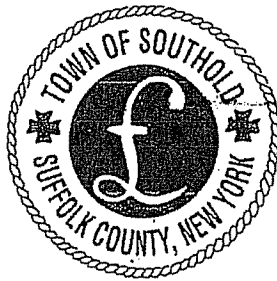


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# *Appendix D*

ELIZABETH A. NEVILLE  
TOWN CLERK  
REGISTRAR OF VITAL STATISTICS  
MARRIAGE OFFICER  
RECORDS MANAGEMENT OFFICER  
FREEDOM OF INFORMATION OFFICER



Town Hall, 53095 Main Road  
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Southold, New York 11971  
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**OFFICE OF THE TOWN CLERK  
TOWN OF SOUTHOLD**

**ORDER AND DETERMINATION**

**THIS IS TO CERTIFY THAT THE FOLLOWING RESOLUTION NO. 709 OF 2005  
WAS ADOPTED AT THE REGULAR MEETING OF THE SOUTHOLD TOWN BOARD  
ON November 16, 2005:**

**RESOLVED** that the Town Board of the Town of Southold hereby determines that the petition for annexation filed on July 14, 2005 by applicant KACE LI, LLC complies with the procedural filing requirements of Article 17; and it is further

**RESOLVED** by the Town Board of the Town of Southold, based on the considerations set forth below, that it is not in the over-all public interest to approve such petition for annexation; and it is therefore

**RESOLVED** that the Town Board of the Town of Southold **DENIES the petition for annexation submitted by KACE LI, LLC** based on the following:

1. The territory proposed to be annexed is a vacant seventeen acre parcel of property (SCTM#1000-40-3-1) located on Rte 48 in Greenport, Town of Southold. The applicant seeks to annex the property from the Town of Southold to the Village of Greenport to avail itself of the Village sewer system, water system, electric system and high density zoning laws. However, the property, if developed as part of the Town, is eligible for Suffolk County Water Authority service and electric service through LIPA. The property is eligible for connection to the Village sewer system by virtue of a written agreement/stipulation of settlement between the Village and the applicant. Further, the property is currently zoned Hamlet Density (HD) which allows four units to the acre. It is well-settled that "annexation may not be used as a means by which the owner of land in one municipality may escape the effect of that municipality's local legislation by having the land transferred to an adjoining municipality." Board of Trustees, Village of Spring Valley v. Town of Ramapo 264 A.D.2d 519, 694 N.Y.S.2d 712, at 714 (2d Dept. 1999). In this case, the services are all available without annexation. No evidence has been presented by the applicant that the land cannot be developed as currently zoned. It thus appears that applicant seeks annexation merely to avoid the Town's limitations on density and to avail itself of the greater density allowance permitted by the Village.

2. Municipal annexations are discretionary decisions of the governing body that require SEQRA review. (See "SEQR Handbook: SEQRA and Local Government" attached hereto as Exhibit "A".) This Town Board, on August 16, 2005, determined that the proposed annexation is an Unlisted action, and proposed that the Town of Southold serve as Lead Agency. (See copy of resolution #508 of 2005 attached hereto as Exhibit "B".) The Village of Greenport challenged that determination. The Lead Agency question has been submitted to the Commissioner of the DEC pursuant to 6 NYCRR Part 617.6(b)(5) for resolution. The Commissioner, in turn, submitted the matter to the Region One (local) DEC office for input because there are several acres of freshwater wetlands on the property. The Region One office replied on October 28, 2005 to the Commissioner's office indicating that insufficient specific information has been provided by the applicant to allow them to provide meaningful comments. Specifically, they noted the lack of a plan, rendering or drawing of the proposed project and the lack of a survey with the freshwater wetland boundary depicted thereon. (See letter from John Pavacic, Regional Permit Administrator, DEC, to Betty Ann Hughes, Chief, SEQRA and Training, DEC dated October 28, 2005 attached hereto as Exhibit "C".) Importantly, they also noted flaws in the SEQRA process to date, including the fact that the SEQRA process should have been commenced prior to the public hearing on August 23, 2005. (In fact, the applicant did not submit the EAF until the public hearing on August 23, 2005). The Region One office indicated that they may wish to assume Lead Agency status, and that the project may result in a significant impact to the environment and an environmental impact statement would need to be prepared. The Town Board would be agreeable to the DEC assuming Lead Agency status in the SEQRA review. The Town Board concurs that, based on the information available to date, the project may result in a significant environmental impact requiring the preparation of an environmental impact statement. At any rate, the Town Board is unable to approve the annexation at this juncture because the SEQRA review has not been completed. (It should be noted that the municipality has only ninety days from the close of the hearing to adopt findings, or the municipality will be deemed to have approved the annexation. There appears to be a conflict between the time frame dictated in Article 17 of General Municipal Law and the time in which it takes to perform a SEQRA review on the annexation. The proposed development of the parcel must be considered in conjunction with the annexation petition under SEQRA {see Exhibit "A" at D.3.} and a "hard look" at a project of this magnitude would be very difficult, if not impossible, under the required time limits.)
3. The applicant claims that a significant benefit of the annexation would be an "as-of-right" connection to the Village sewer system. This is no benefit to the Village residents. There is already an agreement in place to allow the applicant to hook in for a charge. The Village has previously charged significant hook-up fees for properties outside the Village boundaries. The applicant has proposed to construct 128 dwelling units on the property, which, as pointed out at the public hearing (see hearing transcript attached hereto as Exhibit "D") would provide a significant income to the Village if the applicant is required to pay a hook-up fee. Here, if annexation were approved, the applicant would not have to pay a hook-up fee. Sewer rents as income to the Village would be charged in either event, and are not a factor.

4. There is no apparent public benefit to the Village. The overwhelming sentiment at the joint public hearing was against the annexation. Although the applicant has stated that half of the units would be classified as "affordable", there is no proposal for keeping them affordable in perpetuity. Many at the public hearing expressed a need for affordable housing in the Village, but few saw this proposal as a real solution. Comments at the public hearing included "quick-fix", "no benefit to the residents of Greenport" and "appalling". See Exhibit "D".
5. The Town of Southold has enacted legislation that mandates twenty-five percent (25%) of all homes constructed in a subdivision or as part of a residential site plan be classified as "affordable" or "work force" housing. It is required that these homes be covenanted and the future sales price be restricted such that they will remain affordable in perpetuity. The homes must be sold to qualified buyers selected from a lottery of the Town's housing registry. There is NO requirement in the Village laws that the future sales price be restricted, thereby mandating perpetual affordability. The applicant has indicated that the units will initially be sold at the prices mandated by the Southold affordable housing program, and will remain affordable because they will be small. The Town Board finds that the real estate market on the East End of Long Island has shown otherwise. A "small" unit in a desirable community is likely to be priced far above what the average working family in Southold Town can afford. The proposed "quick-fix" to the affordable housing crisis has no long-term benefit to the public. The Town created three affordable housing districts in the Town in the past, without perpetual affordability controls, and these homes are currently half-million dollar homes that are unaffordable to the average family. Once again, the applicant is seeking to escape the laws of Southold Town by annexing the property to Greenport, where he will not be required to mandate perpetual affordability on the resale. As set forth above, annexation to avoid the laws of a municipality is improper and a misuse of the annexation process.
6. An annexation should not be piecemeal, benefiting one property owner alone. Rather, it should follow sound planning principles. See Village of Warwick v. Town of Warwick, 56 A.D. 2d 928, 393 N.Y.S.2d 47. The Town of Southold has long engaged in comprehensive planning for development and land use decisions throughout the Town. The Town recently completed a hamlet study planning process whereby stakeholders selected from each hamlet prepared recommendations for the vision and future of their hamlets. Although this parcel is located within the HALO, or hamlet locus area surrounding the hamlet center, this proposed high-density development is against "smart-growth" planning principles. The development is located on a heavily traveled roadway, and is not within walking distance of the Village center, post office, or stores.

This property is surrounded on three sides by Village property. The surrounding Village property is parkland, zoned PD (Parkland) by the Village. The property to the north of the parcel is zoned by the Town as R-80, which is two acre residential zoning. Although the subject parcel is adjacent to land owned by the Village, it is approximately 4,500 feet (close to a mile) from the nearest developed portion of the Village, and even farther from the business center. The Village changed the surrounding land from residential zoning to PD in 1987 in response to directives from the Department of Environmental

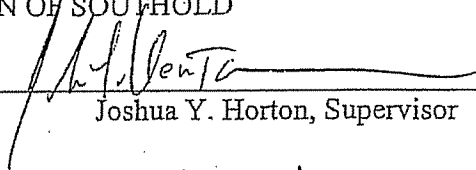
Conservation. (See portion of "Review of Hamlet Density Zoning in Southold Town" report to the Town Board dated February 1994, attached hereto as Exhibit "E" which recommended rezoning of the parcel to a less intensive residential district. The Town Board rezoned the subject parcel, which was overturned by the court following a challenge by Kace LI, LLC on the basis that the rezoning required a supermajority of the Town Board because the owner had filed a protest petition, and such supermajority was not achieved.) An updated report on the zoning of this parcel prepared by the Town Planner in 2002 reiterates the recommendation that high density development of this parcel is contrary to the comprehensive planning and smart growth planning principles utilized in the Town of Southold.

It is estimated that as many as nine of the seventeen acres are freshwater wetlands, and not buildable. To achieve a density of 128 units, the wetlands would have to be included in the yield, which is an approach that is clearly not in the over-all public interest. To put 128 dwelling units on the remaining land runs afoul of the sound planning principles the Town has implemented over the past 20 years. The density controls in place in the Town are designed to impose a minimal impact on the environment and the community.

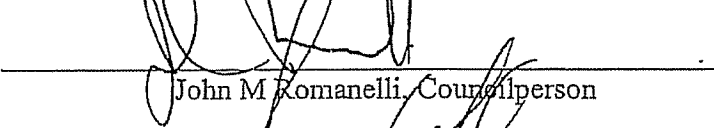
7. The remaining area in the direct vicinity of the subject property receives no benefit from the annexation, and in fact, is likely to be negatively impacted. Despite the fact that the Town has not had the opportunity to evaluate the traffic impact, such high density development in that location is more likely than not going to have a significant impact on the existing residential properties in the area.
8. The annexation is not in the over-all public interest of the school district. Dr. Charles Kozora, Superintendent of Greenport Public Schools, appeared at the public hearing and spoke of the effect of the proposal on the school district. Dr. Kozora projected that, after income from the development is deducted, there would be a net increase of \$1.16 million on the school budget. This increase would result in a 14% school tax increase at the completion of the project. (See Exhibit "D" at p.66)
9. The annexation is inconsistent with the policies contained in the Town's Local Waterfront Revitalization Program, and as such the Town may not approve of the annexation pursuant to Chapter 95 of the Town Code of the Town of Southold. The Town Board hereby adopts the recommendation of the LWRP Consistency Coordinator dated November 16, 2005 in this regard.
10. The Town Board finds that the proposal for annexation submitted by the applicant KACE LI, LLC is not in the over-all public interest. In fact, the sentiment at the public hearing that the proposal does not benefit anybody but the developer appears true. The proposal does not benefit the Town, the Village, or the school district.
11. There are no agreements as referred to in Section 707 or 708 of General Municipal Law between the municipalities, and if there is property or indebtedness it shall be payable in the manner set forth in those sections.

TOWN BOARD OF THE TOWN OF SOUTHBOLD

DATED: November 16, 2005

  
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Joshua Y. Horton, Supervisor

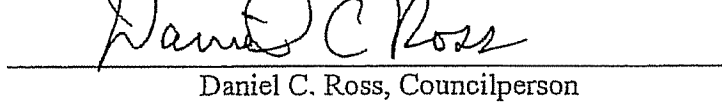
Absent  
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Louisa P. Evans, Justice

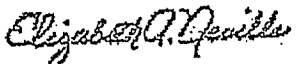
  
\_\_\_\_\_  
John M. Romanelli, Councilperson

  
\_\_\_\_\_  
Thomas H. Wickham, Councilperson

(SEAL)

Absent  
\_\_\_\_\_  
William P. Edwards, Councilperson

  
\_\_\_\_\_  
Daniel C. Ross, Councilperson

  
Elizabeth A. Neville  
Southold Town Clerk