

GENERAL

Chapter Two

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Introduction:

The comments identified in this chapter include two types , first- those that occurred regularly in the public comment period and represent items addressed in the DEIS and FEIS which are repeated here as the first chapter of comments; and, second, those items which are considered housekeeping items such as text changes to the DEIS or other points of clarifications. The topics of public interest are also addressed in the following chapters by topic such as architecture and wetlands.

Comment HK-1

Chapter 1.C Approvals Required

Required permits are summarized on pages 1-8 and 1-9 of the DEIS; however, DEP approval authority for the sewer extension was not included. DEP has approved authority for the collection system and pump station that will be necessary to connect this project to the Terravest Wastewater Treatment Plant (WWTP). As such, this section must be revised to include DEP approval of the sewer extension. (NYCDEP (11/12/2013))

Response:

The FEIS includes a revised list of Approvals Required which include these items..

Comment HK-2

- 3. The DEIS shall identify the agency approvals obtained, to date, for the senior housing project in Section T3 of Terravest Corporate Park. (PCDOH (10/18/2013))*

Response:

The Terravest Senior Housing project has obtained all approvals necessary for Site Plan Approval including-

Town of Southeast Approvals (Site Plan, Wetlands, Special Permit)

NYCDEP Approvals for WWTP, sewer connections and stormwater

NYSDEC Approvals for WWTP, stormwater

PCDOH approval for sewer connections and WWTP

The final approval required for construction was for the potable water supply (NYSDOH and PCDOH) which is ongoing.

Comment HK-3

DEC Approvals Required

The above approvals (SPDES General Permit, Art. 17 P/C/I SPDES, Art.15 Water withdrawal) should be noted in the Executive Summary (page ES-10) and Chapter 1C (page 1-8) of the DEIS. (NYSDEC (11/22/2013)

Response:

The FEIS includes a revised list of Approvals Required which include these items..

Comment HK-4

Specifically, the DEIS is missing a Stormwater Pollution Plan (SWPPP), including an Erosion and Sediment Control Plan and mitigation for stormwater impacts to wetland buffers; complete analysis of the range of alternatives; and detailed evaluation of growth-inducing aspects and cumulative impacts. As discussed below, without this information the Town Board cannot adequately evaluate the Proposed Project and its potential adverse environmental impacts, preventing the Board from being able to meet SEQRA's requirement to take a "hard look" at the "relevant areas of environmental concern." Jackson v. New York State Urban Dev. Corp., 494 N. E. 2d 429, 436 (NY. 1986). (Riverkeeper (11-12-2013).

Response:

The FEIS includes an updated stormwater management plan design which reflects the new project layout and current NYSDEC and NYSDEP requirements. The revised report is discussed in detail in Chapter Thirteen of the FEIS and included in its entirety in the Appendix. The updated plan includes the required SWPPP, which features drainage design, stormwater management and quality improvements. A new Erosion and Sedimentation Control Plan is also included in this FEIS. Comments on the Erosion and Sedimentation Control Plan are addressed in Chapter Fourteen; however, this plan continues to be developed as the stormwater management plans evolve. Final versions of these plans are not required at this stage in the development, as final plans will need to be vetted and approved by the Town Board during the site plan phase before the project can proceed. Thus, there is ample information in the FEIS for the Town Board to make a determination that "adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating ... mitigative measures which were identified as practicable." *Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 416 (1986). *See also, Save Coney Island, Inc. v. City of New York*, 27 Misc. 3d 1221(A), 910 N.Y.S.2d 765 (Sup. Ct. N.Y. Co. 2010) (FEIS satisfied "hard look" standard where it stated that interim and long-term infrastructure improvements would be implemented to mitigate adverse impacts on sewer and drainage in the impact area notwithstanding the final plans for such improvements were ongoing at the time the FEIS was adopted).

Comment HK-5

As such, the Town Board must ensure that the missing information is submitted and made available for public review and comment before the DEIS is finalized. Riverkeeper urges the Town Board to extend the public comment period on the DEIS until at least 30 days after the missing information identified herein is submitted by the Applicant and made available for public review and comment pursuant to 6 N.Y.C.R.R. § 617.12. (Riverkeeper (11-12-2013))

Response:

SEQRA requires a public comment period of thirty (30) days from the filing and circulation of the notice of completion of the DEIS. 6 N.Y.C.R.R. § 617.9(a)(3). The Town Board, acting as Lead Agency, accepted the DEIS as complete, scheduled a public hearing on the DEIS and then held the public comment period open for nearly two months. The responses set forth in this FEIS adequately and accurately respond to all comments received during the extended public comment period. In accordance with the Town Board's response to Comment HK-4, above, the Town Board finds no reason to re-open the public comment period.

Comment HK-6

D. The SWPPP Must Provide Critical Information that is Missing from the DEIS

For these reasons, as lead agency, the Town of Board must require the applicant to submit a detailed SWPPP and Erosion and Sediment Control Plan for public review prior to preparing an FEIS for the proposed Crossroads 312 Project. (Riverkeeper (11/12/2013))

Response:

The local site plan approval process requires that the SEQRA process be completed before the Town Board can take action with respect to a proposed site plan for the Crossroads 312 Project. See TOWN OF SOUTHEAST, CODE §§ 138-41(E)(2)(c)(3), 138-48. The SWPPP associated with the Crossroads 312 Project, which shall be a part of the proposed site plan, will be reviewed in detail when the site plan goes through the formal site plan review process. The proposed site plan, and proposed SWPPP, will also be submitted to the NYSDEC and NYSDEP at that time for independent review and comment.

Comment HK-7

V. The Town Board Has the Authority to Require the Applicant to Provide Missing Information Subject to Public Review Before Finalizing the EIS.

The Town Board has ample authority to require the Applicant to provide information missing in the DEIS and to make that information available for public review. Even after acceptance of the DEIS, the Town Board as lead agency retains authority to require the project applicant to provide supplemental information essential to review and evaluation of significant adverse environmental impacts. Matter of Bronx Comm. For Toxic Free Schools v. New York City School Construction Authority, 981 N.E.2d 766 (N.Y.2012) (requiring agency to supplement an EIS to include information on methods for long-term maintenance and monitoring of mitigation controls); see also Matter of Sour Mountain Realty, Inc. v. N.Y..State Dept of Env'tl. Conserv. 688 N.Y.S.2d 842 (N.Y. App. Div.1999)(upholding agency requirement that the applicant prepare supplemental environmental review nearly two years after acceptance of the DEIS). (Riverkeeper (11/12/2013))

Response:

The Town Board carefully considered the DEIS for completeness, having rejected it on two occasions before accepting it as complete. As previously stated in the responses to Comments HK-4, HK-5 and HK-6, the Town Board has taken the requisite hard look with respect to the storm water management impacts associated with this application and has identified the mitigation measures that will be used to address those issues at the formal site plan phase. Moreover, the public comment period on the DEIS is now closed. The Town Board also notes that neither decision cited in Comment HK-7 stands for proposition for which it is cited. Rather, these cases deal with a lead agency's authority to require a Supplemental Environmental Impact Statement, after the filing of a FEIS, where a change in circumstances or newly discovered information compel the lead agency to investigate an issue that was inadequately discussed or not addressed in the filed FEIS. Neither case exists here.

Comment HK-8

The Town Board also has authority to extend the timeframe for SEQRA review. The timeframe for finalizing an EIS may be extended by the lead agency "if it is determined that additional time is necessary to prepare the statement adequately." 6 N.Y.C.R.R. § 617.9(a)(5)(ii). The lead agency should not place timeliness concerns over ensuring proper environmental review:

"(A) An important consideration, which bears repeated emphasis when discussing the issue of timeliness in completing the SEQRA process, is SEQRA's overriding requirement that agencies affirmatively consider environmental

factors when undertaking or approving actions. Accordingly, agencies (and, of course, applicant) should be wary of ignoring a potentially significant environmental issue simply in order to meet a SEQRA time frame.

Gerrard, et al., Environmental Impact Review in New York (2012)§.13(3).
(Riverkeeper (11/12/2013)

Response:

The Town Board, acting as Lead Agency, has closed the public comment period, identified all comments through the consultant reviews and has directed that the FEIS be prepared. In light of its responses to Comments HK-4, HK-5, HK-6 and HK-7, the Town Board finds that extension of the SEQRA timeframe is neither desired nor required for this application.

Comment HK-9

*“More importantly, the Town Board cannot satisfy SEQRA simply by including the missing information in final EIS. **Webster Associates v Town of Webster, 451 N. E. 2d 189, 192 (N.Y.1983)** (“the omission of a required item from a draft EIS cannot be cured simply by including the item in the final EIS”). In order to satisfy SEQRA, the Town Board must require the Applicant to submit the missing information for public review and comment before finalizing the DEIS. (Riverkeeper (11/12/2013)*

Response:

All relevant information necessary for the Town Board to make its SEQRA findings has been included in the DEIS and FEIS. In line with its responses to Comments HK-4, HK-5, HK-6 and HK-7, the Town Board finds there to be no missing information for inclusion in the DEIS or submission for public comment.

Comment HK-10

Is the plan proposed in the DEIS considered the final plan? How likely is the plan to change between the zone change and site plan approval? (Catherine P. Croft (11/11/2013)

Response:

The plan shown in the DEIS has been modified as part of the review process. The FEIS reflects the applicants preferred plan for construction however, the site plan review process may result in additional changes to the plans. The plan proposed in the DEIS is not the final plan. Projects typically evolve as they move through the SEQRA process in response to comments from the Town and public. As such, the Proposed Project has been revised since the issuance of the DEIS. It is anticipated that further changes will be

made as the Project proceeds with Site Plan and Special Permit approval. However, any further changes would be limited by the requirements of the Findings Statement.

Comment HK-11

Will the project include exterior solar lighting or other LEED elements? Does the proposed stormwater design meet the stormwater requirements of the LEED system? (Lisa Eidlin McCarthy (11-11-2013), (Public Hearing Comments 11/07/2013)

Response:

The project exterior lighting will be an energy efficient LED light fixture to reduce energy usage. The stormwater facilities will meet NYSDEC and NYCDEP requirements which meet the LEED requirements for peak flow reduction and quality improvement.

Comment HK-12

What was the zone when the property owner purchased the property? ((Lisa Eidlin McCarthy (11-11-2013), (Lynn Edelson (11/11/2013)

Response:

The northeastern half of the property was owned by the Warm family prior to 1985 when the property was zoned M-2 (Manufacturing). This property was rezoned to OP-1 in or about 1991. The southwestern half was purchased in the 1990's when the property was zoned OP-1. The full property was the subject of a conditional rezoning to HC-1 adopted September 19, 1996. The owner on the southwestern side submitted a full site plan application and Public Hearing was held on the HC-1 zone application in compliance with the conditional rezoning. However, by 2001, the property reverted to OP-1. It was to RC rezoned in or about 2004, following the adoption of the 2002 Comprehensive Plan.

Comment HK-13

14. *Is there going to be a signed agreement by the applicant to use local construction workers and building supplies? (Samantha Jacobs (11/08/2013),(Lynn Edelson (11/11/2013), (Public Hearing Comments (11/07/2013)*

Response:

The applicant has typically used local workers, suppliers and contractors wherever possible on past projects and would anticipate doing so again.

Comment HK-14

How will the developer be held accountable for promises that are not met and tax revenue targets that are not met? (John Lord (11/04/2013), (Public Hearing Comments 11/07/2013)

Response:

First, any Site Plan approved by the Town includes commitments for highway improvements, stormwater facilities, water supply, sanitary sewer, landscaping and site lighting that must be installed in order to receive a Certificate of Occupancy. Second, the tax revenue projections are estimates based on current information and ultimately the assessment of the Tax Assessor. The calculations herein are conservative and historic experience from other projects indicate that revenue is generally higher than projections. The more successful the project; the higher the tax revenues.

Comment HK-15

Who will pay for traffic remediation work that will be required? I believe that the consultant said that work will have to be done at 13 intersections. (John Lord (11/04/2013), (Public Hearing Comments (11/07/2013

Who will have to pay to maintain those improvements at the 13 intersections? (John Lord (11/04/2013)

Response:

The applicant will be responsible for the funding for the installation of all improvements. However, the applicant is not precluded from pursuing grants or other funding as many of the required improvements will benefit the overall roadway system. Any pursuit of grants will be at the applicant's time and expense, except to the extent that any grant or funding application requires a local or county sponsor. It is anticipated that the maintenance of state highway improvements will be undertaken by NYSDOT.

Comment HK-16

Is any land owned, maintained or operated as part of Tilly Foster Farm proposed to be used for this project including traffic improvements? (Christine and William Capuano (10/24/2013), (Public Hearing Comments (11/07/2013)

Response:

No, this project does not affect lands of the Tilly Foster Farm in any way.

Comment HK-17

Are there any tax abatements being offered to the project? Are there any proposed tenants eligible for tax abatements? (Nancy Teague (9/16/2013), (Christine and William Capuano (10/24/2013)

Response:

No, there are no tax abatements associated with this project.

Comment HK-18

Does rezoning this parcel set a precedent for future rezoning? What happens if one project is approved and another denied in the future? (Cherie Ingraham (11/11/2013), (Public Hearing Comments (11/07/2013)

Response:

Granting the zone change application for this project will not create an absolute precedent for granting future rezoning applications. Although precedent is a factor in deliberating on future applications, every application for rezoning would need to be reviewed on its own merits, based on the facts and circumstances specific to that application, and evaluated for consistency with the Town's Comprehensive Plan.

Comment HK-19

What is the capacity of the Terravest Water Storage Tank for fire fighting? Will this serve Terravest Phase 1, 2 and 3 as well? What is needed to provide adequate protection to all three phases as well as Crossroads 312? (Public Hearing Comments (11/07/2013)

Response:

The fire protection system at Terravest includes a 500,000+/- gallon storage tank and pumps needed for fire protection. The tank was sized to address the needs of all of Terravest and the vicinity if needed. Hydrants and pipes will be extended to the project.

Comment HK-20

What rights do the people and Tonetta Lake have to their view? Do the people in Tonetta Lake Heights who bought homes, believing that their view would be protected by the Town Board, have a right to that view? (Public Hearing Comments (11/07/2013)

Response:

In general, the existence of a view from a residence or place of recreation does not confer a right on the property owner or public, as the case may be, to own or control that view. In any event, people using Tonetta Lake will not have a view of the proposed project. The buildings and structures associated with the project are being designed and configured such that they will be recessed below the ridgeline, reducing the visual impact associated with the project.

Comment HK-21

Have any tenants been identified? (Public Hearing Comments(11/07/2013)

Response:

Several retail groups have expressed interest but there are no known tenants at this time.

Comment HK-22

Can anything be done to address the increase in garbage on the side of the road? Who is responsible to pick it up? (Public Hearing Comments (11/07/2013)

Response:

Comment noted. This comment is not within the scope of the FEIS.

Comment HK-23

Why is the Route 312 road surface so rough? Who maintains it? (Public Hearing Comments (11/07/2013))

Response:

Comment noted. This comment is not within the scope of the FEIS.

Comment HK-24

Is it possible to integrate the YMCA into this project?

Response:

The YMCA is not part of the project and have not expressed interest in this location.

Comment HK-25

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.

Comment HK-26

Who is going to hold the developer responsible if he doesn't install these lights and plant the buffer trees? Will the penalty be severe enough to force him to comply? (Public Hearing Comments (11/07/2013))

Response:

The town requires that the planting be counted and confirmed and all aspects of the site plan are consistent with the Approved plans as part of the certificate of Occupancy and Bond Release process. Over time, this process has proved to be quite effective.

Comment HK-27

Given the trend for e-commerce, why does the developer think they can get tenants and that the town can support more retail? (Public Hearing Comments (11/07/2013))

Response:

Although e-commerce has changed the way some consumers receive goods, conventional bricks and mortar stores are still operating and selling goods to the public. In addition, many goods are best purchased locally. The applicant's market research indicates that the project will easily find tenants once approved and will be successful.

Comment HK-28

Also, in the introduction tonight with one of the consultants, he mentioned it was going to be high end development, and I'm curious as to the definition of high end? (Public Comments (11/07/2013))

Response:

The consultant was referring to the building style and materials as shown on Illustrations 1 through 9.