FINDINGS AND RECOMMENDATIONS OF THE PLANNING BOARD

PRELIMINARY STATEMENT:

In 1972, the Town of Cairo adopted a comprehensive plan pursuant to NYS Town Law § 272-a. This plan was then updated sometime around 2004 and is available on the town's website. Section 272-a requires that any land use laws adopted must be in accord with the goals as set forth in the comprehensive plan.

The plan's vision statement provides that Main St. should be "filled with vibrant businesses"[1] and that the town should have a "diversity of retail and service business that meet the needs of local residents and provides jobs for all income and education levels,"[2] while at the same time taking advantage "of one of our most important assets - our great scenic beauty and small town ambiance."[3]

In order to achieve these goals, the plan envisioned certain benchmarks that should be achieved by 2018. In part, those include, no empty storefronts on Main St.,[4] a diversity of businesses "located outside the downtown core [that] supports and complement those located in the core."[5] The tax base should be broadened to include "incentives for continued investments in properties" where "[p]rosperous commercial [and] light industrial development . . . have added significantly to the tax base."[6]

The plan identified certain of the town's strengths, including an "interest and willingness for economic development," "land available for development," "natural resources for open space and recreation" and "affordable housing opportunities."[7] Also identified were weaknesses. These included, "lack of [local] employment [opportunities]" and a "perception that [site plan] project review is difficult and not very business friendly."[8]

The plan also identified certain opportunities Cairo has to reach the stated goals. There was a "[d]esire for more job and retail growth . . ." and "opportunities to continue commercial development in [the] hamlets."[9] Cairo also provides an "[e]xcellent location in [the] region to draw business and tourism from major urban areas."[10]

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[1] Cairo Comprehensive Plan at 6.
[2] *Id.*
[3] *Id.*
[4] *Id.* at 7.
[5] *Id.*
[6] *Id.* at 7-8.
[7] *Id.* at 9.
[8] *Id.* at 10.
[9] *Id.*
[10] *Id.*

Finally, the plan identified threats that could possibly prevent Cairo from achieving its stated goals. Those included, "[l]ack of land use controls," "[l]ack of commercial development [that] impacts the tax base and makes it difficult for residents to find work" and "[l]ack of [a] stable atmosphere for investment in new businesses and properties . . . ."[11]

Against this encouragement of business development is the backdrop of keeping the town's "forested character . . . intact" and insuring that the '[v]iewsheds to the impressive mountain range are open and remain the dominant visual element of our town."[12] While the two are not mutually exclusive, they are in conflict. A balance must be maintained between commercial development and protection of natural resources. If the town becomes too focused upon its natural and architectural aesthetics, the restrictions imposed will choke needed commercial development. Conversely, a lack of adequate control may result in commercial sprawl that could potentially destroy the town's natural beauty.

The planning board believes that such a balance can be maintained through well-crafted zoning regulations tailored for the town's specific needs. The town should endeavor to retain and expand commercial and retail spaces while protecting those areas that have established residential uses. After reviewing the proposed law, we believe that it lacks proper balance because it unreasonably favors aesthetic over business concerns. We believe that many of the conditions and site design criteria set forth are unnecessarily restrictive, and too expensive for most of our local citizens to meet. The focus on the aesthetic of the development, especially in areas that are proposed as commercial or mixed use, will needlessly increase the applicant's development costs to the point where it becomes economically unfeasible to open a profitable business. We therefore recommend the following changes to the proposed zoning document.

A. GENERAL RECOMMENDATIONS

1. **Elimination of Internal Incorporation of Other Laws' Statutory Language.** The statutory or regulatory language of other laws that is quoted within the document should be eliminated. For example, paragraph A.2 of § VII, "General Regulations for all Districts," contains language that specifically references the EPA's "method 9 or 22" used to determine smoke emission. Paragraph F.1 of the same section makes reference to "EPA's phase II NPDES regulations. Paragraph F.13 specifies certain acreages of disturbance necessary before NYSDEC SPDES regulations apply. This will lead to obsolescence when regulations are, inevitably, changed. In fact this entire section could be reduced to one simple paragraph that states "all current Federal and NYS DEC erosion and storm water control management practices shall be observed."

[11] *Id.*
[12] *Id.* at 7.

2. **Streamlining of Language Cross-Reference Overlap:** This document combines elements of the current subdivision and site plan laws while leaving those as "stand alone" laws. This will lead to conflict when one or more are amended without adequate cross-referencing the changes. The board should do one of two things. Either (1) combine all three laws into one, or (2) remove all subdivision and site plan x-references in the zoning document. The board recommends option number 2.

3. **Incorporating Density Dimensions, Regulations and Conservation Subdivision Language into a Stand-alone Subdivision Law.** The board believes that most of section V - Density Dimensions and Regulations, Section VI - Density Incentives and section XIII - Conservation Subdivision Regulations should be included in an updated, stand alone, subdivision law. The board believes that the town's initial foray into zoning should be limited to the siting of commercial vs. residential land uses within the town.

   The board is not opposed to establishing density development regulations, density bonuses and conservation subdivision regulations; we simply do not believe they are a necessary part of a zoning ordinance. In addition, the act of including some subdivision regulations in the zoning ordinance while maintaining a separate subdivision law makes things unnecessarily complex and confusing.

4. **Elimination of Individual Standards for Special Uses.** The Board is particularly concerned with the restrictiveness of Part "F" of Section XV, "Individual Standards for Special Uses." **The board believes this entire section should be eliminated**. There is contradictory language throughout this section. There are arbitrary distinctions between uses that make no logical sense. In general, the provisions contained in this part are overly restrictive and a disincentive to needed and wanted commercial development. In addition, many of the restrictions do not concern land use; they impact internal business operations. The board believes such restrictions have no place in a land use ordinance. Specific objections regarding restrictions and design elements for various listed uses are set forth below in the "Specific Recommendations" section.

5. **New and Converted Two-Family Residences and Accessory Apts.** The arbitrary distinction between new and converted two-family dwellings should be eliminated. In addition, there are numerous irrational concerns with "accessory apartments." The board sees no reason a special use permit should be required to convert an existing single-family residence into a two-family residence when none is needed to build a new two-family residence. In addition, the board sees no justification for any of the restrictions concerning "accessory apartments" when (1) every residence is allowed to have one "as of right" (*see* § XV.F.7.a.4, and (2) it is likely there would be fewer problems associated with an accessory apartment because of the residential presence of the homeowner, and (3) new, two-family homes where there may be an absentee landlord do not require special use permits (SUPs).

6. **Splitting Lots Between Two RR Designations.** The board does not believe that existing lots should be split between two different RR designations. This will just cause problems later on. If the Town Board adopts this board's recommendation that all RR designations have a two-acre minimum lot size, then this comment will not matter. However, assuming different RR designations will have different lot size minimums, the entire lot should be under a single designation. In addition, the locations of the lines dividing single parcels into multiple RR districts were placed on the map without any type of survey. There is no way to ascertain the actual dividing line without a survey.

7. **Expansion of Designated Commercial Districts.** The board believes that he percentage of land designated appropriate for commercial use and development should be expanded as follows:
   - All lands adjoining both sides of State Route 23 from the Town of Catskill to the Town of Windham town lines.
   - All lands adjoining both sides of State Route 32 from The Town of Catskill town line to the 4-way Route 23/32 traffic light.
   - All lands adjoining State Route 145 from the intersection with Route 23 to the Town of Durham town line.
   - All lands adjoining County Route 23-B from the Town of Catskill town line to its most westerly intersection with State Route 23 in Acra.

   The board believes that this expansion is desirable for several reasons:
   - The town needs expanded commercial growth in order to provide jobs and lessen the tax burden on residential properties.
   - The existing highway infrastructure along the state highways and County Route 23-B is designed to support the heavy truck traffic commonly associated with commercial use.
   - Because commercial development already exists in a large portion of these areas, expansion is less likely to negatively impact existing residential use.

8. **Expansion of Designated Industrial Districts.** The board believes that additional land should be designated as an industrial district. Currently, the majority of the designated industrial district is comprised of a contaminated landfill. The board believes it is unreasonable to expect a potential industrial user to locate in a contaminated area and potentially bear the remediation costs. In essence there is really no viable area set aside for industrial uses. The board makes no specific recommendations, however, the board did discuss the route 32 south corridor as well as state route 23 on the north side across from McDonalds in the vicinity of the power lines as viable additional areas.

B. SPECIFIC RECOMMENDATIONS

1. The recommendations listed below correspond to the section, sub-section and paragraph numbers as they appear in the document.

SECTION II. ESTABLISHMENT OF DISTRICTS

E. **Applicability of Zoning**

1. The words "for commercial or multi-family structures" should be removed. They are unnecessary and create confusion.

   It is unclear whether the town board is trying to say that the zoning law (1) permits certain types of commercial concerns to have more than one principal structure on a single lot, or (2) that a single lot may have more than one principal building if one or more of those buildings are used for commercial purposes as opposed to a second, residential unit on one lot.

   Removing the quoted language would clarify the intent while maintaining the "[as] otherwise permitted" exceptions.

SECTION III. EXISTING AND NONCONFORMING USES

A.3. Under the Site Plan Law, any commercial use discontinued for more than one year must come before the planning board before it is re-started. The draft-zoning document requires a three-year period of discontinuance. These periods in the zoning and site plan laws should be consistent with one another. The board recommends amending the Site Plan Law to extend the period to three years.

The board also recommends the term "discontinuance" be fully defined whether within paragraph A.3 or in the definitions section.

I. Pre-existing Accessory Apartments: See general comment # 4, above. The board believes the general concern throughout this law over these apartments is misplaced and overblown. This paragraph is flagged as another location for recommended changes pertaining to accessory apartments. The board recommends removing this paragraph from the law.

J. Why is the expansion limitation of section III.J limited in scope to only dealers, dismantlers or repair shops with licensing requirements? The board should consider expanding this language to include any state licensed business and move this language from this section (III.J) to section III.B.

SECTION IV. USE REGULATIONS.

B. Accessory Uses: The board wonders whether uses incidental and subordinate to currently non-conforming uses will be allowed under this paragraph. There is no distinction made.

C. Schedule of uses: SU: The wording of this paragraph seems to indicate that unless the zoning law says otherwise, all proposed uses that require a SUP must also undergo site plan review. That statement is not true. Not all uses requiring a SUP

under the zoning law are reviewable under the SPL and the zoning law does not dictate which projects must undergo site plan review. E.g., two-family residences & accessory apts. do not require SPL review. The board recommends re-wording the "key to symbols" SU paragraph as follows:

> SU: A use that requires the issuance of a Special Use Permit granted by the Planning Board under the terms set forth in this Zoning Law. Unless exempted by the provision of the Town of Cairo Site Plan Law, any use requiring a Special Use Permit shall also require site plan approval by the Planning Board pursuant to the Town of Cairo Site Plan Law.

Table 1 – Schedule of Uses.

With respect to this table, the board has the following concerns:

1. In the table on page 16, a two-family residential use is "permitted." On page 17, the conversion of an existing single-family into a two-family residential unit requires a SUP. The board considers this an arbitrary distinction that serves no legitimate purpose. The board recommends that any two-family residence should be a permitted as-of-right use.

2. The board believes an accessory apartment should be an as-of-right use. The board does not understand the preoccupation with what it considers a relatively innocuous use entirely consistent with residential purposes. An accessory apartment is comparable to an owner-occupied, two-family dwelling. The board believes that they are even less problematic than regular two-family dwellings because (1) they are often mother/daughter types of occupancies, and (2) since they are owner-occupied dwellings, they are less prone to "absentee landlord" abuses. The resulting disparity of treatment makes no sense:
   a. New two family = permitted use.
   b. Remodeled two family = SUP without expirations
   c. New mother/daughter = ?? (undefined?)
   d. Remodeled mother daughter = SUP with expirations.

   Since a residential lot may have only one single-family residence, and every single-family residence may have an accessory apartment as a matter of right, (see § XV.F.7.a.4) why are we even addressing this issue? And, if one is allowed as a matter of right, why is there a need for a SUP that has an expiration date?

   Again, the board recommends allowing accessory apartments as an as-of-right use (P) unrestricted by lot size. If a two-family residence has no lot size restriction, neither should an accessory apartment.

4. The board sees the total prohibition of auto junk or salvage yards as problematic. If the town must allow for an adult entertainment zone, it probably must also allow

some area where an auto junk or salvage yard can exist. The board recommends siting an auto junk or salvage yard in the industrial zone.

5. The board believes it is unnecessarily restrictive to require a SUP for every major home occupation in every commercial district. The board believes that lawyers, accountants, engineers and other professional service/non retail providers could establish their businesses in commercial and mixed use districts without the need for a SUP. What's the point in having mixed use districts and commercial districts if even relatively innocuous commercial uses must obtain Special Use Permits. There must be some commercial uses allowed in a mixed-use district that don't need SUP's.

6. The board does not understand why a B&B requires a SUP. Neither does the board understand why a SUP is required in every district except mixed commercial? Are not all commercial districts mixed use under this law because as a matter of right you can site single or new two family house anywhere but industrial? What difference does it make where a B&B is sited? The board recommends that a B&B be a permitted use in all commercial and mixed-use districts and only require a SUP when siting in a residential district.

7. The board believes that car repair shops, car washes, car sales, gas station convenience stores should all be allowed in all commercial districts as a matter of right except in the Main St. district. Only site plan review should be necessary.

8. The board believes there is no difference between C23, C23-East and C32S when it comes to siting an educational/training facility. The board believes only site plan review should be necessary.

9. Equipment storage sheds are prohibited on Main St. (MS). The board finds this unreasonable. Businesses and commercial establishments must have some ability to store equipment and supplies on-site. How exactly are businesses supposed to store their necessary equipment and supplies?

11. The board believes an office building of more than 10,000 square feet is a more obtrusive use than a membership club or mortuary/funeral parlor. Yet, the office building needs only site plan review while the membership club/funeral parlor/mortuary must undergo both SUP and SP review.

    The board believes that if an office building of greater than 10,000 square feet needs only site plan review, than the SU designation should be changed to SP on many other smaller uses with lesser potential impacts.

12. The board disagrees with the disparate treatment given to "Service Business w/ no customers at site" when compared with "minor home occupations." Where minor home occupations are allowed as a matter of right, it should not matter whether the occupation is a service occupation or not so long as the home occupation

restrictions are met. The same comment holds true for a service business with customers at site. How can you allow major home occupations in one box in the table yet prohibit "service industries" (accountants/lawyers/chiropractor/hair cutting) in another box in the table? (Compare page 16 with 21)

D. Change of Use

2. The board sees no reason to single out accessory apartments for special treatment. The board believes the language pertaining to accessory apartments should be deleted.

E. Other Uses Requiring Site Plan Approval.

The board believes there is no reason to recite language contained in the site plan law and recommends simply saying that the applicant should check the SPL for other uses that may require SP review.

This section also conflicts with the duties section of the ZEO. In section XVI.A.6, the ZEO is tasked with collecting applications and making determinations of "completeness." This language is confusing. Under the Subdivision and Site Plan Laws, no application is "complete" until there is an environmental review that results in either a negative declaration or a draft environmental impact statement is filed.

The board recommends rewording various paragraphs of section XVI. This is discussed in more detail below.

SECTION V. DENSITY AND DIMENSION REGULATIONS

A. Density Regulations

1. **Density Calculation**

b. The board sees no logical reason for excluding from density calculations the lands listed in paragraphs b.1 through b.4. Consider the following hypothetical situations:

- Assume a 100-acre parcel that is 100% buildable. If the density is 1 dwelling/five acres, then the maximum build-out is 20 houses. Suppose the applicant desires to create a "conservation subdivision." DOH will do a water and sewer analysis. If after reviewing water and sewer needs the DOH says each lot can be no smaller than 1.5 acres, then the developer may situate all 20 houses on only 30 acres. The remaining 70 acres will remain undeveloped, as maximum overall density under the zoning regulations has been reached. [To keep this comparison simple, I am ignoring the "density bonus" provisions.]

- Now, assume the lot is 50% covered by wetlands. Under your proposed restriction, that landowner is penalized for having less desirable building land. 50% of his 100 acres is removed from the density calculation. He would only get to build 10 houses and must keep 85 acres undeveloped. This is an unfair result. This landowner could build the same 20 houses on the same 30 acres and still keep the same 70 acres undeveloped just like the more fortunate landowner.

- Now, assume that 80 of the 100 acres are covered by wetlands and steep slopes that exceed 25% so that only 20 buildable acres remain. Despite the fact that density regulations would allow 20 houses, because the DOH would require a 1.5-acre minimum, the number of potential houses is limited to 15. Under your formula, that owner would be limited to only 4 houses on his 100 acres because you are deleting 80 from density calculations in the first instance. The board considers this unreasonably unfair.

  The board sees no justification for treating landowners differently in density calculations based upon the overall buildable quality of their land. That goes for all listed net-acreage exclusions. The board recommends deleting all language in section V, subsection A, paragraph 1.b after the sentence, "Use of average lot sizes is acceptable."

  The board sees other problems with exempting the noted lands from density calculation. For example:

  - If the entire parcel is within the 100-year flood plain and you exclude the entire parcel then that person has no available land to use for density calculations. Are you saying no building will be allowed on that parcel?

  - Steep topography: The board believes exempting land starting at a 15% slope is unreasonable considering the general topography of the town. A 15% slope translates into about 8 ½ degrees, or a 21inch rise over a 12-foot run. In reality, the slopes going up Mountain Ave from Main St, Bald Hill Rd, Winterclove Rd, German Hill, portions of Ira Vail and CR 67 - just to name a few - likely all exceed a 15 %.

  - The law provides no method for measuring the slope of the land. There is no starting and ending point, nor is there any mention of a required minimum area before measurement is necessary.
    - What two points are used for measurement?
    - Does one use the entire width or length of the land and measure overall?
    - Does one measure from highest to lowest over that distance?
    - What if going in different directions gives different slopes?
    - How about if you confine the measurement between two very close points that account for the majority of the change in elevation and discount all other elevations changes, is that acceptable?

- What if one measuring method results in a 50% reduction but measuring another way does not?

The board believes there is no reason to penalize people who own such land by restricting their ability to develop the unrestricted portion. If the town board's intent is to restrict development on steep slopes, it should consider simply adding that as a restriction but not in a manner that removes that land from density calculations.

B. Regulation of Lot Dimensions - Table 2.

The board disagrees with the minimum lot size designations in all the areas not serviced by existing municipal water and sewer. The board understands that the zoning commission based its lot size recommendations upon water availability and septic percolation constraints. However, the board believes the methodology used is flawed and the results are therefore inaccurate.

Septic:

In the area designated RR1, the minimum lot size designations were based upon a belief that the existing minimum lot size of 1.25 acres could not support conventional septic systems without causing nitrate contamination of groundwater.[13] The study relied upon data obtained from a GIS database.[14] There was no identification of the specific database and so there is no way to evaluate the accuracy or reliability of the database. The study makes broad, sweeping generalizations regarding the nature of how water moves through various hydrogeologic characteristics.[15] Recommended housing density is based upon these sweeping generalizations.[16]

The board believes the town board should not be so quick to enlarge minimum lot sizes based upon what the board believes is questionable data. In addition, less intrusive alternatives are available, such as:

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[13] Steven Winkley, *Groundwater Resources Study and Protection Plan for the Town of Cairo, Greene County, New York*, 24 (2009).

[14] *Id.*

[15] *Id.* at 25. *E.g.*, "High to vary high sensitivity is found chiefly in areas with coarse-grained soils, with the exception of local topographic lows where groundwater discharge is likely occurring." *Id.* (emphasis added). In addition, since no on-site studies were done, there is no determination of where these "local topographic lows" exist.

[16] *Id.* at 25. Calculations are based on "base flow estimates, surficial geology and means annual runoff rates in the region." *Id.* However, the surficial geology characteristics were not determined by on-site inspections but through unidentified GIS data, and upon this are heaped estimated and averages in order to obtain a result. While the board does not question the mathematical accuracy of the result, it does question the accuracy of the underlying data used to obtain the result.

- Individualized soils analysis for projects in areas where percolation rates are questionable
- Soil remediation through the use of "above-ground" or built up septic systems.

Water:

In the area designated as RR2, the minimum lot size designations were based upon a belief that there was not enough groundwater to support the existing minimum lot size of 1.25 acres.[17] However, like the septic analysis, the groundwater (well water) availability analysis is based upon questionable data.

As part of the board's review, the board enlisted the expertise of Nick and Anthony Passero of Cairo Well Drillers. They indicated that there are two predominant methods of drilling wells. Those are best described as the pounding method and the rotary method.

With the pounding method, a heavy (2 ton) tubular steel shaft is held vertically by the drilling rig. There is a drill bit attached to the end of the steel shaft. A rotating cam moves the shaft up and down and the drill bit pounds the ground pulverizing the earth and rock as it pounds out a hole in the ground. In addition, the pounding fractures the surrounding rock creating fissures that allow any existing groundwater to migrate into the well.

With the rotary method, a drill bit is attached to a hollow, rotating shaft. This shaft is forced into the ground under hydraulic pressure. Since heat is created, water is used to cool the bit. In addition the cuttings are removed as this water is extracted from the drill hole. The water combines with the cuttings to create a slurry. The spinning bit actually forces this slurry into existing rock fissures plugging them up. As a result, unlike a pounded well, a rotary drilled well is less efficient at producing water. A rotary drilling rig is also very expensive to purchase and operate. These factors result in deeper wells. The plugging effect means you need a deeper shaft in order to obtain sufficient water and it is simply not cost effective for the rotary operator to drill a shallow well.

There are two reasons that people/developers choose rotary drillers. First, the quoted price per foot is less. What most people do not realize is that the well is ultimately more expensive because it is likely to be drilled deeper than if it is pounded. Additionally, the deeper you go, the more likely you are to encounter sulfur and other undesirable minerals and/or natural gas deposits. Luckily for the homeowner, the well driller can help out here also because he likely offers a wide variety of water treatment systems to remove the contaminants from the well he just drilled for you. The second reason drilled wells are more common is time. A rotary rig can bore through several hundred feet in a day. They can set up, drill, and move the rig to the next job. This is fortunate for them because they have a large overhead expense to deal with.

[17] *Id.* at 27.

A pounding rig takes several days, even longer depending upon the type of rock that must be pounded through. Because these operators need to stay on one site for longer periods of time - and must also pay for their machines - they must charge more per foot. However, as stated above, you get better water, and more of it, at a shallower depth.

Armed with an understanding of well drilling, it was clear to the board that the conclusions drawn in the groundwater study were flawed. According to the Passeros, a vast majority of the wells drilled in Cairo during the study period were rotary drilled. The study does not distinguish between drilled and pounded wells. There is no analysis done regarding well recharge rates in pounded wells vs. drilled wells. Therefore, the data, and the conclusions drawn from the data, are skewed because of the prevalent use of a less efficient well drilling method. It is likely that there is more available water than the study concludes

For the following reasons, the board recommends no greater than a 2 acre minimum lot size where municipal septic and water are unavailable:

- The groundwater study used by the zoning commission is based upon skewed and inadequate data.
- The groundwater study was largely based upon GIS data of uncertain reliability.
- The groundwater study lacks adequate on-site study.
- The groundwater study failed to adequately factor in differences in well drilling methods.
- The zoning commission failed to undertake an analysis of how increasing lot sizes could negatively impact growth. Will potential land purchasers decide to buy in an adjoining community because large lots are more expensive and they do not want so much land? No economic impacts were considered.

While the board makes the above recommendation, it also offers the following alternative should the town board decide to keep the respective 3 and 5 acre minimums: Since the intent of the lot sizes appears to be protection of resources, so long as the applicant can demonstrate adequate water and septic conditions exist, he should be allowed to subdivide his land into smaller parcels accordingly, up to a minimum lot size of 2 acres. This would not apply to conservation subdivisions were a community water supply and sewage treatment plant would service the development.

SECTION VII GENERAL REGULATIONS FOR ALL DISTRICTS

F Stormwater, Drainage, Grading, Erosion and Siltation control

1. The board believes any reference to specific phases should be eliminated and that the law should simply say that construction should conform to the SPDES and/or NPDES regulations currently in force.

2. Reference to specific code language should be eliminated to avoid conflict if the code language changes. Simply say that all existing SWPPP or SPDES regulations must be followed?

3. This paragraph is unnecessary. If the requirements of paragraph 1 & 2 are followed, then this is surplusage. If the SPDES and/or NPDES design requirements change, then the paragraph may end up conflicting with them. This paragraph should be eliminated.

SECTION VIII - SUPPLEMENTARY REGULATIONS FOR SPECIFIC DISTRICTS

A8: This paragraph makes reference to: "aqueous-carried waste," "medicate waste," "pathological waste," "process waste," and "solid waste." These terms are undefined in the proposed zoning law. It should be noted that these terms, as well as variations thereof, appear in other sections of the document. (*see, e.g.*, §§ VIII.C.3.a; VIII.C.8.f).

The board recommends defining these terms in a manner that is consistent with existing definitions, if any, that may be found in NYS DEC or DOH regulations. Otherwise, the board recommends changing the terms to conform with those terms and definitions that do currently exist.

SECTION XIV - DEVELOPMENT REGULATIONS FOR THE PLANNED RESORT DISTRICT (PRD)

A. The board is concerned with this section because it believes that while the intent of the town board is to promote tourist-based commercial business, there is nothing precluding a not-for-profit organization from purchasing land and siting their operation anywhere within the town. The planning board recommends removal of this entire section. The board does not see how the section could be re-written to legally exclude a not-for-profit resort district.

SECTION XV – SPECIAL USE PERMITS:

C The planning board does not need 7 copies of an application, two copies will suffice.

1. **This paragraph should be eliminated**. There is no reason that an EAF or any other SEQRA material needs to be in included with the initial application. Many potential uses or re-uses of existing structures would be "Type II" projects with no review required. In fact, pursuant to paragraph 7 of § 617.5 of the DEC regulations concerning SEQR provides that, "construction . . . of a . . . non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance . . . " is a type II project and no

SEQR review is permitted. In reality, the vast majority of projects are so small in scope that they will not require an environmental review.

The ZEO lacks standing as an "involved agency" to make any SEQR determinations. The ZEO has no SEQR review authority and cannot determine the completeness of any application. The ZEO's authority in the initial application stage is limited to determining whether a use or area variance is necessary prior to planning board review. In addition, § XV.D.3 discusses the SEQRA requirements pertaining to special use permit review. That paragraph is all that is needed.

2. Site plan review is not required under the SPL for 2 family dwelling units. The SPL conflicts with the language in this paragraph. The ZEO lacks the ability to determine whether a site plan review will be necessary.

4. This paragraph should provide for the use of a written escrow agreement between the parties.

5. **There is no reason that applicants should consult with the ZEO regarding submission requirements.** As stated above, the only pre-review function of the ZEO should be to determine whether the proposed action would require a use or area variance prior to planning board review.

D. Procedures

1. **Remove the "notification within 300 feet" requirement and replace it with adjoining landowners only.** Both the subdivision and site plan notification requirements limit notification to abutting landowners. That is a workable, inexpensive and easy to administer standard. Making all the notification requirements consistent would also prevent mistakes in notification.

   This paragraph also specifies who sends out the certified mailings. It should be amended to require the PB send out the notices to the adjoining landowners and place the legal notice in the newspaper as well. **The 300-foot requirement should be eliminated as discussed above.**

   In addition, since the planning board will be sending out the mailings, it is not necessary to send them out certified/return receipt. The board recommends the use of regular, first class mail and a corresponding affidavit of mailing completed by the board's secretary.

11. In *Town of Gardiner v. Blue Sky Entm't Corp.,* 623 N.Y.S.2d 29 (3d Dept. 1995), the defendant's business expanded because it had an increase in the number of skydivers, campers and pilots using the premises. The court affirmed its prior holding that, "[a]n increase in the volume of use, without a significant change in the kind of use, is not considered a proscribed extension of a nonconforming use" *Id.* at 30, *citing Gilmore v. Beyer,* 361 N.Y.S.2d 739, 741 (3d Dept. 1974).

It would appear that some provisions of this paragraph (11) run counter to the cited court decision. In addition, setting legal considerations aside, requiring a business owner to come to the PB to expand his hours of operation is unreasonable, is not related to actual land use but speaks to the internal operation of the business, and not very business friendly.

F. Individual Standards for Special Uses.

AS STATED IN THE GENERAL COMMENTS, THE BOARD BELIEVES THIS ENTIRE SUBSECTION SHOULD BE DELETED FROM THE LAW. HOWEVER, SHOULD THE TOWN BOARD DECIDE NOT TO ACCEPT OUR GENERAL RECOMMENDATION, WE OFFER THE FOLLOWING SPECIFIC RECOMMENDATIONS FOR CHANGE:

1(b) **Major home occupations**

4. This sentence is missing a word or two between "not" and "noise."

5. What constitutes "other exterior evidence of the home occupation?" Isn't the presence of customers' cars, allowed with this usage, such other evidence?

6. Hours of business operation is not a proper consideration for a zoning law as it impacts the internal operation of the business and not the use of land.

2. **Multi Family Dwellings including Senior Housing**.

h. It is inappropriate for the Planning Board to condition the issuance of a SUP on another agency's decision. This should be changed to also comply with the procedural requirement in paragraph XV.D.5.b that only requires proof of other agency applications. The use cannot commence until a certificate of occupancy is issued and no C of O can be issued until all required licenses are obtained. The C of O should be your safeguard, not the SUP.

3. **Gas Station**

c. It should also be noted that this provision would have prohibited Slater's quick stop from installing the propane tanks and high-speed diesel pumps along the outer perimeter of their property. This placement was desirable because it reduced congestion at the regular pump area.

d. "All repair work and storage shall be conducted within a completely enclosed building."
   - What do you mean by "storage"?
   - How about customers' cars?

- What about vehicles that have been towed and for which the garage is charging storage fees? Is that storage?
- Must a tow service store all towed vehicles inside? How about only those for which it charges storage fees? How will you know the difference?
- By storage, do you mean inventory the gas station sells to customers at wholesale or retail? Does inventory include product consumed both on site and sold at retail or wholesale for off site consumption?
- How does one conduct repair work on vehicles and not become considered "car repair" under number 10, below?
- The board finds many of these restrictions to improperly intrude on the internal workings of the business as opposed to being land use issues.

i. **Delete this paragraph; this is a site plan review issue.**

k. Not sure how a gasoline canopy can reflect the design of the building unless you want all peaked roofed canopies. In that case, you can kiss most all your gas stations good bye. Imagine the increased cost involved. Explain again how the increased development costs aid in attracting business to town?

l. Delete this paragraph as unnecessary and not a zoning issue. This is a site plan review issue.

n. Delete this paragraph as unnecessary and not a zoning issue. This is a site plan review issue.

o. Delete this paragraph as unnecessary and not a zoning issue. The town has no authority to review employee-training standards.

p. Limiting hours of operation and fuel delivery times are not proper restrictions for a land use law. They are concerned with internal business practices and outside the allowable scope of a zoning law.

In general, the board finds the restrictions on gas station design and operation overly restrictive and very business unfriendly.

4. **Bed and Breakfast**

a. Compliance with UFPBC standards is a building code issue. Remove this language from this paragraph.

b. What if the character of the residential neighborhood is to have cars parked in view. Wouldn't a place with no cars be out of character?

5. **Convenience Store.**

a. This is not a design criteria issue. This is an enforcement issue.

6. **Mines**

This entire entire section should be deleted. The only notation should be that the activity must conform to current NYS DEC regulations.

Any concerns regarding mines should be addressed in a stand-alone law because the board believes it is too specific, complex and fluid an activity to be addressed in a zoning ordinance. (*see e.g.,* the Town of Cairo Telecommunications Tower Law, Local Law # 1 of 2001, as amended by Local Law # 2 of 2010 as an example of a complicated issue justifying a stand-alone law incorporated by reference into the proposed zoning ordinance.)

7. **Accessory Apartments**

The board lacks authority under the site plan law to review this usage. This zoning law and the site plan law are in conflict on this point.

The board re-states its position that this use should be a permitted as-of-right use. Site plan review and SUPs should not be not required.

4. When you say any lot may contain one accessory apartment by right, and in paragraph 6 say only one accessory apartment is allowable per unit or lot, then why review this at all?

   How will this be enforced when the owner moves and rents to another? What about seasonal rentals while the owner is in Florida for the winter? If we allow new two family dwellings as of right in all areas except industrial, why do we care about this at all?

8. This is a building code issue and has nothing to do with zoning. It should be deleted.

8. **Equipment Storage Associated with Home Based or Commercial Businesses**

a. The board believes the indoor storage requirement is unreasonable and should be deleted.

   Compare this with your "Equipment Storage associated with Major Home or Business or Commercial Use" category on the table on page 18 - specifically the MS district - and you will see that it becomes impossible to conduct a commercial enterprise on Main St. if the

business requires exterior storage. This seems rather unworkable where the only storage option left is basements in an area where basements regularly flood during periods of heavy rain.

c. Delete this reference to parking because parking has nothing to do with equipment storage.

9. **Kennels and Veterinary Hospitals**

Treatment of kennels and veterinary hospitals should be separate. They have totally separate concerns.

The designation of "kennel" should be restricted to commercial business concerns and should not include household pets.

c. The board believes it is unreasonable to limit indoor animal hospitalization care to 6 animals. What possible link is there between the number of sick animals being cared for indoors and the size of the parcel upon which the veterinary hospital sits?

- No veterinarian will open a clinic if 6 sick animals are all that can be cared for overnight at one time.
- The board finds this to be an unwarranted intrusion into the internal operation of the business and not a land use issue.

d. A 100-foot setback from all property lines when the veterinary hospital has an indoor 'kennel' is unreasonable in light of the fact that soundproofing can serve the same purpose.

e. Eliminate the specific parking lot siting regulation.

10. **Car Repair**

The board disagrees with the unequal treatment between car repair shops and car dealers (#24) who also repair cars.

a. The board sees no reason why all repair work must take place in a fully enclosed building.
   - Is the building not fully enclosed if the bay doors are opened during the summer because of the heat? If they have to be closed, won't that mean air conditioning of the repair bays will be necessary otherwise they will become oppressively hot with the doors closed.
   - Is the underlying issue here noise? If so, there are site plan regulations that deal with noise.

- Who's going to be the 72 hr. police? The board recommends this be eliminated as an unworkable/unenforceable provision.
- In addition, the board finds these matters to be unwarranted intrusions into the internal operation of the business as opposed to land use issues.

b. The board strenuously disagrees with the prohibition against car sales. There is no such prohibition for gasoline stations. If car dealers can repair cars, why should car repair shops be prevented from selling them? The board finds these restrictions are aggressively anti-business and unreasonably restrictive regarding normal, long established and accepted business practices. The board finds no reason the town should seek to eliminate lawful business opportunities that are incidental to the principal business. The board finds this to be an unwarranted intrusion into the internal operation of the business as opposed to a land use issue.

c. Since car repair shops are only allowable in a mixed use or commercial district, the board sees no reason why screening must be employed.

d. The board is hard-pressed to name any car repair shop where the bay doors only face the rear yard. The board strongly recommends removing this oppressive design element.

f. The board strongly recommends removing this parking design element.

The board finds these restrictions will do nothing but increase the cost of doing business and potential businesses will look elsewhere.

- No one will open a car repair shop in Cairo with this as the standard that needs to be met.
- There is no need to attempt to make the repair shops look 'pretty' - especially since they are not allowed in purely residential areas anyhow. We are, after all, talking about a car repair shop.

11. **Self Storage Facility**

a. This minimum front setback of 35 ft. conflicts with your tables.

b. What is a "required front yard?" What is a "required transitional yard?" These terms appear in text but are undefined. Nowhere is it explained or stated which uses, if any, require any specific types of yards in order to operate. Are you saying that no structure can be built within the minimum setback distances? If so, then the board believes the language should be clarified.

g. If views of the storage facility must be fully buffered from public rights of way then why can't the fences have razor or barbed wire for added security reasons?

14. **Campground.**

a. Doesn't it make more sense to regulate in terms of # of sites/acre rather than # of persons in the campground?

17. **Hotel/Motel/Country Inn.**

1. According to the definitions section, the term "country inn" includes a "motel" but not a hotel with the difference being the number of rooms. Hotels have more than 25 rooms and country inns (and motels) have 25 or fewer.

2. Reading17.a (Hotel/Motel) and 17b (Country Inn) in conjunction with one another, a hotel or motel cannot have an efficiency unit but a country inn can. So, in reality, if someone wants to put efficiency units in their establishment, all they need to do is call it a country inn. But if the term country inn includes motel, why can't they call it a motel? The board considers the proposed limitation on the business owner's ability to offer efficiency units as an unwarranted intrusion into business practices as opposed to a land use issue.

c.6. Do the recreational facilities associated with hotel/motel/country inn facilities have to maintain the setbacks and follow the restrictions associated with outdoor recreational businesses? If not, why be so restrictive to outdoor recreational businesses? If yes, shouldn't it be stated?

18. **Mfg. & Research Laboratory**

a. Why must a mfg. or research lab have a 100-foot minimum road frontage? Our current subdivision regulations require a 150-ft./lot minimum. Any lot with less than 150 feet of road frontage is either a pre-existing lot or a "flag lot." If 5 acres is sufficient for a mfg. research lab, why prohibit a flag lot from accommodating such a use? The board believes that the very nature of a flag lot lends itself to this type if usage because it is generally set well off the public roadway and often provides automatic screening from public view. Its seclusion provides privacy. This restriction makes no sense and should be eliminated.

21. **Bar/Tavern**

a. Why must bars or taverns be separated from one another by at least 500 feet?

24. **Car Sales**

f. The board can see no reason to limit at eight the number of vehicles left for repair. To impose limits at all seems inappropriate and eight is absurdly low.
   - If car repair shops are not limited, why should dealers be limited in the # of vehicles they can repair?
   - What exactly is a reasonable time period for repairs?
   - Who will be the "no more than 8" police?
   - Would Sawyer Chevrolet limit itself to 8 vehicles awaiting repairs at any one time?
   - Must a car dealer's repair facilities also be rearward facing as opposed to on the side of the building?
   - In a parking lot full of cars for sale, why would you need to screen from view customers' cars left for repair? What possible difference does it make?
   - How exactly does this car sales use interact with the car repair use? Why should car repair shops be prohibited from selling cars when car dealers can both sell and repair cars? This seems a lot like the meaningless country inn/motel distinction.

   According to the NYS VTL § 415(1)(a), a person cannot legally offer for sale more than 5 cars/year, or 3 or more cars at one time or in any one month in NYS without obtaining a NYS Dealer's License. Under these proposed restrictions, all a repair shop needs to do in order to sell cars is (1) obtain a dealer's license [like he'd have to do anyway] and (2) call himself a dealer instead of a repair shop.

   Finally, the planning board considers the proposed limitation on the number of cars that can be left for repair and the restriction of cars offered for sale as unwarranted intrusions into the internal operations of a business as opposed to land use issues.

25. **Warehouse**

a. If a warehouse is buffered from view, why does it need a 100-foot setback from any lot line?

b. If you can't see it from any public highway and it has to be buffered from view, why can't you use barbed wire or razor wire to protect it? If you can't see it, what difference does it make? If you can't see it, then you lose the protection afforded by visibility and that is all the more reason to allow for increased physical protection.

h. If you can't see the thing from a public highway, why are you worried about the location of parking?

j. The board has never before required a ten-foot wide fence or wall as a buffer. This restriction is poorly worded. The board also finds that it makes little sense to specify a mandatory (shall be) height and width of an optional (may require) buffer. The board believes that it should have the ability to determine the height and width adequacy of a non-mandatory buffer area.

28. **RV/boat storage**

a. The board thinks it is absolutely absurd that a person would have to build a huge warehouse in order to commercially store boats and RVs. The board believes the construction of a permanent structure large enough to accommodate such a use does way more environmental damage than simple, outdoor storage of these items in a remote, screened area.

SECTION XVI– ADMINISTRATION AND ENFORCEMENT

A. **Zoning Enforcement Officer**

1.a. The board understands that should this law be adopted, certain pre-review criteria will have to be met. The board understands that it is the responsibility of the Zoning Enforcement Officer (ZEO) to make that determination and that if the application is denied, the applicant will have to appeal the denial to the Zoning Board of Appeals (ZBA).

The board's understanding is that the ZEO may deny the application for two basic reasons. First, the proposal may be for a use that is prohibited in a given district and so a use variance would be needed. Second, the proposed subdivision or use would require an area variance. However, if the proposed use requires a special use permit and/or site plan review, then it becomes the planning board's responsibility to review and approve or deny the proposal under the terms of the zoning ordinance, subdivision, or site plan law.

The ZEO cannot make any determination of the "completeness" of the application. That is to say, he has no authority to say what documents are necessary for the planning board's review. He cannot determine whether the project may proceed with a short form EAF or if a long form EAF is necessary. In fact, he cannot even determine if the project is Type I, Type II, or unlisted action; he has no authority to do so.

The ZEO cannot determine that the "application meets all of the requirements of the Zoning law" as the proposed language seems to say. The board believes this section is very poorly worded and suggests the following:

" Prior to any action by the planning board, to review all applications for subdivision, site plan review and special use permits for a determination under the provisions of this law as to whether a use or area variance is required. If any such variance is required, the ZEO shall deny the application and the applicant may appeal such denial to the Zoning Board of Appeals (ZBA). If the ZEO determines no such use or area variance is required, the application shall be forwarded to the planning board for review."

6. Complete Application: Again, the ZEO has no authority to determine what a complete application is or what "additional information" might be required. **The board strenuously objects to this entire paragraph and believes it should be entirely deleted. As the reviewing body, only the Planning Board can determine what documentation is necessary in order to make a "complete application."**

7. The board disagrees with the apparent enforcement overlap this section provides. The board envisions territorial disagreement here between the ZEO and the CEO. The ZEO should not have the authority to revoke a building permit for a violation of the building code; that should be the CEO's responsibility alone.

8. Why is this paragraph - that discusses the duties of the Code Enforcement Officer - included in the section "XVI.A Zoning Enforcement Officer"? Shouldn't this paragraph be placed somewhere else?

SECTION XVII ZONING BOARD OF APPEALS

C. **Conduct of Business**

8. Hearing on Appeal. This section again raises the issue of notifying property owners within a certain distance from a property line. As it stands, you now have three different measurement requirements in various sections of this and other laws: (1) adjoining property owners, (2) owners within 300 feet, and (3) owners within 100 feet. The board feels this is unnecessary, that this will all lead to confusion and that unless there is some state law that requires a more extensive notification the notice here and elsewhere should be consistent and limited to adjoining property owners only.

This paragraph does not specify the number of days in advance of the public hearing that notice must be mailed. The board suggests mailing 10 days in advance of the hearing date. Our experience has shown that people complain about insufficient notice under our Site Plan Law that provides for 7 days notice. Certified mailings actually take longer to obtain simply because instead of getting the letter, the recipient gets a paper notice to pick up the letter. Then, they have to go and get the letter. As an alternative and as a cost savings measure, the board recommends a first class mailing together with a notarized affidavit of service.

9. Notice to County Planning Board. The County Planning Board referral guide specifies it wants all submissions at least 10 days before its monthly meeting. Accordingly, if the materials are not submitted and received following the county's guidelines, the materials are not "received" under the provisions of GML § 239-m(1)(d):

> "The term 'receipt' shall mean delivery of a full statement of such proposed action, as defined in this section, *in accordance with the rules and regulations of the county planning agency or regional planning council with respect to person, place and period of time for submission*"

That means that not getting the materials at least 10 days in advance of the meeting will needlessly add at least another 30 days onto the review process.

The board recommends mailing all materials to the County Planning Board at least 15 days in advance of their meeting date.

SECTION XX. DEFINITIONS

C. **Terms Defined.**

Complete Application: The requirement that no application is complete until SEQRA requirements have been met means that the application review by the ZEO to determine "completeness" is an impossible standard to meet. The board re-states its earlier position that the only pre-review function of the ZEO should be to determine whether a use or area variance is needed so that the project may be presented to the ZBA prior to the planning board's review.

Kennel: The board believes the definition should be re-worded so that individuals that have four or more pets are not considered kennels. The board recommends the following wording:

> "Any place where any number of mammals, birds, reptiles, amphibians or other animals are kept for the purpose of wholesale, boarding, care, or

breeding, whether or not a fee is charged or paid. This shall not include boarding or care facilities on the premises of a veterinary hospital for animals undergoing medical care, except that it shall include any such animals offered for sale or adoption at such a facility. A retail pet store, as that term is commonly understood, is not a kennel for purposes of this law."

Pet Store, Retail: The board believes the following definition should be adopted:
"Any place, including any non-profit organization, where any number of live mammals, birds, reptiles, amphibians, insects, or other animals are offered for sale or adoption to the general public.

Pet Grooming Facility: The board believes the following definition should be adopted:
"Any place where the grooming of animals takes place, including kennels, veterinary hospitals and retail pet stores. Grooming includes the washing, drying, nail clipping and other non-medical procedures commonly used to enhance an animal's physical appearance."

Planning Board: Since the Planning Board was in existence and approving subdivisions in 1990, it could not have been created by Local Law # 4 of 2004. The board recommends deleting the reference to the 2004 law.