

TOWN OF SOUTHEAST
1360 Route 22, Brewster, New York 10509
Thursday, February, 13, 2020
SPECIAL MEETING 7:00 P.M.

Pledge of Allegiance
Notation of Exits
Turn Off/Put on Vibrate - All Electronic Devices

Present: Supervisor Tony Hay
Councilman John Lord
Councilman Eric Larca
Councilman John O'Connor
Councilman Edwin Alvarez

Also: Town Clerk Michele Stancati
Town Attorney Willis H. Stephens Jr.

And: 44 Persons

PUBLIC HEARING

Alienation – Pugsley Rd – Sports Complex

Supervisor Hay made an opening statement setting the parameters for this Public Hearing, and gave a power point presentation, which is on the Town website.

Supervisor Hay:

Good evening ladies and gentlemen thank you for attending tonight's Public Hearing. Let me set the parameters of how tonight's meeting will be conducted. Seeing that there is a substantial audience present this evening, we want to ensure that everyone will be given an opportunity to speak.

I will start the proceedings and explain the purpose of these proceedings, then clear up the tremendous amount of misinformation that has been printed in local papers and broadcast on social media.

Each speaker will be given a ten-minute window to speak and once everyone has had an opportunity to speak, a five-minute window will be allowed for each speaker to clarify any comments they would like to put on the record. No speaker can yield time to another.

At the end of the meeting, the Public Hearing will be closed, but will remain open for written comment until Wednesday, February 19, 2020 at 12:00 noon.

Show Slide: Ms. Fanizzi's Ad

“Scheming” - not by the Town, but by this article which appears to be a well calculated attempt to provide the public with misleading information.

When residents approved the \$5M open space bond, did the town and open space committee make the public aware that you were agreeing to pay back the equivalent of a \$370K a year mortgage payment for the next 20 years? \$7.4M! That payback rate calculates out to 5% annually. However, the Town is limited by a state mandated tax cap which only allows a 2% increase. Fortunately, though the Town only borrowed \$2.2M which costs the Town \$165K a year, \$3.3M over twenty years, which equates to a 2.2% increase and the state mandated tax cap remains at 2%.

The taxes you are paying are for an open space bond, regardless of its location, does not, nor will it ever benefit a developer as you are being told! Developers pay their own proportionate share of taxes just like you and I.

Ms. Fanizzi claims that this is a “let’s make a deal” and that the Town Board are “conniving” public officials. Nothing could be further from the truth and let me try to put this in perspective and to explain it to you what is going on in layman’s terms.

To be able to even consider the transfer of designated open space land, the Town must first obtain permission from the New York State Legislature. To begin, this process, the Town must file a Home Rule Request with the NYS Senate and NYS Assembly.

What is a home-rule request? In this case, the Town of Southeast is requesting that the NYS Assembly and NYS Senate, authorize the Town to swap one parcel of land for another parcel of land that is either similar or in this case, greater in size. Under the current proposal, the Town would swap approximately 81+/- acres located at 132 Pugsley Road for approximately 95+/- acres on 273 Starr Ridge Road. If approved by the NYS Legislature, the owner of the Starr Ridge property would only receive a portion of the land on Pugsley Road and the Town will retain approximately 72 +/- acres. (Show Slide – Pugsley Road, Starr Ridge Road, County, owned property) This land swap would generate a net increase of Open Space land in the Town of Southeast by approximately 14 +/- acres.

If the alienation request is denied, the project is dead. If the alienation is approved, the proposal to improve the 81 acres on Pugsley Road as a Baseball / Sports training facility will undergo the same rigorous site plan reviews by County, Town, Federal and State agencies as is the case with all projects that come before the Town. There will be many more public hearings on many levels.

It has been suggested that the Town should “delay” the home rule request to allow the alienation / swap of these parcels. Delaying this alienation request would serve one purpose and that would be to deny those that would like more recreational opportunities in the Town of Southeast from having them. The New York State Legislature meets only from January to June of each year. If we don’t get this request in for consideration to the legislature in a timely fashion, which in this case is before the end of February, we will lose a year in the blink of an eye and just to ask a question? A sketch plan for the proposal suggests several big and little league fields, multi-sport fields, batting cages and a 20,000 to 30,000 indoor complex and this appears to be something that would resonate well in this community. This project would become a destination site for tourism during the summer which will add sale tax revenues to the County's coffers. There are a lot of kids out there and you might even have one or two that have big dreams, this project has the potential to make some of those dreams come true.

Let me provide you with some of my personal experiences with Home Rule requests. Back 2001, when I was a PC Legislator, the County approved (8-1) a home-rule request to create a Putnam County Taxi and Limo Commission. It was approved by both the Assembly and Senate; however, once it passed both

houses, it was forwarded to the Governor for final approval. In this case, the Governor vetoed the home rule request and it never came to fruition. It received a fair disposition of its request, the same fair hearing this home rule request deserves as well.

Now, in order for this home rule request to move forward, the Town Board will first need to vote next Thursday, February 20, 2020, to determine if that will happen.

At our Town Board meeting on February 6, 2020, Ms. Fanizzi was quite upset and adamant that a Resolution had already been prepared. Yes, it was, however that is the standard protocol. Any action taken by a Town Board requires either a Motion or a Resolution be prepared in advance for discussion and an eventual vote. It either passes or it fails. That's Robert Rules of Order by which most municipalities are governed. That's neither "scheming" nor "conniving". This Town Board, under my watch, has been very transparent and inclusive when it comes to public input.

Let me share with you some of my own personal experiences with Open Space issues.

Back in 2002, while I was on the PC Legislature, the County proposed purchasing 199 acres of land in the Town of Southeast, Tilly Foster Farm. I don't quite recall the rationale used for the purchase at the time, but it was purchased for \$3.9M. It was approved by the Putnam County Legislature by a 9-0 vote.

Also, back in 2003, while I was on the PC Legislature, the County proposed purchasing 376 acres of land in the Town of Carmel. Rumor had it that the land which consisted of an airport, farm and golf course was going to be sold to a developer to build condominiums. The price tag was \$11.3M. It was approved by the Putnam County Legislature by a 6 to 3 vote. After it was approved, an amendment was put forward and 36 acres were leased back to the Town of Carmel for recreational purposes for 99 years. So, the Town of Southeast is not setting a precedent by mixing open space and recreational fields.

Now let's move on to how and why we are here tonight.

On December 7, 2004, the Town of Southeast Open Space Advisory Committee had its inaugural meeting. Then, after several meetings, on February 22, 2006, the Open Space Committee similarly discussed as we are this evening, a home rule legislation request that would allow the Town to adopt a mechanism which would allow the Town to create and build an Open Space Preservation Fund by levying a tax on the sale of property within the Town. That home rule legislation was never pursued, but it would have involved requesting home rule legislation.

On August 2, 2006, the Open Space Advisory Committee forwarded language to the Town Board to put a \$5 million bond resolution up for a vote, which was subsequently approved by the residents on November 7, 2006. That referendum authorized the Town to borrow "up to" \$5 million for the purpose of acquiring "open space".

What I really find ironic about the "scheming and fast tracking" charges being levied by a former member of the Open Space Advisory Committee and Town resident, Ms. Fanizzi, is that on January 31, 2007 the Open Space Advisory Committee discussed that the Trust for Public Land had an option that would expire at the end of March and that several hurdles would have to be surmounted, i.e., publicity campaign, public notification in media, public hearing by no later than March 8th, etc. that needed to take place in less than 36 days! However, here we are this evening with the very same challenges they faced, the only exception being that we only have 17 days to do it. It was OK for them to have done it, but not us.

What we are doing and the speed in which we are doing it is dictated by NYS Legislative Procedure which must be followed.

Another interesting fact that can be found in the minutes of the Open Space Advisory Committee held on March 28, 2007, there was some strong discontent of a member of the Board, who eventually resigned. It is stated in the minutes that the Resolution adopted by the Town Board for the acquisition of the UJA property did not reflect the actual resolution adopted by the Advisory Board. I also could not find the actual vote if there was one by the open space committee.

However, on May 17, 2007, the Town Board, by Resolution, authorized the purchase of land from United Jewish Appeal (UJA) for \$2.2M.

Then, on July 2007 (two months AFTER the Town Board resolved to purchase the UJA property) six of the Open Space Advisory Board Members filled out an Open Space Parcel Evaluation Survey. Four of the six members indicated that the Pugsley Road site had potential for active recreation.

(Show Slide – Valuation Chart) On November 7, 2007, the purchase was finalized and the Town paid \$2,245,662.08. This, by the way, leads to yet another ironic situation. In a February 10, 2020, letter from James Bryan Bacon, ESQ. P.C., states that the Pugsley Road property is “twice as valuable” as the proposed Starr Ridge property. So, I went back to the Town of Southeast Assessor’s office and pulled the value of the Pugsley Road property. In 2007, Lot #10 – 94.82 acres had an assessed valuation of \$467,600 and Lot #11 – 61.36 acres had an assessed valuation of \$700,000 – a combined total assessed valuation of \$1,167,000. All Town properties taxable and exempt are assessed annually at 100% of market value. So how did this parcel sell for twice its assessed valuation, \$2,245,662.08 back in 2007? By the way, based on the 2019 assessed valuation, Lot #10’s current assessed valuation is \$789,040 and Lot #11’s current assessed valuation is \$313,840 – a total of \$1,202,888 – which is a far cry from the \$2,245,662.08 price paid in 2007.

Other interesting facts:

I find it ironic that lands that were being purchased to preserve open space carved out 10 prime acres for development.

This proposed land swap will not only recoup those lost ten acres of open space, but will provide an additional 4 acres adding an additional 14 acres to the Town’s open space inventory.

Pugsley Road is a seasonal road and that the proposed land that the Town wants to swap for has frontage on two designated Town Scenic and Historic Routes, Starr Ridge Road and Turk Hill Road? Open Space, scenic views and historic routes are a perfect combination for open space preservation.

Contrary to the misinformation being circulated in newspapers and social media, the proposed recreation planned for the Pugsley Road site will be privately owned and operated. A concept sketch for Starr Ridge Road showed 4 little and 4 big league fields, 3 multi-sport fields, batting cages and a 20,000 to 30,000 sq. ft. indoor facility. Again, this project is not being contemplated by the town but a private company and they will pay their full share of taxes like any other development!

Personally, I feel this trade off will off will be one that will preserve even more open space due to the fact that the 81 acres will be well manicured fields.

Supervisor Hay asked that the Attorney for the owner of the Starr Ridge Rd property, Richard O’Rourke, who’s seeking to swap his clients land for the land on Pugsley Rd, further explain the proposition to the

public and the Town Board. Once the presentation is complete, we will take public comment and after everyone has had an opportunity to speak once, you can have five minutes more to respond.

Mr. O'Rourke introduced himself and stated he has been a resident of the Town for 45 years and his daughters played varsity sports for Brewster High School, so he has some familiarity with sports. He also has a daughter who played for a travel softball team. To correct a misstatement made by Ms. Fanizzi last time, ProSwing Sports is Dan Grey, a former member of the Dodgers and has been training young men and women and children down in Mt Kisco. They have gone on to play sports, in division one colleges, universities, and have had major league players who have come from the program. They are not developers, they are sportsman. ProSwing proposes that they will convey approximately 94.9 acres on Starr Ridge Rd to the Town to be dedicated as open space preservation and passive recreation. With the Starr Ridge property being on a designated scenic and historic route in a residential area, it makes sense for preserving the land for passive recreation, like waking and hiking trails. In return, the Town would convey 81.7 acres of land on Pugsley road to ProSwing leaving the Town with ownership of approximately 71.7 acres of open space on Pugsley road, and therefore, there will be open space on Pugsley Rd. and Starr Ridge Rd. The 81 acres ProSwing will have on Pugsley road will be used for active recreation, such as softball and baseball fields and training facilities. To accomplish this swap of land, there are many steps all of which are a very public and a deliberate process. The first step is the Town must authorize that a request be made to the Senate and Assembly to adopt a home rule legislation, and then it must be signed by the Governor. Second, the Town Board has to pass a resolution authorizing a contract of sale providing for the land swap. Third, if the Town authorizes the land swap, ProSwing will have to file a site plan application with the Planning Board, with the layout and engineering of the proposed baseball fields, which will include a woman's softball field, children's 12 & under baseball field and a regulation 60 ft. pitching mound and 90 ft. bases and a baseball diamond for high school and adult baseball players. ProSwing has already committed that if and when they were to achieve all those steps and the ownership of the Pugsley property goes to ProSwing sports, they will prepare a DEIS which will fully examine the proposed active recreation development. Pugsley road is a permitted use in the Town Zoning Ordinance and the Comprehensive Plan, adopted in 2014. It specifically endorses public and private cooperation to provide recreational opportunity for the kids and adults residents of this town. The Pugsley road site and this proposal provides this opportunity on properly zoned land right now. The land that would be developed for the athletic facility and sports would be returned to the tax rolls. My understanding from Dan Grey is he had a conversation with Rich Anderson, President of the Brewster Little League, and that they wanted to host a playoff game in Brewster, and were trying to get to the Little League World Series games here in the Town, and the fields were not acceptable. They want to develop fields of a caliber that are not presently in this town. Sports provide team building and leadership, and after being a judge for 27 years, this is an activity that is worthwhile and benefit for the town.

Kathleen Gallagher, landscape engineer for Insite Engineering, stated that the alienation is between two properties. She showed a map of where the properties are located and where the project will be built. The Starr Ridge property is one lot which is approximately 103 acres and under review for a subdivision, which proposes to subdivide the one lot into two lots. Lot B is the front parcel, 8 acres, which will have a residence on it and the other lot A, is the back parcel, which will be 95 acres. Lot A is being proposed for the alienation. It incorporates a large forested area throughout the center of the site, located on a sloping hill with DEC wetlands at the bottom of the hill.

Pugsley road consists of four areas, area 1, tax map # 10, 160 Pugsley Rd, area #2, tax parcel #11, and two smaller parcels that intersect at Pugsley road and Fields Corner, that if the potential logistics project is done, will combine the two. The parcel is separated by an easement in favor of the County down the middle, the majority of the parcel is forested with a ridgeline protection area also with regulated wetlands and water courses. The ridgeline area is about 27 acres, and the wetland area is about 45 acres, and those two areas will remain parkland. That leaves the area of alienation of 81 acres. The two areas proposed are the 95 acres on Starr Ridge and the 81 acres on Pugsley.

Don Matuse, resident for 25 years, stated he remembered when the Open Space committee bought the property and he thought there should have been an investigation; why buy open space land along a major highway? I'm sure no one has used it; the road is closed most of the time. Now we're going to take the best part of that parcel, away from the highway, and trade it for a swamp, which is almost all wetlands on Starr Ridge Rd? There's only about 20 or 30 acres of the 90 acres that are good there. He stated he thinks we're jumping from the frying pan into the fire. The soil on Starr Ridge is clay and it doesn't perk, which would make it hard to put septic systems and subdivide. If you eliminate the property the house is on, the property isn't worth that much. You want to trade a piece of property that we spent 2 million dollars on for a piece only worth about \$300,00.00. Look at this closely.

Samantha Woodgate asked why the developer bought the property on Starr Ridge Rd? Also, we're looking at a facility with warehouse close by with 372 semitrucks a day, next to a facility that will have children and young adults driving there. She stated that Patterson doesn't want to open Pugsley Rd. because they are concerned about cut through traffic. Her concern is that we will be mixing families with trucks. If we have a family facility on Pugsley road, then Patterson residents will want to visit it, and that would mean opening the road to Patterson. What does the Town of Patterson think? We will also be adding more traffic on Route 312 and can Pugsley road hold that much traffic? And who's going to maintain the road?

Richard O'Rourke stated that in answer to Ms. Woodgate's question, that Mr. Grey bought the property and came up with a sketch and a proposal and hired Mr. O'Rourke to see if the sports complex would work out there. Mr. O'Rourke spoke with them and suggested they look for another site. He told them although recreation was a special permitted use, and knowing it was a very residential area and on a historic road, he explained that he didn't think the Starr Ridge property would work. He went to a meeting with planning staff and discussed it and to no one's surprise, they looked for land in a R6 zone, where a complex like this would be a permitted use. We looked at the zoning ordinance of the Town of Southeast and one of the properties with recreation as a permitted use was on Pugsley road. We took a look at the property, examined it, and realized there are no walking trails, the property borders I84, it's not been developed, the Town is paying debt maintenance of \$186,000.00 a year on a bond, and the though process was, it's zoned for rural commercial and a portion of it could be developed for the complex. It made sense. That's how we went from Starr Ridge road to Pugsley road and the alienation. Please refrain from calling them developers, these people are not developers, they are sports people.

Ms. Woodgate wanted to know if the property owner brought the property and then came to you for a solution or did they buy the property knowing they weren't going to get the zoning change? I feel like we're bailing them out. How many of us residents get to buy a piece of property and find out we can't get what we want and come to the Town to bail us out.

Mr. O'Rourke answered Ms. Woodgate's question stating there is a fundamental misunderstanding. It's not a zone change. A recreational complex is a permitted use by special permit on Starr Ridge road. A recreational complex is a principal permitted use, a use as of right. The zoning is there, it's not a zone change.

Ms. Woodgate wants to know if they brought the property, then figured out that they weren't going to get a zone change.

Mr. O'Rourke stated that it's not a zone change.

Lisa Orello, who lives on Route 6 near Pugsley Rd, stated that if we bought land that didn't work out, we would have to sell it, she can't imagine swapping land. The land on Pugsley road isn't for sale, it is open space. With all due respect, it might be equal space to all of you, but for me who lives in the vicinity, we

are in constant pressure of development, traffic and pollution. It's not an equal trade to me, I thought they had a certain amount of open space that wouldn't be developed. Now we have the logistics project bearing down on us and now a sports complex. What if it fails, will we have another empty building or some other project? Don't we already have an empty sports complex? Please consider our quality of life in our area. I know the people in the Starr Ridge area are wealthier. It seems like economic discrimination to me, we're not as wealthy and we get all the garbage.

Alex Mazzotta, lifelong resident and baseball fan, now a dad and coach for little league, which he states is the most gratifying part of his day. He knows the kids are in an element where they get to enjoy fresh air, comradery, and team building. It's hard to do today, competing with technology, this is a great opportunity for our community and neighboring communities, giving them an outlet to escape to. We're not talking about development, or big box stores, we're talking about a space for kids to have fun.

Cathy Chiudina who runs the Town recreation center, stated she is a 30-year resident, raised four girls who all played sports. One played competitively in college and now the other is. We had to travel far to get quality training for them. I have personal experience with ProSwing and they are a quality organization. To have a place like this come to Brewster is huge, it will enhance the level of play and they are willing to work with the little league and provide an opportunity for their World Series games. I wish I had that for my kids growing up. My kids played in the Golf Dome, because there was nowhere else to go. We also traveled to Queensbury for them to play in a dome. It's a win-win for everybody and it would be a great thing for us to have as a community and will also bring more shopping to the community.

Joe Dash stated he is a life-long resident of the area and wanted to know how many people would buy property close to Yankee Stadium with all that congestion. I have walked Pugsley road and I've seen bear, deer, bald eagles, and other wildlife. I've coached children in primitive skills, how to survive, and it's a great way to get out in fresh air. You don't need a trail. I've seen this area become more and more developed and congested, not what we came up here for. Route 6 is bumper to bumper, do we want that here? We are destroying a piece of property that the citizens of this Town have voted for open space. Why isn't this project being done in a high intensity development?

Alicia LaRusso of Fields Corner road, wanted to clarify that there are walking trails back there on Pugsley road they're just not manicured. One of the reasons she moved up here was because it was a rural, warm environment. My kids also played baseball but why are we discriminating against other sports, like outdoor sports. My kids enjoyed playing in the woods, building forts and it's sad were ignoring the other sports the property and open space is there for. There are also historical walls there, some 200 years old, I thought they were supposed to be preserved. Both the Golf Dome and Brewster Sports Complex all failed. There isn't a demand for the product and I'm concerned with the setup.

Barbara Mundy who lives in Hunters Glen, has nothing against baseball, but she questioned with children playing and open space, will this plan that you are proposing cost a fee? In my experience this isn't for the average person, it takes money. There's a cost; it's not inexpensive and it is a business. If were talking about children and worried about children, why would we mix a sports center with a logistics center. It doesn't make sense to me. I'm new here and came here because its open and beautiful and in a year and a half, my life is upended by this. I saw the logistics center in Fishkill right off the highway in a commercial area where they don't have to go through the local streets to get to it. I understand the Board has a responsibility to bring in income, but maybe together we can work on it in a different manor. Maybe a little more common sense and give and take.

Ann Fanizzi thanked the residents for coming out to a Public Hearing. She stated she has a copy of the 2004 Putnam Press where the Town of Southeast formed an open space advisory committee to better

protect the natural environment. It was the first such committee in the county. We did incur a slight tax increase to protect our environment. It shows just how dedicated our constituents and this Town Board was to the preservation of our rural heritage. Have things changed so much in 16 years that we can bait and switch one property for another? Mr. O'Rourke and Supervisor Hay stated that the open space committee by majority, agreed that it would be active recreation on this property. Actually, according to the open space minutes, it was discussed and the committee was somewhat divided. One person said potential, but not assured. It wasn't a majority; it was 2 to 2 and a maybe. In every piece of property they looked at, they had a reputable person come to analyze the land. It was discussed with the committee and residents. We have only one week to discuss this. This developer went before the Planning Board on January 13, 2020 and in the January 27th minutes, it doesn't show that there is anything being preserved on that land for anybody. Mr. O'Rourke stated that this is an application to create a two-lot subdivision. I looked at the agenda and was sorry there would be another development on Starr Ridge. Has Starr Ridge road officially been declared a historic and scenic road? The Supervisor answered yes. Last week Mr. Bell asked specifically what was going to be built or done with the property on Pugsley road. Mr. O'Rourke replied that first we have to get the land and then we'll talk about what's going to be on it. Ms. Fanizzi stated that as an Open Space Committee, we saved Ryder farm, and if not for the residents and the Town being mindful and being able to put in their own money, it wouldn't be there. The resolution reads "that on the advice of the open space committee", the town at that time valued the opinion of the residents and we gave \$325,000.00 of that money and \$5000 to engage a biodiversity expert to come and appraise Haines Pond. That money was well used. We didn't make any decision unless we had evidence behind us. Who appraised the property on Starr Ridge in terms of its value for active and passive recreation? All of this should have been discussed in November, December, and January to absorb this information.

Supervisor Hay told Ms. Fanizzi her time was up. The Supervisor called for a 5- minute recess and asked for a second. Councilman Alvarez asked Ms. Fanizzi if she would recognize the chair. Supervisor Hay stated that every speaker has 10 minutes and after everyone has spoken, they can come back for 5 more minutes. Ms. Fanizzi stated we need another meeting.

Craig Cole stated he is a resident of the Town for 10 years and is just south of the proposed development on Starr Ridge road. I don't know what the impact is over on Starr Ridge road, it seems to me the zoning over on Pugsley road is different than on Starr Ridge. He commended the Board for trying to do something that would make sense from a zoning stand point and a financial benefit to the Town. I don't understand the impact on Pugsley road but I will speak to Starr Ridge. I'm familiar with the property behind there and the owner is a friend of mine and we used to walk the property a lot. There are some wetlands and beautiful walking trails, it would make a beautiful open space on this Historic road. I can't imagine a sports facility in there. When I first heard of it I thought it made a lot of sense, but I'm learning more about it now, but that land there is not suitable for major development, it's perfect for open space. The southern part connects to a road that goes into the Fitchen preserve. From the Starr Ridge standpoint, this makes a lot of sense. Whether or not the swap makes sense, the development of the Starr Ridge land would be very difficult and would not be with the nature of a Historic road that's been around for a 100 years. Pugsley is more of a commercial area.

Peter Bell stated that after listening to everyone, he agrees that the Starr Ridge property would make a great open space lot. Listening about the other sports, ATV's, and building forts on Pugsley road, it concerns me because we had problems on Fields Lane with ATV's, it's hard to enforce and it's a liability to the Town. The property on Starr Ridge road is so much better than on Pugsley road.

Debra Dillion, resident for 10 years, stated that she just learned today about the proposed swap and saw information about a zoning change that this parcel would fall into on Pugsley road to permit additional uses such as a shooting range. Supervisor Hay stated there is a proposed zoning change on that subject but it has nothing to do with this site. Ms. Dillion asked if Pugsley road is in a RC zone and if it can

affect this type of parcel. Supervisor Hay stated that it possibly could but that's not what this proposal is about. She said it would allow go cart tracks and shooting ranges. Supervisor Hay said he would never allow that at this parcel.

Bradley Schwartz of Starr Ridge Manor stated that there is a community of 98 house directly across from the proposed open space. He thinks it would be a tremendous asset to the area with beautiful views, but has serious concerns about whether this land swap is in the best interest of the Town. In one statement it was said that this land was in proximity of the land trust and people should be aware that there is no access to the property off Seven Oaks Lane. To access that property, you would have to drive over to Cobb road. Also, you can't park on Starr Ridge road, the Town would have to install parking to access the property and to use it for passive recreation. On Pugsley road there are no signs, and there should be. You don't know when the open space ends and the private property begins. He noted that there have been no improvements that he's aware of on the Pugsley road property. There's also a tract of land owned by the Putnam County Land Trust, the Ryder Farm was mentioned, and these are open spaces that are an asset to the Town. In summary, the key question is; are the 95 acres on Starr Ridge road of equal or greater value as open space then the 82 acres on Pugsley road, and what are the potential developments on these properties? The Pugsley road property is in a commercial area that can be heavily developed, and the Starr Ridge road property is not a piece of property that can be heavily developed. It might remain open space anyway. I question if the Town is really gaining open space or losing open space. Also, would the ProSwing Company consider purchasing another piece of property. It seems odd they would go to the Town and consider a land swap.

Donna Relyea asked if the Town knows how big a facility this will be, will there be lights, and will they be open at night? Supervisor Hay explained that they don't own the property yet and if this goes through, they will propose a plan and go through a full environmental review. They are not going to spend money before they know if it's possible. They had a proposal for the site on Starr Ridge road, but because of the terrain, the plan may change. If the logistics project goes through, will the road be paved by the town? Supervisor Hay stated that it would be paved by the Interstate Logistics developer. Her concern is living off of Route 312, the traffic since we got Home Depot and the other businesses has been horrendous. The trucks that come through right now are beyond belief. If this goes in, how much more traffic is going to come across that road? I understand at this point you can't really say. As far as Pugsley road, I joined the Open Space Committee after Pugsley road was purchased and we didn't purchase anything after that. A few of us did get together to see if we could get some walking trails but found it impossible to even get in or out of there. Personally, I don't think it lends itself to walking trails and it would be a big expense to the Town to provide that. There's a big drop off and it's totally overgrown. I don't know what the other property looks like but it seems it might be easier to do something of that nature. Will you be getting extra acres in exchange for this? Supervisor Hay stated yes, we would gain 14 acres in open space. Ms. Reylea, asked if that would be coming off the tax rolls and Councilman Larca stated from an acreage perspective yes, but not by much. There will be an increase because the assessed value of taxable property will increase as a result of this. The other property will come onto the tax rolls and the assessed value will be higher and generate more tax revenue.

James Bacon, representing Ricky Fuerman and Ann Fanizzi, stated he wanted to make 3 points, on fiscal, environmental and public participation as they relate to the public trust doctrine. The public trust doctrine would like to see certified appraisals for both these properties and the developability of both parcels, the proposed use, the soil, slopes and wetlands. A buildout analysis should be done on both parcels. You'll find that the Pugsley road parcel is quite a bit more valuable from a fiscal standpoint. It was a high price to pay, 2.2 million in 2007 but that is what the voters authorized the Town to do, it was the will of the voters and backed by the open space committee to pay back the bond. Right now, the land for the Starr Ridge property is assessed for \$330,000.00 at 100% of value. Right now, the Pugsley road property is assessed at over \$700,000.00, more than twice the value. With regard to the environmental

attributes, when the committee was considering Haines Pond, they had Michael Clemens do an environmental assessment of that sight. That really should be done for both of these sites as well. One thing the Pugsley road property has that Starr Ridge doesn't is connections to other open space. There is 81 acres of County owned land on the north border and south of the property is land owned by Putnam Seabury about 52 acres, and most of it is wetlands are undevelopable. Across the street is property owned by DEP that goes down to Westbranch and Tilly Foster Farm. Also, from an environmental standpoint, the distance from this property to the Middlebranch is 1.2 miles but on the Starr Ridge road property, there are slopes that go down toward 684 and diverting reservoir and SE toward Middlebranch. That's something an environmental inventory would look at. From a public participation standpoint, whether the Pugsley road property was vetted enough, they had their evaluation, the County Executive was very much pushing for this, and it does provide this corridor of about 300 acres. The public was involved and voted for it and no one has complained about it since. I'm glad the Supervisor talked about his interest in recreational opportunities because I was involved with the purchase of AIG, over 600 acres on both sides of the border and succeeded in selling 300 acres to Danbury and they made a park. We tried to sell Haines Pond and another 300 acres to the Town but they didn't have any interest. I think the Open Space Committee should be reformed and that would allow the Board to look to other entities that could help with the decisions. The Parks and Rec committee used to have that function, they would give you their recommendation about parkland acquisition. Other towns have gone ahead with open space acquisitions and it's been good for them economically. The Rail Trail acquisitions that towns have made have been a success. This area has so much potential. The Starr Ridge property is surrounded by residents, it's a beautiful area but there's not that context of properties around it that forms a corridor. I think this project should be put up to a public referendum, the public should have a chance to say in as well.

Cathy Croft lives in the Town and asked if there was going to be a 10 day comment period and Supervisor Hay stated that written comments will be accepted up to 12 O'clock noon on Wednesday, February 19th. She also asked if the Town could post the Power Point on the website and Supervisor Hay answered yes. Ms. Croft pointed out the that Senator Harckham's name in the resolution was spelled wrong. She also stated that back in 2014 there was an update of the comprehensive plan. The Route 312 area around crossroads was in front of the Planning Board at the time and was not really discussed during that comprehensive update. You might want to revisit that area and do a Route 312 overlay of that area, especially if they will be widening the road. They will not be widening the bridge over 84.

Supervisor Hay asked if everyone who wanted to speak, came up. He stated that if anyone would like to come up again, they will only have 5 minutes.

Don Matuse wanted to clarify his position. He stated he is not opposed to a sports complex at Pugsley road. When we bought the property on Pugsley road, we grossly overpaid. With the advent of Interstate Logistics moving in, and straightening out 312, and improving Pugsley road, it's a good location for this sports complex.

My concern for the Town is we got screwed when we bought that property and it has now increased in value, but it was a horrible piece of property for open space. The parcel on Starr Ridge is actually a good parcel for Open Space. As far as parking, there's 20 acres of flat land across from Seven Oaks Lane. Councilman Larca, stated that there is also a pull off where you can park. I think it would be a great parcel for the Town to purchase, for the correct amount of money. The development on the parcel on Starr Ridge road is very little. The soil is clay, you really can't build houses up there. So, what's the value of that property if the whole parcel with the house was purchased for 1.2 million? What's the value of the house, a million dollars? So, what's the value of the rest of the property, \$200,000.00? The parcel on Pugsley road is worth a lot more, it's not an even swap. If we want to do the swap, the people of the Town shouldn't be ripped off. If we do it, make sure we get the right money. The Starr Ridge property would be great for open space; the Pugsley road never was or will be.

Ann Fanizzi stated that just from the comments from the audience, I hope this Board will reconsider the need to continue this discussion. We need a lot of thought on this project, we're speaking about open space. No one has really made an analysis, the pros and cons, the people here are here because of my add or they might of heard, no one knew the magnitude or details of this project. I think in respect to the residents, you spoke about the various steps to be taken, I already saw the home rule resolution, all it needed was your signatures. This was February 6th. I was shocked to hear Mr. O'Rourke say we already contacted our State Legislators. This has been in the works behind the scenes blindsiding the residents. If I didn't see the Public Hearing notice, I wouldn't know. I don't know how many people saw it. There was only one notice, it was not in the paper again to remind people. Was there another notice? When I looked at the material I received from the Planning Board, I saw the word segmentation. I implore you, not to take this step without adequate analysis, notification and discussion; that is what is needed. Two hours is insufficient.

Donna Relyea wanted to confirm what the process was. The Town is going to go to the State Legislature just to find out if you can swap this open space property, is that correct? Supervisor Hay stated that next week there will be a resolution voted on and if it passes it will go up to the state to have them consider the swap. Ms. Relyea asked if this is allowed, would there be more public hearings on this issue? Supervisor Hay said yes. Councilman Larca stated that this is just to see if we can get permission from the state to swap these. That was my question because from what I'm hearing here it was suggested you're trying to railroad this through and that wasn't my impression. Supervisor Hay stated that we have a deadline on the time we need to get it to the Legislature, which I explained, and the open space committee had a similar amount of time. It goes to the Assembly, the Senate, and the Governor has to approve it. It could be vetoed, that can also happen. Ms. Relyea stated that if they say yes, she assumes there will be more public hearings and discussions. This is not a done deal. Supervisor Hay said no. If it's approved, then it begins the process. Then the owner will go out to all these studies, and could take about a year and a half to two years, goes through the development process; which is done with every project that is done in this Town. Interstate Logistics has been going through the process for about 2 years now. Ms. Relyea didn't want to feel like this was the last chance to speak. Supervisor Hay said, not even close. I also want to clarify something the gentlemen before said about buying Haines Pond. That bond is done. It's no longer available, we won't be using that to buy any more open space for the town.

Joe Dash stated that he didn't get much notice either, he just found out about it yesterday. He didn't have much time to prepare or research. Looking at the map, look at the Starr Ridge property, it's located right near North Salem, one of the wealthiest Towns in Westchester. I did a quick search on what the median income was between Carmel and Brewster, and it's \$70,000.00 per household. This company, ProSwing, is located in Mt. Kisco, another wealthy area in Westchester. I don't think a median of 70,000.00 per household will pay for those lessons. There is very strict land use in that area of very expensive homes. We're being bamboozled. We have a prime piece of property, bought with public funds approved by the public for open space, you can use even if there aren't trails. Before I came to Putnam County, I lived in Brooklyn, and we could only play on the concrete. We lived to come up here, to ride bikes and pick apples. I think we really need to give this more study and consideration. Also, Pugsley road goes right into Fair St. Could you imagine the amount of traffic into Fair St. and the ramifications? Why isn't this being put in a high density high use area like Brewster, Carmel or Mahopac?

Craig Cole stated that he lives in the Starr Ridge area and there are a lot of raised ranches and small colonials, it's not North Salem, we live in Brewster. The kids that live there go to the North Salem Schools and we pay North Salem taxes. That road is not large wealthy homes that will not make it appropriate for open space. If you could blow that picture out farther, this property at the corner of Seven Oaks Lane butts Ryder Farm, 250 acres of agriculture, and further down is the Peach Lake Preserve and the Fitchen Preserve so you're talking about a small road with little houses that runs through open space

with undevelopable space all around it. It's not North Salem or wealthy people that live there who are going to fight this. It's a considerable amount of protected area in a historic scenic road for 120 years. It's a beautiful area to walk, and there are trails and a pull off already there.

Bradley Schwartz stated that the idea that you can come up from Peach Lake is incorrect. The property on Peach Lake is owned by the Starr Ridge Civic Association and non-residents are not permitted to use it. There is no public access to the lake there. I have a question about the procedures going forward. If it's approved and the reviews can take up to 2 years, my question is what is the actual process for doing this land swap? Does it automatically happen or will there be more hearing on it?

Town Attorney Stephens stated that if it's approved and the Town decides to pursue this, they will enter into a contract that would provide for the swapping of deeds, and a process in which lands would have to be subdivided so the acquisition parcels would be established, then the review of what they would use that parcel for, the planning board process, further environmental reviews, a closing according to the terms of the contract. There could be a lot of conditions in the contract where certain other considerations have to be met. There is a lot to be said between now and when the land transfer takes place. Mr. Schwartz read from a paragraph on the second page of the draft resolution. Town Attorney Stephens explained that the reference he is reading is to allow the Supervisor to sign the Home Rule Request, not to transfer the property.

Councilman Larca wanted to clarify that we go to the State, they say ok, then we start the process, and if they say no, it's dead.

Ann Fanizzi asked to make one more comment and the Supervisor said 2 more minutes. She stated that the Home Rule Resolution is sent up to the state, the state legislators will vote on it. The Supervisor said yes. Ms Fanizzi asked that when you mentioned the one to two years, the Town still has to go through the process of a DEIS right? The Supervisor said yes. What you were referring to when you said 2 years is the SEQRA process? The Supervisor stated yes. So, the Town will go through the SEQRA process, DEIS, and examine this property, and do an environmental assessment, but the property is already swapped.

Joe Dash stated that Starr Ridge might not be wealthy, but you are next door to a very wealthy community and they are never going to let a ball field be built there. That land is never going to be developed. We can stand our ground, keep Pugsley road and I bet you we'll get Starr Ridge as well.

Richard O'Rourke stated that there were quite a few comments that were made that I would like to respond to. He listened to Mr. Bacon and he spoke to three points, public trust, environmental prospective, and the evaluation of the property. He stated he received a letter Mr. Bacon to the Town Board dated February 10th. He has prepared a response which addresses and corrects many of the misstatements made tonight and in Mr. Bacon's letter. The most dis-concerning, thing is that the exchange of land is contrary to the Public Trust Doctrine and it's not. The reason is set forth in a memorandum which will be part of the public record. Also, when you look at the credentials of our appraiser, he has done most of the evaluations for NYSDEP, as well as the State Historic Preservation Department as well as hundreds of other organizations throughout the state. There was a comment made with comparison to the grand concourse and Yankee Stadium, nothing could be farther than the truth. This is not about a dome or a stadium. In so far as the notice and conniving, as a courtesy we mailed notices to every property owner within 500 feet of both properties, and the Town Supervisor of Patterson. One other comment in regards to the Comprehensive Plan of 2014 is that it specifically endorses public and private cooperation to provide recreational opportunities to the kids and adult residents of this Town. The citation is in the papers submitted. One other consideration that has to be made is what your Comprehensive Plan says. As far as truck traffic, the Ace Endico trucks are right up there near Terravast

Park and I'm unaware of any accidents because of that truck traffic. To suggest something that we don't know without going through the review process which is required, it will all be vetted. Mr. O'Rourke's response memorandum and exhibits to Mr. Bacon's letter of February 10th are on the website and in the Town Clerk's Office.

Councilman Lord asked if going into the DEIS, has the swap already occurred? Town Attorney Stephens stated that a DEIS would not be prepared until there is a contract to do the swap. We are complying with SEQRA, which has been submitted as part of the package to seek legislative approval of the alienation parkland. Mr. Lord stated that a contract would have to be made to start the DEIS or SEQRA process? Yes, Town Attorney Stephens stated they're certainly not going to prepare them or spend the money until they have a contractual right to acquire the property. So by sending this to Albany and asking if we can do the swap, if they say yes, they won't be making any plans or provide us with any documentation until we agree to swap the property. Town Attorney Stephens stated that the contract would be conditioned upon whatever the Town Board wants to put in. It's a negotiation. By getting the authorization to alienate, it doesn't put this Town Board in a position to have to convey the land without a contract with terms that are favorable to the Town. Councilman Lord asked if it would be in our best interest to go to referendum on this. Town Attorney Stephens said that it's not required by law. Councilman Lord stated that he's just sympathetic to some of the resident's concerns that this is being put through too quickly and he doesn't want the ok from Albany to be a signal that we've agreed and it's going to happen. Town Attorney Stephens stated that we haven't agreed to anything.

Councilman Larca stated that there was a comment made about the house being appraised for 1.3 million with the house worth 1 million and the land worth \$300,000.00. It's my understanding the when you have a house and a lot of land around it, that land is ancillary to the house so when you subdivide the house out the rest of the land becomes more valuable because it's not just yard and when the property is subdivided the appraisal will be different.

Supervisor Hay made a motion to close the meeting this evening but will accept written comment until Wednesday, February 19, 2020 at 12 pm noon. Councilman Alvarez seconded. All in favor.

All written comments that are part of the record, that are not in the online minutes, are in the minute book in the Town Clerk's Office.

Respectfully Submitted,

Michele Stancati
Southeast Town Clerk

Mr. James Bryan Bacon, ESQ, entered comments on the behalf of Ann Fanizzi and Ricky Feuerman on the Alienation of Pugsley Rd in exchange for Starr Ridge Road property, which was received by the Town Clerk on February 11, 2020.

It states:

**JAMES BRYAN BACON, ESQ.,
P.C.**

Attorney and Counselor at Law

P.O. Box 575
New Paltz, New York
12561 (845) 419-
2338

February 10, 2020

Town Supervisor Tony
Hay Town Board of
Southeast 1360 Rt. 22
Brewster, NY 10509

Re: Alienation of Pugsley Road Property in exchange for Starr Ridge Road Property

Dear Supervisor Hay and Members of the Board,

Please consider the following comments submitted on behalf of Ann Fanizzi and Ricky Feuerman.

A February 5th public notice¹ indicated the Town could determine as soon as February 13th to alienate a portion of parkland purchased for 2.2 million dollars in 2007 following passage of a ballot initiative to purchase and preserve lands as "open space."

For the following reasons, the Town Board should keep the public comment period open to allow a thorough vetting of the alienation proposal by all interested parties.

The alienation proposal is a complete surprise to former members of the Open Space Committee which spearheaded the Town's open space initiative and worked to properties that merited protection based upon a number of ranked environmental attributes.

Review of documents just released by the Town pursuant to Ms. Fanizzi's FOIL request indicates that the proposed exchange of portion of the Pugsley Road parkland for acreage on Starr Ridge Road owned by ProSwing is contrary to the Public Trust Doctrine.

Specifically, the proposed use of the Pugsley Road acreage by ProSwing, a for-profit enterprise, is contrary to the purpose of the parkland acquisition and the trade lands on Starr Ridge Road do not advance comparable open space goals.

And, unlike the Starr Ridge property, the Pugsley Road property was systematically vetted for 11 months by County and Town representatives before being purchased with funds earmarked for "open space." And, unlike the Starr Ridge property, the Pugsley Road property forms a critical link in a 300+ acre open space and wildlife corridor from the Town of Patterson to the Middle Branch reservoir. Finally, the Pugsley Road property is more than twice as valuable as the Starr Ridge property which has not been independently appraised or surveyed.

¹ The public notice indicated a public hearing would be held on February 13, 2020 "to consider a proposal to alienate (transfer) a portion of certain open space (park) lands acquired by the Town in 2007 consisting of approximately 166 ± acres and located on Pugsley Road, TM# 45.-1- 10 and 11."

Background

In 1992, the Town amended its Code to create a Parks and Recreation Advisory Board that would, among other things:

Formulate and make recommendations for basic policy with respect to parks and recreation programs of the Town [and] Make recommendations upon any proposed sale or purchase of parklands.

Town Code §28-2(D) and (J).

To speed along the acquisition of open space, in 2005, the Town formed its Open Space Advisory Committee. The committee's purpose was to advance initiatives to preserve open space. The committee conducted a public survey finding wide public support to acquire and preserve open space. The committee worked with the Town on a ballot initiative which authorized the Town to bond 5 million dollars "[i]n order to preserve the quality of drinking water sources, preserve working farms and wildlife habitat," subject to the committee's "audit and review." (See committee minutes of August 2, 2006.)

The Town's resolution authorizing the ballot initiative stated the money would be used "for open space preservation" and to fund an "Open Space Acquisition and Preservation Program."

Following approval of the referendum in November 2006, a number of properties with notable environmental characteristics were identified for potential acquisition and preservation by Bill Ford, (the Town Assessor), and others. The committee developed and used a ranking system to identify open space parcels most suitable for protection. The Starr Ridge Road property now proposed as "exchange lands" was not identified as potential parkland.

On January 31, 2007, the Trust for Public Land and the Putnam County Executive met with the committee and proposed the acquisition of 166 acres on the east side of Pugsley Road:

Based upon a preliminary study by Trust for Public Land, the Town of Southeast and the Open Space Advisory Board recommends that the Supervisor pursue

discussions and research with all interested parties toward possible open space acquisition of the properties known as Tax Map 45.1.10, 45. 1.10 [sic] and 35.2.11.

Committee minutes 1/31/07.

The committee evaluated the Pugsley Road parcels, (45.1.10 and 45.1.11), and issued four evaluations determining that the properties included "natural features suited to passive recreation" and were "contiguous to existing larger open spaces." Regarding whether the properties were appropriate for "active recreation," two members answered "yes" while Ms. Ingraham said "no." Ms. Nugent answered "potential but not assured" and Ms. Fanizzi cautioned that "Wildlife Habitat and Natural Resources would be destroyed if active recreation permitted."

Based upon the committee's recommendation, on November 7, 2007, the Town purchased parcels 45.1.10 and 45.1.11 comprising a total of 166 acres for 2.2 million dollars, or an average of \$13,253 an acre.

Notably, the parcels sit at the headwaters of two tributaries feeding the Middle Branch reservoir less than a mile away. The parcels are bounded on the north by an 81-acre County-owned property purchased from the Open Space Institute in January 2006 which was preserved with a conservation easement. To the south, the parcels are bordered by a privately owned 52-acre parcel, which is largely undevelopable due to wetlands constraints.

Together, these 299-acres present one of the largest tracts of undeveloped land in the region. And, the location is especially important as a wildlife corridor given the nearby County owned property on both sides of Rt. 312, (163 acres) and NYC watershed lands.

Procedural and Substantive Concerns

The 2006 ballot initiative stated the Town would use funding to establish an "Open Space Acquisition and Preservation Program." The Town never followed through with this promise and the proposed alienation of a portion of the Pugsley Road 166 acres is absolutely contrary to the terms of the ballot initiative.

Specifically, the Pugsley Road property was purchased with the ballot initiative's limitation that it would be used for "for open space preservation." Transferring any portion of the 166 acres for any purpose other than "open space preservation" violates the ballot initiative and essentially defrauds the voters who publicly financed that acquisition.

Although the Town Code provides for administrative review of parkland acquisition, the Town Board has not re-instated its Parks and Recreation Advisory Board and thus has not obtained its recommendation as required by Town Code §28-2(1).

In further rejecting the public's open space funding, the Town Board disbanded its Open Space Advisory Committee, which had established the protocol for ranking the environmental benefits of potential properties for purchase.

Notably, it appears the Town has failed to include either the Trust for Public Land or Putnam County in its alienation proposal even though the County owns significant acreage adjacent and in proximity to the Pugsley Road parcels. Similarly, there is no indication the Town has sought comments from the neighboring Town of Patterson.

Further, the Town has failed to prepare a "Parks and Recreation Master Plan" to guide acquisition and use of Town parks and open space as recommended by the Town's Comprehensive Plan (2014):

It is the recommendation of this Comprehensive Plan Update that the Town prepare a Parks and Recreation Master Plan to identify in detail existing park resources and to recommend improvements and/or additional land acquisitions. Decisions regarding open space improvement, acquisition and management should be should be made jointly by the Town's Recreation Department, the several conservation agencies and organizations, and the Planning Board to ensure that some open space be set aside for animal and vegetative habitat. ...

(At 9-5).

Significantly, the Town has not obtained independent appraisals of the Starr Ridge Road and Pugsley Road properties to compare values. In alienating parkland and/or exchanging parkland for other lands, a formal appraisal is necessary to assess whether such an exchange is financially sound. (See Report of the New York State Comptroller "Parkland Alienation" [May 2015] at <https://www.osc.state.ny.us/localgov/audits/swr/2015/parkland/global.pdf>).

However, even a preliminary review indicates the Pugsley Road property is twice as valuable as the proposed Starr Ridge trade lands. Specifically, the Pugsley acreage was purchased for 2.2 million dollars, (\$13,253 an acre), and is assessed at \$789,040. By contrast, the Starr Ridge Road acreage is assessed at less than half that amount—\$335,700.

Also, the Town has not obtained an environmental assessment of either the Starr Ridge or Pugsley property. By contrast, when the Open Space Committee investigated the Haines Pond property for potential acquisition, it hired wildlife expert Michael Klemens, Ph.D., to conduct a full environmental inventory and issue a report. Similarly, the Town Board's resolution approving acquisition of the Ryder Farm development rights, noted the Open Space Committee's 14-point evaluation of that property. Without an environmental study and independent analysis, it is impossible to weigh the benefit of acquiring the Starr Ridge property against the loss of the property on Pugsley Road.

In sum, the Town has unilaterally determined to trade a portion of the Pugsley lands to a for-profit corporation in exchange for acreage adjacent to Starr Ridge Road. Unlike the years of preparation and vetting of parcels by the Open Space Committee, the Town Board has conducted no such review.

Finally, I note that the State Environmental Quality Review Act, (SEQRA), discourages segmentation, but that appears to be exactly what is occurring with separate SEQRA reviews of the subdivision of ProSwing's proposed trade lands on Starr Ridge Road and the Town' s proposed transfer of a portion of the Pugsley Road property to ProSwing. <http://www.townofsoutheastny.com/DocumentCenter/View/3477/ProSwing-Subdivision-Application>.

For the above reasons, the Town should not proceed to alienate its acreage on Pugsley Road at the present time.

Respectfully,

James Bacon

Cc: Christopher M. Walker, Pace Environmental Law
Clinic Philip Bein, NYC Watershed Inspector
General
Peter B. Harckham, N'YS
Senate Sandra Galef - NYS
Assembly Kevin Byrne - 1YS
Assembly
Erik Kulleseid NYS Commissioner Parks, Recreation and Historic
Preservation NYS Assembly Committee on Tourism, Parks, Arts and
Sports Development

February 3, 2020

VIA E-MAIL TOWN BOARD MEMBERS, TOWN ATTORNEY, TOWN PLANNER

Town Board

Town of Southeast

Town Hall

1360 Route 22

Brewster, New York 10509

Attention: Hon. Tony Hay, Town Supervisor

Re: Proposed Alienation of Town Owned Property
on Pugsley Road in Exchange for Privately
Owned Property on Starr Ridge Road

Dear Supervisor Hay and Members of the Town Board:

Enclosed please find a submission from Proswing Sports Realty, Inc. (the "Applicant") with respect to its proposal to exchange of privately-owned property for property owned by the Town of Southeast (the "Town"). Simply stated, the purpose of this exchange is to potentially provide increased opportunities for both passive and active recreational opportunities.

The Applicant owns 94.9 acres of property located on Starr Ridge Road (the "Starr Ridge Road Site"). The Applicant seeks to convey the Starr Ridge Road Site to the Town in exchange for 81.72 acres of the property owned by the Town on Pugsley Road. This proposed land transfer would require the Town to subdivide 153.85 acres of public parkland located on Pugsley Road. The Town would retain ownership of 71.7 acres of land on Pugsley Road, and convey 81.72 acres to the Applicant. In return, the Town will receive the 94.9 acres located on Starr Ridge Road which will become substitute parkland and permanent open space.

This exchange of property requires, as you know, authorization from the New York State Legislature. The Town Board must adopt a resolution to request the New York State Legislature introduce Home Rule Legislation to authorize the discontinuance and alienation of a portion of the parkland located on Pugsley Road and must approve the submission of an application to the New York State Legislature to accomplish the proposed "land swap" of property. The benefits of the proposed parkland alienation and property exchange are set forth in the draft answers to the questions on the Parkland Alienation Form.

Enclosed for the Town's consideration are draft forms setting forth the information that is required by the New York State Legislature. You will note that the information set forth incorporates the history of the acquisition by the Town of the open space on Pugsley Road along with a narrative of the details of the proposed exchange of properties. Also enclosed is a complete draft Environmental Assessment Form, Parts I, and III for the consideration of the Town Board.

Additional enclosures are the following:

- Final subdivision plat setting forth the metes and bounds description for the 94.9 acres located on Starr Ridge to be conveyed to the Town;
- Map of alienation parcels of land located on Pugsley Road showing the areas to be conveyed by the Town as part of the land swap. Total acreage proposed to be conveyed (alienated) is 81.72 acres with the Town retaining ownership of approximately 71.7 acres;
- Comparative site analysis of Starr Ridge Road site with Pugsley Road site prepared by KGD Architects;
- Area Summary of Pugsley Road recorded deeds;
- Area MAP of Town owned Property (160, 132 Pugsley Road including Parcels 1B and 2B);
- Draft Town Board Resolution requesting Home Rule Legislation; and
- Draft Bill Provisions of Consideration by the New York State Legislature.

The proposed action includes the alienation of public parkland on Pugsley road through State legislation, acquisition of the Starr Ridge Road site and sale of the Pugsley Road property by the Town (the "Proposed Action.") The Proposed Action is subject to the State Environmental Quality Review Act ("SEQRA"). For the Town Board's consideration, we have provided below recommendations and analysis of the proper procedures which will allow this exchange to proceed expeditiously.

The proposed action does not include any proposal whatsoever of development on either parcel. It is, however, the intention of the Applicant, should the exchange be successful and approved so that the owner would take title for the property on Pugsley Road, to develop the Pugsley Road property for active recreation. Of course, title to the Pugsley Road property will remain with the Town until the New York State Legislature approves the Town's request to discontinue and alienate a portion of public parkland on Pugsley Road, and the Town thereafter approves the exchange. Only then will a proposal for the

recreational use of a portion of the Pugsley Road property be engineered, designed and proposed. At this time, engineering and design of the Pugsley Road site is far too speculative, given especially that the property is not even owned by an entity that could propose development.

That such is the case means that while the swap of land may enable a proposal at some future time for active recreation on the Pugsley Road property, there simply is no plan for any development at this time given the premature status of ownership. The Applicant will submit an application to the Town for review pursuant to the Town Code and SEQRA if and when, title to the property is acquired and a site development plan is designed and engineered. The Applicant is prepared to commit to the preparation of a Draft Environmental Impact State (“DEIS”) to review the potential environmental impacts associated with the proposed development of the Pugsley Road property. The SEQRA review to be performed by the Town Board at this time includes only consideration of the potential environmental impacts associated with the exchange of property. By issuing a negative declaration on the Proposed Action, the Town Board is not committing the Town to any future approvals or actions with respect to development on the Pugsley Road site. As discussed above, the Applicant will be required to submit separate SEQRA documents and the Town will be required to make a determination of significance at that time.

Moving forward, we recommend the Town Board, after due consideration of the full Environmental Assessment Form, declare the proposed action as a Type I, declare itself Lead Agency, conduct a public hearing, and thereafter adopt a negative declaration. After satisfying SEQRA, the Town Board may proceed to adopt a resolution to request the New York State Legislature introduce Home Rule Legislation to authorize the discontinuance and alienation of a portion of the parkland located on Pugsley Road.

One issue that may come up is whether the Proposed Action constitutes SEQRA segmentation because the scope of SEQRA at this time does not include hypothetical build-out proposals for the Pugsley Road site. Pursuant to SEQRA, “segmentation” is defined as a “division of the environmental review of an action such that various activities and stages are addressed under this part as though they were independent, unrelated activities, needing individual determinations of significance”. 6 NYCRR 617.2(a)(h). The approach recommended for this proposed action of alienation of property is that the impacts of the parkland alienation and land swap be considered separately from the impacts of what may possibly occur later. It is our strong belief that the Proposed Action is not SEQRA segmentation.

However, even if the Town Board’s action authorizing this land swap was considered segmentation, such segmentation is permissible. The current owner

of the Starr Ridge property has committed to the preparation of a DEIS if and when title is gained to the Pugsley Road property and financing is then achieved for the advancement of an active recreation proposal on the property. Only upon taking title to the property could an application for site plan approval be filed to develop the Pugsley Road property. Under such circumstances a determination of significance may be made now for the exchange of property. See *Scott v. City of Buffalo*, 20 Misc.3d 1135(A), 2008 WL 3843532, —19-20 (Sup.Ct. Erie Co.2008), *aff'd*, 67 A.D.3d 1393, 887 N.Y.S.2d 894 (4th Dept.2009), *lv. denied*, 70 A.D.3d 1519 (4th Dept.2010), *lv. denied*, 14 N.Y.3d 710 (2010) (“SEQR expressly provides that segmentation is permissible and a cumulative environmental review is not required if a lead agency believes that segmentation is warranted under the circumstances, provided that the agency: (i) clearly states its reasons therefore; and (ii) demonstrates that a segmented review will be no less protective of the environment”). The Town Board should clearly state in its determination of significance the supporting reasons for conducting a segmented SEQRA analysis of the Proposed Action and must demonstrate that such review is clearly no less protective to the environment. Here, the supporting reasons include the uncertainty of whether the New York State Legislature will approve the alienation of the Town property and the speculative nature of information on future development of the Pugsley Road Site. Moreover, securing adequate financing for any proposed development for property not yet owned or under contract is virtually impossible.

The Proposed Action involves the conveyance of property much more attractive for passive recreation in exchange for property that has the potential for use as active recreation. The Pugsley Road property is already zoned for Recreation. It is zoned Rural Commercial (RC) which has the Permitted Principal Use “Recreation.”

There is no current matter to be considered at present other than the discontinuance and alienation of parkland and the mere conveyance and exchange of the properties.

It is impossible to consider as one project the alienation of property and possibility of further disturbance and development of the property on Pugsley Road. The Pugsley Road property is not owned by anyone who can propose development, there is no site plan that has been developed, and there is no financing that could potentially be available so as to provide for any further development of a proposed project until and unless there is title to the property. Moreover, the Town is protected as is the State, by virtue of the commitment now made for a complete environmental impact review if and when there is a proposed development for property on Pugsley Road.

There are different property owners for the two properties that are contemplated for the exchange. There is no proposed development for property on Starr Ridge Road. With respect to the property on Pugsley Road, there is only the possibility of future development, if and when title is obtained, if and when financing is obtained, and if and when the proposal is possible.

There is no segmentation with respect to what is presently proposed. All that is proposed is a land swap with no proposed development, nor could the proposed development be put forth as there is no ownership of the property on which development may occur.

In making its findings that the proposed action - - alienation of property - - will not have a significant adverse impact on the environment, the Town board may properly state that there is no commitment by any agency to approve any additional phases. In fact, the exact opposite is true. There is no commitment, and any further proposed development on Pugsley Road will necessitate a thorough environmental review, and the potential property owner is committing to full preparation of a draft Environmental Impact Statement should the development proposal occur.

What is important for the Town Board to acknowledge is that while one might consider the parkland alienation/"land swap" and the possible development of the Pugsley Road property as related actions, consideration of the parkland alienation/land swap by itself is not impermissible segmentation. Nonetheless, even if segmentation exists, it is acceptable under the following circumstances:

- (1) Information on future phases of the project is speculative;
- (2) Future phases may not occur; and
- (3) Future phases are functionally independent of the current phase.

See, SEQRA Handbook, Fourth Edition 2019 (Draft), pp. 60-61.

For the reasons discussed herein, the Town Board may conclude its SEQRA review for the Proposed Action without considering future development of the Purdsley Road property.

Conclusion

As part of the Town Board's consideration of this proposed action, (i.e., alienation of a portion of the property owned on Pugsley Road) it will be necessary for the Town Board to clearly note in its determination of significance, its supporting reasons and demonstrate that such review will be no less protective of the environment. The Town Board should find there are functionally independent

projects, (alienation of property, and potential later development of active recreation), and as such segmented review is reasonable. The alienation and land swap should be classified Type I action under SEQRA that will not have a significant adverse impact on the environment. Thus, the proposed action should be granted a negative declaration by the Town Board.

While the possibility of developing a portion of the Pugsley Road property exists, it certainly is not a foregone conclusion. More importantly, the two aspects of the project are functionally independent and segmenting the review will be no less protective of the environment because the ultimate development of the Pugsley Road property will be the subject of a DEIS by the Town of Southeast Planning Board.

Thank you for your consideration.

Very truly yours,

Richard L. O'Rourke

RLO/sb

Encls.

CC: Via Overnight Delivery

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