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10 April 2007

Mr. Don Bartles, Chairman, and Members of the Board
Town of Pine Plains Planning Board
Pine Plains Town Hall
3284 Route 199
Pine Plains, New York 12567

Re: *Pine Plains United - Comments on Completeness of Preliminary DEIS*
Project Name: Carvel Property Development
Applicants: 1133 Taconic, LLC & Landmark Land Company, Inc.
Premises Location: Town of Pine Plains, Dutchess County, New York

Dear Chairman Bartles and Members of the Board:

Summary

This firm represents Pine Plains United (PPU). I write to advise you of significant technical defects in the Preliminary Draft Environmental Impact Statement (PDEIS). These defects are identified and discussed in two attached reports written by expert consultants for PPU. The defects are technical, not substantive, and unless corrected, they will undermine the integrity of the forthcoming substantive public comment. On behalf of PPU, I urge you not to declare that the PDEIS is complete and suitable for public comment until the Applicant corrects those defects.

The Reports of the Environmental Simulation Center, Ltd. & Elan Planning & Design, Inc.

The Environmental Simulation Center (ESC) specializes in visual resources and impact analysis. ESC's George Janes, AICP, reviewed Chapter 7 and Appendix 7.1 of the PDEIS. According to Mr. Janes, there are "fundamental errors in the visual simulations and/or viewshed analyses" in the PDEIS. These errors include critical defects in both assumptions and the methodology used to create the PDEIS visual simulations. Mr. Janes states that "[t]his letter makes no substantive comments as to impacts on visual resources *as those impacts cannot be accurately described using materials published in the PDEIS.*" (Attached ESC Report, pages 1, 16) (Emphasis added)



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Elan Planning & Design, Inc. (Elan) is a planning and design firm. Elan's Lisa Nagle, AICP, supports ESC's findings regarding the defects in the visual impact analysis. She also identifies significant incomplete data regarding the fiscal impacts of the attached and semi-attached residential units. And perhaps most importantly, Ms. Nagle demonstrates, using specific examples, that the PDEIS fails to comply with the express requirements of the final scope by failing to "describe the relationship and evaluate the compatibility of this project with local, county, regional, and State land use studies and plans including ... the draft Town of Pine Plains Updated Comprehensive Plan ..." (Attached Elan Report, page 3)

Completeness is Important Because it is a Building Block

The regulations require that "an EIS must assemble relevant and material facts upon which an agency's decision is to be made."¹ While the PDEIS is not required to be "perfect", it should contain the degree of detail which reflects "the complexity of the action and the magnitude and importance of likely impacts."² And of course, the DEIS should contain accurate and correct information.

Any SEQRA review is a sequential process. The integrity of each step is dictated by the integrity of the previous step. A fundamental defect in the foundation of a building will undermine the integrity of an entire building no matter how well it is otherwise built. The same is true here. If the technical part of the DEIS is defective, that defect will affect the integrity of the substantive review. Meaningful and effective public comment simply cannot be made on an inaccurate or incomplete document. Moreover, allowing technical defects to carryover into the substantive step of the review perverts its function by focusing on the technical rather than the substantive. Consequently, the technical defects identified in the attached reports must be corrected to insure the integrity of the process as it moves into the substantive public comment phase.

Time is the Tail, Not the Dog

Finally, a few words about time. I have 20 years of experience in the field of SEQRA review and have participated in the reviews of residential projects even larger than that proposed by Carvel. I can assure you that the duration of the completeness review is normal given the scale and complexity of this project. More importantly, with SEQRA, "the overriding interest in ensuring that SEQRA's environmental mandates be upheld, outweighs concerns over undue delay."³ This is a huge project with huge potential adverse impacts and a correspondingly complex PDEIS. Don't let the tail wag the dog by curtailing your completeness review due to time concerns.

I urge you to take the time necessary to perform your completeness review properly. The future of Pine Plains depends on it.

¹ 6 NYCRR 617.9(b)(1).

² SEQR Handbook, Nov. 1992 Ed., Ch. 5, p. 70

³ Gerrard, Ruzow, Weinberg, *Environmental Impact Review in New York*, Rel. 16, July 2006, §3.13[3], citing as examples, ECL § 8-0109(5), 6 NYCRR 617.14(b).



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Very truly yours,

GRANT & LYONS, LLP

JOHN F. LYONS

cc: Warren S. Replansky, Esq.,
Nan C. Stolzenburg, AICP,
Town of Pine Plains Town Board
Town of Milan Town Board
Town of Milan Planning Board
Greenplan, Inc.
Pine Plains United

