

# **LAND USE AND ZONING**

## **Chapter Four**

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### **Introduction:**

The project plan has been modified through the DEIS review process. The FEIS proposal includes a four (4) story hotel. The inclusion of the hotel is the result of many comments made during the Public Comment period. The Town Board will need to modify the HC-1 Zone to permit hotels at 4 stories in height as a result of this modification.

The proposed Zone Change Map is included as Map #4. The project Master Plan is included as Map #5. The Zone Change Petition and proposed Local Law associated with this application is included in Volume Two, Tab1.

### **Comment LU&Z-1**

*The proposed Local Law does not address which board would be responsible for approving Town of Southeast Wetland Permits, which may be required for this project and are currently under the Planning Board's jurisdiction. (AKRF (11/12/2013))*

### **Response:**

The amended Zoning Change Petition submitted by the applicant would transfer all discretionary approvals for Large Retail Establishments to the Town Board. The amended petition now reads: "Notwithstanding any other provision of the Town Code, the Town Board shall have approval authority for all discretionary permits and approvals, of whatever kind, needed for the construction of a Large Retail Establishment. The Town Board, in its discretion, may consult with any other Town board, commission, committee or officer whom the Town Board deems necessary and appropriate. The Town Board, in its consideration of applications for discretionary permits and approvals, shall follow the procedure of the approval authority that otherwise would have decided the application. For purposes of this section, discretionary permits and approvals shall mean those permits and approvals which are granted at the discretion of the approving authority and excluding ministerial permits and approvals which must be granted upon the applicant's compliance with the relevant application requirements under the Town's laws and regulations." However, the petition does not propose to amend the Special Permit regulations which require the application to be referred to the Planning Board for a report and recommendation, or to the Architecture Review Board for their recommendation.

## **Comment LU&Z-2**

*Nor does the Local Law address which board would be responsible for any subdivision approvals, which is also the Planning Board's jurisdiction, that could be undertaken as part of the development of a large retail establishment (although not currently proposed for this project). (AKRF (11/12/2013))*

### **Response:**

Please refer to response to comment LU&Z-1 above. The amended Zoning Petition, if adopted, would transfer subdivision approval to the Town Board for applications involving a Large Retail Establishment.

## **Comment LU&Z-3**

*The applicant proposes to allow the Town Board to "permit minor modifications or waivers of any of the Town's performance standards identified in Section 138-12" for the development of a Large Retail Center. The performance standards identified in Section 138-12 are currently applicable to all uses of land and buildings and other structures in the Town, and regulate the following areas: dust, dirt, fly ash, and smoke; odors; gases and fumes; noise; vibration; wastes; glare and heat; danger; ridgeline protection; stone wall, stone chamber, and root cellar protection; and stormwater. It appears, based on the DEIS text which only describes waivers of ridgeline protection and manufactured slopes (138-15.1), that this reference should be to (138-12.1), that this reference should be to "138-12.1" specifically as such, the Zoning Petition should be corrected. In addition, the second reference in Section 2 to 138-15.1 should also be corrected. (AKRF (11/12/2013))*

### **Response:**

The provisions concerning Ridgeline Protection are set forth in Section 138-12.I of the Southeast Town Code. The provisions concerning Manufactured Slopes are set forth in Section 138-15.1 of the Southeast Town Code. These typographical errors have been noted, and, an amendment to the Petition is included in this FEIS which identifies waivers for Sections 138-12.I and 138-15.1 only.

## **Comment LU&Z-4**

*The FEIS should further describe the proposed changes to the ridgeline protection ordinance, and what permit conditions would be implemented to protect ridgelines and viewsheds. The language that is included in the Zoning Petition (see Appendix A) does not include any specific performance requirements, and therefore could be too vague to provide adequate ridgeline protection or mitigation. (AKRF (11/12/2013))*

Response:

The Applicant has proposed an amendment to Section 138-63.4 of the Code of the Town of Southeast which would add subsection F, allowing the Town Board to modify or waive the requirements set forth in Sections 138-12.I and 138-15.1 of the Town Code. No performance criteria are proposed by the applicant.

However, the Town of Southeast Comprehensive Plan Update adopted on August 21, 2014 recommends the adoption of a Ridgeline Development Permit. Development within a ridgeline would be subject to a public hearing and permit approval by the Town Board, with review and recommendation by the Planning Board. The Comprehensive Plan Update further recommends that the development approval be contingent on the following performance criteria:

- *Buildings, structures, towers, storage tanks, or other improvements should not be visible above the top of the ridgeline, or above the top of vegetation located within the ridgeline area, from surrounding private property or public rights-of-way in adjoining lowlands or adjoining ridgelines by cause of excessive clearing, building or structure height, or location of any building or structure with respect to the top of the ridgeline. Development within a ridgeline area should be carefully evaluated during site plan review. The developer should be required to submit detailed viewshed analyses and alternatives so siting choices can be evaluated by the Planning Board.*
- *Buildings should be sited to minimize intrusions into viewsheds. This can be achieved by taking advantage of topographic changes and existing vegetation.*
- *Buildings and other structures should be placed to maintain the harmony between the built and natural environment and not change the sequence of views to or from other areas of the Town. Objects such as dumpsters, antennas, satellite dishes, and solar panels should be screened. Where practical, development should occur at the edge of wooded and open areas.*
- *Development of parcels containing steep slopes should be evaluated during site plan review to minimize the potential for erosion and visual intrusion.*
- *Excessive clearing of any ridgeline should not be permitted for the purpose of site access, site landscaping, installation of subsurface sewage disposal systems, or any other modification to the natural land. The term “excessive clearing” means the removal of more than 10 trees, eight inches or more in diameter at breast height, per quarter acre of land disturbed.*
- *Lighting of building and parking areas within a ridgeline area should be dark sky compliant. All exterior lighting should utilize full cut off fixtures. Berms and evergreen buffers should be used to further shield views of lighted parking areas and buildings from off-site locations. Exterior lighting should be zoned so that only those lights which are necessary for health and safety remain on after hours.*
- *Ridgelines should be designated as the uppermost 50 vertical feet of a hill or mountain above a minimum elevation of 500 feet above mean sea level.*

- *Promontories should be designated as the high point of land or rock projecting into a body of water or a local summit(s), ridge(s), or high point(s) along a ridgeline measured to a maximum of 150 horizontal feet but no more than 75 horizontal feet on any side.*
- *Visual analysis of potential impacts to ridgelines should be conducted in the leaf-off season.*

The above language is currently a recommendation in the Comprehensive Plan, and has not been codified into the Town's Zoning Ordinance. However, the local law proposed by the Applicant, if adopted, would require the Town Board to consider the project's consistency with the Comprehensive Plan. As such, the proposed development would be required to be reviewed against the above criteria during site plan review.

### **Comment LU&Z-5**

*The draft Comprehensive Plan Update recommends the establishment of a Ridgeline Protection Permit with specific performance criteria that should be met for development to be permitted within a ridgeline area. The recommended performance criterion includes night lighting restrictions, tree preservation, and similar measures to minimize the visual impact of development within a ridgeline area. The Town Board may consider pursuing the development of this zoning in lieu of the applicant's recommendations. (AKRF (11/12/2013))*

#### **Response:**

Please refer to response to comment LU&Z 4 for a description of the ridgeline protection measures proposed by the Comprehensive Plan Update. The Town Board will consider the overall merits of the Applicant's proposed local law, as well as the proposed language in the Town's Comprehensive Plan Update, and will pursue the legislation that best balances natural and visual resource protection with economic development. Since the Town Board has the sole authority to adopt local zoning laws, it may amend the text proposed by the Applicant to include measures recommended by the Comprehensive Plan Update.

Notwithstanding the foregoing, as shown on Map 12, a portion of the ridgeline adjacent to I-84 would be preserved as an environmental conservation buffer. As shown in the cross sections of the site (see Map 21 and Illustrations 10 through 12.10) the proposed rooflines would be below the tree line of the preserved ridge. As such, the proposed project would be substantially screened from I-84. The proposed project would be visible from the North Brewster Road neighborhood (see Illustrations 12.4 through 12.8), but from most locations the view would be buffered by existing trees, and the proposed buildings would be at a slightly lower elevation than the North Brewster neighborhood. To avoid visual impacts, the Applicant will be required to utilize full-cut off LED light fixtures that meet the International Dark-Sky Association criteria. The use of this type of lighting fixture, as well as requiring plantings along the southern edge of the proposed parking area, will minimize the potential visual impacts of the project to nearby residential neighborhoods, particularly at night.

### **Comment LU&Z-6**

*The Zoning Petition recommends allowing the Town Board to modify or waive the provisions of 138-15.1. The section of the Code regulates manufactured slopes and retaining walls. The Zoning Petition if granted, would allow the Town Board to grant a waiver of up to 10% of the requirements of 138-15.1. The FEIS should provide an analysis, including site sections, calculations and renderings, of what a 10% waiver of these requirements would look like on the Project Site. (AKRF (11/12/2013)*

#### **Response:**

The Zoning Change Petition has been amended to remove the 10% waiver. Instead, the Town Board would be permitted to grant modifications or waivers limited to 3 feet in height for fill or cut slopes, and 1 foot in height per wall.

### **Comment LU&Z-7**

*Page ES-2 of the DEIS indicates that in conjunction with the proposed zone change, the Applicant has requested a change in Section 138-15 A & B of the Town's Zoning Regulations to allow for a 10% modification of the requirements for slopes and walls. However, previous correspondence, the DEIS Page ES-5, and a review of the submitted plans indicate that the project as now proposed complies with current regulations. The need for the requested modification should be clarified and if proposed, the areas where the project exceeds current standards should be identified. If the current requirements are exceeded, the maximum wall height and slope length proposed for the project should be specified. (NLJA (11/12/2013)*

#### **Response:**

Please refer to LU&Z-6 above. The project has been redesigned to generally meet the requirements of Section 138-15.1(A) and (B). The provision for the waiver is to allow flexibility during construction and to address specific tenant requirements not defined at the time of approval. The Town Board would retain review and approval authority for such waivers.

### **Comment LU&Z-8**

*The Town Board should consider how the project and the proposed local law fit the overall context of the Town's Zoning Code and Comprehensive Plan. (AKRF (11/12/2013)*

#### **Response:**

The Town Board has carefully considered how the Crossroads 312 Project and proposed Zoning Code amendment fit within the overall Zoning Code and Comprehensive Plan. As stated elsewhere in the Town Board's responses to these comments, the Crossroads 312 Project is consistent with the 2004 Comprehensive Plan, and the 2014 Comprehensive Plan Update, both of which identify the intersection of I-84 and NYS Route 312 of the project as a prospective commercial node within the Town (*See* Comprehensive Plan, pp. 7-3 - 7-4; Comprehensive Plan Update p. 7-4). With respect to the Zoning Code amendment, the Town Board finds that the proposed amendment will benefit the Town by streamlining the review, and if appropriate the approval, of large-scale retail projects in the Town. The amendment will not lower the standards required for such approvals, nor will it contravene any principle of the Comprehensive Plan.

### **Comment LU&Z-8a**

*How does the existing zoning relate to the Comprehensive Plan? (Bill Heath (11/12/2013))*

Response:

Existing zoning on the subject property is consistent with the Comprehensive Plan. The property is currently in an "RC" zoning district. Permitted Principal Uses in this district include offices, restaurants and recreational uses. Conference centers and hotels are permitted by special permit. Permitted Accessory Uses include Retail and Services. *See* TOWN OF SOUTHEAST, CODE, CH. 138 ATTACHMENT 5 "COMMERCIAL ZONING SCHEDULE." The Comprehensive Plan identifies the area at the intersection of Routes I-84 and 312 as within a "Growth Focus Area" envisioned as a "node of commercial activity."

### **Comment LU&Z-9**

*Is the proposed zoning consistent with the current Comprehensive Plan? (John F. Riley (11/10/2013))*

Response:

Yes. Please see response to Comment LU&Z-8.

### **Comment LU&Z-10**

*Is the proposed zoning consistent with the proposed Comprehensive Plan which is being reviewed and revised as of November 2013? (Steven Mattson (11/10/2013))*

Response:

Yes. As stated on Page 7-4 of the Comprehensive Plan Update, the area surrounding the Interchange of Routes I-84 and 312 is still viewed as a prospective "node of commercial activity." The map in Figure 7-1 specifically identifies Crossroads 312 Retail Center as a location of Potential Commercial Activity (black square No. 6). The proposed rezoning to

HC-1, and the proposed addition of “Hotel/motel/conference facility” as a special permit use to the HC-1 zoning district, would allow for uses consistent with the existing commercial development in the vicinity of the project. Permitted uses on the site would include: office, personal and professional services, restaurants, and recreational uses, as well as special permit uses including hotels, motels, conference centers and large retail establishments. In addition, the general design principles, and Ridgeline and Hillside development provisions would apply.

### **Comment LU&Z-11**

*How does the proposed rezoning affect the overall development potential of the Crossroads property? What is the development potential of the property under the current zoning? (Kim Cercena (11/12/2013), (Public Hearing 11/07/2013)*

Response:

The proposed rezoning affects the potential uses and development potential of the property. The proposed rezoning increases the FAR from 0.15 in the RC Zoning District to 0.3 in the HC-1 Zoning District. The HC-1 Zoning District also has smaller setback and yard requirements than the RC Zoning District. However, both zoning districts have the same lot and building coverage requirements. The Permitted Principal, Accessory and Special Permit Uses on the property are more limited under the current zoning (RC). The proposed rezoning and text amendments would allow for the development of a Large Retail Establishment as a Special Permit Use, which is not currently allowed in the RC Zoning District.

### **Comment LU&Z-12**

*Why can't a Bed & Breakfast establishment be built here? (Steven Mattson (11/07/2013)*

Response:

Under the current RC zoning, a bed-and-breakfast is a Special Permitted Use on the property. However, the applicant has represented that a bed and breakfast is not a reasonable alternative to the proposed project because a “bed-and-breakfast” is defined under the Town Code (§138-4) as a “lodging facility with fewer than 10 guest rooms” and “no public dining or public bar.” This definition severely limits the potential economic benefits associated with bed-and-breakfast establishments and is not consistent with developing the interchange of I-84 and Route 312 into a node of commercial activity. For these reasons, a bed-and-breakfast is not an economically feasible prospect for this property.

### **Comment LU&Z-13**

*If the Highway/Commercial zoning change is approved, the applicant can build what they like which is considerably more than the current Rural/Commercial zoning would allow. (Concerned Residents of Southeast 11/9/2013)*

Response:

The development potential on the property under the current RC zoning is comparable to the proposed HC-1 zoning (as amended). Approximately 283,000 square feet of floor area is possible under both the RC and proposed HC-1 zoning. The current RC zoning limits the uses on the property, not the overall size of development, which will remain largely the same under the proposed HC-1 rezoning.

#### **Comment LU&Z-14**

*The intersection of I-84 and Route 312 seems a perfect location for a project of this kind. (James W. Byron, Jr. (11/8/2013), Jim Byron 11/8/2013) Alexander J. Abels (11/07/2013) S. Peter Pastore (11/7/2013), Mr. & Mrs. K. Mitchell 11/07/2013, Sara Amuso 11/07/2013), Carol Davis (11/07/2013), Louis and Jocelyn Sarro (11/06/2013), Peter C. Alexanderson (11/05/2013), Clare & Holger de Buhr (11/03/2013), Sheri Hogan (11/02/2013), Kahleen Abels (11/01/2013), Meghan Taylor (10/24/2013), Public Hearing Comments (11/07/2013)*

Response:

Comment LU&Z-14 expresses support for the Crossroads 312 Project and makes note of the letters written in support. No further response to this comment is necessary.

#### **Comment LU&Z-15**

*How many jobs are to be created by this project? (Alexander J. Abels (11/07/2013), (Stephen Abels (11/07/2013)*

Response:

It is estimated that the Crossroads 312 Project will generate approximately 250 full time equivalent jobs during the construction period, and approximately 391 full time equivalent jobs during operation.

#### **Comment LU&Z-16**

*The HC-1 Zone has smaller setbacks than the RC Zone. Why should this be approved? (Public Hearing Comments (11/07/2013)*

Response:

Because the proposed project is a “Large Retail Establishment,” it is subject to the site design standards prescribed in Section 138-63.4 of the Southeast Town Code, which prescribes larger buffer zones than the setbacks required in the HC-1 District. To the extent these buffers are smaller than the setbacks required in the RC District, they are only slightly smaller and there are vegetative screening requirements under 138-63.4 that must be observed as well. Therefore, it is not expected that the smaller setbacks will result in an appreciable difference in the visual impacts on the area surrounding the subject property.

**Comment LU&Z-17**

*Why is the applicant requesting that the Town Board have Site Plan review and approval authority for the requested Special Use Permit for “large retail establishments” in lieu of the Planning Board? (Public Hearing Comments (11/07/2013))*

**Response:**

The project for which this application has been submitted is uniquely complex and requires various stages of review and multiple approvals, some of which must come from third-party state agencies. Recognizing the complexity and importance of this application, the Town Board found it would be in the best interests of the Town to streamline the site plan and special permit review processes and vest approval authority with a single agency within the Town. As the legislative body of the Town, it seemed most appropriate to place the decision-making authority with the elected officials on the Town Board.