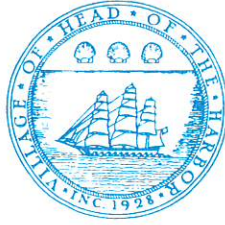


# Village of Head-of-the-Harbor



DOUGLAS A. DAHLGARD  
*Mayor*

TRUSTEES

DANIEL W. WHITE  
*(Deputy Mayor)*

JUDITH C. OGDEN

L. GORDON VAN VECHTEN

JEFFREY D. FISCHER

500 N. Country Road  
St. James, New York 11780  
Phone (631) 584-5550  
Fax (631) 862-1417  
HeadoftheHarborNY.gov

ANTHONY S. GUARDINO  
*Village Attorney*

MARGARET O'KEEFE  
*Village Administrator/Clerk*

PATRICIA A. MULDERIG  
*Village Treasurer*

CHARLES M. LOHMANN  
*Police Chief*

October 20, 2021

Barbara DeSorbe, Chairperson  
Members of the Planning Board  
Town of Smithtown  
23 Redwood Avenue  
Smithtown, N.Y. 11787

Re: Defects in Proposed SEQRA Findings – Gyrodyne Subdivision #1178

Dear Chairperson DeSorbe and Members of the Board,

We write today in the spirit of cooperation to urge the Town to take immediate steps to modify the Draft Findings Resolution in order to correct flaws in the Findings in an effort to address defects in the SEQRA process thereby strengthen the ongoing environmental review of the pending Gyrodyne subdivision. While it should be noted that many stakeholders have commented that the Board should not advance a Findings Resolution but should instead require the preparation of a Supplemental Environmental Impact Statement (SEIS) before doing so, these comments are limited to and focus on the content of the Draft Findings Resolution that was recently presented by Town staff to the Conservation Board. The Trustees did not author the comments, but have endorsed its contents and enacted a resolution authorizing that it be submitted on behalf of the Village.

The urgency of these comments is underscored by the recent request by the Town of Brookhaven that the Board not move forward to consider a Findings Resolution pending correction of what the Brookhaven Superintendent of Highways has stated are material misstatements and mischaracterizations contained in the Draft Findings Resolution regarding the substance of the Town of Brookhaven's comments and concerns related to the potential traffic impacts that would be caused by the proposed Gyrodyne development.

Our specific comments regarding the pending Draft Findings Statement are as follows:

## Format

The first page of the Findings document should include the name and address of the lead agency, applicant name and address, name of the project and the project location and date. The last page of the Findings document should list the names of the persons and entities to whom the Findings shall be sent, include the Town Supervisor, involved agencies and the applicant.

## Comments on Facts Relied Upon in the Preparation of These Findings

1. In Paragraph 5a) i) of the Findings, page 2, the Findings note that the Planning Board is enabled to "...set limitations on the anticipated impacts of future development..." including "...restrictions on building height..." The specific building height restrictions applicable to the project should be enumerated.
2. In Paragraph 5b of the Findings (page 2), reference is made to the "...existing Covenants and Restrictions..." currently constrain development on significant portions of the project site. The specific title and date these covenants and restrictions were filed should be included here to avoid any ambiguity or confusion regarding these constraints in the future.
3. In Paragraph 5c) i) on page 3, the Findings state that "*Additional supplemental plantings, consisting solely of native plant species, will be provided in the existing buffer...*" As herbaceous plants do not provide significant visual buffering, the Findings should be amended to state that the native plant species will include native woody trees and shrubs. Furthermore, specific species to be utilized should be listed here.
4. In Paragraph 5c) iii) on page 3, the Findings note that the two historic building located on the Gyrodyne property, consisting of the "*Gyrodyne Gambrel Roofed House*" and "*Bailey Homestead/Papadakos House*" are "*being preserved on proposed Lot #2.*" Deciding not to demolish or destroy these two historic structures is certainly a positive outcome. However, the Draft Findings is deficient in that does not address how it will be ensured that these two historic structures are not destroyed over time through neglect and a failure to actively repair and maintain them. Accordingly, the Findings should be amended to include a requirement that the applicant (and subsequent future owners) prepare and implement plans for active maintenance and repair of the two historic structures. The plan should include architectural and engineering reports on the status of the structures (to be submitted to the Town), and a requirement for an annual report to the Town and Smithtown Historical Society of all measures and activities employed by the Applicant to stabilize, repair and maintain the structures while ensuring their historic integrity. Finally, the plan should also include a detailed proposal to explore various means of full restoration and adaptive reuse of these historic structures, including potential arrangements with local historical societies or other non-profit entities.
5. In Paragraph 5c) vi) on page 4, the Findings note that the Town Board of Site Plan Review "*...retains its authority to require design features (e.g. height limits, building architecture, signs, lighting, etc.) to minimize potential impacts of any future development proposals on the*

*Historic District.*” Later in the same paragraph, the Findings state that “*All proposed building heights will comply with Town ordinance limits.*” As this subdivision project provides the only opportunity to review and prescribe development requirements over the entire project site, the conditions section of the Findings should be amended to specify the standards that will be applied to all subsequent individual site plans, including specific building height limits, architecture, signs, lighting and related standards to ensure consistency and uniformity and to ensure that environmental impacts are minimized to the greatest extent possible.

6. In Paragraph 5e) i) on page 5, the Draft Findings state that “*Additional supplemental plantings, consisting solely of native plant species, will be provided in the existing buffer...*” Because herbaceous plants do not provide significant visual buffering, the Findings should be amended to state that the native plant species will include native woody trees and shrubs. Furthermore, specific species to be utilized and specific planting parameters the Town will require (including plant size, spacing requirements) should be listed. This will provide both the applicant and the community with certainty and will ensure there are no unexpected costs.
7. In Paragraph 5e) iii) of the Findings on page 5, reference is again made to the “*...existing Covenants and Restrictions...*” currently in existence as well as how the Town Board of Site Plan Review “*...retains its authority to require design features (e.g. height limits, building architecture, signs, lighting, etc.) to minimize potential impacts of any future development proposals on the Historic District.*” As was stated previously, the specific title and date these covenants and restrictions were filed should be described here to avoid any ambiguity or confusion regarding constraints on development in the future. In addition, the Findings should be amended to enumerate and specify the particular standards that will be applied to all subsequent individual site plans, including specific building height limits, architecture, signs, lighting and related standards to ensure consistency and uniformity and to ensure that environmental impacts are minimized to the greatest extent possible.
8. In Paragraph 5i) the Findings state that the “*...applicant has indicated it is possible to relocate the proposed leaching pools to a location east of the proposed sewage treatment plant.*” This statement would be meaningless unless the Findings are modified to make relocation of the leaching pools a condition of approval, especially in light of the fact that the current proposed location of the leaching pools is within the proposed 200-foot-wide open space buffer to State Route 25A. Furthermore, as was stated in comments on the FEIS, neither the DEIS nor FEIS address how the sewage treatment plant will meet effluent standards during its initial operational period before full build-out on the project site occurs, when influent flows are low, and during the winter when STPs with lower flows operate poorly due to the effects of cold temperatures on the microbes upon which these systems depend.
9. In Paragraph 5 l) on pages 7 through 9, the Findings discuss the traffic impacts of the project and indicates that the project will not result in any significant adverse traffic impacts. However, as stated in prior comments on the FEIS, the traffic counts used as the basis of the DEIS and FEIS traffic analysis, having been conducted in 2017, are significantly outdated, and do not consider the impacts of the Covid-19 pandemic and its inducement of an outward migration from New York City to its suburbs. Further, as was noted in prior comments, some of the 2017 traffic counts were conducted at 7 am instead of starting at 6 am. The exclusion of the 6-

7 am time period is flawed in that it does not consider potentially significant commuter and school traffic, especially educator, bus and student traffic to local high schools, such as Smithtown High School East. High schools typically have the earliest start times which may not be accounted for in this circumstance. However, the Findings fail to address these significant deficiencies and instead ignore them. For these reasons and more, the traffic analysis should be considered inadequate and, as a result, these Findings should be considered premature and should not be adopted at this time. Instead, the Town of Smithtown should require a Supplemental Environmental Impact Statement to address these deficiencies.

10. In Paragraph 5n) on pages 9 through 10, the Findings rely upon and repeat the very loose definition of open space which was employed in the DEIS and FEIS. The Findings continue to misapply the term open space to include the 13.5 acres of “Managed Landscape” to be established on the project site. Actively maintained areas, such as lawn and landscaped areas, are not generally and should not be included in a formal “open space” definition. Areas that are not formally dedicated to or covenanted as open space are suspect, especially if the applicant is proposing to count land-banked parking as open space (land-banked parking is an area designated for development into parking spaces but which a municipality allows a private property owner to defer paving unless or until needed in the future). Failure to correct this flaw will result in a fundamental defect in the Findings and overall SEQRA process.
11. In Paragraph 5 o) on page 10, the Draft Findings state that public access will be provided to open space areas on the project site and that approximately two miles of walking and nature trails will be established within the preserved open space areas. However, no mechanism to require or ensure that public access is provided, especially if the interior roads are privately owned. Failure to modify the Draft Findings to address this omission will result in a defect in the Findings and overall SEQRA process.
12. In Paragraph 5 q) on page 10, the Findings are improperly dismissive of comments made regarding the need for a cumulative impacts analysis. Instead of requiring the applicant to undertake the requisite “hard look” required by SEQRA, the Draft Findings state that these comments appear to be “...*pure speculation at this time as there do not appear to be any active applications for any nearby parcels of any significant size...*” To state that formal development applications for nearby parcels are a necessary precursor for inclusion of said parcels in a cumulative impact review, is simply false. The lack of a truly meaningful and substantive cumulative impact review is a significant flaw as the neither the DEIS nor the FEIS adequately considered the cumulative impacts associated with parcels of real property located in proximity to the Gyrodyne site, particularly parcels located either adjacent to or within 1/4 mile of the site, such as those which front on Mill Pond Road, in the hamlet of St. James, and on Route 25A, on both sides of the Smithtown-Brookhaven Town border.

The Town is fully capable of conducting the same kind of valid, comprehensive cumulative impact review that other local governments have for various projects which have not been limited to specifically-prescribed adjacent sites but which have examined cumulative impacts within a specific radius of a proposed project. Links to a number such reviews undertaken by the Town of Brookhaven are listed below:

- <https://www.brookhavenny.gov/DocumentCenter/View/986/Caithness-Long-Island-Energy-Center-II-Final-Environmental-Impact-Statement-PDF?bidId=>
- <https://www.brookhavenny.gov/DocumentCenter/View/972/Middle-Island-Solar-Farm-Draft-Environmental-Impact-Statement-DEIS-PDF?bidId=>
- <https://www.brookhavenny.gov/DocumentCenter/View/16345/Supplemental-Draft-Environmental-Impact-Statement-SDEIS-to-the-DEIS-for-Mount-Sinai-Village-Center-PDF?bidId=>
- <https://www.brookhavenny.gov/DocumentCenter/View/944/Draft-Environmental-Impact-Statement-Deis-for-Proposed-Wal-Mart-Store-Number-4587-PDF?bidId=>
- <https://www.brookhavenny.gov/DocumentCenter/View/18421/THE-MEADOWS-AT-YAPHANK-DGEIS-Main-Text-Volume-I?bidId=>
- <http://www.southamptontownny.gov/DocumentCenter/View/1680/DEIS-Main-Text-Submitted-June-2013?bidId=>
- <https://www.brookhavenny.gov/DocumentCenter/View/1421/Future-Land-Use-Impacts-Technical-Memorandum-PDF>

The Town of Smithtown could readily use these examples as a blueprint for conducting a truly adequate and substantive cumulative impact review of the Gyrodyne project. A similar approach is taken by the Central Pine Barrens Joint Planning and Policy Commission which analyzes land use within one half-mile radius of proposed development projects subject to its jurisdiction.

Accordingly, the lack of a comprehensive cumulative impacts analysis represents a significant deficiency in the DEIS and FEIS and Findings. Accordingly, these Findings should not be adopted but instead the Town should require a Supplemental Environment Impact Statement to adequately address this major flaw.

### **Findings Conditions**

1. In Paragraph 1 on page 10, reference is again made to the “...existing Covenants and Restrictions...” currently in existence. As stated above, the Findings should be modified to include the specific title and date that these covenants and restrictions were filed to avoid any ambiguity or confusion in the future.
2. In Paragraph 3 on page 11 the Findings again reiterate that “*additional supplemental plantings, consisting solely of native plant species, will be provided in the existing buffer.*” As

stated previously, herbaceous plants do not provide significant visual buffering, so the Findings should be amended to state that the native plant species will include native woody trees and shrubs. Furthermore, the Findings should be amended to include specific planting parameters to be required of the applicant for the supplemental plantings. These parameters should include a listing of the specific native species to be used, minimum plant sizes (for woody species in gallons or caliper), spacing requirements and planting seasons (e.g. specific fall or spring planting periods), replacement requirements (e.g. applicant to guarantee survival of at least 85% of all supplemental plantings for a three-year period commencing on the date of installation of last plant). This will provide both the applicant and the community with certainty and will ensure there are no unexpected costs.

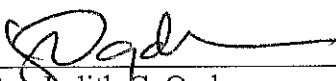
3. In Paragraph 6 on page 11, the Findings state that “...*the maximum daily wastewater flow/hydraulic load for the entire site, consisting of all currently existing and all new uses, shall be limited to 87,591 gallons per day...*” However, the Findings do not specify how this will be monitored and enforced. Accordingly, the Findings should be amended to provide specificity here including requiring the applicant to submit quarterly and annual reports to the Town that include daily flow rates (similar to the Discharge Monitoring Reports that the New York State Department of Environmental Conservation requires for sites that have SPDES permits). The Findings should also indicate remedies to be employed if exceedances of the daily discharge levels occur.
4. In Paragraph 7 on page 11, the Findings state that “...*on-site nitrogen-loading levels shall not increase above the existing levels currently generated at the Gyrodyne property.*” The Findings should be amended to state the specific numerical nitrogen-loading threshold that is not to be exceeded. Furthermore, the Findings should specify how this will be monitored and enforced and should therefore be amended to provide specificity here including requiring the applicant to submit quarterly and annual reports to the Town that include nitrogen loading levels (similar to the Discharge Monitoring Reports that the New York State Department of Environmental Conservation requires for sites that have SPDES permits). The Findings should also indicate remedies to be employed if exceedances of the nitrogen loading levels occur.
5. In Paragraph 7c) on page 12 the Findings state that all existing uses on the Gyrodyne property must connect to the sewage treatment plant within six months of commencement of sewage treatment plant operation and all on-site individual septic systems abandoned. However, the Findings do not specify how this condition will be monitored and enforced. Accordingly, the Findings should be amended to require the applicant to notify the Town that the sewage treatment plant has commenced operations, within two weeks of operation commencement, and to require that the applicant submit to the Town reports indicating when each existing use has been connected to the sewage treatment plant and individual septic systems abandoned, with the proviso that the applicant submit said reports within 2 weeks of sewage treatment plant connection.

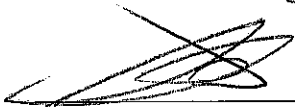
6. In Paragraph 8 on page 12, the Findings state that the “...*proposed wastewater discharge pools shall be relocated to the east side of the proposed Sewage Treatment Plant...*” The Findings should be amended to require that the applicant revise the plans to show the location of the leaching pools to be east of the sewage treatment plant and should require this be done within a certain time period of project approval (e.g. 3 months). In addition, in this same paragraph the Findings state “*All leaching wastewater discharge shall be located as to avoid 2 - 10 year travel times as per the Final Suffolk County Subwatershed Plan dated July 2020, page 480.*” This condition appears to indicate that no discharge will occur within the 2-10-year travel areas in the Stony Brook Harbor subwatershed and that no portion of the effluent will therefore reach Stony Brook Harbor. If this is not the intent, the condition should be reworded to indicate that the location of all sewage treatment point sources, effluent discharge locations and leaching fields will be located outside the 2 to 10 year travel area in order to reduce effluent impacts on Stony Brook Harbor.
  
7. In Paragraph 9 on page 12, the Findings state that “...*maximum hourly trip generation rates for the entire Gyrodyne site...shall be limited to 382 peak hour am trips, 538 peak hour PM trips and 323 peak hour Saturday trips.*” The Findings go on to state that this number would be determined by either design standards within the most current Institute of Transportation Engineers (ITE) Trip Generation manual or actual traffic counts conducted by New York State DOT or the Town of Smithtown Department of Traffic Safety. If the ITE manual is to be used, the Findings must be modified to clarify who will apply those rates and make those determinations, and how frequently such an analysis will be performed (e.g. annually). If either the New York State DOT or Smithtown Department of Traffic Safety conducts the counts, the frequency should be delineated. It is likely that in this latter scenario, there is no guarantee these agencies would conduct the counts frequently enough or at the appropriate time of year to ensure validity. Furthermore, DOT would likely be limited to conducting counts on State Route 25A but not Town roads such as Mill Pond Road and the Smithtown Department of Traffic Safety could likely only conduct counts on Town roads but not State route 25A. Accordingly, to ensure that this condition is met, the applicant should be required to install and maintain traffic counters at entrances into and exits from the Gyrodyne property (for a period of at least 10 years) and should provide monthly reports from these counters, including daily total trips, to both the New York State DOT and the Smithtown Department of Traffic Safety. Finally, the Findings should be amended to state how the Town will specifically enforce the peak hour trip limits if they are exceeded (e.g. requiring the applicant to develop and implement a car pooling plan, providing a shuttle bus service to and from the site for employees in order to reduce overall trips and requiring tenants to develop and implement a staggered shift plan).
  
8. In Paragraph 11 on page 12 the Findings continue to misapply the term open space to include the 13.5 acres of “Managed Landscape” to be established on the project site. Actively maintained areas, such as lawn and landscaped areas, are not generally included in a formal “open space” definition. Areas that are not formally dedicated to or covenanted as open space are suspect, especially if the applicant is proposing to count land-banked parking as open space (land-banked parking is an area designated for development into parking spaces but which a municipality allows a private property owner to defer paving unless or until needed in the future). This should be corrected. Failure to correct this flaw will result in a fundamental defect in the Findings and overall SEQRA process.

9. In Paragraph 12 on page 12 the Findings again state that the on-site open space areas will be open to the public and that trails will be provided for public access. However, no mechanism for formally ensuring public access is provided, especially if the interior roads are private. The Findings should therefore specify that covenants will be filed by the applicant to require said public access and should describe in detail how the applicant will be required to guarantee public access.
10. As stated previously, the Findings should be amended to require a condition that the applicant (and subsequent future owners) be required to prepare and implement a plan for active maintenance and repair of the two historic structures located on the Gyrodyne property, consisting of the "*Gyrodyne Gambrel Roofed House*" and "*Bailey Homestead/Papadakos House*". This should include annual architectural and engineering reports on the status of the structures (to be submitted to the Town), undertaking and reporting to the Town (on an annual basis) of all measures and activities employed by the Applicant to stabilize, repair and maintain the structures while ensuring their historic integrity. Finally, the plan should also include a detailed proposal to explore various means of full restoration and adaptive reuse of these historic structures, including potential arrangements with local historical societies or other non-profit entities.
11. As was stated previously, the Findings should be amended to enumerate and specify the standards that will be applied to all subsequent individual site plans arising from this subdivision, including specific building height limits, architecture, signs, lighting and related standards to ensure consistency and uniformity and to ensure that environmental impacts are minimized to the greatest extent possible. This will help ensure that impermissible segmentation (as referenced by SEQRA) does not occur.

Thank you for the opportunity to comment on the Draft Findings Statement. We look forward to working with the Town to see that an SEIS is required, and that the resulting Findings are modified to ensure that the requirements of SEQRA are satisfied.

Sincerely,

  
\_\_\_\_\_  
Trustee Judith C. Ogden

  
\_\_\_\_\_  
Trustee Gordon Van Vechten

  
\_\_\_\_\_  
Trustee Jeffrey D. Fischer



cc: Supervisor Edward R. Wehrheim, Town of Smithtown  
Town Council, Town of Smithtown  
Mr. Vincent Puleo, Town Clerk, Town of Smithtown  
Mr. Peter Hans, Town Planning Director, Town of Smithtown  
Mr. David Barnes, Environmental Protection Director, Town of Smithtown  
Hon. Board of Trustees, Village of Head of the Harbor  
Mr. Paul Athineos, Architectural Review Board Chair, Village of Head of the Harbor  
Mr. Harlan Fischer, Planning Board Chair, Village of Head of the Harbor  
Mr. Joseph Bollhofer, Zoning Board of Appeals Chair, Village of Head of the Harbor,  
Ms. Kaylee Engellenner, Joint Coastal Commission Chair, HOTH/Niss.