

Appendix B
CORRESPONDENCE

Police Department
Town of Yorktown

2281 CROMPOND ROAD
YORKTOWN HEIGHTS, NEW YORK 10598-3795

Robert A. Arruda, *Chief of Police*



July 23, 2003

Tina Wang
Tim Miller Associates, Inc.
10 North Street
Cold Spring, New York 10516

Dear Ms. Wang:

Re: Proposed Yorktown Farms Subdivision

The following information is being provided in response to your June 11, 2003 letter:

- 1) The number of police calls in 2002 was 14,113.
- 2) The service ratio is 1.4 police officers per one thousand residents.
- 3) The typical response time for an emergency call for service is approximately three minutes, however, it can be as little as less than one minute or as long as several minutes, depending on other police activity at the time.
- 4) The Yorktown Police Department is located approximately six miles from the site.
- 5) The Yorktown Police Department currently employs fifty-three officers.
We utilize 30 marked and unmarked vehicles.
At any one time there is between five and seven officers assigned to patrol duties in marked and unmarked vehicles that would be available to respond to a call for service.
- 6) The Yorktown Town Board has determined that it will expand the number of police officers by one each year until the department has hired six more officers. These officers would be available for patrol duties to respond to calls for service.

A handwritten signature in cursive script that reads 'Robert A. Arruda'.

Robert A. Arruda
Chief of Police

**TIM
MILLER
ASSOCIATES, INC.**

10 North Street, Cold Spring, New York 10516 (845) 265-4400 Fax (845) 265-4418

June 11, 2003

Chief Robert Arruda
Yorktown Police Department
Town of Yorktown
2281 Crompond Road
Yorktown Heights, NY 10598

Re: Proposed Yorktown Farms Subdivision, Town of Yorktown

Dear Chief Arruda:

Tim Miller Associates, Inc. is in the process of preparing a Draft Environmental Impact Statement (DEIS) for the proposed 37 residential single family lots with a town recreational ballfield in the Town of Yorktown, called Yorktown Farms Subdivision. These lots will support four bedroom single family homes. Projected population size is about 134 persons including 32 school aged children. The property is located in northeast Yorktown, on the south side of Route 6 and along the municipal border of the Town of Somers. The site is approximately 1.5 miles east of Jefferson Valley Mall and the Taconic Parkway. A location map is enclosed for your reference. Proposed access is from Route 6 and Gay Ridge Road.

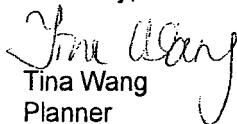
As part of the environmental review process, we wish to include any concerns your office may have relative to this proposed project. We would appreciate your written response regarding the effect of the increased population on the district's facilities, and the ability of the Police Department to provide police protection services to this property. Information which would be useful in that regard would include:

- the number of police calls per year
- service ratio (police officers to population served)
- your typical response time to a site in this location
- the location of police stations near the site
- your current manpower and equipment levels
- any anticipated department staff or facility expansion or equipment procurement plans

Your input is important. Should you not be able to provide written correspondence, I can be reached by telephone at the above number during the weekdays.

Thank you for your assistance in this matter. Please do not hesitate to call me should you have any questions or need additional information. I look forward to hearing from you.

Sincerely,



Tina Wang
Planner

TIM MILLER ASSOCIATES, INC



July 15, 2003

Ms. Tina Wang
Tim Miller Associates, Inc.
10 North Street
Cold Spring, NY 10516

Re: Town of Yorktown
Proposed Yorktown Farms Project

Dear Ms. Wang:

The Town is in receipt of your letter regarding information for the above referenced project (copy attached). In accordance with your request, the Town's responses are as follows:

- *Location of wastewater treatment plant.*
The proposed Yorktown Farms Subdivision is located in the Westchester County Peekskill Sewer District; there currently is no local district associated with the parcel.
- *Existing capacity of the Town's sewage disposal system, including sewer plant and sewer lines.*
Tim Miller Associates is advised to obtain the information on the capacity of the County-owned sewer lines and treatment plant directly from Westchester County. There is an existing pump station and force main which travels along Route 6 which was constructed as part of The Meadows-Stephans Green Subdivision located in the Town of Somers. A copy of the Sanitary Sewer Engineer's report and Design Drawings prepared by Divney Tung Schwalbe, LLP, dated October 6, 1998 is available for your review in our office.
- *Existing manpower.*
The Town of Yorktown's sewer department presently includes seven people. The positions are as follows:
 - Assistance Plant Superintendent
 - Wastewater Treatment Plant Operator
 - Road Foreman
 - 2 Mechanics
 - 2 Laborers

Ms. Tina Wang
Page 2
July 15, 2003

- *Description of plans to expand Town facilities or manpower related to sanitation services.*

There currently are no plans to expand Town facilities or the Town's sewer department's manpower at this time.

- *Ability of existing sewage disposal system to process sewage waste from proposed project.*

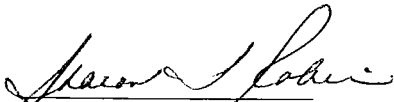
As previously stated, since the ultimate treatment facility is the Westchester County Owned Peekskill treatment plant, this question must also be posed to the County.

- *The remaining questions reference the Town of Yorktown's solid waste program.*

It is my understanding that you have obtained the answers to your remaining questions from Ms. Kim Ryyslyainen of the Town's Environmental Conservation Department.

The applicant should also ensure that it is familiar with the policies being pursued by the Rt. 6/Rt. 202/Bear Mountain Parkway Sustainable Development Study, as well as the Town's Comprehensive Plan. If you should have any question or require any additional information, please contact me at (914) 962-5722.

Very truly yours,



Sharon L. Robinson, P.E.
Acting Town Engineer

SLR/slr
Enclosure

cc: Linda G. Cooper, Town Supervisor (w/encl.)
Patrick Lofaro, Environmental Conservation (w/encl.)
Yorktown Farms Subdivision (w/encl.)

**TIM
MILLER
ASSOCIATES, INC.**

10 North Street, Cold Spring, New York 10516 (845) 265-4400 Fax (845) 265-4418

RECEIVED
~~TOWN OF YORKTOWN~~

JUN 30 2003

June 27, 2003

ENGINEERING DEPARTMENT

Ms. Sharon Robinson, P. E.
Town Engineer
Engineering Department
Town of Yorktown
363 Underhill Avenue
Yorktown Heights, NY 10598

Re: Proposed Yorktown Farms Subdivision, Town of Yorktown

Dear Ms. Robinson:

Tim Miller Associates, Inc. is in the process of preparing a Draft Environmental Impact Statement (DEIS) for a proposed 37 lot residential subdivision in the Town of Yorktown, called Yorktown Farms Subdivision. The proposed development will support four bedroom single family homes. Projected population size is about 134 persons. The property is located in northeast Yorktown, on the south side of Route 6 and along the municipal border of the Town of Somers. The site is approximately 1.5 miles east of Jefferson Valley Mall and the Taconic Parkway. A location map is enclosed for your reference. Proposed access is from Route 6 and Gay Ridge Road.

As part of the environmental review process, we wish to include any concerns your office may have relative to this proposed project. We would appreciate your written response regarding the effect of the increased population on the district's facilities, and the ability of the Sewer Department to provide Sewer treatment service to this property. Information which would be useful in that regard would include:

- Location of wastewater treatment plant
- Existing capacity of the Town's sewage disposal system, including sewer plant and sewer lines
- Existing manpower
- Description of plans to expand Town facilities or manpower related to sanitation services
- Ability of existing sewage disposal system to process sewage waste from proposed project
- Estimation of any additional manpower needs or facilities due to the project
- Tons of waste generated by the Town in the last year
- Estimated impacts of providing town sanitation services to the proposed development

Your input is important. Should you not be able to provide written correspondence, I can be reached by telephone at the above number during the weekdays.

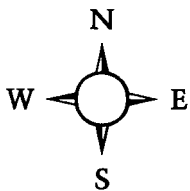
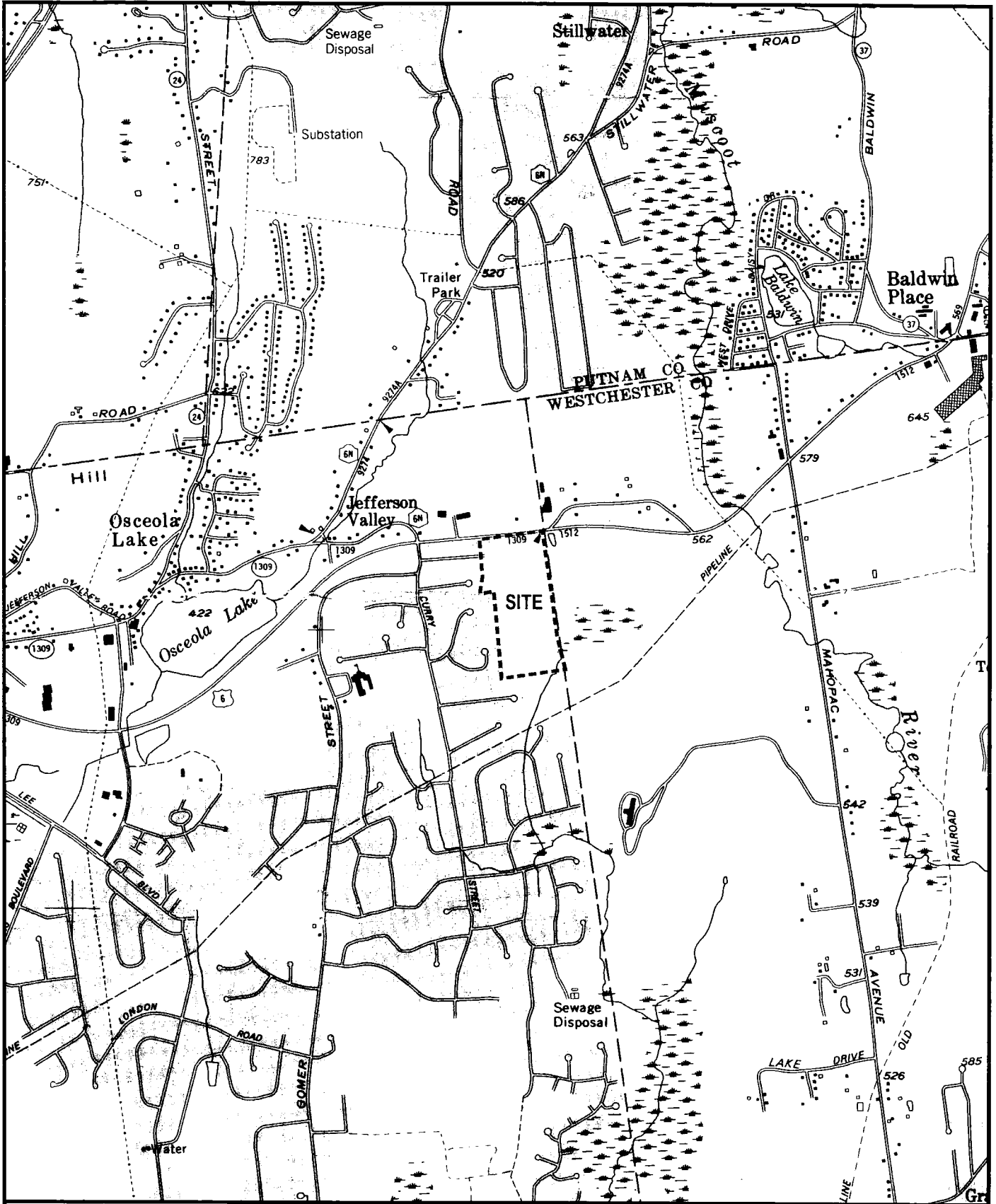
Thank you for your assistance in this matter. Please do not hesitate to call me should you have any questions or need additional information.

Sincerely,



Tina Wang, Planner
Tim Miller Associates, Inc.

Attachment: Location Map



File 0326 Fig 1 - 02/12/04

Figure 1: Location Map
 Yorktown Farms Subdivision
 Town of Yorktown, Westchester County, New York
 Source: NYSDOT Planimetric Map (Mohegan Lake Quad)
 Scale: 1" = 2000'

**TIM
MILLER
ASSOCIATES, INC.**

10 North Street, Cold Spring, New York 10516 (845) 265-4400 Fax (845) 265-4418

June 11, 2003

Ms. Susan Palamarczuk
Director of Finance and Operation
1086 East Main Street
Shrub Oak, NY 10588

Re: Proposed Yorktown Farms Subdivision, Town of Yorktown

Dear Ms. Palamarczuk:

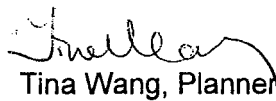
Tim Miller Associates, Inc. is in the process of preparing a Draft Environmental Impact Statement (DEIS) for the proposed 37 residential single family lots with a town recreational ballfield in the Town of Yorktown, called Yorktown Farms Subdivision. These lots will support four bedroom single family homes. Projected population size is about 134 persons including 32 school aged children. The property is located in northeast Yorktown, on the south side of Route 6 and along the municipal border of the Town of Somers. The site is approximately 1.5 miles east of Jefferson Valley Mall and the Taconic Parkway. A location map is enclosed for your reference. Proposed access is from Route 6 and Gay Ridge Road.

As part of the environmental review process, we wish to include any concerns your office may have relative to this proposed project. We would appreciate your written response regarding the effect of the increased population on the district's facilities, and the ability of the School District to provide educational services to the children who will be associated with this property.

Your input is important. Should you not be able to provide written correspondence, I can be reached by telephone at the above number during the weekdays.

Thank you for your assistance in this matter. Please do not hesitate to call me should you have any questions or need additional information.

Sincerely,


Tina Wang, Planner
Tim Miller Associates, Inc.

**TIM
MILLER
ASSOCIATES, INC.**

10 North Street, Cold Spring, New York 10516 (845) 265-4400 Fax (845) 265-4418

June 11, 2003

Captain George Keesler
Mohegan Lake Fire Department
P. O. Box 162
Mohegan Lake, NY 10547

Re: Proposed Yorktown Farms Subdivision, Town of Yorktown

Dear Captain Keesler:

Tim Miller Associates, Inc. is in the process of preparing a Draft Environmental Impact Statement (DEIS) for the proposed 37 residential single family lots with a town recreational ballfield in the Town of Yorktown, called Yorktown Farms Subdivision. These lots will support four bedroom single family homes. Projected population size is about 134 persons including 32 school aged children. The property is located in northeast Yorktown, on the south side of Route 6 and along the municipal border of the Town of Somers. The site is approximately 1.5 miles east of Jefferson Valley Mall and the Taconic Parkway. A location map is enclosed for your reference. Proposed access is from Route 6 and Gay Ridge Road.

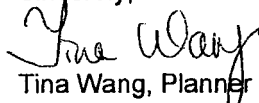
As part of the environmental review process, we wish to include any concerns your office may have relative to this proposed project. We would appreciate your written response regarding the effect of the increased population on the district's facilities, and the ability of the Fire Department to provide fire protection and ambulance services to this property. Information which would be useful in that regard would include:

- Equipment/vehicles available to the District
- Existing manpower
- Description of any existing plans to expand District buildings or manpower
- Number of responses in the last year
- Closest fire station and ambulance facilities to proposed project
- Estimated response time to the site
- Estimation of additional resources, if needed, for the proposed project

Your input is important. Should you not be able to provide written correspondence, I can be reached by telephone at the above number during the weekdays.

Thank you for your assistance in this matter. Please do not hesitate to call me should you have any questions or need additional information. I look forward to hearing from you.

Sincerely,



Tina Wang, Planner
Tim Miller Associates, Inc.

ZARIN & STEINMETZ
ATTORNEYS AT LAW
81 MAIN STREET
SUITE 415
WHITE PLAINS, NEW YORK 10601

DAVID S. STEINMETZ *
MICHAEL D. ZARIN

*ALSO ADMITTED IN D.C.
*ALSO ADMITTED IN MASS.
° ALSO ADMITTED IN CT.

TELEPHONE: (914) 682-7800
FACSIMILE: (914) 683-5490

October 7, 2003

JODY T. CROSS °
DANIEL M. RICHMOND
MARK R. RIELLY +
BRAD K. SCHWARTZ
LISA F. SMITH °

MARSHA RUBIN GOLDSTEIN
SUSAN H. SARCH *
OF COUNSEL.

Via Federal Express

Hon. Linda Cooper
Supervisor of the Town of Yorktown
Town Hall, 363 Underhill Avenue
Yorktown Heights, New York 10598

**Re: Potential Rezoning of Yorktown Farms Subdivision
Route 6 and Curry Street, Section 6.17, Parcel 3**

Dear Supervisor Cooper and Members of the Town Board:

We represent VS Construction Corp. ("VS"), the owner of the above-referenced parcel. We are writing in direct response to a recommendation by the Comprehensive Plan Task Force to rezone the Yorktown Farms property (the "Subject Parcel") from Residential ("R1-20") to Office-Business ("OB").

To that end, enclosed please find an Office Market Demand Study (the "Demand Study") for the Town of Yorktown, prepared by Angela Witkowski of Housing and Neighborhood Development Services. As this letter and the accompanying Demand Study indicate, the recommendation by the Task Force should respectfully be rejected.

Background

The Subject Parcel consists of 43.34± acres located in northeast Yorktown, on the border of the Town of Somers, and is currently undeveloped. It is surrounded by properties zoned and utilized single-family residential in both Yorktown and the Town of Somers. As previously mentioned, the Subject Parcel is zoned R1-20 (single-family, half acre).

A Subdivision Application is currently pending with the Town of Yorktown Planning Board in the preliminary plat approval stage. The Application was filed with the Town on April 3, 2002. The pre-preliminary application was first filed with the Town on July 22, 1994, and was subsequently refiled on January 31, 2000. The Application is currently proposed as a 37 lot single-family conventional subdivision, including a 9.5 acre park parcel.

The proposed subdivision would be served by existing utilities located adjacent to the Subject Parcel. There is public water available from the adjacent subdivisions, and newly

constructed sewer mains in Route 6 would provide a connection to the Peekskill plant on the Hudson River.

At the beginning of the subdivision process, the former applicant and the Planning Board were interested in adding commercial retail features to the proposal. This would have required the rezoning of a portion of the property to C-1 or C-2. However, the opposition to commercial uses was great, and the Town Board, at its June 26, 2001 work session, did not support the rezoning.¹ At that Town Board work session, it was determined that the application would be for a conventional subdivision, and the commercial retail aspects were abandoned completely. (See Town Board Minutes, June 26, 2001.)

At that meeting, it was also acknowledged that the Subject Parcel is currently "master planned" as Office/Lab, yet the Town and Planning Board raised no objection to the residential subdivision. To the contrary, the Planning Board allowed the application to proceed, and has even made suggestions pertaining to a clustered subdivision, a possibility to which our client would be amenable.

The Subject Parcel Is Best Suited For Residential Use

The Subject Parcel is over a mile from any major highway. There are few restaurants, no public transportation, and no lodging in the vicinity. Moreover, the Subject Parcel is surrounded to the east, west, and south by single-family residential uses, and to the north by Route 6.

The Comprehensive Plan Task Force has recommended the Subject Parcel be rezoned OB. However, it has been the aggressive policy throughout the Comprehensive Plan Draft Amendment process to upzone large undeveloped parcels, which would subsequently be utilized to provide for much needed middle income housing in the Town. (See Draft Comprehensive Plan for the Town of Yorktown, dated June 2003 ("Draft Comprehensive Plan"), Policy 5-1.) More importantly, it is one of the Goals of the Draft Comprehensive Plan to "[p]reserve vacant residentially zoned parcels in northern Yorktown to reduce further development 'stress' on those neighborhoods." (Id. Goal 5-B (emphasis added).)

In view of this policy of "upzoning contiguous, larger-lot areas and/or open space areas," it does not appear to be rational or fair to treat this one large parcel differently from other large contiguous parcels also currently zoned residential. See, e.g., Jurgens v. Town of Huntington ("Jurgens"), 53 A.D.2d 661, 384 N.Y.S.2d 870, 871 (2d Dept. 1976) (holding where the zoning of a property is discriminatory, the landowner is entitled to a change in zoning to

¹ It should be noted that the only vocal opposition to a residential subdivision on the Subject Parcel thus far has been from residents of Jefferson Court. They do not want the cul-de-sac to be opened up for access into the development. However, this has never been considered a particularly viable option because there would be significant environmental impacts associated with grade change. Conversely, the residents on Gay Ridge Road have expected that such a connection would eventually exist, and have not spoken against it. Unlike Jefferson Court, Gay Ridge Road dead ends at the site, making future connection rather apparent.

remedy the discrimination). In fact, it is incomprehensible considering the express desire of the Town to preserve residentially zoned parcels such as the Subject Parcel in northern Yorktown. See id.

Due to the pattern of development in the surrounding area – *i.e.*, the residential use of “all the property surrounding the subject parcel,” and the undesirable location for OB uses due to lack of adequate public transportation, restaurants, lodging, access to highways, and moderate income housing – “it can hardly be said that the land is reasonably adapted” to OB uses. Humble Oil & Refining Co. v. Dekdebrun, 38 A.D.2d 46, 326 N.Y.S.2d 444, 447 (4th Dept. 1071), quoting Stevens v. Town of Huntington, 20 N.Y.2d 352, 283 N.Y.S.2d 16, 19 (1967). Accordingly, the only rational action to take on the Subject Parcel would be to maintain its residential zoning. This would be consistent with the existing character of the surrounding area, which is developed residential in both Yorktown and the Town of Somers, and it would be in accordance with the Policies set forth in the Draft Comprehensive Plan. See, e.g., Jurgens, 384 N.Y.S.2d at 871 (holding where a parcel is treated differently than the surrounding parcels, a rezoning application must be granted where it is in accordance with an adopted comprehensive plan and zoning policies).

VS believes that any prospective owner of the Subject Parcel could reasonably rely upon the zoning remaining residential based upon the determination made only two years earlier by the Town Board that nonresidential uses were not desirable on the Subject Parcel. There has been no change in the exclusively residential character of the area south of Route 6 surrounding the vacant Subject Parcel that would indicate a necessity for a shift in use from residential to OB. Nor is there any indication that the homeowners living in the adjacent residential districts would be any less vocal against a nonresidential use on the Subject Parcel than they were in 2001.

Potential Impacts Of Development

The impact on the environment and community character resulting from locating an office building on the Subject Parcel would be staggering as compared to a residential subdivision, such as the conventional 37 lot subdivision currently pending before the Planning Board. For example, under the currently existing OB-1 district, lot coverage must not exceed ten percent (10%) of the total lot area, and any building may not exceed forty-five (45) feet, or three (3) stories, where the third floor must not exceed thirty-five percent (35%) of the ground floor. (See Town of Yorktown Zoning Ordinance (“Zoning Ordinance”) § 300-107(B).) Thus, the Subject Parcel could potentially support a 4.3 acre building footprint, or approximately 187,300 sf. Considering the possibility of two full floors and a thirty-five percent (35%) floor, the building could have a total floor area of 440,155 sf.² A building this size could support three (3)

² Since the bulk is based upon total aggregate allowable building and floor area, a number of smaller buildings, rather than one large building, could be developed so long as the total building and floor area thresholds are not exceeded.

office workers per 1,000 sf of space, or 1,320 employees.³

Parking for 1,320 employees would equate to approximately 880 spaces, plus company car spaces. A conservatively rounded figure of 900 nine (9) foot by twenty (20) foot parking space would equal 3.7 acres or 162,000 sf of impervious surfaces, not including additional area for parking lot driving lanes, and internal roadways and sidewalks. Thus, taking into account both the building footprint and the additional paving, an OB development on the Subject Lot could potentially result in eleven (11) to twelve (12) acres of impervious surfaces. Furthermore, a development of this size could potentially generate an average of 687 morning peak hour vehicle trips, and 656 evening peak hour vehicle trips.⁴

In stark contrast, based upon the currently pending 37-lot conventional residential subdivision, there will be a total of five (5) acres of impervious surfaces.⁵ The Equation Rate Projection of generated vehicle trips would be 35 during the morning peak hour, and 44 during the evening peak hour.⁶

It is therefore unquestionable that the potential impacts on the environment of a residential subdivision are far less onerous than that of an OB development. Thus, it follows that a residential subdivision would be preferable on the Subject Parcel.

The Subject Parcel Is Distinctly Different From Other Parcels Being Considered For OB Zoning

According to the Draft Comprehensive Plan, the four parcels Yorktown seeks to promote for "corporate or multi-tenant office development" for the accommodation of "info-tech or bio-tech tenants" include: "(1) areas around the IBM campus; (2) the Crompond Triangle; (3) existing office campus in the northeastern corner of the Taconic-Route 6 interchange; (4) vacant parcel on the south side of Route 6 bordering Somers [the Subject Parcel]. Such sites could accommodate info-tech or bio-tech tenants." (Draft Comprehensive Plan at Policy 4-65.)

³ Calculations are based upon the Urban Land Institute's Development Impact Handbook. The calculations also disregard the additional square footage within a partial below grade level, which appears to be permitted pursuant to the Zoning Ordinance. (See Zoning Ordinance § 300-107(B).)

⁴ Calculations based upon the "General Office Building" multipliers as provided in the Institute of Transportation Engineer's ("ITE") Trip Generation book. Morning peak hour trips average 1.56 trips per 1,000 sf of gross floor area, and evening peak hour trips average 1.49 trips per 1,000 sf of gross floor area.

⁵ Calculations based upon 37 homes, each with a 2000 sf footprint and twelve (12) foot wide driveways, together with the proposed road network.

⁶ The ITE offers two different methods to project trip volumes -- the Average Rate and the Equation Rate Projection. Using the Average Rate multiplier, the morning and evening peak hour average rate would be twenty-eight (28) and thirty-seven (37) trips respectively, but the Equation Rate Projection is preferable since it results in more conservative numbers.

The first three of the referenced properties are well suited for OB uses. The IBM site is adjacent to the Taconic Parkway, is currently zoned OB-1, and contains the largest, most successful office complex in the Town. The Crompond Triangle is delineated by the convergence of the Bear Mountain Parkway, the Taconic Parkway, and Route 202, and is an existing hamlet business center with retail development, businesses, and restaurants. The third parcel, as noted, is an existing office campus referred to in the Demand Study as the Contractor's Registrar site, located at the junction of the Taconic Parkway and Route 6.

The fourth parcel -- seemingly singled out -- is the Subject Parcel. There is no indication as to why the Subject Parcel is being grouped into the same category as parcels with far more convenient access to commerce and transportation. Nor is there any indication as to why a property such as the Subject Parcel, which is completely surrounded to the west, south, and east by residential uses in both Yorktown in the Town of Somers, should be zoned in a manner completely out of character for the vicinity, especially in light of the Town's express desire to maintain the residential zoning on large parcels in northern Yorktown.

Furthermore, the Subject Parcel is over a mile away from the Taconic Parkway, on an already heavily traveled Route 6. Thus, rezoning the Subject Parcel to OB would seem to contradict the policies clearly set forth in the Draft Comprehensive Plan to minimize traffic congestion and retain the residential character of the area. (See generally Draft Comprehensive Plan, ch. 3.)

The only support for this rezoning is the fact that the parcel is currently "master planned" as Office/Lab. This support is tenuous at best.

There Is No Demand For OB Properties In Yorktown

While demand for all types of housing in Yorktown is high, the market demand for office space is not. The North Submarket of Westchester County, which includes Yorktown, has the highest office vacancy rate in Westchester County at 34 percent. (See Demand Study at 9, Exhibit 3.) Yorktown alone has a vacancy rate of 63 percent. (Id. at 11, Exhibit 4) Besides Goldens Bridge, which currently has a 100 percent availability in a new building, 63 percent is by far the highest vacancy rate in the North Submarket, and only one other municipality in the entire county has a higher rate. (Id.)

Absence of public transportation and limited housing also adds to the lack of sensibility of rezoning the parcel OB. As noted in the Demand Study, businesses tend not to locate themselves in communities in which their employers cannot afford to live. (See Demand Study at 5.) Furthermore, there are few nearby restaurants, and no lodging or other facilities that tend to attract and support a large office development. (See Demand Study at 2.)

Finally, the current questionable economic conditions do not lend themselves to an increase in desirability of the existing office space in Yorktown, much less new office space.

If existing offices in easily accessible locations stand vacant, certainly merely rezoning the Subject Parcel would not lead to additional office development.

It is quite possible, given the severely negative aspects of the Subject Parcel for OB uses, that the value of the property would drop substantially if rezoned, as it would "preclude the use of the property for any purpose for which it is reasonably adapted" -- *i.e.*, residential uses. Summers v. City of Glen Cove, 17 N.Y.2d 307, 270 N.Y.S.2d 611, 612-13 (1966). "[A] drastic reduction in value tends to establish that the property is not reasonably suited for the uses prescribed by the zoning ordinance." Grimpel Assocs. v. Cohalan, 41 N.Y.2d 431, 393 N.Y.S.2d 373, 275 (1977) Due to the "inaccessibility and impractical availability of the premises," if the property were to be rezoned OB, it is possible that development could not occur "at a profit or otherwise for an unforeseeable and unreasonable period in the future" due to the current economic climate in the office-use market. Horn Constr. Co. v. Town of Hempstead, 41 Misc.2d 438, 245 N.Y.S.2d 614, 619-21 (Sup. Ct. Nassau Cty. 1963). (See also Demand Study at 2, 12.) At a bare minimum, even if VS could realize even some profit as an OB use, creating a single parcel island of office/business uses amidst a sea of residential homes would cause a discriminatory effect. See Jurgens, 384 N.Y.S.2d at 871, citing Udall v. Haas, 21 N.Y.2d 463, 288, N.Y.S.2d 888, 900 (1968) (holding "a zoning ordinance can be discriminatory, and hence invalid" even where it "falls short of being confiscatory").

The Demand Study discusses the economic and rental market issues in greater detail. We therefore respectfully request you review that document for an in depth analysis of the demand for office space in the Town of Yorktown, or more specifically, the lack thereof.

CONCLUSION

Based upon the foregoing, we respectfully request that the recommendation by the Task Force to rezone the Subject Parcel from Residential to Office-Business be rejected. Instead, VS maintains that a continuation of the existing residential zoning will protect and preserve the owners property rights, while simultaneously providing valued and necessary housing in the Town.

Residential development on the Subject Parcel will be more harmonious with and conformal to the Town's zoning policies, as well as the pre-existing surrounding community. Additionally, residential development allows greater flexibility, and therefore would generate fewer environmental stresses, thereby assuring compatibility with the existing natural and built environment.

We certainly look forward to participating in any public hearings before your Board, and to working cooperatively with the Town to achieve a mutually acceptable solution.

Hon. Linda Cooper
October 7, 2003
Page 7

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

ZARIN & STEINMETZ

By: _____

David S. Steinmetz

Encls.

cc (with enclosure):

Val Santucci
Hon. Jeremiah Dineen
Stephanie Johnson
John Shapiro
John Tegeder
Kevin Sweeney, Esq.
Tim Miller, AICP
Ralph Mastromonico, P.E.
Angela Witkowski