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# MEMORANDUM

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP

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**DATE:** February 5, 2015

**TO:** Town of Amenia Planning Board

**FROM:** Peter J. Wise

**RE:** Silo Ridge Field Club: Supplementary Planning Board Approvals, Waivers, and Determination pursuant to §121-18.C(7) of the Town Zoning Law

**CC:** David Everett, Esq.  
Mary Ann Johnson, AICP  
Dr. Michael W. Klemens  
Julie S. Mangarillo, P.E., CPESC  
Pedro Torres  
Juan Torres  
Michael Dignacco  
Amanda DeCesare, P.E.

Silo Ridge Ventures, LLC (the “Applicant”) has applied to the Planning Board for the following principal approvals with respect to the resort community now known as “Silo Ridge Field Club” (the “Modified Project”): (i) amended special permit/master development plan approval for the Modified Project; (ii) special permit approval for the uses proposed to be located on the property owned by Harlem Valley Landfill Corp. (golf course improvements; maintenance facility; wastewater treatment plant); (iii) site plan approval of the first phase of the Modified Project; and (iv) preliminary subdivision approval (including a lot line adjustment to incorporate as part of the site approximately 6.4 acres of the Harlem Valley Landfill Corp. property).

In addition to the principal approvals, certain supplementary Planning Board waivers, a supplementary approval, and a supplementary determination pursuant to §121-18.C(7) of the Town Zoning Law, are required to accommodate the most recent, proposed master development plan/site plan for the Modified Project.<sup>1</sup> Those waivers, approval, and determination, and the Applicant’s justifications for them, are as follows:

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<sup>1</sup> As shown on the site plan drawings last revised January 8, 2015.

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1. Approval/waiver: Waiver of §105-21.A(1) and §105-21.A(3) of the Town Subdivision Code<sup>2</sup>.

(a) Requirements:

All lots must contain a “buildable” area of 5,000 square feet “providing sufficient suitable area for dwelling, driveway and other permitted accessory structures.” The buildable area “shall be so positioned as to allow the siting of buildings meeting all zoning district requirements, as well as the following criteria: (1) Maximum slope of less than 15%... and (3) a depth of undisturbed usable soil with respect to seasonal or prolonged high-water table and bedrock of not less than four feet.”

(b) Justification:

Town Zoning Law §121-18(A) expressly provides that “the purpose of the RDO District is to provide use and design flexibility to encourage resort development on appropriate large properties....” To ensure that this design flexibility is preserved, the use regulations of the RDO District supersede the use regulations of the underlying district, and the bulk and dimensional regulations supersede “the density and dimensional standards in § 121-11, all other density and dimensional regulations in this chapter other than those contained in this § 121-18, and the parking and loading requirements in § 121-38” of the Zoning Law (see § 121-18.C(5) of the Zoning Law).

Design flexibility in the RDO District is also preserved by §105-3 of the Subdivision Code, which provides that if there is a conflict between the Subdivision Code (Town Code Chapter 105) and the Zoning Law (Town Code Chapter 121), the Zoning Law governs. The regulations of the RDO District therefore supersede inconsistent provisions of the Subdivision Code.

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<sup>2</sup> Unless otherwise indicated, all waivers under Town Code Chapter 105 – the Subdivision Code - are pursuant to §105-33, which provides as follows: “This chapter grants the Planning Board with specific waiver authority in specified circumstances, to be exercised in the Planning Board’s sole discretion. The Planning Board has also been granted authority, as specified in § 277 of New York State Town Law, to waive, when reasonable, any requirements or improvements for the approval, approval with modifications or disapproval of subdivisions submitted for its approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event any such requirements or improvements are found not to be requisite in the interest of the public health, safety and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision. However, the Planning Board’s authority to waive specific requirements or improvements does not include the ability to waive the initial public hearing of a proposed subdivision as set forth in this chapter and New York State Town Law.”

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Given the Town's unequivocal intent to make the flexible design regulations of the RDO District controlling, we believe that §105-21.A of the Subdivision Code is inconsistent, and therefore superseded. We also note that §105-21.A is not required to be applied to existing conditions rather than post-improvement conditions (i.e., after approved grading). After grading, only townhome lots T2 through T12 will have less than 5,000 square feet of "buildable" area having slopes of 15% or less, and then only because the total area of each of these lots is less than 5,000 square feet. All of these townhome lots are located in the resort core, and the layout of the lots results in less land disturbance and grading, and increased open space. Section 105-21.A of the Subdivision Code cannot reasonably be applied to these fee-simple townhome lots having less than 5,000 square feet of total lot area.

We believe that all of the other fee-simple lots will comply with §105-21.A of the Subdivision Code, because after grading, each lot will have 5,000 square feet or more of "buildable" area having slopes of 15% or less. Nevertheless, to the extent that Town concludes that §105-21.A is applied to the existing condition and not the improved (graded) condition, then a waiver is required for the following lots: E1-E8, E12, E15-E24; E29, E31-E33, E35-E56; CM1, CM4, CM5, CM8-CM18, CM20, CM21; VG3-VG8, VG18-VG24; LL5-LL7, LL9, LL10, LL12, LL18, and LL27-31. Regarding the waiver, it should be noted that overall, the Modified Project reduces disturbance to steep slopes compared to the current approved project<sup>3</sup>, as follows:

- 20.6% less disturbance of slopes 15% and greater within the development area;
- 17.6% less disturbance to "natural forested areas"; and
- 18.9% less disturbance to steep slopes overall.

The Modified Project achieves these reductions in impact while protecting other natural features of the site including water bodies, naturally forested habitat, and open space, and natural visual resources. In addition, as more fully described in the Addendum to the EAF dated January, 2015, potential impacts to steep slopes are mitigated by:

- Implementation of the Habitat Management Plan;
- Implementation of the Natural Resource Management Plan;
- Implementation of the Storm Water Pollution and Prevention Plan pursuant to NYSDEC GP-0-15-002, and in compliance with East of Hudson Standards; and

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<sup>3</sup> The "current approved project" means the development program permitted in accordance with the approved October 8, 2009 master development plan.

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- Implementation of the Amended Master Development Plan (“Amended MDP”), including the Estate Home Design Standards.

The Applicant believes waivers of §105-21.A(1) and §105-21.A(3) of the Subdivision Code (which requires the “buildable” area to have four (4) feet of “undisturbed usable soil with respect to seasonal or prolonged high-water table and bedrock”), will not adversely impact public health, safety and general welfare. The Applicant, in consultation with the Town Engineer, has concluded that that purpose of the “buildable” area requirements is to ensure the provision of an area that can accommodate on-site septic and well water systems. However, the Modified Project will be served by community (public) sewer and water systems, making compliance with these requirements unnecessary.

2. Approval/waiver: (i) Waiver of §105-22.E of the Subdivision Code; (ii) Approval under §105-22.H(2) of the Subdivision Code; and (iii) Waiver of §105-22.H(3)(e), (g), (h), (j), (k) and (m) of the Subdivision Code.

(a) Requirements:

(i) Within 40 feet of all intersections, roads shall be approximately at right angles, and grades shall be limited to 1.5%.

(ii) Planning Board may approve more than 15 lots on a rural lane.

(iii) Under §105-22.H(3):

- §105-22.H(3)(e): Rural lane pavement width is a minimum of 18 feet.
- §105-22.H(3)(g): Rural lane maximum grade is 10%.
- §105-22.H(3)(h): Rural lane minimum curb radii is 20 feet
- §105-22.H(3)(j): Rural lane maximum grade within 150 feet of center-line intersection is 1.5%;
- §105-22.H(3)(k): Rural lane minimum sight distance is 150 feet; and
- §105-22.H(3)(m): Rural lane angle at intersection of road center lines is 90°.

(b) Justification:

The proposed “rural lane” road design is an essential component of the Modified Project, which could not feasibly be developed in accordance with the regulations of the RDO District, and without greater environmental impacts, if roads are limited to serving 15 or less

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lots. The Applicant believes that permitting more than 15 lots on the proposed roads will not adversely impact public health, safety and general welfare, and, as required under §105-22.H(2) of the Subdivision Code, will not increase the otherwise allowable density of development, will provide an alternative to the development of additional new roads, will not conflict with existing abutting residential uses, and will advance the purposes of the Subdivision Code and Zoning Law, including, in particular, the preservation of open space and natural and scenic resources.

We note that the proposed rural lanes/roads have been generally designed in accordance with §105-2.E of the Subdivision Code, which in pertinent part provides that:

“Where a subdivision is designed to be rural in nature, roadways shall be designed in a manner which, together with the design of the lots, encourages rural, as opposed to suburban, quality and image and shall be, wherever appropriate, private, so that maintenance of such roadways shall not be a cost of the Town. The construction of such private roadways need not meet Town highway specifications for a public road but shall be sufficient to service all lots on such roadway with all manner of traffic.”

Waiver §105-22.E of the Subdivision Code, and of 105-22.H(3)(e),(g),(h),(j) and (m) of the Subdivision Code, allows the Applicant to further reduce environmental impacts by reducing the retaining walls, clearing, and grading on the site, thereby in turn reducing potential visual impacts. Specifically, the roads have been designed to have intersections with angles less than 90° so that disturbance and clearing of existing vegetation is minimized. The approach grades at intersections vary, but are as close to 1.5% as can be achieved while minimizing grading and best accommodating existing topography, which furthers the objectives of the Hamlet Design Guidelines, and Greenway Connections.

It is important to note the following mitigation measures with respect to road design:

- The roads will be private, and the master homeowners association will bear with all expenses of maintenance, repair and restoration;
- The Applicant will provide a performance bond to ensure completion of all roads;
- All roads have been reviewed by the Town consultants and the Amenia and Wassaic Fire Companies. All roads have been designed to meet the recommendations of the Fire Companies;
- All roads will comply with applicable requirements of the 2010 Fire Code of New York State;

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- Road design reduces impacts to natural and scenic resources;
- Road design and site layout is consistent with, and furthers the policies and objectives of, Greenway Connections rural road guidelines, which encourages rural roads to be context sensitive, designed to reflect the character of the surrounding countryside, and compatible with slower farm equipment, nearby vegetation, and crossing wildlife, and provides that road design should:
  - Maintain natural and cultural roadside features, such as rock outcroppings, stone walls, and rows of trees;
  - Limit grading and clearing to the minimum necessary, based on traffic volumes and visibility at curves;
  - Reduce access points by promoting shared driveways; and
  - Consider alternatives to standard asphalt, such as porous paving, chip seal, or gravel.

3. Approval/Waiver: Waiver of §105-22.G(1), (2), (3) and (4) of the Subdivision Code<sup>4</sup>.

(a) Requirements:

- §105-22.G(1): Not more than 15 single-family residential lots may gain access from a cul-de-sac road;
- §105-22.G(2): A cul-de-sac road shall be restricted to a maximum of 10% grade and to a length of 1,500 feet;
- §105-22.G(3): A turnaround with a right-of-way radius of at least 50 feet and a pavement radius of 30 feet to 40 feet shall be provided at the end of any permanent cul-de-sac or permanent dead-end road; and
- §105-22.G(4): The center of all cul-de-sac road turnaround areas shall have a center landscape island area planted with landscape materials or left in its natural state.

(b) Justification:

The Modified Project is proposed to have dead-end roads with standard 120 foot hammerheads in lieu of traditional cul-de-sac roads. The roads have been designed to be rural in character and to preserve natural and scenic resources, and the road design minimizes

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<sup>4</sup> Pursuant to §105-22.G(6), which provides as follows: “The Planning Board may waive one or more of these cul-de-sac road standards in its sole discretion, upon a determination that the requested waiver will not endanger public health and safety, will not increase the otherwise allowable density of development, will provide an alternative to the development of new Town roads, will not conflict with existing residential uses, and will advance the purposes of this chapter and the Zoning Law, including, in particular, the preservation of natural and scenic resources.”

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disturbances to natural forested habitat with slopes 15% and greater by 13.7± acres compared to the current approved project. In accordance with §105-37 of the Subdivision Code, road design is consistent with Greenway Connections rural road guidelines, siting principles and planning objectives for protecting site features such as mature trees, rocky slopes, stone walls, and streams, and limiting grading and clearing to the minimum necessary.

The use of hammerheads (which will be constructed with pervious pavers) instead of cul-de-sacs, and the increase in grade of certain road sections to 13%, reduces grading impacts and retaining walls, and provides better access to the lots. The proposed road design – including road length - is an essential component of the Modified Project, which cannot feasibly be developed in accordance with the regulations of the RDO District, and without greater environmental impacts, if road length is limited to 1,500 feet.

As required by §105-22.G(6) of the Subdivision Code, the proposed dead-end roads with hammerheads will:

- Not endanger public health and safety. All roads have been reviewed by Town consultants, and comply with all recommendations of the Amenia and Wassaic Fire Companies. The standard 120 foot hammerhead is designed in accordance with 2010 Fire Code of New York State Figure D103.1 (Dead-end Fire Apparatus Access Road Turnaround).
- Not increase allowable density of development. The Modified Project is well under the allowable development density, and reduces density (including lodging units) by more than 455 units compared to the current approved project.
- Not conflict with any existing residential uses.
- Advance the purposes of the Subdivision Code and Zoning Law, including the preservation of natural and scenic resources.

4. Approval/Waiver: Waiver of §105-22.L(2), (4) and (5) of the Subdivision Code.

(a) Requirements:

- §105-22.L(2): Adequate sight distance, as specified in §105-22.F(1), shall be provided;
- §105-22.L(4): Driveway grade shall not exceed 12%; and
- §105-22.L(5): Driveways shall slope from the road at a grade of not greater than 2% for a minimum distance of 20 feet measured from the edge of pavement.

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(b) Justification:

Waiver of §105-22.L(2), (4) and (5) will not adversely impact public health, safety and general welfare. All driveways have been reviewed by the Town consultants and the Amenia and Wassaic Fire Companies. Driveways have been designed to take into consideration the rural character of the Town and expressed policies of minimizing environmental disruption, and grade shall not exceed 15%. The benefits of the proposed driveway design are:

- Reduction of clearing of existing vegetation;
- Reduction of grading disturbances;
- Reduction of retaining walls;
- Reduction of potential visual impacts; and
- Reduction of impervious surfaces.

In accordance with the recommendations of the Town consultants, the following mitigation measure is being provided for all driveways not complying with §105-22.L (3) and (4):

- A trench drain shall be required for all driveways that exceed the maximum 12% grade and that do not comply with the slope down and away from the road at a grade of not greater than 2% for a minimum distance of 20 feet measured from the edge of pavement.

5. Approval/Waiver: Waiver of §105-24.A(1), (2), (4), (6) and (7), of the Subdivision Code.

(a) Requirements: The following improvements shall be provided unless waived by the Planning Board pursuant to §105-24.A:

- §105-24.A(1): Parks, playgrounds or other public open spaces of adequate size and location for recreational purposes.
- §105-24.A(2): Paved common driveways and driveway aprons.
- §105-24.A(4): Road lighting.
- §105-24.A(7): Road trees and treatment of buffer areas and other required landscaping.

(b) Justification:

The Modified Project is a master planned community the design of which has been thoroughly reviewed by the Planning Board and its consultants. Because it is



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comprehensively planned and designed as an integrated development under the regulations of, among other special districts, the RDO District and SPO District, provision of some of the kinds of improvements typically required in a conventional single-family home subdivision is either not called for, or would be contrary to the Applicant's and Town's design objectives as expressed in the Amended MDP. Specifically:

- The Modified Project provides an 18 hole golf course and related recreational amenities, as well as a total of 538.4± acres of conserved open space, and a public scenic overlook. Other public open spaces are not called for under RDO District regulations.
- The internal, private roads will be paved. However, to maintain rural character, certain Estate Home lot owners may elect not to pave driveways and driveway aprons.
- The site lighting is intended to complement, and comply with, the proposed Amended MDP. The design is informed by the development patterns of the Hudson Valley, in which town and country are realized as hamlets within rural landscapes. A characteristic of Hudson Valley hamlets and farms is limited site lighting which helps to preserve the dark night sky. For instance, the Town only has street lights on Route 343 around the town center (intersection of Routes 343 and 22). No other streets in the Hamlet of Amenia have street lighting. To maintain this rural character, no road lighting is proposed. Furthermore, by not providing road lighting, night sky impact and energy use will be reduced.

6. Approval/Waiver: Waiver of § 121-14.1.G(1) of the Zoning Law<sup>5</sup>.

(a) Requirement: A continuous green buffer, at least 100 feet deep along Routes 44, 22, and 343, and 50 feet deep along the other scenic roads or trails, shall be maintained.

(b) Justification:

All plans provide, through preservation or restoration after disturbance, a continuous "green buffer" at least 100 feet deep along Routes 44 and 22. A waiver was previously granted for the crossing of the buffer by the access driveway for the Artisan's Park Overlook/Winery Restaurant/Vineyard Cottages, and related underground utilities. Because the plan for that portion of the Modified Project is the same as the current approved plan, a new waiver is not required. However, a waiver is required for work to the portions of the existing main and

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<sup>5</sup> Pursuant to §121-14.1L and §121-18.C(10)(d) and (e) of the Zoning Law.

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southern, secondary access roads located in the buffer, and for the construction/installation of underground utilities in those general areas. The entrance roads are the essential means of access to the site, and the underground utility crossings are reasonably required to facilitate the development of the site in accordance with the proposed Amended MDP. In each case, maintenance of the rights-of-way and underground utilities will not impair the scenic preservation purposes of the SPO District, or adversely impact any existing residential uses. We also note that a Confirmatory Visual Analysis which considers these project features has been performed.

7. Approval/Waiver: Determination pursuant to §121-18.C(7) of the Zoning Law.

(a) Requirement:

Streets shall generally be interconnected, and permanent culs-de-sac shall only be permitted where wetlands, watercourses, or steep slopes make street interconnections impractical. In such cases, pedestrian paths and public stairways shall be provided where possible. The average area of a block shall not exceed 2.5 acres. All streets shall be offered for dedication to the Town, and no street shall be gated.

(b) Justification:

The Applicant acknowledges that, like the current approved project, the Modified Project does not fully comply with TND principles with respect to the single-family homes, Vineyard Cottages, private streets and gated entrances. The single-family homes located along the western boundary of the golf course and the bottom of the wooded hillside are within comfortable walking distance of the Village Green core area, but do not fully comply with TND principles. The Vineyard Cottages are physically separate and distinct from the Village Green area, and have a recreational area separate and distinct from the recreational facilities located in the Village Green area. Streets are not generally interconnected, although this directly results from preservation of existing environmental features in furtherance of other Town goals and objectives (and in compliance with other regulations), including wetlands, and steep slopes.

Like the current approved project, the Modified Project is intended to be, and will be heavily marketed as, a second-home club community, in which the vast majority of residential unit owners are expected to be part-time residents who occupy their homes on weekends or for short vacation stays. A large-scale commercial component would not be consistent with the rural/recreational character of the resort community, and would neither be financially

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feasible, nor meet the Applicant's goals and objectives. A larger and broader retail commercial program would also compete with, and have potential adverse economic impacts on, the Hamlet of Amenia. The proposed commercial component appropriately advances the desired character of the community by "incorporating elements (a small general store, golf pro shop, restaurant, etc.) to fulfill the convenience needs of the part-time residents as it relates to the recreational and second home focus of the project" (see Mary Ann Johnson comment memo dated May 14, 2014). The proposed reduction in on-site commercial space compared to the current approved project will limit potential competitive impacts to the Hamlet and encourage additional patronage of hamlet businesses, creating the type of synergy between the new residents and existing hamlet businesses described in the Town Comprehensive Plan. These more modest, targeted commercial uses will complement existing uses in the Town, which will in turn be supported by approximately \$1.5 million of community resident spending on meals and food, \$700,000 on transportation and gas, and \$1.1 million on retail goods, annually. This revenue is vital to the economic growth of the Hamlet of Amenia and the region.

Due to the nature of the Modified Project as a second-home, resort community, it does not fully comply with the principles of TND, and the Applicant therefore requests a determination pursuant to §121-18.C(7) of the Zoning Law that, to the extent of the non-conformity, these principles do not apply. For the reasons set forth above and in the memorandum addressing TND dated August 26, 2014, the Applicant submits that as permitted under §121.18.C(7) of the Zoning Law, the Modified Project complies with TND principles to the extent reasonably practical and appropriate, given the overriding objective of the RDO District to preserve natural resources, and the essential rural/recreational character of the resort community.

Finally, we note that §105-25.B and §105-25.C of the Subdivision Code are superseded (pursuant to §105-3) by §121-65.D(1)(h) of the Zoning Law, which provides that:

"Newly installed utility service systems, and service modifications necessitated by exterior alterations, shall be installed underground. When feasible, existing aboveground utility service systems shall be placed underground."

No waivers of §503 of the 2010 Fire Code of New York State (regarding "fire apparatus access roads") are required.

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## SUMMARY:

The Applicant requests the following supplementary waivers, approval, and determination:

1. Waiver of §105-21.A(1) (for the lots identified above) and §105-21.A(3) of the Subdivision Code.
2. Waiver of §105-22.E of the Subdivision Code.
3. Approval under §105-22.H(2) of the Subdivision Code, and waiver of §105-22.H(3)(e), (g), (h), (j), (k) and (m) of the Subdivision Code.
4. Waiver of §105-22.G(1), (2), (3) and (4) of the Subdivision Code.
5. Waiver of §105-22.L(2), (4) and (5) of the Subdivision Code
6. Waiver of §105-24.A(1), (2), (4) through (7), and (12) of the Subdivision Code.
7. Waiver of §121-14.1.G(1) of the Zoning Law.
8. Determination pursuant to §121-18.C(7) of the Zoning Law.