

# SUFFOLK COUNTY PLANNING COMMISSION

c/o Suffolk County Department of Planning  
100 Veterans Memorial Highway, PO Box 6100, Hauppauge, NY 11788-0099  
T: (631) 853-5192 F: (631) 853-4044  
Sarah Lansdale, Director of Planning

## **NOTICE OF MEETING**

August 3, 2011

12:00 P.M.

Rose Caracappa Auditorium, William Rogers Building  
725 Veterans Memorial Highway, Hauppauge, NY

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### **Tentative Agenda Includes:**

1. Adoption of minutes for June 2011
2. Public Portion
3. Chairman's report
4. Director's report
5. Guest Speakers:
  - Town of Islip (Invited)
  - Town of Shelter Island (Invited)
6. Section A14-14 thru A14-23 & A14-25 of the Suffolk County Administrative Code
  - Update to Town of Islip Comprehensive Plan (Town of Islip)
  - Moratorium on Development of Causeways Areas (Town of Shelter Island)
  - Jefferson Meadows LLC 0200 22900 0400 002002 (Town of Brookhaven)
  - Lowe's Home Centers Inc. 0800 17400 0200 050001 (Town of Smithtown)
7. Section A14-24 of the Suffolk County Administrative Code
8. Discussion-
9. Other Business:

NOTE: The **next meeting** of the SUFFOLK COUNTY PLANNING COMMISSION will be held on  
WEDNESDAY, September 7, 2011 in Board Room in the Town of East Hampton.

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STEVE LEVY  
SUFFOLK COUNTY EXECUTIVE

DEPARTMENT OF PLANNING

SARAH LANSDALE, AICP  
DIRECTOR OF PLANNING

**STAFF REPORT**  
**SECTIONS A14-14 THRU A14-25 OF THE SUFFOLK COUNTY ADMINISTRATIVE CODE**

**Applicant:** Jefferson Meadows LLC  
**Municipality:** Brookhaven  
**Location:** S/E/C/ of NYS Rte. 112 & Jefferson Avenue  
**Received:** 7/14/2011  
**File Number:** BR-10-16  
**T.P.I.N.:** 0200 22900 0400 002002 and 0200 20700 0400 014000  
**Jurisdiction:** Adjacent to NYS Route 112

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**PROPOSAL DETAILS**

**OVERVIEW:** Applicants request a special permit from the Town of Brookhaven Planning Board Pursuant to Article XLI, Redevelopment Initiative, section 85-493.C. of the Brookhaven Town Zoning Law. Said article is derived from the Town of Brookhaven "Blight to Light" initiative. Applicants propose the demolition of "blighted" buildings previously used as a car dealership and a landscaping business with accessory uses and proposes the construction of a multi-family attached unit development, including the construction of ninety-six (96) workforce housing rental units. The applicant proposes to retrofit the existing car dealership building to house office space (2,000 SF), a health club (2,100 SF) for use by the public, a community clubhouse (1,500 SF) and a concession stand (600 SF). In addition, the Town of Brookhaven Zoning Law requirement for off street parking relevant to this proposal is 240 stalls. The proposal includes 240 off street parking stalls, 40 of which are land banked to provide additional greenery around the subject development.

A storm water retention pond is proposed as part of the storm water management system on site as well as to be an aesthetic amenity.

The application material indicates that the development is to connect to an existing sewage treatment facility.

The applicant also proposes the incorporation of approximately five (5) acres of landscaping and recreational areas including gazebos, putting green, walking trails, playground, tennis and bocci courts.

**STAFF ANALYSIS**

**GENERAL MUNICIPAL LAW CONSIDERATIONS:** New York State General Municipal Law, Section 239-I provides for the Suffolk County Planning Commission to consider inter-community issues. Included in such issues are compatibility of land uses, community character, public convenience and maintaining of a satisfactory community environment.

The proposal intends to eliminate the existing vacant commercial use on the subject site, improve conditions of the subject site and provide a use that is presumptively compatible with the existing residential and commercial character of the area.

**LOCAL COMPREHENSIVE PLAN RECOMMENDATIONS:** The Town of Brookhaven 1996 Comprehensive Land Use Plan identifies the subject parcel as appropriate for “one acre or less residential development.” The applicant also puts forth that the 1996 plan states that consideration should be given to placement of multi-family housing along major roadways, as well as the need to continue to provide a choice of housing types for an aging population desiring to remain in the community.

Brookhaven Town is currently preparing a new Comprehensive Plan entitled “Brookhaven 2030”. Goals for this plan include: protecting open space and the environment, redirecting growth to areas with existing infrastructure, revitalize downtowns making them pedestrian oriented with a unique “sense of place” and expand the town’s transportation options, among others. Recent Town Hamlet/Corridor Studies that are either in progress or have been adopted or accepted by the Town Board emphasize “downtown development centers” with neighboring “transition zones”. These plans generally promote increases in density in the downtown development centers while maintaining or reducing density outside of the downtown. Additional emphasis is placed on multi-modal transportation and development of transit oriented development. Though the subject parcel was included in the Port Jefferson Station, Terryville, Comsewogue Moratorium Area, there were no specific recommendations for the subject parcel in the Port Jefferson Station, Terryville Comsewogue Hamlet Comprehensive Plan (2008).

The Department notes the nuanced recommendations of the Town’s 1996 Comprehensive plan relative to this parcel. The Plan recommends zoning of one acre residential or less but generally recommends the consideration of multi-family housing along major transportation corridors throughout the town. This proposal is not at a one unit per acre or less density as recommended by the plan map but rather proposes a density of approximately 12 units to the acre. Moreover, the proposal is not in a “downtown development center” as envisioned in any of the updates in progress.

#### **Article XLI (REDEVELOPMENT INITIATIVE) of the Town of Brookhaven Zoning Law**

Department of Planning Staff has had several conversations with Town of Brookhaven Department of Planning, Environment and Land Management staff regarding Article XLI (Redevelopment Initiative) of the Brookhaven Zoning Law and its applicability to the subject application.

Section 85-493.C. of said article allows the petition for inclusion in the program by

property owners whose property have not been targeted for redevelopment and elimination of blight in a community based adopted hamlet plan, corridor plan, land use plan or the Town's Comprehensive Plan and the property does not have a "Blight Plan" adopted by the Town Board which determines the property is blighted and appropriate for redevelopment. Pursuant to this section random parcels may apply to the planning Board for inclusion in the Redevelopment Initiative.

Applicability for a "Redevelopment designation" by the Planning Board is based upon the submission by the applicant of a "point analysis" or "score card" and review and approval by the Planning Board. Many of the elements to be reviewed by the Planning Board are subjective and result in Brookhaven Planning staff having a different interpretation of the rating than that indicated by the applicant. For example, the score card requires a determination of the severity of existing blight that would include determinations such as if the building has become a fire hazard or has fire damage or if the property has been impacted by community complaints. Other determinations of the local planning board include the redevelopment benefit potential of the project and may be as subjective as petitioners achieving points for a project that has engaged the community and stakeholders.

Suffolk County Department of Planning staff does not have the facts on hand to review and assess portions of the "Score Card." It should be noted that the Town of Brookhaven staff indicated to the Department of planning in correspondence dated July 12, 2011 that a Revised Town of Brookhaven Blight to light Score Card completed by the Planning Division staff gave a Redevelopment Achievement Score thirteen and a half points less than the applicant's submission. The Department of Planning staff did not review the submitted score card by the applicant or the Town of Brookhaven score card. As a matter of practice, the Suffolk County Planning Commission does not make determinations on interpretation petitions to the local Planning Board where the Planning Board is acting in a fact finding quasi-judicial capacity.

## **SUFFOLK COUNTY PLANNING COMMISSION GUIDELINE CONSIDERATIONS:**

The Suffolk County Planning Commission has identified five general Critical County Wide Priorities including:

1. Environmental Protection and Energy efficiency
2. Economic Development, Equity and Sustainability
3. Housing Diversity
4. Transportation and
5. Public Safety

Policies contained within the Suffolk County Planning Commission Guidebook derived from the above priorities that are relevant to the subject application are included below. It should be noted that the Suffolk County Planning Commission Guidebook was adopted unanimously by the Suffolk County Planning Commission at their regularly scheduled meeting of January 7, 2009.

**Section 4.2 A. General Policy Goal: *Promote sustainable land use and development throughout the county by encouraging density, transit, and mixed uses in downtowns, hamlet centers and areas with adequate infrastructure.***

The Subject property is not located in a downtown, hamlet center or within 500 feet of a Main Street Business District (J-6) as indicated on the Town of Brookhaven Zoning map. The subject property is more than ¼ mile (1,250 feet) from any of the above land forms. Moreover, the subject property is approximately 2,640 feet (1/2 mile) to the nearest local shopping center. An “as the crow flies” analysis utilizing GIS capabilities indicates that the subject property is approximately 1.76 miles to the nearest downtown (Port Jefferson Station) as identified by the Suffolk County Department of Planning Shopping Center and Downtown study (2006). To the nearest J-6 zoned property (Main Street Business District) the distance is approximately one (1) mile. Pedestrian sidewalks or bicycle lanes along any route to any of these destinations is sporadic. It should be noted that NYS Rte. 112 is undergoing a design upgrade and may include bike lanes and sidewalks. It is also noted that Suffolk County Transit operates a bus line along NYS Rte. 112. An inquiry to the web-site WALKSCORE.COM rates the walkability of the subject property to typical residential amenities to be 32 out of a possible 100. The intended one-hundred percent (100%) affordable rental complex at this location may be remotely situated. Moreover, the premises could reasonably be developed in accordance with the existing J-2 Business District zoning requirements applicable to the site.

**Section 4.2 B. Specific Land Use Policies: *Increases in density should be tied to the purchase and or transfer of development rights or to a one-for-one density offset through upzoning of vacant privately owned land.***

This policy is put forth to link the creation of open space and high density projects to avoid the creation of suburban high density sprawl (see the full text of the Suffolk County Planning Commission Guidebook). The increase in density can be visualized via the Suffolk County Sanitary Code Article 6 regulations. Article 6 would allow, via normal conventional on-site sanitary waste treatment systems, a “population density equivalent” of 2,433 gpd. (8.11 ac x 300 gpd in zone III). The proposal of the project sponsor, as indicated in the referred Environmental Assessment Form, would have a waste water “density load” flow of approximately 22,980 gpd.(EAF pg. 6). The difference in density load intensity of the project in terms of waste water flow over the “as-of-right” population density equivalent is 20,547 gpd. One could divide the difference by 300 gpd (typical waste water flow of a detached single family dwelling) to visualize the requested increase in housing density of the project. This would equate to an additional sixty eight (68) units than could be constructed as of right.

Applicants are proposing this density by invoking section 85-87.2B.(1) of the Town of Brookhaven Zoning Law relative to Article IX (MF Residence District). It is the applicants contention that the subject property is in a “Primary Zone” (commercial sites which provide opportunities for redevelopment as housing sites) permitting nine (9) units to the acre and that the maximum permitted density may be increased

to 12 units per acre for projects in which one hundred percent (100%) of the units are designated as workforce housing units.

Staff notes above (see 4.2A) that the subject property is not located within a reasonable distance to a downtown, hamlet center or Main Street Business District and notes the criteria by which density is set is by the proposed conversion of a commercial property to residential use and the provision of 100% affordable rental housing (section 85-80 of the Town of Brookhaven Zoning Law).

**Section 4.4 B. Specific Energy Efficiency Policies: *all new residential...buildings should be designed and constructed to reduce energy consumption and improve environmental quality.***

The applicant indicates, through the submitted materials, that the proposal will conform to a LEED certified project. The petitioner also indicates that all residences under the proposed action would conform to the relevant energy efficiency requirements set forth in the Town Code.

**Section 4.5 A & B. Public Safety: *New buildings and developments should incorporate general design elements that promote public safety...New residential...developments must incorporate design elements that calm traffic, deter criminal activity and increase public safety.***

Apart from the proposed special permit action, that would improve and occupy a vacant and abandoned land use, the application material does not indicate a consideration of public safety. The applicant should be directed to consult the Suffolk County Planning Commission Guidelines on Public Safety prior to referral of the final site plan application.

**Section 4.7 A. Transportation: *Expand sustainable transportation options – for commercial, commuter, and recreational travel – by providing greater public transit alternatives and creating a diverse, multi-modal transportation system that links jobs, housing, shopping, and recreation and reduces dependence on single occupant motor vehicles.***

The Subject property is not located in a downtown, hamlet center or within 500 feet of a Main Street Business District (J-6) as indicated on the Town of Brookhaven Zoning map. The subject property is more than ¼ mile (1,250 feet) from any of the above land forms. Moreover, the subject property is approximately 2,640 feet (1/2 mile) to the nearest local shopping center. An “as the crow flies” analysis utilizing GIS capabilities indicates that the subject property is approximately 1.76 miles to the nearest downtown (Port Jefferson Station) as identified by the Suffolk County Department of Planning Shopping Center and Downtown study (2006). To the nearest J-6 zoned property (Main Street Business District) the distance is approximately one (1) mile. Pedestrian sidewalks or bicycle lanes along any route to any of these destinations is sporadic. It should be noted that NYS Rte. 112 is undergoing a design upgrade and may include bike lanes and sidewalks. It is also noted that Suffolk County Transit operates a bus line along NYS Rte. 112. An

inquiry to the web-site WALKSCORE.COM rates the walkability of the subject property to typical residential amenities to be 32 out of a possible 100. The preliminary site plan does not indicate an accommodation for a bus stop or turn out. A bus stop is located approximately 500 feet north of the property boundary.

It is the belief of the staff that by design, 100% rental and 100% affordable, the subject special permit use will have a lower single occupant motor vehicle demand than typical suburban development and have high dependence on pedestrian, bicycle, mass (bus) transit or other multi-modal options. This is substantiated by U.S. Census *vehicles per household* analysis indicating that renter occupied households have approximately one third fewer vehicles per household (source 2000 U.S. Census). For this reason, locational parameters (i.e. proximity to a Main Street Business District, downtown or hamlet center) are a significant element in the consideration of the request.

**Section 4.8 B. Environment: *Preserve the region's natural resources including, but not limited to, groundwater, surface waters, tidal and fresh water wetlands, dunes, steep slopes, bluffs and Pine Barren regions.***

The subject property is located within Groundwater Management Zone III in accordance with Suffolk County Sanitary Code Article VI. The property is also situated in the Central Suffolk SGPA (EAF Pg. 2.). No other significant environmental constraints are associated with the site.

The applicants are proposing a pump station to direct an estimated 22,980 gpd of waste water to an off-site sewage treatment plant. The closest STP would be associated with the Woodhaven Nursing Home to the north or Sterling Woods condominiums to the south.

The Long Island Comprehensive Special Groundwater Protection Area Plan states as a goal that reducing or minimizing the potential for pollution (to the groundwater table) should include the regionalization and centralization of treatment facilities in those portions of the Central Suffolk SGPA that cannot be served by STPs with discharges to surface water or shallow flow groundwater, and the consolidation of the remaining existing and proposed facilities wherever feasible should be considered in order to insure the creation or continuation of viable state of the art sewage treatment within the SGPA. The SGPA plan also notes that "the ability of existing tertiary plants to produce effluent meeting the 10 ppm drinking water standard for nitrate has been inconsistent at best, due primarily to inconsistent operation and maintenance." It is premature at this time to be able to determine if the proposed development will comply with the goals of the SGPA. The issue of the viability of the connection to existing STP's in the area is the jurisdiction of the Suffolk County Department of Health Services, the Suffolk County Department of Public Works and the Suffolk County Sewer Agency. The applicant should be in contact with these agencies.

**Section 4.9 A & B. Design: *Encourage high-quality and innovative design which incorporates universal design principles...and utilize green infrastructure to***



***minimize community and environmental impacts and reduce both private and public development costs.***

There is no indication in the referred preliminary site plan material that the applicant has given consideration to the Suffolk County Planning Commission publication with respect to universal design. The applicant should be directed to consult the Suffolk County Planning Commission publication on universal design prior to referral of the final site plan application.

With respect to proposed energy efficiency considerations see 4.4 B above. It is noted that a man-made pond is proposed for the development action. The applicant should be directed to consult the Suffolk County Planning Commission publication on Managing Stormwater-Natural vegetation and green Methodologies and Study of Man-made Ponds in Suffolk County New York.

### **STAFF RECOMMENDATION**

**Disapproval.** Proposed special permit use contradicts Suffolk County Planning Commission Guidelines as follows:

- 1. Section 4.2 A. General Policy Goal: *Promote sustainable land use and development throughout the county by encouraging density, transit, and mixed uses in downtowns, hamlet centers and areas with adequate infrastructure.***

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The increase in density can be visualized via the Suffolk County Sanitary Code Article 6 regulations. Article 6 would allow, as-of right, via normal conventional on-site sanitary waste treatment systems, a “population density equivalent” of approximately 2,433 gpd. (8.11 ac x 300 gpd in zone III). The proposal of the project sponsor, as indicated in the referred Environmental Assessment Form, would have a waste water “density load” flow of approximately 22,980 gpd.(EAF pg. 6). The difference in density load intensity of the

project in terms of waste water flow over the “as-of-right” population density equivalent is 20,547 gpd. One could divide the difference by 300 gpd (typical waste water flow of a detached single family dwelling) to visualize the requested increase in housing density of the project. This would equate to an additional sixty eight (68) units than could be constructed as of right.

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## **SUPPLEMENTAL DATA**

### **ZONING DATA**

- Zoning Classification: J-2/A-1
- Minimum Lot Area: 15,000.Sq. Ft./40,000 Sq. Ft.
- Section 278:
- Obtained Variance:

### **SUPPLEMENTARY INFORMATION**

- Within Agricultural District: No

- Shoreline Resource/Hazard Consideration: No
- Received Health Services Approval: No
- Property Considered for Affordable Housing Criteria: Yes
- Property has Historical/Archaeological Significance: No
- Property Previously Subdivided: No
- Property Previously Reviewed by Planning Commission: No
  - File:
  - Date:
  - Map of:
- SEQRA Information: Yes
- SEQRA Type EAF
- Minority or Economic Distressed No

#### **SITE DESCRIPTION**

- Present Land Use: Vacant car dealership
- Existing Structures: Yes- Block Bldg. existing dealership
- General Character of Site: Level
- Range of Elevation within Site: N/A
- Cover: Asphalt
- Soil Types: Haven & Riverhead Associations
- Range of Slopes (Soils Map): 0-3%
- Waterbodies or Wetlands: non existing - proposed pond

#### **NATURE OF SUBDIVISION/ NATURE OF MUNICIPAL ZONING REQUEST**

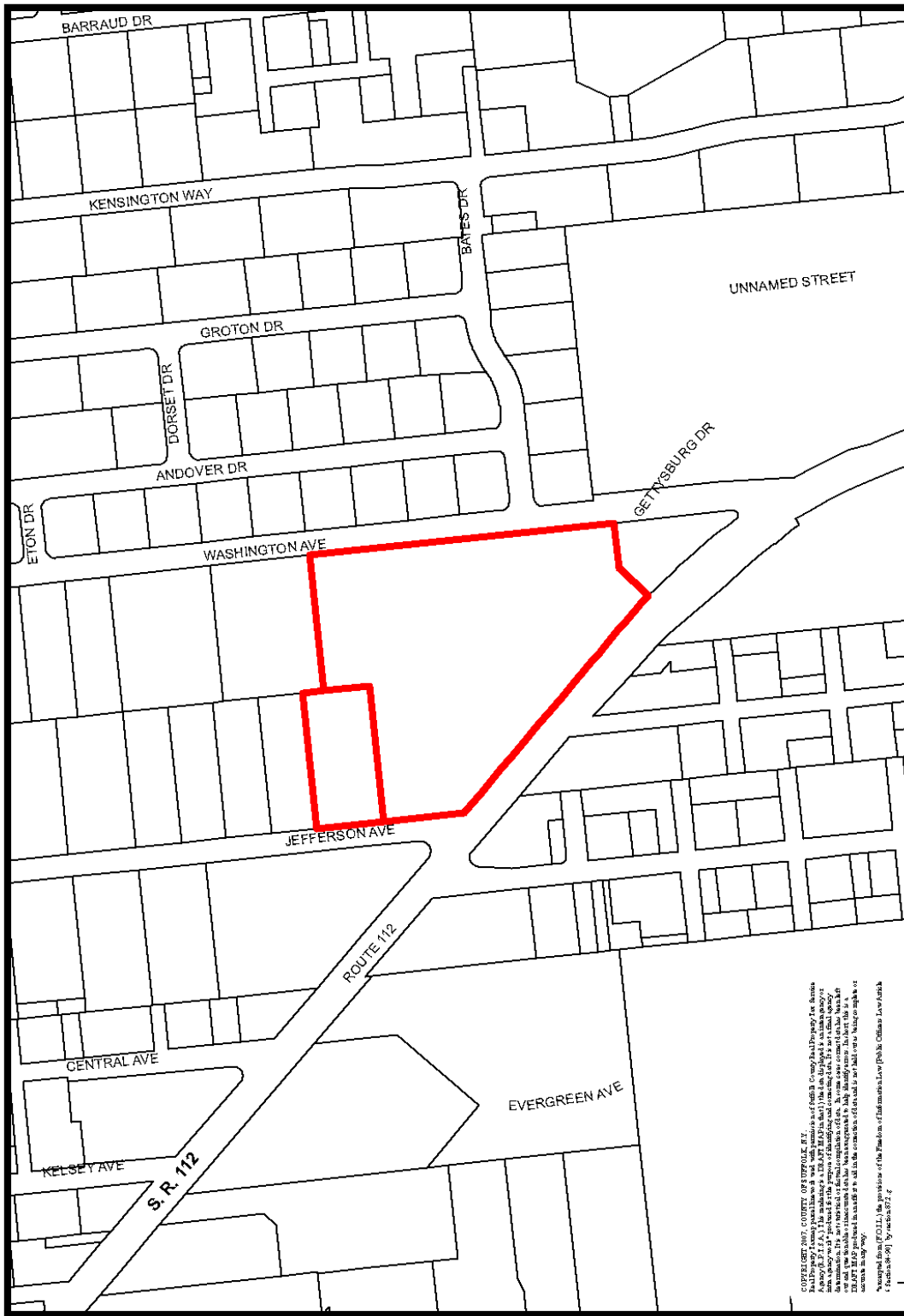
- Type: attached multi-family
- Layout: Standard
- Area of Tract: 8.11 Acres
- Yield Map:
  - No. of Lots: 96 units
  - Lot Area Range: Sq. Ft.
- Open Space: None

#### **ACCESS**

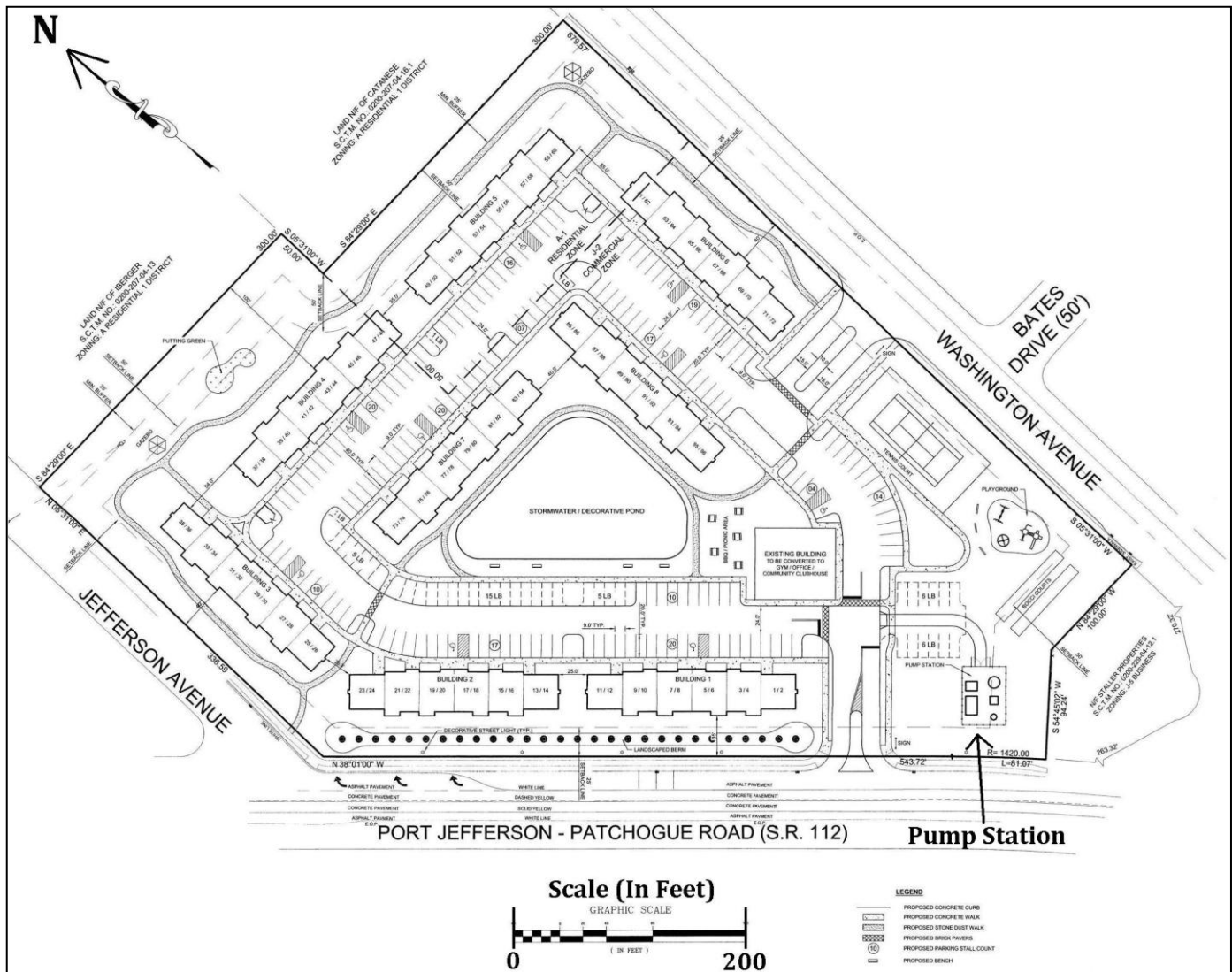
- Roads: Existing NYS Rte. 112 & Washington Avenue
- Driveways: Private - on-site

#### **ENVIRONMENTAL INFORMATION**

- Stormwater Drainage
  - Design of System: CB & LP
  - Recharge Basins Yes- stormwater Detention Pond
- Groundwater Management Zone: III
- Water Supply: Public
- Sanitary Sewers: Public



Z-3: Jefferson Meadows, LLC  
 SCPD No.: BR-10-16  
 SCTM No.: 0200-207.00-04.00-014.000 et al.  
 Town of Brookhaven  
 Suffolk County, New York  
 Department of Planning  
 Date: 8/03/2011  
 0 187.5 375 750 1,125 1,500 Feet



Z-3: Jefferson Meadows LLC  
 SCPD: BR-10-16  
 SCTM No: 0200-229.00-04.00-002.002 and  
 0200-207.00-04.00-014.000



STEVE LEVY  
SUFFOLK COUNTY EXECUTIVE

DEPARTMENT OF PLANNING

SARAH LANSDALE  
DIRECTOR OF PLANNING

### STAFF REPORT

#### **“Extension of Temporary Moratorium on Development of Causeway Areas”**

**ADDENDUM – 8/3/11**

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### PROPOSED DETAILS

**OVERVIEW:** The Shelter Island Town Board proposes to enact a five (5) month moratorium extension on Development of Causeway Areas to December 31, 2011. On March 18, 2011 a four (4) month moratorium was enacted on development on the two Ram Island Causeways, and is set to expire on July 31, 2011. The Suffolk County Planning Commission reviewed the referral on the originally proposed moratorium, at the April 6, 2011 regularly scheduled meeting and resolved to approve the proposed moratorium.

Hearings on laws to regulate development on the two Ram Island causeways were held by the Shelter Island Town Board and generated significant public comment. The Town of Shelter Island has indicated that while draft legislation to address the zoning and wetland issues in the subject areas are “close to completion, it will not be ready to adopt by the end of the current moratorium. “ In order to address the issues raised, the existing moratorium is proposed to be extended.

**STAFF ANALYSIS:** The Town of Shelter Island has adopted the Moratorium on Development of Causeway Areas incorporating some of the comments of the Suffolk County Planning Commission (April 6, 2011 referral approval) related to the necessity of the moratorium and cases involving hardship. It would appear that progress is being made toward the development of a local ordinance and the process of soliciting public comment has resulted in some reconsiderations of the law. The five month extension would appear reasonable bringing the entire moratorium period for the Moratorium on the Development of Causeway Areas to nine (9) months.

### STAFF RECOMMENDATION:

**Approval** for the following reason:

The Town of Shelter Island has indicated pursuant to their resolution, that they are making progress in pursuing a local ordinance to deal directly with the special development regulations necessary for the low-lying areas along the two Ram Island causeways.

## **ORIGINAL STAFF REPORT – 4/6/11**

### **STAFF REPORT SECTIONS A14-14 THRU A14-25 OF THE SUFFOLK COUNTY ADMINISTRATIVE CODE**

**Applicant:** Temporary Moratorium on Development of Causeway Areas  
**Municipality:** Town of Shelter Island  
**Location:** RAM Island Causeway

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**Received:** 3/2/2011  
**File Number:** SI-10-01.1  
**T.P.I.N.:**

**Jurisdiction:**

- Local Law
- Amendment & Zoning Ordinance-Moratorium

**ZONING DATA**

- Zoning Classification: CB Overlay
- Minimum Lot Area: N/A

**SUPPLEMENTARY INFORMATION**

- |  |         |
|--|---------|
| ▪ Within Agricultural District:            | No      |
| ▪ Shoreline Resource/Hazard Consideration: | Yes     |
| ▪ Received Health Services Approval:       | N/A     |
| ▪ SEQRA Information:                       | Yes     |
| ▪ SEQRA Type                               | Type II |
| ▪ Minority or Economic Distressed          | No      |

**NATURE OF SUBDIVISION/ NATURE OF MUNICIPAL ZONING REQUEST**

- Type: Local Law Amendment to Zoning Ordinance-Moratorium

### **PROPOSAL DETAILS**

**OVERVIEW** - Referral from the Shelter Island Town Board of a proposed temporary moratorium relating to chapter 133 of the Shelter Island Zoning Law. Said Local Law is for a four (4) month moratorium (July 31, 2011) where "...no activity such as land clearing, filling, new docks or bulkheads or applications for land division approval or permit of any kind shall be allowed, accepted, processed or issued..." for properties lying within the two low lying areas along the Ram Island causeways.

**LOCATION** - Applicable to multiple properties designated as "causeway areas" generally in the vicinity of Upper Beach and Lower Beach along Ram Island Drive (see map).

### **STAFF ANALYSIS**

In 2010 the Town of Shelter Island adopted a moratorium on development within the Undeveloped Coastal Barrier District described in Chapter 133 of the Shelter Island Town Code. The moratorium

is due to expire on March 31, 2011. Said moratorium was referred to the SCPC and was deliberated at the April 7, 2010 regular meeting of the Suffolk County Planning Commission. After due study and deliberation the Commission was unable to render a determination as the necessary votes were unavailable to carry a resolution relative thereto. Therefore no action was taken by the Commission on the referral.

During the past year the Town of Shelter Island, under the protection of the adopted moratorium, has had several public meetings and has drafted laws on amendments to the rules for development within the Coastal Barrier district. As a result of this effort the Town has decided to narrow the focus of the development restrictions to the low-lying areas along the two Ram Island Causeways. These areas are reported by the Town to be "frequently flooded from multiple directions during storms, have a thin aquifer, have little traditional upland to be devoted to development and septic, and are a sensitive habitat, which warrants special development regulations."

The Town has indicated that the draft legislation is close to completion, but will not be finalized by the end of the current moratorium. The Town Board has decided to allow the moratorium on development in the Undeveloped Coastal Barrier District to expire and to establish a moratorium on development within the causeway areas to allow the draft legislation to be finalized.

As indicated in the Suffolk County Planning Commission Advisory News (Volume 2 Issue 1) A moratorium is, from one perspective, the most extreme land use action that a municipality can take because it suspends completely the rights of land owners to use their property. From the perspective of the Suffolk County Planning Commission a limited or narrowly scoped moratorium generally does not involve regional or inter-community impacts of an adverse nature and generally are considered matters for local determination. The Suffolk County Planning Commission has published guidance on the structure and content of moratoria (see attached SCPC Advisory News: Moratorium on Development). The moratorium should be tied to a legitimate comprehensive planning initiative such as the completion of zoning or master plan updates. Where possible the moratorium should be limited and allow for the due process of applications and assure the proper balance between property rights and community planning. The moratorium should not be used to delay controversial development applications.

The dynamics of the coastal barrier and the hazards to property and infrastructure in these areas are generally well known and therefore the Local Law should not be too severely criticized for the brevity of the findings that confirm the necessity of this moratorium. However, the Local Law does not point out other alternatives to the moratorium considered and rejected or the urgency of the conditions necessitating the moratorium now as opposed to those conditions existing in the past.

It is the belief of the staff that the proposed Local Law Section 6.a. is too vague in its exceptions to the moratorium and should include language to clarify the exception provision such as:

This moratorium shall not affect applications which have already been scheduled for public hearing or

- The issuance of a demolition/building permit required in connection with the ordinary repairs and/or maintenance of a structure for which there exists a valid certificate of occupancy,
- The issuance of a demolition/building permit for interior renovations in connection with property (provided there is no change in facade appearance or parking requirements), for which there exists a valid certificate of occupancy.
- The issuance of a building permit in connection with a project, which obtained prior site plan



approval or approval prior to the effective date of the moratorium.

In addition, it is the belief of the staff that the “Hardship” (Section 6.b.) provisions should be revised to include objective standards including but not limited to the following examples:

- Submission of proof of hardship. Hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a building permit, site plan, subdivision, land division, variance, special permit, change of zone, or other approval during the period of the moratorium.
- Substantive requirements. No relief shall be granted hereunder unless the Town Board shall specifically find and determine and shall set forth in its resolution granting such hardship that:
  - o Failure to grant a hardship to the petitioner will cause the petitioner undue hardship, which hardship is substantially greater than any harm to the general public welfare resulting from the granting of the exemption; and
  - o Petitioners circumstances are different from any other member of the community to the extent the petitioner is burdened by the moratorium substantially greater than any other member of the community; and
  - o Grant of the hardship will clearly have no adverse effect upon any of the Towns goals or objectives enumerated in the moratorium; and
- The project or activity for which the petitioner seeks a hardship will be in harmony with the existing character of the Town as a whole and the area of the Town in which the affected land is located, and will be consistent with any interim data, recommendations, or conclusions which may be drawn from any community planning effort then in progress or under review.

### **STAFF RECOMMENDATION**

It is the belief of the staff that the proposed amendment should be **approved subject to the following comments:**

Comments:

1. It is the belief of the Suffolk County Planning Commission that the proposed Local Law Section 6.a. is too vague in its exceptions to the moratorium and should include language to clarify the exception provision such as:

This moratorium shall not affect applications which have already been scheduled for public hearing or

- The issuance of a demolition/building permit required in connection with the ordinary repairs and/or maintenance of a structure for which there exists a valid certificate of occupancy,
- The issuance of a demolition/building permit for interior renovations in connection with property (provided there is no change in facade appearance or parking requirements), for which there exists a valid certificate of occupancy.

The issuance of a building permit in connection with a project, which obtained prior site plan approval or approval prior to the effective date of the moratorium.

2. In addition, it is the belief of the Suffolk County Planning Commission that the “Hardship” (Section 6.b.) provisions should be revised to include objective standards including but not limited to the following examples:
  - Submission of proof of hardship. Hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a building permit, site plan, subdivision, land division, variance, special permit, change of zone, or other approval during the period of the moratorium.
  - Substantive requirements. No relief shall be granted hereunder unless the Town Board shall specifically find and determine and shall set forth in its resolution granting such hardship that:
    - o Failure to grant a hardship to the petitioner will cause the petitioner undue hardship, which hardship is substantially greater than any harm to the general public welfare resulting from the granting of the exemption; and
    - o Petitioners circumstances are different from any other member of the community to the extent the petitioner is burdened by the moratorium substantially greater than any other member of the community; and
    - o Grant of the hardship will clearly have no adverse effect upon any of the Towns goals or objectives enumerated in the moratorium; and
    - o The project or activity for which the petitioner seeks a hardship will be in harmony with the existing character of the Town as a whole and the area of the Town in which the affected land is located, and will be consistent with any interim data, recommendations, or conclusions which may be drawn from any community planning effort then in progress or under review.
3. The dynamics of the coastal barrier and the hazards to property and infrastructure in these areas are generally well known and therefore the Local Law should not be too severely criticized for the brevity of the findings that confirm the necessity of this moratorium. However, the Local Law does not point out other alternatives to the moratorium considered and rejected or the urgency of the conditions necessitating the moratorium now as opposed to those conditions existing in the past. It is therefore recommended that the proposed Local Law be amended to include this overview.



COUNTY OF SUFFOLK



STEVE LEVY  
SUFFOLK COUNTY EXECUTIVE

FILE  
COPY

DEPARTMENT OF PLANNING

April 6, 2011

Town of Shelter Island  
38 Ferry Road  
PO Box 1549  
Shelter Island NY 11964-1549  
Att: Dorothy S. Ogar, Clerk

Re: Temporary Moratorium on Development of Causeway Areas  
S.C.P.C. File No.: SI-10-01.1

Dear Ms. Ogar:

The Suffolk County Planning Commission at its regular meeting on April 6, 2011 reviewed the referral from the Town of Shelter Island entitled "Temporary Moratorium on Development of Causeway Areas", referred to it pursuant to Section A14-14 thru A14-25, Article XIV of the Suffolk County Administrative Code.

The attached Resolution signifies action taken by the Commission relative to this application.

Very Truly Yours,



Andrew P. Freling  
Chief Planner

APF:ds

LOCATION  
H. LEE DENNISON BLDG. - 4TH FLOOR  
100 VETERANS MEMORIAL HIGHWAY

MAILING ADDRESS  
P. O. BOX 6100  
HAUPPAUGE, NY 11788-0099

(631) 853-5190  
TELECOPIER (631) 853-4044



Resolution No. ZSR-11-12 of the Suffolk County Planning Commission  
Pursuant to Sections A14-14 thru A14-25 of the Suffolk County Administrative Code

WHEREAS, pursuant to Sections A14-14 thru A14-25 of the Suffolk County Administrative Code, a referral was received March 2, 2011 at the offices of the Suffolk County Planning Commission with respect to the application of **“Temporary Moratorium on Development of Causeway Areas” in the Town of Shelter Island**

WHEREAS, said referral was considered by the Suffolk County Planning Commission at its meeting on April 6, 2011, now therefore, Be it

RESOLVED, that the Suffolk County Planning Commission hereby approves and adopts the report of its staff, as may be amended, as the report of the Commission, Be it further

RESOLVED, pursuant to Section A14-16 of the Suffolk County Administrative Code and Section 239-m 6 of the General Municipal Law, the referring municipality within thirty (30) days after final action, shall file a report with the Suffolk County Planning Commission, and if said action is contrary to this recommendation, set forth the reasons for such contrary action,  
Be it further

RESOLVED, that the Suffolk County Planning Commission **Approved** said referral subject to the following Comments:

Comments:

1. It is the belief of the Suffolk County Planning Commission that the proposed Local Law Section 6.a. is too vague in its exceptions to the moratorium and should include language to clarify the exception provision such as:

This moratorium shall not affect applications which have already been scheduled for public hearing or

- The issuance of a demolition/building permit required in connection with the ordinary repairs and/or maintenance of a structure for which there exists a valid certificate of occupancy,
- The issuance of a demolition/building permit for interior renovations in connection with property (provided there is no change in facade appearance or parking requirements), for which there exists a valid certificate of occupancy.

The issuance of a building permit in connection with a project, which obtained prior site plan approval or approval prior to the effective date of the moratorium.

2. In addition, it is the belief of the Suffolk County Planning Commission that the “Hardship” (Section 6.b.) provisions should be revised to include objective standards including but not limited to the following examples:

- Submission of proof of hardship. Hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a building permit, site plan, subdivision, land division, variance, special permit, change of zone, or other approval during the period of the moratorium.
- Substantive requirements. No relief shall be granted hereunder unless the Town Board shall specifically find and determine and shall set forth in its resolution granting such hardship that:
  - o Failure to grant a hardship to the petitioner will cause the petitioner undue hardship, which hardship is substantially greater than any harm to the general public welfare resulting from the granting of the exemption; and

- o Petitioners circumstances are different from any other member of the community to the extent the petitioner is burdened by the moratorium substantially greater than any other member of the community; and
- o Grant of the hardship will clearly have no adverse effect upon any of the Towns goals or objectives enumerated in the moratorium; and
- o The project or activity for which the petitioner seeks a hardship will be in harmony with the existing character of the Town as a whole and the area of the Town in which the affected land is located, and will be consistent with any interim data, recommendations, or conclusions which may be drawn from any community planning effort then in progress or under review.

3. The dynamics of the coastal barrier and the hazards to property and infrastructure in these areas are generally well known and therefore the Local Law should not be too severely criticized for the brevity of the findings that confirm the necessity of this moratorium. However, the Local Law does not point out other alternatives to the moratorium considered and rejected or the urgency of the conditions necessitating the moratorium now as opposed to those conditions existing in the past. It is therefore recommended that the proposed Local Law be amended to include this overview.

- The Suffolk County Planning Commission Guidebook for policies and guidelines can be found on the internet at the below website address:  
<http://www.suffolkcountyny.gov/Home/departments/planning/Publications%20and%20Information.aspx#SCPC>  
 A copy of the Suffolk County Planning Commission Guidebook is also included with this letter.

Motion by: Commissioner Holmes

Seconded by: Commissioner Roberts

Commission Vote: Present – 12

Ayes -12

Nays - 0

Absent - 1

#### **COMMISSION ACTIONS ON ADOPTION OF RESOLUTION**

	<b>AYE</b>	<b>NAY</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
<b>CALONE, DAVID</b> Town of Babylon	X			
<b>CHARTRAND, MATTHEW</b> Town of Islip	X			
<b>ESPOSITO, ADRIENNE</b> Villages over 5,000	X			
<b>FINN, JOHN</b> Town of Smithtown	X			
<b>HOLMES, LINDA</b> Town of Shelter Island	X			
<b>HORTON, JOSHUA</b> At-Large				X
<b>KELLY, MICHAEL</b> Town of Brookhaven	X			
<b>KONTOKOSTA, CONSTANTINE</b> Vill. Under 5,000	X			
<b>LANSDALE, SARAH</b> Town of Huntington	X			
<b>MC ADAM, TOM</b> Town of Southold	X			
<b>ROBERTS, BARBARA</b> Town of Southampton	X			
<b>TALDONE, VINCENT</b> Town of Riverhead	X			
<b>WEIR, DIANA</b> , Town of East Hampton	X			

Dated: April 6, 2011

Location: Town of Huntington Board Room

COUNTY OF SUFFOLK



STEVE LEVY  
SUFFOLK COUNTY EXECUTIVE

DEPARTMENT OF PLANNING

THOMAS A. ISLES, A.I.C.P.  
DIRECTOR OF PLANNING

April 7, 2010

Town of Shelter Island  
38 North Ferry Road – P.O. Box 1549  
Shelter Island, New York 11964-1549  
Att: Ms. Dorothy S. Ogar, Town Clerk

**FILE COPY**

Re: Application of "Temporary Moratorium on  
Development in Undeveloped Coastal Barrier  
District; Chapter 133"

SCPC File No.: SI-10-01

Dear Ms. Ogar:

Pursuant to the requirements of Sections A14-14 thru A14-25 of the Suffolk County Administrative Code, the Suffolk County Planning Commission on April 7, 2010 reviewed the above captioned application and after due study and deliberation was unable to render a determination as the necessary vote(s) were unavailable to carry a resolution relative thereto.

Therefore, **no action** was taken by the Planning Commission.

Sincerely,

Thomas Isles, AICP  
Director of Planning

A handwritten signature in black ink, appearing to read "Andrew P. Freleng".  
Andrew P. Freleng  
Chief Planner

APF:jc

# Suffolk County Planning Commission Advisory News



Volume 2  
Issue 1  
Spring - 1998

Donald Eversoll  
CHAIRMAN  
*At Large*

Robert Martin  
VICE CHAIRMAN  
*Smithtown Town*

Louis Dietz  
SECRETARY  
*Babylon Town*

Lydia A. Tortora  
*Southold Town*

vacant  
*East Hampton Town*

George J. Dickerson  
*Shelter Island Town*

Richard London  
*Village under 5,000  
population*

Michael J. Macco, Esq.  
*Huntington Town*

Laure C. Nolan, Esq.  
*Village over 5,000  
population*

Richard M. O'Dea  
*Riverhead Town*

Edward J. Rosavitch, PE  
*Brookhaven Town*

Frank A. Tantone, Esq.  
*Islip Town*

vacant  
*Southampton Town*

Mardooni Vahradian  
*At Large*

Linda B. Petersen  
*At Large*

## MORATORIUM ON DEVELOPMENT

**A** moratorium on development is a local law or ordinance that **suspends the right of property owners to obtain development approvals** while the community takes time to consider, draft and adopt land use plans or rules to respond to new or changing circumstances not adequately dealt with by its current laws.

Development moratoria may be general or specific. A **general moratorium** imposes a ban on all development in the community. Hardship exemptions may be provided and certain actions may be exempted.

A **specific moratorium** may prevent development approvals in a particular geographic area or of a certain type. Moratoria have suspended the right to process proposals relating to a specific land use. For example, they have been enacted to affect only the construction of docks, for instance, or communications antennas.

### PURPOSE

A moratorium on development **preserves the status quo for a reasonable time** while the municipality develops and adopts a land use strategy to respond to new or recently perceived problems. The moratorium prevents developers and property owners from rushing to develop their land under current land use rules that the community is in the process of changing. By so doing, it helps to accomplish the purpose of the new rules by giving them the broadest possible applicability and preventing development that is inconsistent with them.

### AUTHORITY

There is no specific statutory authorization to adopt a moratorium on development. The courts have pointed to two separate sources of authority, while consistently confirming the municipal power to enact moratoria.

Communities are implicitly authorized to take those actions they deem reasonable to encourage the most appropriate use of the land throughout the municipality. In light of new or changing circumstances, a moratorium may be necessary to allow the community to achieve this express purpose of zoning and land use planning.

Some courts have held that a **development moratorium is a form of zoning**, implying that it is part of the statutorily delegated power to adopt and amend zoning provisions. Alternatively, a community's authority to adopt a moratorium has been referred to as a "police power" measure appropriate to prevent conditions that threaten the community's health, safety, welfare and morals.

### IMPLEMENTATION

A moratorium is, from one perspective, **the most extreme land use action that a municipality can take because it suspends completely the rights of owners to use their property**. Seen in this light, it is advisable to precede the adoption of a moratorium by **findings** that confirm the necessity of this action. What are the **conditions** that mandate the imposition of a moratorium? Are no other **alternatives**, less burdensome on property rights, available? Why are the existing land use plans and ordinances not adequate? What **recent circumstances** have occurred that justify the adoption of the moratorium? How serious and **urgent** are these circumstances? What **hard evidence** is there to document the necessity of the moratorium?



When adopting a moratorium, the municipality may set forth how the situation that gave rise to the moratorium is to be dealt with. What local bodies are responsible? What studies are to be done? What resources are being made available to complete those studies? Can deadlines be established for various steps in the process? **The more specific and legitimate this plan and timetable are, the more likely the moratorium will be found to be reasonable.**

Based on this action plan and timetable, a date can be selected for the expiration of the moratorium. A moratorium can be extended if the timetable cannot be met; however, the reasonableness of the action is enhanced by setting a date for expiration that is legitimate under the circumstances.

A moratorium should be adopted in conformance with all procedures required of any zoning or land use action, including notice, hearing, the formalities of adoption and filing. While a moratorium does not require an environmental review under the State Environmental Quality Review Act, if it affects adjacent municipalities or county facilities, it may be subject to review by those governments before it can be formally adopted. **The Suffolk County Planning Commission considers suspension of any portion of a Zoning Code to be a "municipal zoning action" requiring review by the Commission.**

## LIMITATIONS AND CONCERNS

**Since development moratoria affect property rights so severely, they must be reasonable or run the risk of being challenged, voided by the courts and, perhaps, resulting in a damage award against the locality.** Reasonableness is best established if the community can document that it is facing a true emergency. Several court decisions sustaining moratoria refer to the "dire necessity" that justifies them. Such a necessity arises not only when health and safety risks are confronted, but also when the community is facing a significant new land use problem that its existing regulations were not designed to handle.

For the same reason, when specific action plans and timetables are established to deal with the necessity or emergency, the reasonableness of the locality's moratorium

is demonstrated. Similarly, a community needs to make reasonable progress in carrying out the plan and adhering to the schedule so its actions are seen to be reasonable. Moratoria that have been extended for up to three years have been sustained by a showing that the community was diligently pursuing its plan and timetable and shorter moratoria have been voided because the community was making little or no progress. In the same way, the plan must be calculated to deal directly with the necessity or emergency at hand; otherwise, its reasonableness may be questioned.

Moratoria do not apply to approved projects where the developer has completed construction or has completed substantial construction in reliance on a development approval or permit. Such developers are said to have vested rights in their permits and to be immune from changes in applicable regulations. Other property owners, who have made less progress, are said to have no legitimate or enforceable expectation that the rules applicable to the development of their land might not change in the interest of protecting the public health, safety or welfare.

## CITATIONS:

1. In *Duke v. Town of Huntington*, 153 Misc. 2d 521, 581 N.Y.S.2d 978 (Sup.Ct., Suffolk Co., 1991), the property owner challenged a moratorium prohibiting construction of any docks. The court held the moratorium unreasonable under the circumstances.
2. In *B & L Development Corp. v. Town of Greenfield*, 146 Misc. 2d 638, 551 N.Y.S.2d 734 (1990), the court struck down a one year moratorium on all building permits and land use approvals including subdivision and site plans. **The court found that in adopting the moratorium, the Town had failed to notify the county government** under General Municipal Law § 239-m and adjacent communities under Town Law § 264 and to follow its own requirements for adopting zoning provisions.
3. In *Cellular Telephone Co. v. Tarrytown*, 209 A.D.2d 57, 624 N.Y.S.2d 170, (2nd Dep't, 1995) the court struck down a moratorium prohibiting the construction of cellular antenna.

## SOURCE:

**Local Leader's Guide to Land Use Practice, Second Edition (In Progress)**, Series III: Innovative Tools and Techniques, Issue 1: Moratorium on Development, <http://www.law.pace.edu/landuse/morato~1.html>, downloaded 4/23/98.



STEVE LEVY  
SUFFOLK COUNTY EXECUTIVE

DEPARTMENT OF PLANNING

SARAH LANSDALE, AICP  
DIRECTOR OF PLANNING

**STAFF REPORT**  
**SECTIONS A14-14 THRU A14-25 OF THE SUFFOLK COUNTY ADMINISTRATIVE CODE**

**Applicant:** Update to the Town of Islip Comprehensive Plan  
**Municipality:** Islip  
**Location:** Town Wide  
**Received:** 7/11/11  
**File Number:** IS-11-01  
**Jurisdiction:** Comprehensive Plan Amendment

---

**PROPOSAL DETAILS**

**OVERVIEW:** The Islip Town Board proposes to amend and update the Town Comprehensive Plan to “highlight the demographics of the Town in terms of population, race, housing, and growth in order to understand the current population and trends to properly plan for future needs and development.” The one page amendment (released as a single electronic web-page) seeks to “highlight current demographics and trends within the Town of Islip in order to set the stage for future changes to the Towns Comprehensive Plan.”

**STAFF ANALYSIS:** The Town of Islip last completed a Comprehensive Plan in the 1970's and early 1980's. These have been followed by many specialized studies including a town-wide economic development plan and numerous corridor studies. More recent plans include hamlet studies of Oakdale and Brentwood. Islip's planning Department indicates that in addition to their written plans, a consistent land use philosophy is used (and made evident in their staff reports) when evaluating change of zone applications.

The planning and research unit reviewed the content of the proposed plan amendment and have made some comments related to change in place names, changes in boundaries from 2000 and 2010. One comment of particular note is that within the Housing section of the release a comparison to similar or comparable municipalities would better illustrate the text than comparison to the County and State.

The Town of Islip appears to be making progress in the development of a Comprehensive Plan Update. The update of the Town Comprehensive Plan will help to ensure that future development adheres to goals of the community of Islip as reflected in the Plan. The

inclusion of factual demographic data sets the foundation for the derivation of all assumptions and recommendations of the Plan.

## **STAFF RECOMMENDATION:**

**Approval** for the following reason:

The Town of Islip appears to be making progress in the development of a Comprehensive Plan Update. The update of the Town Comprehensive Plan will help to ensure that future development adheres to goals of the community of Islip as reflected in the Plan. The inclusion of factual demographic data sets the foundation for the derivation of all assumptions and recommendations of the Plan.

## **SUPPLEMENTAL DATA**

New York State General Municipal Law section 239-m 3. States that each local municipality shall, before taking final action on proposed action, refer the same to the county planning commission. These actions include:

- i. Adoption or amendment of a comprehensive plan;
- ii. Adoption or amendment of a zoning ordinance or local law;
- iii. Issuance of special use permits;
- iv. Approval of site plans;
- v. Granting of use or area variances;
- vi. Other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law

GML 239-I further states that the Commission shall review the proposed action for inter-community and county-wide considerations, including but not limited to:

- a) The compatibility of various land uses,
- b) Traffic generating characteristics,
- c) The impact of the proposed use on county or state institutional or other uses,
- d) Protection of community character,
- e) Drainage,
- f) Community facilities,
- g) Official municipal and county development policies and
- h) Such other matters as may relate to the public convenience, to governmental efficiency, and to the achieving and maintaining of a satisfactory community environment. Commission policies contained within the Guidebook are relevant factors consistent with the above enumerated GML considerations.

According to the Commission Guidebook, the policies are *“intended to articulate Commission land use policies in order to better inform local municipalities and applicants, effectively guide regionally significant actions and better coordinate local responses.”*





# Town of Islip

## Department of Planning and Development



### CP2011-01: COMPREHENSIVE PLAN UPDATE #1: Introduction to updating the Town’s Comprehensive Plan; Changes in the Town’s Demographics and Existing Conditions.

The Town of Islip is a community of great diversity and resources. Islip currently faces many challenges related to a changing population, a diversifying economic landscape, and limited vacant land. A comprehensive plan guides the town in response to these challenges with insight and cohesiveness. This plan, adopted in 1979, has served the town well. The goals set forth are as relevant today as they were at their inception. However, a plan must evolve over time to respond to the current and future challenges facing our town and must be updated to account for demographic shifts. These updates will ensure that future development continues to adhere to these goals and takes into consideration our changing population and landscape.

#### Goals of the 1979 Comprehensive Plan

The Seven goals of the 1979 Comprehensive Plan for the Town of Islip are still as important and valid today as they were then. They are:

1. To promote housing which satisfies the needs and tastes of Islip citizens for the entire range of income levels in the Town.
2. To protect the natural resources and environment of Islip.
3. To provide recreational services of all kinds in adequate supply and easily accessible to all the Town's people.
4. To provide or promote efficient, quality public services, including transportation, education, health, safety and consumer protection.
5. To promote the development of identifiable communities and corresponding social activities.
6. To promote only those commercial and industrial developments that are compatible with local employment needs and surrounding environments.
7. To promote attractive environments that enhance the value of life with aesthetically pleasing surroundings.

## Demographic Changes:

Much has changed since the Comprehensive Plan was written in the mid to late 1970s. Recent data has shown significant recent and long term shifts in the demographic makeup of the Town of Islip. The town has become older and more diversified. There has been relatively slow population growth overall in the past four decades. However, in the last ten years, growth has been uneven in the town, generally occurring in a small handful of hamlets.

This update seeks to highlight the current makeup of the town in terms of population, race, housing and growth. It is important to understand the current population and trends, in order to properly plan for future needs and development.

#### Housing:

##### How diverse is our housing?

The single family home continues to be the predominant housing option in the Town of Islip, comprising over 76% of the total housing stock. When compared to the County and State, Islip has a relatively diverse mix of housing options. But, when compared to other municipalities in the east, we are far less diversified.

##### Town's Housing Mix:

Source: Town of Islip Assessor's Data 2011

#### Population:

##### Population—2000-2010 Changes:

After gaining approximately 208,000 people between 1950 and 1970, the Town has reached a plateau, only gaining 57,000 since 1970. Since then, the Town's population has seen consistently slow growth with an average of about 14,000 per decade. The more relevant topic is not the amount of growth, but the changing population. The Town's population is aging. Also, certain areas of the Town are becoming more ethnically diverse.

##### Population 1950-2010

Source: U.S Census Bureau 2010, Town of Islip Comprehensive Plan Update 1988

#### Ethnicity:

##### Who We Are:

Source: U.S Census Bureau 2010

##### Ethnic Diversity:

The majority of hamlets in the Town have not seen shifts in ethnic diversity within the past 10 years, with the exception of the Hamlets of Brentwood, Central Islip, and Bay Shore. These hamlets have seen significant growth in the Hispanic population, contributing to an overall diversification of the Town.

##### Population Growth 2000-2010

##### How are the individual Hamlets changing?

Overall, the Town has grown by 13,134 people since the year 2000. Of this recent growth, the hamlet of Brentwood alone increased by over 10,000 people. Additionally, the Hispanic population in Brentwood has risen by 31%.

Not all areas of the Town grew. Of those hamlets that lost population since 2000, Islip has seen the biggest loss with a decrease of 1,886 people.

##### An aging population:

In the ten years between the year 2000 and 2010, the Town's population of people under the age of 40 has decreased by 12,330 and increased by 25,261 people over the age of 40. This represents a 6% shift in population distribution.

Overall, both Suffolk County and New York State have seen similar aging trends in the last ten years. Suffolk County has seen a 5% growth in those over 40 while New York State has seen a 4% growth in this age group.

##### Age:

##### Changes in Age Distribution from 2000-2010:

#### Population Density:

##### Varying Density:

Population density varies significantly between various hamlets in the Town of Islip. Great River has the fewest people per square mile at 795 while Brentwood has the highest density at over 5600 people per square mile. Additionally, Great River accounts for 7% of land area within the Town while Brentwood accounts for 15.5%.

Overall, the Town of Islip has an average population density of about 3400 people per square mile.

##### Population Density by Hamlet

Source: U.S Census Bureau 2000-2010

#### Where We Live:

##### Uneven Distribution:

Of the 335,000 residents of the Town of Islip, nearly 87,000, or 26% live in the hamlet of Brentwood, despite making up just 15.5% of the Town's land area. Over 5,000 people per square mile live in this hamlet compared with an average of 3,060 people per square mile in the Town overall.

The Town's lowest population density can be found in the hamlet of Great River, averaging just 795 people per square mile and making up just 2% of the Town's total population on 7% of the total land area.

##### Population by Hamlet

Source: U.S Census Bureau 2010





STEVE LEVY  
SUFFOLK COUNTY EXECUTIVE

DEPARTMENT OF PLANNING

SARAH LANSDALE, AICP  
DIRECTOR OF PLANNING

**STAFF REPORT**  
**SECTIONS A14-14 THRU A14-25 OF THE SUFFOLK COUNTY ADMINISTRATIVE CODE**

**Applicant:** Lowe's Home Centers, Inc.  
**Municipality:** Town of Smithtown  
**Location:** W/S/O Crooked Hill Road, N/S/O L.I.E. Service Road, S/O Henry Street; in the hamlet of Commack  
**File Number:** SM-11-02  
**T.P.I.N.:** 0800 17400 0100 020001 and 0800 17400 0200 050001  
**Jurisdiction:** Adjacent to C.R. 13 (Crooked Hill Road), C.R. 4 (Commack Road) and S.R. 495 (Long Island Expressway North Service Road); Within 500' to municipal boundary lines of Towns of Huntington and Islip.

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**PROPOSAL DETAILS**

**OVERVIEW** – Applicant seeks Zoning Board of Appeals approval in order to construct a free-standing Lowe's Retail Store having a total area of 187,925 square feet. This includes both the building (149,667 SF) and garden center (38,258 SF). The subject site consists of two tax map parcels; a main parcel having an area of 19.77 acres will be the site of the proposed building, and a smaller corner parcel having a total area of 0.26 acre will be the site of a proposed sign. The total area of the subject site is 20.03 acres, zoned SCB Shopping Center Business.

The property is currently used as a multi-screen movie theater, known as the Commack Multiplex, that is proposed to be demolish and replaced with the Lowe's Home Center.

The proposal requires a special exception, several variances and relief by the Zoning Board of Appeals that are as follows:

**1. Special Exception/Variance:** To permit the sale and exchange of propane (20 lbs. barbeque type propane tank cylinders). In addition to the special exception the applicant requests a variance to exceed the maximum storage capacity on-site of 200 gallons to 450 gallons.

**2. Parking Variance:** Based upon the size of the proposed retail store and lot size, the proposal is classified by the Town of Smithtown Zoning Ordinance as a "Community Shopping Center" and as defined within the Shopping Center Business zone has a parking requirement calculation of one (1) stall per 125 square feet of overall store area. Therefore the required number of parking stalls is 1,504, plus 2 stalls for the proposed propane exchange, for a total of 1,506 parking stalls. The applicant proposes the physical construction of 517 parking stalls, and land-bank 493 parking stalls, for a total of 1,010 parking stalls provided on-site. Accordingly, the applicant seeks a 496 stall parking variance, or a 33% reduction.

**3. Height Variance:** Permission to increase the maximum building height from 35 feet to 52 feet.

**4. Permitted Signage:** The applicant seeks relief from the Town Zoning Ordinance regarding the following signage:

1. To permit an off-site ground sign (s/e/c of Henry Street and Commack Rd.);
2. To increase the maximum number of ground signs from two (2) to five (5);
3. To increase the maximum square foot of ground signs from 32 square feet to 316 square feet and have a width greater than 12 inches;
4. To increase the maximum number of wall signs from one (1) sign to five (5) signs;
5. To increase the maximum height of a wall sign from 15 feet to 34 feet, for the proposed "Indoor Lumber Yard" sign facing south;
6. To increase the maximum height of a wall sign from 15 feet to 41 feet, for the proposed "Lowe's" sign facing south;
7. To increase the maximum height of a wall sign from 15 feet to 24 feet, for the proposed "Garden Center" sign facing south;
8. To increase the maximum height of a wall sign from 15 feet to 33 feet, for the proposed "Lowe's" sign facing north;
9. To increase the maximum height of a wall sign from 15 feet to 33 feet, for the proposed "Lowe's" sign facing east.

## **STAFF ANALYSIS**

**GENERAL MUNICIPAL LAW CONSIDERATIONS:** New York State General Municipal Law, Section 239-I authorizes the Suffolk County Planning Commission to consider inter-community and county-wide issues. Included in such issues are compatibility of land uses, community character, public convenience and maintaining of a satisfactory community environment.

The proposal intends to eliminate the existing multiplex movie theater use on the subject site, and redevelop the subject site with a Lowe's retail store, which is compatible with the existing commercial character of the neighborhood, and provide job opportunities and retail services to the surrounding areas.

**LOCAL COMPREHENSIVE PLAN RECOMMENDATIONS:** The Town of Smithtown's Comprehensive Plan was last adopted in 1957, and an 'in-house' Plan Update is currently in process. The stated goal of the Update to the Plan is to improve the quality of life of its residents by proposing an environment that is reflective of the community's wishes.

The proposed Lowe's Home Center would be considered consistent with the goals of the Plan Update if the proposal improves the local economy in terms of business activities, taxes, employment, and property values so as to provide an attractive, affordable and livable community.

## **SUFFOLK COUNTY PLANNING COMMISSION GUIDELINE CONSIDERATIONS:**

The Suffolk County Planning Commissions has identified five general Critical County Wide Priorities including:

1. Environmental Protection and Energy Efficiency
2. Economic Development, Equity and Sustainability
3. Housing Diversity

4. Transportation and
5. Public Safety

Policies contained within the Suffolk County Planning Commission Guidebook derived from the above priorities that are relevant to the subject application are included below. It should be noted that the Suffolk County Planning Commission Guidebook was adopted unanimously by the Suffolk County Planning Commission at their regularly scheduled meeting of January 7, 2009.

**Section 4.2 (B) of the SCPC Guidelines relates to Specific Land Use Policies, *promoting redevelopment and infill development as an alternative to continued sprawl.***

It is the staff belief that the subject application is in accordance with this commission policy, as the proposal is to construct a new commercial building in the place of an aging multiplex movie theater that has waned in popularity, partly due to the competition created from newly redeveloped site a few miles south containing a state of the art multi-screen movie theater, as part of an outdoor shopping mall.

**Section 4.5 (B) of the SCPC Guidelines relates to the Specific Public Safety Policies: *New residential, commercial and industrial buildings and developments must incorporate design elements that calm traffic, deter criminal activity, and increase public safety.***

The referral material (preliminary site plan) associated with this proposal indicates a new traffic signal light at a potential point of congestion created by relocating the ingress/egress from the subject parcel directly across from an existing ingress/egress on the opposite side of Crooked Hill Road. Therefore, the proposal will result in traffic calming improvements to this local roadway.

**Section 4.7 (A) of the SCPC Guidelines relates to the General *Transportation Policy Goal* of *expanding sustainable transportation options – for commercial, commuter, and recreational travel – by providing greater public transit alternatives and creating a diverse, multi-modal transportation system that links jobs, housing, shopping, and recreation and reduces dependence on single occupant motor vehicles.***

The location of the proposed Lowe's Home Center is situated along a Suffolk County Transit Bus Route (#41), and in close proximity both the east bound and west bound exits of the Long Island Expressway.

And **Section 4.7 (B) of the SCPC Guidelines relates to the Specific *Transportation Policy* of *improving access management standards. Access management refers to the design of motor vehicle access to individual parcels along a roadway. The layout, location and number of access points can significantly affect both the capacity and safety of the roadway.***

It is the belief of the staff that by relocating two (2) existing points of ingress/egress of the subject parcel, 1) southward along Crooked Hill Road, to be directly opposite the ingress/egress of the commercial shopping center across the street (Costco and Shop Rite), and installing a traffic signal light there, and 2) an other ingress/egress westward along the L.I.E. Service Road, further away from an existing point of ingress/egress for the abutting gas station property. The proposal will contribute to mitigating points of conflict along those two roadways, as well reducing on-site congestion on the subject parcel as well as the neighboring properties.

**Section 4.8 (A) of the SCPC Guidelines relates to General Environmental Policy Goals** *to protect, preserve, and restore critical natural resources to maintain a healthy and diverse ecosystem for present and future generations. Promote biodiversity, limit greenhouse gases, and improve water and air quality by requiring energy efficiency in design, construction, land use, and industry.*

Based on the referral material (preliminary site plan), the subject proposal will consume less land than the existing multiplex movie theater, and convert a significant area of paved parking into a landscaped area used for storm-water infiltration.

**Section 4.9 (B) of the SCPC Guidelines relates to Specific Design Policy** *to utilize green infrastructure to minimize community and environmental impacts and reduce both private and public development costs.*

The staff has noted that the referral material (preliminary site plan) associated with the proposal indicates utilizing landscaped areas for storm-water mitigation purposes.

**Section 4.10 (A) of the SCPC Guidelines relates to General Cooperation Policy Goal** *that the sustainability of the County is inextricably tied to its broader regional, national, and global context. The County recognizes the importance and need for cooperation and coordination among and between County agencies, local municipalities, and neighboring jurisdictions.*

The neighboring municipalities within 500 feet; and all property owners and occupants within 1,000 feet of the subject parcel have been notified of the applicant's proposal.

## **STAFF RECOMMENDATION**

**Approval**, with the following modifications:

1. The building shall be reduced in size to be in accordance with the on-site parking requirements of Town of Smithtown's Zoning Code; or the applicant shall be directed to provide a Comprehensive Parking Analysis to determine that the proposed number of on-site parking stalls, both improved and land-banked, would be adequate to accommodate all future parking demands.
2. The applicant shall meet the Suffolk County Planning Commission Guidelines relating to Energy Efficiency.
3. The applicant shall meet the Suffolk County Planning Commission Guidelines relating to Public Safety.
4. The applicant shall incorporate elements of the Suffolk County Planning Commission publication on Managing Stormwater-Natural vegetation and green Methodologies.

It is noted that there are two areas containing a significant number of land-banked parking stalls that are designated as 'landscaped areas to be used for storm-water infiltration' purposes. The eventual conversion of these land-banked parking stalls to improved parking stalls shall be a component of the proposed Lowes's storm-water management plan.

## **SUPPLEMENTAL DATA**

### **ZONING DATA**



- Zoning Classification: SCB Business
- Minimum Lot Area: 87,120 SF (2 acres)
- Section 278: N/A
- Obtained Variance: N/A

#### **SUPPLEMENTARY INFORMATION**

- Within Agricultural District: No
- Shoreline Resource/Hazard Consideration: No
- Received Health Services Approval: No
- Property Considered for Affordable Housing Criteria: No
- Property has Historical/Archaeological Significance: No
- Property Previously Subdivided: No
- Property Previously Reviewed by Planning Commission: No
  
- SEQRA Information: Short Environmental Assessment Form
- SEQRA Type: Pending
- Minority or Economic Distressed: No

#### **SITE DESCRIPTION**

- Present Land Use: Entertainment
- Existing Structures: Multiplex movie theater
- General Character of Site: Level
- Range of Elevation within Site: Not specified
- Cover: Building, asphalt, recharge basin
- Soil Types: Haven loam
- Range of Slopes (Soils Map): 0-2% slopes
- Waterbodies or Wetlands: None

#### **NATURE OF SUBDIVISION/ NATURE OF MUNICIPAL ZONING REQUEST**

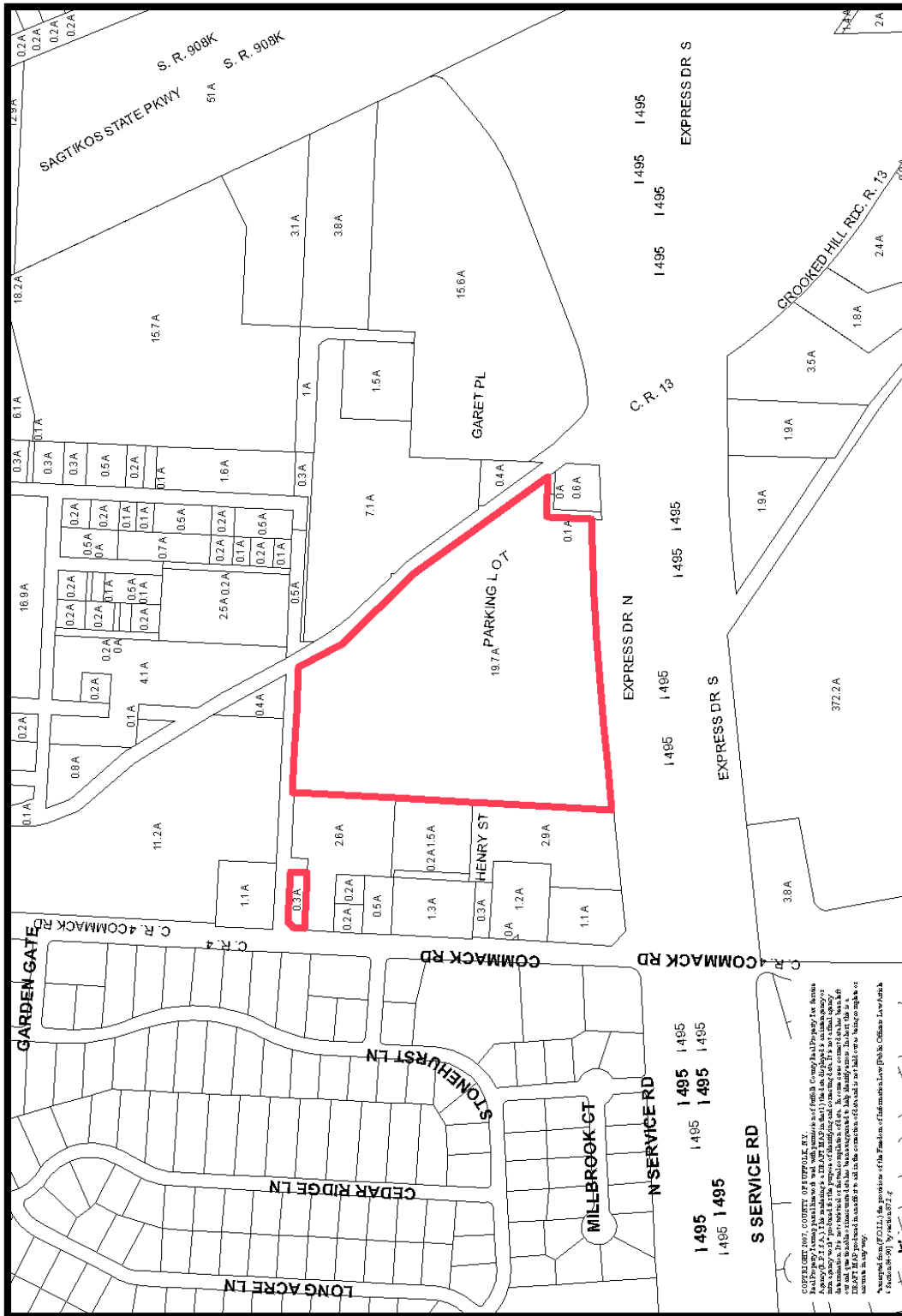
- Type: Variances, and a Special Exception
- Layout: Standard
- Area of Tract: 20.03 Acres (two noncontiguous parcels, 0.26 & 19.77 acres)
- Yield Map: N/A
  - No. of Lots: N/A
  - Lot Area Range: N/A
- Open Space: N/A

#### **ACCESS**

- Roads: Existing Crooked Hill Road (C.R. 13), Long Island Expressway North Service Road (S.R. 495), Henry Street, and Commack Road (C.R. 4)
- Driveways: Private

#### **ENVIRONMENTAL INFORMATION**

- Stormwater Drainage
  - Design of System: Catch basins and landscaped infiltration systems
  - Recharge Basins: Yes
- Groundwater Management Zone: I
- Water Supply: Public
- Sanitary Sewers: ST & LP



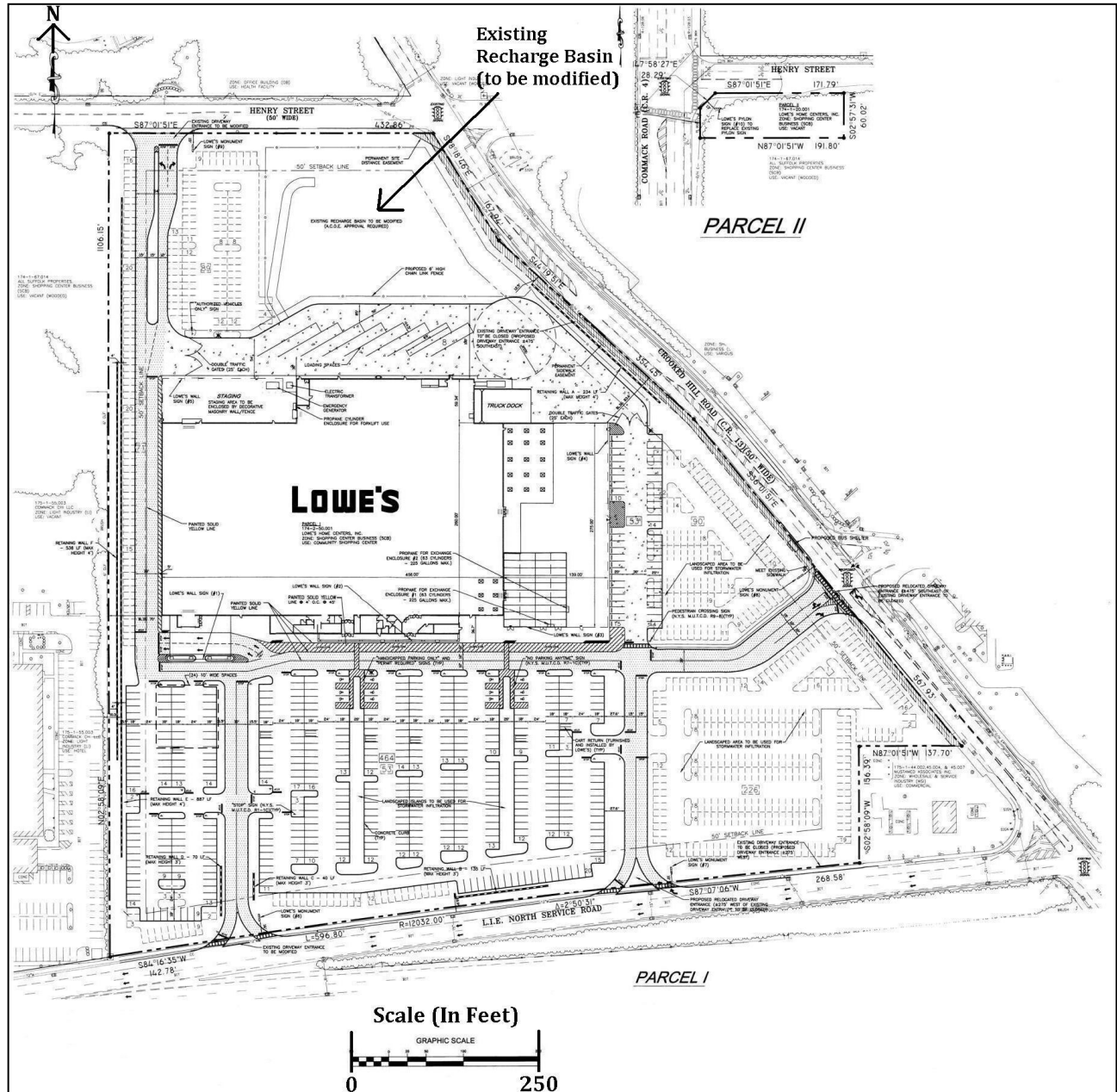
Z-4: Lowe's Home Centers Inc.  
 SCPD No.: SM-11-02  
 SCTM No.: 0800-174.00-02.00-050.001 et al.

SUFFOLK COUNTY  
 Department of Planning  
 Planning Board

Town of Smithtown  
 Suffolk County, New York

Date: 8/03/2011

0 310 620 1,240 1,860 2,480 Feet



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 0800-174.00-02.00-050.001