2008 Build year, relying on standard modeling and/or methodologies and conservative assumptions using the traffic volumes and capacity analyses calculated in the traffic study prepared for the Project. It identified no significant Project impacts for CO or particulates based on current State and Federal standards. Worst-case receptor locations were considered in the analyses and therefore other locations further distances from the roadway edge such as area parks would have no potential for adverse air quality impacts as a result of this project. The study indicates that the growth in traffic due to the proposed project would not create a violation of the National or New York State Ambient Air Quality Standards (NAAQS, NYSAAQS). The worst-case CO concentration for the build condition occurs at the Route 300/site access intersection, where the modeled eight-hour CO concentration is 4.0 ppm and the one-hour concentration is 5.6 ppm. These concentrations fall below the eight-hour standard of 9.0 ppm and one-hour standard of 35.0 ppm. Since the results of the analysis indicate the resulting CO concentrations at the three worst case studied intersections are within the NAAQS and NYSAAQS, it is expected that other area intersections would also operate within NAAQS requirements. Similar results were obtained from the particulates analysis indicating that all results were within the thresholds indicating that the project will not result in any impacts to PM<sub>10</sub> or PM<sub>2.5</sub>.

Since the project will not result in any violations of the air quality standards, no mitigation is required

An analysis for emissions generated from the parking area for the worst-case Saturday peak hour was also conducted. The 8-hour average concentrations were determined by using the Saturday peak traffic volumes for eight consecutive hours, which is a conservative modeling. The analysis determined the parking areas would contribute up to 1.4 ppm of CO.

Combining the worst case 8-hour intersection value, which was 4.0 ppm, and the parking area value of 1.4 ppm totals 5.4 ppm. This conservative, worst-case value is still within the NAAQS (National Ambient Air Quality Standards) eight-hour allowable standard of 9.0 ppm.

The additional traffic associated with the proposed development is not expected to result in any significant increase in particulate matter.

As no ambient air quality impacts are anticipated as a result of the vehicle traffic generated by the Project when it is built and occupied, no mitigation is proposed.

**Finding:** For the above reasons, the Planning Board finds that any impacts to air quality from construction activities will be temporary and intermittent. Mitigation measures have been identified which will minimize those temporary impacts to the maximum extent practicable. No ambient air quality impacts are anticipated as a result of the vehicle traffic generated by the Project when it is built and occupied. No project level air quality mitigation is necessary as a result of this project.

## **J. Visual Resources**

Construction of the Project will convert existing woods to developed land, thus creating a change in the visual character of the site area. A site landscaping plan has been designed that includes tree and shrub plantings outside of the developed areas of the site to provide visual

buffers for the public at all street level views onto the property. The landscape plan mitigates the change in visual character of the site frontage along I-84 by providing tree and shrub plantings and seeding along the tops and faces of the proposed embankments. The site frontage between Route 300 and the new pavement areas will be provided with a new three-foot high stone wall backed by a planted earthen berm, essentially removing the view of the parking lot from this roadway. Other perimeter areas disturbed by grading will be revegetated with tree and shrub plantings and woody and herbaceous seed mixes. These areas include the disturbed portions within the 75-foot buffer from Hilltop Avenue and all embankment cuts to be surfaced with soil. Existing vegetation outside the disturbed areas will be preserved. With the FEIS, the applicant also presented an alternative plan that meets or exceeds the new Town of Newburgh Buffer Law.

The Plans illustrate the site landscape plantings that include 1,004 street trees, 287 evergreen trees, 244 minor trees and 56 wetland basin trees. Water for irrigation during initial grow-in, i.e., the first two years, will be trucked into the site as needed from commercial sources. The final landscaping plan will be reviewed during final site plan review, and will include native plantings along the perimeter of the site, additional and re-located parking lot trees, and additional screening in the area of the proposed gas station and loading docks. This plan shall also include landscape maintenance specifications, appropriate landscape details and soil mixtures. Interim landscape treatments on areas that were disturbed but not fully developed must also be shown on the plans including preserving a 150' wooded buffer along the Route 84 exit ramp and Route 300 while the project site is being developed.

The lighting design (luminaire height, pole spacing and light shielding) will allow sufficient illumination at night to provide pedestrian and vehicle safety throughout the developed portion of the Project site. The luminaires chosen to light the parking lots will utilize a flat glass lens with the lamp completely recessed into the housing to maintain "dark sky" compliance. No increase in lighting levels at the property lines of adjoining residential properties will occur. The proposed lighting plan for the Project also demonstrates that the light trespass increase from the Project will not exceed 0.1 foot-candles at the edge of the traveled way for I-84 as required by the NYS Thruway Authority. The project sponsor will work with the potential future tenant for whom the gas station location has been provided to determine if an alternative location can be identified on site. The alternative location will be selected based on criteria of reducing visibility and light impacts, especially from Interstate 84, and reducing grading impacts currently resulting in the need for a retaining wall on the south side of the facility. This issue will be further reviewed by the Planning Board during the final site plan review phase.

Architectural development of the site will follow a unified theme in accordance with guidelines that establish a basic level of architectural variety, compatible scale, pedestrian access and mitigation of negative visual impacts. The entire site will be designed as a pedestrian-oriented environment and will include pedestrian amenities such as benches. The lifestyle center will feature decorative sidewalks internal to the complex and various pedestrian amenities including café tables and chairs, benches, etc. The appearance and proposed architectural design of the lifestyle center will provide a sense of proportion to the larger individual stores that mitigates the overwhelming visual impact that would otherwise be presented by a "big box" shopping center of this size. Its sense of "downtown" character also provides a focus, a sense of scale and a public amenity that is pleasing and that greatly limits the visual impact that would result were there no lifestyle center component to the project. Potential pedestrian access to the existing Newburgh Mall will be subject to Planning Board review. Specific site plan elements, including conformance with the architectural guidelines, signage, pedestrian circulation, awning details

and street furniture, will be reviewed by the Planning Board as a condition of final site plan approval.

While it is recognized that the precise assignment of leasable floor area of the lifestyle center will be a function of the competitive marketplace, the Developer has pledged that the lifestyle center shall be comprised of not less than 100,000 square feet of area (unless amended approval is granted by the Planning Board as noted below).

In order to preserve the community character and the sense of buffering and scale essential to an acceptable visual presentation, the Developer shall not build more than 450,000 square feet of non lifestyle center space until it completes at least 100,000 square feet of the lifestyle center portion of the project unless an amended approval is obtained from the Planning Board. Any application for an amended approval must include measures that will, on both an interim and permanent basis, suitably address and substitute for the community character and visual presentation features that flow from the lifestyle center component of the project. It is understood by the Developer that “big box” retail space will not likely be an acceptable substitute. Any substitute shall provide the same or similar community and public amenities as does the lifestyle center, e.g., a park or community center.

Future development of the site will follow the guidelines adopted by a number of municipalities across the country, including Fort Collins, Colorado, Georgetown Kentucky, Somerset County New Jersey, and others. These guidelines are included in the FEIS, Appendix 1 page 1-11. These guidelines establish standards for ensuring that big box and “super center” developments consider a basic level of architectural variety, compatible scale, pedestrian access and mitigation of negative visual and community impacts. Facades and exterior walls, detail features, awnings and roof lines, materials and colors and entryways can be integrated to ensure that design proceeds in a manner or style so that the end result contributes positively to the overall development.

Specifically, these guidelines offer recommendations to review boards to encourage:

- 1) the articulation of long facades to reduce scale and provide visual interest, thereby mitigating the potential for uniform, impersonal appearance;
- 2) provision of architectural features, patterns and detail at pedestrian level to reduce massive aesthetic effects and recognize local character;
- 3) varying roof lines to add interest to and reduce the scale of large buildings, in a manner consistent with adjoining neighborhoods; and
- 4) use of color and textures in a manner that is aesthetically pleasing and compatible with materials and colors in the adjoining neighborhood.

In addition to these guidelines, landscaping along facades of the big box retail stores is required to soften the visual impact of these stores. Facades with entrance points must be of substantial width to enable interesting pedestrian amenities and paths and should be approximately 20’ wide with at least 40% of this area landscaped. Facades that do not have entrance points but face public views should have landscaping space that is at least 10’ wide.

Recent site plan revisions include a proposal to construct sidewalks linking the shopping center with adjoining neighborhoods. A sidewalk will be constructed along the access road to the Route 52 roundabout, with crosswalks located in necessary positions around the roundabout. A sidewalk will also be constructed to Route 300, leading to the property line with the adjacent Newburgh Commons. A crosswalk will be constructed across the main site access road to the

north side of the access, in an area that will also be set aside as a future right of way for a potential traffic access to the rear of the Newburgh Commons site. Pedestrian access and amenities will be reviewed during site plan review to assess the adequacy and location of sidewalks for convenience and aesthetics.

Signage contributes significantly to the visual character of the site and community. During architectural and site plan review, a cohesive signage plan must be prepared that includes individual store signs, monument signs and way finding signs. Guidelines for the store and monument signs must include the type and color, the maximum height and width, and square footage of proposed signage. Site plans shall include a chart that allocates square footage of signage for each store and monument sign. Architectural drawings shall show the area where signage can be installed.

**Finding:** The Planning Board finds that the visual impacts of the Project are mitigated to the greatest extent practical. Mitigation measures include (1) significant landscaping and buffering that meets or exceeds the current Town buffer codes, (2) the placement of the life style center to mitigate the view of the large big box retail stores (3) provision of a pedestrian friendly design which positively affects community character (4) the applicant agrees to a condition of final site plan approval that the Project architecture will utilize a unified architectural theme, and (5) the Project lighting will be shielded to prevent light trespass from the site onto residential properties.

Should the project design significantly change from drawings submitted within the FEIS, the applicant will have to resubmit drawings for the Planning Board to determine if the new proposal mitigates visual and community character impacts to the greatest extent practicable. All agency approvals must be in place before any work is performed to ensure that all impacts are mitigated to the greatest extent practical.

#### **K. Historical and Archeological Resources**

A Phase 1A/B cultural resource investigation was carried out for the Project Area of Potential Impact in accordance with NYS OPRHP guidelines. The cultural resources investigator concluded that the proposed construction on the Project site would have no impact on either Native American or European American era cultural resources or viewscapes. The applicant received, on 13 November, 2006, a determination from OPRHP that the proposed project will have no impact on cultural resources.

**Finding:** Based on the foregoing, the Planning Board finds that no significant historical or architectural cultural resources have been identified on the Project site.

### **III. ALTERNATIVES**

Four alternatives to the proposed action were studied in the EIS:

- No Action Alternative
- Alternative 1 – Access Road Realignment
- Alternative 2 – Buffer Alternative
- Alternative 3 – Alternative Lifestyle Center Design

#### **A. No Action Alternative**

The No Action alternative is represented by the existing conditions on the Project site. Under this alternative, the site would remain wooded uplands, freshwater wetlands, and non-agricultural meadow/brushland, pending further development proposals for the property. Without the proposed improvements to the site, the new commercial and retail facilities associated with the Marketplace Project would not occur. The No Action Alternative would avoid those adverse impacts that could result from the proposed Project. However, it would forego the substantial economic benefits of the Project as well as the desired land use policy to establish mixed-use commercial and retail development in the IB Zoning Districts as per the recently updated and adopted Town of Newburgh Master Plan. Potential tax revenues resulting from the development would not be realized by the Town, the County or the School District. New sources of sales tax revenue would also not be realized. Moreover, this alternative does not meet the objectives and capabilities of the Project sponsor and the Town Board to generate new and enhance existing economic activity in the Town.

### **B. Alternative 1 – Access Road Realignment**

This alternative was considered in the DEIS. While the original plan showed the easterly access road winding east, north, then east again, along the existing property lines, on its way to Route 52 at Fifth Avenue, Alternative 1 presented a layout which suggested a realignment of the easterly access drive onto the New York State Department of Transportation property. All other aspects of the layout, including the proposed berm, landscape planting and fencing along the Hilltop property line, were very similar to the original proposed plan.

With this access alternative, the applicant also considered the provision of pedestrian access to the site. Consideration was given to providing pedestrian access to residents along Hilltop Avenue and Brookside Avenue, but due to concerns expressed by adjacent property owners and security concerns of potential tenants this part of the alternative was abandoned. Pedestrian access from the east, via Route 52/Fifth Avenue/Exit 8, was considered to be too far away from the shopping facilities to be practical.

The applicant also considered providing pedestrian access to the site intersection with Route 300, thereby connecting existing and proposed bus stops and pedestrian connections with both the Marketplace and the Newburgh Mall, as well as connections to Route 52 at Meadow Avenue.

Based on concerns about traffic, noise, air quality, pedestrian access, grading, wetland impacts and site clearing, the major features of the Access Road Realignment Alternative have been incorporated into the FEIS proposed project. This includes the use of the adjacent New York State DOT parcel to further mitigate these potential impacts.

### **C. Alternative 2 - Buffer Alternative**

This alternative was originally considered in the DEIS. This alternative layout increased the building setback from 100 feet to 120 feet and included a 50-foot non-disturbance area, increasing the vegetative buffer from 50 feet to 75 feet in the area abutting Hilltop Avenue. This alternative also includes the realigned easterly access road noted in Alternative 1 above, therefore the discussion presented under Alternative 1 also applied to this alternative.

The most significant benefit associated with this alternative was the 50 percent increase in the minimum buffer width that was required by the Town's zoning regulations that were in effect at

the time of the preparation of the DEIS. The DEIS site plan incorporated a 75 foot minimum planted buffer and 120 foot minimum building setback, as opposed to the 50 and 100 feet setbacks required by zoning during the preparation of the original proposal.

Following the adoption of the Town's revised buffer law, the applicant provided an alternative site plan in the FEIS that complies with the law. Conformance to the law resulted in the loss of a portion of those buildings shown as Building C and D in the site plans, and a minimum building setback from the property line at Hilltop Avenue of 150 feet, with a 100 foot planted zone. The height of the proposed buffer fence was also increased from eight feet to ten feet in response to the requirements of the new law.

#### **D. Alternative 3 – Alternative Lifestyle Center Design**

This alternative was considered in the DEIS. An alternative building orientation layout with a modified design for the lifestyle center was prepared. In this alternative, the circular arrangement of parking located centrally in the lifestyle center, as shown on the original site plan, was removed, and a longer main street created with improved view corridors and more efficient parking areas. The orientation of the surrounding buildings were slightly modified as a result.

The overall site plan considered with this alternative also showed the realigned access road through the DOT parcels and the expanded buffer described in Alternative 2. Based on input from the Town and public during the public hearing and preparation of the FEIS, this alternative Lifestyle Center layout became a part of the FEIS site plan proposal. This was in response to concerns about traffic flow and visual impacts in this part of the site.

### **IV. IMPLEMENTATION**

The applicant shall be required to submit a site plan to the Planning Board that complies with and incorporates these Findings and that, to the extent feasible, references these Findings with appropriate map notes or accompanying narratives. No site plan will be approved that is inconsistent with these Findings.

In order to ensure that all mitigation measures contained within these Findings are performed, the applicant shall deliver an undertaking to the Town of Newburgh (prior to final approval) in which the applicant undertakes full and satisfactory performance of all mitigation measures contained in these Findings. That undertaking shall address, at the very least, the following:

1. The hiring of an on site inspector, at the developer's expense, who will monitor the construction process, report to the Town, and deal with any complaints from the public. It is anticipated that this will be a full time job for the initial stages of construction (particularly with respect to the monitoring required by the SPDES permit) and then be scaled back until completion.
2. The establishment of a well monitoring protocol and remediation plan satisfactory to the Town and the posting of performance security (re: potential damage to neighboring wells caused by blasting activities on site). The obligation shall include payment of a hydrogeologist to make binding determinations as to causation and appropriate corrective action.
3. The establishment of a landscape installation and maintenance plan satisfactory to the Town and posting of performance security for same.

4. Installation, at developer's expense, of pedestrian crosswalks and signals at intersections of the project access roads with Rt. 300 and Rt. 52, as well as "traffic calming measures" along Powder Mill Road in the vicinity of Algonquin and Cronomer Parks, *if required by the Town Board and approved by the NYSDOT.*
5. The performance of all of the proposed offsite improvements such as the access intersection improvements, road widening, turn lane installations, traffic signalizations, etc. (and posting of performance security).
6. Establishment of an agreement regarding developer's offer to participate in a "fair-share" contribution towards future improvements at the intersection of Rt. 300 and Rt. 52.
7. Establishment of a Transportation Management Plan, including a reimbursement agreement and performance security in the event use of the Town's police force is necessary for traffic control during extraordinary peak traffic events.



## V. CERTIFICATION OF FINDINGS

Having considered the Draft and Final EIS, and having considered the preceding written facts and conclusions and specific findings relied upon to meet the requirements of 6 N.Y.C.R.R. Part 617, this Statement of Findings certifies that:

1. The requirements of 6 N.Y.C.R.R. Part 617 have been met;

1. Consistent with the social, economic and other essential considerations, from among the reasonable alternatives thereto, the action approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable; including the effects disclosed in the environmental impact statement; and

1. Consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

Dated: May 3, 2007

Town of Newburgh Planning Board  
Newburgh Town Hall  
Town of Newburgh Planning Board  
308 Gardnertown Road  
Newburgh, NY 12550

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By: John P. Ewasutyn, Planning Board Chairman