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PRIVILEGED & CONFIDENTIAL

October 14, 2014

Via Email and Regular Mail

Mayor Ralph Falloon and Board of Trustees
Village of Cold Spring
Village Hall
85 Main Street
Cold Spring, New York 10516

Dear Mayor Falloon and Members of the Board of Trustees:

The Board of Trustees has requested that we address questions that have arisen relating to the extent of the Planning Board's authority to be exercised during site plan review for the Butterfield Redevelopment. Specifically, Trustee Hawkins believes there may have been some confusion by yet to be identified Planning Board members.

Notably, there has been a great deal of misinformation about this issue, including a suggestion that any alleged misunderstanding or uncertainty by Planning Board members as to the extent of their authority during site plan review could put at risk or compromise the Planning Board's review as Lead Agency under the State Environmental Quality Review Act ("SEQRA") of the Butterfield Redevelopment. In particular there has been a suggestion by Trustee Hawkins that the so called "mass and scale" of the Butterfield Redevelopment was not considered during the SEQRA review process. This represents a fundamental misunderstanding of SEQRA requirements and of the SEQRA review process that was diligently undertaken by the Planning Board.

As discussed more fully below, the Planning Board complied with all substantive and procedural requisites of SEQRA when it adopted its Negative Declaration of Significance for the Butterfield Redevelopment on February, 19, 2014. The Planning Board's Negative Declaration remains a legally binding final determination that is also binding on all Involved Agencies, such as the Board of Trustees,

and it has never been legally challenged. It also represents many months of very hard work by a volunteer board, involving the review of environmental impacts for a project with procedural and technical complexities rarely encountered by a village like Cold Spring.

Throughout this process we advised the Planning Board of its Lead Agency duties and legal requirements under SEQRA. As such, we have and will continue to protect the legal interests of the Village with respect to its review of the Butterfield Redevelopment and advise Village Boards we represent of all legal requirements that apply to their reviews and land use approvals.

B-4A Zoning Amendments-Background

Much of the history related to efforts by property owner Butterfield Realty to redevelop the Butterfield site preceded our representation of the Village that commenced on August 2, 2013. The record reflects that the current Butterfield Redevelopment proposal and Concept Plan¹ resulted from the participation of Village officials, residents and consultants in a lengthy review process that considered various development schemes at numerous public meetings and a community charette.

On May 7, 2013, proposed legislation was unanimously introduced by the Village Board of Trustees (Village Resolution 24-2013)² that would create a new “conditional” B-4A Zoning District to change the zoning designation of the majority of the Butterfield site from Zoning District B-4 to Zoning District B-4A (Medical and Health Care Facility Mixed Use District) and a small portion of the Butterfield site along Paulding Avenue from B-4 to R1, and that required approval of a site plan that substantially conformed to the Concept Plan annexed to the proposed local law (“Proposed B-4A Zoning Amendments”). At the same meeting, the Board of Trustees adopted a resolution declaring its intent to be Lead Agency under SEQRA for a coordinated review with regard to the Proposed B-4A Zoning Amendments and directed that notice be circulated to all involved and interested agencies.

Shortly thereafter on June 26, 2013, the Board of Trustees rescinded its resolution to be Lead Agency to allow the Planning Board to circulate its own notice of intent to be Lead Agency for the Butterfield Redevelopment. On July 31, 2013, Butterfield Realty assumed the designation of “applicant” with respect to the Proposed B-4A Rezoning Amendments and reviews associated with other Village land use approvals so that the Village could be reimbursed by Butterfield Realty for the Village’s legal and other consultant costs associated with review of the Butterfield Redevelopment project.

SEQRA Review by the Planning Board as Lead Agency

On August 2, 2013, our firm was engaged by the Village to provide legal assistance and advice to the Board of Trustees, Planning Board and to other Village officers and boards, as well as to attend

¹ The Concept Site Plan was prepared by Stephen Lopez, Landscape Architect (Tim Miller Associates Inc.), dated January 18, 2013 and last revised on May 6, 2013. The proposed redevelopment of the Butterfield site as shown on the Concept Plan contemplates a 15,000 square foot office retail building located off Route 9D, a 17,500 square foot office retail building and 55 market rate condominium units designated for senior citizens to be contained within 3 building with a resident community center and the existing Lahey Pavilion. Also included were the 3 proposed single-family homes to be constructed along the northern portion of the premises along Paulding Avenue on lots to be subdivided.

² See Resolution 24-2013 “Introduce Local Law Amending B-4 Zoning”, unanimously voted in favor by Trustees Hustis, Campbell, Hawkins, Francisco and Mayor Falloon on May 7, 2013.

meetings as required by the Village in connection with the Butterfield Redevelopment. Subsequently, Planning Board Chairman Barney Molloy asked us to conduct a SEQRA training session for Planning Board members on substantive and procedural requirements and that training was conducted on the evening of August 7, 2013.

In September, 2013, the Planning Board assumed the role of Lead Agency and commenced SEQRA review of the Butterfield Redevelopment, including review of Butterfield Realty's Expanded Environmental Assessment Form ("EAF") (after the Board of Trustees rescinded its resolution declaring its intent to be Lead Agency and the Planning Board circulated its notice of intent to be Lead Agency to all involved and interested agencies and receiving no objection thereto). At that time and throughout the SEQRA review process we advised the Planning Board of its Lead Agency duties and legal requirements under SEQRA. We advised that a determination of significance (whether or not to issue a positive declaration or issue a negative declaration) must be initially made by the lead agency, to require an Environmental Impact Statement ("EIS") for a proposed action the lead agency must determine that the action may include the potential for at least one significant adverse environmental impact [6 NYCRR § 617.7(a) (1)] and to determine that an EIS will not be required for an action, the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant [6 NYCRR § 617.7(a) (2)]. The Planning Board was also advised that in making its determination of significance it must consider and review the EAF and any other information provided by the applicant, comments by involved and interested agencies, and the public; it must "thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment;" and set forth a "reasoned elaboration" of its determination in writing [6 NYCRR § 617.7(b)(1)-(4); 6 NYCRR § 617.7(c)].

As Lead Agency, the Planning Board was tasked with conducting a thorough review of potential environmental impacts associated with the Butterfield Redevelopment as shown on the Concept Plan ("Butterfield Redevelopment" or "Action") and to base its SEQRA Determination of Significance on the record of that review. Over a period of almost six months, the Planning Board conducted its review of the EAF and potential environmental impacts associated with the Butterfield Redevelopment and over that period a significant SEQRA record emerged, in large part due to the applicant's responses to questions raised by the Planning Board as Lead Agency. Again, we consistently advised the Planning Board members of their duties in accordance with the procedural and substantive requisites of the SEQRA regulations and Charles Voss of Barton & Loguidice, as Planning Consultant, assisted the Board with all technical aspects of that review in accordance with those requirements.

Potential community character impacts, potential visual impacts and the "mass and scale" of the Butterfield Redevelopment were reviewed throughout the SEQRA review process and the applicant was requested to provide additional information to enable thorough study of these potential impacts. In fact, the extensive amount of documentation reviewed and/or produced by the Lead Agency during the SEQRA review process, including Planning Consultant's memos and the applicant's responses, the EAF and in particular Part III of the EAF, the Negative Declaration, and the Lead Agency's comprehensive resolution accompanying the Negative Declaration, demonstrate the extent to which the Lead Agency thoroughly reviewed and considered all potential environmental impacts associated with the Action.

On February 19, 2014, the Lead Agency unanimously adopted a Negative Declaration determining that the Action will have "no significant adverse environmental impacts." This is a legally binding

determination of the Lead Agency supported by a SEQRA record that demonstrates the Planning Board fully complied with the substantive and procedural requisites of SEQRA. Further, if at that time there was any confusion whatsoever with regard to the Planning Board's site plan review authority and/or when the scope of that authority would ultimately be determined, it was completely irrelevant to the Lead Agency Determination of Significance under SEQRA.

Planning Board Recommendations on Proposed B-4A Zoning Amendments and Adoption of Legislation by Board of Trustees

The Planning Board also had the opportunity to provide advisory comments to the Board of Trustees in accordance with Village Code §134-32 on the Proposed B-4A Zoning Amendments, including the Concept Plan. The Planning Board was advised that this would be an opportunity for the Planning Board to recommend changes to the proposed legislation and the Concept Plan. Of course the Board of Trustees as the legislative authority in the Village was not bound by such recommendations, but did duly consider same.

After crafting a very detailed and thoughtful advisory memo over a number of meetings, the Planning Board thereafter by a majority 4 to 1 vote approved the memo to the Board of Trustees that expressed their concerns with regard to the Proposed B-4A Zoning Amendments, including the Concept Plan and recommendations on how the Planning Board believed the Amendments could be improved. The Planning Board acknowledged that its ability to modify aspects of the Concept Plan during site plan review was significantly constrained and restricted under the Proposed B-4A Zoning Amendments and among its many other recommendations was that the adopted legislation give it greater ability to modify aspects of the Concept Plan during site plan review. The memo also recognized that the extent of the Planning Board's authority to modify the Concept Plan during site plan review would be dictated by the rezoning legislation in its final form to be adopted by the Board of Trustees.

Thereafter, the Board of Trustees and Planning Board convened a joint meeting to discuss all recommendations set forth in the advisory memo. Over several subsequent meetings the Board of Trustees discussed the proposed legislation, possible revisions to the legislation, and we prepared revised drafts of the legislation for the Board of Trustees to review and consider, as directed. A public hearing was held on the revised B-4A legislation on April 29, 2014. The Proposed B-4A Zoning Amendments, as last revised on April 30, 2014 ("Adopted B-4A Zoning Amendments") were adopted by the Board of Trustees by a 4 to 1 vote in favor on May 11, 2014. The resolution of approval (Village Resolution 18-2014) that accompanied the legislation and was submitted to the Board of Trustees in draft form in advance of the meeting, memorialized the procedures followed and confirmed that all legal requirements had been satisfied.

The Adopted B-4A Zoning Amendments reflect some of the Planning Board's recommendations as set forth in the advisory memo. However, the Board of Trustees did not modify the Concept Plan that remains unchanged from when the Proposed B-4A Zoning Amendments were introduced as a proposed local law. The Adopted B-4A Zoning Amendments did not change in any way the main premise of B-4A, that conditional zoning requires approval of a site plan that substantially conforms to the Concept Plan. Although the adopted legislation expressly authorizes the Planning Board, in the case of unanticipated site conditions or aesthetic considerations, to move buildings up to 25 feet in any direction and change building orientation by up to 15 degrees under such specific circumstances, it is our view that the adopted

legislation imposes strict constraints on the Planning Board's ability to modify the Concept Plan during site plan review.

September 17, 2014 Planning Board Meeting

At the September 17, 2014 Planning Board meeting during review of Butterfield Realty's site plan submission, members asked for clarification regarding the Planning Board's authority to decrease the size of the buildings shown on the site plan. We discussed the Adopted B-4A Zoning Amendments and explained our view that under that legislation the Planning Board could not require the applicant to decrease the size of buildings as shown on the Concept Plan, although the applicant could voluntarily choose to reduce the size. There were questions posed about the extent of the Planning Board's authority to modify the Concept Plan during site plan review and it appeared that there was some confusion about constraints imposed by the Adopted B-4A Zoning Amendments.

At least one member felt that the Planning Board had authority to require a reduction in the size of buildings as shown on the Concept Plan or to reduce the "mass and scale" of the Concept Plan during the site plan review process. There was discussion about seeking clarification from the Board of Trustees on the intent of certain provisions of the Adopted B-4A Zoning Amendments. The Planning Board then requested advice of counsel on the legal issues presented.³ After the public portion of the meeting resumed, the Planning Board voted not to refer this question to the Board of Trustees, but instead, a majority voted to accept Butterfield Realty's site plan application as a formal submission and the applicant was also directed to submit site plans to the HDRB.

For purposes of clarification, it is our view (and the Planning Board was advised) that Adopted B-4A Zoning Amendments do not authorize the Planning Board to require a decrease in the size of buildings from what is shown on the Concept Plan, although the applicant itself can decrease the size of buildings on the proposed site plan but is constrained not to increase building size. Although this interpretation may not be favored by some Planning Board members, we feel this is a reasonable interpretation of the Adopted B-4A Zoning Amendments, particularly given our role in drafting revisions to the Proposed B-4A Zoning Amendments and also that conditional B-4A Zoning mandates approval of a site plan that substantially conforms to the Concept Plan. We have also consistently advised the Planning Board that they are not a legislative body and must apply legislation that is adopted by the Board of Trustees although they may not agree with it. Again, the extent of the Planning Board's ability to make changes to the Concept Plan during site plan review and to specifically address "mass and scale" could only be determined by the final legislation adopted by the Board of Trustees.

Please be assured that we have and will continue to advise the Planning Board to exercise their authority reasonably, in full compliance with the law, and with an understanding of what those requirements are. The technical standards and legal complexities and other intricacies associated with review of a project like the Butterfield Redevelopment are substantial, particularly here when the Village is not accustomed to reviewing such projects. Under such circumstances it is not at all unusual that misunderstandings could occur.

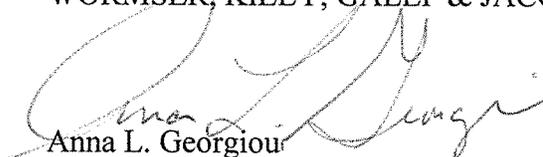
³ A private session for advice of counsel is a recognized exception to the New York State Open Meetings Law.

WORMSER, KIELY, GALEF & JACOBS LLP

We would also like to assure the Board of Trustees and Planning Board, and also on behalf of Planning Consultants Barton & Loguidice, that we have endeavored to provide the best possible legal and technical advice that protects the Village and is in the Village's best interest and thank you for this opportunity to provide the necessary clarification with regard to this matter.

Very truly yours,

WORMSER, KIELY, GALEF & JACOBS LLP


Anna L. Georgiou

cc: Charles A. Voss, Barton & Loguidice
Chairman Molloy and Members of the Planning Board
Daniel Pozin, Esq.

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