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June 26, 2014

**By Hand Delivery**

Hon. Randy Clark  
Supervisor of the Town of Cornwall  
and Members of the Town Board  
183 Main Street  
Cornwall, New York 12518

**Re: Cornwall Commons, LLC  
Application for Zoning Text Amendment**

Dear Supervisor Clark and Members of the Town Board:

Cornwall Commons, LLC (the "Applicant") retained our firm as co-counsel in connection with the proposed Cornwall Commons Project. The Applicant has also retained AKRF, a well-respected environmental and planning consulting firm with extensive experience conducting environmental impact assessment for mixed-use projects of this scale, including for the mixed-use project in the Town of Tuxedo known as Tuxedo Reserve.

We are aware that this Project has a long history before the Town. We are hopeful that by working collaboratively with the Town Board and your professional staff, we can chart a path towards getting a shovel in the ground in the not too distant future. The modified unit mix proposed herein – 65% non-age-restricted, and 35% age-restricted – would allow for a marketable and economically viable Project, while not causing any significant adverse environmental impacts, including with respect to school age children. The Applicant requests the Town Board's support in this Project.

This submission demonstrates that the proposed modified unit mix would not result in any new significant adverse environmental impacts that were not previously identified or studied in the Supplemental Environmental Impact Statement ("SEIS") for the 2006 Proposed Project, which contained 100% age-restricted units. The current 65%/35% proposal is within the scope of the 2008 SEQRA Findings Statement (which supplements the original GEIS and 2003

SEQRA Findings Statement). Accordingly, a second SEIS is not required for the proposal to develop up to 65% non-age-restricted units.

### **Application For Zoning Text Amendment**

The Applicant respectfully submits this Application for a Zoning Text Amendment to modify the Planned Adult Community (“PAC”) supplementary regulations set forth in Zoning Code Section 158-21X, to permit a PAC to contain up to 65% non-age-restricted units (the “Proposed Action”). The PAC regulations currently limit a PAC to persons 55 years of age or older. The Applicant proposes to modify the Project’s residential unit mix to include 65% non-age-restricted units (312), and 35% age-restricted units (168), in response to the Town’s Comprehensive Plan and changing market conditions regarding senior housing (the “Current Proposed Project”). There would be a total of 480 residential units.

To remind the Town Board, the 197-acre Project Site along US Route 9W is located in a Planned Residential Development (“PRD”) Zoning District. The PRD District permits a PAC by Special Use Permit. The Town Board issued a PAC Special Use Permit for the Project on June 5, 2006.

We make this submission in advance of the Town Board’s July 1, 2014 Work Session, and look forward to appearing that evening for a presentation and discussion. We respectfully request that at the July 1<sup>st</sup> meeting the Town Board (i) declare its intent to serve as Lead Agency under the State Environmental Quality Review Act (“SEQRA”) for the environmental review of the proposed legislative action to adopt the Zoning Text Amendment, (ii) refer this Application to the Planning Board for its report pursuant to Section 158-43 of the Zoning Code, and (iii) schedule a Public Hearing on the Zoning Text Amendment under Section 158-43 of the Zoning Code for September 9, 2014, which takes into account the 45-day period in which the Planning Board must issue its report.

Accordingly, enclosed please find the following materials in support of this Application:

- Full Environmental Assessment Form (“EAF”) Part 1 and Part 3, prepared by AKRF;
- Traffic Memorandum, prepared by Maser Consulting, P.A., dated June 23, 2014;
- Plan showing updated Recreational Areas;
- Draft Zoning Text Amendment (showing proposed changes to Zoning Code Section 158-21X);
- Draft Amendment to the Developer’s Agreement between the Town and the Applicant; and
- Escrow check in the amount of \$5,000.

### **Withdrawal Of Prior Application**

The Applicant hereby also formally withdraws its prior application for a Zoning Text Amendment, which was submitted in September 2012 in furtherance of a previously proposed unit mix of 78% non-age-restricted and 22% age-restricted.<sup>1</sup> The newly proposed 65%/35% unit mix is a more attractive option for the Town. Importantly, it would, among other things, result in only 125 school-age children, whereas the 78%/22% proposal would result in 154 school-age children (although neither option would result in any actual significant adverse impacts to the School District).

### **Current Proposed Project – 65% Non-Age-Restricted/35% Age-Restricted**

The Current Proposed Project that is the subject of this Application for Zoning Text Amendment would result in 312 non-age-restricted units, and 168 age-restricted units. This proposed change in unit mix – which affects only the age of the persons residing in the Project's units – is the only substantive change from the 100% age-restricted Project that went through a SEIS process beginning in Fall 2006, culminating in SEQRA Findings in December 2008. The layout, building footprints, and limits of disturbance as shown on the subdivision and site plans all remain exactly the same.

Some other pertinent facts regarding the Current Proposed Project are, as follows:

- **Loss of 10 single-family homes** – 480 units would be constructed instead of the prior approved 490 units due to Central Hudson relocating certain gas lines.
- **Limit Number of Non-Age-Restricted Homes Sold Per Year To 80** – Applicant would voluntarily limit the number of non-age-restricted single family homes that could be sold in any one calendar year to 80, in order to minimize the total number of new residents in any one year, and to encourage a more “organic” growth of the new community within the Town of Cornwall.
- **Enhanced Recreational Amenities** – Recreational facilities would be expanded to accommodate families and young children. The new proposed recreational facilities include, for example, a tot lot (young child playground), basketball court (two half-courts or one full court), a ball field, and three (3) additional pocket parks disbursed throughout the Project (see enclosed Plan). The new facilities would generally be constructed within the same land area previously designated for recreational use.
- **Recreation Fees** – Applicant would pay approximately \$734,880.00 in recreation fees to the Town to be used for new recreational areas or other public purpose pursuant to the

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<sup>1</sup> This application was referred to the Planning Board in December 2013. We have copied the Planning Board and its attorney on this letter so that it knows that the prior application has been withdrawn.

Developer's Agreement amendment, even though the Applicant can satisfy the Project's recreational demands on-site.

- **School Bus Pickup** – Designated “transportation pickup/drop-off area” on the site plan, located along the public loop road, near the main entrance.
- **Restrictive Covenant** – The Applicant would record a restrictive covenant against the property, prohibiting institutional uses at the site.
- **Expanded Commercial Uses** – If the Town desires, the Applicant would increase the commercial component of the Project, provided that any such increase does not exceed the thresholds and conditions established in the existing approvals from all the outside agencies. Such potential increase in commercial uses could include a combination of one or more of the following: increasing the number of congregate care/assisted living units, increasing the number of rooms in the hotel, and/or increasing the commercial square footage spread over various commercial uses.

**EAF Demonstrates No New Significant Adverse Environmental Impacts, And A Negative Declaration Under SEQRA Is Warranted**

As part of this submission, AKRF has prepared a comprehensive EAF Part 1 and Part 3 in order to provide the Town Board with ample factual evidence that the Zoning Text Amendment (and Current Proposed Project) would *not* cause any new significant adverse impacts with respect to school children, water/sewer, traffic, or any other area of potential environmental concern, as compared to the approved, all age-restricted 2006 Proposed Project. The SEIS for the 2006 Proposed Project resulted in the 2008 Findings Statement, which supplements the original GEIS and 2003 Findings Statement.<sup>2</sup>

In preparing the EAF, AKRF reviewed the prior technical analyses that were submitted to the Town, and updated the analyses, where appropriate, to reflect the proposed mix of age-restricted and non-age-restricted housing units. The EAF also describes how the Zoning Text Amendment would comply with the Town's Comprehensive Plan, and the December 21, 2011 letter issued by the County Planning Department, both of which discourage limiting an entire project to age-restricted housing. The objective technical evidence before your Board, as summarized below, firmly supports your Board's issuance of a Negative Declaration under SEQRA, and approval of the Zoning Text Amendment.

The purpose of the EAF is to determine whether the Proposed Action would have the potential to generate any new significant adverse environmental impacts that were not previously identified and studied in the SEIS for the 2006 Proposed Project. The EAF

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<sup>2</sup> The original GEIS evaluated the potential development of 69 single family detached residential lots in the Town of New Windsor, and the potential development of 1,000,000 square feet of mixed use industrial development in the Town of Cornwall.

demonstrates that the Proposed Action would not result in any new significant impacts not previously studied, and that this modified unit mix is within the thresholds and conditions established in the 2008 SEQRA Findings. The EAF concludes that a *second* SEIS for this Project is not required.<sup>3</sup>

The key findings in the EAF are, as follows:

- ***School-Age Children*** – While there would be a change in school-age children generation as compared to the 2006 Proposed Project, there would not be a significant adverse impact on the School District.

The Current Proposed Project would result in 125 school-age children, who would be phased into the School District over the 7 to 10 year build-out of the Project. As such, the Project would result in *approximately 12 to 18 school kids entering the School District per year*. The School District has available capacity given declining enrollments of approximately 30-40 students per year. The Property taxes generated by the Project would far exceed the additional costs to the School District, resulting in approximately \$2 million in net benefit to the District.

The EAF also describes the established methodology in SEQRA review for analyzing potential impacts due to school-age children. The EAF explains that the use of “multipliers,” which take into account the *average* number of school children in a particular household based on large sets of actual data, is an accepted industry practice in SEQRA review. In fact, multipliers (or other similar standards) are also used in other areas of study, such as traffic and sewer/water demand, to make projections about potential impacts. The multipliers do not mean that every household meets the standard established; again, they represent an average. The multipliers are further augmented by the use of local case studies where, as here, such data is available.

- ***Net Fiscal Benefits To School District*** – After accounting for the cost to provide educational services to the new school-age children, the net tax benefit to the School District would be approximately \$2 million.

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<sup>3</sup> See, e.g., Riverkeeper, Inc. v. Planning Bd. of Southeast, 851 N.Y.S.2d 76 (2007) (upholding planning board’s decision not to require preparation of a second SEIS in connection with a 104-lot subdivision project where the Board found that there were “no new significant adverse impacts” imposed by the increased wetlands acreage and tightened phosphorous regulations); Muir v. Town of Newburgh, 854 N.Y.S.2d 727 (2d Dep’t 2008) (upholding Planning Board’s decision after certain changes were made to an approved mixed-use development plan that the “current proposal was within the scope of the previous SEQRA findings statements and that there were no new significant adverse environmental impact[s] which had not been previously addressed”; “the total amount of traffic would still be less than the original amount anticipated in the 1987 FEIS”); see also Jackson v. N.Y.S. Urban Dev. Corp., 503 N.Y.S.2d 298 (1986) (rejecting claim that *any* change in a project described in a FEIS requires a SEIS, and stating bedrock principle of law that only “environmentally significant modifications” made after the issuance of a FEIS require a SEIS).

- **Water/Sewer** – There would be no change in water or sewer demand as compared to the 2006 Proposed Project. NYSDEC’s standards do not differentiate water and sewer demand by the age of the residents. The Current Proposed Project would continue to be below the threshold of 200,000 gpd originally evaluated for the Project, and well below the 314,200 gpd maximum included in the Orange County Department of Health permits for the Project. The Project would be served by the Town sewer system, and would receive its water from the Village of Cornwall-on-Hudson.

- **Traffic/Parking** – The Project’s traffic engineer, Maser Consulting P.A. (formerly John Collins Engineers, P.C.) has concluded that including up to 65% of non-age-restricted units in the Project would not result in any new traffic impacts as compared to the 2006 Proposed Project. Both the 2006 Proposed Project, and the Current Proposed Project, would still result in less traffic as compared to the Project studied in the original GEIS, and memorialized in the 2003 Findings Statement. Thus, the traffic improvements that were planned to be completed to accommodate the Original Proposed Project would accommodate the additional trips from both a 100% age-restricted development, as well as from the current proposed 65%/35% mix.

In addition, the Project would continue to meet the Zoning Code’s parking requirements. The Project would provide a total of 1,943 parking spaces (including for residential units, visitors, and clubhouse), whereas the Code requires 1,129. There would be a surplus of 814 parking spaces.

- **Stormwater Management** – As there would be no changes in the Project layout or disturbance limits, the previously prepared and approved SWPPP in 2008 for the maximum build-out of the entire Project Site remains sufficient for handling and mitigating the Project’s stormwater runoff. The Applicant has filed a Notice of Intent with NYSDEC and has been notified of its coverage under the SPDES General Permit for Construction Activity.

- **Recreational Facilities** – The Project will meet the recreational demands of its new residents on-site through the recreational facilities described above. Notwithstanding, the Applicant would still pay the Town approximately \$734,880 in recreation fees pursuant to the Developer’s Agreement.

- **Density Supports Infrastructure Costs** – The EAF also explains why the current residential density and commercial square footages are necessary to support the Project’s substantial infrastructure costs without overburdening the units with untenable pro-rata costs, which would result in unmarketable sales prices and render the Project economically unfeasible.

Accordingly, a Negative Declaration is warranted for the Zoning Text Amendment. The Current Proposed Project would not result in any new significant adverse environmental impacts that were not previously identified or studied in the SEIS for the 2006 Proposed Project.

**Zoning Text Amendment**

Enclosed for the Town Board's review is a draft Zoning Text Amendment, which would modify the PAC supplementary regulations set forth in Zoning Code Section 158-21X to include up to 65% non-age-restricted housing. The Applicant believes it is efficient to keep the PAC designation while simply changing the permissible unit mix, instead of changing the name of the development to a Planned Residential Development (or some other categorization) as previously proposed. The Applicant is obviously open to discussing with the Town Board and staff other approaches for proceeding with the Text Amendment.

**Developer's Agreement Amendment**

Also enclosed for the Town Board's review is a draft amendment to the Developer's Agreement. This Amendment would, among other things, memorialize the following terms:

- Permit a mix of 65%/35% non-age-restricted and age-restricted units;
- Restrict the number of non-age-restricted single-family homes that could be sold in any one calendar year to 80;
- Establish recreation fees in the amount of \$734,880; and
- Extend the Town's reservation of sewer capacity for the Project for a period of seven (7) years from the date of final approval of the first section of Lot 10.

**Conclusion**

The Applicant looks forward to appearing before the Town Board on July 1<sup>st</sup>, and working together with the Board and staff to process this Application for Zoning Text Amendment in an expedited manner. A lot of work has been invested in this Project over the past ten-plus years. The Applicant wants to move forward with the Project, and this modified unit mix.

Thank you for the Town Board's continued attention to this Project. Please do not hesitate to contact us should you have any questions.

Respectfully submitted,

ZARIN & STEINMETZ

By:   
Michael D. Zarin  
Brad K. Schwartz

Hon. Randy Clark and Members of Town Board

June 26, 2014

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Encls.

cc: Mr. Joseph Amato/Ms. Christina Amato  
Gerald N. Jacobowitz, Esq./Michele L. Babcock, Esq.  
Stephen J. Gaba, Esq.  
Chairman Novesky and Members of the Planning Board (w/o encls.)  
Dominic Cordisco, Esq.  
Gary Vinson, Building Inspector  
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