

SUFFOLK COUNTY PLANNING COMMISSION

Suffolk County Department of Economic Development & Planning
100 Veterans Memorial Highway, PO Box 6100, Hauppauge, NY 11788-0099
T: (631) 853-5191 F: (631) 853-4767

Theresa Ward, Commissioner

Sarah Lansdale, Director of Planning

Notice of Meeting

June 6, 2018 at 2 p.m.

**Rose Caracappa Auditorium, W.H. Rogers Legislature Bldg.,
725 Veterans Memorial Highway, Smithtown, NY**

Tentative Agenda Includes:

1. Meeting Summary for May 2018
2. Public Portion
3. Chairman's Report
4. Director's Report
5. Guests
 - Rosemary Mascali, Manager, Transit Solutions
 - Seth Forman, Principal Planner and Peter Lambert, Principal Planner Suffolk County Economic Development and Planning, Division of Planning and Environment, Disability Statistics
6. Section A 14-14 thru A 14-23 & A 14-25 of the Suffolk County Administrative Code
 - Concern at Port Jefferson Station, LLC, Town of Brookhaven
0200 25700 0300 003003
Construction of 108 apartments on 10.99 acres
 - Town of East Hampton
Adopted Resolution 2018-461 to extend Moratorium – Wainscott Hamlet
Business Properties
7. Section A-14-24 of the Suffolk County Administrative Code
None
8. Other Business
None

NOTE: The **next meeting** of the SUFFOLK COUNTY PLANNING COMMISSION will be held on **July 11, 2018, 2 p.m.** Maxine S. Postal Auditorium, Evans K. Griffing Building, Riverhead County Center, 300 Center Drive Riverhead, New York 11901

Language Access Services are available for free to Limited-English Proficient individuals. Requests for telephonic interpretation services or other special needs must be communicated in writing or by telephone to the EDP Language Access Designee at least three business days prior to the meeting. Contact: Jeffrey Kryjak, Department of Economic Development and Planning, H. Lee Dennison Bldg., 11th Floor, 100 Veterans Memorial Highway, Hauppauge, NY11788. Phone: (631) 853-5192, email: jeffrey.kryjak@suffolkcountyny.gov



Steven Bellone
SUFFOLK COUNTY EXECUTIVE

Theresa Ward
Deputy County Executive and Commissioner

Department of Economic Development and Planning
Division of Planning and Environment

STAFF REPORT

SECTIONS A14-14 THRU A14-25 OF THE SUFFOLK COUNTY ADMINISTRATIVE CODE

Applicant: Concern at Port Jefferson Station, LLC
Municipality: Town of Brookhaven
Location: E. Side of Route 112, 497 +/- North East Grove St, Port Jefferson Station.

Received: 4/26/2018
File Number: BR-18-04
T.P.I.N.: 0200 25700 0300 003003
Jurisdiction: Adjacent to NYS RT 112

ZONING DATA

- Zoning Classification: MF (Multifamily)
- Minimum Lot Area: 3 acres
- Section 278: N/A

SUPPLEMENTARY INFORMATION

- Within Agricultural District: No
- Shoreline Resource/Hazard Consideration: No
- Received Health Services Approval: No
- Property Considered for Affordable Housing Criteria: Yes
- Property has Historical/Archaeological Significance: No
- Property Previously Subdivided: No
- Property Previously Reviewed by Planning Commission: No
- SEQRA Information: Yes
- SEQRA Type: Unlisted Action (EAF)
- Minority or Economic Distressed: No

SITE DESCRIPTION

- Present Land Use: Vacant Land
- Existing Structures: None,
- General Character of Site: Slope of 10'
- Range of Elevation within Site: 130' to 140'
- Cover: Wooded
- Soil Types: Haven Loam (HaB) & Haven Loam (HaA)
- Range of Slopes (Soils Map): 0%-6%

NATURE OF MUNICIPAL ZONING REQUEST

- Type: Site Plan
- Layout: Multiple units of apartments with a community center.
- Area of Tract: 10.99 Acres
- Yield Map: N/A
 - # of Housing Units: “108 Apartment units including community building
- Open Space: 7.2 acres (includes forested grasslands and landscape areas).

ACCESS

- Roads: NYS RT 112
- Driveways: Internal roadways incorporated on-site parking

ENVIRONMENTAL INFORMATION

- Stormwater Drainage
 - Design of System: Catch Basins/Leaching pools and
 - Recharge Basins: 1 Recharge Basin.
- Groundwater Management Zone: III
- Water Supply: Public – Suffolk County Water Authority
- Sanitary Sewers: Public - Suffolk County Sewer District #11 Selden.

PROPOSAL DETAILS

OVERVIEW – Applicants request of the Brookhaven Town Planning Board approval to develop a 10.99 acre subject property in Port Jefferson Station with 108 rental apartment units in nine (9) buildings along with a community building and recreational amenities (patio area, fitness trail, and community gardens). The total gross floor area of the development is 53,128 SF. The resultant residential density of the proposal is approximately 10/units to the acre.

The subject property is zoned MF (Multi-family Residential Zoning District) with a minimum lot size of three (3) acres.

The referred Site Plan proposes creating community gardens and ‘green space’ in the center of the project coincidental with prime agricultural soils that occur at the location of project site.

The proposed apartment development is to collect sanitary wastewater and direct the flow to an on-site pump station and convey the waste by a force-main to the Suffolk County Sewer District No. 11 sewage treatment plant located at Old Town Road and Hawkins Path.

A review of the character of the land use and zoning pattern in the vicinity indicates a wide variety of uses ranging from single family residential to the east (A1 zoning), light industrial zoning (L1) and uses to the north, improved MF (Multi-Family) zoned land to the west across NYS Rte. 112 and J business zoned and improved property to the north, north-east and south.

Little walkable shopping center development is in the vicinity of the subject property. Suffolk County Transit operates a bus route (known as S61) along NYS Rte. 112 directly past the subject property.

The subject application proposes an ingress/egress point of access NYS Rte. 112 providing access to the housing development which will need to obtain a curb-cut permit from the New York State Department of Transportation. This ingress/egress is proposed to be un-signalized, and directly across from another existing access point to a multi-family housing complex. It has been noted that no other form of alternative or emergency access has been proposed as part of the current Site Plan application.

The subject property is situated in Hydro-geologic Ground Water Management Zone III pursuant to Article 6 of the Suffolk County Sanitary Code. The site is located in the Central Suffolk NYS Special Groundwater Protection Area (SGPA). The subject site is located in the Middle Island – Yaphank NY State Critical Environmental Area. The subject property is entirely wooded however, the site is not located in a Suffolk County Pine Barrens zone. No federal or state mapped and regulated wetlands occur on or near the subject property. The subject development site contains prime agricultural soils.

It should be noted that the subject application is not located in an economically distressed community as defined by commission guidelines and required to be reported pursuant to Resolution 102-2006 of Suffolk County.

STAFF ANALYSIS

GENERAL MUNICIPAL LAW CONSIDERATIONS: New York State General Municipal Law, Section 239-I provides for the Suffolk County Planning Commission to consider inter-community issues. Included are such issues as compatibility of land uses, community character, public convenience and maintaining a satisfactory community environment.

The proposed attached housing development is compatible with the adjacent land uses. The project is designed to conform to community character, being limited to two stories with architectural elements consistent with the area. Public convenience is not anticipated to be impacted as motor vehicle trip generation will be accommodated by roadway improvements to the intersection with NYS Rte. 112 (Port Jefferson-Coram Road). The project as proposed along with the local review process assures the continuance of a satisfactory community environment.

LOCAL COMPREHENSIVE PLAN RECOMMENDATIONS: The referral material submitted with this application indicates that the Town Board adopted a resolution changing the zoning of the subject parcel from J-3 Business to MF Residence on their own motion (1996), and describes the motion as an integral part of the implementation phase of the Town of Brookhaven’s 1996 Comprehensive Land Use Plan. The proposed use is “as-of-right” and requires no variances.

SUFFOLK COUNTY PLANNING COMMISSION GUIDELINE CONSIDERATIONS:

The Suffolk County Planning Commissions has identified six general Critical County Wide Priorities that include:

1. Environmental Protection
2. Energy efficiency
3. Economic Development, Equity and Sustainability
4. Housing Diversity
5. Transportation and
6. Public Safety

These policies are reflected in the Suffolk County Planning Commission Guidebook (unanimously adopted July 11, 2012). Below are items for consideration regarding the above policies:

As part of the information in the Town referral, the project is classified as an Unlisted Action pursuant to SEQRA; and no significant adverse environmental impacts were identified by the Town of Brookhaven. Consequently, a determination of a negative declaration was put forth.

The subject property is entirely wooded and the site is not located in a Suffolk County Pine Barrens zone. As a result, the application proposes the clearing of 9.09 acres of the 10.99 acre site leaving only 1.09 acres or 17.26% of the naturally occurring vegetation undisturbed. Best management practice would be to leave 35% (for commercial properties) of the naturally occurring vegetation on

site undisturbed to provide the minimum biological carpet amenities to the aquifer (Groundwater Management Zone III) as warranted by being located in an SGPA and CEA. This would equate to approximately 3.8 acres of the 10.99 acres undisturbed.

The proposal includes a large excavated storm water recharge basin of approximately one acre at the south end of the subject site. This would be adjacent to an existing storm water recharge basin. The applicant should be directed to consult the Suffolk County Planning Commission's publication on Managing Stormwater - Natural Vegetation and Green Methodologies. There may be ways to eliminate the need for an excavated recharge basin by incorporating some of the methods explored in the document (also in the community green and garden areas and along the front, rear and side yard setbacks) and thereby lessen the disturbance to the natural vegetation on site.

The proposal indicates connection to Suffolk County Sewer District #11. Early review by the Suffolk County Department of Health Services and the Suffolk County Department of Public Works is warranted for consideration of waste water treatment options and the applicant should also be directed to contact and begin/continue dialogue with the Suffolk County Department DPW as early as possible.

The applicant has not indicated that energy efficiency is an objective of the proposed action; it is anticipated all units would be constructed to Energy Star Standards in accordance with Town of Brookhaven Code requirements (section 16-4.2).

There is no indication in the application referral material from the Town of Brookhaven to the Suffolk County Planning Commission if there are any proposed affordable units. The New York State Long Island Workforce Housing Act would require 10% of the units (11) to be set aside for affordable housing purposes. In addition, if the connection to SD#11 is considered an "out of district extension" then 15% of the units would be required to be set aside. The Town of Brookhaven and the applicant should investigate affordable housing requirements for the subject development proposal.

As noted above, Suffolk County Transit operates a bus route (known as S61) along NYS Rte. 112 directly past the subject property. The bus route has connections to Port Jefferson village (train station and hospitals), Coram shopping plazas, Brookhaven Town Hall and Patchogue village (LIRR train station). Service past the subject property is approximately every 30 minutes during the morning weekday rush and roughly hourly thereafter thought the day. On average there are approximately 20 north and southbound stops per day.

No mass transit (bus) shelter is proposed though the site is pedestrian friendly via a network of walkways and sidewalks. The applicant should be directed to contact and begin/continue dialogue with the Suffolk County DPW Transit Division as early as possible for the ability to accommodate bus ridership at the subject property and with respect to the preferred location of the proposed bus shelter (and turn-out if deemed necessary).

The proposed apartment complex does not appear to be conveniently situated to any downtown or area providing food, personal or medical services and hence can be considered auto-oriented. Notwithstanding this observation, 42 parking stall are proposed to be land banked. As part of site plan review, the applicant should be encouraged to explore techniques to reduce parking demand. Techniques may include, but are not limited to parking management programs, promotion of and priority to car sharing and ridesharing, parking cash-out programs, unbundled parking, provisions of free or discounted transit passes, provision of bicycle parking facilities.

There is no indication in the application materials referred to the Suffolk County Planning Commission if the applicant has given any consideration to universal design. The applicant should be directed to consult the Suffolk County Planning Commission model code on Universal Design and incorporate any practical measures into the design plan.

There is no indication in the application materials referred to the Suffolk county Planning Commission if the applicant has given any consideration to public safety. The applicant should be directed to consult the Suffolk County Planning Commission guidelines on public safety and incorporate any practical measures into the design plan.

STAFF RECOMMENDATION

Approval of the Site Plan application of Concern at Port Jefferson Station, LLC with the following comments:

1. The proposal is to collect sanitary wastewater and direct the flow to an on-site pump station and convey the waste by a force-main to the Suffolk County Sewer District No. 11 sewage treatment plant located at Old Town Road and Hawkins Path. Dialogue and discussion should continue with the Suffolk County Department of Health Services and the Department of Public works until all appropriate approvals and permits are obtained.
2. The applicant should be directed to consult the Suffolk County Planning Commission's publication on Managing Stormwater - Natural Vegetation and Green Methodologies. The proposal includes a large excavated storm water recharge basin of approximately one acre at the south end of the subject site. This would be adjacent to an existing storm water recharge basin. There may be ways to eliminate the need for an excavated recharge basin by incorporating some of the methods explored in the document (particularly in the community green and garden areas and along the front, rear and side yard setbacks) and thereby lessen the disturbance to the natural vegetation on site.
3. The applicant should be encouraged to review the Suffolk County Planning Commission Guidebook particularly with respect to energy efficiency and incorporate where practical, applicable elements contained therein.
4. The Town of Brookhaven and the applicant should investigate affordable housing requirements for the subject development proposal. There is no indication in the application referral material from the Town of Brookhaven to the Suffolk County Planning Commission if there are any proposed affordable units. The New York State Long Island Workforce Housing Act would require 10% of the units (11) to be set aside for affordable housing purposes. In addition, if the connection to SD#11 is considered an "out of district extension" then 15% of the units would be required to be set aside.
5. The applicant should communicate with the Suffolk County DPW Transit Division and discuss accommodations for bus riders from the subject development.
6. As part of site plan review, the applicant should be encouraged to explore techniques to reduce parking demand. Techniques may include, but are not limited to parking management programs, promotion of and priority to car sharing and ridesharing, parking cash-out programs, unbundled parking, provisions of free or discounted transit passes, provision of bicycle parking facilities.
7. Alternative or emergency access should be provided as part of the current Site Plan.
8. The applicant should review the Planning Commission guidelines particularly related to universal design and incorporate into the proposal, where practical, design elements contained therein.
9. The applicant should review the Planning Commission guidelines particularly related to public safety and incorporate into the proposal, where practical, design elements contained therein.

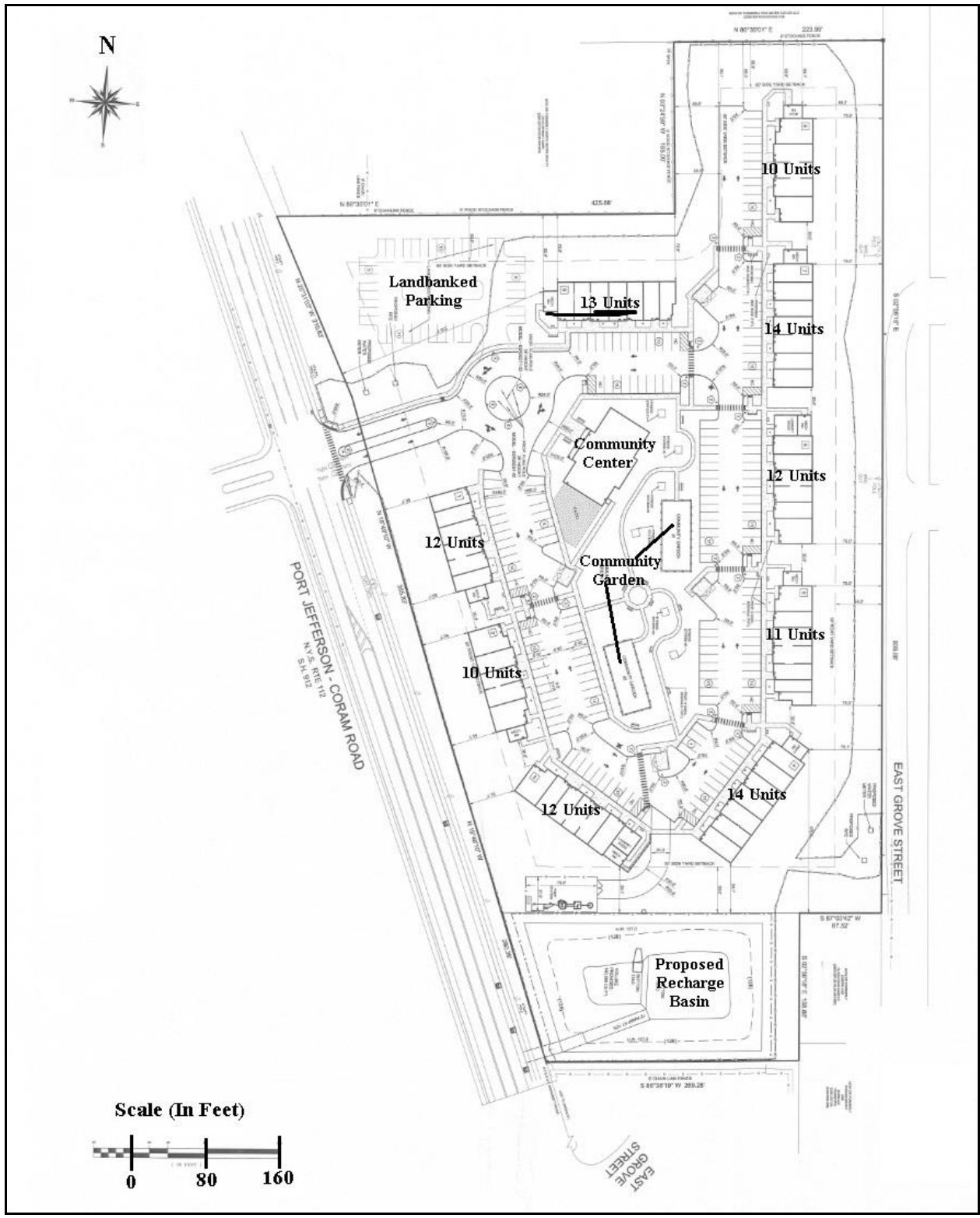
10. The visual impact to the NYS Rte. 112 corridor and surrounding area should be assessed in order to mitigate any visual effect that might lessen the safety and carrying capacity of the state roadway. "Dark Sky" best management techniques should be employed for the lighting plan to mitigate impacts to adjacent residential areas as well as the NYS Rte. 112 corridor.



SCRP TAXMAP BASE, 2016
 Application: Concern at Port Jefferson Station, LLC
 SCPD No.: BR-18-04
 SCTM No.: 0200 25700 0300 003003
 Date: 05/21/2018

1 inch = 300 feet
 0 300 600 Feet

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STAFF REPORT
SECTIONS A14-14 THRU A14-25 OF THE SUFFOLK COUNTY ADMINISTRATIVE CODE

Applicant: Moratorium - Wainscott Hamlet Business Properties
Municipality: Town of East Hampton
Location: Montauk Highway Wainscott

Received: 5/1/18 (9/19/16)

File Number: EH-18-02 (EH-16-02)

Jurisdiction: Moratorium, adjacent to NYS Rte. 27

ZONING DATA: Subject to Central Business (CB), Commercial Industrial (CI) & non-conforming uses in residential zones.

SUPPLEMENTARY INFORMATION

- Within Agricultural District: No
- Shoreline Resource/Hazard Consideration: No
- Received Health Services Approval: NA
- Property Considered for Affordable Housing Criteria: Yes
- Property has Historical/Archaeological Significance: No
- Property Previously Subdivided: Yes
- SEQRA Information: No
- SEQRA Type: Type II
- Minority or Economic Distressed: No

PROPOSAL DETAILS (Addendum to the 11/2/16 staff report)

The East Hampton Town Board has referred a local law to the Suffolk County Planning Commission to extend the moratorium for the Wainscott Hamlet Business Properties (providing for the “temporary suspension of the authority to grant subdivisions and/or site plan approvals for certain properties located on or adjacent to Montauk Highway [NYS Rte. 27] in Wainscott in non-residential Central Business (CB) or Commercial Industrial (CI) zoning district, or properties in residential zoning districts currently used for non-residential uses) for an additional 6 months.

As reported below, the East Hampton Town Board first referred a local law for a 12 month

moratorium beginning in November of 2016 and ending in November of 2017. On November 27, 2017 the East Hampton Town Board referred a local law authorizing the extension of the moratorium for another six months. The extension was “to complete the Wainscott hamlet study and to implement any new land use regulations which may arise therefrom.” The referral received a Local Determination on December 1, 2017 from the Suffolk County Department of Economic Development and Planning.

In Section I of the current Local Law extension request (Findings and Objectives) the new law’s findings mirror exactly the findings in the first six month extension. The current referral from the East Hampton Town Board to the Suffolk County Planning Commission did not include any information pertaining to what additional facts confirm the necessity of this action.

Suffolk County Planning Commission staff subsequently did independent research and discovered, on the Town of East Hampton website, the notification of the release of the East Hampton Hamlet Report for Wainscott dated January 30, 2018 (Prepared by Dodson & Flinker, Landscape Architects and Planners, et al.). The report contains recommendations for the Wainscott hamlet including:

- A. Relationship to the Comprehensive Plan
- B. Protection and Enhancement of the Natural Environment and Historic Character
- C. Patterns of Development
- D. Design
- E. Parking
- F. The Former Sand and Gravel Mine Property
- G. Mixed Use Development and workforce housing
- H. Plan and Build a Decentralized Community Wastewater System
- I. Transportation Improvements
- J. Action Plan Matrix

The full text of the East Hampton Hamlet Report – Wainscott can be found at the following web-link:

<https://www.ehamptonny.gov/DocumentCenter/View/2790/Wainscott-Hamlet-Report-January-30-2018-PDF>

STAFF ANALYSIS

The Town of East Hampton continues to make progress in the development of an updated Comprehensive Master Plan. It is the belief of the staff of the Suffolk County Planning Commission that the recommendations within the Hamlet Study – Wainscott document are contemporary, sound, and may be considered the best land use management practices available. Notable recommendations include illustrative plans; recommended use of Community Preservation Fund (CPF) monies to preserve vacant land in the western section of the Business area; recommended implementation of a B Residence Limited Business Overlay District; a new Home Improvement Overlay Zoning District; development and implementation of the Wainscott Business Overlay District including the recommendation for mixed-use buildings; the use of a “Form Based Code”; and traffic improvements including the construction of a roundabout to replace the hamlets traffic light.

The Hamlet Study for Wainscott includes Conceptual Framework and Illustrative Master Plans for the east and west sides of the hamlet identifying certain advantages and disadvantages for various uses. It provides suggested uses and configurations for each area that build on its unique advantages.

The hamlet plan provides for a “conceptual framework” plan as a recommendation for the reuse of the former sand and gravel mine property. The document indicates that although mining operations have ceased. Industrial uses and activities occupy portions the site and “additional review with the

property owner and the public are necessary before a plan can be considered for implementation.” The document continues to state that “as one of the largest remaining tracts of land in East Hampton, the magnitude of potential environmental impacts stemming from redevelopment of the site is significant. At a minimum, the preparation of a detailed environmental impact statement will be required as a pre-requisite for approval of a reuse or master plan.” A conceptual plan is mentioned indicating that half the property could be proposed for restoration to parks and open space and reference to modest affordable housing, active recreation, solar farm; future train station and a decentralized community wastewater treatment system. The environmental review process including the preparation of any SEQRA documentation would be required for any development action petitioned for the site. A generic impact statement can be prepared or caused to be prepared by the Town on the entire Wainscott Hamlet illustrative Master Plan. Detailed impact analysis would dovetail into the generic analysis as implementation of development projects in accordance with or deviating from the plan are put forth. SEQRA would not be required for conceptual planning or the development of a controlling plan. It is unfortunate that after 18 months of moratorium there is no solid recommendation for the largest land use issue in the hamlet; that being the re-use of the sand and gravel site.

It is noted that though the conceptual framework plan included in the Wainscott hamlet report provides for a new LIRR train station the layout of the illustrative master plan is not Transit Oriented Development (TOD) by design since the residential mixed-use buildings are furthest from the station along Montauk Highway separated from the station by open space, commercial and industrial uses.

The necessity of the station is obviated by the design. It can be argued that the Illustrative Master Plan is an auto-oriented plan exacerbating the existing conditions. The benefits of locating apartments and affordable housing in mixed-use buildings are lessened by being separated by over a half mile from the train station.

The Wainscott Hamlet Plan has a section on the reorganization and rethinking of the parking approach as an essential element of the plan. The plan envisions a configuration for interconnected shared parking lots. The plan also provides for incentivizing shared parking through an ordinance and the implementation of a Municipal Parking Management District. It is the belief of the staff that while the Wainscott hamlet plan approach to the parking issue is sound and will address some of the parking requirements and associated congestion, the recommendations do not go far enough to incentivize employers and employees within the hamlet business area or future residents of any mixed-use building to consider alternate forms of transportation as opposed to a personal single occupancy vehicle (parked on site most of the day). The Town of East Hampton should consider Parking Stall Demand Reduction (PSDR) techniques as part of the development review process in the Wainscott hamlet. Applicants for Town land use approvals should be encouraged to explore techniques for employers, employees and residents of the Wainscott hamlet to reduce parking stall demand. Techniques may include, but are not limited to parking management programs, promotion of and priority to car sharing and ridesharing, parking cash-out programs, unbundled parking costs, provision of free or discounted transit passes and the Provision of bicycle parking facilities, pick-up/drop-off shelters, etc.

STAFF RECOMMENDATION

Approval of the Town of East Hampton Resolution 2018-461 to extend the moratorium for the Wainscott Hamlet Business Properties (providing for the “temporary suspension of the authority to grant subdivisions and/or site plan approvals for certain properties located on or adjacent to Montauk Highway [NYS Rte. 27] in Wainscott in non-residential Central Business (CB) or Commercial Industrial (CI) zoning district, or properties in residential zoning districts currently used for non-residential uses) for an additional 6 months with the following conditions and comments.

Conditions:

1. Reuse planning for the sand and gravel property shall not delay the implementation of other recommendations of the Wainscott Hamlet Plan beyond the additional requested six month extension.

Reason: The Hamlet Study-Wainscott indicates that “as one of the largest remaining tracts of land in East Hampton, the magnitude of potential environmental impacts stemming from redevelopment of the site is significant. At a minimum, the preparation of a detailed environmental impact statement will be required as a pre-requisite for approval of a reuse or master plan.”

The environmental review process including the preparation of any SEQRA documentation would be required for any specific development action petitioned for the site. SEQRA would not be required for conceptual planning or the development of a controlling plan. A generic impact statement can be prepared or caused to be prepared by the Town on the entire Wainscott Hamlet illustrative Master Plan. Detailed impact analysis would dove-tail into the generic analysis as implementation of development projects in accordance with or deviating from the plan are put forth.

2. The Town shall investigate whether there are less burdensome alternatives to the moratorium after the completion of the 2 year suspension of land use approvals.

Reason: A moratorium is, from one perspective, the most extreme land use action that a municipality can take because it suspends completely the rights of land owners to use their property.

Comments:

1. It is noted that though the conceptual framework plan included in the Wainscott hamlet report provides for a new LIRR train station the layout of the illustrative master plan is not Transit Oriented Development (TOD) by design since the residential mixed-use buildings are furthest from the station along Montauk Highway separated from the station by open space, commercial and industrial uses. The necessity of the station is obviated by the design. It can be argued that the Illustrative Master Plan is an auto-oriented plan exacerbating the existing conditions. The benefits of locating apartments and affordable housing in mixed-use buildings are lessened by being separated by over a half mile from the train station.
2. Applicants for Town land use approvals should be encouraged to explore techniques to reduce parking stall demand for employers, employees and residents of the Wainscott hamlet. Techniques may include, but are not limited to parking management programs, promotion of and priority to car sharing and ridesharing, parking cash-out programs, unbundled parking costs, provision of free or discounted transit passes and the Provision of bicycle parking facilities, etc.
3. The Town is encouraged to begin/continue dialogue with the NYS Department of Transportation (NYSDOT) regarding design and construction of two roundabouts on Montauk Highway (NYS Rte. 27) in the hamlet of Wainscott.

PROPOSAL DETAILS (11/2/16 staff report)

OVERVIEW – The Town Board of the Town of East Hampton proposes to adopt a one (1) year moratorium providing for the “temporary suspension of the authority to grant subdivisions and/or site plan approvals for certain properties located on or adjacent to Montauk Highway [NYS Rte. 27] in Wainscott in non-residential Central Business (CB) or Commercial Industrial (CI) zoning district, or properties in residential zoning districts currently used for non-residential uses, in order to permit the Town of East Hampton to complete its Wainscott hamlet study and to implement any new land use regulations which may arise therefrom...”

As indicated in the Local Law (see attached) the East Hampton Town Board has retained consultants to work with Town staff, members of the business community, property owners and other stakeholders to develop a new and workable business and hamlet action plan, as called for in the Town’s 2005 Comprehensive Plan. A Public Charrette including a public walking tour, public workshop and public visioning session was conducted in May of 2016 for the Wainscott Hamlet. The Local Law indicates that the Town Board finds it essential that a moratorium be imposed upon certain development or re-development of non-residential properties...until such time as the Hamlet Study is completed and its recommendations implemented.

The moratorium covers approximately one (1) linear mile of Montauk Highway which includes properties south of the Long Island Rail Road between Town Line Road to the west and Hedges Lane and the East Hampton Village Boundary to the east.

The primary focus of the moratorium is to allow time to implement recommendations from the Hamlet Study that will provide for changes to the Town Code which will result in changes to the use tables and/or design specifications for properties within the Wainscott hamlet that include plans for a walkable hamlet center internally focused rather than sprawled along the Montauk Highway corridor. Commercial development in Wainscott is currently stretched along the highway corridor and automobile focused, adding to traffic congestion.

STAFF ANALYSIS

A moratorium is, from one perspective, the most extreme land use action that a municipality can take because it suspends completely the rights of land owners to use their property. From the perspective of the Suffolk County Planning Commission a limited or narrowly scoped moratorium generally does not involve regional or inter-community impacts of an adverse nature and generally are considered matters for local determination. The Suffolk County Planning Commission has published guidance on the structure and content of moratoria (see attached SCPC Advisory News: Moratorium on Development). The moratorium should be tied to a legitimate comprehensive planning initiative such as the completion of zoning or master plan updates. Where possible the moratorium should be limited and allow for the due process of applications and assure the proper balance between property rights and community planning. The moratorium should not be used to delay controversial development applications.

The moratorium should include findings that confirm the necessity of this action. The Law should indicate what recent circumstances have occurred that justify the adoption of the moratorium and how serious and urgent are these circumstances are. In addition findings are in order regarding what the conditions are that mandate the imposition of the moratorium and if there are no other alternatives less burdensome on property rights.

The Wainscott area can be characterized as being a mix of industrial, commercial and residential uses bisected by a roadway corridor with high traffic volumes and congestion. At the present there is

a mix of incompatible land uses creating dangerous walking conditions for pedestrians. Motorists including second home owners living in the hamlet and tourists visiting and passing through are required to navigate heavy industrial traffic emanating from the commercial/industrial zone of the former sand mine, as well as, motor vehicle turn movements in and out of commercial establishments, at the same, time being mindful of pedestrians. Moreover, there are dust, noise and groundwater concerns that arise out of the various geographical locations of the land uses.

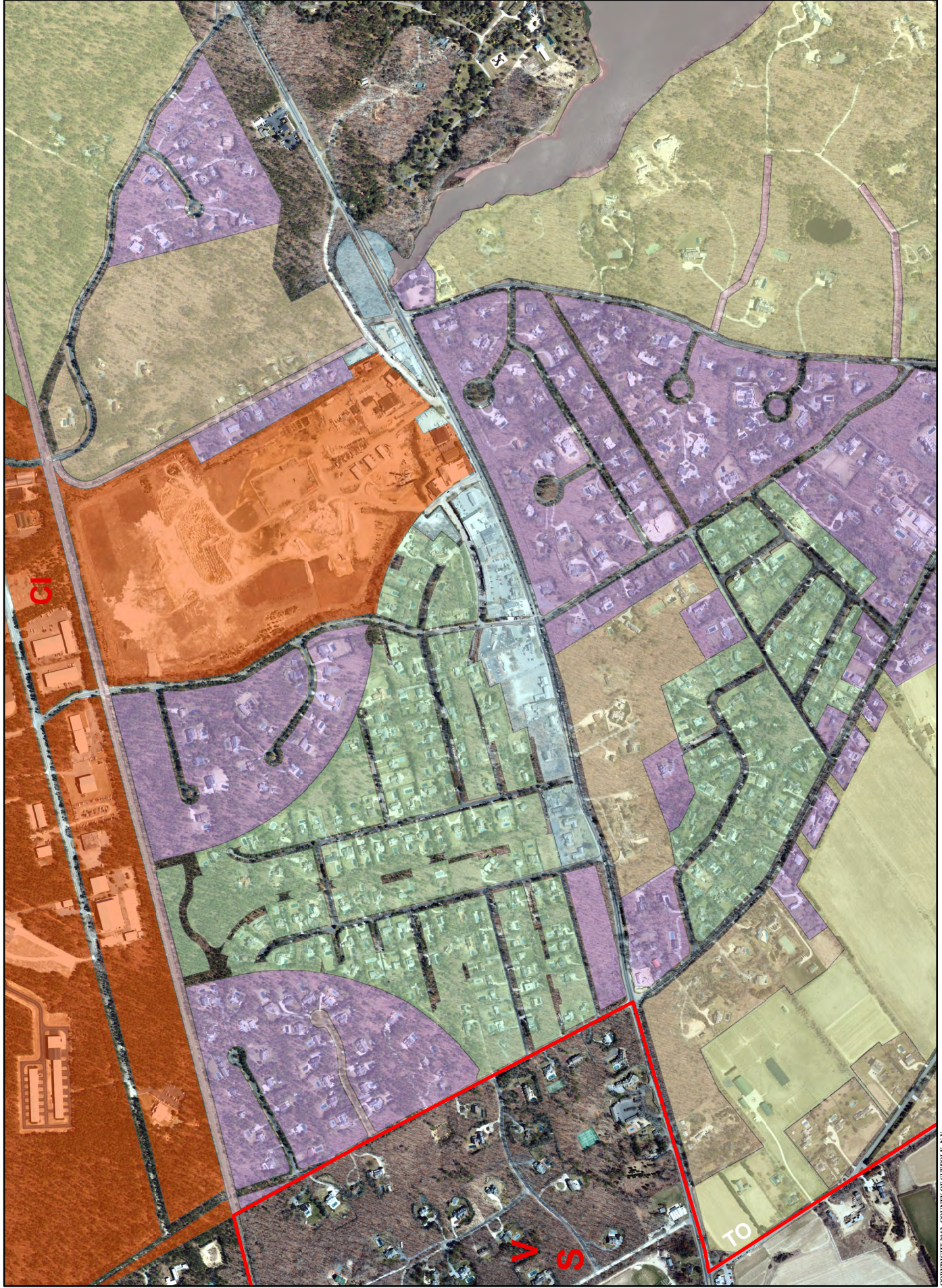
Staff is in agreement with the content of the Local Law indicating that “it is anticipated that the [Town Hamlet] Study will contain recommendations that may mitigate traffic impacts, improve motorist and pedestrian safety, and further the quiet enjoyment of surrounding residential properties. However, if development continues along this portion of the Montauk Highway while the study is pending, and the Town is unable to implement recommended changes prior to further approvals being issued, opportunities to improve safety and mitigate traffic and other impacts may be lost.”

STAFF RECOMMENDATION

Approval of the Town of East Hampton Local Law for Moratorium – Wainscott Hamlet Business Properties IR No. 51 of 2016 with the following comment.

1. The Town of East Hampton continues to be making progress in the development of an updated Comprehensive Master Plan with a revised and updated zoning ordinance. The update of the Montauk Highway corridor zoning districts in this area will help to ensure that future development of the Wainscott hamlet adheres to goals of the community as reflected in the Wainscott Hamlet Charrette and the Town of East Hampton’s Comprehensive and Hamlet Plans.

Zoning for Wainscott



1,250 625 0 1,250 Feet

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Agency (R.P.T.S.A.). This rendering is a DRAFT MAP in that (1) the data displayed is an interagency or
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6 Section 84-50) by section 87.2g

Suffolk County Planning Commission Advisory News

Volume 2
Issue 1
Spring - 1998

Donald Eversoll
CHAIRMAN
At Large

Robert Martin
VICE CHAIRMAN
Smithtown Town

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SECRETARY
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Lydia A. Tortora
Southold Town

vacant
East Hampton Town

George J. Dickerson
Shelter Island Town

Richard London
*Village under 5,000
population*

Michael J. Macco, Esq.
Huntington Town

Laure C. Nolan, Esq.
*Village over 5,000
population*

Richard M. O'Dea
Riverhead Town

Edward J. Rosavitch, PE
Brookhaven Town

Frank A. Tantone, Esq.
Islip Town

vacant
Southampton Town

Mardooni Vahradian
At Large

Linda B. Petersen
At Large

MORATORIUM ON DEVELOPMENT

A moratorium on development is a local law or ordinance that **suspends the right of property owners to obtain development approvals** while the community takes time to consider, draft and adopt land use plans or rules to respond to new or changing circumstances not adequately dealt with by its current laws.

Development moratoria may be general or specific. A **general moratorium** imposes a ban on all development in the community. Hardship exemptions may be provided and certain actions may be exempted.

A **specific moratorium** may prevent development approvals in a particular geographic area or of a certain type. Moratoria have suspended the right to process proposals relating to a specific land use. For example, they have been enacted to affect only the construction of docks, for instance, or communications antennas.

PURPOSE

A moratorium on development preserves the status quo for a reasonable time while the municipality develops and adopts a land use strategy to respond to new or recently perceived problems. The moratorium prevents developers and property owners from rushing to develop their land under current land use rules that the community is in the process of changing. By so doing, it helps to accomplish the purpose of the new rules by giving them the broadest possible applicability and preventing development that is inconsistent with them.

AUTHORITY

There is no specific statutory authorization to adopt a moratorium on development. The courts have pointed to two separate sources of authority, while consistently confirming the municipal power to enact moratoria.

Communities are implicitly authorized to take those actions they deem reasonable to encourage the most appropriate use of the land throughout the municipality. In light of new or changing circumstances, a moratorium may be necessary to allow the community to achieve this express purpose of zoning and land use planning.

Some courts have held that a **development moratorium is a form of zoning**, implying that it is part of the statutorily delegated power to adopt and amend zoning provisions. Alternatively, a community's authority to adopt a moratorium has been referred to as a "police power" measure appropriate to prevent conditions that threaten the community's health, safety, welfare and morals.

IMPLEMENTATION

A moratorium is, from one perspective, the most extreme land use action that a municipality can take because it suspends completely the rights of owners to use their property. Seen in this light, it is advisable to precede the adoption of a moratorium by findings that confirm the necessity of this action. What are the conditions that mandate the imposition of a moratorium? Are no other alternatives, less burdensome on property rights, available? Why are the existing land use plans and ordinances not adequate? What recent circumstances have occurred that justify the adoption of the moratorium? How serious and urgent are these circumstances? What hard evidence is there to document the necessity of the moratorium?

When adopting a moratorium, the municipality may set forth how the situation that gave rise to the moratorium is to be dealt with. What local bodies are responsible? What studies are to be done? What resources are being made available to complete those studies? Can deadlines be established for various steps in the process? **The more specific and legitimate this plan and timetable are, the more likely the moratorium will be found to be reasonable.**

Based on this action plan and timetable, a date can be selected for the expiration of the moratorium. A moratorium can be extended if the timetable cannot be met; however, the reasonableness of the action is enhanced by setting a date for expiration that is legitimate under the circumstances.

A moratorium should be adopted in conformance with all procedures required of any zoning or land use action, including notice, hearing, the formalities of adoption and filing. While a moratorium does not require an environmental review under the State Environmental Quality Review Act, if it affects adjacent municipalities or county facilities, it may be subject to review by those governments before it can be formally adopted. **The Suffolk County Planning Commission considers suspension of any portion of a Zoning Code to be a "municipal zoning action" requiring review by the Commission.**

LIMITATIONS AND CONCERNS

Since development moratoria affect property rights so severely, they must be reasonable or run the risk of being challenged, voided by the courts and, perhaps, resulting in a damage award against the locality. Reasonableness is best established if the community can document that it is facing a true emergency. Several court decisions sustaining moratoria refer to the "dire necessity" that justifies them. Such a necessity arises not only when health and safety risks are confronted, but also when the community is facing a significant new land use problem that its existing regulations were not designed to handle.

For the same reason, when specific action plans and timetables are established to deal with the necessity or emergency, the reasonableness of the locality's moratorium

is demonstrated. Similarly, a community needs to make reasonable progress in carrying out the plan and adhering to the schedule so its actions are seen to be reasonable. Moratoria that have been extended for up to three years have been sustained by a showing that the community was diligently pursuing its plan and timetable and shorter moratoria have been voided because the community was making little or no progress. In the same way, the plan must be calculated to deal directly with the necessity or emergency at hand; otherwise, its reasonableness may be questioned.

Moratoria do not apply to approved projects where the developer has completed construction or has completed substantial construction in reliance on a development approval or permit. Such developers are said to have vested rights in their permits and to be immune from changes in applicable regulations. Other property owners, who have made less progress, are said to have no legitimate or enforceable expectation that the rules applicable to the development of their land might not change in the interest of protecting the public health, safety or welfare.

CITATIONS:

1. In *Duke v. Town of Huntington*, 153 Misc. 2d 521, 581 N.Y.S.2d 978 (Sup.Ct., Suffolk Co., 1991), the property owner challenged a moratorium prohibiting construction of any docks. The court held the moratorium unreasonable under the circumstances.
2. In *B & L Development Corp. v. Town of Greenfield*, 146 Misc. 2d 638, 551 N.Y.S.2d 734 (1990), the court struck down a one year moratorium on all building permits and land use approvals including subdivision and site plans. **The court found that in adopting the moratorium, the Town had failed to notify the county government under General Municipal Law § 239-m and adjacent communities under Town Law § 264 and to follow its own requirements for adopting zoning provisions.**
3. In *Cellular Telephone Co. v. Tarrytown*, 209 A.D.2d 57, 624 N.Y.S.2d 170, (2nd Dep't, 1995) the court struck down a moratorium prohibiting the construction of cellular antenna.

SOURCE:

Local Leader's Guide to Land Use Practice, Second Edition (In Progress), Series III: Innovative Tools and Techniques, Issue 1: Moratorium on Development, <http://www.law.pace.edu/landuse/morato~1.html>, downloaded 4/23/98.



RESOLUTION 2016-1104

Item # 4.A.2

ADOPTED

DOC ID: 17414 B

**NOPH - Local Law for Moratorium - Wainscott Hamlet
Business Properties**

RESOLVED, that the Town Clerk is directed to publish the attached notice of public hearing in the September 22, 2016 edition of THE EAST HAMPTON STAR.

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Town Board of the Town of East Hampton will hold a public hearing at Town Hall, 159 Pantigo Road, East Hampton, New York, on Thursday, October 6, 2016, at 6:30 p.m., or as soon thereafter as this matter may be heard, to consider comments of all persons regarding a Local Law providing for the temporary suspension of the authority to grant subdivisions and/or site plan approvals for certain properties located on or adjacent to Montauk Highway in Wainscott in non-residential Central Business (CB) or Commercial Industrial (CI) zoning districts, or properties in residential zoning districts currently used for non-residential uses, in order to permit the Town of East Hampton to complete its Wainscott hamlet study and to implement any new land use regulations which may arise therefrom, all as more fully set forth in the text of the Local Law, said Local Law to read as follows:

LOCAL LAW NO. OF 2016

INTRODUCTORY NO. 51 OF 2016

A Local Law providing for the temporary suspension of the Planning Board's authority, pursuant to Chapter 255 ("Zoning") of the East Hampton Town Code, § 274-a of the New York Town Law to grant certain site plans, and Chapter 220 ("Subdivision of Land") of the East Hampton Town Code, and § 276 of the New York Town Law, to grant certain subdivision approvals, for properties located on or adjacent to Montauk Highway in Wainscott in non-residential Central Business (CB) or Commercial Industrial (CI) zoning districts, or properties in residential zoning districts currently used for non-residential uses, in order to permit the Town of East Hampton to complete its Wainscott hamlet study and to implement any recommendations which may arise from the Study.

BE IT ENACTED by the Town Board of the Town of East Hampton as follows:

SECTION I. - FINDINGS AND OBJECTIVES:

The Town Board of the Town of East Hampton has retained consultants to work with Town staff, members of the business community, property owners and other stakeholders to develop a new and workable business and hamlet action plan, as called for in the Town's 2005 Comprehensive Plan, to meet the future commercial needs of the community in compliance with the goals of the Comprehensive Plan.

The hamlet study area includes properties in the business hamlet areas within the Town, including Wainscott, Springs, North Main Street East Hampton, Amagansett, Montauk Downtown and Montauk Dock areas. Zoning within these areas include Residential (B, A & numbered A), Neighborhood Business (NB), Central Business (CB), Commercial Industrial (CI), Commercial Service (CS), and properties within such districts with Affordable Housing Overlays (AHO) and Limited Business Overlays (LBO).

However, the Wainscott hamlet area, particularly along the Montauk Highway corridor, experiences extremely high traffic volumes which are significantly higher than the other hamlet study areas, due in large part to Montauk Highway in Wainscott being the primary entrance into the Town of East Hampton. As a result of these exceptionally high traffic volumes occurring on Montauk Highway, neighboring residential neighborhoods to the north and south of the highway are impacted, as motorists seek alternate routes through these residential districts in order to avoid the heavy to gridlock traffic conditions along Montauk Highway. Many of these residential streets are not designed for high volumes of traffic and when used as by-passes, place pedestrians in danger. Development of properties along the highway corridor may exacerbate the situation. The Hamlet Study is anticipated to provide, among other recommendations, potential changes to the Town Code which may result in changes to the use tables and/or design specifications for properties within hamlet areas.

With regard to the Wainscott hamlet, anticipated recommendations include plans for a walkable hamlet center that is internally focused rather than sprawled along the Montauk Highway corridor. In this regard, Wainscott is unique. Amagansett, East Hampton and Montauk have clearly defined historic hamlet centers. Springs contains a number of small commercial nodes and residents of that hamlet have indicated that consolidation of commercial development is not appropriate for Springs. Commercial development in Wainscott is currently stretched along the highway and automobile focused, thus adding to traffic impacts created by the hamlet's westernmost location. The Wainscott hamlet charrette workshop revealed a great potential for transforming the Wainscott commercial area to remedy this situation while creating a traditional style hamlet center.

It is anticipated that the study will contain recommendations that may mitigate traffic impacts, improve motorist and pedestrian safety, and further the quiet enjoyment of surrounding

residential properties. However, if development continues along this portion of the Montauk Highway while the study is pending, and the Town is unable to implement recommended changes prior to further approvals being issued, opportunities to improve safety and mitigate traffic and other impacts may be lost. For this reason, the Town Board finds it essential that a moratorium be imposed upon certain development or re-development of non-residential properties with Central Business (CB) or Commercial Industrial (CI) zoning districts, or residential properties (B, A and numbered A zoning districts) used for non-residential uses, along the Montauk Highway corridor through Wainscott, which includes properties south of the Long Island Rail Road between Town Line Road at the west and Hedges Lane and the East Hampton Village Boundary to the east, until such time as the Hamlet Study is completed and its recommendations implemented. Therefore, for a period of one (1) year the Planning Board shall be prohibited from deeming such subdivision and/or site plan applications complete, or proceeding to a public hearing or an approval on such applications. *

SECTION II. - CERTAIN REVIEW AND APPROVALS TEMPORARILY PROHIBITED:

Except as otherwise provided herein, for a period of one (1) year from the effective date hereof, the powers and duties of the Planning Board shall be limited as follows:

A. Prohibition on approval of sub-divisions and site plans. With respect to any application for subdivision, or for site plan approval for development, improvement or re-development of properties zoned Central Business (CB) or Commercial Industrial (CI) or residentially zoned properties (B, A and numbered A zoning districts) used for non-residential purposes, and located along either side of the Montauk Highway corridor through Wainscott, and including properties south of the Long Island Rail Road between Town Line Road at the west and Hedges Lane and the East Hampton Village Boundary to the east, the Planning Board shall not be authorized, empowered, or required to do, and shall not do, any of the following:

- (1) Grant site plan approval to such application pursuant to Chapter 255 ("Zoning") of the East Hampton Town Code and/or § 274-a of the New York Town Law for any site plan for a non-residential use, which proposes new development upon a parcel, or if expansion is permitted under current zoning, proposes to increase the total area of any existing structures currently approved for and used for one or more non-residential uses, by more than twenty-five (25%) percent of the structure(s) legally existing square footage, if such increase in building area results in an increase in the allowable occupancy of the site.
- (2) Grant subdivision approval to such application pursuant to Chapter 220 ("Subdivision of land") of the East Hampton Town Code and/or § 276 of the New York Town Law for any subdivision of proposing to subdivide any parcel of

property zoned Central Business (CB) or Commercial Industrial (CI) or any residentially zoned property (B, A & numbered A) used for non-residential purpose(s).

- (3) Determine such application described in (1) or (2) to be complete, or schedule or hold a public hearing on such application.

B. Exemption for site plans and subdivisions which have completed public hearing before the Planning Board and received an approval. The limitations and restrictions imposed on the Planning Board by the foregoing provisions of this Local Law shall not delay, avoid, or invalidate any approval of a site plan or subdivision for which a public hearing has been held and for which approval has been granted under the current provisions of the Town Code.

SECTION III. NEW YORK TOWN LAW SUPERSEDED:

To the extent that any conflict arises between the provisions of this Local Law, the provisions of § 274-a of the New York Town Law, or the provisions of § 276 of the New York Town Law this Local Law shall take precedence over and shall supersede those provisions of the Town Law. This declaration of precedence or supersession is made by authority of the Town's municipal home rule law powers, pursuant to §§ 10 (1) (ii) (a) (14) and 10 (1) (ii) (d) (3) of the Municipal Home Rule Law, § 10 (6) of the Statute of Local Governments, and Article IX, § 2 (b) (3) of the New York State Constitution.

To the extent that any conflict exists between the provisions of this Local Law and certain provisions of the New York Town Law which provide time limitations on the review or processing of applications for site plan approvals or subdivisions which are made or issued by planning board, this Local Law shall take precedence over and shall supersede those provisions of the Town Law. This declaration of precedence or supersession is made by authority of the Town's municipal home rule powers, pursuant to §§ 10 (1) (ii) (a) (14) and 10 (1) (ii) (d) (3) of the Municipal Home Rule Law, § 10 (6) of the Statute of Local Governments, and Article IX, § 2 (b) (3) of the New York State Constitution, and is specifically intended to supersede the the provisions of § 274-a of the New York Town Law, and the provisions of § 276 of the New York Town Law,

SECTION IV. - EXEMPTIONS:

Notwithstanding any other provision of this Local Law, the Town Board may by resolution authorize the Planning Board to grant an application for subdivision or site plan

approval, or to deem complete, schedule for hearing, and hear such an application, provided that the following requisites are met:

A. Procedural requirements. The following procedural requirements shall be prerequisite to the grant of an exemption by the Town Board hereunder:

- (1) The owner of the land affected shall have filed with the Town Board a written petition specifically requesting exemption from the effect of this Local Law; and
- (2) The Town Board shall have held a public hearing on the petition upon at least ten (10) days' prior public notice, which notice shall have been published in the official newspaper of the Town.

B. Substantive requirements. No exemption shall be granted hereunder unless the Town Board shall specifically find and determine, and shall set forth in its resolution granting such exemption, that:

- (1) Failure to grant an exemption to the petitioner will cause the petitioner undue hardship, which hardship is substantially greater than any harm to the general public welfare resulting from the grant of the exemption; and
- (2) Grant of the exemption, even if the site plan for which exemption is sought is approved, will clearly have no adverse effect upon any of the Town's goals or objectives as set forth in the Town's Hamlet Study Plan; and
- (3) The site plan for which petitioner seeks an exemption is in harmony with the existing character of the Town as a whole and the area of the Town in which the affected land is located, as well as the existing Comprehensive Plan.

SECTION V. - SEVERABILITY:

Should any part or provision of this Local Law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole nor any part thereof other than the part so decided to be unconstitutional or invalid.

SECTION VI. - EFFECTIVE DATE:

This Local Law shall take effect immediately upon filing with the Secretary of State as provided by law.

DATED: September 15, 2016

BY ORDER OF THE TOWN BOARD

TOWN OF EAST HAMPTON, NEW YORK

CAROLE BRENNAN, TOWN CLERK

RESULT: **ADOPTED [UNANIMOUS]**

MOVER: Kathee Burke-Gonzalez, Councilwoman

SECONDER: Peter Van Scoyoc, Councilman

YES: Kathee Burke-Gonzalez, Peter Van Scoyoc, Fred Overton, Larry Cantwell

ABSENT: Sylvia Overby