

Appendix F-13
Carolyn Zenk, Esq. Letter

March 27, 2017 (First)

Carolyn A. Zenk
Attorney at Law
143 West Montauk Highway
Hampton Bays, New York 11946
Phone/fax: 631-723-2341

Southampton Town Board
Southampton Town Hall
116 Hampton Road
Southampton, New York 11968

RECEIVED

2017 11/27 PM 2:52

RECEIVED

Re: HILLS AT SOUTHAMPTON PDD - *TIME IS OF THE ESSENCE.*

1) *Time is of the essence* to make your decision denying a change of zone from five acre residential/Aquifer Protection Overlay District to Planned Development District; and

2) CLEAN's proposed Town Board resolution denying the change of zone to PDD is attached with respect to the standards contained in both the Town and New York State's Planned Development District Laws (PDDs).

March 27th, 2017

Dear Supervisor Jay Schneiderman, Councilwoman Julie Lofstad, Councilman John Bouvier, Councilwoman Christine Scalera, and Councilman Stanley Glinka:

1) *Citizens for Clean Drinking Water, Clean Air, and Clean Bays (CLEAN)* emphasizes that *time is of the essence* with respect to making a decision on a proposed zone change.

The review process has already gone on over the course of two administrations, over three years. Bleeding into a third administration would be *grossly* unfair to all parties because the current configuration of the Board has had the benefit of numerous hearings, letters, meetings, and a voluminous record.

The *Planned Development District Zoning* has been discredited in Southampton Town. There is a moratorium on *every single* other PDD application in Southampton. The PDD zone should be rejected and *repealed in its entirety as soon as possible.*

2) CLEAN has prepared a Town Board resolution rejecting the change of zone based upon the criteria in the Town and State *Planned Development District Laws*, which resolution is attached. See **Exhibit A/PDD Resolution**. We have clearly demonstrated that the application does not meet the PDD law's standards.

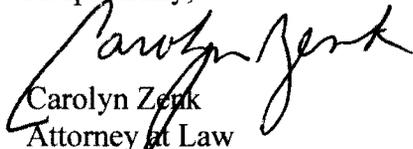
F-13.1
Sec. 6.12



Carolyn A. Zenk
Attorney at Law
143 West Montauk Highway
Hampton Bays, New York 11946
Phone/fax: 631-723-2341

We hope this resolution will inform your own Town Board resolution and decision.
Thank you for your kind consideration in this regard.

Respectfully,



Carolyn Zenk
Attorney at Law

Certified *Environmental and Natural Resources Law*

Certified *Ocean and Coastal Law*

Vice President Citizens for *Clean Drinking Water, Clean Air, and Clean Bays (CLEAN)*

Former Southampton Town Board member (99 to 2003)

Former General Counsel Group for the East End

Carolyn A. Zenk
Attorney at Law
143 West Montauk Highway
Hampton Bays, New York 11946
Phone/fax: 631-723-2341
E-mail: CarolynZenk@netscape.net

Southampton Town Board
116 Hampton Road
Southampton, NY 11968

ADOPTED

TOWN BOARD RESOLUTION 2017-_____ (Submitted: March 27th, 2017)

TOWN BOARD RESOLUTION, WHICH DENIES "THE HILLS AT SOUTHAMPTON" CHANGE OF ZONE PETITION REQUEST TO CHANGE CURRENT ZONING FROM FIVE ACRE RESIDENTIAL aka CR200 AND AQUIFER PROTECTION OVERLAY DISTRICT TO MIXED USE PLANNED DEVELOPMENT DISTRICT (MUPDD).

WHEREAS, the Town Board received a request for a change of zone from five acre residential and *Aquifer Protection Overlay District* zoning to *Mixed Use Planned Development District (PDD for short)* for a project known as "The Hills at Southampton" in East Quogue; and

WHEREAS, pursuant to the Town Law of the State of New York, applicants have no right what-so-ever to a change of zone and such change of zone is entirely at the discretion of the Town Board; and

WHEREAS, existing zoning would allow a maximum of 118 residential units, and mandate a residential cluster plan with a minimum of 65% natural unfragmented open space under Southampton's Open Space Law; and

WHEREAS, existing zoning does not allow commercial or industrial uses in the Pine Barrens, such as a clubhouse as proposed, nor does it allow either a public or private golf course and such uses are impossible without a change of zone; and

WHEREAS, the applicant requests not only the full 118 unit residential density, but a 100 acre golf course, and a 155,760 square foot clubhouse, and a pond house; and

WHEREAS, the developer offers virtually no "community benefits" *within the meaning* of the New York state enabling legislation for PDDs, contained at Town Law 261 b-1. The state law is also known as "Incentive Zoning." It was intended to provide additional density to developers *only* as an incentive for *improvements that towns could not otherwise obtain* via the zoning, subdivision, or SEQRA process and it requires that the additional density will cause "no significant environmentally damaging consequences": and



Carolyn A. Zenk
Attorney at Law
143 West Montauk Highway
Hampton Bays, New York 11946
Phone/fax: 631-723-2341
E-mail: CarolynZenk@netscape.net

WHEREAS, New York Jurisprudence Second, Section 209- “Incentive” or “Bonus” Zoning- explains the purpose of incentive or bonus zoning thus:

Incentive or bonus zoning programs provide a valuable and flexible tool through which municipalities ***may obtain amenities they may not otherwise demand of private owners***, and owners may at the same time obtain desirable economic advantages...***The community benefits or amenities for which incentive zoning may be used encompass open space, housing for persons of low or moderate income, parks, elder care, day care, or other specific physical, social, or cultural amenities of benefit to the residents of the community...Furthermore, the legislative body must, in designating such districts, determine that there will be no significant environmentally damaging consequences*** and that the incentives or bonuses are compatible with the development otherwise permitted. [citations omitted.] (Emphasis added).

WHEREAS, "The Hills at Southampton" does not provide any affordable housing whatsoever; and

WHEREAS, "The Hills at Southampton" fails to provide any elder housing whatsoever; and

WHEREAS, "The Hills at Southampton" does not provide any day care facilities; and

WHEREAS, the "Hills at Southampton" allegedly offers open space as a community benefit, but this benefit is illusory because Southampton's Open Space Law already mandates that a minimum of 65% open space be preserved and encourages the maximizing of open space, when a parcel is located in the five acre zone and in the Aquifer Protection Overlay District; "The Hills at Southampton" is located in both these zones; and

WHEREAS, the Southampton Town Code already mandates that a park be included in subdivisions or a park fee be paid in lieu thereof, and the developer has used the entire yield for housing before "donating" the land from which it was taken, thus negatively impacting the tax base, so this constitutes a limited "community benefit;" and

Carolyn A. Zenk
Attorney at Law
143 West Montauk Highway
Hampton Bays, New York 11946
Phone/fax: 631-723-2341
E-mail: CarolynZenk@netscape.net

WHEREAS, the *alleged* primary "community benefit" offered by the developers is *alleged* tax benefits to the East Quogue Public School District; however, New York State's enabling legislation for the PDD zone does not recognize tax benefits as the "community benefits" necessary to change the zone to PDD and the legislative record before the Town Board proves that the covenant proposed by the developer to prohibit school-age children from the development is likely illegal and won't legally hold up; and

WHEREAS, zoning restrictions imposed for considerations or purposes, which are not embodied in the enabling act, will be held as invalid, not as exceeding the scope of the police power *per se*, but as *ultra vires acts* beyond the statutory authority delegated. People v. Amerada Hess Corporation, 765 NYS 2d 202, 196 Misc 2d 426. (2003); and

WHEREAS, the developer's down zoning to Planned Development District offers virtually no legally recognized "community benefits" within the meaning of the Southampton Town Planned Development District Law, and therefore must be rejected. Furthermore, it does not offer benefits "commensurate with the benefits provided to the developer" as legally required; and

WHEREAS, the **TEST** a developer must meet to obtain a change of zone is stated at Southampton Town Code, Section 330-240 (D), to wit:

[TEST FOR CHANGE OF ZONE TO PDD] *A planned development district may be established as a method of providing incentives or bonuses for development providing substantial community benefits or amenities pursuant to the applicable provisions of this article and section 261-b of the Town Law of the State of New York. The development incentive or bonuses and the community benefits or amenities shall be consistent with the recommendations of the Central Pine Barrens Comprehensive Land Use Plan and/or the Town's Comprehensive Plan.*

1) "*Community benefits or amenities" shall mean open space, housing for persons of low or moderate income, parks, elder care, day care, or other specific physical, social or cultural amenities, or cash in lieu thereof, of benefit to the residents of the affected community¹ or communities and commensurate with the benefit to the applicant...*

¹ The State enabling act exactly mirrors the definition of Community benefit contained in the Town Law at 261-b 1 b). Definitions. In addition, the Southampton law requires benefits to the public "commensurate with benefits" to the developers.

Carolyn A. Zenk
Attorney at Law
143 West Montauk Highway
Hampton Bays, New York 11946
Phone/fax: 631-723-2341
E-mail: CarolynZenk@netscape.net

WHEREAS, the planned development district proposed is at odds with the environmental objectives contained in the PDD law at Town Code, Section 330-240 (E), because it adds a golf course land use, which requires *heavy* fertilization and carcinogenic and poisonous pesticides, which are inherently incompatible with the Pine Barrens ecosystem, drinking water quality, and the connection of open space systems and corridors because "open space" is provided between golf fairways. That legislation states:

The various long-term goals which the Town Board wishes to achieve by this legislation are:

1) ***Preservation and conservation of open space, natural resources, diverse ecological communities, species diversity, and groundwater quality and quantity.***

2. ***Connection of open space systems and maximization of open space corridors*** and to establish and maintain open space and open space corridors for active and passive uses... (Emphasis added.)

WHEREAS, the proposed Planned Development District fails to provide open space other than that already required under the Town's Open Space Law, such that the legally recognized "community benefits" have not been provided; and

WHEREAS, the proposed PDD fails to provide affordable housing, elder care, or day care, such that the legally recognized "community benefits" have not been provided; and

WHEREAS, the Town's Planned Development District Law expressly prohibits claiming that the benefits, which could be obtained as a part of subdivision approval or via conditions imposed through the State Environmental Quality Review Act (SEQRA) can count as "community benefits", within the meaning of the statute, to wit:

Community benefit. For each PDD approved, the Town Board shall establish a required community benefit(s) specific to the project. The required benefit(s) shall be detailed in the resulting PDD legislation. In determining the community benefit requirement of a proposed PDD, the Town Board shall consider:...**Whether the applicant proposes project features that would otherwise be required of development on the subject property through the site plan, subdivision, architectural, SEQRA or other regulatory review process. Said features shall not qualify as**

Carolyn A. Zenk
Attorney at Law
143 West Montauk Highway
Hampton Bays, New York 11946
Phone/fax: 631-723-2341
E-mail: CarolynZenk@netscape.net

community benefits. See Southampton Town Code, Article XXVI:
Planned Development District 330-245I.(6). (Double emphasis added.)

WHEREAS, one of the main *alleged* benefits that has been offered by the developers is open space; however, the Town's Open Space Law already mandates a minimum preservation of 65% in the five acre zone and *Aquifer Protection Overlay District*, thus this "benefit" is illusory and the test for PDDs has not been met; and

WHEREAS, the primary benefit that the developer has offered to the Town is an *alleged* four million dollar plus tax savings to *allegedly* benefit members of the East Quogue School District, by *allegedly* restricting school-age children from attending the East Quogue Schools. In its PDD application at page 5, the developer states, "*The applicant will provide a covenant that no children from The Hills development will attend the local public schools of the East Quogue Union Free School District.*" (PDD application p.5);
and

WHEREAS, neither the state enabling legislation for PDDs nor the Town PDD law include tax benefits in the definition of the "community benefits" necessary for a change of zone to PDD; and

WHEREAS, in a letter dated, September 5th, 2013 from the Suffolk County Planning Commission to the Southampton Town Board, this regional planning entity unanimously (one abstention) rejected the pre-application proposal for the "Hills at Southampton" and voiced its solid skepticism regarding the Town's ability to maintain the non-primary residence status for the project, and expressed its concern over the pollution that would be generated by a golf course in the Central Pine Barrens. More specifically, it definitively concluded:

RESOLVED, that the Suffolk County Planning Commission
disapproved said Pre-application referral for the following reasons:

The Suffolk County Planning Commission is concerned about the ability to maintain the non-primary residence status for the proposed units.

The Suffolk County Planning Commission is concerned about a golf course proposed above a critical watershed and raises issues related to nitrogen, phosphate, potash, bacteria, etc.

The Suffolk County Planning Commission is concerned about the elimination of access to the Pine Barrens core via this parcel.

Carolyn A. Zenk
Attorney at Law
143 West Montauk Highway
Hampton Bays, New York 11946
Phone/fax: 631-723-2341
E-mail: CarolynZenk@netscape.net

The petition lacks any significant discussion of the provision of affordable (workforce) housing on or off-site. (Emphasis added.)

WHEREAS, Town records reveal that tax revenue *actually* generated by golf courses in Southampton Town is not generating the revenue claimed by the developers. Tax records for existing golf courses from December 1, 2013 to November 30th, 2014, when this project was originally submitted, reveal the following. *Sebonac Neck Golf Course* at 405 Sebonac Road, Southampton Town, pays \$241,975/annually for its 238 acre property or only \$1,017/acre. *Atlantic Golf Club* at 1040, Scuttle Hole Road, Southampton, pays only \$52,246 for its 204 property or \$257/acre. *National Golf Links of America* at 129 Sebonac Inlet Road, Southampton pays \$185,989 for its 185.300 acres or \$1005/acre. *Shinnecock Hills Golf Club* at 200 Tuckahoe Road, pays \$180,257/year for its 202 acres or \$892/acre; and

WHEREAS, these golf courses pay a combined average of \$793/acre, which is radically below the \$10,126/acre claimed by the developer; and

WHEREAS, the Town of Southampton would set a terrible precedent by gutting its landmark environmental programs and initiatives for *alleged* "tax benefits." Such a precedent would put Southampton's Pine Barrens protection program, farmland protection programs, and coastal protection programs at risk. The Town should not destroy its five acre zoning/*Aquifer Protection Overlay District*, which were designed to protect the drinking water quality and Pine Barrens ecology for local residents in exchange for *alleged* tax benefits, which are unlikely to materialize; and

WHEREAS, Southampton Town Code, Open Space Law, Section 247-8. Farmland and Watershed Protection A), specifically mandates that where land, "is located in the *Aquifer Protection Overlay District*, the use of this procedure shall also result in the preservation of open space as provided in this section." Section H provides that, "Where a parcel is located in Residence Zone CR 200, [*like this parcel*]...and is in the Aquifer Protection Overlay District [*like this parcel*], at least 65% of the parcel shall be preserved. ...In addition, the Planning Board may require development to be located on the portion of the parcel or tract that minimizes the impact on groundwater recharge;" and

WHEREAS, the Open Space law goes on to state at section I, "It is the policy of the Town to *maximize the preservation of...groundwater recharge lands*. *The preservation requirements of this section are minimum requirements and shall not preclude the preservation of additional open space by the Planning Board whenever possible.*"

Carolyn A. Zenk
Attorney at Law
143 West Montauk Highway
Hampton Bays, New York 11946
Phone/fax: 631-723-2341
E-mail: CarolynZenk@netscape.net

(Double emphasis added.) Thus, more open space can be saved under the Open Space Law than the developers are currently providing in their PDD; and

WHEREAS, other alleged benefits proposed by the developer are illusory. "The Applicant proposes, where practicable, to recruit from the *local* labor pool for jobs, both for construction and post-construction operations." (PDD application p. 60). (Emphasis added.) It lists the "public benefit" at **\$5,100,000** . However, if the developer finds it's not "feasible" to provide *local* jobs, he needn't provide them; and

WHEREAS, a comparison between the proposed Planned Development District and the "As of Right" alternative under current zoning reveals that the "As of Right" alternative is much more protective of the drinking water supply, the marine ecosystem, the public wells at Spinney Road, the ecosystem of the Pine Barrens, the Pine Barrens core, the Pine Barrens compatible growth area, and the rural character of Southampton Town, than the proposed PDD; and

THEREFORE, be it resolved that the Town Board denies the change of zone from five acre residential zone and *Aquifer Protection Overlay District* to *Planned Development District* for "The Hills at Southampton."

By the Town Board of the Town of Southampton

Jay Schneiderman, Supervisor

Julie Lofstad, Town Councilwoman

John Bouvier, Town Councilwoman

Christine Scalera, Councilwoman

Stan Glinka, Councilman

Date: _____