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via electronic mail only (willowsegr@nassaucountyny.gov)

Nassau County Planning Commission
1194 Prospect Avenue
Westbury, New York 11590

Re: Willow View Estates
DEIS Supplemental Comments
Our File No.: 25558.0068

Dear Commissioners:

I am the Village Attorney for the Village of Woodburgh (the "Village"), and counsel to the Village Planning Board and Zoning Board of Appeals.

On behalf of the Village, the Village of Lawrence, and the Town of Hempstead (the "Three Municipalities"), by letter dated today, Cameron Engineering & Associates, L.L.P. has submitted to the Commission technical comments regarding the Draft Environmental Impact Statement (DEIS). The purpose of this letter is to provide supplemental comments relating to the inadequacy of certain studies or sources and deficiencies in the discussion of potential impacts, which apply primarily to considerations in the Village, and not regionally to the Three Municipalities.

The Village Planning Board and Zoning Board of Appeals are Involved Agencies under SEQRA. The Village Planning Board has subdivision jurisdiction over the 24 single family lots in the Village and approximately 100 of the lots in the Village of Lawrence and the unincorporated area of the Town of Hempstead. As discussed herein (and as we originally noted in our July 15, 2019 letter to the Commission, a copy of which we attach hereto), insufficient detail is provided in the plans (and the DEIS) to determine precisely the lots that are within 300 feet of the Village and thus subject to the Village's concurrent subdivision jurisdiction. And, whether the current or the former zoning regulations apply, the proposed subdivision requires variances from the Village Zoning Board of Appeals, as discussed herein (and indicated in our July 15, 2019 letter).

As Involved Agencies, we submit that all of the Village's comments, in the Cameron letter and below, be addressed in the EIS process. As to the substantive portions of the DEIS (Existing Conditions, Potential Impacts and Proposed Mitigation Measures), we submit the following comments:

Physical Alteration of Land

Comment 1.

The explanation that the property has been filled with sand, 3.5 to 8 inches thick over tidal marsh and wetlands and the soils are limited by tidal flooding during “intense” coastal storms may not be in accord with existing conditions. As reported by former Club members and Club Board members, many areas of the course, especially in the southern and northern portions, suffer from constantly being wet. This would seem to occur from rain events, minor or intense, and continues for days even without any rain event, as well as on certain dry weather days. These conditions may be influenced by a high groundwater table, soils that do not permit water percolation or specific conditions in the area. The source of these conditions must be flushed out. Greater and more detailed analysis for the soggy conditions must be analyzed to determine impacts caused by groundwater and stormwater conditions effecting the property.

Comment 2.

The high water table may impact use of not just basements, but underground facilities and systems. The ability to place on-site drainage facilities on each proposed lot and to assure proper sanitary sewer connections cannot be properly analyzed without further details, including additional borings. Given the proximity to surface waters and limited depth to groundwater in the area, the groundwater elevation must be determined at the site of all bioretention areas by groundwater monitoring (considering tidal fluctuations) for at least a 90 day period, including winter conditions with an appropriate adjustment (if any) to the historic groundwater elevation. To fully address the potential impacts, boring tests should be provided in numerous additional representative locations where there will be potential below grade construction impacts. This should include at least one boring location for each of the 284 sites proposed for new homes and the proposed low points within each of the four (4) bioretention sites. Only a proper evaluation of each location where subsurface water can be impacted can there be a proper review of the impacts and depiction of any available mitigation measures. Among the reasons stated for the claimed non-significant impact related to storm or groundwater based impacts is the ability to convey water to proper drainage facilities. Absent a complete and comprehensive study demonstrating such viability on the respective lots, the DEIS neither contains nor references any support adequate to support the analyses and conclusions.

Comment 3.

On page 70, the DEIS concludes that “it would be anticipated that the ability for the subject property to support typical suburban lawns and landscaping would be limited”, but that “[i]t is clear that any anticipated limitations related to the ability of the

site to support lawns and landscaping for the future residential development have been overcome [on account of the property being used as a golf course for over a century]". The basis for overriding the conclusion of the limitations of grass growing and thriving is because a golf course existed. Contrary to the assertion, the course has been a constant source of water inundation. Members and past Club presidents have identified that the course is constantly flooding, that as a result of this, many golf events had been limited to walking only conditions (no carts) and the Club often discussed the viability of adding cement or asphalt paths for cart usage to overcome the normally soggy conditions. These historical, continuous and repeated soggy conditions must be used when addressing the contention that the lawns and landscaping can be accommodated because of the course's maintained conditions for over a century.

Comment 4.

The DEIS provides that necessary Storm Water Pollution Protection Plans (SWPPPs) will be submitted to the respective municipalities prior to commencement of construction activity. To assess and understand potential impacts related to such pollution protections, plans must be incorporated into the current submission. In fact, the Village of Woodsburgh specifically mandates, in its subdivision regulations, that the SWPPP be provided as a predicate to "the review" of any land development activity, not at a time only preceding construction activity. Village Code §150-75. The lack of any such plan provides no information as to the sufficiency of the plans for environmental review analysis.

Comment 5.

On page 72, in the Topography discussion, the proposed increase in height of the base floor elevation, necessarily limits the potential heights of the dwellings proposed in Woodsburgh. While Woodsburgh specifically requires compliance with the base flood elevation requirements, which would increase the height of the lowest habitable portion of the residences, the total height of the residences is taken from the existing natural grade and the maximum height in the Village's 1A and 2A Zoning Districts is 28 feet from existing natural grade. Accordingly, each of the homes in the Village can contain only 17-19 feet in height of living space (excluding the 9-11 feet necessary to comply with the minimum base elevation). If the applicants propose 2 story houses that are higher than 17-19 feet in living space, variances will be required. This must be addressed so it can be incorporated into the analysis of impacts, both to community character and approvals required.

Comment 6.

The internal roadways are proposed to be elevated significantly. They all sit higher than existing connecting roadways. This will result in potential for greater and higher velocity stormwater flow. Combined with existing flooding conditions on

adjoining roadways, particularly Keene Lane and Meadow Lane, during normal rain events, the changed roadway elevations has the potential to significantly impact roadway drainage capabilities. The analysis must include a discussion of the manner in which this potential impact will be addressed and mitigated, if possible. Photographs of Keene Lane and Meadow Drive after a minor rain event this past February are attached as exhibits A and B, respectively.

Comment 7.

The determination that there will be no significant adverse impacts with respect to subsurface conditions, soils and topography does not account for impacts on adjacent areas resulting from subsurface conditions, soils and the change in topography. In effect, by raising the internal roadways and the property on the newly created lots, this will create both an avenue and impetus for stormwater diversion off-site and into adjoining roadways (which are overly burdened with stormwater during normal rain events) and nearby properties, and potentially act as a dam to prevent stormwater runoff from its natural flow. The potential impacts are significant and may destroy the surrounding neighborhoods. While this appears to be an unavoidable condition, if there are any mitigating measures, they must be identified.

Surface Water, Floodplains, Stormwater, and Groundwater Resources

Comment 1.

A significant portion of the biofiltration area, on which the DEIS relies for stormwater control efforts, is located on property outside of the boundaries of the property owned by the applicant. At the westerly portion of the Woodmere Basin, as indicated in the Nassau County Assessor records, the property lines shown in the subdivision plans differ from the Assessor's records. The plans provide for a significantly larger applicant owned area than is owned by the applicant. This area is part of the Woodmere Basin, owned by a public entity, and is not owned privately. The area, which can be determined by reference to the Assessor's records, must be excluded from the proposed development (and necessarily from the biofiltration area). The impacts of this exclusion, specifically in relation to the adequacy or necessary modification of the biofiltration area, must be identified and analyzed. If additional or different land area owned by the applicant is required for a biofiltration area, the area should be indicated in the subdivision plans and the DEIS should address the adequacy and viability of this area in conjunction with the proposed biofiltration plans.

Comment 2.

The DEIS presumes that the internal roadways will be maintained by the municipality in which the roadways are located. This is a strong presumption. If the roadways are offered for dedication, they still have to be accepted by the municipality

before they become public roadways. The impacts from private ownership of the roadways must be addressed.

Aesthetic Resources

Comment 1.

Supplementing the comments regarding the visual impact analysis, we refer the Commission to the Village's adopted Vision Plan (adopted on December 16, 2019 and link provided below), and particularly to pages 112-115, for photographs that are more representative of the existing visual and aesthetic context. The only path to understand the context of the visual and aesthetic impact is to consider it in context. The bold assertion that there is consistency in aesthetics is not borne of facts or analysis. Consideration of the aesthetics in their existing context is required, and upon such consideration, undoubtedly the proposed action can only result in a significant and unavoidable environmental impact.

The viewshed from all areas impacted by the loss of open space should be depicted. The viewshed can be evaluated only through renderings of the proposed residential development from various viewpoints (including within and abutting the Woodmere Club and accounting for the proposed topographical changes), along with photographic simulations depicting existing and proposed conditions and changes in character of views along Broadway, Meadow Drive, Keene Lane, Ivy Hill Road, Tulip Street and Rutherford Lane. A discussion of how the viewsheds may be affected, the nature of the proposed development's architecture, and the ability or inability of the proposed site layout and building design to be integrated into the pattern and character of the neighborhood, must be provided. Only after inclusion of such information, can site and building design mitigation measures, if any, be assessed, in relation to the existing community character, quality of life, and the elimination of the charming, quaint gateway to the Village and the surrounding community.

Transportation

Comment 1.

The DEIS provides that the Village has no parking requirements for single family homes. Village Code §150-3(C) requires a 2 car garage in Residence 1A and 2A zoning districts.

Comment 2.

Keene Lane is subject to frequent flooding that limits access during rain and storm events, and certain high tide cycles. Installation of a data logger on the existing bulkhead that fronts Keene Lane to measure tidal flux (high and low water) over the fall

through summer months (to include typical storm seasons and maximum annual high tides) should be required. This will enable an analysis of the frequency of high water conditions and flooding along the roadway, and the impact of such flooding on the proposed development.

Infrastructure and Community Facilities

Comment 1.

The property is burdened by significant drainage easements running to the favor of Nassau County. These are not specifically identified in the plans filed with the DEIS. The locations of these easements, and the impact of these easements on the viability of the development, must be incorporated into the proposal for analysis of impacts.

Zoning, Land Use and Community Character

Comment 1.

This section fails to discuss or analyze whether the proposed development is in accordance with the Village's Vision Plan, which serves as the Village's comprehensive plan. The Village adopted the Vision Plan on December 16, 2020, and a link to the plan is provided here:

<http://nebula.wsimg.com/fb3905a5ae762f6014c08e4adff2c858?AccessKeyId=661566C4A2F1F27A2C36&disposition=0&alloworigin=1>

The DEIS states that the Village adopted a comprehensive plan, in discussing community character (page 258), but it drops off this acknowledgement when discussing impacts. In fact, the DEIS addresses impacts "in the absence" of such a comprehensive plan. Instead, impacts should be addressed based on considerations in the Vision Plan, including goals and objectives (pages 11-16 and 21-36) and the Conceptual Land Use Plan (pages 17 and 18, with proposed districts identified in A and C therein).

Similarly, the DEIS provides that the Vision Plan is the subject of current litigation. It should be noted amended to confirm that the Nassau County Supreme Court dismissed that litigation.

Comment 2.

The DEIS also states that the Village land use regulations have not yet been amended to reflect recommendations in the Vision Plan. On June 29, 2020, the Village adopted a new Zoning District, which was in accordance with the recommendations in the Vision Plan. The new zoning district is called the Coastal Conservation District – Woodmere Club, and a copy of the local law is available in the following link:

https://locallaws.dos.ny.gov/sites/default/files/drop_laws_here/ECMMDIS_appid_DOS2_0200716060058/Content/09021343802bdef6.pdf. The DEIS makes no effort to address any impacts related to this law. The new zoning district must be incorporated into the DEIS analysis.

Comment 3.

At the time of submission of the initial subdivision map, we conferred with the Building Inspector regarding certain items in the subdivision plan. Among those was that the application does not demonstrate compliance with the then required minimum street frontages for certain lots. Frontage runs in a straight line from corner to corner, and this measurement was not provided where lot frontages did not run in a straight line. If the frontages, when measured from corner to corner, along a straight line, do not meet the minimum 150 foot requirement in the 1A zoning district, then the application, at the time of submission and as currently presented in the DEIS, would require variances from the Village Zoning Board of Appeals. The applicant never consulted with the Building Department to discuss this item or confirmed with the Building Department, prior to the submission of the DEIS, that the lots comply with all Village zoning regulations. These variances must be identified in the DEIS, in relation to the 1A zoning district, and additional modifications made to address the need for variances. These variances also render the proposed subdivision not to be “fully compliant” with then existing zoning requirements, as has been asserted in the DEIS.

Comment 4.

There may be restrictions related to the development of site, that would be reflected in title documents. To assess any such restrictions, the impact statement must include a copy of a title report containing all restrictions, limitations and encumbrances. In this regard, not only must this include information dating to the original acquisition of the property in the early 1900s, but also must include any restrictions, limitations or encumbrances relating to the portion of the property acquired from the Rockaway Hunting Club.

Comment 5.

The DEIS does not include any documentation indicating which lots are subject to concurrent jurisdiction, as being within 300 feet of an adjoining municipality. This should be addressed.

Comment 6.

Village Code §131-25(A) requires that a subdivision application provide for a minimum set aside of 10% of the area in the Village for parks for recreational purposes. The bioretention area does not serve this purpose, and cannot be considered for recreational purposes. A recreational area must be included in the proposed development.

Noise, Odors and Lighting

Comment 1.

The DEIS provides that the Village has no noise ordinance. Technically, that is correct, as the Village Code contains no ordinances. The Village does have a law that provides for noise restrictions. Noise is primarily regulated under Village Code §106-6. The regulations prohibits various noises including the use of air conditioning, HVAC, generator equipment or pool equipment where noise generated therefrom exceeds 50 decibels across a property line. To determine whether there is no significant impact, as the DEIS contends, the DEIS would have to assess noises associated with these items, in place of non-contributing open space.

Lastly, the DEIS's references to the lead agency process are not stated correctly. On March 7, 2019, the Commission adopted a resolution declaring itself as lead agency pursuant to SEQRA and determining that the proposed action is likely to have the potential for one or more significant adverse environmental impacts (the "Positive Declaration Resolution"). The Positive Declaration Resolution further provided that, in response to the Commission's notice to involved agencies of the Commission's intent to serve as lead agency, no involved agency objected to the Commission serving as lead agency.

We note that, by letter dated March 1, 2019, the Village responded to the Commission's notice of intention to serve as lead agency, as follows (italics and bold added):

*The Village does not object to the Planning Commission serving as lead agency, in accordance with Article 8 of the Environmental Conservation Law and the implementing regulations in 6 NYCRR Part 617, **on the condition that the applicant agree to fund consultant reviews to be sought and obtained by the Village** in reviewing any scoping*

documents, Environmental Assessment Reviews and/or Environmental Impact Statements.

The Village has received no response to its aforesaid conditional consent. As such, the DEIS statement that there have been no objections to lead agency status, does not correctly address the Village's position of conditional consent.

We submit the above comments addressing the adequacy of the DEIS studies and sources and to further identify deficiencies in the potential impact discussions.

Very truly yours,

Brian S. Stolar

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Board of Trustees,
Village of Woodsburgh