

JAMES BRYAN BACON, ESQ., P.C.
Attorney and Counselor at Law
P.O. Box 575
New Paltz, New York 12561
(845) 419-2338

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Town of Guilderland Industrial Development Agency
Guilderland Town Hall
P.O. Box 339
Guilderland, New York 12084

Attention: Donald Csaposs, Chief Executive Officer
Email: csapossd@togny.org
Telephone: (518) 356-1980 x 1097

*Re: Comments on Crossgates Releaseco, LLC-
Town of Guilderland Industrial Development Agency Application for
Financing and Condemnation*

Dear Mr. Csaposs and Members of the IDA,

I represent 1667 Western Ave., LLC owner of property adjacent to the proposed Costco site in Guilderland, New York and submit these comments for both the Town of Guilderland Industrial Development Agency's (IDA) public hearings held pursuant to Section 859-a(2) of the General Municipal Law (GML) and Section 201 of the Eminent Domain Procedure Law (EDPL).

Pyramid Management Corporation, (Applicant), proposes development of a ±160,000 square ft. Costco retail facility and related fueling facility with a kiosk, and associated driveways, parking areas, and other infrastructure on Site No. 2 and requests the IDA to provide financial assistance and requests its use of eminent domain proceedings.

However, the project application is incomplete and is contrary to the purposes and policies of New York State and the IDA as set forth in the GML and eminent domain proceedings are not authorized for this project pursuant to the EDPL.

POINT I

THE COSTCO IS CONTRARY TO THE GML

The "policy and purposes" of GML Article 18-A makes clear that an IDA's is intended:

to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation, economically sound commerce and industry and economically sound projects...

A. The Project Fails to Comply with Local Zoning

The GML requires that actions shall be “in compliance with the local zoning and planning regulations and shall take into consideration regional and local comprehensive land use plans.” GML §§858(4), 909-a.

I. The Project is Inconsistent with the Purposes and Goals of both the Westmere Corridor Study and Guilderland’s TOD Zoning Overlay

The proposed use of Site No. 2 as a Costco selling gasoline is contrary to the purposes and goals of the Westmere Corridor Study, (WCS), and the Town’s Transit-Oriented District (TOD) zoning overlay.

As background, it well known that traffic congestion on Western Avenue in the Town of Guilderland is a public, health and safety hazard. According to the state Department of Transportation, the average traffic volume is “more than 29,000 vehicles a day from the proposed Costco site west to Route 155 and more than 51,000 from the Costco site east to Fuller Road.” <https://dailygazette.com/article/2019/11/26/costco-would-take-place-of-mostly-vacant-neighborhood>.

Due to the severe congestion, the Town studied and identified planning and zoning measures in the 2016 WCS to encourage specific types of development to reduce congestion on Western Avenue.

The WCS identified a number of priorities for a new TOD zoning overlay district to:

- Encourage reinvestment and redevelopment of vacant/underutilized buildings and sites...accompanied by repairs and upgrades to the existing infrastructure. (p. IV-16).
- Prepare an access management study/plan to develop guidelines for shared access, shared parking, and the development of access roads. Priority should be given to more creative solutions that provide common parking and shared access for multiple owners.” (p. IV-20)
- Develop a pedestrian access plan for the Route 20 corridor that provides for continuous sidewalks and the development of appropriately located linkages to adjoining neighborhoods.” (p. IV- 20)
- Consider using the Crossgates Ring Road as a bypass around congestion on Route 20/Western Avenue, perhaps with a physical linkage over the Northway to Stuyvesant Plaza.

Most significantly:

A TOD strategy inherently requires a focus on improving access to non-auto oriented modes of transportation and integrated street networks.

WCS at pg. 62, emphasis added.

The WCS pinpointed the Costco site stating:

While several elements of TOD are recommended throughout the Westmere Corridor with regard to access management, traffic calming, pedestrian, bicycle and transit improvements, this particular part of the corridor has critical features that would be necessary for a successful TOD neighborhood. These features include the availability of underutilized or vacant land adjacent to major destinations that attract high volumes of people (such as shopping, entertainment and employment centers) and could support high ridership transit stops. **The missing elements, mixed-use structures and compact, walkable more “urban” form can be created when land exists to integrate and transition uses into a more connected area with short street blocks, mixed use buildings, public spaces and a strong pedestrian, bicycle and transit presence.**

WCS at pg. 56, emphasis added.

And, the WCS warned against the loss of neighborhoods in the TOD overlay:

Focusing density in the proposed TOD area will help protect viable residential areas and neighborhoods from commercial and higher density residential development pressure.

WCS at page 69.

Time and time again, the WCS stressed avoiding automobile- dependent uses, *i.e.* the project area should “Support a Wide Variety of Non-Auto Dependent Land Uses” to “create a walkable, viable mixed use community”:

Within the [proposed TOD] overlay, the permitted uses should include a wide range of residential, institutional, retail, service, entertainment and employment uses found in the “General Business” (GB) District. However, **several auto-dependent uses are also permitted that should be discouraged on the interior of the overlay district area, such as car dealerships, car rentals, car washes, service garages, drive through windows and other like uses.**

WCS pgs. 62-63, emphasis added. Indeed:

A cornerstone element of TOD is to support transit and **reduced emphasis on the automobile** through walkable, compact design. **An abundance of surface parking directly conflicts with this concept in both form and function.**

WCS pg. 64, emphasis added.

The Town adopted the TOD in 2018. The law specifies its purpose:

A. Purpose. The Transit-Oriented Development (TOD) District is designed to implement the recommendations of the Westmere Corridor Study (study) by using an overlay district to support and incentivize development that **adequately protects nearby residential neighborhoods** and utilizes resources within and near the TOD's boundary, including regional shopping, entertainment, and employment centers, a robust transit service with high ridership and proposed enhancements, direct vehicle access to the interstate highway system, and a nearby local business community. The TOD District encourages more compact development, **traffic-calming measures**, better access management, **improving the environment for non-automobile-oriented modes of transportation**, **reducing the number of required parking spaces**, supporting mixed-use buildings and pedestrian linkages, and **focusing intense development away from existing residential neighborhoods**.

§ 280-18.1, emphasis added.

In reviewing only the Site 1 development in March 2019, the Albany County Planning Board identified that “[t]he proposed project fails to comply with the stated goals of TOD in multiple ways”;

The purpose of a “Transit Oriented District (TOD) is to encourage more compact development, traffic measures, better access management, improving the environment for non-automobile oriented modes of transportation, reducing the number of required parking spaces, supporting mixed use building and pedestrian linkages, and focusing intense development away from existing residential neighborhoods.”

Exhibit A.

And, at its March 21, 2019 meeting, the ACPB indicated:

The TOG board should encourage significantly reducing the number of parking spaces provide to coincide with the purpose of the TOD....

The proposed single use project does not appear to meet the intent of the re-zoning. If the development is proposed to be in multiple phases then the applicant should demonstrate how the proposed development with or without future phases will support the goals and objectives of the TOD District.

Exhibit B.

As set forth below, the Costco project is inherently contrary to the priorities and purposes expressed by the WCS and the TOD zone.

II. Elimination of a residential neighborhood is contrary to the TOD zone

A cornerstone of the TOD was to:

Create... neighborhoods or areas that are pedestrian friendly, supportive of transit and emphasize alternate modes of transportation. The TOD model provides a mix of housing, shopping, entertainment and employment within walking distance (½ mile) of transit... A TOD neighborhood is expected to be fairly dense to keep walking distances shorter and maximize the number of people living in, working and visiting the area.

WCS at pg. 56. Emphasis added.

Here, there is a neighborhood comprised of approximately 20 homes arranged around the four interconnected streets of Gabriel Terrace, Lawton Terrace, Rielton Court, and Tiernan Court. The WCS Map 5-1 identifies this neighborhood as the center of the TOD overlay.

Pyramid's Costco will eliminate this neighborhood.

While single family use is not permitted as a "new" TOD use, that does not mean existing neighborhoods should be demolished. In fact, the WCS specifically stated that streets like Gabriel Terrace, Lawton Terrace, Rielton Court, and Tiernan Court were of the scale and magnitude to be promoted:

The design of new streets in the proposed TOD area should consider shorter blocks, sidewalks and bicycle travel lanes. The following standards could be incorporated: Small blocks, generally 300 feet long or less, with 400 feet as the maximum length of any block or single building.

WCS at page 65.

Moreover, the WCS specifically cited the potential extension of Lawton Terrace and Rielton Court as examples of how this neighborhood could be transformed and integrated into a larger cohesive mixed-use area:

Within the area identified for a potential TOD there are currently a number of existing streets, including dead end neighborhood streets running north and south off Western Avenue and service roads such as Rapp Road and the Crossgates Access Road (ring road). **There are opportunities for future connections to be made across undeveloped or underutilized parcels that could create an integrated street network and pedestrian connections.** The establishment of desired street connections in either a plan or within zoning should be part of the TOD Overlay District. Future development should integrate buildings and streets into a pedestrian and transit environment using build-to lines, maximum setbacks and other site developments techniques.

WCS at page 64, emphasis added.

However, rather than “creating a neighborhood” as repeatedly called for in the WCS, (pgs. 56, 60), Pyramid proposes to entirely eliminate the Lawton neighborhood that has functioned for more than 50 years as a safe and secure haven for its residents and has been used by the neighboring Westmere residents for walking and bicycling.

The project proposes no extension of Lawton Terrace or Rielton Court to integrate the existing homes into a larger, cohesive, mutually-beneficial mixed use development.

Pyramid’s replacement is a single retail use - 700 parking spaces and a 160,000 sq. ft. big box retail store. There no mixed-use, integration of street designs or connections and no “ringing the mall with smaller businesses creating more of a streetwall effect with community scaled street connections.” WCS pg. 64.

Notably, the Albany County Planning Board issued a disapproval recommendation for Pyramid’s proposed development of a Costco at Site 2. Exhibit C.

III. Costco’s scale and single use is contrary to the TOD purposes

Costco’s large scale and 100% reliance on automobile traffic and significant increase in traffic trips violates everything the WCS and TOD were meant to accomplish. There is no “model neighborhood design” and no “mix of housing, shopping, entertainment and employment.” And no pedestrian or cyclist is going to carry off multiple boxes of Costco’s wholesale goods.

There is no more higher traffic generator than a Costco selling cheap fuel. Based on Costco’s own reporting and traffic counts at other Costcos, there will be thousands of new vehicles flooding the current transportation network during peak hours. There is no “traffic calming, and pedestrian, bicycle and transit improvements” that can mitigate the new traffic volume. And, a parking lot with 700 parking spaces is entirely at odds with the WCS’ recommendation to “Reduce Surface Parking Lots.” WCS at 5.2.1.5. And, there is no hint of any potential for shared parking as called for by the WCS. (At pg. 64).

In sum, a Costco with 700 parking spaces selling 7-10 million gallons of gasoline a year, (the Costco in New Rochelle sells 1.4 million gallons every month), conflicts with virtually every sentence in the WCS. While “[a] TOD neighborhood is expected to be fairly dense to keep walking distances shorter and maximize the number of people living, working and visiting the area,” an existing residential neighborhood will be replaced by Costco’s automobile-centric use.

IV. Costco’s generation of significant traffic volumes is contrary to the TOD

The Maser Consulting traffic projections provided to the Planning Board during its SEQRA review do not resemble the actual traffic counts at Costcos in Melville, New York and Hackensack, New Jersey, as well as Costco’s own traffic projections for a store in La Habra, California which report the generation of hundreds of more trips as compared with Maser’s estimate. See DEIS comments of F&A comments at pgs. 16-18.

Specifically, Maser Consulting underestimated PM peak hour trips by 200 and Saturday peak hour trips by 286 trips as compared with Costco's La Habra study. *Id.* at 17. Compared with actual traffic counts at Costcos in New York and New Jersey, Maser underreported traffic trips by over 300 trips. *Id.* at 18.

This is not a disagreement between experts. What is lacking is fundamental reporting of traffic counts representative of other Costcos.

Further, regarding the actual traffic counts at the Melville and Hackensack Costcos, Petitioners provided the Board with the comments of Michael Maris relating to the Yorktown, New York Costco dated October 30, 2014. Exhibit D.

And, Costco's Yorktown FEIS stated "[t]he Costco fueling facility is expected to sell as much as approximately 10,000,000 gallons per year," (see attached excerpt from Costco FEIS attached as Exhibit E). Costco made that estimate despite at least five (5) Costcos being located within an approximate 25-mile radius of Yorktown - in Nanuet, Yonkers, New Rochelle and Port Chester, NY and in Brookfield, Ct.

The nearest Costco to Guilderland Albany is about 70 miles east in West Springfield, Massachusetts. Therefore, the absence of other Costcos near Guilderland indicates the Guilderland Costco could sell more than 10 million gallons of gasoline a year overwhelming the area with traffic congestion contrary to the purposes of the TOD.

And, again, the ACPB recommended a denial of the any administrative approvals for the proposed Costco at Site No. 2 due its incompatibility with the TOD and WCS. Exhibit C.

V. Costco's merger of retail use and gasoline sales is a new use in the town of Guilderland and therefore is prohibited

A use comprised of a big box retailer selling fuel is not listed as a permitted use and is therefore prohibited by the Town of Guilderland's zoning code (Code).

The Guilderland Code defines "use" as:

A. The purpose for which a building, structure or land may be arranged, designed, intended, maintained or occupied.

B. An occupation, business activity or operation conducted (or intended to be conducted) in a building or other structure or on land.

Code at §280-5.

And, the Code specifically prohibits any use that is not "in conformity" with the Code's listed uses:

No structure shall be erected, moved, altered or enlarged, **no use shall take place**, be moved, altered or enlarged, and no land development activity shall take place,

except in conformity with the regulations for the district in which the lot, structure or use is located and other requirements of this chapter. Where this chapter imposes greater restrictions than those imposed or required by other rules or regulations or ordinances, the provisions of this chapter shall control.

Code at §280-6, emphasis added.

Here, Costco presents an unprecedented combination of retail and services:

The Costco services role call: gas stations, pharmacies, food courts, hearing aid centers, photo processing centers, travel centers, optical dispensing centers (at a majority of its warehouses), **Budget truck rental**, business printing, prescription programs, **RV rentals**, mortgage purchase and refinancing, life insurance, dental plans, identification protection, **Costco auto program**, auto and home insurance, business and personal checks, bottled water delivery, business health insurance and **Costco auto leasing**....

These services account for about 20 percent of Costco's annual revenues, or about \$30 billion.

Perhaps the most powerful driver for visitation and new membership are Costco's gas stations. Costco not only has cheaper gas than stations it directly competes with, but it's also less expensive than other warehouse club chains. This alone compels consumers to become members. There are about 567 Costco gas stations connected to their roughly 768 warehouses across the globe, accounting for roughly \$9 billion in sales or about a third of the total revenues of ancillary services.

While Costco is likely not the first retailer to adopt and build a major services business, it may be the largest in terms of revenues.

<https://www.therobinreport.com/costcos-ancillary-services-are-a-poster-child-for-the-future/>

As detailed below, Costco's combining gasoline sales with big box retail use is unprecedented in the Town and not permitted by the Code.

VI. The Code does not list a big box store selling gasoline as a use

It is well settled that "[i]t is a basic tenet of zoning jurisprudence that an ordinance which lists permitted uses excludes any uses that are not listed." *Incorporated Vil. of Old Westbury v Alljay Farms*, 100 AD2d 574, 575 (2d Dept 1984), *mod* 64 NY2d 798 (1985).

Here, the proposed "use" is "a Costco retail facility," - a "+/- 158,202 square foot retail facility with ancillary facilities and infrastructure." Costco's ancillary facilities include selling gasoline. November 15, 2019 Special Use Application at pages 1 and 5 at <https://www.townofguilderland.org/zoning-board-appeals/pages/costco-special-use-permit-application>.

Pyramid argued that its use is actual two uses identified in the TOD – “Retail, General” and “Automobile Service Station.”

https://www.townofguilderland.org/sites/guilderlandny/files/pages/costco_application.pdf.

However, while the TOD permits those two uses as independent principal uses, Pyramid’s proposed use is neither “Retail, General” nor an “Automobile Service Station” as defined by the Code.

Instead, Pyramid’s use is a big box store selling gasoline as one of its many ancillary services. On point is the matter of *Incorporated Vil. of Old Westbury*, cited above, where the applicant argued that two uses could be merged. The Court held:

[T]he... Town’s] definition of farming contemplated the cultivation of crops as a principal use while permitting “incidental live stock” solely as an accessory use [citations omitted]. There is a substantial difference between using land for the cultivation of crops with the accessory right to maintain “incidental live stock” and using it for the breeding and training of horses as an independent and dominant commercial enterprise.

Thus, just as the definition of “farming” could not accommodate a horse breeding operation, here, the definition of “Retail, General” cannot be redefined to include the sale of gasoline, subordinate to the main use of the site as a 160,000 sq. ft. Costco retail outlet.

Indeed, as discussed below, not only is the Code devoid of any provision allowing a large scale retail store to sell gasoline, Costco’s gasoline facility is not an Automobile Service Station, (AuSS), as defined by the Code.

i. “Retail, General”

The Code defines “Retail, General” as “[a] retail use in a structure with a maximum gross floor area of 250,000 square feet.”

The Costco store standing alone fits that definition. However, the sale of gasoline is not permitted under a “Retail, General” use. Instead, the sale of gasoline is only permitted by an AuSS.

ii. “Automobile Service Station” (AuSS)

The Code defines an AuSS as:

A place where gasoline or other motor vehicle engine fuel (stored only in underground tanks), kerosene, motor oil, lubricants, grease (for operation of motor vehicles), **or minor accessories are sold directly to the public** on the premises and where the servicing or repair of automobiles, or installation of mufflers or other specialty items, may occur. **An automobile service station shall not include sale or storage of automobiles or trailers**, new or used, and

shall be licensed by the NYS Department of Motor Vehicles. See § 280-40, Supplemental regulations.

§280-5 Zoning Code, emphasis added.

a. “Minor Accessories”

The AuSS definition limits the sale of other non-petroleum retail items to “minor accessories.” The definition does not permit large scale retail. Obviously, Costco’s purpose is to sell far more retail goods than “minor accessories.”

Moreover, the Code provides two definitions for a convenience store – one that sells gasoline and one that does not. (§280-5).

There is no similar provision regarding big box stores selling gasoline.

Thus, had the Town determined that both big box stores and convenience stores could sell gasoline, the Town would have included a separate definition in the Code. It did not. Thus, under the well-settled rules of statutory construction, the Town’s inclusion of gasoline sales for convenience stores but not larger retail stores forbids gasoline sales by big box stores.

b. Gasoline “sold directly to the public”

Costco does not sell gasoline “directly to the public.” Instead, it sells gasoline only to its members. For this reason alone, Costco’s fueling facility is not an AuSS as defined by the Guilderland zoning code.

c. Prohibition of the sale of automobiles or trailers

The Code’s definition prohibits an AuSS from selling vehicles: “[a]n automobile service station shall not include sale or storage of automobiles or trailers, new or used.” Yet, Costco offers the sale of automobiles and trailers for its members. See Affidavit of James Calvin¹ herewith included as Exhibit F dated February 27, 2020 at ¶11 and description of Costco’s ancillary services above.

In sum, the Costco store is inseparable from its fueling facility as it is located on the same tax lot, operated by Costco employees and sells only Costco’s special brand of Kirkland signature gasoline.

Thus, even if Costco’s fueling facility fit the AuSS definition, it would be an unlawful conversion of a principal use to an accessory use. (See *Hassett v Horn* 23 NY2d 745 [1968] where the Court held that automobile servicing and retail uses were not accessory to each other,

¹ James Calvin is the Chief Executive Officer of the New York Association of Convenience Stores, a private, not-for-profit trade organization representing thousands of neighborhood convenience stores and mini-marts statewide.

and set aside the special exemption permit that had allowed the auto repair facility to be operated as an accessory use to retail.)

VII. Costco's fueling facility is not an independent use

Costco's fueling facility is not an independent use under the Town Code.

First, Costco's fueling facility is located on the same tax lot as Costco's warehouse.

Second, Costco's fueling facility is not an independent use and could never survive independent from the Costco retail facility.

Mr. Calvin confirms that an independent Costco gasoline station is impossible:

[B]ased on my familiarity with hundreds of gas stations in New York and familiarity with fuel facilities accompanying big box retailers such as Costco, Sam's Club and BJ's, a Costco fueling station without a supporting membership scheme is not economically viable.

Calvin Affidavit at ¶12. Indeed:

Claiming that a fueling facility with a kiosk could survive independently of the Costco warehouse is like claiming that the earth could survive independently of the sun. Removing the nurturing radiance and magnetic pull of the Costco warehouse would fundamentally alter the underlying operating conditions of the orbiting fueling facility, exposing it to economic peril...

Id. at ¶16.

Importantly, Costco freely admits that its gasoline "has a significantly lower gross margin percentage relative to our nongasoline business." Obviously, it would be impossible to run a stand-alone business relying 100% on a portion of a business having a "significantly lower gross margin percentage" as compared with the core business.

Indeed, as proved by the closed down Sunoco located on Western Avenue just west of the Crossgates Mall entrance – which sold unrestricted profit margin gasoline - even if a stand-alone Costco fueling facility was built, it could not be sustained without support from at least a convenience store.

In fact, there is no such thing as a Costco standalone gasoline station. There is not one in the whole country (as proved by examination of Costco's annual reports going back to 1999).

Indeed, no membership-only fueling facility operates without the benefit of the parent retail operation, whether it is Costco, BJs or Sam's Club.

Therefore, because the Costco fueling facility is not an independent use and the hard evidence, (Calvin Affidavit, Costco's annual reports and the closed down Sunoco), all

demonstrate that theoretical independence from Costco, (or a convenience store), is impossible, the Costco fueling facility cannot be considered an independent use as defined by the Code.

Third, Costco's Tire Center is part of the retail giant's building rather than connected to the gasoline kiosk. Costco's website explains:

WHAT SERVICES DOES THE COSTCO TIRE CENTER PROVIDE?

The Costco Tire Center offers several installation and maintenance services to get our members on the road, including rotation, balance, nitrogen inflation, nitrogen conversion, and flat repair.

Costco will install any loose trailer tire with the exact same size and load index tire that is currently on the wheel...

https://customerservice.costco.com/app/answers/detail/a_id/9231/~tire-center-faqs#2.

Fourth, Costco's fueling facility is incidental to Costco's warehouse as noted in the DEIS:

[The Costco site] is analyzed for development of a ±160,000 square feet Costco retail facility and related fueling facility with a kiosk, and associated driveways, parking areas, and other infrastructure.

See DEIS page 30. Costco's fueling facility occupies a minor fraction of the total square footage of Costco's retail facility and thus is clearly subordinate in area.

Fifth, Costco itself defines its fueling facilities as subordinate in extent to its primary use. Gasoline is one of many "[a]ncillary businesses within or next to our warehouses [to] provide expanded products and services and encourage members to shop more frequently." These "ancillary" retail services include pharmacies, optical and hearing aid centers, food courts, and travel services and together total 18% of overall sales. See Affidavit of James Calvin at ¶¶19, 20 citing Costco's 2018 Annual Report.

Indeed, Costco's fueling facilities are fully merged with Costco's operations and are unique in that they sell fuel only to Costco members.

And, Costco's Annual Reports indicate a more than 20-year record of transporting, handling and delivering gasoline to its members at its 497+ fueling facilities in the United States.

As further proof of the merger of the two uses, Costco's fueling facility only sells Costco's brand of gasoline, *i.e.* "Costco offers a unique blend of gasoline as one of its Kirkland Signature™ products." (See Annual Costco Reports).

Also, the fact that 100% of the fuel customers are Costco members proves its fueling facility is incidental to Costco's primary use. *Aim Rent A Car, Inc. v Zoning Bd. of Appeals*, 156 AD2d 323, 324 (2d Dept 1989).

Moreover, unlike the Code's definition of an AuSS where gasoline is the primary retail product, Costco simply uses low cost gasoline as a means to draw Costco customers to its primary warehouse:

We believe that our gasoline business draws members but it generally has a significantly lower gross margin percentage relative to our nongasoline business.

See Affidavit of James Calvin at ¶14, citing Costco's 2018 Annual Report.²

Therefore, Costco's Annual Reports prove Costco's fueling facility is "incidental and subordinate to the principal use" of Costco's principal warehouse and therefore not an independent use.

Further, restricting the fueling facility to Costco members-only defines the use as accessory as a matter of law. (See *7-11 Tours, Inc. v Board of Zoning Appeals*, 90 AD2d 486 [2d Dept 1982]; "[a]s a matter of law, a travel agency could not be considered an accessory use to a motel unless its services were restricted to the guests of the motel.")

Similarly, in *New York Ambassador, Inc. v Board of Standards & Appeals*, 281 AD 342, (1st Dept 1953), a hotel's laundry service was an accessory use because it was limited to the hotel's guests. (See also, *Dellwood Dairy Co. v City of New Rochelle*, 7 NY2d 374, [1960], restricting vending machine sales to hotel guests rendered the sales an accessory use.)

By contrast, where retail sales are open to the public, the use is not accessory.

For example, in *Matter of La Vecchia v Board of Stds. & Appeals of City of N.Y.*, 26 Misc2d 39, (Sup Ct, Bronx County 1960), a hotel's bowling alley that was not restricted to guests was not an accessory use. (See also *7-11 Tours, Inc.* cited above.)

And, in *Cord Meyer Dev. Co. v Bell Bay Drugs, Inc.*, 25 AD2d 744 (2d Dept 1966), *reversed on other grounds*, 20 NY2d 211 (1967), a pharmacy was not an accessory use where it was open to the public rather than restricted to serving "tenants-only" in an apartment building.

Here, again, Costco's gasoline cannot be purchased by the public. Thus, as a matter of law, Costco's "members-only" restriction defines its fueling facility as an accessory use.

Notably, Costco has argued successfully in other states that its fueling facilities are not a separate and independent use but an accessory use to its primary retail stores.

For example, in Pennsylvania litigation, the Court held:

Costco argues that its evidence proved that gasoline sales are subordinate to and customarily incidental to Costco's permitted-by-right retail use. We agree that

² See: <https://www.sec.gov/Archives/edgar/data/909832/000090983218000013/cost10k9218.htm#sB7C2BA5831435E409906549BACAA1ECF>.

Costco's evidence established that gasoline filling stations are subordinate to and customarily incidental to its retail use.

In re Appeal of Costco Wholesale Corp., 49 A.3d 535 (Pa. Commw. Ct. 2012) *app. den.* 63 A.3d 1250 (Pa. 2013) at footnote 7, emphasis added.

Further, in Connecticut, Costco sought and received approval from the Town of Brookfield to allow Costco's fueling facility as an accessory use.³

In sum, as above, §280-6 of the Code prohibits any use that is not specifically authorized. A big box store selling gasoline is that type of use. It is not listed as a permitted use and does not conform to either the Code's definition of Retail, General or an Automobile Service Station. To permit such a use would render the Code's definitions inoperable and therefore be unlawful. (See McKinney's Cons Laws of NY, *op. cit.*, § 98; *Pearson v Pearson*, 81 AD2d 291, 293 [2d Dept 1981] and.; *Grich v Wood & Hyde Leather Co.*, 74 AD2d 183, 184 [3d Dept 1980]; [i]t is also a rule of statutory construction that 'effect and meaning must, if possible, be given to the entire statute and every part and word thereof.'")

B. The Costco Retail Project is Contrary to GML §862

GML §862(2)(a) states:

...no financial assistance of the agency shall be provided in respect of any project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost...

Except, however, that tourism destination projects shall not be prohibited by this subdivision. For the purpose of this paragraph, "tourism destination" shall mean a location or facility which is likely to attract a significant number of visitors from outside the economic development region as established by section two hundred thirty of the economic development law, in which the project is located.

The Applicant's economic study by Camoin 310, dated October 2019, was prepared for the overall project's SEQRA review and does not address conformity with GML §862(2)(a).

For example, Camoin did not identify the "Economic Development Region" as that term is used in the GML and Costco is not a "tourism destination."

³ Notably, the Town of Brookfield defines accessory use as:

A land use customarily incidental and clearly subordinate to the principal use or building and located on the same lot with such principal use or building.

Town of Brookfield, Connecticut zoning regulations §242-202.

And, even if a Costco could be considered a “tourism destination,” the Camoin report provides zero empirical data concerning the number of visitors expected from beyond the unidentified “Economic Development Region.” Without this data it is impossible to determine whether a “significant number of visitors” would be travelling to Costco.

In fact, the Camoin study’s figures do not support a finding that significant numbers of people will be visiting from outside areas since it claims there is sufficient local buying dollars to meet Costco’s projected sales of \$170 million a year. A simple review of census data proves that the centers of population are within an approximate 30-mile radius of Costco – well within the area’s economic development region and thus there are no significant numbers of people that will be visiting the Costco. See Exhibit G.

Specifically, Camoin states:

A retail gap analysis shows that demand currently exceeds supply in both the County and Town for many of the goods that will be available at Costco. Specifically, there is a retail gap in Albany County of over \$84.3 million of Food and Beverage Stores and nearly \$192.0 million in Gasoline Stations. Within the Town of Guilderland, there is a gap of nearly \$20.9 million in Food and Beverage Stores, over \$38.7 million in Gasoline Stations, and over \$41.4 million in General Merchandise Stores.

Pg 21 Camoin 310 report.

Moreover, while the Applicant claims 50% of sales will be considered to be “net new,” as Ferrandino and Associates, (F&A) made clear during the SEQRA process:

Albany County currently has Sam's Clubs in Latham and Schenectady, and a Restaurant Depot and BJ's in Albany. It is unclear how this figure was derived. If a portion of the Costco sales is coming from existing warehouse clubs and other local retailers, this would significantly reduce the new on-site sales projections and tax revenues.

See Exhibit H, excerpt from DEIS comments.

POINT II

PYRAMID’S PROPOSED CONSOLIDATION OF TAX LOTS ON SITE NO. 2 REQUIRES SUBDIVISION APPROVAL

Section 280-49 of the Guilderland Code states:

No real property shall be subdivided into two or more lots, or any lot line changed, until a map of such subdivision, drawn to a scale as prescribed by the Planning Board, showing such lots and any streets laid out in connection therewith, shall have been approved by the Planning Board and filed with the Albany County Clerk's office in accordance with Chapter 247, Subdivision of Land.

Here, Pyramid never filed a subdivision application for the consolidation of tax lots on Site 2 which includes the former Town roads.

Thus, Pyramid is unauthorized to continue its IDA application in the absence of consolidation of the various tax parcels in the Lawton neighborhood.

POINT III

THE USE OF EMINENT DOMAIN IS IMPROPER AND UNAUTHORIZED

The use of eminent domain is contrary to law as the project is a purely retail operation that is contrary to the zoning code and represents an end run around the permissive referendum requirements of the Town Law.

First, the EDPL is not intended to serve as a vehicle for private developers simply to gain property for purely commercial gain.

Secondly, this action is an illegal end run avoiding a permissive referendum which would ordinarily be required pursuant to Town Law §64(2) due to the alienation of Town properties in both the Westmere and Lawton neighborhoods.

POINT IV

SEQRA COMPLIANCE

As a matter of law, the IDA's SEQRA process must analyze a big box development's potential displacement of businesses which was not reviewed by the Planning Board. Specifically:

With respect to the "community character" of the Village, we note that SEQRA defines "environment" as "the physical conditions which will be affected by a proposed action, including . . .existing community or neighborhood character" (ECL 8-0105 [6]), and "require[s] a lead agency to consider more than impacts upon the physical environment," including "the potential displacement of local residents and businesses" (*Chinese Staff & Workers Assn. v City of New York*, 68 NY2d 359, 366, 509 NYS2d 499, 502 NE2d 176 [1986]). Therefore, contrary to the Town Board's apparent conclusion, "**[a] town . . . board reviewing a big box development should consider the impact of the development on the community character of a neighboring village that might suffer business displacement as a result of the approval of the big box development**" (SEQR Handbook at 179 [3d ed 2010]; see *Matter of Village of Chestnut Ridge v Town of Ramapo*, 45 AD3d 74, 94-95, 841 NYS2d 321 [2007], lv dismissed 12 NY3d 793, 906 NE2d 1072, 879 NYS2d 39 [2009], 15 NY3d 817, 934 NE2d 882, 908 NYS2d 149 [2010]; *Matter of Wal-Mart Stores v Planning Bd. of Town of N. Elba*, 238 AD2d 93, 98, 668 NYS2d 774 [1998]). Because there is no evidence in

the record before us that the Town Board even considered the impact of the project on the community character of the Village, we conclude that it failed to take a hard look at that impact, requiring annulment of the resolution adopting the negative declaration on that ground as well.

Matter of Wellsville Citizens for Responsible Dev., Inc. v Wal-Mart Stores, Inc., 140 A.D.3d 1767, 1770 (4th Dept 2016), emphasis added.

The Camoin study does not assess business displacement.

James Calvin has specifically identified the vulnerability of Western Avenue gasoline stations:

The fact that gasoline retailers have gone out of business on Western Avenue in the immediate vicinity of Costco's proposed site proves there are no additional local dollars to support a new fueling facility that will sell a projected 7-10 million gallons of gasoline a year.

The DEIS fails to include a market retail analysis identifying existing gas stations in the market area, quantifying their employment and tax revenue generated, and comparing how these stations will be impacted and whether economic impacts will result in blighted properties in the Town.

Affidavit of James Calvin at ¶¶24-25.

Further, the Westmere Corridor Study specifically identified as a priority for the Westmere area to “[e]ncourage reinvestment and redevelopment of vacant/underutilized buildings and sites...accompanied by repairs and upgrades to the existing infrastructure. (p. IV-16).”

There are already abandoned gasoline stations on Western Avenue in the vicinity of the proposed Costco. A Costco will impact a wide range of businesses.

Therefore, the IDA's failure to include a full fiscal impact and market analysis pertaining to business displacement is an error of law.

Moreover, the IDA must examine reasonable alternatives including avoiding eminent domain by allowing the Town Board to alienate the roads in question and allow the public to vote on the matter by permissive referendum. “Any choice among alternatives must be based on an awareness of all reasonable options.” *Matter of Brander v. Town of Warren Town Bd.*, 18 Misc. 3d 477, 481 (Sup. Ct. 2007).

“Courts generally rely on the relevant factors identified by the [NYSDEC] in the SEQR Handbook” in evaluating SEQRA challenges. *Scott v. City of Buffalo* 20 Misc. 3d 1135(A), 872 N.Y.S.2d 693 (Table) (Sup. Ct. Erie Cnty. 2008); *Ass'n for Prot. of Adirondacks, Inc. v. Town Bd. of Town of Tupper Lake*, 17 Misc. 3d 1122(A), 851 N.Y.S.2d 67 (Table) (Sup. Ct. Franklin

Cnty. 2007) (The SEQR Handbook promulgated by the DEC ... is a basic source material for agencies to use in interpreting SEQR.”)

The goal of the alternatives discussion in an EIS is to investigate means to avoid or reduce one or more identified potentially adverse environmental impacts. Part 617 further requires that the alternatives discussion include a range of reasonable alternatives which are feasible considering the objectives and capabilities of the project sponsor. In general, the need to discuss alternatives will depend on the significance of the environmental impacts associated with the proposed action. The greater the impacts, the greater the need to discuss alternatives. The discussion of each alternative should specifically include an assessment of its likely effectiveness in reducing or avoiding specific impacts. For projects such as the construction of a residential subdivision or an office building, it is not necessary for every possible alternative density or size to be discussed. A range such as the density or size permitted under the existing zoning, the density or size after taking into consideration environmental constraints (wetlands, steep slopes, etc.), and the density or size if clustering were to be used, may be reasonable alternatives.

SEQRA Handbook at page 127 - <https://www.dec.ny.gov/permits/6188.html>.

Several passages in the SEQRA Handbook are especially relevant with regard to the Costco proposal. Specifically:

Consideration of alternative scales or magnitudes may be reasonable under the following circumstances:

- Some or all potential impacts of the action can be avoided or reduced by a change in project size;
- The change in project size does not reduce the project to the point where it will no longer serve its intended function...., or;
- The reduction in project size may decrease potential profit but does not make the project infeasible.

Consideration of an entirely different use or action may be reasonable in the following circumstances:

- The proposed action does not conform to the current zoning of the site, in which case comparison to the use allowed under the existing zoning may be informative.

Id. at 128-129. Given these parameters applied to the Costco application, the IDA should analyze an alternative that does not include the Costco fueling facility.

This would accomplish several goals.

First, as above, it is reasonable to consider a use that conforms in all respects to the zoning code. There is no question that a 160,000 sq. ft. Costco meets the Code's definition of "Retail, General." It is only when that use is merged with elements of the Code's definition of an AuSS that the merged use assumes a new identity that is not listed as a permitted use in the Code. Proposing a Costco that does not sell gasoline avoids many of the issues regarding the project's conformance with the Town Code.

Second, it is reasonable under SEQRA to assess a Costco without a fueling facility because that option allows the project's traffic impacts to "reduced by a change in project size." And, a non-fueling facility Costco "does not reduce the project to the point where it will no longer serve its intended function." In fact, as discussed above, (pg. 10), out of 768 warehouses, 567 Costcos sell gasoline, meaning 201 Costcos do not and are warehouses only. Thus, concerning the overall project and its cumulative impacts, proposing a Costco without a fueling station is a reasonable alternative that meets the goals of the Applicant by developing Site No. 2 with a big box store.

Third, a "reduction in project size may decrease potential profit but does not make the project infeasible." Indeed, as detailed by Mr. Calvin, Costco draws very little profit, if any, from gasoline sales. Instead, the sale of gasoline acts is defined as just one of Costco's many "amenities" for its members and serves as a "loss leader," *i.e.* "[w]e believe that our gasoline business draws members but it generally has a significantly lower gross margin percentage relative to our nongasoline business." (See above.)

In the past, Pyramid claimed examination of alternatives was not feasible due to different ownership. However, the ownership of the adjacent mall tax parcels that might be used for in-fill are all owned by Pyramid affiliates or subsidiaries all sharing the same address and contacts, according to the New York State Department of State corporation search database. And, in a public announcement dated March 18, 2020, Pyramid acknowledged ownership and control of the Crossgates mall along with a number of other malls. <https://www.pyramidmg.com/pyramid-announces-closure-of-all-interior-portions-of-its-ny-shopping-centers/>

Specifically, Pyramid stated Governor Cuomo's Executive Order to close the interior of malls, "impact the following Pyramid-owned and operated centers: "New York, Aviation Mall — Queensbury, NY, Champlain Centre — Champlain, NY [and] Crossgates — Albany, NY." Id. For more information, Pyramid directs interested parties to its website and address at "www.pyramidmg.com, The Pyramid Companies, The Clinton Exchange, 4 Clinton Square, Syracuse, NY 13202."

Therefore, it is reasonable for the lead agency to examine in-fill options re-siting portions of the project to the Crossgates mall and allowing the public to vote on whether they approve of the alienation of the Town roads which Pyramid is requesting the IDA take by eminent domain.

CONCLUSION

A 160,000 sq. ft. Costco selling gasoline is not permitted by the Guilderland zoning code and is contrary to the purposes and recommendations of the Westmere Corridor Study and the Town's Transit-Oriented Development overlay district. The project is also contrary to purposes and specific language of GML §§§§858(4), 909-a and 862(2)(a). The project also violates the EDPL and represents an illegal end run around the requirements of Town Law §64(2).

Dated: May 31, 2023
New Paltz, New York

Respectfully submitted,


James Bacon



ALBANY COUNTY PLANNING BOARD
NOTIFICATION

RECOMMENDATION DATE: May 13, 2019

Case #: **10-190503221**
Applicant: **Rapp Road Development**
Project Location: Rapp Road and Gipp Road
Tax Map Number: 52.01-3-5.1, 52.01-3-4.1, 52.01-3-4.2, 52.01-3-3,
Referring Agency: Town of Guilderland Planning Board
Considerations: Subdivision site plan review for 222 Units in 2 (five story) buildings. Current proposal includes dead-ending (to automobiles) Rapp Road at the Gipp Road intersection to mitigate traffic concerns. ACPB reviewed this case in March and April 2019

ACPB
Recommendation: Disapprove Without Prejudice

1. The proposed project is in a Transit Oriented District (TOD) zone. A TOD tries to “support and incentivize development that adequately protects nearby residential neighborhoods and utilizes resources within and near the TOD’s (including) direct vehicle access to the interstate highway system and a nearby local business community.” The proposed project fails to comply with the stated goals of TOD in multiple ways:

- a. The proposed obstruction of traffic at Gipp Rd. cuts off access to the highway system and business community and is a deviation of typical TOD traffic calming measures.
- b. The proposed project is not appropriately concentrated near existing mass-transit.
- c. The proposed project does not adequately protect the character of historical and non-historical adjacent neighborhoods.
- d. The proposal does not sufficiently address the preservation of bicycle and pedestrian traffic through a dead end.
- e. The proposed project drastically exceeds the total number of parking spaces required by Town of Guilderland Zoning requirements.

2. The solution to dead-end Rapp Road at Gipp Road is problematic:

- a. An approved emergency access plan for both municipalities should be submitted with the application.
- b. Further traffic studies are needed. It is unclear which percentage of traffic will be diverted to Gipp, and which to the Crossgates Ring Road.
- c. The Albany County Planning Board agrees that traffic deterrent initiatives are vital in preserving The Rapp Road Historical District. However, it remains unclear if dead-ending the Road at Gipp will result in less traffic through the Historic District.

3. New York State General Municipal Law §96-a. Protection of historical places, buildings, and works of art states:
“In addition to any power or authority of a municipal corporation to regulate by planning or zoning laws and regulations or by local laws

and regulations, the governing board or local legislative body of any county, city, town, or village is empowered to provide by regulation special conditions and restrictions for the protection, enhancement, perpetuation, and use of places, districts, sites, buildings, structures, works of art, and other objects having a special character or special historical or aesthetic interest or value. Such regulations, special conditions and restrictions may include appropriate and reasonable control of the use or appearance of neighboring private property within public view, or both. “

4. The Rapp Road district was designated to the Nation’s list of properties worthy of preservation in 2002. The Director of New York State’s Technical Preservation Bureau within the State Historic Preservation Office, has advised that the impact of traffic and high density development as having an adverse impact on the historical preservation of the Rapp Road historical community.

5. The origin of the Historical Rapp Road community is an African American community that migrated from Shubuta, Mississippi during the Great Migration. The community is singular in the Albany County in its living presentation of the agrarian lifestyle that remained intact through a community’s chain migration to the north and the subsequent five generations. Multiple decedent families from the original property owners still live on Rapp Road. The Great Migration was the largest migration of United States citizens in American History that culminated in the mass urbanization of most of the migrants. The historical Rapp Road community provides an alternate and unique oral and living history that is increasingly hard to maintain as development and density continues to encroach.

6. Two 5 story buildings, with +/- 4,300 of ground floor commercial space are antithetical to the community character that currently exist along Rapp Road now. The degree of difference in height and density between the proposed development and existing residential development with frontage on Rapp Road is significant.

7. Sections C.2.b., E.2.n., E.2.0, E.2.p., E.3.c, E.3.h, and D.1.b.b. on the Full Environmental Assessment Form is incorrectly filled out and provides inaccurate information.

9. The application should include the results of a coordinated SEQR review, including a DEIS.

Advisory:

Laura Trivison, Senior Planner
Albany County Planning Board

NOTE:

- This recommendation is rendered in compliance with applicable requirements of Section 239 of New York State General Municipal Law. Final determination on this matter rests with the appropriate municipal body.
- A recommendation of "APPROVE" or "MODIFY LOCAL APPROVAL" should not be interpreted as a recommendation by this body that the referring agency approve the matter referred. Such recommendation does not indicate that this body has reviewed all local concerns; rather the referral has met certain countywide considerations. Evaluation of local criteria is the responsibility of the referring agency.
- General Municipal Law Section 239 requires that the local agency notify the county within thirty days of its final action. Please use the OFFICIAL NOTICE OF LOCAL ACTION form that is attached for this purpose.
- General Municipal Law Section 239 sets forth the procedural requirements for taking local action contrary to the County Planning Board's recommendation of objection or conditional approval.
- Albany County is required to submit a Municipal Separate Storm Sewer System Permit (MS4) (No. GP-0-10-002) Notice of Intent (NOI) to comply with the NYS DEC permit for the control of wastewater and stormwater discharges in accordance with the Clean Water Act. Construction Activity Permit No. GP-0-1-001 issued by NYSDEC is also required for activity with soil disturbances of one acre or more. The law is required by the Clean Water Act to control point source discharges to ground water as well as surface waters.

449 New Salem Road, Voorheesville, NY 12186
TELEPHONE: (518) 447-5644/FAX: (518) 765-3459

In compliance with Article 12-B, Section 239 of New York State General Municipal Law, this serves as official notification to the Albany County Planning Board of the action taken on the application described above.

LOCAL ACTION ON ACPB RECOMMENDATION:

- AGREED WITH COUNTY PLANNING BOARD RECOMMENDATIONS TO MODIFY OR DISAPPROVE
- OVER-RULED COUNTY PLANNING BOARD RECOMMENDATIONS TO MODIFY OR DISAPPROVE

LOCAL DECISION ON PROJECT:

- PROJECT APPROVED
- PROJECT DISAPPROVED

VOTE RECORDED: _____ DATE OF LOCAL ACTION: _____

Set forth the reasons for any action contrary to the ACPB recommendations (use additional sheets if needed):

SIGNED: _____ TITLE: _____

**Albany County Planning Board
Meeting Minutes
March 21, 2019**

Present:

Dominic Rigosu, Chair, William Anslow, Brian Crawford, Tim Garufi, Roland Graves, Enzo Sofia, David Reilly

Minutes:

Janis Dunham Relyea

Guests:

Zachary Simpson
Karen White
Tom Shepardson
Dan Hershberg
Jeremiah Hogan
Elizabeth Floyd Mair
Juanita Nabors
Michael Gately
Beverly Bardequez

A call to order:

Dominic Rigosu called the meeting to order at 3:32 p.m.

Enzo Sofia made a motion to approve the minutes from the February 25, 2019 meeting. The motion was seconded by Roland Graves and unanimously approved by the board.

Roland Graves made a motion to hear case #10-190303221 first. The motion was seconded by Enzo Sofia and unanimously approved by the board.

Case #10-190303221

Rapp Road Development, LLC
Opposite side of Rapp Road from Crossgates Mall
Subdivision/site plan review for 222 units across five buildings on a 19.68 acre site.

Staff opinion is to disapprove without prejudice:

The recent re-zoning of the parcels for areas around Crossgates Mall to Transit Oriented District (TOD) was to encourage a more compact development and mixed uses within this zone. The proposed single use project does not appear to meet the intent of the re-zoning. If the development is proposed to be in multiple phases then the applicant should demonstrate how the proposed development with or without future phases will support the goals and objectives of the TOD District.

Traffic Impact Study dated November 14, 2018 is incomplete. Due to the project size and connection to Crossgates Mall Ring Road the traffic study must include

traffic impacts on NYS I-87 exit ramp leading to the Ring Road. This intersection has a long history of accidents. Additional traffic should not be added to this intersection until the current deficiencies at the ring road have been mitigated.

Additional comments:

60% of the trips will use the ring road to Washington Ave Extension, I-87 and I-90. These intersections should be included in the study.

On-street parallel parking often increase crash rates. It can reduce vehicle speeds if spaces are used. However, if spaces are empty, vehicle speeds will likely increase. Parallel parking along Rapp Road should be discouraged.

Does the connection to the mall ring road have to be a four - leg intersection? Three-leg intersections have lower crash rate.

A complete handicap accessible route to bus stop(s) and main mall building should be provided.

Shared-use paths should be greater than 8' wide. Widen 8'-0" paths to 10'-0". In the long term, there should be a plan to connect this path into the trail network proposed in the Capital District Trail Plan.

The project is exceeding the total number of parking spaces required by Town Zoning requirements. Town requires 333 parking spaces and the applicant is proposing 405 spaces. The purpose of a "Transit Oriented District (TOD) is to encourage more compact development, traffic measures, better access management, improving the environment for non-automobile oriented modes of transportation, reducing the number of required parking spaces, supporting mixed use building and pedestrian linkages, and focusing intense development away from existing residential neighborhoods." The TOG board should encourage significantly reducing the number of parking spaces provide to coincide with the purpose of the TOD. Parking above the required amount should be banked.

Tom Shepardson, attorney for the developers addressed the board.

Introduced the team of people attending with him, Jim Seuss, Roger Keating and Dr. John Collins a traffic expert, particularly in the Crossgates Mall area, he has been studying the traffic there for nearly 40 years.

John Collins with Maser Consulting addressed the board, he prepared the traffic study submitted with the application as part of the application Maser was involved with Creighton Manning who is preparing for the transit oriented developments new transit center includes a detailed study of the Crossgates Mall Ring Road as part of the study dated 2016, if the board would like a copy of the Creighton Manning Study for the record I can do that. They did an extensive analysis of the traffic generated by the transit oriented development which included this parcel of land. Therefore, when we were preparing our documents, since that had already been evaluated during the previous SEQR process the CDTA. The study showed there should be improvements at the I87 ramp, they suggested a round a about, in fact in two locations. The mall has come to an agreement with CDTA for improvements and is waiting on federal funding. When I look at the predicted level of service predicted in the CME study the addition of the traffic even if 60% of the traffic from the development came thru here it is a low percentage

compared to what is currently going thru. In off peak hours the intersection does have some capacity. That intersection does have operational issues and it is a matter of history. I can approach it two ways I can take a separate analysis take the information in the main study add volume of traffic and show what the impact would be I don't anticipate it to be substantial because of the type of development, of heavy retail or a major industrial complex.

We have met with the City of Albany and asked what they would like to see done with the City owned portion of Rapp Road, if they want us to cut off access we can, we have showed a new access from Rapp Road to Crossgates, we show as two way road but we can make it one way if they prefer. There is a heavy volume of traffic on Rapp Road, not from the Mall but other City roads. CME added almost a 1000 vehicles in the supplemental study.

Enzo Sofia asked what time of day did they add the additional 1000 cars?

The summary stated the vacant land along Western Avenue including this parcel and said what could be developed, that generated for evening and morning rush hour. The cars were figured in the evening rush hour. And depending if the cars were coming home to the area or leaving from working in the area and that is what led to the ultimate design of the roundabout. There is a roundabout proposal, it needs additional land the mall needs to cooperate, and they are. There would be a road leading to the new transit center and a roundabout and there will be 4 lanes feeding it then there will be a conventional driveway leading out to Western Avenue. The plan for the transit center will allow for the busses to come in and turn around and go back.

There are two rotaries proposed, one at the I87 ramp and one at the main entrance.

Dominic stated that Crossgates has gone thru many phases construction, many tenants and the last thing was the hotel and traffic has not improved, they keep building and nothing is done with the traffic at some point someone we have to say enough and address the problem. Putting a hotel in I honestly didn't think it would do well but parking lot is always full and that is great.

John says at the same time the mall parking lot is empty the traffic is less than half of what is out there 20 years ago.

Dominic replied, yes but that ramp is always full of cars.

At some point it must be mitigated, that is one of the boards concerns.

John said they plan to mitigate it as part of the CDTA project.

Bill asked if that is 100% go and funded.

John-application has been submitted for federal funding

Dominic replied Trump has put that money on hold.

Roland said I believe most of that traffic from apartment complex will us the ring road. It won't go over to Western, it will go down Rapp Road.

They assume 60% of the traffic is destined for the ring road system.

Dominic asked what direction, John replied to the ramps.

Roland said he travels that road at 6 am and it is jammed, I know there was a study done, I travel that road a lot it's always busy. It is highly congested and I don't think the road was designed for that much volume.

John said it's the same size as Western Avenue, there are multiple signals a short area there are 5 signals and the traffic circles will help that.

It is a town road and the county plows it.

CDTA will put the rotaries in.

Tom Shepardson addressed the board, he wanted to discuss the inconsistencies with the TOD, I believe that is a misstatement because the project does promote pedestrian linkages, we have multiple trails, sidewalks, CDTA bus stop all consistent with what the TOD is trying to accomplish a dense development in order to do that the TOD allows for taller buildings it is a dense development and by design it is consistent with a TOD. There was discussion regarding parking, east of Rapp Road there will be one space per dwelling unit whereas west of Rapp Road there will be 1.5 parking spaces. The TOD itself removes the amount of parking that is in the language of the law and it meets the requirements, we go over the parking requirements so we comply.

Dominic asked why the extra parking?

Tom replied, we have one and two bedroom units here we determined that is the appropriate amount. I don't know if we both have the same interpretation but ultimately it is up to the town to decide. Tom said it is a local issue and the board should be looking at the bigger picture.

Dominic replied we are looking at the bigger picture, including; parking, Rapp Road Historic Association and the highways in the surrounding area and we recommend parking be banked.

Juanita Nabors addressed the board, she lives on Rapp Road, part of the Historical Association. She said I have one question how many of you in this room when backing out of your driveway do you have to wait for 10 or 15 cars bumper to bumper to go by? That is what we do on Rapp Road, we can't even get in and out of our driveway and the traffic study on Rapp Road says there are 125 cars, 125 people don't live on that road, we are getting traffic from Guilderland, they use it as a short cut from Washington Ave Ext to Western Ave, 222 units will be going to make it worse, I am a committee person for district 3, the condos on pine lane, when I was carrying petitions, there are 1200 units down there and the people are complaining, what are we going to do, we can't even get out of our road because of the traffic.

Paddock Circle is on the back side, but there is a National Grid property between the apartments and Paddock Circle so you can't create another exit.

Beverly Bardequez addressed the board, Rapp Road Historic District was placed on the state historic registry in 2002 and in 2003 it was placed on the national registry. So it is now a landmark. She met with Mr. Suess and she told him that we need to protect our historic district that is our objective. Putting two five story buildings facing Rapp Road and come out to Rapp Road, it is going to impact Rapp Road, I don't care how many cars you say will go thru here, it is going to affect Rapp Road. Because if you are headed toward the Ring it is congested, people want to avoid congestion, they will look for the easiest way that means they are heading west and get onto Washington Ave Ext, that brings them thru the historic district.

Zachary Simpson addressed the board. I work at Columbia Circle and drive thru the Rapp Road district at all times of day, it is always congested. It was never designed for this much traffic, there is no sidewalk or bike lane. If this development gets built young people will be riding and walking thru to get to the Pine Bush. No street lights. Something that needs to be considered.

Karen White addressed the board. She agreed with Beverly's statements. I don't see demonstrated need for a 200 unit apartments. I recall at the Guilderland town hall when the proposal was brought to them. In absence of retail business are you willing to convert some of the mall space into apartments? Can we think about reusing what we already developed rather than taking away green space? We already have vacant surface lot that could be used as parking for the apartments. When an anchor store leaves why can't they turn the old store into apartments? It works with the TOD district, there are busses going downtown. We have to start reusing instead of just mowing everything down.

Juanita added we are impacting the butterfly.

Dominic replied that B Lange and Associates are working together with the butterfly and other endangered animals in the Pine Bush.

Dominic asked if anyone else from Crossgates or the neighborhood would like to speak.

Tom Shepardson addressed the board there has been a lot said, I think we have some more work to do, particularly with traffic we are asking the board table this for another month so that we can work on the issues.

Dominic replied, The Town of Guilderland has submitted everything they have and if we don't respond within 30 days and if we don't act on it they can override the board and review it as is. Last month we did not have the EAF or Traffic Study so we were able to consider it an incomplete application. Bill Anslow produced a letter from GPI and they suggested that the applicant consider conducting additional analyses under site plan review to insure adequate intersection and site distance is provided at the proposed driveways and adding a sufficient buffer between the proposed on street parking and any proposed bike paths.

We can table until the end of the meeting and reach out to Town of Guilderland and ask them if they are ok with this being tabled another month.

Beverly addressed the board again asking if The City of Albany has been contacted regarding the traffic.

Dominic said yes, we asked them to work with the City of Albany regarding the traffic impacts.

John replied Yes, I met with someone at the City of Albany.

Beverly asked who? Because they didn't seem to know very much about it.

John did not remember who, but I can get you a list of who was there also said it was the city planning department. We discussed traffic on this road and other roads bringing the traffic to your neighborhood.

Beverly strongly encourages Guilderland to work with the City.

Enzo Sofia made a motion to table this item until the end of the meeting. Roland Graves seconded the motion and it was unanimously approved by the board.

Roland Graves made a motion to move case #10-190303229 to the front of the agenda. Enzo Sofia seconded the motion and it was unanimously approved by the board.

Case #10-190303229

300 Great Oaks Boulevard

Rosenblum Companies

300 Great Oaks Boulevard, Guilderland

Rezone site to build two market rate apartment buildings with amenities for both residential and office tenants.

Staff opinion is to modify local approval to include:

1. The proposed rezone and increased density of the site may require additional fire access. Section D104 on the 2015 International Fire Code requires two means of fire departments access for certain size commercial buildings and building heights. If the existing structures or the proposed buildings meet the requirements for an additional or the proposed buildings meet the requirements for an additional fire apparatus access then it should be determined how this will be addressed prior to rezoning as the site has limited access.
2. The rezoning should be sent to the Fire Department for review and comment. Under Section 503.1.2 of the International Fire Code it states the fire code official is authorized to require more than one fire apparatus access road based on potential impairment of a single entrance.

Advisory Note: The Town should look at the town-wide impact of surrounding usage.

Roland Graves made a motion to accept staff opinion. The motion was seconded by Brian Crawford and unanimously approved by the board.

Roland Graves made a motion to move cases #07--190303228 and #01-190303238 to the front of the agenda. Enzo Sofia seconded the motion and it was unanimously approved by the board.

Case #07-190303228

Cold Springs Subdivision

Starlight Development

499-507 Albany Shaker Road

Site Plan Review-Demolition of existing buildings (vacant former horse paddock, abandoned farm stand and a vacant dwelling) and construction of new cluster subdivision of 39 homes.

Staff opinion is to modify local approval to include:

1. A Notice of Intent filed with the NYSDEC affirming that a Stormwater Pollution Prevention Plan has been prepared, and is being implemented, or submission of a Stormwater Pollution Prevention Plan (SWPPP) that is consistent with the requirements included in the NYSDEC SPDES General Permit for Stormwater Discharges (GP-0-15-002, January 29, 2015) for construction activities that disturb more than one acre.
2. Any wetlands disturbance will require notification to and review by the U.S. Army Corps of Engineers for permits under Section 404 of the Clean Water Act.
3. Show the intersection sight distance from Leighton Street on the plan.

Advisory: The applicant should be encouraged to build sidewalks for access to Albany Shaker Road.

Dan Hershberg addressed the board. A few years back we presented a townhome development on this site and the town rejected the proposal. We have changed the plan to a cluster subdivision we meet the density for the site and able to maintain 3.6 acres of conservation area and able to maintain a 25 foot no cut buffer around the site. The town would not consider this project until the Albany Shaker Road Traffic Study was done.

Roland Graves asked why there is a mail kiosk?

Dan Hershberg replied it is a US Post Office regulation, all new single family developments must have a kiosk for mail delivery.

Dominic mentioned the possibility of sidewalks being put in so they can connect to Albany Shaker Road. Dan Hershberg said the Town of Colonie normally requires a sidewalk on one side of the road, this discussion will probably happen again since pedestrian traffic is important to them.

Enzo said there is only one outlet

Dan replied-Fire department is ok as long as the cul-de-sacs are short and they are wide enough for a truck to get around.

Enzo Sofia made a motion to accept staff opinion. The motion was seconded by Roland Graves and unanimously approved by the board.

Case #01-190303238

60 Academy Road-Parson's Child and Family Center

60 Academy Road, Albany

District Plan Amendment-Amendment to a previously approved district plan involving construction of a 12,910 s.f. community residential facility and demolition of an existing 8,750 s.f. residential structure will be demolished.

Staff opinion is to modify local approval to include:

1. A Notice of Intent filed with the NYSDEC affirming that a Stormwater Pollution Prevention Plan (SWPPP) has been prepared, is being prepared and is being implemented or submission of a Stormwater Pollution Prevention Plan that is consistent with the requirements included in the NYSDEC SPDES General Permit for Stormwater Discharges (GP-0-1-15-002, January 29, 2015) for construction activities that disturb more than one acre.

Dan Hershberg addressed the board. He stated that they don't need a SWPPP because there is public sewer and the city has their own SWPPP. This is regulated by the Albany Water Board.

He did a brief overview of the new facility, discussed the demolition and Stormwater issues that will be addressed.

Roland Graves made a motion to accept staff opinion. The motion was seconded by Brian Crawford and unanimously approved by the board.

GML 239 DEFER TO LOCAL CONSIDERATION

Brian Crawford made a motion to move the 18 cases that are defer to local consideration to the front of the agenda and approve as is. The motion was seconded by Roland Graves and unanimously approved by the board.

Case #07-190303227

Bob Cordell-Garage
2155 Central Avenue
Area Variance-Proposed accessory garage in the COR zoning district seeking a setback allowance.

Case #12-190303230

A1 Self Storage, LLC
30 Broadway, Menands
Use Variance to build a 450 s.f. self-storage building with units varying in size.

Case #05-190303231

Kathleen Palmer-2 Lot Subdivision
505-511 CR 111, Coeymans
Subdivision Review-2 Lot Subdivision, Lot #1 – 2.58 acres, Lot #2 – 3.45 acres to separate two dwelling units on two individual lots.

Case #01-190303234

89 (AKA 95) Central Avenue
Legal Aid Society of NY
89 (AKA 95) Central Avenue, Albany
Area Variance-From the maximum wall sign of 24 s.f. to a 35 s.f. wall sign.

Case #01-190303235

BBL Construction
950, 960, 964 Central Avenue, Albany
Area Variance-To allow for a 136 foot front setback, where the maximum permitted front setback is 100 feet.

Case #01-190303236

Habitat for Humanity
288 Orange Street, Albany
Area Variance to allow for a (6) foot side setback, where the maximum permitted site setback is 3.5 feet.

Case #01-190303237

Habitat for Humanity
301 Orange Street, Albany
Area Variance to allow for a (6) foot side setback, where the maximum permitted site setback is 3.5 feet.

Case #01-190303239

Edward Maltino
423 & 427 Washington Avenue
Site Plan Review-Demolition Review-Construction of a 16,900 s.f. multi family dwelling with 16 dwelling units. An existing 2,025 s.f. residential structure will be demolished.

Case #13-190303241

Minor Subdivision Lands of Sommer/Cheever
35 Hurst Road, Town of New Scotland

Subdivision Review-Minor subdivision to separate a 60 acre parcel into 20 acre and 40 acre parcels. All improvements will remain on the 40 acre parcel.

Case #13-190303242

Lands of Malark

365 New Salem Road, Voorheesville

Area Variance to allow for construction of a detached garage 72' off center of the road when 95' is required.

Case #13-190303243

Small Cell Wireless Local Law

Town-Wide, Town of New Scotland

Adoption of Local Law B of 2019-Local Law Amending Local Law No. 6 of the year 2004 of the Town of New Scotland to establish special regulations regarding small scale cell technology.

Case #13-190303244

Kim Newell and Eldrid Andres

44 New Salem South Road, New Scotland

Special Use Permit – Request for 12 chickens and 6 ducks contained in a coop/pen area.

Case #04-190303245

Boswell Penc Home Addition

510 Russell Road, Town of Bethlehem

Special Use Permit – Applicant would like to finish the ground level basement to include a 760 s.f. accessory apartment that will be subordinate to the single family dwelling. It would have a separate entrance clearly marked.

Case #10-190303247

Town of Guilderland Local Law 5 of 2019

Town-Wide, Guilderland

Local Law #5 of 2019 regarding small cell wireless facilities and micro cell facilities.

Case #10-190303247

Lands of Sancchetti-2 Lot Subdivision

2747 Curry Road, Town of Guilderland

Subdivision Review-2 lot subdivision of 11 acres.

Case #10-190303248

Clover Pond Vineyard

4730 Western Tpk., Town of Guilderland

Area Variance – Request to eliminate fire sprinklers in lieu of alternate protection.

Advisory: The applicant should confirm that a fire protection sprinkler system is not required by Section 903 of the 2015 International Building Code adopted by NYS.

Case #10-190303249

Crossgates Mall Sign

1 Crossgates Mall Road, Guilderland

Area Variance-Installation of exterior sign exceeding 50 s.f.

Advisory: The Town should consider the precedent setting nature of significant changes to the sign code.

Case #10-190303251

ARB Legacy Development

Western Avenue and Twenty West Drive, Guilderland

Interpretation request-Is the proposed use allowed in the LB zone? Proposed use is a farm store.

GML 239 CASES RECOMMENDED FOR MODIFICATION

Case #02-1903033233

VMAR Development, LLC

Bozenkill Road, Altamont

Subdivision Review-Project includes the land subdivision of the main 23.87 acre parcel into 4 lots. 3 new lots will be developed as single family residences, totaling 1.42 acres. The remaining 22.45 acre lot to the north, will remain undeveloped. The 3 residential lots range in acreage from .46 acre to .50 acre and will be served by public water and sanitary sewer.

Staff opinion is to modify local approval to include:

1. Notice of Intent filed with the NYSDEC affirming that a Stormwater Pollution Prevention Plan has been prepared and is being implemented or submission of a Stormwater Pollution Prevention Plan (SWPPP) that is consistent with the requirements included in the NYSDEC SPDES General Permit for Stormwater Discharges (GP-0-15-002, January 29, 2015) for construction activities that disturb more than one acre.
2. Any wetlands disturbance will require notification to and review by the U.S. Army Corps of Engineer for permits under Section 404 of the Clean Water Act.
3. Driveway access permits must be obtained from the Albany County Department of Public Works.

A motion to accept staff opinion was made by Roland Graves. Brian Crawford seconded the motion and it was unanimously approved by the board.

Case #07-190303240

Mobil Air Transport

12 Runway Avenue, Colonie

Site Plan Review-Proposed 6,000 s.f. warehouse addition. No proposed public utility connections or changes to the ingress/egress. Revisions to parking lot and minor grading.

Modify local approval to include:

1. Review by the FAA (Form 7460-1 available from www.faa.gov) and notification to the Albany Airport Authority for FAA-FAR part 77 Aeronautical Impact Notification for Temporary Construction related and structural incursions within prescribed runway approach.
2. A Notice of Intent filed with the NYSDEC affirming that a Stormwater Pollution Prevention Plan (SWPPP) has been prepared is being implemented or submission of a Stormwater Pollution Prevention Plan (SWPPP) that is consistent with Stormwater Discharges (GP-0-15-January 29, 2015) for construction activities that disturb more than one acre of land.

Enzo Sofia made a motion to accept staff opinion. The motion was seconded by Brian Crawford and unanimously approved by the board.

Case #10-190303250

Stuyvesant Dental Care Sign
1465A Western Avenue, Guilderland
Area Variance – Request for placement of a sign

Staff opinion is to modify local approval to include:

1. The Town should ensure the sign is not in the ROW of SR 20.
2. NYSDOT should be notified of the sign.

Roland Graves made a motion to accept staff opinion. Brian Crawford seconded the motion and it was unanimously approved by the board.

Case #10-190303221

Rapp Road Development, LLC
Opposite side of Rapp Road from Crossgates Mall

The board agreed to table the earlier discussion until the end of the meeting. Tom Shepardson was not able to reach anyone at the Town of Guilderland and asked the board to table any decisions until the April meeting.

Enzo Sofia made a motion to table this case with a recommendation that the Rapp Road Development meets out to the Rapp Road Historic Associations, State Historic Preservation Office and the City of Albany to address concerns regarding traffic impacts to the National Historic District until April 18, 2019. The motion was seconded by Roland Graves and unanimously approved by the board.

Meeting adjourned at 4:57 p.m.

The Albany County Planning Board meets again on Thursday, April 18, 2019 at 3:30 p.m. at the Cornell Cooperative Extension 24 Martin Road, Voorheesville, NY 12186.



DANIEL P. MCCOY
COUNTY EXECUTIVE

DOMINIC RIGOSU
ACTING CHAIRMAN

COUNTY OF ALBANY
PLANNING BOARD
449 NEW SALEM ROAD
VOORHEESVILLE, NEW YORK 12186
PHONE (518) 655-7932 FAX (518) 765-3459

Jacqueline Coons
Chief Building & Zoning Inspector
Guilderland Town Hall – 2nd Floor
5209 Western Turnpike
P.O. Box 339
Guilderland, NY 12084

May 4, 2020

Dear Jacqueline Coons,

Pursuant to your request and under the authority of Section 239-m or n of General Municipal Law, the Albany County Planning Department reviewed the following material:

Case #:	<u>10-200403466</u>
Applicant:	Costco
Project Location:	Western Ave. & Crossgates Mall Road
Tax Map Number:	52.1-1-6, 52.10-1-26, 52.10-1-27, 52.10-1-28, 52.10-1-29, 52.10-1-30, 52.10-1-31, 52.10-1-32, 52.10-1-33, 52.10-1-34, 52.10-1-35, 52.14-1-1, 52.14-1-2, 52.14-1-10, 52.14-1-20, 52.14-1-21, 52.14-1-22, 52.14-1-23, 52.14-1-24, 52.14-1-25, 52.14-1-26, 52.14-1-28, 52.14-1-29, 52.14-1-30, 52.14-1-31, 52.14-1-32
Referring Agency:	Town of Guilderland Zoning Board of Appeals
Considerations:	The special use permit to develop the parcel into a Costco.

In conducting the review as per GML 239-l the Albany County Planning Board (ACPB) finds the proposed Costco Wholesale retail facility and fueling stations will create a significant negative intermunicipal and county-wide impact and voted to **disapprove** the Special Use Permit.

Pursuant to GML 239-l, review and recommendation by the County Planning Agency includes consideration of “pertinent inter-community and county-wide planning, zoning, site plan, and subdivision considerations” with respect to:

1. Compatibility of various land uses with one another:

- A. The ACPB find the proposed use is not a compatible land use as it does not meet the purpose of an approved use in a Transit Oriented Development District (TOD)

as described in the Town of Guilderland (TOG) Zoning Code Chapter 280-18.1 A. Purpose.

- B. Page 56 in the Westmere Corridor study states, *“While several elements of TOD are recommended throughout the Westmere Corridor with regard to access management, traffic calming, pedestrian, bicycle and transit improvements, this particular part of the corridor has critical features that would be necessary for a successful TOD neighborhood. These features include the availability of underutilized or vacant land adjacent to major destinations that attract high volumes of people (such as shopping, entertainment and employment centers) and could support high ridership transit stops. The missing elements, mixed use structures and compact, walkable more “urban” form can be created when land exists to integrate and transition uses into a more connected area with short blocks, mixed use buildings, public spaces and a strong pedestrian, bicycle and transit presence.”* A warehouse retail store does meet the goals for the “missing elements” as described.
- C. Large warehouse stores are typically found in auto-oriented commercial zones that rely on highway infrastructure and are not found in TOD zones that promote walkability.
- D. Majority of customers visiting warehouse stores drive in. The closest Costco store is two hours away. Conceivable customers will be driving from many miles away to buy in bulk and leave. In this situation customers will typically not travel by bicycles or bus.
- E. The proposed warehouse along with 700 parking spaces does not show evidence of reducing the number of parking spaces and is in direct contradiction of the purpose of a TOD zone.
- F. In an article published by the American Planning Association dated May 2003 “How to Make Transit-Oriented Development Work” quotes Peter Albert, a Planner for Bay Area Rapid Transit (BART), *“If the parking requirements doesn’t reflect the transit resource, it’s not TOD. It’s just a development close to a transit station.”*
- G. In the Albany County Planning Board case #10-180503020 Town of Guilderland Local Law 4: Transit Oriented Development District (May 14, 2018) published meeting minutes states; *“Michael Shanley addressed the board explaining that this town-wide initiative helps Crossgates Mall, which is a major employer and tax revenue generator for the county and town. Crossgates is forced to look at doing business in a different way; the TOD will help to create a mixed “community.” Crossgates has bought property in the surrounding area, and is hoping to build something that is first floor commercial, upper floors residential apartments/condos; perhaps a civic component as well, maybe government offices, a Police station, and medical offices all of which will help support the overall health of Crossgates.”*

2. Traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities:

- A. The ACPB finds the traffic impact will have detrimental effects in and around the proposed project. There will be an increase in accidents at the I-87 exit ramp leading to Crossgates Mall Ring Road, increased accidents and congestion along State Route 20 and increased traffic through the Rapp Road Historic District.
- B. In June 2001 the Altamont Enterprise published an article on the traffic accidents at the I-87 exit ramp leading to Crossgates Mall titled “Ending the ramp’age?” It noted 26 accidents in 1994 and jumped to 140 in 2000.
- C. New York State Department of Transportation provided accident reports on this same exit ramp. It noted 52 accidents in 2016, 48 accidents in 2017 and 54 accidents in 2018.
- D. In addition, the Westmere Corridor Study noted 502 accidents along the eastern portion of the Westmere Corridor in a three year span.
- E. New York State Thruway Authority is expecting cashless tolls by 2020. These tolls act as a “traffic calming measure” to the entrance onto I-87. How will this affect the traffic patterns and accidents at the Crossgates I-87 entrance?
- F. The proposed warehouse does not appear to show any traffic mitigation that address the accident prone exit ramp nor the heavily traveled eastern section of the Westmere corridor.

3. Impact of proposed land uses on existing and proposed county or state institutional or other uses:

- A. The special use permit does not demonstrate conclusively that no such negative impacts with regard to traffic and accidents in and around the proposed location and has not proposed any mitigation.
- B. We understand there is conversation with Town of Guilderland, Rapp Road Historic District, City of Albany and Pyramid regarding the adverse impacts to the Rapp Road Historical District. However at this time we don’t have a conclusive traffic mitigation proposal that was deemed viable either by the Town of Guilderland or the City of Albany to be commenting on.

4. Protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas:

- A. The proposed warehouse ignores the community character. If built, this structure will be the largest single use retail building found along State Route 20 in the Town of Guilderland.
- B. New York State General Municipal Law §96-a. Protection of historical places, buildings, and works of art states, *“In addition to any power or authority of a municipal corporation to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing board or local legislative body of any county, city, town, or village is empowered to provide by regulation special conditions and restrictions for the protection, enhancement, perpetuation, and use*

of places, districts, sites, buildings, structures, works of art, and other objects having a special character or special historical or aesthetic interest or value. Such regulations, special conditions and restrictions may include appropriate and reasonable control of the use or appearance of neighboring private property within public view, or both.”

- C. The Rapp Road district was designated on the Nation’s list of properties worthy of preservation in 2002. The Director of New York State’s Technical Preservation Bureau within the State Historic Preservation Office, has advised that the impact of traffic and high density development is an adverse impact on the historical preservation of the Rapp Road historical community.
- D. The origin of the Historical Rapp Road community is an African American community that migrated from Shubuta, Mississippi during the Great Migration. The community is singular in Albany County in its living presentation of the agrarian lifestyle that remained intact through a community’s chain migration to the north and the subsequent five generations. Multiple decedent families from the original property owners still live on Rapp Road. The Great Migration was the largest migration of United States citizens in American History that culminated in the mass urbanization of most of the migrants. The historical Rapp Road community provides an alternate and unique oral and living history that is increasingly hard to maintain as development and density continues to encroach.

5. Drainage:

- A. Maser Consulting, on behalf of Pyramid LLC, responded to the Department of Public Work’s comments about the exceeding 5 acres disturbances in their phasing descriptions as such: “Due to the extent of mass grading +/-8’ across the majority of the site and the complexity of the proposed site improvements, it is not feasible to split up construction in such a way that there is less than 5 acres of disturbance at any given time.”. For construction activities outside of grading, Pyramid should adhere to recommended 5 acre maximum disturbance of a construction site at one time (GP-0-20-001).

6. Community facilities:

- A. Not applicable.

7. Official municipal and county development policies, as may be expressed through comprehensive plans, capital programs or regulatory measures:

- A. The proposed warehouse does not meet recommendations of the Westmere Corridor Study; it does not protect nearby neighborhoods, it does not create neighborhoods, it is not pedestrian friendly, it does not support bus transit services and does not emphasize alternate modes of non-automobile-oriented modes of transportation.
- B. Page 56 in the Westmere Corridor study states, “While several elements of TOD are recommended throughout the Westmere Corridor with regard to access management, traffic calming, pedestrian, bicycle and transit improvements, this

particular part of the corridor has critical features that would be necessary for a successful TOD neighborhood. These features include the availability of underutilized or vacant land adjacent to major destinations that attract high volumes of people (such as shopping, entertainment and employment centers) and could support high ridership transit stops. The missing elements, mixed use structures and compact, walkable more “urban” form can be created when land exists to integrate and transition uses into a more connected area with short blocks, mixed use buildings, public spaces and a strong pedestrian, bicycle and transit presence.”

8. Such other matters as may relate to the public convenience, to governmental efficiency, and to the achieving and maintaining of a satisfactory community environment:

- A. A satisfactory community environment should be planned and based on a process that involved analysis of existing conditions, as well as public and professional input. The Westmere Corridor study established the TOD zone and based its recommendations on an “analysis of the existing conditions information found in the previous sections, discussions with the Study Advisory Committee (SAC) and comments received from the public at the project open house (pg. 55).
- B. Based on the study a satisfactory community environment would contain “mixed use structures and (a) compact, walkable more “urban” form (that) can be created when land exists to integrate and transition uses into a more connected area with short street blocks, mixed use buildings, public spaces and a strong pedestrian, bicycle and transit presence (pg. 56). The environment would ideally consist of “at least 80% coverage”(pg. 63), “orienting buildings to the street with a consistent build-to line with maximum setbacks of no more than 15 feet”, and “parking in the rear” (pg. 68).
- C. Granting a Special Use Permit to the Costco proposal as is, would be out of compliance with the community and professional input in a pre-existing study produced by the Town of Guilderland. To maximize governmental efficiency and community character development should try to adhere to existing comprehensive plans and studies.



Laura Trivison, Senior Planner
Albany County Planning Board

In compliance with Article 12-B, Section 239 of New York State General Municipal Law, this serves as official notification to the Albany County Planning Board of the action taken on the application described above.

LOCAL ACTION ON ACPB RECOMMENDATION:

- AGREED WITH COUNTY PLANNING BOARD RECOMMENDATIONS TO MODIFY OR DISAPPROVE
- OVER-RULED COUNTY PLANNING BOARD RECOMMENDATIONS TO MODIFY OR DISAPPROVE

LOCAL DECISION ON PROJECT:

- PROJECT APPROVED
- PROJECT DISAPPROVED

VOTE RECORDED: _____ DATE OF LOCAL ACTION: _____

Set forth the reasons for any action contrary to the ACPB recommendations (use additional sheets if needed):

SIGNED: _____ TITLE: _____

October 30, 2014

Mr. Richard Fon
Planning Board Chairman
Town of Yorktown
1974 Commerce Street
Yorktown, NY 10598

RE: Cumulative Traffic Generations
Proposed Costco FEIS
Yorktown, New York

Dear Chairman Fon:

We have been retained to review the trip generation estimates in the Revised Traffic Impact Study (TIS) for the proposed Costco Development in Yorktown in order to determine whether the Revised TIS adequately addresses future traffic conditions along the Route 202/35 corridor. After review of the Revised TIS, we have reached the following conclusion:

- The Revised TIS includes the trip generations of a relatively small residential development on the State Lands site that would generate very few new trips. However, it does not identify the development's impact as retail space in accordance with the plan approved by the Planning Board last year, which would generate substantially higher traffic volumes.
- The Revised TIS underestimated the new trip generations of the proposed Costco Development.
- It is our understanding that BJ's proposes to construct a 12-pump fueling station at its existing store. While it is understandable that its generations were not included in the Revised TIS, the BJ's fueling station will generate traffic that will impact traffic flow conditions in the area.

Based on the findings of our review, we performed trip generation estimates of the three developments and compared our estimates to the estimates analyzed by the Revised TIS. Presented herein is a summary of the tasks we performed and the resulting estimates, which are also presented in more detail in the attached Tables A and B.

A. Costco Development Trip Generations

1. Costco Store

We estimated the trip generations of the proposed Costco store using trip generation rates determined by surveys at two existing stores in Melville, New York and Hackensack, New Jersey. While the Institute of Transportation Engineers (ITE) provides trip generation rates for discount club stores in its publication entitled Trip Generation, 9th Edition, those rates are based on surveys of different stores located throughout the United States, and it is our

opinion that rates based on surveys of Costco stores that are located in the same general region would provide more accurate results. Following is a summary of our findings:

- a. The surveys at the two existing stores show that they generated an average of 5.98 vehicle trips per 1,000 sf during the Peak PM Highway Hour and 7.39 trips per 1,000 sf during the Peak Saturday Hour.
- b. Application of the generation rates to the proposed 151,092 sf Costco store shows that it will generate 904 total trips during the Peak PM Highway Hour and 1,117 total trips during the Peak Saturday Hour.
- c. It is expected that some of the Costco shoppers are already on Route 202/35 and that they will stop and shop at the store during a trip to a different destination (Pass-by Trips). The ITE publication does not provide Pass-by rates for Discount Stores and it is our opinion that 10 percent of the Costco generations will be Pass-by Trips. It has been suggested that the Pass-by Trips for the Costco store will be 25 percent. This percentage would mean that a high amount of the drivers on Route 202/35 will be Costco members, which is highly unlikely and, in our opinion, not acceptable.
- d. Reduction of the estimated total generations for the Costco store by ten 10 percent indicates that the store will generate 813 new trips during the Peak PM Highway Hour and 1,006 new trips during the Peak Saturday Hour.

2. Costco Fueling Station

The Costco fueling station will consist of 12 pumps open from 6:00 AM through 9:00 PM. The ITE publication provides trip generation rates for fueling stations also. However, those rates are based on surveys at fueling stations that are not part of a discount club and should not be used to estimate the generations of the Costco fueling station.

- a. The applicant has stated that one to five trucks will to deliver fuel every day which, based on 10,000 gallons per truck, indicates that up to 50,000 gallons will be delivered on a daily basis. Assuming that each vehicle at the site will purchase an average of 15 gallons, the 50,000 gallons could generate 3,333 vehicles per day, or an average of 222 vehicles per hour. If the peak hour is 50 percent higher than the average hour, each pump would have to serve almost 30 vehicles per hour (one every two minutes). Surveys conducted at the existing Costco in Nanuet, New York resulted in an average service time per vehicle of 3:30 minutes, therefore, it was decided to estimate the fueling station trip generations as follows:
- b. Based on an average service rate of 4:00 minutes (to be conservative), each pump can serve up to 15 vehicles per hour pump. The 15 vehicles represent 30 trips (one arriving and one departing) during each peak hour for a total of 360 trips by the 12 pumps.

- c. Using a Pass-by Rate of 10 percent for the fueling station and an Internal Trip Rate (trips also shopping at the Costco store) of 35 percent, it is estimated that the Fueling Station will generate 198 new trips during each of the Peak PM Highway and the Peak Saturday Hours.

3. Total Costco Development Generations

- a. The estimates show that the Costco development will generate a total of 1,011 new trips during the Peak PM Highway Hour and 1,204 new trips during the Peak Saturday Hour.
- b. The Revised TIS estimated that the Costco development will generate a total of 398 new trips during the Peak PM Highway Hour and 686 new trips during the Peak Saturday Hour. Therefore, our estimates indicate that the actual Costco development generations will be substantially higher than those analyzed in the Revised TIS.

B. State Lands Development

The Revised TIS includes the trip generations of a residential development on the parcel known as the State Lands. However, a Resolution of the Yorktown Planning Board of December 17, 2013 rezoned the parcel to permit retail development of 240,000 sf, which includes a 140,000-sf discount store and 100,000 sf of retail space. We estimated the trip generations of this development using trip generation rates published by ITE.

1. Discount Store Generations

Trip generation rates provided in the ITE publication for Land Use Code 813 (Free-Standing Discount Superstore) were used to estimate the generations of the 140,000 sf discount store.

- a. The ITE data shows that during the Peak PM Highway Hour the discount store will generate 4.35 trips per 1,000 sf, about 28 percent of which will be Pass-by Trips. Therefore, the discount store is estimated to generate 438 new trips during the Peak PM Highway Hour.
- b. The ITE publication also shows that during the Peak Saturday Hour the discount store will generate 5.64 trips per 1,000 sf. Estimating that about 30 percent of the trips will be Pass-by Trips, the discount store will generate 553 new trips during this hour.

2. Retail Space Generations

- a. Trip generation equations provided in the ITE publication for Land Use Code 820 (Shopping Center) were used to estimate the generations of the 100,000 sf of retail space. The ITE data also shows that 34 percent and 26 percent of the generations will be Pass-by Trips during the Peak PM Highway and Peak Saturday Hours, respectively.

- b. Based on the ITE data, the retail space is estimated to generate 395 new trips during the Peak PM Highway Hour and 647 new trips during the Peak Saturday Hour.

3. Total State Lands Generations

- a. The trip generation estimates show that the State Lands development will generate a total of 833 new trips during the Peak PM Highway Hour and 1,200 new trips during the Peak Saturday Hour.
- c. The Revised TIS includes the generations of a residential development on the State Lands parcel that would generate a total of 31 new trips during the Peak PM Highway Hour and 33 new trips during the Peak Saturday Hour. Therefore, the actual generations will be much higher than analyzed in the Revised TIS by 802 new trips during the Peak PM Highway Hour and 1,167 new trips during the Peak Saturday Hour.

C. BJ's Fueling Station

It is understood that BJ's has proposed to add a fueling station consisting of 12 pumps to its existing store in Yorktown. Using the same methodology as that used to estimate the generations of the Costco fueling station, the BJ's fueling station could generate an additional 198 new trips during each of the Peak PM Highway and the Peak Saturday Hours.

D. Combined Trip Generations

The trip generation estimates show the following:

1. All three developments will generate a combined total of 2,042 new trips during the Peak PM Highway Hour and 2,602 new trips during the Peak Saturday Hour.
2. Without the BJ's fueling station, the construction of the Costco and State Lands developments will generate a combined total of 1,844 new trips during the Peak PM Highway Hour and 2,404 new trips during the Peak Saturday Hour.

E. Comparison to Trip Generations in the Costco Revised Traffic Impact Study

Our estimates indicate substantially higher trip generations than analyzed in the Costco Revised TIS, as summarized in the following comparison tables.

1. All Three Developments

The following table compares the generations in the Revised TIS to the estimates by MMA if all three developments were constructed. The table shows that the findings of the Revised TIS analyses are based on traffic generations that are 3.6 to 4.8 times lower than could be generated by the developments. Consequently, traffic conditions along the Route 202/35 corridor will be worse than indicated in the Costco study.

	<u>Peak PM Highway Hour</u>	<u>Peak Saturday Hour</u>
Estimated by MMA	2,042 trips	2,602 trips
Analyzed in Revised TIS	<u>429 trips</u>	<u>719 trips</u>
Difference	1,613 trips	1,883 trips

2. Costco and State Lands Developments

It is understood that the BJ's fueling station has not been approved. Therefore, we prepared the following comparison table of the traffic generations without the BJ's fueling station to those analyzed in the Revised TIS. As shown in the table, the Revised TIS analyzed trip generations that would still be 3.3 to 4.3 times lower than the actual generations. Consequently, even without the BJ's fueling station, traffic conditions along the Route 202/35 corridor will be worse than indicated in the Costco study.

	<u>Peak PM Highway Hour</u>	<u>Peak Saturday Hour</u>
Estimated by MMA	1,844 trips	2,404 trips
Analyzed in Revised TIS	<u>429 trips</u>	<u>719 trips</u>
Difference	1,415 trips	1,684 trips

F. Conclusion

In summary, our trip generation estimates resulted in substantially higher traffic volumes than those analyzed in the Revised TIS. Based on this finding, it is our conclusion that the Revised TIS did not adequately identify the traffic conditions that will exist in the area and the potential delays along the Route 202/35 corridor that will be experienced by the residents and commuters of Yorktown.

We trust that the findings presented herein are clear.

Respectfully submitted,
MICHAEL MARIS ASSOCIATES, INC.

Michael Maris
President
att.

However, effective May 16, 2012, the EPA issued a Final Rule stating they have determined that onboard refueling vapor recovery (ORVR) technology is in widespread use throughout the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions, which will be at approximately 75.2% in the year 2014, and therefore, the EPA is waiving the requirement for states to implement Stage II gasoline vapor recovery systems at gasoline dispensing facilities. The EPA's study also determined the ORVR efficiency will be at approximately 80.2% in the year 2014. This ruling allows, but does not require, states to discontinue Stage II vapor recovery programs for gasoline fueling facilities.¹ Because the Applicant's design still includes a Phase II system, the Applicant asserts that the adverse air impacts associated with filling individual vehicles at this Site would be minimal, if any.

Additionally, the fueling facility will be required to comply with the EPA requirements for fillings stations codified in 40 CFR Part 63, Subpart CCCCCC - National Emission Standards for Hazardous Air Pollutants for Gasoline Dispensing Facilities. This subpart establishes national emission limitations and management practices for hazardous air pollutants (HAP) emitted from the loading of gasoline storage tanks at gasoline dispensing facilities. This subpart also establishes requirements to demonstrate compliance with the emission limitations and management practices. Applicant asserts that Costco will own and operate the fueling facility in accordance with the NYSDEC and EPA fueling facility regulations.

Applicant asserts that the Costco fueling facility is expected to sell as much as approximately 10,000,000 gallons per year. Applicant estimates that with the use of the required emission control systems and best management practices the yearly emissions of VOC could be as much as 15.5 tons which is well below the 6 NYCRR Part 231 regulatory major source threshold of 100 tons per year for a point source. This includes the emissions from submerged underground storage tank filling, displacement losses during vehicle refueling, spillage during refueling, and underground storage tank breathing losses. DEIS Sections III.D.2.c and III.D.3.c describe the technology and practices that will help minimize potential loss of fuel and vapors to the environment. Such technologies include but are not limited to the use of double wall tanks, overflow prevention valves, spill prevention nozzles, regular monitoring and inspection of equipment, leak prevention and detection technology.

¹ USEPA Final Rule May 16, 2012: <http://www.gpo.gov/fdsys/pkg/FR-2012-05-16/pdf/2012-11846.pdf>.



New York Association of Convenience Stores
130 Washington Avenue, Suite 300, Albany NY 12210

TELEPHONE: (800) 33-NYACS or (518) 432-1400

FAX: (518) 432-7400

JAMES CALVIN, being duly sworn, deposes and says:

1. I submit this affidavit regarding the economic impacts and conflict with Guilderland's zoning code that are presented by the proposed Costco warehouse as described in a Draft Environmental Impact Statement (DEIS) filed with the Town.
2. For the past 22 years, I have served as the chief executive officer of the New York Association of Convenience Stores, a private, not-for-profit trade organization representing thousands of neighborhood convenience stores and mini-marts statewide.
3. More than 85 percent of our member locations sell gasoline. Some are branded, some not. Some are chain-operated, others are independent. Some locations sell over 100,000 gallons a month, some only 30,000.
4. I am familiar with laws and regulations governing the retail sale of motor fuel in New York State, the various gasoline retailing business models that exist, and marketplace factors that influence retail gasoline volumes, branding, and pricing decisions.
5. I have reviewed the proposal by Costco to build a warehouse with 18 fueling positions in the Town of Guilderland and I have reviewed the Town's zoning code.
6. In my opinion, the Costco "members-only" fueling facility proposed as part of a Costco Warehouse Club is impermissible under the zoning code.
7. A big box retailer selling gasoline is not a permitted use.
8. Instead, Guilderland's Zoning Code, (§280-5), defines "Automobile Service Station" as:

A place where gasoline or other motor vehicle engine fuel (stored only in underground tanks), kerosene, motor oil, lubricants, grease (for operation of motor vehicles), or minor accessories are sold directly to the public on the premises and where the servicing or repair of automobiles, or installation of mufflers or other specialty items, may occur. An automobile service station shall not include sale or storage of automobiles or trailers, new or used, and shall be licensed by the NYS Department of Motor Vehicles. See § 280-40, Supplemental regulations.

9. Obviously a big box store selling gasoline does not fit this definition. By contrast, the Code does define “Convenience store, gas” as “[a] convenience food store including retail sale of motor vehicle fuel.”

10. Further, the Code’s definition of Automobile Service Station states “[a]n automobile service station shall not include sale or storage of automobiles or trailers, new or used.”

11. However, Costco offers the sale of automobiles and trailers for its members.¹ (See “How Much Can You Save by Purchasing Your RV From Costco?” at

<https://www.crowsurvival.com/rv-from-costco/> and Costco’s “Costco Auto Program” stating “Costco members save on RVs... Low, prearranged Costco member pricing on many makes and models... Smooth, seamless buying experience.

at <https://www.costcoauto.com/rv/enterzipcode.aspx?gotourl=%2fRV%2f>)

12. Moreover, based on my familiarity with hundreds of gas stations in New York and familiarity with fuel facilities accompanying big box retailers such as Costco, Sam’s Club and BJ’s, a Costco fueling station without a supporting membership scheme is not economically viable.

13. Without the Costco store and its member-discount prices, all of Costco’s ancillary uses - its fueling facilities, pharmacy, optical and hearing aid centers, food court, and travel agency - would not perform as well as stand-alone businesses.

¹ “Executive members have access to additional savings and benefits on various business and consumer services (except in Mexico), such as auto and home insurance, the Costco auto purchase program and check printing services.” Costco Annual Report (2017) at pg. 8, see http://www.annualreports.com/HostedData/AnnualReportArchive/c/NASDAQ_COST_2017.pdf.

14. This is especially true for the no-frills Costco fueling facility which uses low² gasoline prices as a means to draw in members, e.g.:

We believe that our gasoline business draws members but it generally has a significantly lower gross margin percentage relative to our non-gasoline business. A higher penetration of gasoline sales will generally lower our gross margin percentage.

See page 21 of “Costco Wholesale Corporation Annual Report on Form 10-k for the fiscal year ended September 2, 2018” available at

<https://www.sec.gov/Archives/edgar/data/909832/000090983218000013/cost10k9218.htm#sB7C2BA5831435E409906549BACAA1ECF>

15. Based on my observation of the New York market, Costco’s business strategy with regard to fuel sales is to offer retail prices for Costco members that competing gasoline retailers perceive to be equivalent to the *wholesale* price they pay their supplier. That poses a Hobson’s choice for gasoline retailers in the surrounding market – match Costco on price and forfeit profitability, or maintain prices at a reasonable profit per gallon but lose volume to Costco. Since gas stations cannot operate on a zero profitability basis, most try to maintain their price per gallon, lose volume to Costco, and hope that in-store sales will keep them solvent.

16. Claiming that a fueling facility with a kiosk could survive independently of the Costco warehouse is like claiming that the earth could survive independently of the sun. Removing the nurturing radiance and magnetic pull of the Costco warehouse would fundamentally alter the underlying operating conditions of the orbiting fueling facility, exposing it to economic peril, to wit:

- The discount-driven high traffic count a Costco fueling facility relies upon for high sales volume would collapse without the big-box store affiliation.

² “Costco sets its gasoline prices for each day based on two price factors: our cost and the lowest priced competitor in the market. Within the geographic vicinity of our warehouses (generally a three to five-mile radius), you'll find we consistently have the lowest priced gasoline.”

https://customerservice.costco.com/app/answers/detail/a_id/9230/~/-/costco-gas-station-faqs

- Without a Costco warehouse, a stand-alone Costco fueling facility’s business would be dependent on gross profit margin revenue from gasoline sales alone, forcing it to charge significantly more per gallon than the Costco business model allows. This inevitably would reduce its sales volume. The station would be saddled with the carrying charges of infrastructure designed to pump perhaps 300,000 gallons a month, yet it would struggle to achieve even a third of that volume.
- The station would no longer enjoy the economic advantage of operating as part of a “membership club.” Revenue from annual membership sales enables Costco to price substantially lower for gasoline.
- It would lack the financial stability to withstand wholesale gas price volatility. If you’re an independent operator, and you take delivery of 10,000 gallons of fuel at \$2 a gallon, but the market price subsequently drops to \$1.75, you’re not going to be able to sell that load at a sustainable level of profitability, meaning you may not be able to pay for the next load. Publicly traded Costco is big and diversified enough to absorb that delta until the market stabilizes; not so for a mom-and-pop business wholly dependent on wider gasoline margins.
- In this particular case, nearby gas stations on Western Avenue that did not have any convenience store failed – proving that without associated retail, a fueling station alone is not economically viable.

17. Given all of the above factors, in my opinion, the fueling station could not be operated successfully independent of the Costco Warehouse Club at the Crossgates site.

18. Even if Costco’s use could be considered permissible under the Town Code, I note the Town’s definition of Accessory use is “[a] use that is incidental and subordinate to the principal use and located on the same lot with such principal use.”

19. As proof that Costco’s fueling facility is “incidental and subordinate to the principal use,” Costco defines its fueling facilities as “ancillary” businesses along with its pharmacies, optical and hearing aid centers, food courts, and travel:

We offer merchandise in the following categories: **Food and Sundries** (including dry foods, packaged foods, groceries, snack foods, candy, alcoholic and nonalcoholic beverages, and cleaning supplies) **Hardlines** (including major appliances, electronics, health and beauty aids, hardware, and garden and patio) **Fresh Foods** (including meat, produce, deli, and bakery) **Softlines** (including apparel and small appliances) **Ancillary** (including gasoline and pharmacy businesses)

Ancillary businesses within or next to our warehouses provide expanded products and services, encouraging members to shop more frequently. These businesses

include gas stations, pharmacies, optical dispensing centers, food courts, and hearing-aid centers.

Id. Costco Annual Report (10K) at pg. 4.

20. Even when gasoline is combined with all of the other ancillary sales, it comprises just 18% of Costco's net sales. *Id.* at page 59 reporting the following net sales: Food and Sundries 41%, Hardlines 16%, Fresh Foods 14%, Softlines 11% and Ancillary 18%.

21. Therefore, because fuel sales comprise just a fraction of the 18% of total ancillary sales, Costco's fueling facility is an accessory use as defined by the Town Code.

22. Further, during my tenure as the chief executive officer of the New York Association of Convenience Stores I have become familiar with and followed planning and zoning issues throughout the state. I am aware that the Town of Riverhead on Long Island has adopted zoning measures to allow discount clubs such as Costco to operate fueling facilities as an accessory use.³ Guilderland has not done that.

23. Finally, the DEIS fails to give any consideration to Costco's impacts upon other gas station businesses.

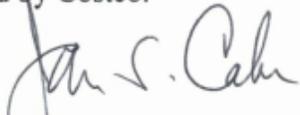
24. The fact that gasoline retailers have gone out of business on Western Avenue in the immediate vicinity of Costco's proposed site proves there are no additional local dollars to support a new fueling facility that will sell a projected 7-10 million gallons of gasoline a year.

25. The DEIS fails to include a market retail analysis identifying existing gas stations in the market area, quantifying their employment and tax revenue generated, and comparing how these stations will be impacted and whether economic impacts will result in blighted properties in the Town.

³ Riverhead established a "Destination Retail Center" zone allowing as a principal use "[w]arehouse clubs or wholesale clubs" and specifically identifies "[f]ueling facilities accessory to a warehouse club or a wholesale club" as a permitted accessory use. (See Section 301-106(A)(5) and (B)(2) at <http://www.ecode360.com/29712367>).

26. As evidenced by the long-deserted gas stations existing along Western Avenue, once gasoline businesses shut down, it is unlikely that the buildings can be retrofitted to a new productive use.

27. The DEIS fails to discuss whether surrounding gas stations will be able to survive the drop in sales volume due to artificially low fuel prices charged by Costco.



James Calvin

Sworn to me this 27th day
of February, 2020



ALISON RITCHIE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01RI6392401
Qualified in Albany County
My Commission Expires 05-28-2023

2020 Census Demographic Data Map Viewer A Story Map



- Population
- Race alone
- Race alone or in combination
- Hispanic Origin
- Families and Households
- Housing
- Group Quarters
- Population Change
- Population Aged 18 and Over
- Population Aged 65 and Over

This map shows the population density—expressed as persons per square mile—from the 2020 Census at the state, county, and census tract levels. Zoom in to see county- and tract-level data. Click on the map to learn more.

Legend

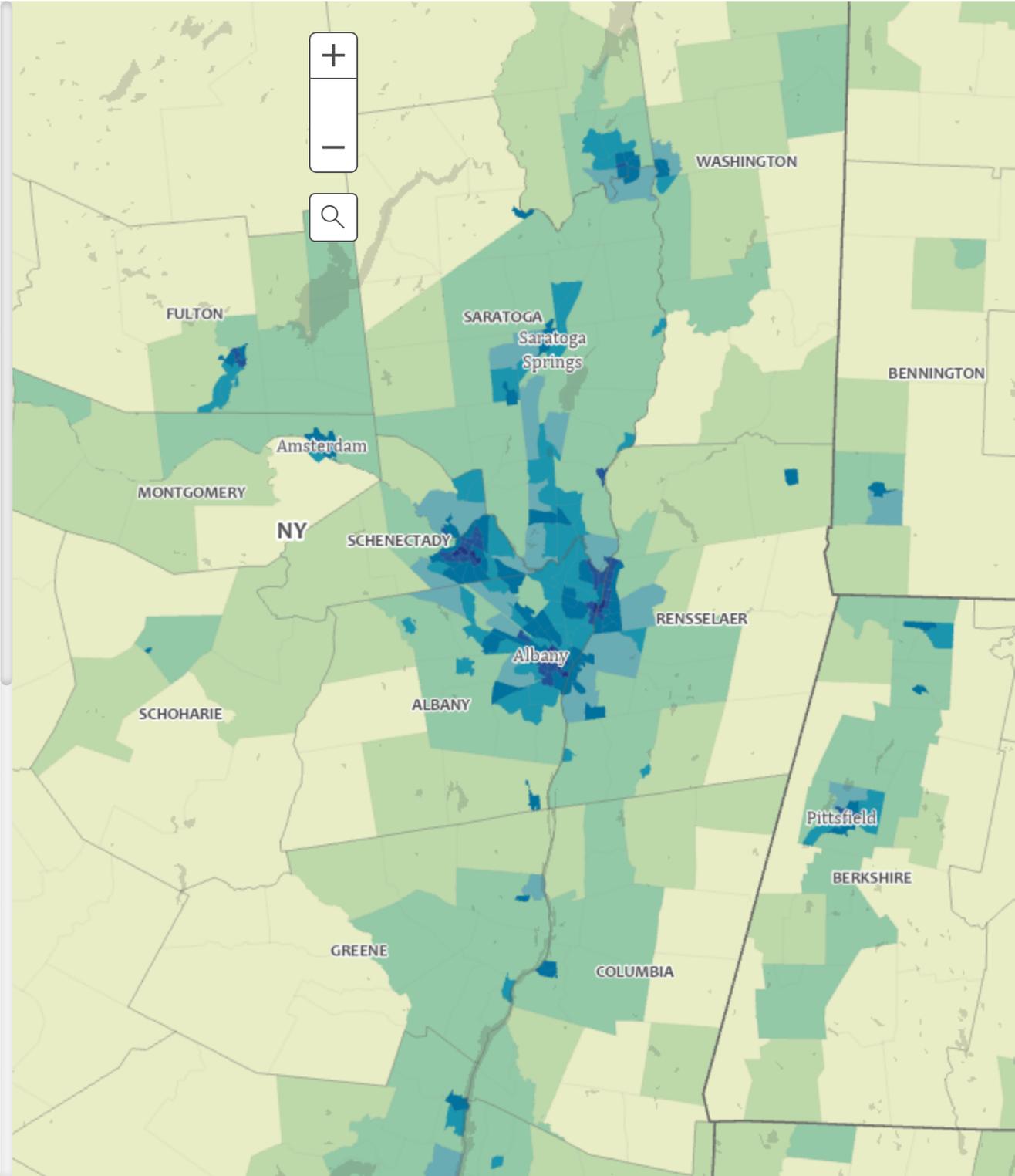
State (or state equivalent) boundary

County (or county equivalent) boundary

Census tract boundary

Persons per square mile by census tract

- 10,000.0 or more
- 5,000.0 to 9,999.9



Page 17: NEW ON- SITE SALES

DEIS statement: 50% of these sales will be considered to be “net new” to Albany County.

Comment: Albany County currently has Sam’s Clubs in Latham and Schenectady, and a Restaurant Depot and BJ’s in Albany. It is unclear how this figure was derived. If a portion of the Costco sales is coming from existing warehouse clubs and other local retailers, this would significantly reduce the new on-site sales projections and tax revenues. Please clarify.

Page 19: CONSTRUCTION PHASE IMPACTS

Comment: The assumptions related to the percentages of new spending, and the associated impacts require more detail to verify. In addition, the applicant outlines construction related revenues to be generated. How many of the construction-related workers will come from the Town of Guilderland? How many from Albany County? For Site 2, will Costco use its own contractors for the building construction? If the majority of workers are not from the Town or the County, the revenue projections would need to be adjusted accordingly. Please provide.

Page 20: ANNUAL OPERATIONS IMPACT

DEIS statement: [The proposed Costco will] capture” some of the sales that are currently going to adjacent municipalities.

Comment: The applicant notes that the Costco store closest to the proposed project is 1.5 hours away. What percentage of the capture rate is coming from a market that travels 1.5 hours to Costco stores? It seems likely that much of the capture will come from the four competitive warehouse retailers within the market area. This issue requires closer examination, and positive tax forecasts may need to be revised. Please provide.

DEIS statement: Customers who would typically shop outside of the municipalities would decide to shop at the Project because of loyalty to and preference for the Costco brand.

Comment: It is unclear where the shopping “outside of the municipality” is occurring and what is the loss of retail revenue based on this seepage. If the loss of revenue in part relates to online shopping opportunities, it is unlikely that Costco will recapture these retail dollars. Please provide additional information.

Page 21: NEW SALES FROM BRAND LOYAL CUSTOMERS

DEIS statement: The Project could potentially also attract loyal Costco customers who would typically shop at similar mass merchandisers outside of the market area or who would choose to shop at Costco over other smaller chains if there was one available.

Comment: Those who would choose to shop at Costco over the existing BJs or Sam’s Clubs are not “net new.” Please revise accordingly.

Comment: The applicant references four existing competitive establishments, but fails to include all of the other retailers that are selling similar goods ranging from gasoline to tires (“relevant establishments”). Again, this reduces the amount of “net new.” Please provide.

Page 22: Table 32: Gap Analysis

Comment: The gap analysis does not indicate retail gaps in auto service stations, florists, photoshops, pharmacies, etc. Again, if the proposed Costco is, in part, redistributing existing annual sales revenues, the sales tax revenues projected need to be adjusted. In addition, this analysis does not quantify impacts on community character.

Comment: The DEIS lacks a standard community character assessment that documents the community before and after Costco is built on Site 2 and quantifies the impacts of the addition of Costco's in store and fuel sales, given that this community already contains retailers selling similar goods, services and gasoline which would be impacted by the addition of a Costco . Please provide.

DEIS statement: . . . we estimate that 50% of sales at Site 2 will be net new to the county and 75% of sales will be net new to the town. Net new sales will be driven by brand-loyal customers travelling from outside of the municipalities to shop at the new Costco and by additional purchases being made in the municipalities to satisfy unmet demand.

Comment: We agree with the applicant that the above figure is imprecise, but it seems unlikely that 75% of the sales will be new to the Town/County and that a significant portion of these new sales will be from customers regularly travelling over an hour for groceries and other consumer products. Additional analysis needs to be undertaken to more accurately determine the amount of actual "net new." Please provide.

Page 24: NEW HOUSEHOLD SPENDING

Comment: The comments related to Site 1 also apply to Site 3.

Page 25: EMPLOYEE EARNINGS AND TOTAL ANNUAL SALES REVENUES.

Comment: The comments related to Site 1 also apply to Site 3.

Page 26: CONSTRUCTION PHASE IMPACTS

Comment: The comments related to Site 1 and 2 also apply to Site 3.

Pages 27-28: SPENDING BY NEW TENANTS

Comment: The comments related to Site 1 also apply to Site 3.

Pages 28-29: ON SITE EMPLOYMENT

Comment: The comments related to Site 1 also apply to Site 3.

Pages 29 – 30: TOTAL ECONOMIC IMPACT

Comment: See comments above.