

SPACE

STONY POINT ACTION COMMITTEE FOR THE ENVIRONMENT

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Ms. Risa Sugarman
Office of NYS Attorney General
235 Main Street, 3rd Floor
Poughkeepsie, NY 12601-3194

February 27, 2008

Subject: Crossroads, LLC application to construct a Shopping Center in the town's LI Zone
RE: Section 20.04, Block 11, Lot 2.2

Dear Ms. Sugarman,

I am writing to request the help of your office to investigate actions within the Town of Stony Point, NY which, we believe, involve serious violations of NYS Environmental and Municipal Town Law – resulting in specific violations of procedure, public disclosure, attorney conflict of interest, NYS SEQRA regulations, NYS Open Meetings Law, Freedom of Information Law, hidden public records and illegal changes to town land use regulations, which conflict with our established Stony Point Town Comprehensive Plan.

SPACE is an incorporated, non-partisan, not-for-profit, citizens environmental organization, established in 1990 to promote and advocate for greater public awareness, education and action involving issues that will adversely affect the natural resources and the quality of life that is unique to our area. We are volunteers who attend and participate in local, town meetings and are concerned about both the environmental and economic impacts of poor land use planning decisions on our community. Our town has had a history of drainage, flooding, traffic and water quality problems, which have caused direct financial impact to homeowners, businesses and all town taxpayers. As a result, we expect our elected and appointed town officials to take thoughtful and legal action using NYS Environmental Law, the Town of Stony Point Comprehensive Plan and local town code, as tools for improved land use planning in our community.

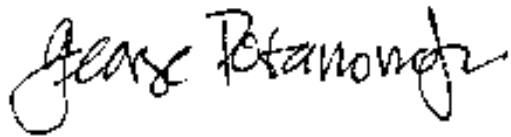
While we certainly support and encourage good, clean tax ratables in our town, we are very concerned that our current Stony Point Supervisor and Town Board are repeating a similar pattern of mistakes made in 2002, by a previous administration which, after designating itself lead agency for SEQRA during the construction of the Stony Point Town Golf Course, proceeded to rush through the Environmental Assessment Form as if it were a paperwork exercise – ignoring all practical drainage and other environmental impacts on neighboring properties. As a result of this action, the NYS Appellate Division, 2nd Department (2002) ruled unanimously in *S.P.A.C.E v. Hurley* (291 A.D.2d. 563, 739 N.Y.S.2d. 164) against the town for violating NYS Environmental Law and required that the town conduct a Full Environmental Impact Study (EIS) for the site. Subsequently, Supervisor Hurley was arrested and sent to prison in connection with his involvement in the oversight of the Stony Point Golf Course.

In this case, we believe that the Town of Stony Point elected officials have violated state and local law in this application request, by an influential local developer, to change town zoning regulations by secretly adding new high-density land uses for a shopping center, in the town's Light Industrial (LI) Zone and, as done before, designate itself Lead Agency under SEQRA, to expedite approval of a high-density use which conflict with our established Town of Stony Point Comprehensive Plan, specific recommendations by our Town of Stony Point Planning Board, and Stony Point Town code.

We are writing to ask for the intervention by the NYS Attorney General in this matter because, while we do not have the financial resources to bring legal action against the town in the courts, we believe that there is a conscious and coordinated effort by town officials to circumvent local and state law and that the integrity of this entire process is seriously impaired.

Attached is a copy of our list of alleged violations, with descriptions and copies of town documents, which support these allegations. If we can provide any further details, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "George Potanovic, Jr.", written in a cursive style.

George Potanovic, Jr.
President, SPACE .

cc: Phillip Marino, Supervisor
Michael H. Sussman, Attorney
SPACE Board of Directors

Below, is a timeline and outline of these alleged violations, along with a description of explanation and copies of town documents, which support these allegations:

1. **February 22, 2006:** Stony Point Planning Board discusses the Town Board's request for a recommendation on additional uses in the LI Zone. Chairman provides Stony Point Town Board with a written list of recommendations for additional uses by Special Permit in the established LI Zone (**March 3, 2006 Memo**). The list of recommendations specifically recommends AGAINST including "Local Convenience Commercial" uses. (See attached document: #EXHIBIT #A1-A6)

2. **April 11, 2006:** Stony Point Town Board, in its role as LEAD AGENCY, holds a PUBLIC HEARING, as required under SEQRA. It declares a NEGATIVE DECLARATION and votes to adopt RESOLUTION 06-61 – "Additional Uses in the LI Zone." The resolution states that it [amends local law] "to incorporate the recommendations of the Stony Point Planning Board..." and allow additional uses in the LI Zone by Special Permit, issued by the Town Board.

RESOLUTION 06-61 contained a list of uses but DID NOT include (1) "Local Convenience Commercial" or (4) "Hotels and Motels" as permitted uses. (See attached document: #EXHIBIT of Town Board Minutes #B1-B3)

I. The TOWN OF STONY POINT has violated NYS MUNICIPAL LAW by MODIFYING an adopted resolution AFTER THE PUBLIC HEARING and WITHOUT PUBLIC DISCLOSURE

3. **June 14, 2006:** Supervisor Phil Marino stated that RESOLUTION 06-04, just adopted on April 11, 2006, needed to be "re-adopted" by the board with the reason given that the local law "...had not been completed within the time frame required by the NYS Secretary of State."

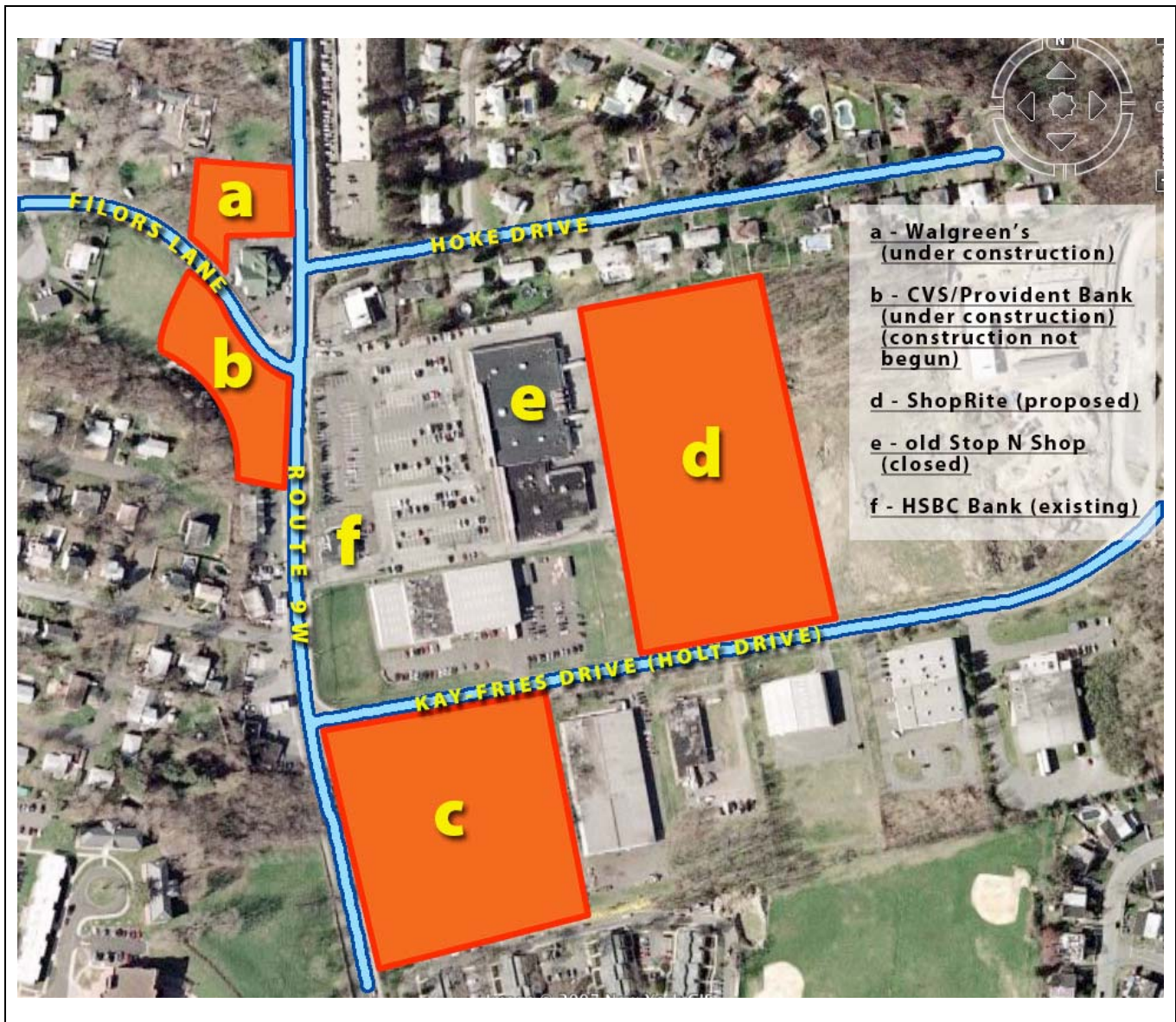
(NOTE: April 11, 2006 minutes, makes no reference to RESOLUTION 06-04. However, it appears that he is referencing RESOLUTION 06-61, which covers the same subject matter).

Councilman Stephen Cole-Hatchard motioned to adopt a new RESOLUTION 06-128 and it was seconded by Supervisor Marino. However, a review of the minutes from that meeting, obtained under the Freedom of Information Law, show that the RE-ADOPTED RESOLUTION 06-128 was actually SIGNIFICANTLY MODIFIED. "Local Convenience Commercial" and "Hotels, Motels and Restaurants Accessory to Hotels and Motels," were ADDED without public disclosure. (See attached documents covering readopted resolution: #C1-C3)

II. The TOWN OF STONY POINT has violated NYS ENVIRONMENTAL LAW by NOT CONDUCTING a required SEQRA REVIEW for actions involving significant changes to land use identified in our town comprehensive plan

4. **June 14, 2006:** The TWO ADDITIONAL uses were NOT DISCLOSED PUBLICLY but ADDED AFTER the PUBLIC HEARING and WITHOUT A SEQRA review for the additional uses. NO SEQRA review was conducted because the ADDITIONAL USES were NOT INCLUDED in the original resolution, adopted by the Town Board on April 11, 2006. These two additional, new uses are considered HIGH DENSITY traffic uses and would likely trigger a TYPE 1 ACTION classification under SEQRA. The TYPE 1 classification (see: 617.4 (b) (2)) requires a more extensive environmental

review and traffic study of this property, which is adjacent to an inactive **NYS Superfund Hazardous Waste Site** previously operated by Kay Fries Corporation and of questionable safety concerning public exposure.



Area Map: February 2008

III. The TOWN OF STONY POINT has NOT MAINTAINED MINUTES and has attempted to DESTROY THE PUBLIC RECORD

5. **December 26, 2007:** A Freedom of Information Law request for copies of the minutes from the Stony Point Planning Board February 22, 2006. In late January, when the minutes were received, it was noticed that they were incomplete and that significant comments by board members and the public were absent from the written record. After the Building Inspector, William Sheehan, was questioned about the incomplete minutes, he reviewed the minutes and agreed that they were incomplete. The Building Inspector noted that the audiocassette tape of the minutes had been discarded, but that he was able to “rescue the tapes” from the trash the previous day. He then supplied Frank Collyer with a copy of the audiocassette tapes.

After listening to the audiocassette tapes from the February 22, 2006 Planning Board meeting, it was confirmed that the Planning Board members has discussed several times and agreed that the **Local Convenience Commercial** use was NOT AN ACCEPTABLE USE due to traffic concerns and would not be recommended as a permitted use to the Town Board.

IV. The TOWN OF STONY POINT has deceived the Planning Board with INCOMPLETE AND INACCURTE INFORMATION provided by the Building Inspector

6. **January 24, 2008:** At the regular Stony Point Planning Board meeting, the Town Board asked the Planning Board to review and give its recommendation on the application to construct a ShopRite supermarket and additional retail stores by Special Permit in the LI Zone. Several Planning Board members questioned under which Special Permit Use was the project to be considered. However, there was no attorney present to answer or clarify the questions by the board. Instead, the Building Inspector answered that the project was to be considered under the “**Local Convenience Commercial**” use in the LI Zone. Several Planning Board members questioned how that use was defined in town code. The Building Inspector offered no specific definition. Although the definition of “Local Convenience Commercial” use does exist in Stony Point Town Law (215.5):

LOCAL CONVENIENCE COMMERCIAL – Establishments that deal in the retail sales of convenience goods (food, drugs and sundries) and such personal services as laundry and dry cleaning (pick-up and delivery), hair styling and shoe repair. The maximum permitted aggregate gross floor area on any site shall not exceed 100,000 square feet. The floor area of any single store shall not exceed 8,000 square feet, except that food stores or combined sales stores may not exceed 45,000 square feet. Other commercial uses of any kind elsewhere specified in this chapter shall not be deemed “local convenience commercial.”

The Building Inspector never offered the above definition to the Planning Board. Instead, he suggested that it meant a “grocery store.” When board members questioned how a shopping center could be considered a “grocery store,” the Building Inspector answered first that it was not a “shopping center,” but a “supermarket,” which is not defined in town code. In any case, he stated that he would allow the “supermarket” use as arbiter of what the zoning laws say. Further discussion on the difference between “supermarket” and “shopping center” ensued, but the Planning Board members were reminded that they had a time limit to reply to the Town Board, and they needed to act immediately. The NOTICE OF PUBLIC HEARING refers to the application by Crossroads, LLC as a SPECIAL PERMIT for construction and operation of a “shopping center.” (See attached public notice – EXHIBT #D-1)

V. The TOWN OF STONY POINT does not provide reliable and independent legal counsel to its town, planning and zoning boards

7. Attorney, Dennis Lynch, has been retained by the Town of Stony Point as “Special Council.” His firm also provides legal counsel to the Stony Point Planning Board and Zoning Board of Appeals. It is our contention that a “conflict of interest” arises because Dennis Lynch also actively represents the applicant, Patrick Magee. While the Town of Stony Point has retained an additional attorney to replace the town special counsel in these situations, sometimes the boards are left without legal advice. (Reference item #IV above)

Patrick Magee, a principal of Dynamic Fitness Products, originally requested the additional uses in the LI Zone in February 2006, AND is the contractor and owner of the property who filed the application with the Stony Point Planning Board on behalf of Crossroads, LCC, dated August 17, 2007 to construct a ShopRite Shopping Center in the town Light Industrial (LI) Zone by Special Permit. (See attached Planning Board application #E1-E2)

While we recently received a copy of an email from attorney Lynch to the town clerk, indicating that Mr. Magee has sold his interests in the property, he seems to still maintain an active interest in this application, having spoken publicly in support of the SPECIAL PERMIT at the recent PUBLIC HEARING on February 13, 2008. It seems apparent that Mr. Magee’s interest in selling the LI Zoned property to Crossroads LLC, is contingent on the town granting approval of the SPECIAL PERMIT? (See attached copy of e-mail: #F-1)

VI. The TOWN OF STONY POINT is currently reviewing a SPECIAL PERMIT application request, based upon an illegally approved resolution and town law

8. **February 13, 2008:** The Town of Stony Point held a PUBLIC HEARING on the application by Crossroads, LLC and developer, Patrick Magee, to request a SPECIAL PERMIT for the construction of a Shopping Center, including a ShopRite Supermarket and five additional stores on property in the town’s established Light Industrial LI Zone. Despite the Building Inspector’s statement that the application is a “Supermarket” and not a “Shopping Center,” the town’s own PUBLIC NOTICE and other documents identify that application as a SHOPPING CENTER.

9. SPACE presented a “position paper,” which outlines our concerns about the environmental and economic impacts of this application for high-density use in the LI ZONE, the precedent it sets for other land located in the LI ZONE and the illegal process used to RE-ADOPT RESOLUTION 06-128, upon which this SPECIAL PERMIT is based. (see attached SPACE position paper #G1-G5)

10. The SPECIAL PERMIT PUBLIC HEARING has been continued by the TOWN BOARD to its next meeting, scheduled for **TUESDAY, March 11, 2008 at 7pm.**