

WAIVER OF NOTICE AND CONSENT
OF SPECIAL MEETING

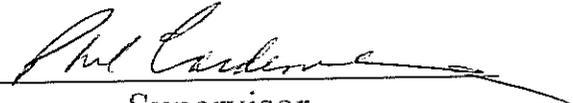
We, the Undersigned, being all members of the Riverhead Town Board of the Town of Riverhead, County of Suffolk, and State of New York, do hereby waive notice of the time, place, date and purpose of a meeting of the Town Board of the Town of Riverhead, to be held at the Town Hall, Riverhead, New York at 12:00 p.m. on the 27th day of March, 2008 and do consent to the holding of such meeting for the purpose of:

RESOLUTIONS:

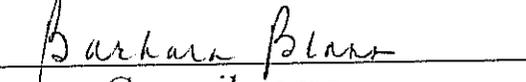
#257 TO DETERMINE WHETHER THE RENOVATION, CONSTRUCTION, AND/OR SITING OF THE DRIVING RANGE, GOLF PROFESSIONAL SHOP, MINIATURE GOLF COURSE, AND/OR GOLF CART BARN AT THE INDIAN ISLAND COUNTRY GOLF COURSE, LOCATED ON RIVERSIDE DRIVE, RIVERHEAD, NEW YORK, MUST COMPLY WITH THE TOWN CODE OF THE TOWN OF RIVERHEAD.

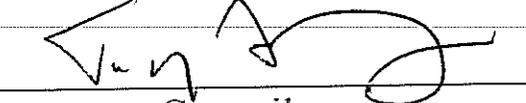
Dated: March, 27, 2008
Media Notified by
Supervisor

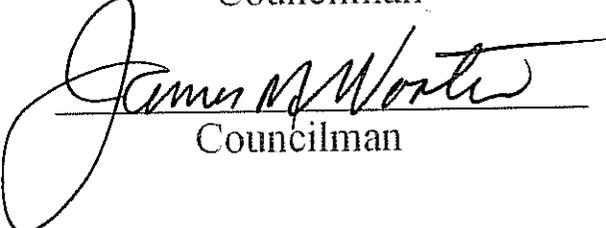
TOWN BOARD MEMBERS
of Riverhead, New York


Supervisor


Councilman


Councilwoman


Councilman


Councilman

SPECIAL BOARD MEETING

March 27, 2008

Adopted

TOWN OF RIVERHEAD

Resolution # 257

DETERMINING THAT THE RENOVATION, CONSTRUCTION, AND/OR SITING OF THE DRIVING RANGE, GOLF PROFESSIONAL SHOP, MINIATURE GOLF COURSE, AND/OR GOLF CART BARN AT THE INDIAN ISLAND COUNTY GOLF COURSE, LOCATED ON RIVERSIDE DRIVE, RIVERHEAD, NEW YORK, MUST COMPLY WITH THE TOWN CODE OF THE TOWN OF RIVERHEAD.

COUNCILWOMAN BLASS offered the following resolution, was seconded

by COUNCILMAN DUNLEAVY :

WHEREAS, the Town of Riverhead is a municipal corporation existing under the laws of the State of New York having those powers of zoning and land use regulation specified in New York Town Law Article 16; and

WHEREAS, the County of Suffolk is a municipal corporation existing under the laws of the State of New York; and

WHEREAS, the County of Suffolk has proposed and commenced the renovation, construction, and/or siting of the driving range, golf professional shop, miniature golf course, and/or golf cart barn at the Indian Island County Golf Course located on Riverside Drive, in Riverhead, New York; and

WHEREAS, the proposed project under consideration and/or construction includes the following:

1. Replacement of the roof on the cart barn;
2. Construction of overhangs at the driving range;
3. Construction of permanent target greens at the driving range;
4. Installation of a loudspeaker at the facility;
5. Installation of asphalt cart paths throughout the facility;
6. Installation of netting on areas of the golf course and driving range;
7. Landscaping/hardscaping with pathways, hardwood trees, shrubs, and annual/perennial flowers at the facility;

8. Installation of a permanent driving ball dispensing machine with counter and shelter;
9. Installation/maintenance/repair of heating systems, sprinkler systems, and cesspools;
10. Expansion of the operation of the pro shop and driving range facility until 10:00 p.m., including lighting;
11. Operation of a golf school;
12. Expansion of existing pro shop with additional bathroom;
13. Construction of a miniature golf course; and
14. The purchase, dumping, excavating, and grading of soil at the facility.

WHEREAS, in order to determine whether the County of Suffolk must comply with the Town Code of the Town of Riverhead in the renovation, construction, and/or siting of the proposed project, a "balancing of public interests" test must be conducted as set forth in the Court of Appeals' decision in *Matter of County of Monroe v. City of Rochester*, 72 N.Y.2d 338; and

WHEREAS, under the balancing test, the Town of Riverhead should weigh the following factors to determine whether the County of Suffolk must comply with the Town Code in connection with the renovation, construction, and/or siting of the proposed project located within the Town:

1. the nature and scope of the instrumentality seeking immunity,
2. the encroaching government's legislative grant of authority,
3. the kind of function or land use involved,
4. the effect local land use regulation would have upon the enterprise concerned,
5. alternative locations for the facility in less restrictive zoning areas,
6. the impact upon legitimate local interests,
7. alternative methods of providing the proposed improvement,
8. the extent of the public interest to be served by the improvements, and

9. intergovernmental participation in the project development process and an opportunity to be heard; and

WHEREAS, by Resolution #133, adopted on February 6, 2008, the Town Board of the Town of Riverhead scheduled a public hearing for March 4, 2008, to consider whether the proposed renovation, construction, and/or siting of the driving range, golf professional shop, miniature golf course, and golf cart barn at the Indian Island Golf Course must comply with the Town Code of the Town of Riverhead under the balancing test set forth in the *County of Monroe* decision; and

WHEREAS, notice of the public hearing was duly given; and

WHEREAS, the Town Board of the Town of Riverhead conducted a public hearing on March 4, 2008, and heard testimony from all interested parties requesting to speak on the matter at issue; and

WHEREAS, the Town Board of the Town of Riverhead accepted written documents concerning the matter into the record until March 11, 2008; and

WHEREAS, the Town Board of the Town of Riverhead has carefully considered all the evidence submitted in connection with this matter in the context of the "balancing of public interests" test;

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Riverhead makes the following Findings and Determination:

FINDINGS AND DETERMINATION

1. Pursuant to *Matter of County of Monroe v. City of Rochester*, (72 N.Y.2d 338), the County's renovation, construction, and/or siting of the proposed project are presumed to be subject to the Town Code of the Town of Riverhead absent an expression of contrary legislative intent.

2. There is no expression of legislative intent to exempt the County's renovation, construction, and/or siting of the project from compliance with the Town Code.

3. The James A. Coon Local Government Technical Series, promulgated by the New York State Department of State, instructs a municipality that is developing a project in another community to assume that the project be subject to the host community's zoning requirements and that any disagreement between

the parties should be resolved by the appeals process of the host community.

4. The County of Suffolk is a municipality created pursuant to New York State law without any overriding authority to undertake the proposed project in the Town of Riverhead.

5. The proposed project is designed for the Indian Island Golf Course Park, located on Riverside Drive, within the Tourism/Resort Campus ("TRC") zoning district of the Town of Riverhead.

6. The proposed project involves a golf course, which is a function or land use more traditionally owned and operated by the private sector, not a municipality. In fact, the County leases the golf course to a private entity that manages and operates the facility.

7. The Indian Island Golf Course Park is within the Peconic Estuary and the proposed action includes a significant amount of construction within the fragile parkland and in the immediate vicinity of the Peconic Estuary.

8. Pursuant to the Town Code of the Town of Riverhead, the proposed action would require, among other things, a special permit, site plan approval, coordinated review pursuant to the State Environmental Quality Review Act ("SEQRA"), review by the Conservation Advisory Council and the Dark Skies Advisory Committee, fire safety review, an excavation permit, a building permit, and a certificate of occupancy.

9. A golf course is not a permitted use in the Town's TRC zoning district.

10. A golf course is a prohibited use in the Town's TRC zoning district.

11. The Indian Island County Golf Course is a pre-existing nonconforming use at its present location.

12. The proposed project would extend and intensify the pre-existing nonconforming use and require the issuance of a special permit by the Town Board.

13. Review by the Town Board, pursuant to the special permit criteria set forth in Article XXVIA, would afford the Town an opportunity to, among other things, ensure that the health, safety, and welfare of its inhabitants will not be adversely affected by the proposed project.

14. The proposed project does not have site plan approval as required by the Town Code.

15. Prior to commencing construction at the site, the County of Suffolk failed to notify the Town of Riverhead about the project and failed to secure approvals required under the Town Code for such a project.

16. On February 29, 2008, the Riverhead Building Department served the County with a Stop Work Order directing that excavation and construction at the site be stopped until violations of the Riverhead Town Code were corrected.

17. Despite the Stop Work Order, the County has not applied for the approvals required under the Town Code for such a project.

18. The Town of Riverhead's permitting process would allow full analysis to be made regarding the suitability of the site from a land use and environmental perspective.

19. Traffic issues for the site need to be studied. The proposed project will generate additional traffic. It will draw additional vehicles specifically to the site based on the expansion and intensification of the use at the site. It is also likely that the increase in traffic will have a significant adverse impact on the already crowded intersection of Riverside Drive at Route 105.

20. The County has commenced the above-described work by, among other things, importing sand/soil to the site. The County undertook this action without providing the Town with the proper assurances that the sand/soil is not contaminated, as required by Town Code. Such assurances are particularly important because of the site's close proximity to the Peconic Estuary.

21. By letter dated March 4, 2008, the Planning Board of the Town of Riverhead advised the Town Board that proper site plan review is required for this project for numerous reasons.

22. Among other things, site plan review by the Planning Board would address zoning, traffic, safety, environmental and SEQRA concerns, and provide for the mitigation of these concerns.

23. By letter dated March 4, 2008, the Town of Riverhead Conservation Advisory Council advised the Town Board that the project should be reviewed pursuant to Chapter 107 of the Town Code because of its close proximity to the Peconic Estuary.

24. Conservation Advisory Council review, pursuant to Chapter 107, would afford an opportunity for the Town to address and mitigate numerous potential environmental concerns with the project.

25. The project also requires review by the Town's Dark Skies Advisory Committee because of the outdoor lighting required to operate the driving range in the nighttime hours. Article XLV of the Town Code specifically addresses outdoor lighting.

26. Review pursuant to Article XLV would afford an opportunity for the Town to address and mitigate potential concerns with the outdoor lighting included in the project.

27. Alternative locations for the project exist in less restrictive zoning areas. For example, the County could construct a miniature golf course on other property it owns in zoning districts that permit such a use, which would be far more appropriate than the present site unilaterally picked by the County.

28. Prior to the implementation of the proposed project, the Town of Riverhead enacted a Comprehensive Master Plan and adopted new zoning legislation to encourage conformity with the Master Plan.

29. The proposed project is not in conformity with the Master Plan.

30. There is a significant degree of public interest in the proposed project because it is located on fragile public parkland within the Peconic Estuary.

31. As described above, the proposed project could create serious potential adverse impacts on the community that warrant serious review.

32. The Town of Riverhead has historically followed a policy of requiring municipal projects within the Town to comply with the Town Code. The Long Island Power Authority, the Riverhead Fire District, the Riverhead Water District, and the Town itself have been subjected to the requirements of the Code. In addition, the Town recently determined that the fueling facility constructed at the Indian Island Park by the County of Suffolk must comply with the Town Code.

33. The County of Suffolk did not allow the Town of Riverhead to participate in the planning or siting of the proposed project. In addition, neither the Town of Riverhead nor the public was provided with an opportunity to be heard in connection with the project prior to commencing the construction and excavation already underway.

34. The Town advised the County and the vendor that the proposed project must comply with local code requirements. To date, neither the County nor the vendor has applied for applicable permits or approvals.

BE IT FURTHER

RESOLVED, that based upon the foregoing, the Town Board of the Town of Riverhead, after due deliberation, finds that the proposed project, as described above, at the Indian Island County Golf Course, located on Riverside Drive, Riverhead, New York, must comply with the Town Code of the Town of Riverhead; and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a certified copy of this resolution to the Riverhead Planning Department, the Riverhead Building Department, the Riverhead Conservation Advisory Council, the Riverhead Fire Protection Division, the Riverhead Town Attorney, Smith, Finkelstein, Lundberg, Isler & Yakaboski, LLP., 456 Griffing Avenue, Riverhead, New York, 11901; the Suffolk County Attorney, at 100 Veterans Memorial Highway, Hauppauge, New York, 11788; and Assistant Suffolk County Attorney, John R. Petrowski, at 100 Veterans Memorial Highway, Hauppauge, New York, 11788.

THE VOTE

Buckley yes no Wooten yes no
Dunleavy yes no Blass yes no
 Cardinale yes no

THE RESOLUTION WAS WAS NOT
 THEREFORE DULY ADOPTED