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Date: Wed, Nov 18, 2020 at 6:23 PM

Subject: Comments to DGEIS/FBC

To: <[publiccomment@mynewcastle.org](mailto:publiccomment@mynewcastle.org)> ,

<[chappaquaforward@mynewcstle.org](mailto:chappaquaforward@mynewcstle.org)>

Please see the attached.

Maryanne and Thomas O'Connor

November 18, 2020

**Via E-Mail**

Members of the New Castle Town Board  
Town of New Castle  
200 South Greeley Avenue  
Chappaqua, NY 10514

Re: Chappaqua Hamlet Form Based Code  
Comments to Draft Generic Environmental Impact Statement

Dear Town Board:

We write regarding the Draft Generic Environmental Impact Statement accepted by the Town of New Castle Town Board (the "Town Board") on September 25, 2020 (the "DGEIS"). The proposed legislative action would abolish the current zoning laws and adopt a developer-centric Form-based Code ("FBC") for the Town of New Castle. The FBC, as drafted, and the scope of the project outlined in the DGEIS, will negatively impact the environment of the Chappaqua hamlet. The most cursory reading of the FBC and DGEIS show the need for further study and analysis by competent professionals to assess the consequences of these fundamental changes now being considered by the current Town Board.

We have no business or financial interest in the Chappaqua hamlet, but we do have an interest in supporting and maintaining the downtown businesses and not losing them because of the impacts that will result from the current iteration of the proposed form based code: impacts due to construction, parking, traffic, among other issues. The timing of this proposal is also rash due to the COVID-19 pandemic, and because the totality of the Chappaqua Crossing development has yet to be determined on the downtown hamlet businesses.

We outline our preliminary opposition to the FBC and DGEIS in the substantive comments below. Additional substantive comments will follow within the time prescribed for the public comment period.

**A. The DGEIS Is Developer-Centric and Deprives the CCSD and the Community the Ability to Control Developments in the Hamlet.**

The most critical aspect of SEQRA is to ensure that residents' concerns are addressed before major developments are imposed on a community. New Castle currently has its own environmental review process which allows the community and CCSD to weigh in on potential impacts on a project by project basis. It further grants the town the right to refuse projects which would have a negative impact. **The proposed developer-centric FBC would obliterate these environmental safeguards. If enacted, the FBC will permit developers to construct large projects "as of right." The result will be that developers, with no connection to our community, will have**

**the “right” to construct buildings with little or no opportunity (or enforcement power) for the community or planning board to study the project’s impact and modify plans accordingly. In fact, only those property owners who are “adjacent” to new large-scale projects are required to be “notified” of any such project.**

The FBC represents an extreme departure from the public control Chappaqua has historically maintained over development in our hamlet. It will affect all aspects of our life in Chappaqua - from school enrollment, to traffic congestion, to the loss of green space and parking. Impacts that would traditionally and rationally have been approved under a SEQRA review basis are now left to the discretion of developers. The purported safeguards in the DGEIS are without any meaningful force. For example, section 2.B.1.f. of the DGEIS purports to address the lack of environmental review by stating that some future development proposals may need to conduct some additional review. This section, however, fails to specify which projects would be required to undergo more strenuous environmental review, nor does it provide any discernible standard for what circumstances would trigger this provision. The section is crafted to favor developers in all significant respects; specifically stating that: (1) “The Development Department will determine whether the application is for a “by-right” use, and for which the procedures in the new Code will apply”; (2) Section 60-840.A.(3): the “Development Department shall determine whether the application is for a by-right use;” and (3) Section 60-840.B(7): the allowed by right does not require the submission of additional SEQRA documentation if the “Director of Planning” finds that the actions fall within the environmental parameters. These provisions should be clarified.

The public and CCSD will not learn about major projects the “Director of Planning” has greenlighted for development until the findings statement, at which point it will be too late for the community and CCSD to debate and, if necessary, oppose new development. The commonsense approach is not for a community to forfeit its inherent and fundamental environmental control over its community to developers. The proposed code should specify that all projects shall require SEQRA review in our hamlet.

We note that the Village of Port Chester (population greater than 29K) recently enacted a form based code - the initial drafting of the Port Chester form based code likewise contained an “as of right” build provision, but the Board of Trustees of Port Chester modified its code to remove the “as of right” provision. I spoke to Eric Zamft, Director of the Port Chester Department of Planning & Economic Development who pointed me to the answer the Village of Port Chester gave in response to these same concerns:

*“The Village is in agreement that a key component of the SEQRA process is to ensure that community concerns are addressed. Future site-specific applications will still undergo a SEQRA review and the community will remain involved in the process.”*

The Town Board has made a host of unsubstantiated public representations that “this is not a construction project and [it] will take 10-15 years [to reach maximum build out].” There is no support for the Town Board’s position, and code alterations in other municipalities demonstrate the speciousness of these claims. For example, New Rochelle recently enacted a similarly developer-centric overlay zone and reached its maximum buildout within twelve months. Without the safeguards of the public’s right to know and its feedback, the developers will build at a pace and scale that will exceed the Town’s capacity, a growth that will overwhelm our school district’s

capacity to absorb the additional new students with little or inadequate notice and still maintain its current exemplary standards. The pace and scale of construction will be such that no amount of mitigation can prevent traffic and parking congestion and a catastrophic impact to the existing small businesses in the hamlet. Removing the “as of right” element to the FBC will mitigate these issues.

Lastly, we would like to address the conflict of interest issues with respect to the downtown working group that drafted the FBC in relation to the “as of right” provisions. Specifically, the downtown working group was comprised of (1) members of the town board, (2) members of the planning board, (3) paid consultants, (4) developers who have a financial interest in the outcome of the legislation and (5) an architect who likewise has a financial interest in the outcome of the legislation (and who has worked on development projects with at least one of the developers noted in (4)). To illustrate for the board how this conflict of interest is problematic to residents who were not invited to sit on the downtown working group, i.e., every other resident in New Castle, we direct you to comments made at the downtown working group on January 14, 2020 (beginning at approximately 40:00: [https://www.youtube.com/watch?v=jsPm-wh\\_fAo](https://www.youtube.com/watch?v=jsPm-wh_fAo)). The discussion concerned the fact the draft FBC did not provide for notice and a public hearing for each proposed new development. One member of the planning board indicated that less public input for each project would be “doing a disservice to the community”; a second planning board member said, “I think it might be better to have the ability to have some sort of input from the public.”

Ms. Katz asked the consultant what a “happy medium” would be, and the consultant replied, “it varies a lot with the community – in larger jurisdictions...they are done administratively...in smaller towns where you have very active citizenry, usually they want to be more involved.” On this critical issue of citizen involvement in the process, the Town Board rejected the input of our planning board and, instead, deferred to the outside developer and architect who have a financial interest in the construction of sixty-foot buildings in our hamlet, one of whom made the following remarks:

[T]hese are strips that are surrounded by residential properties; I guarantee you that they’re not going to be happy, as they were with 91 Bedford, with a commercial development that changes the character of that lot; I don’t believe that we should be bending at each one of those...coming out and saying, ‘why is this building so big?’

To overcome citizen input that might “bend” a developer’s autonomy, the FBC was crafted to eliminate the traditional notice and public hearing safeguards so developers could instead greenlight large scale developments “as of right”. If our active citizenry had been afforded a seat at the downtown working committee table, the FBC would not have been drafted such that it surrenders all our controls and safeguards over to the developers.

The most cursory review of the FBC indicates that in every respect it has been drafted to favor developers, not current residents of New Castle. Please remove the “as of right” build provisions to the FBC, or please clarify why a much smaller hamlet like Chappaqua would be in a position to

sustain rapid growth, in contrast to Port Chester, which removed this type of provision in its form based code.

## **B. The Form Based Code Gives Too Much Liberty to Developers to Avoid Including Retail on the Ground Floor of a Development.**

Section 60-870.E(10) of the FBC states: “Where retail is required in the Regulating Plan, buildings shall be designed to immediately accommodate retail uses on the ground floor, provided, however, that other ground-floor activating uses may occupy the designated retail space, as long as any changes made to accommodate such uses do not prevent a transition back to retail use.” (emphasis mine)

This proviso (underlined section in above paragraph) should be removed, otherwise, the provision permits developers to build four to five story residential buildings without any express requirement to have retail on the ground floor for an indefinite period of time (or ever.) The proviso guts any requirement in the FBC to have retail on the ground floor. If the proviso is not removed, an expiration date should be inserted so that there is not an indefinite use of ground floor space for a purpose other than retail. For example, the provision should include, “provided, however, that other ground-floor activating uses may occupy the designated space for a time period not to exceed one year from the date a certificate of occupancy is issued.”

The consequences for failing to adhere to the above expiration date/deadline should be added to the provision, such that a fine or penalty is incurred for every month the developer/owner fails to convert back to retail after the expiration of the allotted time.

The current draft of the FBC is rife for abuse. By way of illustration, if a developer constructs a residential building that "requires" retail on the first floor, but instead chooses to use the space for a lobby or fitness center (or other “activating use”), he can do so indefinitely and without consequence. The FBC’s language is intentionally disingenuous; specifically, as long as the first-floor lobby or gym does not “prevent a transition back to retail”, the developer is not in violation of this provision. And, even if the developer were somehow to be found in violation of this provision, the FBC provides no consequences for such a violation. In short, the FBC does not compel a developer to put retail on the ground floor; this provision merely requires the developer to build such that the non-retail space can be transitioned to retail. This is a major loophole to the purported FBC’s retail space requirement. We understand some residents are hopeful that the FBC will bring nice restaurants and wine bars to the hamlet so “*we can be like Greenwich*”, but the FBC does not promote retail space on the ground floor of any future development.

The fact we are in a pandemic will only further incentivize developers to use the ground floor for “other accommodating uses”. Since the COVID-19 pandemic, New York State has lost approximately 50% of its restaurants, and a similar catastrophic loss to retail stores. If new buildings are built in our hamlet without retail/restaurants on the ground floor, it will only exacerbate the overall decline of retailers in the hamlet. The loss will create a domino effect because there will be less of a draw for residents who reside outside the hamlet to shop/dine in the hamlet if there are fewer and fewer retailers/restaurants over time. For example, the buildings that house Ibiza and Britches are listed for sale (and the building that houses Petticoat Lane was listed for two years; the listing was removed last month); under the FBC, a developer is permitted to

build a residential building in that location with no requirement to place retail on the ground floor, ever. The loss of small businesses in that section will impact other small businesses; yet, there is no analysis in the DGEIS to address the ramification to small businesses in the current draft of the FBC. There must be further analysis on the impacts to existing small businesses if non-retail “other occupying uses” are permitted on the ground floor of new developments throughout the hamlet. For example, the Town Board should study how the loss of 5, 10, 15, etc. retailers/restaurants over time will impact the remaining small businesses.

### **C. Town Owned Land Should Not Be Rezoned.**

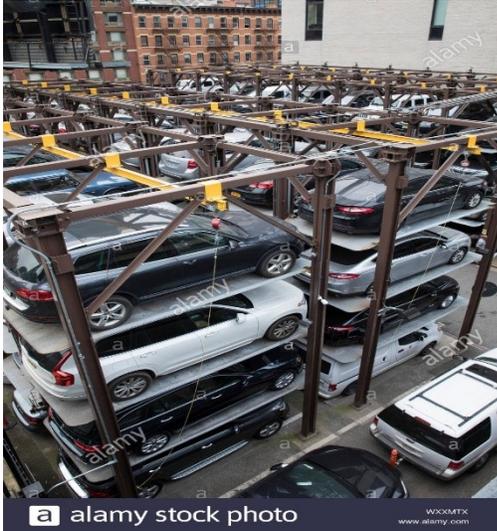
Please remove the town-owned land from the rezoning under the DGEIS and FBC. The town is not ready for the scale and magnitude of development that could come if the Town Board opts to sell off town-owned land at this time. Instead, removal of town-owned land would be an important gesture of re-instilling trust in the Town Board among its constituents.

The train station parking lot is de facto open space - it is open space on weekends where countless parents have taught their children to ride bikes and their teenagers to drive cars. It is the farmers' market and the public space where our civic-building parades finish. When we first closed on our house 18 years ago, we drove up from the city and wound up driving into the train station parking lot to ask for directions. It was filled with parents helping their kids with bike helmets and training wheels. We knew we chose the right town to call home.

Please make a public statement, preferably at the November 24 work session, that **this Town Board will not propose to sell or lease town-owned land without a public referendum on the Town Board's own motion.** (To the town's attorney: Town Board members are certainly permitted to make public statements and promises. They do so all the time! We are not asking for these promises to be included in the FBC, so no memorandum is necessary. Also, now that any vote on the FBC will not occur until 2021, we ask that the four board members who will sit on the board in 2021 make this promise (only three board votes are needed to make this motion).) At the second information session on the DGEIS, the Town Supervisor indicated that she would commit to that (thank you), but the other board members have not publicly made any such a commitment, so we are following up to get a firm commitment on that question. If the Town Board will not make a commitment in this regard, please clarify its position against such a promise.

### **D. Please Remove the Ability for A Developer to Construct Stacker, Hydraulic and Robotic Parking.**

Please revise Section VIII.I.(1) of the FBC to eliminate the ability for a developer to construct stacker, hydraulic or robotic parking or require that any such parking types be located within a building only. The current draft of the FBC requires that any stacker, hydraulic or robotic parking “be located either within a building or behind a building” - please remove the ability to construct such parking structures behind a building. Unless each Town Board member is willing to allow an adjacent neighbor to construct this behind their home:



then the board should remove this provision entirely from the FBC. It is not bucolic, but offensive. You forget that residents reside in the hamlet, not just businesses, and they will have to live with seeing this contraption from their homes. Under the FBC, adjacent residents would receive only notice of such a structure and no public hearing. Also, neighbors who can see this type of structure from their homes but are not “adjacent” would not even have the notice requirement.

I keep hearing the new talking point from the board: *“It is just a draft!! Relax!!! We’re exactly where we need to be!”* That residents are being asked to review and comment on this type of provision in your “draft” is exactly why three attorneys have been engaged to speak on behalf of residents and the CCSD at the public hearings. We really encourage the Town Board to engage with the community on a collective vision for the hamlet; look to other towns, like Armonk, that have bustling retail without dense residential buildings; appoint a resident downtown working group to study the issue.

#### **E. Please Keep the Public Hearing Open to Ensure there is Adequate Public Engagement Following the Final Input from CCSD’s Consultant.**

During the January 14, 2020 downtown working group meeting (link above under section A), one of the planning board members cautioned that if the FBC is drafted in a way that eliminates the notice and public hearing requirements and SEQR review requirements and instead relies solely on this FBC environmental review process as the sole way to engage the public, that only 10% of New Castle residents will be aware of the proposed FBC, and the other 90% will not know about it until five-story buildings are constructed in the hamlet. His comment was made before anyone knew of the global COVID-19 pandemic that was to come, and one can imagine what his estimate regarding public engagement would be now. The Town Board must recognize the lack of public engagement so far in this process; and it would be helpful to know how many residents have attended the information sessions and public hearings (to be clear, how many “unique” residents, as many residents attend more than one or all sessions), and perhaps compare that to the total number of adults who voted in the last election (I understand it was close to 10,000 residents who voted in New Castle on November 3). Please keep the public hearing period open until it can be demonstrated that, at a minimum, the full public has had an opportunity to review and comment on the analysis to be provided by the CCSD’s consultants. **Please advise the public prior to or**

**during your November 24, 2020 work session whether you will leave the public hearing open until such time.**

Thank you for your consideration of the foregoing.

Regards,  
Maryanne and Thomas O'Connor