

**APPENDIX I**

**TESTIMONY AT SPECIAL PUBLIC HEARINGS**

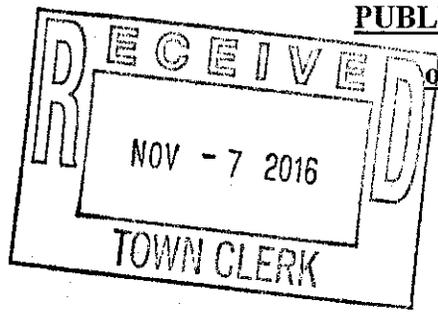
Wayne D. Bruyn, Esq.

## Appendix I-1

November 7, 2016

THE HILLS SEASONAL RESORT PDD

PUBLIC HEARING TESTIMONY



of Wayne D. Bruyn, Esq.

November 7, 2016

INTRODUCTION:

Good Evening Board Members. For the record, my name is Wayne D. Bruyn, Esq. of O'Shea, Marcincuk & Bruyn, LLP, Southampton, New York. As you know, I have an extensive background and experience in land use matters particularly in the Town of Southampton. As a former Town Planner and Assistant Town Attorney, and now an attorney in private practice, I have been intimately involved in most of the land uses issues involving the Town since 1980, including the Town's Aquifer Protection Overlay District, the WGEIS, Central Pine Barrens Plan and the drafting of its implementing legislation, including planned development districts, and several Comprehensive Plan Updates, hamlet studies and code amendments. In particular, I was involved in the Town's review of Golf at the Bridge and later in private practice, represented Sebonack Golf Club.

I appear before you tonight on behalf of DLV Quogue, LLC, a Discovery Land Company, who are the current owners and applicant in connection with the change-of-zone application entitled, "The Hills at Southampton Planned Development District". I have also represented East Quogue Partners, LLC, the prior owners who initiated the application to develop the subject property in 2005.

We are here this evening to make our first public presentation of the Draft Environmental Impact Statement ("DEIS") in connection with the final change-of-zone application for The Hills PDD that was deemed complete for public review on October 11, 2016. We recognize that the application is very detailed and the DEIS is very voluminous and that we could spend several hours presenting same. However, our consultant team has prepared a brief description of the DEIS, and will summarize the key elements in the next few minutes.

In addition to our consultant team, we have the principals of Discovery Land in the audience tonight. You just heard from Steve Adelson, Partner, Discovery, Chief Operating Officer. I will now present the background and history of the application, and then the rest of our consultant team in the order of their presentation will be as follows:

Ed Divita, Partner, Discovery Land Co., and President of Construction & Development.

Chic Voorhis, the managing partner of Nelson, Pope & Voorhis, our professional planner and environmental scientist and team leader for the DEIS.

Don Vita, President of Vita Planning & Landscape Architecture, the project designer.

Paul Grosser, PhD, CEO, PW Grosser Consulting, Inc., our Hydrologist.

Robert Grover, VP and Director of Environmental & Coastal Sciences at Greenman Pedersen, Inc.

Our presentation will conclude with:

Mark Hissey, VP, Discovery Land Co. who is the Project Manager of Dune Deck in Westhampton Beach, Discovery's Silo Ridge development and golf course in Dutchess County, NY and The Hills Seasonal Resort. As you know, Mark was the project manager on the Sebonack Golf Club PDD.

As you can see, we will use the projector and screen to assist in the presentation.

#### BACKGROUND & HISTORY

So, to first orient everyone, please refer to the next slide on the screen, which depicts the subject properties overlaid on a recent aerial photograph. The premises which are involved in the application comprise of several separate parcels of land totaling approximately 591 acres. The premises include three basic properties known as The Hills and the properties formerly owned by John Kracke and the Parlato family, which are now all under the ownership and control of Discovery Land or its affiliates. These properties are generally located northeast of Lewis Road, north of the LIRR, east and west sides of Spinney Road, and the south and north sides of the Sunrise Highway (State Route 27), in the hamlet of East Quogue.

CURRENT ZONING: The current zoning of these properties as shown on the next slide is Residential, CR-200 a/k/a as the 5 acre zoning. The properties are also

within the Aquifer Protection Overlay District and Central Pine Barrens Overlay District (CGA & CPA)

PRIOR ZONING: As the Board may remember, prior to 2008 this area was split between three different zoning districts: CR-80, CR-120 and CR-200. This is important as this was the zoning at the time the Central Pine Barrens Plan was adopted and is the basis for the Pine Barrens regulations and the Town's TDR allocations.

REQUESTED ZONING: The applicant seeks a change-of-zone of The Hills and former Kracke parcels from the current CR-200 zoning to a Mixed Use Planned Development District (MUPDD) to permit the construction of a 118-unit residential development and golf course with customary accessory buildings and uses (i.e. clubhouse, maintenance facilities). The 118 units include the transfer of 24 development rights from the Parlato properties as determined by allocation letters from the Town.

PURPOSE: the purpose of the PDD legislation as stated in the Zoning Code is:

“to facilitate increased flexibility to achieve more desirable development through the use of more creative and imaginative design of residential (and) mixed use, . . . than is presently achievable under conventional land use techniques and zoning regulations and to preserve, adapt and improve existing open space, land uses and communities, consistent with the recommendations of the Town Comprehensive Plan.” See §330-240B of the Zoning Code.

A PDD may be established as a receiving site for development rights or as a method of providing incentives or bonuses for development providing substantial community benefits or amenities.

The Town Board's task is to compare the as-of-right development of the property under the current zoning with the development that would result from the proposed zoning. The Court of Appeals has held that the most essential factor in determining whether a change-of-zone application should be granted is consistency with the Town's comprehensive plan.

The Court has stated: “The rationale for requiring consistency with a comprehensive plan is the necessity that the welfare of the community as a whole be considered in adopting zoning amendments. In exercising (your) zoning powers, the Town Board must act for the benefit of the community as a whole following a calm deliberate consideration of the alternatives, and not because of the whims of either an articulate minority or even a majority of the community. The comprehensive plan protects landowners from arbitrary restrictions on the use of their properties which can result from the pressures which outraged voters can bring to bear on public officials.” See Udell v. Haas, 21 NY2d 463, 288 NYS2d 888, 235 NE2d 897 (1968)

#### COMPREHENSIVE PLANNING DOCUMENTS

Thus, understanding what the Town’s comprehensive plan recommends is essential to this zoning analysis. The DEIS and my written testimony identify the recommendations for the property from the various comprehensive planning documents adopted by the Town beginning with the 1970 Master Plan and the Master Plan Updates in the 1980s. I would like to give you a brief summary of the key Town planning documents that help shape this application:

MASTER PLAN (1970): Northern portion to be Waste Reclamation Park and Water Catchment Residence; southern portion as Suburban and Beach Residence; greenbelt linkage along the drainage swale crossing the southerly portion of the property. Spinney Road is shown to be a collector street with access to the Sunrise Highway.

REZONING (1972): CR-40, CR-60, CR-80.

LAND USE AND GROUND WATER QUALITY IN THE PINE BARRENS OF SOUTHAMPTON (1983) – Known as the “Cornell Study.” This groundbreaking study prepared by Cornell University examined the impacts of various land uses on groundwater. They used East Quogue as their study area because of the variety of land uses in the study area, including agriculture. The subject properties are in the middle of the study area. Cornell found high concentrations of nitrogen already in the groundwater, which we continue to see today. The Cornell Study resulted in planning criterion for nitrogen discharges to ground water and recommended lower residential density (i.e. 5-

acre zoning) to meet drinking water standards. The Cornell Study helped justify the Town's five-acre upzoning that occurred that year.

MASTER PLAN UPDATE #1 & REZONING (1983): rezoned northerly portion zoned CR-80 to CR-200.

MASTER PLAN UPDATE #2 & REZONING (1984): rezoned southerly portions from CR-40 and CR-60 to CR-80 and CR-120, respectively, and created the Aquifer Protection Overlay District.

TOWN OF SOUTHAMPTON GOLF COURSE FEASIBILITY STUDY (1994): The East Quogue area north of the LIRR, including the subject premises, was identified in the study as a prime candidate for a golf course.

WESTERN GENERIC ENVIRONMENTAL IMPACT STATEMENT (1993): Notwithstanding, the upzonings of the early 1980s, less than 5 years later the Town was experiencing great development pressures in the pine barrens region in the western part of the Town. In response, the Town imposed a moratorium, which lasted for over 6 years. During that time, Planner Tom Thorsen and Chief Environmentalist Marty Shea prepared a land plan and Generic Environmental Impact Statement ("GEIS"), called the Western GEIS. This study contains specific recommendations for preservation and development in the East Quogue portion of the pine barrens. The WGEIS identified the environmental conditions and recommended a regional approach to allowing development utilizing transfer of development rights to preserve lands within a core preservation area and allowing development within a compatible growth area. Yes, I believe these concepts were borne in the WGEIS.

The slide depicts the recommended plan for the East Quogue area showing the northerly areas to be preserved. The easterly area, which includes the Henry's Hollow Region and the Parlato properties, is delineated as the "Wilderness Recreational Area", which is also to be protected. The westerly area, which includes The Hills and Kracke properties, is located in the "Resort Development Zone" where the recommended development scheme is for residential development, a golf course and other recreational amenities. The WGEIS expressly identified these alternative land uses as a means of creating tax-ratable development without generating school-aged children.

The WGEIS, however, was not formally adopted by the Town Board as the Central Pine Barrens moratorium superceded the Town's moratorium. The WGEIS then became the Town's contribution to the Central Pine Barrens Comprehensive Land Use Plan ("CLUP") and its recommendations are incorporated therein.

CENTRAL PINE BARRENS COMPREHENSIVE LAND USE PLAN (1995):

So after another 2 year moratorium, the Central Pine Barrens plan and its attendant regulations were adopted. Basically, these regulations created the Core Preservation Area ("CPA") and Compatible Growth Area ("CGA"). The northerly portions of the property extending 1,000 feet south of the Sunrise Highway are in the Core where no development may occur. The remaining portions of the property are located within the Compatible Growth Area, which permits development with certain conditions. Development in the Core is required to be clustered or transferred out to receiving areas in the Compatible Growth Area. The easterly portion of the Compatible Growth Area, which includes the Parlato properties, is designated as the Critical Resource Area (CRA), which adds further development conditions to protect endangered species. The Hills Seasonal Resort is designed to comply with the Central Pine Barrens regulations, including the preservation of the Parlato properties that are located in the CRA. Notably, the Compatible Growth Area in East Quogue included over 800 acres of vacant developable land.

COMMUNITY PRESERVATION FUND PROJECT PLAN (1998): This plan is required for implementation and use of community preservation fund transfer taxes for open space acquisitions. Only the northern portion of the property in the CPA was originally listed as a site potentially worthy of preservation through acquisition. The plan otherwise recommends preservation of community character through alternative land use strategies (i.e. cluster development, TDR, APOD requirements). Acquisition by the Town is the last alternative to preservation of community character. This requires a willing seller to participate in a sale to the Town of Southampton.

COMPREHENSIVE PLAN UPDATE (1999): This plan acknowledged and did not offer any specific changes to the existing zoning and development regulations affecting the property. In general, this plan did note: Southampton is one of the premier vacation and second-home destinations in the region, and the Town's primary economic

development engine is its resort economy. The demand for recreation of all types is likely to grow in the future, by a large measure. The affluence of the Town's market should prompt continued private and public introduction of recreation facilities. With respect to the hamlet of East Quogue: "Use PDD zoning to provide more flexibility with regard to use and density, in order to create incentives to implement design and amenity recommendations."

EAST QUOGUE LAND PLAN & GEIS (2008): By 2006, the Town was experiencing an influx of a number of development proposals for these 800 acres, which would have a potential negative fiscal impact upon the East Quogue school district. These applications included a subdivision application on The Hills property and development proposals for The Links and the Parlato's Atlanticville project. In response, the Town imposed another moratorium and after 2 ½ years generated the EQ Land Plan & GEIS. This study developed a recommended plan and the accompanying GEIS analyzed cumulative and site specific impacts (i.e. impacts on the environment, traffic, school district and fiscal impacts) of no less than eleven (11) different land use alternatives, including development under the current zoning. The EQ Land Plan & GEIS was developed with significant public participation (by many, if not all, of the groups here), and was adopted after careful deliberation of the alternatives.

The slide shows a copy of the recommended land use plan. You will note that the recommended plan actually references individual properties and contains specific recommendations for their development. The Hills property is located in the center and listed as recommendation area 7A. The recommended plan indicates that the development of the property via an as-of-right cluster subdivision is not desirable and that The Hills property should be rezoned utilizing the PDD process into a mixed use proposal that combines housing, resort/recreation, and open spaces uses. The Plan specifically recommends the development of a private golf course as the resort/recreational component and contains specific development standards for the golf course based upon the Town's experience with The Bridge and Sebonack Golf Club.

Like the WGEIS, the EQ Land Plan addressed regional aspects of transfer of development rights and also recommended the rezoning of the southerly portions of the

property from CR-80 & CR-120 to CR-200 to reduce the overall build-out density in the hamlet. This rezoning reduced the overall build-out density in the Study area by approximately 18% but resulted in more than a 26% reduction in density on the subject property.

It is essential that everyone interested in this project to review the EQ Land Plan and its detailed recommendations for development of the property. I have appended the recommendations for The Hills property to my written testimony.

COASTAL RESOURCES & WATER PROTECTION PLAN (2016): This plan morphed from a Local Waterfront Revitalization Plan (LWRP) to a comprehensive plan update. The plan identifies existing policies affecting the Town's waterfront and provides general recommendations for future studies to protect the Town's coastal resources as well as groundwater and surface waters. The plan specifically recommends that the Town should manage development and redevelopment consistent with the visions of the comprehensive plan. The subject property is located outside the Water Protection Boundary set forth in the plan. As such, the plan contains no specific recommendations with respect to the subject property or the Comprehensive Plan's recommendations for resort development.

#### APPLICATION HISTORY

As you can see, the Town over the last 30+ years has extensively studied and established a vision for development in the East Quogue area. Throughout these comprehensive planning efforts, the subject properties have remained slated for residential development, and the more recent Town plans have recognized the need to create more diversified land patterns with resort development and a golf course that will be environmentally sensitive while providing economic growth and minimizing fiscal impacts. It is these comprehensive planning efforts that require the property owners to consider resort development with a golf course.

As counsel to the original owners in 2005, I can attest to the fact that they were solely interested in developing the property with the as-of-right cluster subdivision plans that looked no different than The Pines subdivisions to the east. These plans were already reviewed by the Planning Board and were considered in the EQ Land Plan. After adoption of the EQ Land Plan & GEIS, it became apparent that

the original partners were not fully prepared to implement the recommended resort development and golf course. So, they asked the Discovery Land Co. who has a proven track record in resort development to consider the project.

After careful consideration and substantial reliance on the Town's comprehensive planning efforts, Discovery Land Co. invested in the property and developed The Hills Seasonal Resort to comply with the specific recommendations of the EQ Land Plan. The development of The Hills Seasonal Resort did not come in a vacuum, but was developed after more than one year of due diligence and several meetings with Town officials, Central Pine Barrens staff and community outreach. The Hills Seasonal Resort was further refined during the 8+-month public review of the Pre-Application, where the Town Board identified these comprehensive planning recommendations as one of the key factors as to why the Town Board determined that the Final PDD application should be considered. Over the last year, The Hills Seasonal Resort has been even further refined based upon input from community outreach and the Town's completeness review of the DEIS.

#### CONCLUSION

The DEIS before you now is a complete site specific analysis of The Hills Seasonal Resort, which is specifically designed to implement the recommendations of the EQ Land Plan & GEIS. Discovery Land has made a substantial investment in the community in reliance of the Town's comprehensive planning efforts and I can attest that absent such plans, the as-of-right cluster subdivision plans would have been processed by the Planning Board long ago without the benefits and amenities that come with this PDD application.

I would like to now introduce you to Ed DiVita, a Partner of Discovery Land Co. and President of Construction & Development, who will provide you with some insight on Discovery Land Co. and their commitment to develop the best plan for the property and the community.

## EQ LAND PLAN & GEIS

### (specific recommendations for The Hills)

The SEQRA Finding Statement and the Plan adopted by the Town Board in connection with the EQ Land Plan & GEIS specifically noted:

“It is the purpose of the Recommended Plan to create a comprehensive development program for East Quogue. To that end, an integral part of the plan is a mixed use proposal that combines housing, resort/recreation, and open spaces uses with protected areas of natural resources. These uses could be developed under a Planned Development District (PDD) application and associated that would include a private golf course and/or resort/recreation uses identified in Recommendation Areas 6, 7, 7A and 7B of the plan.”

“It is the objective of this analysis to evaluate land use alternatives that both protect environmental resources while also recognizing that future development will occur in the hamlet, focusing on the potential to create more diversified land patterns, with uses that provide economic growth and minimize fiscal impacts, with preservation and recreational opportunities through smart growth principles and land use management approaches that direct development away from environmentally sensitive areas and towards appropriate receiving areas.”

“Recommendation Areas 5, 6 and 7 would be developed as part of a PDD. See below for specific details on the proposed uses for these combined areas. These areas would be upzoned from a mix of CR80, CR120, and CR200 to all CR200.”

“These recommendation areas (5, 6, and 7) are consistent with the objectives of the CLUP in that they promote community benefits (including providing high quality drinking water, protecting natural habitats and providing open space and public recreation and trails) while preserving contiguous open space, providing a recreation/resort use, utilizing previously cleared areas for active recreation/resort use, and accommodating Pine Barrens Credits from within the study areas as well as lands north of the study area under common ownership. The Town recognizes the benefits of providing the resort/recreational properties within the study area and intends to take a regional approach in ensuring compliance with the CLUP clearing and fertilizer dependent vegetation requirements to achieve the overall goals for the study area. Therefore, similar to transfer of development rights between parcels within the study area, flexibility in the clearing standards can be allocated for individual parcels meeting the resort/recreation goals of the Recommended Plan. However, conformance to the CLUP requirements should be balanced over the entirety of the study area. A more detailed discussion follows.”

“Recommendation Area 5: Approximately 4 acres of land would be allocated to the Suffolk County Water Authority (SCWA). SCWA would utilize the area to install a new well field that would meet the future water demands of the area. As shown on the

plan, the proposed well field would be located on the Hills property (however, this site could also be located on the Links property). This would be a new SCWA well field in addition to the existing Spinney Road well field in the study area.

Recommendation Area 6: To potentially create a more diverse tax base and mix of uses in the hamlet, a portion of the Hills of Southampton property (about 10-15 acres) could be dedicated to resort/recreational uses that would provide additional ratables with little or no demand on local municipal services. This "Resort/Recreation" zone would be flexible in both its size and location on the Hills' property (see Recommendation Area 7A). Planning for this "flex" zone would be accommodated through a PDD process. The proposed uses may include but not be limited to the following: conference center, banquet facility, health and wellness facility, spa, equestrian center, or other recreational and sport related activities and uses.

Recommendation Area 7: This area, the largest of the recommendations areas includes three separate areas of land that total approximately 614 acres. Area 7A, The Hills of Southampton property, is the largest subarea (estimated at about 428 acres). Subarea 7B, the Links property, is about 148 acres and Subarea 7C is Town land that is situated between both the Hills' and Links' parcels and totals about 39 acres. While this Recommended Plan provides recommendations for these identified parcels, this does not preclude expansion of this planning area to include other adjacent properties or land that is included elsewhere in the GEIS study area to achieve the goals of the Recommended Plan. Within these areas, the plan identifies the need to devote about 4 acres of land to a new SCWA well field (see Recommendation Area 5 above). This new SCWA well field could conceivably be located on any of the three identified areas. It should be noted that dedication of land to the SCWA would constitute a public benefit, if located on a private parcel. In addition, careful coordination of the proposed Malloy Drive extension is a priority so that its design, layout, and alignment can be integrated into the development of the Hills or Links properties in a way that does not impact the proposed uses, but provides adequate access to and across the sites. In any potential development scenario, for either an individual property or for a combined development involving more than one property owner, the need to seek a zoning change based on the Recommended Plan would need to be achieved as part of a PDD given the mix of uses that is under consideration. A more detailed description of the conceptual proposal for each of the Subareas 7A, 7B and 7C follows:

Recommendation Subarea 7A: This recommendation assumes the Hills of Southampton property could accommodate a mix of uses in a PDD as follows: a clustered residential comprised of a mix of housing types built around a theme of resort/recreational uses (for the purposes of this plan and the GEIS impact evaluation, 85 to 90 units were assumed for Recommendation Area 7 as a whole with a housing type that would have a mix of traditional seasonal and year-round housing consistent with the current housing profile for the area); a private golf club and golf course that would be constructed on approximately 200 acres of land that is situated on both the Hills property and a portion of the Town land without disturbing any of the Central Pine Barrens Core Preservation Area. It is

estimated that up to approximately 100 acres of the private golf course may be dedicated to managed turf with the remainder of the land that is associated with golf, devoted to course edges, transition areas, buffers and general out-of-play open space that will be preserved as part of the low-impact design of the course. It is noted that a substantial portion of Subarea 7A represents disturbed areas that could be integrated to the recommended development program. For this reason, as well as the site's overall size and dimension, the Hills' property is compatible for private golf development. Because this recommendation area is located north of the LIRR track, it would also be upzoned to CR200. The private golf course would provide the opportunity of staging a limited amount of public events and charitable functions during the year as a public benefit. An additional public benefit to the plan is the development of a trail system that provides public access for walking, jogging, or cross country skiing, for example."

"The golf course/resort/recreation and residential uses would be achieved through a PDD that would be applied by the developer. Public benefits for such a proposal could include limited public access to the golf course for recreation, as well as the development of a restaurant/banquet facility/spa oriented toward private events and conferences as part of a resort/recreation area, land for a new SCWA well field, and public open space and trails."

Recommendation Areas 8, 10, 11: With respect to the former Parlato property: Recommends the transfer or cluster of the development rights from the properties to the north of the LIRR to the property owned by the Parlato family south of the LIRR and north of Montauk Highway (overall yield for development would be approximately 78 units)

THE HILLS  
PROJECT HISTORY TIMELINE

09-06-05	Property acquired by East Quogue Partners, LLC
12-16-05	Submission of PreApplication for 111-Lot Subdivision to Pl.Bd.
04-26-06	Town Board adopts East Quogue Moratorium
05-04-06	Planning Board adopts PreApplication Report for 111-lot plan.
04-24-07	Town Board extends East Quogue Moratorium
10-23-07	Town Board extends East Quogue Moratorium
04-22-08	Town Board extends East Quogue Moratorium
08-11-08	Expiration of East Quogue Moratorium
10-14-08	Submission of subdivision plan and SEQRA scoping document with density reduced to 82 lots as per EQ Land Plan & GEIS
11-25-08	Adoption of Findings Statement for East Quogue Land Plan & GEIS by Town Board
12-09-08	Town Board rezones CR-80 and CR-120 districts to CR200
01-22-09	Planning Board adopts Positive Declaration for 82-lot Subdivision
03-19-09	Planning Board adopts Final Scope for DEIS
10-12-10	Town Board agrees to acquire The Links property with County at a purchase price of \$9,968,700.00 (approx. \$66,500 per acre)
10-12-10	EQ Partners offers land to TOS & COS for open space acquisition at same price per acre as The Links property (total cost of approx. \$29,000,000.00)
11-12-10	Submission of PreApplication for 82-lot plan to Planning Board
03-24-11	Planning Board adopts Updated PreApplication Report
07-07-11	County Executive vetoes TOS/COS acquisition
08-02-11	County Legislature overrides veto

04- -12 Town and County close title on The Links property

02- -13 Discovery Land assumes major partnership interest & re-titles property

04-24-13 Meetings with Town officials regarding draft PDD PreApplication

05-03-13 Town makes offer without the COS to acquire The Hills property for \$18,535,000.00 (approx. \$43,300 per acre)

05-29-13 Town Board Offer declined as DLV is unwilling seller and offer is 1/3 less than market value paid for The Links property

06-07-13 PDD Pre-Application Submitted

08-27-13 1<sup>st</sup> Public Hearing on PDD Pre-Application

10-08-13 2<sup>nd</sup> Public Hearing on PDD Pre-Application

12-06-13 Department of Land Management Advisory Staff Report recommending review of Final PDD application

12-19-13 Planning Board adopts Advisory Report to Town Board supporting review of a Final PDD Application

01-14-14 Town Board adopts PDD Pre-Application Report authorizing submission of Final PDD Application

10-21-14 Submission of Final PDD Application

07-14-15 Town Board adopts Scoping Outline for DEIS

12-21-15 Submission of DEIS

02/09/16 Town Board deems first DEIS incomplete for public review

06/23/16 DLV acquires title to the Kracke property

07/08/16 Town Board makes second offer to acquire The Hills, Kracke and Parlato properties

08/05/16 DLV and affiliates acquire title to the 120 s/s Parlato properties

08/05/16 DLV declines Town offer and indicates for third time that the owners are not willing sellers.

08/23/16 Town Board deems second DEIS incomplete for public review  
10/11/16 Town Board deems third DEIS complete for public review  
11-07-16 Public Hearing on DEIS