

Supervisor Sean Walter  
Councilman John Dunleavy  
Councilman George E. Gabrielsen  
Councilwoman Jodi Giglio  
Councilman James Wooten

Apr 2, 2012

cc: Town Clerk Diane Wilhelm

## “Village at Jamesport” project: Consideration of Special Use Permits

My name is Larry Simms, & I’ve owned a home in South Jamesport for 13 years. In the following comments on subject project, I represent more than 190 local taxpayers, the vast majority of them from Jamesport, South Jamesport, & Aquebogue.

While our recently submitted petition on this matter highlighted select concerns, this memo will provide more complete information about the nature & scope of our objections to the Village project, & detail reasons we believe you, as our elected representatives, are obliged to deny the applications before you for Special Use Permits.

### **Default Position**

The most fundamental problem with these applications is that at least some of you, along with staff reporting to you, have demonstrated by word & deed that your default position is to award Special Use Permits to the applicant unless there’s a compelling reason not to.

Respectfully, we submit that your view of this process is completely backwards. Your job, both as codified & as fiduciaries acting in our interest, is to award Special Use Permits only if a compelling reason to do so has been shown.

Merriam-Webster defines “special” as “being other than the usual.” The usual uses in this zoning are those for which your permission is not needed. Applicants must seek your permission only to implement uses that are inherently unusual. To allow something unusual—something which cannot be in the Rural Corridor without special permission—a compelling reason must be furnished.

Logically, if no reason were required for a Special Use, it would not be “special.”

There is no compelling reason here. There appears to be no reason at all.

In fact, the sole reason that has been offered since the FEIS was accepted is that the Special Uses would be less objectionable than as-of-right uses. While we greatly appreciate that Town Board members seek to minimize the impact of a proposed project to which there has been widespread opposition, we take extreme issue with this premise. As will be seen on objective comparison [below], the Special Uses sought would NOT be less objectionable.

## **Special Permit Obligations**

Contrary to what some of us have recently been told at Town Hall, Special Use Permits are not to be granted automatically, even on issuance of Environmental Impact Studies & SEQRA Findings.

We hold that those who were told, & who believed, that the developer had been “promised” these permits would be awarded on the completion of the EIS / SEQRA process, were misguided. We further hold that anyone believing currently serving Town Board members are in any way bound by statements made by prior Board members—unless supported by a valid Resolution—are mistaken. Finally, we hold that those officials who may have believed that their Special Use Permits vote would be based solely on the Environmental Impact Statements, guided by the SEQRA Findings, were wrong.

Materials recently published by the Town indicate that the EIS / SEQRA process is complete, making the Special Use Permits applications ripe for decision by the Town Board.

That decision obviously will hinge, in part, on information contained in the EIS studies & on recommendation in the SEQRA Findings. Town Board members must ultimately focus, however, on the specific criteria stipulated in §108-133.5 of the Town Code.

## **Criteria for evaluation**

Under the section titled “Items to be considered by reviewing board,” Town Code suggests that, along with other factors the Town Board & Planning Board may each choose to consider, 18 separate criteria be applied for evaluating applications for Special Use Permits. Though these are elective, the depth & specificity of the suggestions indicate that these criteria are of some utility & importance.

Though questions can be raised about the suitability of these projects based on many of these criteria, we’ll focus on just one here. Both Board[s] must determine:

**That the intensity of the proposed specially permitted use is justified in light of similar uses within the zoning district.**

All of the office space in the hamlet, taken together, does not begin to approach the 17,000 square feet of offices sought here. Nor are there any commercial buildings as large as even one of the office structures proposed by applicant.

No restaurant in Jamesport approaches the 4,000 square feet dedicated to each of the proposed bistros. Even if reduced in size by permit conditions, as has been suggested, the combined bistro use would be more intense than anything in the hamlet.

No objective observer could conclude that the intensity of the proposed Special Uses is justified in Jamesport.

## **Affirmative Determinations Required**

After considering the various suggested criteria, along with any other criteria either the Town Board or Planning Board believe to be relevant & important, the Town Board is charged with making four specific determinations, including this one [Town Code §108-133.7]:

**The hazards or disadvantages to the neighborhood from the location of such use at the property are outweighed by the advantage to be gained either by the neighborhood or the Town.**

If you decide to award the Special Use Permits absent any net advantage to the neighborhood or Town, said decision will be arbitrary & capricious.

In order to weigh the advantages of the Special Uses against the disadvantages, it's first necessary to list the advantages [many disadvantages have already been highlighted through Public Hearings & in correspondence].

Having asked many dozens of local taxpayers this question, the immediate response from virtually all was the same: more taxes. The DEIS & FEIS authors held the same opinion, as they cite this with great frequency throughout the studies. Typically:

“In total, the development is projected to generate approximately \$348,694, as compared to the \$8,880.47 currently being generated.”

“The proposed action would result in a significant increase in property taxes...”

“The proposed development would generate significant tax revenues to the Town and its taxing jurisdictions, as well as the Riverhead Central School District.”

Inexplicably, though, various officials & staff have disclaimed taxes as a considered benefit. For example, at a meeting last week, two Town Board members, the Planning Director, & the Town Attorney all vigorously asserted that tax revenues were “not a factor” in their considerations on this project.

In any case, the taxes generated by 42,000 square feet of as-of-right uses would be essentially the same as those from 42,000 of proposed mixed uses. While we maintain tax revenues are extremely important to consider, they confer no advantage to the Special Uses sought.

Absent increased taxes, virtually no advantages to the Special Uses have been suggested, other than that they would be—in some vague way—“less objectionable” than a fully-built, as-of-right development. To respond to that suggestion, an objective comparison must be made.

### **Alternative Use Compared**

We acknowledge that it's important to compare the proposed Special Uses to the same project, fully-built without them. Relying on the analysis prepared by the applicant & included in the FEIS, we find that with the alternative plan allowing only as-of-right uses:

1. The same increase in property taxes would be realized.
2. The same number of jobs—both construction & permanent—would be created.
3. 73% less potable water would be used.
4. Less than half the solid waste would be generated.
5. Potential for noxious odors [from foodservice] would be eliminated.
6. Though we believe the traffic study to be deeply flawed, it shows less than 2% difference in peak traffic.

7. All other important metrics—increase in population; school-age children; area of forest, roads, buildings & laws—are identical.

Even the FEIS authors ascribe no relative benefits to the Special Uses over as-of-right uses, concluding in part:

Response C-26: “The socioeconomic impacts have been determined to be positive from both the proposed development plan & the as-of-right alternative plan.

In short—when considered objectively, the Special Uses offer no advantages over as-of-right development.

This leaves only the subjective question of the nature of the uses themselves. As described in the EIS, you face a choice between making exceptions for offices & for bistros not normally allowed, & letting the property be used for “antique shops, craft stores, and/or museums.”

Without hesitation, we choose the latter. So should you.

From the Master Plan:

**“The intent of the Rural Corridor Zoning Use District is to allow a very limited range of roadside shops and services that are compatible with the agricultural and rural setting...”**

We believe “antique shops, craft stores, and/or museums” to be far more in keeping with Rural Corridor zoning than the alternative of offices & bistros. In addition to a multitude of aesthetic & cultural arguments supporting this position, Jamesport currently—as has been previously observed & published—suffers from a heavy surplus of office space. And, the hamlet is exceedingly well-served by foodservice establishments from casual to fine dining. The Special Uses sought are not needed by the community.

If there are viable arguments as to how & why new offices & bistros at the Village at Jamesport site will bring advantages to the community, they have not yet been made known.

Again—awarding Special Use Permits absent any net advantage to the neighborhood or Town would be arbitrary & capricious.

## **Process**

The public hearings held on the original Special Use Permit applications were widely publicized & well-attended. They generated considerable testimony, both oral & written. The Draft EIS was widely available for public comment.

Introducing the Public Hearing on the DEIS in October 2009, the then-Supervisor said: “[the attorney has] prepared a draft environmental impact statement for our consideration, planning has read it, the board has also and discussed it and the public has the right to comment and that’s what this evening is about.”

In sharp contrast, the Final EIS was shrouded in secrecy. The report was delivered to Town Hall in July, where it apparently sat—unknown to the public—until after the November Town Council elections.

Many of those who submitted comments on the DEIS were completely oblivious to the fact that the final report had been completed, submitted, reviewed, & presented for your acceptance by vote at a Board meeting just before Christmas, on Dec 20, 2011. We learned of it after the fact, when reported by the News Review.

From the official Town video record of that meeting, these votes can be observed, commencing at 1:06:03 on the tape:

- Resolution #945, renewing an annual security service contract; the supervisor said it was insane to vote each year & directed the Town Attorney to see if extensions were available. Time: 84 seconds.
- Resolution #946, authorizing deer hunting by shotgun on Town property; two councilmembers discussed a structure on the property. Time: 51 seconds.
- Resolution #947, motion to pay bills; no discussion. Time: 17 seconds.
- Resolution #948, accepting the 423-page FEIS on Village at Jamesport; no discussion. Time: 17 seconds.

It's hard to comprehend that this massive & complex document, which may lead to the biggest change in the size & character of the hamlet since its founding, did not merit any discussion by the Board members. No one had any questions, no one had any comments. This was the only time it was on a Board Meeting agenda. And, as far as we can tell, it was never covered at a Work Session.

Many individuals, & many organizations, had expressly asked to be kept apprised of all developments regarding this project. Instead, it was received & processed by you in complete secrecy.

Even now, you're preparing to vote on a proposal which has been concealed from the public. Somehow, despite all the recent correspondence, grass-roots organizing, Town Hall meetings, & publicity, at the Work Session on Thursday, March 29<sup>th</sup>, “the petitions were not final” [according to the tape], you had no papers & details could not be discussed. This means that the conditions you propose to attach to these Special Permit requests—at least one of which a Town Board member had the courtesy to briefly mention—will be unknown to the public until, if custom holds, a few hours before your vote on the matter.

This is as difficult to comprehend as it is impossible to accept. We ask, once again, that you consider all the evidence herein & either deny the Special Use Permit applications outright, or postpone your vote.

### **FEIS Defective & Deficient**

The FEIS is deeply flawed in 3 separate ways: a] it contains errors of fact; b] it omits items & issues, including specific promises by the applicant; c] on certain other issues, it's completely non-responsive. Some examples follow, though this listing is by no means comprehensive.

The facts that applicant submitted a study labeled Final Environmental Impact Statement, & that applicant retained experts to contribute to same, do not indicate that the study is either complete or competent, anymore than would its length or heft. We respectfully suggest that Town Board members

must pay attention to substance, must exercise reason & judgment in evaluating the study, & must seek competent & unbiased advice to assist them in interpreting any technical material which they do not understand.

Above all, if an error of material consequence is found in the study, prudence dictates closer scrutiny. If numerous such errors are found, the competence of the authors & the viability of the study must be questioned.

In this case, the number & import of the errors & omissions in the FEIS are shocking. More disturbing still, however, is that we are not aware of a single instance where the Town Board or Planning officials have gone back to the applicant—or to the experts employed—and asked that erroneous or anomalous items be corrected, revised, or explained. This is unacceptable.

#### **a] errors of fact**

- The FEIS projects tax revenues for the project at \$349,000 per year. A look at Table 1 reveals an addition error, causing revenues to be overstated by 97%; the actual total is just \$177,000 annually.
- Two “bistros” comprise 20% of this project. By code, these are limited to 50 seats each, & parking requirements were calculated based on that maximum seating. Each of the bistros is 4,000 square feet, yielding a density of 1 customer per 80 gross square feet. That’s nearly 4 times the space allotted per diner in the best restaurants in town. A top national foodservice consultant was unable to cite a single example of a viable restaurant—anywhere—with anything close to these numbers.  
No experienced operator would lease the bistro spaces for their intended purpose, & inexperienced operators would fail. The bistros are not economically viable as designed.
- Some Town Board members have suggested that conditions placed on the Special Permits could constrain the bistros to perhaps 2,000 square feet each. This won’t work.
  - That’s still double the normal space per diner; they would still be economically infeasible.
  - Bistro parking is based on the number of seats, which won’t change. That means in order for the balance of the space originally slated for bistro use to be used for retail [as suggested by a Town Board member], an additional 20 parking spaces would be needed [even more for offices]. Those spaces, together with the required aisles, would consume 4,000 square feet of the site plan...meaning at least one building would have to be removed.

#### **b] omissions**

- Providing parking for customers of existing Main Road shops was unquestionably the biggest concern of those shopkeepers, & many iterations of plans to provide parking via the Village development were put forth & discussed. The subject was extensively covered in the DEIS. Yet, when the FEIS issued, it said only this:

**“The proposed parking is to serve the retail, office & bistros within the development.”**

Failure to consider the needs of these shopkeepers is a stunning blow to Jamesport.

- At the January 2008 Town Board meeting, the developer’s attorney said:

“I want to also point out that the bistros will not exceed 4,000 square feet. That there will be no outside events at the bistros, and there will be no fast food establishments at the site. We are willing to covenant all of those things if the board so wants us to.”

An opponent later asked at the Public Hearing: “will a bistro someday become a McDonald’s or a Burger King?” The FEIS responded:

**“It cannot be guaranteed that a fast food establishment would never be proposed on the subject site.”**

This, despite the fact that such a guarantee is exactly what had been proposed to the public. Further, one Town Board member said just last week that, if bistros could not be viable as presently designed, the developer “would probably bring in a McDonald’s or Wendy’s.”

### **c] non-responsive**

- From the many items in this category, here are a few examples: a complete lack of retail presence despite a mandate to create vibrant retail frontage; a shopping center apart from downtown Jamesport; why removing 2,200 truckloads of sand @ 30 yards each does not qualify this project as a sand mine. [We’ll leave the sand mine question to experts.]
- The FEIS responds to abundant criticism of the project’s isolation & its mall nature by parroting sections of the Master Plan which emphasize the importance of the “pedestrian character” of the hamlet, & by calling the shopping center a “walkable development.” Yet, apart from the rhetoric, applicant’s experts offer nothing to prove their points. In the context of the proposed site plan & its complete disconnect from Jamesport, their descriptive language is ludicrous.

The Village site plan is 4 acres of pavement, located hundreds of feet from the nearest existing Main Road shops. By the standards of the FEIS, Tanger is a “walkable development” with “pedestrian character” as it, too, has sidewalks.

- And, where the Master Plan stipulates that Main Street “should have a continuous & vibrant retail frontage,” for more than the length of a football field we’ll see nothing but a driveway & shrubs next to the road. The FEIS doesn’t address this concern at all, merely repeating the empty assertion that this project is integrated with, & contributes to, the existing hamlet downtown, maintaining its character.
- Where written comments to the Draft EIS observed that it would bring no benefits to the community, the Final EIS responds: “The comment is noted.”
- Where written comments to the Draft EIS observed that there’s already too much vacant space in Jamesport, the Final EIS responds: “The comment is noted.”

### **Economic Benefit to Town**

The relative advantage to the Town, net of disadvantages, deserves a closer look.

The Draft EIS said this project would generate annual tax revenues of \$177,000, & included an estimate by the Town Assessor on which this was based.

In contrast, the Final EIS said the project would generate \$349,000 annually, apparently due to a math error in a table which propagated throughout the narrative, e.g.:

Response H-18: “In total, the development is projected to generate approximately \$348,694, as compared to the \$8,880.47 currently being generated.”

Response H-47: “property taxes are estimated to increase from approximately \$8,880.47 (2009-2010) to \$348,693.78, upon implementation of the proposed action.”

The discrepancy of \$172,000 per year in tax revenues was discovered a month ago, & published in the Riverhead newspaper of record. There has been no explanation from the Town, from the applicant, or from the applicant’s expert quoted in the Final EIS.

When asked about the discrepancy in tax revenues, the Riverhead newspaper of record reported: “Supervisor Sean Walter said the error wouldn’t have affected his vote in adopting the findings statement.”

The News-Review also contacted the applicant’s consultant seeking an explanation of the 97% error. The consultant, VHB—which is currently employed by the Town to perform major studies on its EPCAL properties—did not respond.

Separately, the Draft EIS offered bottom line assurance that:

- a) the project would “benefit surrounding businesses in downtown Jamesport” because it would “attract new patrons to the area.”
- b) “the proposed development would generate 240± permanent jobs, thus adding to the local employment base of the Jamesport and Town of Riverhead communities.”
- c) “Overall, the proposed action would provide significant economic benefits to the residents of Jamesport and the Town of Riverhead.”

Similarly, the Final EIS said:

Response H-47: “the proposed Village at Jamesport would create temporary construction jobs & permanent part- & full-time employment opportunities, representing economic benefits.”

All of these claims are unsupported by the DEIS, FEIS, & SEQRA Findings, & hence not credible.

By their own admission, certain Town Board members & the Planning Department have not examined or considered the potential negative impact of the proposed Special Uses on existing area businesses, including restaurants & landlords of commercial office space.

The Final EIS does not deal with this either, & says only:

Response C-25: “it is assumed that the proposed office & retail components would create local employment.”



Separately, remember another affirmative determination you’re obliged to make under Town Code §108-133.7]:

**The health, safety, welfare, comfort, convenience and order of the Town will not be adversely affected by the authorized use.**

We submit that at least 3 adverse effects are inescapable:

- Allowing office space & restaurants in areas where they’re not now permitted will only make it harder to fill existing space suitable for these uses in downtown Riverhead. As the stated top priority of this administration is to restore downtown Riverhead to life by filling its empty spaces, one by one, this counterproductive drive to build competing space in outlying hamlets [including where it’s not wanted] is illogical.
- Jamesport has a great deal of empty offices, shops & restaurants. Buildings, both free-standing & strip malls, are unsightly to locals & repellant to the tourists on whom much of our economy depends. The addition of more office space is likely to aggravate the problem, causing landlords of existing space to lose tenants & reduce rents; some will likely fail.
- Similarly, the 6 destination restaurants & several casual foodservice operations are not all thriving. The population base is not growing, & a bad economy has people eating out less. It’s highly likely that if two new bistros are built & succeed [newer restaurants usually do a surge of business when they open, like new office buildings entice tenants from older buildings], at least two existing Jamesport restaurants will fail.

Asked specifically about the impact of the proposed Special Uses on existing landlords & restaurant owners, Town Board members & staff have plainly stated that such things were not considered, & that they don’t plan to take these factors into account when deciding on the Special Permit applications. We believe this indifference to be unacceptable, & a violation of the public trust.

### **Unexplained Zoning Anomaly**

The parcel in question is one of a small cluster of anomalous parcels for which zoning boundaries were radically redrawn in the 1980’s. As a result of this zoning change, development yields were roughly doubled.

Though many current & former Town officials, both elected & appointed, have been asked to clarify the rationale for this change, & to confirm that the map was not redrawn incorrectly, it’s not clear that any such analysis has ever been made.

The parcel on which the Village at Jamesport is planned is undisturbed land. The Town Attorney affirmed last week that the owner/applicant now seeking to develop this property has no vested rights in the land. This means, plain & simple, that the Town Board has the power & the means today to change that zoning, to bring it into conformance with the Master Plan, & to restore equity to all similarly situated property owners along Main Road.

We challenge the Town Board to do just that. Imagine any zoning category, in any part of town, where you find a row of parcels with a particular development depth, but one among them enjoys double that depth. Absent any explanation for the inequitable treatment, if the aberrant parcel is not yet developed, then reason & fairness would compel the Town Board to adjust that parcel to bring it in line with the others. Such is the case here.

The Final EIS states the following [Response H-7] in regard to the development setback concern raised, & makes no other reference to this zoning border:

**“The Rural Corridor (RLC) setback line varied according to Suffolk County Tax Map lot lines so as to not split-zone parcels.** For the subject parcel, that RLC line was setback at 1,100 feet or the northern extent of the property line.”

In this statement, the Final EIS is demonstrably false. Looking at the current map:

- Starting with the Village parcel & heading West, there are 5 parcels [inclusive] on which the RLC setback line follows property lines & does not split zones.
- However—the 2 parcels immediately to the East are split-zoned between RLC & Village Center.
- And, following the RLC setback line West from the 5 parcels of aberrant depth, it can be seen to split-zone 10 of the next 11 parcels it touches, between RLC & Agricultural Protection.
- Some of the resulting zones within a parcel are tiny; in one instance, a 1.8 acre parcel is subdivided & its APZ portion is less than 0.08 acre...obviously impossible to farm.
- Hence, 12 of 18 adjoining parcels are split-zoned, proving the premise of the FEIS wrong. Therefore, the accepted EIS has not responded to the concern about development depth.

Mr. Hanley is known to be researching this issue, & has been very forthcoming with information found to date. He has established that the resolution moving the RLC boundary North on these 5 parcels, from the position it had been in for decades, was passed on January 13<sup>th</sup>, 1987. Yet, the resolution itself neither details the changes made, nor says anything about the reasons for the change; the resolution simply points to the accompanying map.

As of Friday afternoon, March 30<sup>th</sup>, that map had still not been located.

And, though this question has been bandied about for a long time, no one, whether inside or outside of Town Hall, has been able to offer a viable reason why special treatment was given to these 5 parcels in 1987, effectively doubling their yield. In fact, no one is able to demonstrate that these inequitable changes were not made in error.

We're thus faced with this combination of facts:

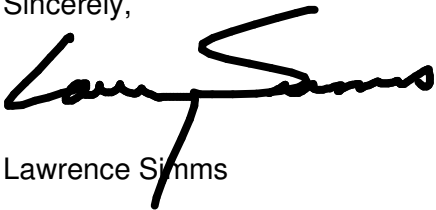
- a) Town government is not able to show or explain why spot-zoning, which appears to be grossly unfair, was applied in 1987 to a handful of parcels in downtown Jamesport.
- b) The current owner of one of these parcels—by far the largest—seeks to create a development, but presently has no vested rights in the land.
- c) The Town Attorney has affirmed that the Town Board has the right & the means to initiate & implement downzoning on any parcels which remain undeveloped.
- d) The Town Attorney has affirmed to two Board members, & we now alert the rest of you, that if the 500' RLC zoning boundary is ever to be restored, bringing uniform treatment & property

rights to all landowners along the Main Road corridor, it must be done before Special Use Permits & Building Permits are issued.

Awarding Special Use Permits may well be an irrevocable act. Given that neither the Planning Director, nor the Town Attorney, nor any Town Board member—serving or retired—can explain the anomalous zoning on subject parcel, it’s imperative that the decision to grant Special Use Permits, if not denied outright for any of the many reasons outlined herein, be postponed until definitive answers can be found as to why development depth was doubled on this property.

Your consideration is greatly appreciated. We welcome any questions, & look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence Simms". The signature is fluid and cursive, with a long horizontal stroke and a large, sweeping flourish at the end.

Lawrence Simms  
—for the petitioners

mail: 200 E. 32<sup>nd</sup> St.  
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