

**TOWN OF ORANGETOWN
SPECIAL TOWN BOARD MEETING
MONDAY, DECEMBER 5, 2005**

This Special Town Board Meeting was opened at 8:10 p.m. Supervisor Kleiner presided. The Town Clerk called the Roll. Present were:

Councilman Denis O'Donnell
Councilman Denis Troy
Councilwoman Marie Manning
Councilman Thomas A. Morr

Also present: Charlotte Madigan, Town Clerk
John S. Edwards, First Deputy Town Attorney
Robert Magrino, Deputy Town Attorney
Suzanne Barclay, Exec Asst. to Supervisor
Charles Richardson, Director of Finance
James Dean, Superintendent of Highways
Ron Delo, Director of Dept. Environmental Mgt. & Eng.
Kevin Nulty, Chief of Police
Mary McCloskey, Assessor's Office
Rich Rose, Superintendent of Parks, Recreation and Buildings
John Giardello, Director, OBZPAE

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The Pledge of Allegiance to the Flag was led by Charlotte Madigan, Town Clerk.

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RESOLUTION NO. 765

**MIXED USE DEVELOPMENT
AT CERTAIN INTERCHANGES
OPEN PUBLIC HEARING**

Councilman O'Donnell offered the following resolution, which was seconded by Councilman Troy and was unanimously adopted:

RESOLVED, that the public hearing continued from November 14th to consider the proposed amendment of Local Law No. 4, 1969, Chapter 43 (Zoning) of the Code of the Town of Orangetown, to permit mixed-use developments at certain interchange locations in the LI Zone upon issuance of a Special Permit by the Town Board is hereby opened.

Ayes: Councilpersons O'Donnell, Troy, Manning, Morr
Supervisor Kleiner
Noes: None

The public portion was opened and there were no public comments.

RESOLUTION NO. 766

**MIXED USE DEVELOPMENT
AT CERTAIN INTERCHANGES
SEQRA DECLARATION**

Councilman O'Donnell offered the following resolution, which was seconded by Councilman Morr and was unanimously adopted:

RESOLVED, that a SEQRA Declaration is hereby reserved until January 9, 2006.

Ayes: Councilpersons O'Donnell, Morr, Troy, Manning
Supervisor Kleiner
Noes: None

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RESOLUTION NO. 767

**MIXED USE DEVELOPMENT
AT CERTAIN INTERCHANGES
TB RESERVED**

Councilman O'Donnell offered the following resolution, which was seconded by Councilman Morr and was unanimously adopted:

RESOLVED, that the Town Board's decision to consider the proposed amendment of Local Law No. 4, 1969, Chapter 43 (Zoning) of the Code of the Town of Orangetown, to permit mixed-use developments at certain interchange locations in the LI Zone upon issuance of a Special Permit by the Town Board is hereby reserved to January 9, 2006.

Ayes: Councilpersons O'Donnell, Morr, Troy, Manning
Supervisor Kleiner
Noes: None

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RESOLUTION NO. 768

**THE POINTE AT LAKE TAPPAN
ARC PROPERTIES/OPEN
PUBLIC HEARING**

Councilwoman Manning offered the following resolution, which was seconded by Councilman Troy and was unanimously adopted:

RESOLVED, that the public hearing continued from November 28th to consider the zone change application from ARC Properties for The Pointe at Lake Tappan, Veterans Memorial Parkway, Pearl River, NY (73.10-1-4,5,6), for a zone change for a portion of the property from Office Park (OP) to Planned Adult Community Floating Zone (PAC), pursuant to Local Law No. 1, 2004, Subsection 4.6.1 of Chapter 43 of the Code of the Town of Orangetown is hereby opened.

Ayes: Councilpersons Manning, Troy, O'Donnell, Morr
Supervisor Kleiner
Noes: None

The public portion was opened and the following people spoke:
Eileen Larkin, Palisades, spoke regarding the importance of the historic vale of the Seth House.
Fran Oldenburger, Blauvelt, spoke about Orangetown's rich history and the importance of the Seth House.

RESOLUTION NO. 769

**THE POINTE AT LAKE
TAPPAN/ARC PROPERTIES
CLOSE PUBLIC COMMENT**

Councilman O'Donnell offered the following resolution, which was seconded by Councilwoman Manning and was unanimously adopted:

RESOLVED, that the public portion for The Pointe at Lake Tappan is hereby closed.

Ayes: Councilpersons O'Donnell, Manning, Troy, Morr
Supervisor Kleiner
Noes: None

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RESOLUTION NO. 770

**THE POINTE AT LAKE
TAPPAN/ARC PROPERTIES
SEQRA DECLARATION**

Councilman Troy offered the following resolution, which was seconded by Councilwoman Manning and was unanimously adopted:

Resolution No. 770 – Continued

WHEREAS, the Town Board of the Town of Orangetown (the “Town Board”) is the duly elected legislative body of the Town, authorized to adopt zoning text amendments to the Town’s Zoning Law, and an “involved agency” under the State Environmental Quality Review Act (“SEQR”) with respect to the adoption of zoning text amendments applicable to property located within the Town of Orangetown; and

WHEREAS, by Petition dated April 20, 2004, and accompanying application, PEARL RIVER VETERANS, LLC, as owner of property located in the Hamlet of Pearl River, on the South side of Veterans Memorial Drive, East of the Existing Blue Hill Office Complex and West of Blue Hill South Drive, and shown on the Tax Map of the Town of Orangetown as SBL 73.10-1-4,5 and 6 (partial) formally petitioned the Town Board to change the zoning classification of the said property from Office-Park (“OP”) to Planned Adult Community (“PAC”) in accordance with provisions of Local Law No. 1 of 2004, as subsequently amended, by which the PAC zoning district was created as a “floating” district; and

WHEREAS, on or about June 8, 2004, the Town Board circulated amongst all other involved agencies notice of its intention to assume Lead Agency status for the purpose of environmental review of the above referenced action; and

WHEREAS, more than thirty (30) calendar days have passed since the Town declared its intent to be Lead Agency for environmental review, and no other involved agency has expressed a desire to intent to act as Lead Agency, or otherwise to contest the Town Board’s authority to act in that capacity with respect to the referenced actions, the Town Board has assumed the role of Lead Agency for environmental review; and

WHEREAS, the Town Board, acting in its capacity as Lead Agency for environmental review, having carefully considered all of the potential environmental impacts that might result from the proposed action, has concluded that there will be no significant environmental impacts or effects caused or occasioned by the change in the zoning classification of the subject parcel and its eventual improvement with adult or senior residential housing,

NOW, THEREFORE, BE IT RESOLVED, that the Town Board adopts the findings and conclusions relating to probable environmental impacts contained in the Long Form Environmental Assessment form, Parts 1 through 3, inclusive, and the Negative Declaration annexed hereto (Exhibit 12-1-05) and authorizes the Town Supervisor, or his designated agent, to execute the Environmental Assessment Form and to file the Negative Declaration in accordance with the applicable provisions of law; and

BE IT FURTHER RESOLVED, that the Town Board authorizes the Town Supervisor, or his designated agent, to take such further steps as may be necessary to discharge the Town Board’s responsibilities as Lead Agency.

Ayes: Councilpersons Troy, Manning, O'Donnell, Morr
Supervisor Kleiner
Noes: None

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RESOLUTION NO. 771

**THE POINTE AT LAKE
TAPPAN/ARC PROPERTIES
TOWN BOARD DECISION**

Councilman O'Donnell offered the following resolution, which was seconded by Councilman Morr and on a roll call was unanimously adopted:

WHEREAS, the Town Board of the Town of Orangetown (the "Town Board") is the duly elected legislative body of the Town, authorized to adopt zoning text amendments to the Town's Zoning Law; and

WHEREAS, by Petition and accompanying application dated April 20, 2004, PEARL RIVER VETERANS LLC, as Contract Purchaser of property located in the Hamlet of Pearl River, on the South side of Veterans Memorial Drive, East of the Existing Blue Hill Office

Resolution No. 771 -Continued

Complex and West of Blue Hill South Drive, and shown on the Tax Map of the Town of Orangetown as SBL 73.10 - 1 - 4, 5 and 6 (partial) formally petitioned the Town Board to change the zoning classification of the said property from Office-Park ("OP") to Planned Adult Community ("PAC") in accordance with the provisions of Local Law No 1 of 2004, as subsequently amended, by which the PAC zoning district was created as a "floating" district; and

WHEREAS, after notice duly given, and no other involved agency having a desire or intention to act as Lead Agency, or otherwise having contested the Town Board's authority to act in that capacity with respect to the referenced action, the Town Board assumed the role of Lead Agency for environmental review; and

WHEREAS, by resolution duly adopted of even date herewith, but prior to the adoption of this resolution, the Town Board, acting in its capacity as Lead Agency for environmental review, concluded that there will be no significant environmental impacts or effects caused or occasioned by the change in the zoning classification of the subject parcel and its eventual improvement with adult or senior residential housing; and

WHEREAS, in addition to the Petition, the Town Board also has considered the following in furtherance of its obligation to evaluate whether the proposed site is both eligible and, in the Town Board's discretion, appropriate for PAC zone designation:

- (1) The application of the Petitioner / Petitioner, including a project description and Illustrative Site Plan;
- (2) A Traffic Impact Analysis by Atlantic Traffic & Design Engineers, Inc. dated April 14, 2004;
- (3) Additional traffic evaluations of the Veterans Memorial Drive corridor and other adjacent or near-by streets and intersections conducted for the Town and/or other petitioners in connection with other projects, including,
 - (i) A Traffic Evaluation by John Collins, P.C., dated March 16, 2004;
 - (ii) A Supplemental Traffic Analysis by John Collins, P.C., dated July 14, 2004;
 - (iii) Additional traffic studies previously filed with the Town in connection with the Town's recent adoption of the RPC-R recreation zoning district located in relatively close proximity to the site of the proposed zone change, including a Traffic Evaluation by John Collins, dated September 3, 2003, last revised May 20, 2004;
 - (iv) An independent review of Petitioner's traffic studies prepared for the Town by Adler Consulting, dated July 30, 2004.
- (4) A Demographic Analysis Report, prepared by New Home Marketing Services, dated March 31, 2004;
- (5) A Demographic Analysis Report, prepared by New Home Marketing Services, dated April 5, 2004;
- (6) A Tax Impact Report, prepared by CB Richard Ellis, Inc., dated April 21, 2004, supplemented by an amended tax impact analysis dated November 14, 2005;
- (7) Additional Market Analyses, prepared in connection with other near-by projects, including reports by :
 - (i) Cushman & Wakefield, Inc; and
 - (ii) Treacy Sayers.
- (8) An independent market analysis prepared for the Town by Brecht Associates, Inc., dated November 7, 2005;
- (9) Descriptive information relating to the proposed housing units, including the proposed costs of the units.

Resolution No. 771 – Continued

- (10) The Full Environmental Assessment Form for the action, consisting of :
- Part 1, prepared by the Petitioner Pearl River Veterans LLC, dated April 20, 2004;
 - Part 2, prepared by the Project Petitioner and reviewed by Saccardi & Schiff, Inc., the Town's Planning Consultant and by the Town Board as Lead Agency;
 - Part 3, prepared by the Project Petitioner and reviewed by Saccardi & Schiff, Inc., the Town's Planning Consultant and by the Town Board as Lead Agency;
- (11) The jurisdictional response of the N.Y.S. Department of Environmental Conservation dated September 7, 2004;
- (12) The comments of the Rockland County Planning Department pursuant to GML § 239, dated August 6, 2004;
- (13) The comments of the Town of Orangetown Planning Board dated June 30, 2004;
- (14) The comments of the County of Rockland Sewer District No. 1, dated June 16, 2004;
- (15) The comments of the County of Rockland Department of Highways, dated June 29, 2004 and July 23, 2004;
- (16) The comments of the Township of River Vale, New Jersey, dated July 1, 2004;
- (17) The comments of the Town of Orangetown Office of Building, Zoning and Planning, dated May 24, 2004 and June 23, 2004;
- (18) The Town of Orangetown Comprehensive Plan, adopted by the Town Board on May 12, 2003, and, in particular, Section V, relating to innovative zoning techniques for Senior Housing;

and,

WHEREAS, following notice duly and properly given, a public hearing was conducted on the Petition, at which the Petitioner provided testimony from several consultants and experts regarding various aspects of the senior housing project proposed for the site under consideration, including consultants on traffic, demographics, market absorption and taxes, and at which members of the public spoke almost uniformly in favor of the proposed zone change; and

WHEREAS the Town Board has considered both the need for adult housing within the Town as contemplated by the adoption of the PAC zoning classification, and the impact on the Town's stock of land available for OP uses at this time and following the zone change;

NOW, BASED ON ALL OF THE INFORMATION BEFORE THE BOARD, AND THE FINDINGS HEREINAFTER MADE, BE IT RESOLVED, that the Town Board hereby adopts Local Law No.18, amending the Town's zoning map and zoning law to change the zoning classification from OP to PAC certain property located in the Hamlet of Pearl River, on the South side of Veterans Memorial Drive, East of the Existing Blue Hill Office Complex and West of Blue Hill South Drive, said property shown on the Tax Map of the Town of Orangetown as Section 73.10 Block 1 and Lots 4, 5 and 6 (partial) and more fully described and set forth on Schedule "A" annexed (Exhibit 12-1A-06) to and made a part of this Resolution.

Specific Findings Relating to the Instant Petition

Pursuant to Chapter 43, Subsection 4.6.12, the Town Board makes the following specific Findings of Fact, pertaining to the instant Petition:

Marketability of the Proposed Units

Based on the market studies conducted by the Petitioner and by the Town, it appears that there presently is a relative dearth of -- and, therefore, a need for - housing stock, meeting the specific needs and concerns of those in the 55 and older active adult age group both within the Town of Orangetown specifically, and within the County of Rockland generally, as well as

Resolution No. 771 - Continued

within an approximately five mile radius of the site of the proposed zone change. As of the date of this resolution, in the Town of Orangetown, only two sites have been re-zoned for a Planned Adult Community use, those being a site located on South Middletown Road, in the hamlet of Pearl River, on which eleven (11) adult units have been approved, and a second site located in close proximity to the instant site, on Veterans Memorial Drive, immediately adjacent to the site of the Hilton Hotel, known as the "Hollows", on which 124 units are to be developed.

There are several other senior housing proposals that shortly will come before the Board for consideration, none of which, at this time, is ripe for determination. Of those likely applications, the principal one will involve a project to be developed on what are now Town owned lands, formerly a part of the Rockland Psychiatric Center. That project will likely involve between 500 and 600 residential dwelling units with other related amenities.

In addition to the RPC project, there is a smaller project being considered, involving 12 units in the downtown Pearl River area on the site of the former Pearl River Movie Theatre; a project on Blaisdell Road involving approximately 162 units; and another project in the Hamlet of Tappan, on the site of the Masonic Home, which could involve up to 134 units. These projects, if approved, coupled with the previously approved PAC projects, would provide nearly 1300 units available for the active adult market, providing housing stock to only a portion of the senior households eligible to purchase a unit or a home, a market that is expected to grow over time.

As testified to at the public hearing conducted by the Town Board on the instant Petition, on November 14, 2005, and as evidenced by the number of over 55 persons actually in attendance, there is considerable demand for this specific project that will provide active adult housing for persons in the moderate to higher income or means range. In light of both the expressed interest in the project, and the obvious under supply of senior housing in the area, coupled further with the price structure proposed by the developer, the 142 senior housing units proposed for the site appear to be very marketable.

Potential Saturation Within and About the Geographic Area of the Proposed Zoning Amendment.

Based on the findings set forth above, relating to the number of eligible prospective purchasers throughout the Town and surrounding areas, and the relative dearth of active adult housing in the relevant market area, the Town Board concludes that the approval of the instant zoning amendment, permitting the construction of up to 142 senior housing units will not saturate the neighborhood in which the site is located.

Suitability of the Site for Senior Housing; Vehicular Access, Transportation, Walking and Traffic Concerns in General.

The proposed residential development will be age restricted and consist of individually owned condominium/townhouse type dwelling units. A condominium or homeowners association will be created and will be responsible for maintaining all of the common areas, including designated recreation areas and internal roadways and open space.

As shown on the architectural renderings and floor plans of the Petitioner's Architect presented on the public hearing, the proposed adult community will be developed in a "cluster plan" with individual "pods" of units intended to provide an aesthetically pleasing appearance from the internal roads. Individual units will range in size from approximately 1,590 square feet to 2,810 square feet, and will consist of two and three bedroom homes. Out of the 142 homes proposed, 128 will be two-bedroom homes with one or two car garages, and 14 will be 3-bedroom units with 2-car garages. Fourteen (14) of the 2-bedroom units, distributed throughout the project site, will sell for a reduced price, even though the Petitioner has not sought approval for "bonus" units available under the PAC zoning where "affordable" units are incorporated into the plan.

The projected selling price of these homes will range approximately from \$295,000.00 to \$450,000.00 and higher, satisfying a higher end need than the previously approved projects.

Resolution No. 771 - Continued

The individual units will all be constructed with a master bedroom suite on the first floor level with only secondary bedrooms and/or dens on the second floor, specifically designed for the older population intended to benefit from the PAC zone developments. As such, the units are particularly suited to the active adult community.

Additionally, there will be a recreation center located on site, consisting of a 5,000.00 sq. ft. club house, a swimming pool and other spot recreation areas, as well as 35,000+ sq. ft. of indoor/outdoor recreation areas, all of which will be owned, managed and maintained by a condominium or homeowner's association. Walkways/sidewalks throughout the project will provide yet an additional recreation amenity.

The interior road system will be private and built in accordance with Orangetown Road and Street specifications. The roadway, accessed through a gate house for security reasons, will wind through the community so as to preserve the wetland areas and steep slope areas. Access to the interior road system will be via Blue Hill West Drive (County Highway Rte. 23A), off of Blue Hill South Drive.

The project design will meet -- indeed, far exceed -- the off-street parking requirements applicable to the PAC zone, providing 639 off-street parking spaces, or 4.5 spaces per unit, as compared with a code requirement of 1.75 spaces per unit.

The location of the site further meets the needs of the senior community in that it is located relatively close to the downtown Pearl River, and the business corridor along Middletown Road. There is bus transportation available for those who do not have private means of travel.

The Town Board further finds, based on the traffic studies conducted not only by the Petitioner, but by others, as well, in connection with other unrelated projects, including studies undertaken in connection with projects proposed for nearby Town owned lands, that the road system in and about the site will accommodate any traffic volume that may be generated by the project proposed for these premises. In fact, the traffic studies prepared with respect to the proposed development establish that the anticipated trips generated by the proposed PAC development will be about 17% of the number of trips that would be generated were the site developed under the existing OP zoning.

Compatibility of a Planned Adult Community Project With the Surrounding Environment.

The proposed senior housing community is an appropriate use for the premises sought to be re-zoned. Although the site is adjacent to lands developed for office and other OP uses, there are existing residential uses in the near vicinity, including another PAC development, an assisted living facility and single family homes, as well as a major hotel and middle school. The Town Board finds, consistent with its Town-wide Comprehensive Plan, that the contemplated planned adult housing use is consistent with the uses otherwise existing and permitted in the area, and is otherwise compatible with the existing development in the area.

The Petitioner, in accordance with the requirements of the Local Law 1 of 2004, has presented to the Town Board an Illustrative or Concept Site Plan, prepared by Chester, Ploussas, Lisowsky Partnership LLP, Planners, Architects, Engineers and Surveyors, which meets the bulk and area requirements of Local Law No. 1. The Concept Plan shows a gated community of 142 dwelling units laid out in a series of clusters oriented around small motor courts servicing each cluster. The individual clusters are along an internal loop road, with overall access from Blue Hill Drive West. The Concept Plan further shows amenities as previously noted, with an overall design and architectural layout which preserves a significant amount of undisturbed open space, supplementing that open space with additional landscaping so as to mitigate any adverse visual impact from the surrounding view points.

Maximum Unit Count

By reason of the proposed layout, the Town Board further establishes 142 units as the maximum number of units permitted on the site, ten percent (10%) of which number (rounded to

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the higher number) shall be at a base price not to exceed \$295,000.00 (adjusted for inflation from the date of the passage of this amendment to the zoning text incorporating this site into the PAC zoning district) which units shall be disbursed throughout the project as required by the Planning Board.

With respect to the number of units, it is to be expressly understood that the 142 units provided for in this resolution is the maximum number of units that may be developed, and not a number to which the Petitioner is necessarily entitled as of right. Whether that number, or such lesser number of units, may actually be developed shall be a determination to be made by the Planning Board as part of its further review process(es) on the application.

The Town Board further finds that the illustrative site plan reflects a suitable mix of open space and senior housing development as contemplated under the PAC Law (Local law No. 1 of 2004).

Other Findings and Conditions

- **Sewer Impact and Petitioner's Contribution in Mitigation of Sewer Impact**

The Town Board, in granting this zone change, recognizes that the approval will place an added burden on the waste and sewer lines and pump stations down flow from the site, and that, without certain improvements to the system, the system might not be able to accommodate the additional flow of effluent from this and the other PAC projects proposed along this sewer corridor.

In order to allow the Petitioner to move forward with its proposed development in a more timely manner, rather than await the construction and/or reconstruction of improvements to the Town's pump stations and sewer lines down flow, the Petitioner has agreed to contribute the sum of One Million Dollars (\$1,000,000.00) toward such improvements, with the understanding that such payment will be made as follows:

- (i) \$530,000.00, as a condition, and upon the issuance, of the first building permit for the residential construction, it being an express condition of this zoning amendment that no building permit shall be effective or released unless and until the said sum shall have been paid in full; and
- (ii) a further payment of \$470,000.00, which sum shall be paid incrementally prior to, and as a condition of, the issuance of each building permit for the commercial development of the adjacent site (the lands purchased by the Petitioner from Mercedes-Benz, the current owner, consisting of 93.3 ± acres), the amount of each incremental payment to be computed based on a pro rata calculation that the square footage of the individual commercial use covered by the building permit sought to be obtained bears to the total potential commercial development of all of the remaining OP lands purchased from Mercedes (660,000 sq. ft. ± under existing regulations);

Provided, however, that the full \$1,000,000.00 shall be paid no later than the earlier of (1) three (3) years measured from the issuance of the first building permit for a residential unit or (2) the issuance of the last building permit for a residential unit.

This contribution of \$1,000,000.00 is not intended to, and does not, supercede any sewer connection fee that may otherwise be applicable to either the commercial or residential connection(s) at the time of such connection(s).

- **Recreation Contribution**

The Petitioner, as part of its proposal, has further offered to make a contribution toward the recreation needs of the Town in the sum \$700,000.00 to be paid following the grant of final site development plan approval by the Town Planning Board for the PAC development and before the signing of the site plan by the Clerk to the Planning Board.

Resolution No. 771 - Continued

It is further understood, in regard to the recreation contribution offered by the Petitioner, as hereinbefore set forth, that the said recreation fee shall not be due and owing unless the Town Planning Board as part of its site plan and/or subdivision approval shall waive the money-in-lieu of land requirement upon a finding that the recreation contribution agreed to be paid as a condition of this zone change, coupled with other on-site recreation lands and amenities provided, exceeds the amount that otherwise would have been due and owing under existing Town land use regulations.

• Relocation of the Perry/David Seth House

In its Petition for the requested zoning amendment, the Petitioner recognizes that a structure eligible for the National Register of historic structures, the Perry/David Seth House, is located on the premises in the area to be developed. As a condition of the grant of the requested zoning amendment, the Petitioner agrees to work with the Town and the Town Board to maintain the said structure, or an historically significant part thereof, as may be determined by the Town Board, in tact, and at its present location, incorporating the structure into the design and development of the PAC site as a functioning part of the Petitioner's development to be owned and used by the Petitioner.

In the event the Petitioner and the Town, in good faith, are not able to accommodate the structure (or any portion thereof) at its present location, in a manner that does not result in a loss of residential units directly attributable to the continued existence of the structure at its present location then, and in that event, the Petitioner agrees, at the Town Board's option, either (i) to dispose of the house, as directed by the Town, or (2) to convey to the Town a parcel of property, consisting of approximately 1 acre, located in the northwest corner of premises, bordering Veterans Memorial Drive and accessed by a service road, and to relocate the structure to such site.

If the Petitioner is able to incorporate the structure into the layout and design of its PAC development, or disposes of the structure at the Town's direction, it shall make a payment to the Town in the sum of \$300,000.00. In the event the Petitioner, at the Town's direction, shall relocate the structure as referenced aforesaid, then, and in that event, the Petitioner shall do so at its sole cost and expense (said relocation to include, but not necessarily be limited to, the grading of the site and the construction of a foundation, access road and parking lot). If the cost of the relocation of the structure (separate and apart from the value of the land being conveyed) shall be less than \$300,000.00 (such costs to be documented to the Town), the residual amount shall be paid to the Town to be used for its general municipal purposes. In the event the cost shall exceed \$300,000.00, the Petitioner shall pay any difference.

The disposition of the Seth House shall be resolved and effectuated, and any monies due and owing in relation thereto paid, as a condition, and upon the issuance, of the first building permit for the residential construction, it being an express condition of this zoning amendment that no building permit shall be effective or released unless and until the said sum shall have been paid in full.

• Adjacent Office Development

Recognizing that the Rockland County Department of Planning has commented that one of the consequences of granting the proposed zoning amendment from OP to PAC will be a reduction in the inventory of developable office sites within the Town, the Petitioner has offered, as a condition of the grant of the requested zoning amendment, to submit an application for site development plan approval, and, thereafter, to promptly construct, a commercial office building, having a minimum of 50,000 square feet of usable office space on the immediately adjacent lands that will continue to be zoned OP. In fact, as an inducement for the grant of the requested zoning amendment, the Petitioner has offered to construct the said commercial building irrespective of whether it has a prospective tenant to fill the space.

In consideration of the County's Planning Department's comments, but, at the same time, recognizing (1) that the market for office space in the Town, for many years now, and with no foreseeable change in the future, has failed to justify the need for the full existing inventory of

Resolution No. 771 - Continued

developable lands for that purpose, and (2) that there is immediate need for active adult housing, the Town Board hereby concludes, on balance, that it is particularly appropriate to grant the requested zoning amendment on condition that the Petitioner construct a commercial office building, having a minimum size of 50,000 sq. ft., on the adjacent lands that will continue to be zoned OP.

In connection with the said condition, it is a further condition of the grant of the proposed zoning amendment that no building permit shall be issued, and no site work shall commence on the re-zoned lands, in furtherance of the proposed PAC project unless and until the Petitioner, or any successor in interest to the Petitioner, shall first have filed a complete application for site development plan approval before the Town Planning Board for the construction of a proposed commercial office building having a minimum size of 50,000 sq. ft. on the adjacent lands that will continue to be zoned OP. Any relief from the aforesaid limitation on the issuance of a building permit for, or relating to, the PAC development may be granted only on application to the Town Board for good cause shown.

- **Site Development Plan and Other Required Municipal Approvals**

The adoption of this resolution granting the requested zoning amendment from OP to PAC based upon the illustrative site plan and related materials is not intended to, nor shall it be interpreted to, circumvent or usurp the authority of the Planning Board or of any other land use board having authority over site specific details.

- **Age Limitations Under the PAC Designation**

As required by § 4.6.5 of Local Law No.1 of 2004, occupancy of the units to be developed on the site as a result of this zoning amendment, at the time of initial conveyance, and thereafter, shall be restricted to persons fifty-five (55) years of age or older, or couples, one of whom is 55 years of age or older. Persons less than 18 years of age shall not be permanent residents under any circumstances. Provided, however, there may be one on-site caretaker / administrator, if so requested as part of the Petitioner's application, whose responsibilities shall be the maintenance and/or management of the PAC development. Households containing one or more adult handicapped persons (over the age of 21) shall also be eligible.

The Petitioner, prior to the conveyance of the first unit, shall file with the Rockland County Clerk, in a form both recordable and acceptable to the Town Attorney, a covenant, which shall run with land and bind all Petitioners and subsequent Petitioners, restricting the sale, re-sale and occupancy of the units within the PAC development as set forth in this resolution.

The Town Board, within 90 days of this resolution, shall develop regulations and relevant procedures for unit sale or rental, re-occupancy, income verification and related costs applicable to "affordable" units, if there should be any, within the development. Such uniform regulations shall be applicable to all developments under the PAC zone. The Petitioner may await the development of such regulations before it submits for site plan approval, or may proceed at its own risk, understanding that the development shall be subject to such regulations and procedures.

Rockland County Planning Department Conditions

The Town Board has received, and has considered, the General Municipal Law § 239 L & M review submitted by the Rockland County Department of Planning and responds to its comments and conditions as follows:

County Comment 1 relates to the effective reduction in the inventory of land developable in the Town for office uses, and demands a finding by the Town Board that the remaining OP inventory, following this zoning amendment, is sufficient to accommodate future expected office development.

Resolution No. 771 - Continued

The Town Board so finds based on the reasoning set forth herein, and the Town Board's longstanding efforts to attract office development on this and on other commercially attractive sites, including the Town owned lands formerly a part of the Rockland Psychiatric Center.

County Comment 2 relates to the Petitioner's intended intrusion into the County owned right-of-way along Blue Hill Drive West.

As requested by the Rockland County Highway Department, the Petitioner, as a condition of the requested zoning amendment, shall submit either a revised plan in connection with its application for site development plan approval that does not encroach into the County right-of-way (but which continues to meet the applicable PAC zone yard and set back requirements) or otherwise satisfy the concerns of the Rockland County Highway Department.

County Comment 3 relates to the sufficiency of the traffic evaluations submitted by the Petitioner pertinent to the east/west corridor along Veterans Memorial Drive, and requests a further comprehensive study of the corridor.

The Town Board concludes that the various studies undertaken and relied upon by this Board, as aforesaid, generated by a number of different traffic analysts, not only in connection with this project, but in connection with other projects, as well -- approved and contemplated -- adequately address the County's concerns.

* **To the extent the County Planning Department and/or the County Highway Department believe additional studies are warranted before the grant of the proposed zoning amendment, the Town Board expressly overrides this comment/condition.**

The above said, the Town Board and Town Planning Board will continue to review traffic conditions along the referenced corridor as the approval processes relative to this and to other applications along, or affecting, the corridor continue.

County Comment 4 relates to the Perry/David Seth House.

The Town Board believes that the proposed re-location of the structure to another area, on site, and in close proximity to its present location, adequately addresses the historic nature of the structure. The re-location, if undertaken, will include a parking area on site with access to and via a County Road. The Town Board understands the Petitioner's logistical concerns over maintaining the Seth House in its present location, particularly given the gated community aspect of the proposed development, and does not agree that the Seth House need necessarily be maintained in its existing location in order to preserve its historic significance. Indeed, the fact that the structure is not presently on the National Register and the Town does not have the funds required to restore, maintain and/or operate another such structure, the Town eventually may determine that it is not in the best interests of the Town either to maintain or to relocate the structure. Accordingly, the Town Board reserves to the Town the right to re-assess whether the Seth House, or any portion of the Seth House should remain in its present location or elsewhere.

* **Under the circumstances, to the extent the preservation of the structure is deemed to be a condition of the Planning Department's approval, the Town Board hereby expressly overrides such condition, with the understanding that the Town will continue to work with the Petitioner and with the Town Historian to provide, in some manner, for the preservation of the historic aspects of the structure.**

County Comment 5 relates to the subdivision of the property made necessary by the proposed development of a PAC project on only a portion of the existing OP site.

If, indeed, the contemplated re-zoning will require the subdivision of one or more existing lot(s), then such action, and the further review occasioned by such action, shall be undertaken by the Petitioner, at which time(s) the County Planning Department shall have the opportunity to comment further.

Resolution No. 771 - Continued

County Comment 6 relates to the current zoning status of Tax Lot 4. Based on submissions by the Petitioner, it appears to the County that the lot may presently be zoned R-80.

In fact, Lot 4 is zoned OP, its zoning status having previously been changed by Town Board Resolution No. 571 duly adopted on July 28, 1997 and Town Board Resolution No. 856, duly adopted on December 15, 1997. The Petitioner shall correct any erroneous reference to the zoning status of the lot in its future filings.

County Comment 7 relates to the traffic analysis submitted by the Petitioner, and the Planning Department's belief that there conflicts and/or matters of confusion therein. The Department further references the proposed construction of a hotel on site, as well as the construction of a 50,000 square foot office building.

The Petitioner has clarified its intentions with respect to any hotel use on site, confirming that it does not propose to construct a hotel (although it may once have considered that opportunity).

With respect to the Office use, as previously noted, the Petitioner does propose, the contemporaneous, or near contemporaneous, development of an office building on the site adjacent to the PAC site. In fact, consistent with the County Planning Department's comments relating to the reduction in the developable inventory of OP lands occasioned by this zoning amendment, the grant of this zoning amendment has been conditioned upon the contemporaneous, or near contemporaneous, the development of an office building.

Insofar as traffic is concerned, as previously noted, the Town Board believes that the various traffic analyses it has reviewed in connection with the proposed zoning amendment, and the full development contemplated in connection therewith, including the proposed office structure -- which analyses include studies in addition to those submitted by this Petitioner, all of which, in the past, have been delivered to the County Planning Department -- adequately identify the traffic concerns and demonstrate that there will be no significant adverse impact occasioned by the proposed zone change.

* **Accordingly, to the extent that County Planning Department Comment 7, like Comment 3, may be deemed to condition the County's approval on a further comprehensive traffic analysis, the Town Board expressly overrides such condition, with the further requirement that, insofar as there may be erroneous, or references to no longer intended uses of the premises, that such erroneous statements be corrected in any and all future submissions.**

County Comments 8 and 9, relate to the sufficiency of the concept plan, including the recreational and open space aspects thereof, in light of the requirements of the PAC Zoning ordinance and the Town's Comprehensive Plan.

As hereinbefore detailed both in the Petitioner's filing and in this resolution, the proposed recreational amenities, which include a recreation center located on site, consisting of a 5,000.00 sq. ft. club house, a swimming pool and other spot recreation areas, as well as 35,000+ sq. ft. of indoor/outdoor recreation areas, supplemented with walkways/sidewalks throughout the project, all owned, managed and maintained by a condominium of home Petitioner's association, adequately meet the recreation needs and requirements of the ordinance.

In addition, as shown on the concept plan, and in the Petitioner's filings in support of the requested zoning amendment, there is significant, additional open space provided on site.

Under the circumstances, the Town Board concludes that the Petition and supporting materials submitted in connection with the proposed PAC zoning amendment meet the requirements of the PAC zoning regulations and otherwise comport with the Town's Comprehensive Plan.

Resolution No. 771 - Continued

- * **To the extent the County Planning Board may disagree, and has conditioned its approval on the submission of a different or revised concept plan, the Town Board expressly overrides Conditions 8 and 9.**

County Comment 10 relates to Lots 4 and 5 and the Town's Comprehensive Plan designation of these lots for Public Park/Open Space purposes.

Lot 5 is the present site of the Perry/David Seth House, which will likely be relocated and preserved for public use in a largely open space setting. Lot 4, in the context of the overall PAC development, also will retain significant open space areas and features as previously discussed.

Under the circumstances, the Town Board does not find the proposed concept plan and Petition to be inconsistent with the Town's Comprehensive Plan for the area.

- * **To the extent the County Planning Department conditions its approval of the proposed zoning change on the submission of a revised concept plan, the Town Board, by this resolution, expressly overrides such condition.**

County Comment 11 relates to the construction of a hotel and office building on the site adjacent to that affected by the proposed zoning amendment.

As noted, any reference in the Petition materials to the construction of a hotel on the site to be re-zoned, or on the adjacent lands is no longer applicable. There will, however, be an office building constructed on the adjacent lands, and the agreement to construct, or to provide for the construction of, that building is a significant inducement to the Town Board to grant the requested zoning amendment and, therefore, has been taken into consideration by the Town Board.

To the extent the County Planning Department, by Comment 11, simply reserves the right to see and comment further at the time of site plan review on any changes to the concept plan relating to any office building to be constructed and/or on other environmentally sensitive features on the site, the Town Board adopts such condition.

County Comment 12 relates to the overall concept site plan, which includes reference to the proposed commercial office building on the adjacent site.

As in the case of Comment 11, to the extent the County Planning Department seeks to ensure that it is a continuing part of the review process of the entire site, PAC and OP, going forward, the Petitioner and/or any successor in interest to the Petitioner shall so involve the Department. In fact, the Town's own Land Use Boards, as part of their review and approval of any development on the site must, and shall, involve the County.

- * **The above said, to the extent County Comment 12 requires any further or revised submission at this stage of the proceedings as a condition of its approval of the proposed zoning amendment, the Town Board expressly overrides that condition.**

County Comment 13, relates to the Town Board's compliance with the requirements of the State Environmental Quality Review Act ("SEQRA").

By Resolution of even date herewith, but adopted prior to the adoption of the zoning amendment, the Town Board has complied with SEQRA, adopting a Negative Declaration with respect to the Petition, and making Findings in connection therewith, based in part, as shown therein, on the Full Environmental Assessment Form prepared in connection with this Petition.

County Comment 14 relates to a review of the proposed zone change Petition by United Water and by the Rockland County Department of Health.

Both the Department of Health and United Water must, and shall, review the proposed development of the premises in the course of the site development plan and subdivision processes, and their comments and/or requirements relating to the availability and adequacy of

Resolution No. 771 - Continued

potable water must, and shall, be addressed. Their comments are not required on the zone change process.

- * **To the extent the County Planning Department conditions its approval of the proposed zoning change on the prior review of the County Department of Health and/or United Water, rather than during the site plan and/or subdivision processes, the Town Board, by this resolution, expressly overrides such condition.**

County Comment 15 relates to an apparent omission of a metes and bounds description of the premises to be re-zoned. That omission has been corrected, and the required description provided to the Town.

County Comment 16 relates to a review by an adjacent out-of-state municipality, the Borough of River Vale.

River Vale was provided with notice of the application, and the Town will continue to keep the Borough informed and involved as may be required by law.

County Comment 17, relates to the failure to reference Blue Hill Drive West and Blue Hill Drive South as County roads within 500 feet of the premises in the Petition.

To the extent the Petition fails to reference the two roads as County roads in the Petition, the Petitioner shall do so in all future submissions to any Land Use or other Board or agency from which a municipal approval is required, and, prior to any submission to the Town Planning Board shall submit a revised Petition to the Town Clerk for filing as part of the Town's file bearing the notation on the face thereof, "Revised Petition in Accordance With County Planning Department Letter dated August 4, 2004." That said, it bears noting that, although the two roads may not have been referenced as County roads, the County Highway Department, nevertheless, did receive, and was afforded the opportunity to comment on, the Petition.

Additional County Planning Department Comments (Not Conditions)

The Town Board has reviewed and considered the further comments of the Rockland County Planning Department, provided at Page 6 of the Department's GML 239 L & M response, and will recommend that the Town Planning and other Land Use Boards take them into consideration in their review processes.

Ayes: Councilpersons O'Donnell, Morr, Troy, Manning
Supervisor Kleiner
Noes: None

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RESOLUTION NO. 772**BOND RESOLUTION/PUMPING STATIONS/RESCHEDULE PH**

Councilman O'Donnell offered the following resolution, which was seconded by Councilwoman Manning and was unanimously adopted:

RESOLVED, that the public hearing originally scheduled for December 12, 2005 to consider a bond resolution for the upgrading and rehabilitation of Upper Grandview, South Nyack, Route 303, Sparkill, Stokes, Sunset Road and Volkswagon Pumping Stations to include new pumps, motors, controls, flow meters, grinders, emergency generators, electrical, heating, ventilation and plumbing improvements, piping modifications, and building repairs is hereby rescheduled to January 9, 2006, 8:05 p.m.

Ayes: Councilpersons O'Donnell, Manning, Troy, Morr
Supervisor Kleiner
Noes: None

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RESOLUTION NO. 773

ADJOURNMENT/MEMORY

Councilman Morr offered the following resolution, which was seconded by Councilwoman Manning and was unanimously adopted:

RESOLVED, that this Special Town Board Meeting adjourned at 10:10 p.m. in memory of Jay Shepard, Pearl River, Susan Walker, Pearl River and Virginia McCarthy, formerly of Pearl River.

Ayes: Councilpersons O'Donnell, Manning, Troy, Morr
Supervisor Kleiner
Noes: None

Charlotte Madigan, Town Clerk