

Editorials & comments

Gyrodyne rant makes case for supplemental review

When Gyrodyne President and Chief Executive Officer Gary Fitlin angrily lambasted the opposition to his company's development plan to subdivide 75 acres of land on the southeast corner of Route 25A and Mills Pond Road in St. James, he unwittingly offered the best case yet for a supplemental environmental impact statement (SEIS) to be required.

After listening to Mr. Fitlin, the town has no choice now but to require a SEIS in order to comply with the requirements of the New York State Environmental Quality Review Act (SEQRA) and the 40-year-old standard established by the landmark court decision in the case of Onondaga Landfill Systems, Inc. v. Robert Flacke, Commissioner of the State Department of Environmental Conservation.

On its 75-acre site, most of it grass fields or wooded lots along a bucolic stretch of Route 25A that gives St. James its rural character, Gyrodyne has applied to the Town of Smithtown for a subdivision to develop a 125-room hotel, 175,000 square feet of medical office space, 250 assisted living units, parking for over 2,000 cars and a 100,000-gallon-per-day sewage treatment plant. It is a development plan that, as one obviously would expect, has engendered intense community opposition.

Conflict associated with land use applications is routine, the intensity of that give-and-take varied by the magnitude of the project and the number of people it will impact. In the case of Gyrodyne, the magnitude is enormous, the impacts it will have are far-reaching and long-lasting, and the community that will be impacted is vast, well beyond the hamlet of St. James.

To counter the critics, Mr. Fitlin was a June 8 guest of Celebrate St. James, a not-for-profit community-based organization that advocates for revitalization of the downtown business district through arts and culture. Mr. Fitlin, obviously angry during his presentation, offered a point-by-point rebuttal of the opposition criticism.

He doesn't like the plan being referred to as a Smith Haven Mall-like mega-development; he doesn't agree with the St. James-Head of the Harbor Neighborhood Preservation Coalition assessment that the Mills Pond Historic District was overlooked in the environmental impact statement (EIS); he doesn't agree with concerns about traffic, visual and scenic impacts of the plan; and he claims the

benefits far outweigh the impacts of development.

Where Mr. Fitlin obviously stumbled was in his discussion of the sewage treatment plant. He cited the \$4 million town project to install a new sewer line on Lake Avenue with the intention of connecting it to the Gyrodyne sewer plant. He made it clear that Gyrodyne is the most logical option for the Lake Avenue connection, and suggested that if the town doesn't connect to the Gyrodyne plant it will be 20 to 30 years before the \$4 million Lake Avenue sewer line is connected to anything.

The legal dilemma with his explanation is that the environmental impact statement (EIS) includes a detailed review of a 100,000-gallon-per-day sewage treatment plant with no consideration, analysis or review for the Lake Avenue connection. According to Mr. Fitlin, the critics are calling it a "bait-and-switch." The "bait-and-switch" allegation appears as infuriating to Mr. Fitlin as the "mega-development" rhetoric and, of course, those are the buzz words that make these types of issues contentious. Although bait-and-switch may not accurately define the situation that has tweaked Mr. Fitlin's ire, "segmentation" under the eyes of the law better sums it up.

During his June 8 remarks, Mr. Fitlin admitted that Gyrodyne and town officials have agreed all along that the intention is to connect Lake Avenue to the Gyrodyne sewer plant. And, he said the sewer plant has been modularly designed so that it can be easily expanded from 100,000-gallons-per-day to 200,000-gallons-per-day to eventually accept the Lake Avenue flow.

"I have always said we would do it. Why would we not do it?" he asked. "The efficiency to accommodate Lake Avenue is better for everyone. The cost per gallon goes down."

Mr. Fitlin then said the Lake Avenue project was left out of the Gyrodyne environmental impact statement intentionally because it would result in additional engineering costs that Gyrodyne would have required the town to pay for and because the addition of the Lake Avenue sewer plant review would have delayed the approval process. He questioned why the town or Gyrodyne would want to include the Lake Avenue hook up in the environmental

impact statement now?

The answer is simple. The law requires it.

New York's half-century-old landmark State Environmental Quality Review Act (SEQRA) directs the Department of Environmental Conservation (DEC) to promulgate criteria to determine if an environmental impact state (EIS) is required for a land use application. In the case of the Gyrodyne application, the town determined there is reason for an EIS and Gyrodyne has done that work.

The SEQRA law also requires that there be a "comprehensive assessment of all related projects at an early stage of review as opposed to an uncoordinated, individual review of projects or permit applications." It is a legal concept put to the test in the 1981 lawsuit by Onondaga Landfill Systems, Inc. against DEC Commissioner Robert Flacke, the DEC and the state.

In a May 27, 1981 decision overturning the lower court, the New York State Supreme Court Appellate Division determined that it was within the scope of the law for the state to include in its environmental review of a sand-mining application a future potential residential subdivision of the land. "The fact that DEC has included the potential effect of the proposed subdivision by Charles Realty as part of its consideration of the environmental impact of the mining operation is consistent with the policy articulated in the [SEQRA] statute and is not arbitrary, capricious or an abuse of discretion," the court ruled, in a decision that has been the case law of the state for 40 years.

Gary Fitlin's explanation that Gyrodyne and the town intend to connect Lake Avenue to the Gyrodyne sewer plant but didn't want to pay the engineering cost or delay project approvals circumvents SEQRA and there has to be a SEIS. And, for Mr. Fitlin to suggest that this is a "chronological" process—first Gyrodyne gets its approvals and then the town connects Lake Avenue—although convenient for Gyrodyne is a classic example of "segmentation" under SEQRA that fails the Onondaga Landfill decision test.

The town should either require the SEIS now or face the consequences in litigation that is sure to follow a decision.

Be our guest

Why the Gyrodyne plan is ill conceived...

Editor, The NEWS:

Editor's Note: This letter was sent last week to Smithtown Town Supervisor Edward Wehrheim with a copy this week sent to *The Smithtown News* for publication.)

Per your request at our recent meeting, this is to summarize for you some of the more important issues that I believe make Gyrodyne's application for development of the Flowerfield property an ill-conceived proposal that should not be approved.

Traffic

The proposed development of this property will cause what currently are daily frustrating traffic conditions to become intolerable. The roads were not made to handle the existing volume, let alone the projected volume, and I believe the applicant's count of projected daily vehicle trips is significantly underestimated and, in any case, from 2017 and out of date.

Although the EIS does not clearly disclose the 2017 traffic counts found, it does acknowledge that in some respects the intersections of North Country Road with Mills Pond Road and with Stony Brook Road received E and F ratings ("congested") during peak weekday a.m. and p.m. hours and Saturday peak hours. (Page 9-3)

Note that this study has not been updated during the past four years.

At the recent County Planning Commission zoom meeting, David Barnes stated the projected vehicle trips resulting from this project. Although it was not clear at first, he ultimately clarified that the projections are for new (additional) trips resulting from Gyrodyne's proposed development: Per hour: weekday a.m. peak 382, weekday p.m. peak 507, Saturday peak 308.

Considering that there are many more hours in each day, these are significant numbers, especially when added to existing traffic. It is frustrating that the applicant has stated its belief that the two-lane roads bordering the property can handle the projected traffic volume with "traffic signaling and right-turn-only lanes." I have been saying it for a few years: A traffic nightmare will result if this project is built. If you take a trip on Stony Brook Road and North Country Road during peak hours, you will see what I mean, especially when the University is in session.

Additionally, the 2017 and projected traffic counts, even if close to accurate, do not take into consideration the additional traffic that would

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This newspaper will not be responsible for any error
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Police blotter

Suffolk County Police Fourth Squad detective are investigating a motor vehicle crash in Kings Park Sunday, June 20 in which a motorcyclist was seriously injured.

At about 4:45 p.m., Florent Sylva, 26, of Bellmore, was riding a 2018 Yamaha motorcycle eastbound on Route 25A when he attempted to pass a 2011 Toyota that was attempting to make a left hand turn onto Patiky Street. The motorcycle and the car collided and Mr. Sylva was knocked to the ground. He was taken by Kings Park Fire Department ambulance to Stony Brook University Hospital for treatment of serious physical injuries. Neither the driver of the Toyota, William Halper, 89, of South Setauket, or a passenger in his vehicle, were injured. Both vehicles were impounded for safety checks.

Detectives are asking anyone who may have witnessed or have information about this crash to call the Fourth Precinct at 631-854-8452.

Suffolk County Crime Stoppers and Suffolk County Police Fourth Precinct Crime Section officers are seeking the public's help to identify and locate the two men who stole merchandise from a store in Commack in April.

Two men stole two Dyson hair curlers at Ulta Beauty, located at 78 Veterans Memorial Highway on April 29. The hair curlers are valued at approximately \$800.

Suffolk County Crime Stoppers offers a cash reward for information that leads to an arrest. Anyone with information about this incident can contact Suffolk County Crime Stoppers to submit an anonymous tip by calling 1-800-220-TIPS, utilizing a mobile app which can be downloaded through the App Store or Google Play by searching P3 Tips, or online at www.P3Tips.com. All calls, text messages and emails will be kept confidential.

Suffolk County Crime Stoppers and Suffolk County Police Fourth Precinct Crime Section officers are seeking the

public's help to identify a man who stole a vehicle from the parking lot of a store in Hauppauge earlier this month.

A man stole a black 2007 Honda Accord with NY license plate KLB 9549 from the Quick Chek, located at 648 Motor Parkway, on June 2 at approximately 10:05 p.m.

Suffolk County Crime Stoppers offers a cash reward for information that leads to an arrest. Anyone with information about this incident can contact Suffolk County Crime Stoppers to submit an anonymous tip by calling 1-800-220-TIPS, utilizing a mobile app which can be downloaded through the App Store or Google Play by searching P3 Tips, or online at www.P3Tips.com. All calls, text messages and emails will be kept confidential.

Gary Banville, 60, of Kings Park, was arrested in Smithtown June 18 and charged with assault in the third degree, with intent to cause physical injury. The incident allegedly occurred

June 8. There was a warrant issued for his arrested June 14 and he was arrested June 18 and released without bail. He is due back in court July 27.

Travis Lawrence, 33, of Ronkonkoma, was arrested in Hauppauge June 18 and charged with criminal obstruction of breathing by applying pressure.

Jonathan Jonas, 45, of the Bronx, was arrested in Smithtown June 17 and charged with petit larceny.

Roberto Rodriguez, 31, of Centreach, was arrested in Smithtown June 17 and charged with driving while intoxicated as a first offense misdemeanor.

Kevin Valeiko, 39, of Ronkonkoma, was arrested in Smithtown June 15 and charged with criminal contempt of a court order of protection in the second degree.

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Letters from our readers

(Continued from page 4)

be produced if/when the following projects are developed: the adjoining Baptist Church property now owned by Jim Tsunis/Northwind LLC with a proposal to Brookhaven for multi-family housing; the adjoining ongoing Stony Brook University R&D development ("These projects have the potential to generate traffic through one or more of the key intersections by 2020, but that traffic would not have been included in the field counts.") DEIS pg 4-2); the Bull Run Farm property; and the BB&GG farm.

In the DEIS the potential traffic counts from the Northwind property are not included because "the sale is very recent and there is no known application" for development. DEIS pages 4-3). Now, four years later, we know that an application is being made and the projected traffic from it should be disclosed and counted.

As you know, the additional University development is a given, and at least two of the other three of these projects are likely to be presented for approval in the near future. At the very least, Smithtown should require a supplemental EIS that includes projected traffic counts showing the cumulative impact of all of these projects, the University's included. How else can informed decisions be made on these applications? Ignoring the effects of the other projects would be grossly unfair to those who live in, work in and pass through this area of town.

Mills Pond Historic District

I am surprised that the statements made by Gyrodyne in its EIS apparently were not fact-checked by Town officials. Approximately one-third of Gyrodyne's property is located in the Mills Pond Historic District, on the National Register of Historic Places (along with two houses on the property) since 1973. However, in its EIS, Gyrodyne incorrectly stated the following:

"There are several historic sites and historic districts within the vicinity of the site." (Section 1.15)

"The site is near several historic sites and districts that are listed on the National Register of Historic Places . . ." (Sect. 16.1)

"The portion of the project site that is within the Mills Pond Road [sic] District is currently occupied for the most part, by the existing industrial development." (Sect. 16.2)

None of those statements is true. In fact, the existing industrial development is located OUTSIDE of the Historic District. The proposed hotel and its parking lot are located totally WITHIN The Historic District. Attached are: The NYS CRIS website screenshot showing the Historic District. Note that Gyrodyne's property also is outlined on this map. My hand-drawn overlay of the Historic District on

Gyrodyne's proposed site plan from the FEIS. It also shows the 300-foot residential restrictive covenant explained below.

When you compare these overlays, which I believe are accurate, you can readily see that a proposed hotel and its parking lot would be fully located within the Historic District.

Restrictive covenants

As you likely know, the requirement of a 200-foot natural buffer has existed on this property along the south side of North Country Road. since 1960, when the Town granted Gyrodyne's application (without public notice) to rezone the property from a single-family residence district to light industry. The ensuing lawsuit brought by the Village of Head of the Harbor and 21 other neighboring landowners, including the Garguilos, the Perrys and the Elderkins, resulted in an additional restrictive covenant being put on the property in 1964.

This additional covenant restricts development of an area of the property to only single-family residences for a distance of 300 feet south from North Country Road and parallel thereto for almost the entire length of the property along that road.

It was not easy for me to discover this because that additional covenant area is not mapped out in the recorded covenant, nor in Gyrodyne's EIS (in which they incorrectly state that the 1964 covenant "sets forth covenants and restrictions already encompassed" within the 1960 restrictive covenant that established the 200-foot natural buffer along the south side of North Country Road. DEIS pg 2-8) That statement simply is not true. Using the courses and distances described in the 1964 covenant, and with the aid of a CAD system, I was able to show that this 300-foot residential line runs through one of Gyrodyne's proposed commercial parking lots and likely part of a proposed assisted living facility. This is another example of no one independently verifying the statements made in the EIS. If allowed, the development would violate the 1964 covenant.

The overlay of this covenant by use of the CAD and hand-drawn is shown on the attached two maps. If there is doubt about this, the applicant should be required to map out the covenant by the courses and distances contained in the recorded restrictive covenant.

I know you asked me for some "bullet points". These are complex issues that I have tried to summarize as best I can. Since the issue of a sewage treatment plant is also complex, I will leave that for another time. However, in comparing the disclosures regarding this proposed project to the Town's Draft Comprehensive Master Plan, I am struck at the conflicts between the two. I am also concerned that, although eighteen areas of Town

are proposed to be included in this study, the North Country Road Historic Corridor apparently is not one of them. This is an oversight that I hope will be corrected. If it were, the Town of necessity would have to take a harder look at the Gyrodyne proposal and it would become clearer how it conflicts with several stated objectives in the proposed Master Plan, including open space and natural resource preservation, historic and cultural preservation, and concentration of new high density, mixed use and commercial developments in existing downtown areas.

One glaring example is the fact revealed in the Draft Plan that at 1.6%, St. James hamlet has by far the least percentage of open space of any hamlet in the Town (the other hamlets averaging 18%). The last 75 acres of open space should be preserved at all costs, Even Mayor Dahlgard has agreed and, I understand, written to you about this.

Please understand, I am an advocate for the business owners in St. James. One way or another, there ultimately will be a working sewer line on Lake Avenue. But I am also a resident who cares deeply about this community, and its citizens, history and environment. To approve this project because the sewer line is needed is narrow-minded and unfairly ignores the looming gigantic traffic problem that will impose an unreasonable burden on the residents of the northeastern part of this Town and those traveling through it. The magnitude of the proposed project will have regional consequences that, with all due respect, have not yet been appreciated.

No one should begrudge the right of a property owner to legally develop its property. However, that right must be reconciled with the greater public good. When an imbalance might occur, as is likely in this matter, it is the job of government to make sure that an injustice does not result.

Finding the money to pay Gyrodyne fair compensation for its property should be the goal. You and I have both been told about possible alternatives, including potentially its use as an equestrian center. I believe that the directors of Gyrodyne would be amenable to discussing these alternatives, and I am ready to assist in any way that you believe could be helpful.

Approval of the proposed project would be a major mistake that I predict we would all come to regret. I urge you and the Town Board to work with the other municipalities, including the County, State and Federal governments, and even private interested parties, to find a way to resolve this matter so that we can all live with it. This property deserves it.

Joseph Bollhofer
St. James