

1. January 8, 2020 Agenda

Documents:

[0108.PDF](#)

2. Subwaiver Review - Three Mile Harbor Vista II Subwaiver

Documents:

[THREE MILE HARBOR VISTA12004420200103125758.PDF](#)

3. Site Plan Review - NCW At Northwest Fire Station

Documents:

[NCW NORTHWEST FIRE STATION12005020200103131024.PDF](#)

4. Site Plan Review - Springs Fireplace Road Car Wash

Documents:

[SPRINGS FIREPLACE ROAD CAR WASH12004820200103130811.PDF](#)

5. Site Plan Review - Lakeview Condos Modification

Documents:

[LAKEVIEW CONDOS12005620200103134926.PDF](#)

**PLANNING BOARD
TOWN OF EAST HAMPTON**

AGENDA FOR MEETING OF:

January 8, 2020

Board of Review:

Building Permit – Rade/Miller; Bl. 190, Lot 4, p/o Rd.; URP 24 in MN 5

Planning Board:

REGULAR MEETING

SUBDIVISIONS:

SUBWAIVER:

SITE PLAN:

Below the Bridge Industrial Park	Approval	Cunningham/East Hampton
South Fork Country Club Barn	Schedule Public Hearing	Parsons/Amagansett
Verizon at Montauk		
Community Church PWSF	Schedule Public Hearing	McCobb/Montauk
T-Mobile at		
Home Sweet Home PWSF	Schedule Public Hearing	Parsons/Wainscott
New Cingular Wireless		
At Northwest Fire Station PWSF	Schedule Public Hearing	Cunningham/East Hampton

OTHER:

Adoption of Minutes: December 18, 2019

URBAN RENEWAL:

COMPREHENSIVE PLAN:

OLD FILED MAPS:

PUBLIC HEARINGS:

East Hampton Retail Site Plan

McCobb/East Hampton

**PLANNING BOARD
TOWN OF EAST HAMPTON
WORK SESSION:
January 8, 2020**

SUBDIVISION REVIEW:

SUBWAIVER REVIEW:

Three Mile Harbor Vista II

Krug/Pahwul/Springs

SITE PLAN REVIEW:

NCW at Northwest Fire Station
Springs Fireplace Road Car Wash
Lakeview Condos Modification

Cunningham/Schantz/East Hampton
Cunningham/Schantz/East Hampton
Cortese/Pahwul/Montauk

COMPREHENSIVE PLAN:

ZONE CHANGES:

OTHER:

URBAN RENEWAL:

OLD FILED MAPS:



TOWN OF EAST HAMPTON

300 Pantigo Place – Suite 105
East Hampton, New York 11937-2684

Planning Department
JoAnne Pahwul
Director

Telephone (631) 324-2178
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January 3, 2020

TO: Planning Board

FROM: JoAnne Pahwul, AICP
Planning Director 

RE: Three Mile Harbor Vista II Minor Subdivision
SCTM#300-94-2-1

Last Review Date: September 11, 2019

Information received:

A copy of a draft preservation and conservation easement for the historic John Dart House, prepared by Robert Hefner, the Town's historic consultant, has been submitted.

Background Information:

Subwaiver application is made to divide a 2.848 acre parcel into three lots ranging in size from 39,746 sf. to 42,022 SF. The parcel is zoned A-Residence and is located on the east side of Three Mile Harbor-Hog Creek Highway between Harbor View Drive and Kingstown Avenue. The parcel contains the John Dart house, which according to Robert Hefner, the Town's historic consultant, is known to have been constructed prior to 1838, and an excellent example of small vernacular Springs houses built by fisherman, mariners and subsistence farmers during the eighteenth and nineteenth centuries.

At the last work session, the Board made a negative declaration pursuant to SEQRA and advised that the application will be deemed complete after the applicant obtains a lot area variance from the Zoning Board of Appeals. The ZBA held a hearing on the lot area variance on October 22, 2019 and granted the variance by resolution dated December 20, 2019.

Issues for Discussion:

As mitigation for the variance request, the applicant offered to file a preservation easement over the site which would limit future changes. The Town hired Robert Hefner, a historic consultant, to write this easement. A copy of this draft easement is attached for Board's review and comment. The Board should review the attached draft easement and determine

if it meets the Board's approval. The relevant conditions are found in Exhibit C, pages 16-18. The filing of an easement will be a condition of the Subwaiver approvals that must be met before the map is signed. The Town Board will need to hold a public hearing before formally accepting the easement.

Conclusion

In conclusion, the Zoning Board of Appeals has granted a lot area variance for Lot 2 and the application can now be deemed complete. The Planning Board should review the attached draft preservation easement prepared by the Town's historic consultant, Robert Hefner, and determine if it adequately protects the historic house and historic setting of the parcel. It is noted that Mr. Hefner has worked with the owner of the parcel on the terms of this easement.

Planning Board Consensus

The Planning Board should review the attached draft preservation easement prepared by the Town's historic consultant, Robert Hefner, and determine if it adequately protects the historic house and historic setting of the parcel.

Additional comments: _____

Additional Board Comments:

JP
attachment

ZONING BOARD OF APPEALS
TOWN OF EAST HAMPTON



1167

In the Matter of the Application

of

DETERMINATION

REBEKAH BAKER & THOMAS BURKE
SCTM # 300-94-2-1

HEARING DATE: October 22, 2019

PRESENT:

JOHN P. WHELAN, *Chairperson*
ROY DALENE, *Vice-Chairman*
THERESA BERGER, *Member*
TIM BRENNEMAN, *Member*
JOAN MORGAN MCGIVERN, *Member*

ALSO PRESENT: NANCYLYNN THIELE, ESQ., Counsel to the Board
BRITTANY MACVITTIE, Acting Secretary
TYLER BORSACK, Planning Department
MARK CATALANO, Applicant's Attorney
THOMAS BURKE, 182 Three Mile Harbor/Hog Creek Road
JEFF CLOSE, 176 Three Mile Harbor/Hog Creek Road

FINDINGS OF FACT AND DETERMINATION OF THE BOARD

The findings of fact and determination made herein are based upon the application, the evidence received at the public hearing before the Board, all documents contained in the Board's files and which were received prior to the close of the hearings, and the inspection and field report made by Vice Chairman Dalene of this Board.

A. PROJECT DESCRIPTION

1. **PURPOSE OF APPLICATION:**

To allow one lot of a proposed three lot sub-waiver to have a lot area of 35,780 sq. ft. where the minimum lot area requirement is 40,000 sq. ft.

2. **RELIEF OR APPROVAL SOUGHT:**

One variance of 4,220 sq. ft. from §255-11-10 of the Town Code is required to allow Lot 2 to be 35,746 sq. ft. where 40,000 sq. ft. is the minimum allowable.

B. PROPERTY SIZE & LOCATION

1. LOT SIZE: 124,044 sq. ft. (all three lots)
2. STREET LOCATION: 182 Three Mile Harbor/Hog Creek Road
3. CONTIGUOUS WATER BODIES: N/A
4. HAMLET OR GEOGRAPHIC AREA: Springs
5. FILED MAP NAME: N/A
6. FILED MAP NUMBER: N/A
7. DATE OF MAP FILING: N/A
8. BLOCK NUMBER IN FILED MAP: N/A
9. LOT NUMBER IN FILED MAP: N/A
10. SUFFOLK COUNTY TAX MAP DESIGNATION: #300-94-2-1

C. ZONING INFORMATION

1. ZONING DISTRICT: A Residential
2. ZONING OVERLAY DISTRICT: N/A

D. SEORA DETERMINATION

1. SEORA CLASSIFICATION: Type II
2. LEAD AGENCY: N/A
3. DETERMINATION OF SIGNIFICANCE: N/A
4. DATE OF DETERMINATION: N/A

E. FINDINGS OF FACT

1. The property is a 2.8 acre parcel that contains the historic John Dart House, one of the small houses built by subsistence farmers, laborers, fishermen and mariners in Springs during the eighteenth and nineteenth centuries. These small, vernacular houses are part of a distinct East Hampton building tradition. The John Dart House was shown on the 1838 U.S. Coast Survey when it was owned by Lester and Prudence Bennett who sold the house to John and Susan Dart in 1850. The John Dart House is one of thirteen houses designated as a Special Historic Landmark by the Town Board in 2017.
2. A certificate of occupancy issued on March 20, 2017 was for a one story, frame, one family residence having one kitchen only, containing a total of three bedrooms only; a one story, frame, accessory building containing plumbing (sink and toilet only) and one frame storage building without plumbing; all erected before the adoption of zoning. A Minor Subdivision map prepared by Hands On Surveying dated revised January 14, 2019 provides the dimensions of the accessory buildings as 430.26 sq. ft. and 168.36 sq. ft.
3. The property is subject to an application made to the Planning Board to subdivide the 124,044 sq. ft. parcel into three lots: one lot at 35,746 sq. ft. and two lots at 40,000 sq. ft. each, with an additional 4,298 sq. ft. access easement – also depicted on the Hands On Surveying map. The John Dart House is located on the proposed Lot 1, and the applicant is entitled to construct a second residence allowable under Section E-3 of the Special Historic Landmark Guideline of the Town Code, while preserving the John Dart House. On the middle lot – Lot 2 – the subject of this application – the applicant intends to construct a 2,400 sq. ft. residence, and on Lot 3 the applicant intends to construct a 2,400 sq. ft. residence.
4. As mitigation, the applicant is willing to forgo the option of a second residence on Lot 1, and covenant to remove certain trees that are obscuring the visibility of the historic home, and limit future plantings; keep the historic structure in its current location; and preserve certain features of the house, specifically the stone foundation, timber frame, chimney with fireplaces and firewood box. Additionally, Lot 1 would include two easements, one of 2,145 sq. ft. at the northern most corner of the lot and one of 5,638 (25' wide) between Lot 1 and Lot 2; Lot 2 would include a 7,932 sq. ft. (50' wide) easement along the border with the parcels at Tax Map #s 300-77-6-8.1 & 8.2; and Lot 3 would include two easements, one 15,137 sq. ft. along the border with the parcel at Tax Map # 300-77-6-8.2 (50') and along the border with the parcels at Tax Map #s 300-94-2-21 & 12.1. In addition, a row of evergreen plantings – 4' to 5' in height, spaced approximately 6' apart, approximately 55 trees – would be placed along the access easement running along the border of Lots 1 and 2 and the parcel at Tax Map # 300-91-2-2 (176 Three Mile Harbor/Hog Creek Road).

F. STANDARDS FOR BOARD REVIEW OF AN AREA VARIANCE

1. Pursuant to Town Law § 267-b(3)(b), in making its determination whether to grant an area variance, the Board is to “take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. The Town Law § 267-b(3)(c) directs the Board, in granting area variances, to “grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.”
2. Pursuant to Town Law § 267-b(3)(b) the Board shall consider (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the grant of an area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue,

- other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.”
- 3. The standards set forth in Town Code § 255-8-50 (D)(1) paraphrase the requirements language of Town Law § 267-b 3(b) and (c).
- 4. The Board finds that the benefit to applicant from grant of the requested variance outweighs any detriment which grant of such variance will cause to the general health, safety, and welfare of the neighborhood or the Town as a whole and that the variance granted is the minimum variance necessary and adequate to alleviate the applicant’s difficulty while preserving the character of the neighborhood and protecting the health, safety and welfare of the Town as a whole.

G. FACTORS TO CONSIDER FOR AN AREA VARIANCE

- 1. The Board finds that granting the requested variance will not cause an undesirable change to the character of the neighborhood or create a detriment to nearby properties. The proposed project is in conformance with the existing residences and surrounding properties. Although neighbors raised concern regarding the access easement creating a driveway along his property line, as well as new houses in proximity to their homes, the construction of three additional houses as well as the driveway access are all permissible regardless of the variance. Furthermore, the 50’ wide easement as a buffer and planting of evergreens to screen the driveway provides some mitigation for these concerns.
- 2. The Board finds that the benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than the requested area variance.
- 3. The Board finds that the requested variance is substantial, but it is the minimum variance necessary and adequate to alleviate the difficulty causing applicant to request an area variance.
- 4. The Board finds that granting the requested variance will have little adverse effect or impact on the physical or environmental conditions in the neighborhood. The easements and covenants with regard to forgoing the right to build a second residence on Lot 1 provide assurances that the density of use will not be increased to four residences, will provide buffers and shielding for adjacent parcels, and more importantly, provide greater protection of the historic house located on Lot 1.
- 5. The Board finds that the need for the variance is self-created. The Board finds however, that although the need for the requested variance is self-created, this need, although relevant to the Board’s decision does not preclude the granting of the requested variances. Town Law §267-b(3)(b)(5).
- 6. The Board finds that the benefit to the applicant from grant of the requested variance outweighs any detriment which grant of the variance will cause to the general health, safety and welfare of the neighborhood and the Town as a whole.

H. DISPOSITION OF APPLICATION

For the reasons set forth herein, the Board makes the following determination with respect to the application:

- 1. **RELIEF OR APPROVAL GRANTED:**
One variance of 4,220 sq. ft. from §255-11-10 of the Town Code is required to allow Lot 2 to be 35,746 sq. ft. where 40,000 sq. ft. is the minimum allowable.
- 2. **DESCRIPTION OF WORK APPROVED:**
To allow one lot of a proposed three lot sub-waiver to have a lot area of 35,780 sq. ft. where the minimum lot area requirement is 40,000 sq. ft.

I. CONDITIONS OF APPROVAL

Grant of the specified variances is specifically conditioned upon compliance with the conditions set forth in this section of the determination. All improvements shall be made, built, or installed in accordance with the survey and plans described below.

1. APPROVED SURVEY: Hands On Surveying dated last revised January 14, 2019, and stamped received by the Board on June 13, 2019. ¹

2. ADDITIONAL CONDITIONS AND TIME LIMITATIONS:

- a. An easement for each of the three lots as depicted on Hands On Surveying dated last revised January 14, 2019, and stamped received by the Board on June 13, 2019. Each easement shall be submitted in acceptable form to the Zoning Board of Appeals Office for approval by Counsel to this Board, upon issuance of separate Tax Map numbers for each of the three lots. The Town Board must accept and the applicant must file with the Suffolk County Clerk's Office each of the scenic easements. The original easements shall be returned the East Hampton Town Clerk's Office. Proof of filing must be presented to the Zoning Board before the issuance of a building permit.
- b. The applicant shall prepare and submit two declarations of covenants and restrictions, incorporating the provisions of the appropriate paragraphs of this determination, one each for Lots 1 and 2, in standard form acceptable to and approved by Counsel to this Board prior to the issuance of a Building Permit. The said declarations shall provide for its modification or termination only upon the approval of the East Hampton Town Zoning Board of Appeals, after a public hearing held on ten (10) days' notice. Said declaration, after approval by counsel, shall be recorded at the Office of the Suffolk County Clerk prior to the issuance of a Certificate of Occupancy.
- c. All applicable zoning, building and fire code regulations shall be met.

J. VALIDITY OF APPROVAL

If any condition of this determination is not met, or is not met within the prescribed time period, all approvals, permits, or authorizations granted hereby shall be deemed void and of no effect.

ALL CONCUR:

- JOHN P. WHELAN, *Chairperson*
- THERESA BERGER, *Member*
- TIM BRENNEMAN, *Member*
- ROY DALENE, *Vice-Chairman*
- JOAN MORGAN MCGIVERN, *Member*

Dated: December 10, 2019

cc: Building Department
Planning Department
Mark Catalano, Applicant's Attorney

¹ Although the applicant is covenanting not to construct a second residence on Lot 1, and the footprint thereof has been removed from the January 14, 2019 revision of the survey, a notation still exists that states "Town of East Hampton has granted a second principal dwelling may be constructed." Although this Determination references this survey for the purposes of incorporating information relevant to the conditions of this approval, this statement is inconsistent with the covenant, and thus has been superseded by the terms of this Determination.

HISTORIC PRESERVATION EASEMENT

THIS PRESERVATION AND CONSERVATION EASEMENT DEED, made this _____ day of _____, 2019, by and between (“Grantor”) and THE TOWN OF EAST HAMPTON, (“Grantee”), a municipal corporation having its principal offices at 159 Pantigo Road, East Hampton, New York 11937.

WITNESSETH:

WHEREAS, Grantor is owner in fee simple of certain real property located in the Town of East Hampton, Suffolk County, New York, more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter “the Property”); and

WHEREAS, the “property” includes the c. 1850 John Dart house which is significant as an example of one of the small houses built by subsistence farmers, laborers, fisherman and mariners in Springs during the nineteenth century. The Dart House has the 1 ¼ story Cape Cod form and plain exterior typical of this group of vernacular houses;

WHEREAS, the location of the John Dart House recalls the typical siting of this group of houses close to the road;

WHEREAS, Grantee is authorized to accept preservation and conservation easements to protect property significant in national, state and local history and culture under the provisions of Section 247 of the New York General Municipal Law and section 64-e of the Town Law of the State of New York (hereinafter “the Act”);

WHEREAS, Grantee is a municipal corporation and is a qualifying recipient of qualified conservation contributions under Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (hereinafter, “the Code”);

WHEREAS, the John Dart House was designated a Special Historic Landmark by the East Hampton Town Board by Resolution 2017-1270 on December 7, 2017;

WHEREAS, the designation of the John Dart House as a Special Historic Landmark allowed one detached accessory dwelling unit to be built on the property pursuant to Section 255-11-88, Grantor and Grantee agree that this right is abandoned and that the restriction in size of the John Dart House provided by this easement achieves the preservation goal of the Special Historic Landmark legislation;

WHEREAS, Grantor and Grantee recognize that the small size of the John Dart House is a defining feature and that too large an expansion of the house would diminish its architectural and historic values and agree to limit the size of an expansion and require that an expansion be compatible with the John Dart House; WHEREAS, the John Dart House and its setting possess special character, historic and aesthetic interest and value as part of the cultural, economic and social history of

East Hampton and embody the distinguishing characteristics of a building type, period and method of construction.

WHEREAS, Grantor and Grantee recognize the architectural, historic and cultural values (hereinafter “conservation and preservation values”) and significance of the Property, and have the common purpose of conserving and preserving the aforesaid conservation and preservation values and significance of the Property;

WHEREAS, the Property’s conservation and preservation values are documented in a set of reports and photographs (hereinafter, Baseline Documentation) incorporated herein by reference which Baseline Documentation the parties agree provides an accurate representation of the Property as of the effective date of this grant. In the event of any discrepancy between the two counterparts produced, the counterpart retained by the Grantee shall control;

WHEREAS, the Baseline Documentation shall consist of a history, description and exterior and interior photographs of the John Dart House, attached hereto as Exhibit B;

WHEREAS, the grant of a preservation and conservation easement by Grantor to Grantee on the Property will assist in preserving and maintaining the Property and its architectural, historic and cultural features for the benefit of the people of the Town of East Hampton, County of Suffolk, the State of New York and the United States of America;

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a perpetual preservation and conservation easement (hereinafter, the “Easement”) in gross over the Property pursuant to the Act;

NOW, THEREFORE, in consideration of ten dollars and other good and valuable consideration, receipt of which is hereby acknowledged, and pursuant to Section 170(h) of the Code, Grantor does hereby voluntarily grant and convey unto the Grantee a preservation and conservation easement in gross in perpetuity over the Property described in Exhibit A.

PURPOSE

1. Purpose. It is the Purpose of this Easement to assure that the architectural, historic, and cultural features of the Property will be retained and maintained forever, the John Dart House substantially in its current condition and the property in a restored open setting, for conservation and preservation purposes and to prevent any use or change of the Property that will significantly impair or interfere with the Property’s conservation and preservation values.

GRANTOR’S COVENANTS

2.1 Grantor's Covenants: Covenant to Preserve and Maintain. Grantor agrees to preserve and maintain the exterior and interior of the John Dart House (the Building) in accordance with the standards in Exhibit C. Subject to the casualty provisions of paragraphs 7 and 8, this obligation to maintain shall require replacement, rebuilding, repair and/or reconstruction of the Building whenever necessary in accordance with the standards of Exhibit C.

Should Grantor add onto the John Dart House, Grantor agrees to expand the house only according to the standards of Exhibit C.

Grantor agrees to maintain the John Dart House at its exact existing location.

Grantor agrees to restore and maintain the setting of the John Dart House according to the standards of Exhibit C.

2.2 Grantor's Covenants: Prohibited Activities. The following acts or uses are expressly forbidden on, over, or under the Property, except as otherwise conditioned in this paragraph:

- (a) the Building shall not be demolished, removed, or razed except as provided in paragraphs 7 and 8;
- (b) any activity contrary to the intent or standards established in the attached Exhibit C.

GRANTOR'S CONDITIONAL RIGHTS

3.1 Conditional Rights Requiring Approval by Grantee. Without the prior express written approval of the Grantee, which approval may be withheld or conditioned in sole discretion of the Grantee, Grantor Shall not undertake any of the following actions:

- (a) make additions to, change the exterior materials of, alter, or change the facades (including fenestration) and roof of the Building;
- (b) Construct or place any structure in the protected setting of the John Dart House.

3.2 Review of Grantor's Request for Approvals. Grantor shall submit to Grantee for Grantee's approval of those conditional rights set out at paragraph 3.1 information (including plans, specifications, and designs where appropriate) identifying the proposed activities with reasonable specificity. Grantor shall not undertake any such activity until approved by Grantee. Grantor shall make no change or take any action subject to the approval of Grantee unless expressly authorized in writing by an authorized representative of Grantee.

4. Standards for Review. In exercising any authority created by the Easement to inspect the Building and Property; to review any construction, alteration, repair, or maintenance; or review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, Grantee shall apply the standards of Exhibit C.

GRANTOR'S RESERVED RIGHTS

5. Grantor's Reserved Rights Not Requiring Further Approvals by Grantee. Subject to the provisions of paragraph 2.1, 2.2 and 3.1, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Easement and by Grantee without further approval of the Grantee:

- (a) the right to engage in all those acts and uses that: (i) are permitted by governmental statute or regulations; (ii) do not substantially impair the conservation and preservation values of the Property; and (iii) are not inconsistent with the Purpose of this Easement;
- (b) pursuant to the provisions of paragraph 2.1, the right to maintain and repair the Building strictly according to the standards of Exhibit C. The right to maintain and repair as used in this subparagraph shall not include the right to make changes in appearance, materials, and workmanship without the prior approval of the Grantee in accordance with the provisions of paragraphs 3.1 and 3.2;

CASUALTY DAMAGE OR DESTRUCTION; INSURANCE

6. Casualty Damage or Destruction. In the event that the Building or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Building and to protect public safety, shall be undertaken by Grantor without Grantee's written approval. Within thirty (30) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantor and Grantee, which report shall include the following:

- (a) an assessment of the nature and extent of the damage;
- (b) a determination of the feasibility of the restoration of the Building and/or reconstruction of damage or destroyed portions of the Building; and
- (c) a report of such restoration/reconstruction work necessary to return the Building to the conditions existing at the date hereof.

7. Review After Casualty Damage or Destruction. If, after reviewing the report provided in paragraph 6 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Grantee agree that the Purpose of the Easement will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Building in accordance with plans and specifications consented by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report provided in paragraph 6 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Grantee agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the Purpose of the Easement would not be served by such restoration/reconstruction, Grantor may, with prior written consent of Grantee, demolish, remove, or raze the Building, and/or construct new

improvements on the Property. Grantor and Grantee may agree to extinguish this Easement in whole or in part in accordance with the laws of the State of New York and paragraph 21 hereof.

If, after reviewing the report provided in paragraph 6 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Grantee are unable to agree that the Purpose of the Easement will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the State of New York's arbitration statute then in effect.

8. Insurance. Grantor shall keep the Property insured by an insurance company rated "A1" or better by Best's for the full replacement value against loss from perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Property and Building without cost or expense to Grantor or contributing coinsurance from Grantor. Such insurance shall include Grantee's interest and name as an additional insured. Grantor shall deliver to Grantee within ten (10) business days of Grantee's written request therefore, certificated of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust, nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

INDEMNIFICATION; TAXES

9. Indemnification. Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, trustees, directors, officers and employees, or independent contractors from and against any and all claims, liability, expenses, cost, damages, losses, and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person; physical damage to the Property; the presence or release in, on or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance; or other injury or other damage occurring on or about the Property, unless such injury or damage is caused by Grantee or any agent, trustee, director, officer, employee, or independent contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien. Provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

10. Taxes. Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and any other charges which may become a lien on the Property unless Grantor timely objects to the amount or validity of the assessment or charge and diligently prosecutes an appeal thereof, in which case the obligation hereunder to pay

such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. In place of Grantor, Grantee is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor any payment relating to taxes, assessment, water rates, sewer rentals, and other governmental or municipality charge, fine, imposition, or lien asserted against the Property. Grantee may make such payment according to any bill, statement, or assessment or into the validity of such tax, assessment, sale, or forfeiture. Such payment if made by Grantee shall constitute a lien on the Property with the same effect and priority as a mechanic's lien, except that such lien shall not jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with promissory noted secured by the Property.

ADMINISTRATION AND ENFORCEMENT

11. Written Notice. Any notice which either Grantor or Grantee may desire or be required to give the other party shall be in writing and shall be delivered by one of the following methods: by overnight courier postage prepaid, facsimile transmission, registered or certified mail with return receipt requested, or hand delivery; if to Grantor:

, and if to Grantee,

Town of East Hampton
Town Clerk's Office
159 Pantigo Road
East Hampton, New York 11937

Each party may change its address set forth herein by notice to such effect to the other party.

12. Evidence of Compliance. Upon request of Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of the Grantee's knowledge, Grantor is in compliance with the obligations of the Grantor contained herein or that otherwise evidences the status of this Easement to the extent of Grantee's knowledge thereof.

13. Inspection. With appropriate prior notice to Grantor, Representatives of Grantee shall be permitted at all reasonable times to inspect the Property.

14. Grantee's Remedies. Grantee may, following reasonable written notice to Grantor, institute suit(s) to enjoin any violation of the terms of the easement by ex parte, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Property and Building to the condition and appearance that existed prior to the violation complained of. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder. In the event Grantor is found to

have violated any of its obligations, Grantor shall reimburse Grantee for any cost or expenses incurred in connection with Grantee's enforcement of the terms of this Easement, including but not limited to all reasonable court costs, an attorney's, architectural, engineering and expert witness fees. Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy or the use of such remedy at any other time.

15. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of violation or lien relation to the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

16. Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of the Easement to potential new owners prior to sale closing.

17. Liens. Any liens on the Property created pursuant to any paragraph of this Easement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien, except that no lien created pursuant to this Easement shall jeopardize the priority of any recorded lien of mortgage of deed of trust given in connection with a promissory note secured by the Property.

BINDING EFFECT: ASSIGNMENT

18. **Runs with the Land.** Except as provided in paragraphs 7 and 21, the obligations imposed by this Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Easement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the work "Grantee" shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the property by reason of a bona fide transfer. The restrictions, stipulations, and covenants contained in this Easement shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself or either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the Property.

19. Assignment. Grantee may convey, assign, or transfer this Easement to a unit of federal, state, or local government or to a similar local, state or national organization that is a "qualified organization" under Section 170(h) of the Code whose purposes, *inter alia*, are to promote preservation or conservation of historical, cultural, or architectural resources, provided that any such conveyance, assignment,

or transfer requires that the Purpose for which the Easement was granted will continue to be carried out.

20. Recording and Effective Date. Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of the Suffolk County Clerk, State of New York. Grantor and Grantee intend that the restrictions arising under this Easement take effect on the day and year this instrument is recorded in the land records of the Suffolk County Clerk's office.

EXTINGUISHMENT

21. Extinguishment. Grantor and Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Property in a manner consistent with the Purpose of this Easement and necessitate extinguishments of the Easement. Such circumstances may include, but are not limited to, partial or total destruction of the Building resulting from casualty. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction.

INTERPRETATION

22. Interpretation. The following provisions shall govern the effectiveness, interpretation, and duration of the Easement.

(a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of Property shall not apply in the construction or interpretation of this Easement, and this instrument shall be interpreted broadly to effect its Purpose and the transfer of rights and the restrictions on use herein contained.

(b) This instrument may be executed in two counterparts, one of which may be retained by Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern.

(c) This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Easement in according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

(d) Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Easement and such ordinance or regulation.

(e) To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Property may be developed to use more intensive (in terms of height, bulk, or other objective criteria related by such

ordinances) than the Property is devoted as of the date hereof, such development rights shall not be exercisable on, above, or below the Property during the term of the Easement, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the Purpose of the Easement.

(f) To the extent that any action taken by Grantee pursuant to this Easement gives rise to a claim of breach of contract, Grantor and Grantee agree that the sole remedy on the part of Grantor shall be reimbursement of actual direct out-of-pocket expenses reasonably incurred by Grantor as a result of such breach that Grantor shall not have any right to indirect, consequential or monetary damages in excess of such actual direct out-of-pocket expenses.

AMENDMENT

23. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement, provided that no amendment shall be made that will adversely affect the qualification of this Easement or status of Grantee under any applicable laws, including Sections 170(h) and 501©(3) of the Code and the laws of the State of New York. Any such amendment shall be consistent with the protection of the conservation and preservation values of the Property and the Purpose of this Easement; shall not affect its perpetual duration; shall not permit additional residential development on the Property other than the residential development permitted by this Easement on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, natural habitat, and open space values protected by this Easement. Any such amendment shall be recorded in the land records of Suffolk County, New York. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

MORTGAGE SUBORDINATION [as applicable]

24. Subordination of Mortgage. At the time of the conveyance of this Easement, the Property is subject to a Mortgage/Deed of Trust dated _____, recorded in the Land Records of Suffolk County at Book/Liber ____, Page/Folio ____ (hereinafter "the Mortgage"/the "Deed of Trust") held by _____ (hereinafter "Mortgagee"/"Lender"). The Mortgagee/Lender joins in the execution of the Easement to evidence its agreement to subordinate the Mortgage/Deed of Trust to this Easement under the following conditions and stipulations:

(a) The Mortgagee/Lender and its assignees shall have a prior claim to all insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the Property and all proceeds of condemnation proceedings, and shall be entitled to same in preference to Grantee until Mortgage/the Deed of Trust is paid off and discharged, notwithstanding that the Mortgage/the Deed of Trust is subordinate in priority to the Easement.

(b) If the Mortgagee/Lender receives an assignment of the leases, rents, and profits of the Property as security or additional security for the loan secured by the Mortgage/Deed of Trust, then the Mortgagee/Lender shall have a prior claim to the leases, rents, and profits of the Property and shall be entitled to receive same in preference to Grantee until the Mortgagee's/Lender's debit is paid off or otherwise satisfied, notwithstanding that the Mortgage/Deed of Trust is subordinate in priority to the Easement.

(c) The Mortgagee/Lender or purchaser in foreclosure shall have no obligation, debt, or liability under the Easement until the Mortgagee/Lender or purchaser in foreclosure under it obtains ownership of the Property. In the event of foreclosure or deed in lieu of foreclosure, the Easement is not extinguished.

(d) Nothing contained in the above paragraphs or in this Easement shall be construed to give any Mortgagee/Lender the right to violate the terms of this Easement or to extinguish this Easement by taking title to the Property by foreclosure or otherwise

THIS EASEMENT reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreement, and representations are null and void upon execution hereof, unless set out in this instrument.

TO HAVE AND TO HOLD, the said Preservation and Conservation Easement, unto the said Grantee and its successors and permitted assigns forever. This DEED OF PRESERVATION AND CONSERVATION EASEMENT may be executed in two counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument.

IN WITNESS WHEREOF, Grantor and Grantee have set their hands under seal on the day and year set forth below.

WITNESS:

GRANTOR:

ATTEST:

By: _____

GRANTEE: TOWN OF EAST
HAMPTON

By: _____
Supervisor (date)

ACKNOWLEDGMENT

State of New York, County of _____ }ss.:

On the day of in the year before me, the undersigned, personally
appeared personally
known to me or proved to me on the basis of satisfactory evidence to be the
individual(s) whose name(s) is (are) subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their capacity(ies),
and that by his/her/their signature(s) on the instrument, the individual(s), or the
person upon behalf of which the individual(s) acted, executed the instrument.

State of New York, County of }ss.:

Notary Public

On the day of in the year before me, the undersigned, personally
appeared personally
known to me or proved to me on the basis of satisfactory evidence to be the
individual(s) whose name(s) is (are) subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their capacity(ies),
and that by his/her/their signature(s) on the instrument, the individual(s), or the
person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Record and Return to:

Town Clerk
Town of East Hampton
159 Pantigo Road
East Hampton, NY 11937

SCHEDULE OF EXHIBITS

- A. Legal Property Description
- B. Baseline Documentation
- C. Standards for the John Dart House and its Setting
- D. D-1 Sketch of first floor plan showing requirements for any expansion and D-2 Sketch site plan
- E. The Secretary of the Interior's Standards for the Treatment of Historic Properties

EXHIBIT A

LEGAL PROPERTY DESCRIPTION

EXHIBIT B

BASELINE DOCUMENTATION

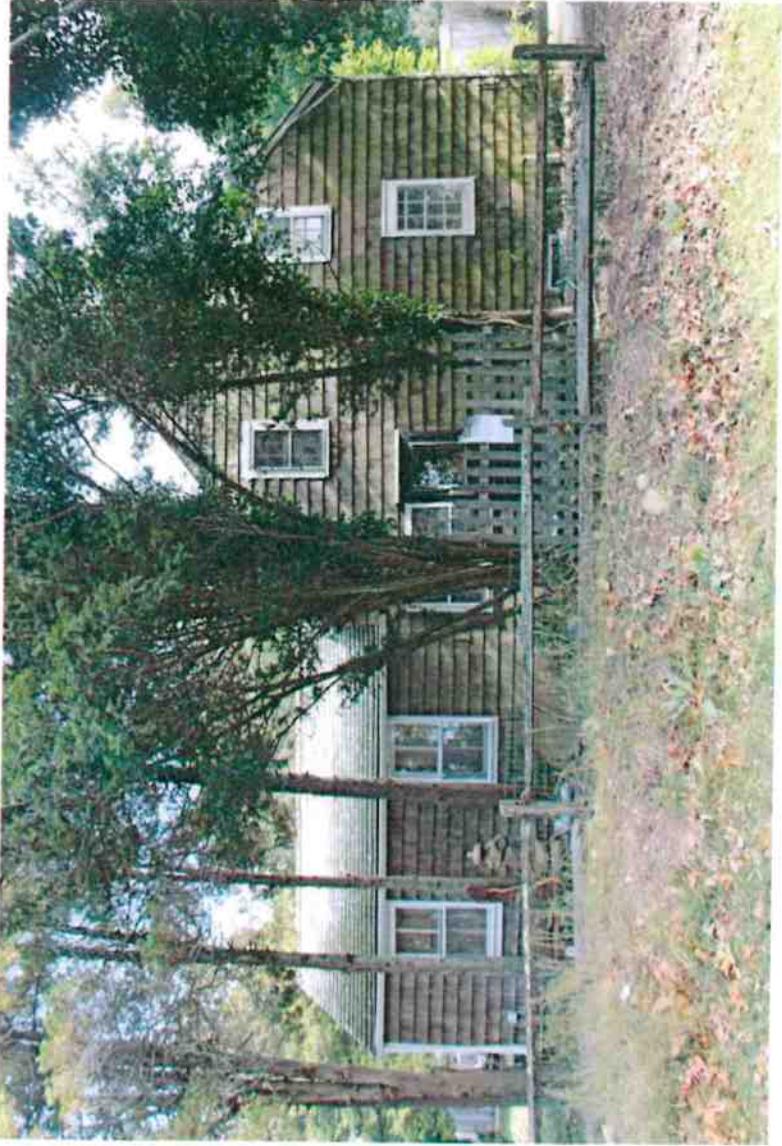
The John Dart House is significant as an example of one of the small houses built by subsistence farmers, laborers, fisherman and mariners in Springs during the eighteenth and nineteenth centuries. In contrast to the substantial houses built by the proprietors and their descendants on the main streets of East Hampton, Wainscott and Amagansett and on the large farms in Springs, this group of small houses scattered throughout Springs represents the lives of those who provided labor for the large farms, supplied seafood for town residents and as mariners conducted the coasting trade that exported the products of the large farms. The John Dart House is one of only two of this group of houses that survive on the shore of Three Mile Harbor, the other being the Zadoc Bennett House (see below). The fact that two others at the Head of the Harbor, the Zebulon Montgomery Pike Field House and the Lyman Beecher Bennett House, were lost within the past five years, makes these two survivors even more important.

The house appears on the 1838 U.S. Coast Survey when it was owned by Lester and Prudence Bennet who sold the house to John and Susan Dart in 1850. The early core of the house, measuring approximately 20 feet by 25 feet in plan, is under the main gable roof. The south half at the first story has a hewn oak frame probably built by Lester Bennett in the early nineteenth century. The north half of the first story and the roof frame are the result of a renovation by John Dart around 1850. The attributed date c. 1850 recognizes the alterations by John Dart that gave the house its present form.

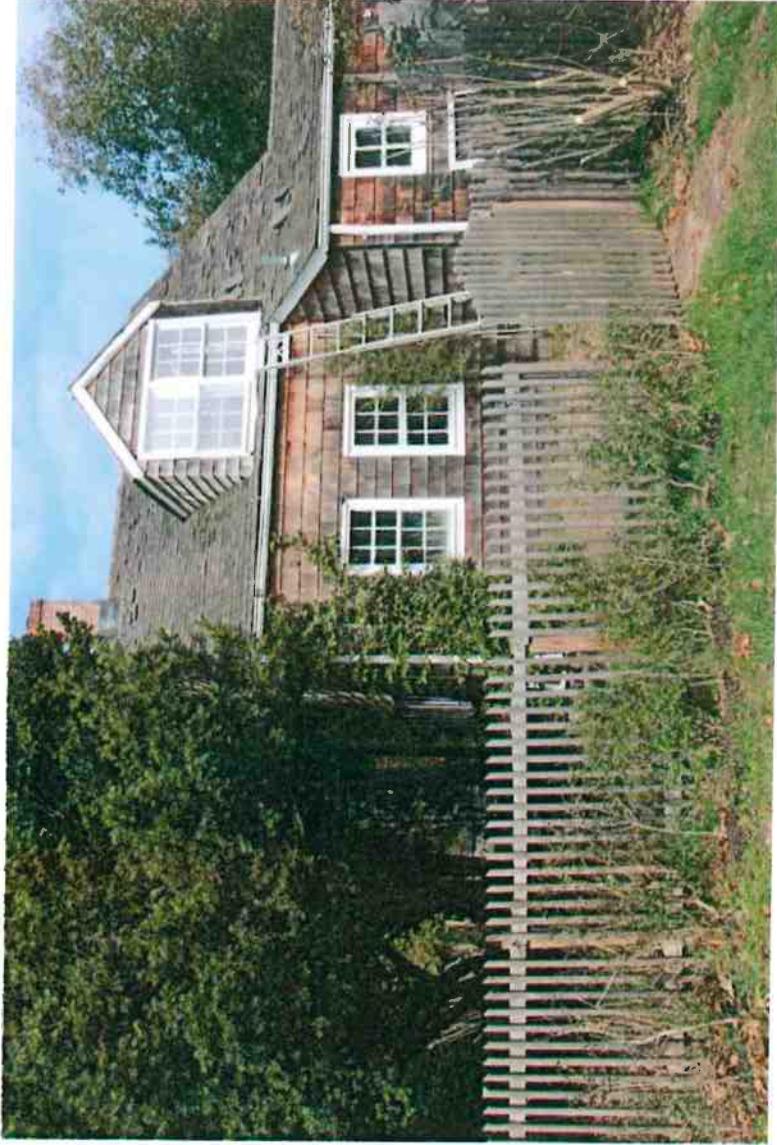
John Henry Dart came from a family of mariners in New London, Connecticut. He was engaged in the coasting trade and sailed on whale ships out of Nantucket and Fairhaven Massachusetts. On one of his trading voyages to East Hampton he met Susan Bennett, whom he married about 1850 when they purchased this property from Lester and Prudence Bennett. Just up the road was the home of Zadoc Bennett, Susan's father, which was also designated a Special Historic Landmark in 2017.

John and Susan Dart lived in the house for 37 years until 1887, when Susan Bennet died and John Dart moved into the Village. John Henry Dart's occupation is listed in the 1850 Federal census as "Mariner, in the 1860 census as "Boatman," and in the 1870 and 1880 census records as "Seaman."

The Dart House has the Cape Cod form typical of the nineteenth century with a raised plate allowing a low knee wall under the eaves. Like the neighboring Zadoc Bennett House, the Dart House has the gable end facing west toward Three Mile Harbor Road and the original entry in the south wall (the entry is now covered by a 20th century addition). The house retains the shingled exterior, plain trim and some original windows with six-light sash. The stone foundation provides a full basement. The interior retains the original chimney, fireplaces and bake oven. A small north addition dates from the end of the nineteenth century and retains windows with two-light sash.



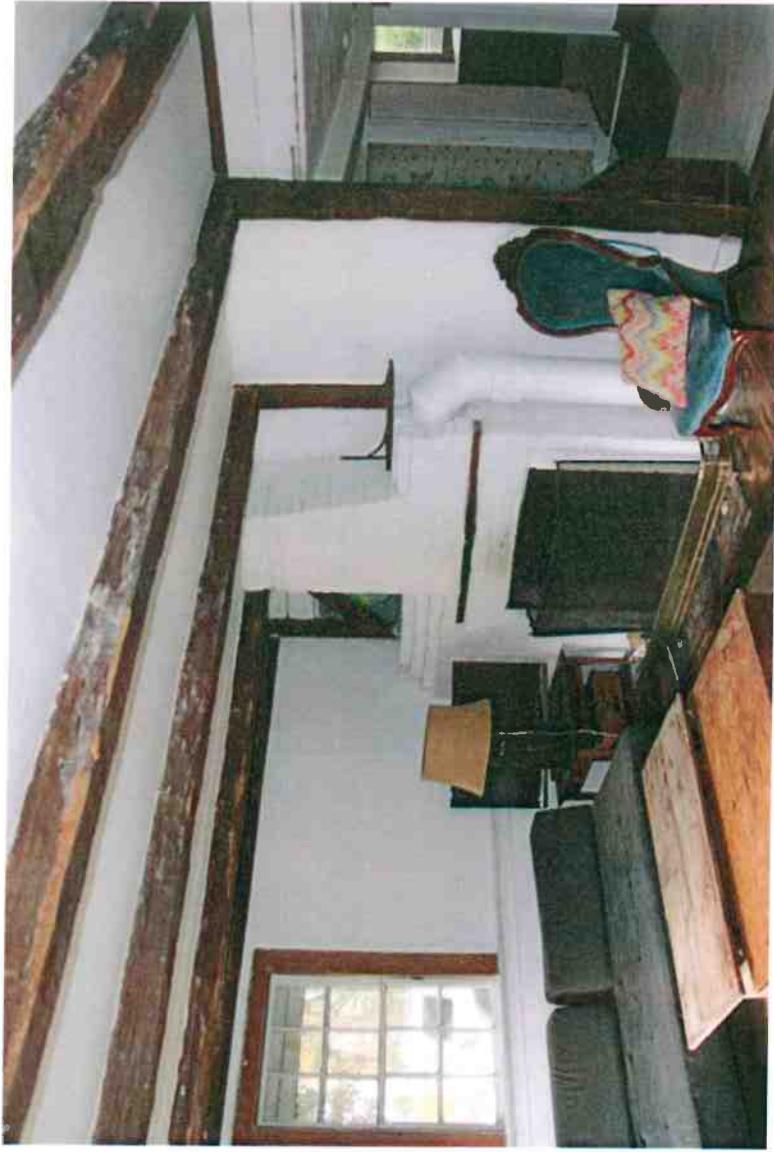
View of the west façade of the John Dart House. The gable end wall of the c. 1850 portion is to the right. The late 19th-century addition is to the left.



View of the south façade of the John Dart House. The non-historic addition to the right covers the original front entry.



Interior view of the John Dart House looking from Room 102 into Room 101, showing the fireplace, bake oven door, wood box and timber framing.



Interior view of Room 101 showing the fireplace, the west window sash, casings and chair rail and components of the timber frame.

EXHIBIT C

STANDARDS FOR THE JOHN DART HOUSE AND ITS SETTING

Grantor agrees to preserve and maintain the exterior, interior and setting of the John Dart House according to the standards of Exhibit C. Should Grantor expand the John Dart House, Grantor agrees to expand the house only according to the standards of Exhibit C.

Standards for maintaining the John Dart House

1. The John Dart House shall not be moved from its exact existing location.
2. The John Dart House shall be maintained at its existing height in relation to the stone foundation and grade.
3. The timber frame shall be retained. No member of the timber frame shall be removed or relocated. Deteriorated members of the timber frame may be repaired or replaced.
4. The following exterior features of the John Dart House (c.1850 portion and historic north addition) shall be retained: the stone foundation of the c. 1850 house; wood-shingled exterior walls and roofs; chimney; window sash and casings of south wall (first floor) and west wall (first and second floors).
5. The following interior features of the John Dart House shall be retained: chimney with fireplaces and bake oven; bake oven door; wood box in Room 102; interior casings and chair rail of Room 101.
6. The floorboards of the second floor shall be retained in place and the second floor shall continue to be counted as part of the gross floor area of the house.
7. Deteriorated components may be replaced to match the existing.
8. The non-historic addition at the southwest corner may be removed or reconfigured to allow restoration of the original front door. The non-historic mud room may be removed. The dormer on the south roof slope may be removed.
9. The accurate restoration of a historic feature of the John Dart House that is substantiated by documentary and physical evidence may be carried out subject to approval by Grantee.

10. In any case where the above standards do not apply Grantee shall apply The Secretary of the Interior's Standards for the Treatment of Historic Properties: Standards for Rehabilitation (Exhibit E), as these may be amended from time to time.

Standards for expanding the John Dart House

The small size of the John Dart House is one of its defining features. The John Dart House was designated a Special Historic Landmark by the East Hampton Town Board to preserve the house and to prevent additions that would overwhelm it. The restrictions below achieve the goal of maintaining the integrity of scale.

1. The total gross floor area of the John Dart House shall not exceed 2,400 square feet (the gross floor area of the existing house is approximately 1,400 square feet).
2. Any new addition shall attach only to the north wall or east wall of the c. 1890 north addition. Any new addition shall not extend west of the east wall of the c. 1890 addition and shall not extend more than 14' 4" north of the north wall of the c. 1890 north addition for a distance of 26 feet eastward as depicted by broken lines on EXHIBIT D-1. The roof slope, ridge and eaves shall match those of the c. 1890 north addition for a distance of 26 feet eastward. These restrictions are intended to allow the c. 1890 north addition to be extended 14' – 4" to the north and then extended eastward with a crossgable roof all matching the form of the north wing. Eastward of the 26 foot setback, any new addition shall have a gable roof with a pitch not less than 8 3/8" rise in 12" run and not exceeding a height of 24 feet (the height of the c. 1850 house is approximately 22 feet).
3. This item is the only exception to item 2 above. The non-historic addition at the southwest corner may be removed or reconfigured to allow restoration of the original entrance in the south wall. If reconfigured with no expansion of gross floor area, this addition may be partly or wholly relocated on the east wall of the c.1850 house.
4. The additions shall be compatible with the John Dart House in scale, height, massing, proportions, roof form, textures and materials.

Standards for the setting of the John Dart House

Grantor agrees to restore a vista into the property and to the John Dart House from Three Mile Harbor Road and to restore and maintain an open setting according to the standards of Exhibit C. The area subject to these standards for the setting of the John Dart House is identified on EXHIBIT D-2.

1. The section of picket fence shall be removed.

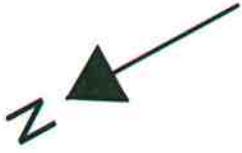
2. The yew at the southwest corner of the house shall be pruned (including removal of one or more trunks) to open up a view of the south and west walls.
3. The three yews and five cedars within the area subject to these standards may be retained, but may not be replaced with new evergreen trees.
4. The area subject to these standards shall be maintained as an open grass lawn with the following exceptions:
 - a. Plantings along the foundation of the John Dart House that mature to have a height no greater than four feet.
 - b. Two deciduous trees that mature to have a high canopy (ten to twenty feet to the lowest limbs).
 - c. A fence may be constructed on the property line that is a post-and-rail fence with two rails only not exceeding a height of three feet. No other fence or structure shall be within the area subject to these restrictions.

26'-0"

ANY NEW ADDITION SHALL ATTACH ONLY TO THE NORTH WALL OR EAST WALL OF c. 1890 NORTH ADDITION. ANY NEW ADDITION SHALL NOT EXTEND WEST OR NORTH OF BROKEN LINE. RIDGE AND EAVES OF ANY NEW ADDITION SHALL NOT BE HIGHER THAN RIDGE AND EAVES OF c. 1890 NORTH ADDITION FOR A DISTANCE OF 26' EAST OF FRONT WALL, BEYOND WHICH POINT ANY NEW ADDITION SHALL NOT EXCEED A HEIGHT OF 24 FEET.

14'-4"

14'-4"



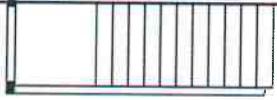
NON-HISTORIC MUD ROOM

ROOM 103
c. 1890
ADDITION

ROOM 102
c. 1850 HOUSE



ROOM 101
c. 1850 HOUSE



NON-HISTORIC ADDITION MAY BE RECONFIGURED ON EAST WALL OF c. 1850 HOUSE TO ALLOW RESTORATION OF ORIGINAL DOORWAY

NON-HISTORIC ADDITION

EXHIBIT D-1
JOHN DART HOUSE - SKETCH OF FIRST FLOOR PLAN
SHOWING REQUIREMENTS FOR ANY EXPANSION

THREE MILE HARBOR ROAD



THE HATCHED AREA IS SUBJECT TO
THE STANDARDS OF EXHIBIT C FOR
THE SETTING OF THE JOHN DART HOUSE

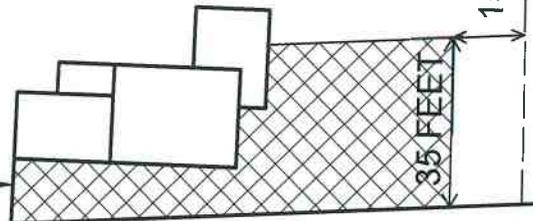


EXHIBIT D-2
JOHN DART HOUSE - SKETCH SITE PLAN

EXHIBIT E

THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES: STANDARDS FOR REHABILITATION

CODE OF FEDERAL REGULATIONS

TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY

CHAPTER I-NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 68--THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES

(b) Rehabilitation.

- (1) A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
 - (2) The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
 - (3) Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
 - (4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.
 - (5) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
 - (6) Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
 - (7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
 - (8) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
 - (9) New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
 - (10) New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.
-



TOWN OF EAST HAMPTON

300 Pantigo Place – Suite 105
East Hampton, New York 11937-2684

Planning Department
JoAnne Pahwul, AICP
Director

Telephone (631) 324-2178
Fax (631) 324-1476

WIRELESS SITE PLAN INITIAL EVALUATION New Cingular Wireless @ Northwest Fire Station Personal Wireless Service Facility (PWSF) – Site Plan/Special Permit SCTM# 300-135-2-15.2, 19 & 34.2

Prepared by: Eric Schantz *E.S. JS*
Senior Planner

Date: December 31, 2019

1. APPLICATION INFORMATION

A. INFORMATION RECEIVED: Applicant submission; cover letter re: (14) Fourteen copies of Exhibit A: - Site Plan, Exhibit B: - RF Affidavit and Plots, Exhibit C: - Alternative Analysis, Exhibit D: - Special Permit Application, Exhibit E: - Survey, Exhibit F: - Part 1 of the Full Environmental Assessment Form, Exhibit G: - FCC Compliance Certificate, Exhibit H: - Structural Analysis, Exhibit I: - FCC License and Exhibit J: - Equipment Specification.

B. DATE SUBMITTED: December 18, 2019

C. TYPE OF APPLICATION SUBMITTED:

- Tier One
 Tier Two
 Tier Three

D. OWNER: Town of East Hampton

E. CARRIER: New Cingular Wireless PCS, LLC (aka AT & T)

F. APPLICANT/AGENT: Phillips Lytle LLP

G. SCHOOL DISTRICT: East Hampton

H. STREET NAME: 12 & 18 Old Northwest Road, 105 Bull Path

K. TYPE OF STREET: Town

L. ZONING DISTRICT: A2 & A3: Residence, Water Recharge Overlay District

M. SEQRA - TYPE OF ACTION: Unlisted

N. INVOLVED AGENCIES: Architectural Review Board, Zoning Board of Appeals,
New York State Department of Environmental Conservation

O. OTHER REVIEW: Office of Fire Prevention

2. DESCRIPTION OF PROJECT

- A. **AREA OF PARCEL (SQUARE FEET):** 708,721 sq. ft.
 - B. **MOST RECENT CERTIFICATE OF OCCUPANCY (date & description):** N/A
 - C. **DESCRIPTION OF EXISTING STRUCTURES:** Vacant
 - D. **DESCRIPTION OF PROPOSED STRUCTURES:** A Personal Wireless Service Facility consisting of a 185' tall monopole with twelve (12) panel antennas at a centerline height of 155' along with fifteen (15) remote radio heads and associated equipment, and a diesel generator and equipment shelter on a 264 sq. ft. concrete slab within a 2,500 sq. ft. fenced-in equipment area, along with a gravel access road from Old Northwest Road.
 - E. **EXISTING LOT COVERAGE:** 0%
 - F. **EXISTING & PROPOSED TOTAL COVERAGE:** 0%, 1.5%
 - G. **HEIGHT OF PROPOSED STRUCTURES:** 185'
 - HEIGHT OF EXISTING SUPPORT STRUCTURE:** N/A
 - CENTER LINE OF PROPOSED ANTENNAS:** 155' AGL
 - HEIGHT OF PROPOSED CABINETS:** N/A
 - H. **NUMBER OF EXISTING PARKING SPACES:** None on-site
 - I. **NUMBER OF PARKING SPACES REQUIRED:** To be determined
 - J. **TOTAL PARKING SPACES PROVIDED:** 2
 - K. **VARIANCES REQUIRED:** Yes, see issues for discussion
 - L. **DOES EXISTING & PROPOSED LIGHTING COMPLY WITH BOARD POLICY?** N/A
 - M. **NUMBER OF ACCESS POINTS:** 1
 - N. **IS SIGHT DISTANCE ACCEPTABLE?** To be determined
 - O. **ARE THERE OTHER CARRIERS USING THIS SITE:** None currently
 - P. **DOES PROP. FACILITY COMPLY WITH FCC STANDARDS?** It appears that it does comply.
3. **SUBMISSION REQUIREMENTS PURSUANT TO CHAPTER 255 NOT SUBMITTED:** See issues for discussion
4. **SITE ANALYSIS:**
- A. **SOIL TYPE:** Gp: Gravel Pits
 - B. **FLOOD HAZARD ZONE:** X
 - C. **DESCRIPTION OF VEGETATION:** Nearly 100% cleared
 - D. **RANGE OF ELEVATIONS:** Not provided
 - E. **NATURE OF SLOPES:** Gentle to flat
 - F. **TYPE OF WETLANDS WITHIN NRSP JURISDICTION:** N/A
 - G. **SETBACK FROM ANY WETLAND OR WATER BODY:** N/A
 - H. **ARE THERE TRAILS ON SITE?** No
 - I. **DEPTH TO WATER TABLE:** Information not provided.
 - J. **DOES THE SITE CONTAIN HISTORIC OR ARCHAEOLOGICAL RESOURCES?** None have been identified and the parcel has been previously disturbed by construction.
 - K. **SITE CONTAINED WITHIN:**

NYS Significant Coastal Fish & Wildlife Habitat	No
Local Significant Coastal Fish & Wildlife Habitat	No
US Fish & Wildlife Significant Ecological Complex	No
PEP CLPS list	No
Town Community Preservation Fund List	No
Recommended Scenic Area of Statewide Significance	No
Suffolk County designated Pine Barrens	Yes
South Fork Special Groundwater Protection Area	Yes
Town Overlay District	WROD

Other Background Information:

Application has been made to construct a Personal Wireless Service Facility consisting of a 185’ tall monopole with twelve (12) panel antennas at a centerline height of 155’ along with fifteen (15) remote radio heads and associated equipment, and a diesel generator and equipment shelter on a 264 sq. ft. concrete slab within a 2,500 sq. ft. fenced-in equipment area, along with a gravel access road from Old Northwest Road.

The parcels are zoned A2: Residence and A3: Residence and are situated between Old Northwest Road and Bull Path in the northwest area of East Hampton. They have historically been used as a brush dump (from between roughly 1973 to 1982) and a mostly cleared of naturally-occurring vegetation.

The property was issued a site plan approval in December 2017 to construct a 3,800 sq. ft. fire sub-station and associated parking and accessory structures along Old Northwest Road. A building permit for this project has been issued.

Issues for Discussion:

State Environmental Quality Review Act (SEQRA)

Pursuant to SEQRA and Chapter 128 of the Town Code the proposed project is an unlisted action. The Planning Department recommends that the Board declare lead agency status.

Settlement Agreement

The subject application has been submitted as a direct result of litigation pertaining to the AT&T @ Iacono Farms PWSF SP/SP application, which was required to prepare an Environmental Impact Statement (EIS) after a positive declaration under SEQRA and Chapter 128 of the Town Code made by the Planning Board as lead agency. This application was subsequently denied by the Planning Board.

The EIS considered alternatives to the Iacono proposal, including the potential to provide a wireless facility at the subject property as opposed to the Iacono Farm property. However, the settlement agreement contains strict time limitations on how long the Town (including the Planning Board, Zoning Board of Appeals, Architectural Review Board, Building Department, etc.) can take before granting any required approvals or permits. Specifically, a 60 day time limitation governs the Town’s review process of the application. Should all required approvals

and permits not be granted within this time frame then the applicants may locate their equipment, as previously proposed, on the Iacono Farm windmill.

The Board should consult Counsel with regard to questions about the terms of the settlement agreement as their impact on review of this application.

Special Permit Standards

The Planning Board should review the attached special permit standards for a personal wireless service facility. The following is a summary of standards which the Planning Department feels the Planning Board should focus its review on:

Location Standards:

Section 255-2-90 of the Town Code contains a set of **directory**, not mandatory, location standards.

“A. Opportunity sites. A personal wireless service facility should be located at one of the following opportunity sites:

- (1) Public rights-of-way utility poles, including telephone poles, utility-distribution poles, streetlights and traffic signal stanchions.*
- (2) Religious institutions.*
- (3) Rooftops.*
- (4) Tree masses.*
- (5) Town-owned properties (except designated open space), depending upon siting and design standards.*

The proposed location represents an opportunity site as it is within tree masses and on Town-owned land. It does not appear to meet any of the criteria for an avoidance area.

Siting Standards:

Section 255-5-50 of the Town Code contains a set of **directory**, not mandatory, siting standards. It appears that the facility will not meet a number of these standards, most notably:

“To the greatest extent possible, personal wireless service facilities should be concealed within existing structures or where camouflaged conditions surround them, or on inconspicuous mounts.”

The antenna mounts are a series of protruding arms and the design of the tower does not allow for equipment concealed within the pole itself. However, the proposed location of the monopole is setback significantly from adjacent roadways and surrounding residential properties and is well-concealed at its base by existing vegetation.

“Placement within trees should be encouraged, but no antennas should extend higher than 10 feet above the average tree height.”

Average tree height is roughly 50'. The proposed monopole is 185' in height with the applicant's equipment situated at 155' AGL.

Design Standards:

Section 255-5-50 of the Town Code contains a set of **directory**, not mandatory, design standards. It appears that the facility will not meet a number of these standards, most notably:

“Color. All personal wireless service facilities should be painted or complementary with natural tones, including trees and sky.”

The Planning Board has made it past practice on many applications to paint all equipment the same color as the mounting structure. The Planning Department would recommend the same for this application. The applicants have submitted information to the Architectural Review Board providing for a variety of colors to be chosen from.

Fall Zone and Setback Requirements:

“No habitable structure or outdoor area where people congregate should be within a fall zone of two times the height of the personal wireless service facility or its mount.”

Two (2) variances from Section 255-5-50 of the Town Code will be required due to the proximity of the proposed monopole to a habitable structure to the south and an outdoor area where people congregate (as well as a habitable structure) to the north. This application has been submitted to the Zoning Board of Appeals and a public hearing is pending.

The Board should note that the settlement agreement addresses the potential for a 160' tall pole at this site rather than a 185' tall one as currently proposed. New Cingular Wireless only proposes to mount its equipment at 155' AGL. A 160' pole would not require any relief given the proposed location. The additional height was added to the tower of the request of the East Hampton Police Department for space for emergency services equipment. The monopole, as proposed at 185' in height, will exceed the 2X setback by roughly 10' from the properties to both the north and south.

Structural Analysis

The applicants have submitted a structural analysis prepared by Sabre Industries dated December 10, 2019 which verifies that the tower will be structurally capable of carrying equipment for the carrier as well as East Hampton Police Department.

Radio Frequency Engineer's Report

An RF engineer's report prepared by Pinnacle Telecom Group dated March 5, 2019 has been submitted. It appears that the proposed electronics are in compliance with all applicable FCC regulations

Visual Analysis

The applicants have submitted elevations, site line drawings and visual renderings (See Sheets Z2, Z3, Z8 & Z9 under tab A). The before and after drawings are difficult to see at smaller scale but can be seen on the full scale sets of plans submitted by the applicants. Given the pole’s proposed location well within the interior of the wooded property, it does not appear that it would be particularly conspicuous from the immediate surrounding area, but more so from a distance as it is well taller than the surrounding trees. It is anticipated that the tower would be only partially visible to the abutting residential properties to the north and south.

Parking & Access

The applicants propose 2 additional parking spaces which appears to be sufficient.

A 20’ wide gravel access road from Old Northwest Road has been proposed. The plans do not specify paving details but provided clean, local quartz gravel is utilized the Planning Department has no objection to this design.

Landscaping

No landscaping has been proposed. The location of the pole and equipment area within the interior of the property would appear to obviate the need for any additional screening but the Board may wish to discuss this with the applicants.

Conclusion

In conclusion, the Planning Department recommends that the Planning Board first declare lead agency status and then discuss the aforementioned issues. In order to meet the required time frame, a resolution to schedule a public hearing should be adopted. The property is an appropriate one for a personal wireless service facility as it represents an opportunity site and can provide substantial concealment due to existing vegetation.

ES

Planning Board Consensus

Declare lead agency?

Additional comments: _____

Does the Board wish to send comments to the ARB or the ZBA?

Additional comments: _____

Additional comments: _____

Section 255-5-40 General Special Permit Standards

No special permit shall be granted unless the issuing board shall specifically find and determine that:

- A. Nature of use. The use proposed will be in harmony with and promote the general purposes of this chapter as the same are set forth in § 255-1-11 hereof.
- B. Lot area. The lot area is sufficient, appropriate and adequate for the use, as well as reasonably anticipated operation and expansion thereof.
- C. Adjacent properties. The proposed use will not prevent the orderly and reasonable use of adjacent properties, particularly where they are in a different district.
- D. Compatibility. The site of the proposed use is a suitable one for the location of such a use in the Town, and, if sited at that location, the proposed use will in fact be compatible with its surroundings and with the character of the neighborhood and of the community in general, particularly with regard to visibility, scale and overall appearance.
- E. Effect on specific existing uses. The characteristics of the proposed use are not such that its proposed location would be unsuitably near to a church, school, theater recreational area or other place of public assembly.
- F. Use definition. The proposed use conforms to the Town Code definition of the special permit use where such definition exists or with the generally accepted definition of such use where no definition is included in the Code.
- G. Circulation. Access facilities are adequate for the estimated traffic generated by the proposed use on public streets and sidewalks, so as to assure the public safety and to avoid traffic congestion; and, further, that vehicular entrances and exits shall be clearly visible from the street and not within 75 feet of the intersection of street lines at a street intersection, except under unusual circumstances.
- H. Parking. There is room for creation of off-street parking and truck loading spaces at least in the number required by the applicable provisions of this chapter, but in any case adequate for the actual anticipated number of occupants of the proposed use, whether employees, patrons and visitors; and, further, that the layout of the spaces and related facilities can be made convenient and conducive to safe operation.
- I. Buffering and screening. Adequate buffer yards and screening can and will be provided to protect adjacent properties and land uses from possible detrimental impacts of the proposed use.
- J. Runoff and waste. Adequate provision can and will be made for the collection and disposal of stormwater runoff, sewage, refuse and other liquid, solid or gaseous waste which the proposed use will generate.

K. Environmental protection. The natural characteristics of the site are such that the proposed use may be introduced there without undue disturbance or disruption of important natural features, systems or processes and without significant negative impact to groundwater and surface waters on and off the site.

L. Compliance with other laws. The proposed use can and will comply with all provisions of this chapter and of the Code, including Chapters **180** and **185** thereof, which are applicable to it, and can meet every other applicable federal, state, county and local law, ordinance, rule or regulation.

M. Conformity with other standards. The proposed use can and will meet all of the general standards for special permit uses in particular districts set forth in § 255-5-45 and also meets all of the specific standards and incorporates all of the specific safeguards required of the particular use, if any, by § 255-5-50.

Section 255-5-50 PERSONAL WIRELESS SERVICE FACILITIES

All personal wireless service facilities shall require a special permit and shall be reviewed pursuant to the following standards or make provisions for the following requirements:

(1) Location standards, as set forth in § 255-2-90 of this chapter.

(2) Siting standards. Personal wireless service facilities should meet the following siting standards. These standards are directory, not mandatory.

(a) To the greatest extent possible, personal wireless service facilities should be concealed within existing structures or where camouflaged conditions surround them, or on inconspicuous mounts.

(b) Placement within trees should be encouraged, but no antennas should extend higher than 10 feet above the average tree height.

(c) Placement on existing roofs or non-wireless structures should be favored over ground-mounted personal wireless service facilities.

(d) Roof-mounted personal wireless service facilities should not project more than 10 additional feet above the height of a legal building, but in no way above the height limit of the zoning district within which the personal wireless service facility is located.

(e) Side-mounted personal wireless service facilities should not project more than 20 inches from the face of the mounting structure.

(f) These standards apply regardless of RF engineering considerations.

(3) Design standards. Personal wireless service facilities should meet the following design standards. These standards are directory, not mandatory.

- (a) Color. All personal wireless service facilities should be painted or complementary with natural tones (including trees and sky).
- (b) Size. The silhouette of the personal wireless service facility should be reduced to the minimum visual impact.

(c) Personal wireless service facilities near residences should either:

- [1] Provide underground vaults for equipment shelters; or
- [2] Place equipment shelters within enclosed structures approved by the Town of East Hampton.

(d) Equipment. The following types of equipment should be discouraged:

- [1] Roof-mounted monopoles, lattice towers or guyed towers.
- [2] Ground-mounted lattice towers.
- [3] Ground-mounted guyed towers.

(e) Height should be kept to a minimum.

[1] Heights of personal wireless service facilities should be no higher than the height of the uppermost height of nearby buildings (within 300 horizontal feet when measured along the ground) of the proposed personal wireless service facility, regardless of prevailing height limits in the zoning district.

[Amended 12-5-2003 by L.L. No. 40-2003]

[2] In the event there are no nearby buildings (within 300 horizontal feet when measured on the ground) of the proposed site of the personal wireless service facility the following should apply:

All ground-mounted personal wireless service facilities (including the security barrier) should be surrounded by nearby dense tree growth for a radius of 20 horizontal feet (when trunk center lines are measured on the ground) from the personal wireless service facility in any direction. These trees can be existing on the subject property or installed to meet the twenty-foot requirement as part of the proposed personal wireless service facility or they can be a combination of both.

Ground-mounted personal wireless service facilities should not project more than 10 feet above the average tree height.

(f) These standards apply regardless of RF engineering considerations.

(4) Safety standards. Personal wireless service facilities should meet the following safety standards. These standards are directory, not mandatory.

(a) Hurricane and tornado design standards should be those of the local building codes used in the Town of East Hampton or EIA-TIA 22 (latest version), whichever is stricter.

(b) Roof mounts on buildings should have railings to protect workers.

(5) Fall zone and setback requirements.

(a) Fall zone.

[1] No habitable structure or outdoor area where people congregate should be within a fall zone of two times the height of the personal wireless service facility or its mount.

[2] No adjoining property line may be within the fall zone of a radius equal to the height of the personal wireless service facility or its mount.

(b) Setback.

[1] All personal wireless service facilities, including mounts and equipment shelters, shall comply with the minimum setback requirements of the applicable zoning district as set forth in the Town of East Hampton Zoning Code, depending upon whether any structure is considered a primary use or an accessory use.

[2] The antenna array for an attached personal wireless service facility is exempt from the setback requirements of this section and from the setback for the zoning district in which they are located, provided that no such antenna array shall extend more than five feet horizontally from the attachment structure at the point of attachment.

[3] On parcels with a principal building housing a primary use, all components of the personal wireless service facility shall be located behind the main building line.

[4] No portion of any personal wireless service facility shall project into a required setback more than the maximum projection permitted in the zoning district in which the facilities are located.

(6) Alternatives analysis and comparison.

(a) Each application for a personal wireless service facility should also contain at least two alternatives that differ from the personal wireless service facility proposed in the application.

(b) The alternatives need not be totally different from the proposed personal wireless service facility; however, the alternatives should contain measurable differences, such as:

[1] Height. An alternative can be identical to the proposed personal wireless service facility except to be for a shorter height.

[2] Number. An alternative could be for two or more personal wireless service facilities that are shorter than the proposed personal wireless service facility.

[3] Location. An alternative could be located on a different property than the proposed personal wireless service facility.

[4] Siting. An alternative could be in a different place on the same property as the proposed personal wireless service facility.

[5] Design. An alternative could be of the same height, location and siting as the proposed personal wireless service facility, but be designed to appear differently.

(c) Submittal requirements for alternatives. The materials submitted for each alternative should show only the differences between each of the alternatives and the proposed personal wireless service facility.

(d) Department of Planning provision of alternatives.

[1] If the applicant has not submitted two alternatives, the Town of East Hampton Department of Planning staff shall prepare at least two alternatives.

[2] If the applicant has submitted two or more alternatives, the Town of East Hampton Department of Planning staff shall prepare at least one alternative.

(e) Comparison of proposed personal wireless service facility and alternatives. The Town of East Hampton Department of Planning staff shall compare the proposed personal wireless service facility to the alternatives on the basis of the following:

[1] Change in community scale, as exhibited in relative height, mass or proportion of the personal wireless service facility within its proposed surroundings.

[2] New visible elements proposed on a contrasting background.

[3] Different colors and textures proposed against a contrasting background.

[4] Use of materials that are foreign to the existing built environment.

[5] Conservation of opportunities to maintain community scale, not compromising buffering areas and low-lying buildings so as to start a trend away from the existing community scale.

[6] Amount and diversity of landscaping and/or natural vegetation.

[7] Preservation of view corridors, vistas, and viewsheds.

[8] Continuation of existing colors, textures and materials.

(f) Ranking of proposed personal wireless service facility and alternatives. The Town of East Hampton Department of Planning staff shall rank the proposed personal wireless service facility and each alternative based on the criteria listed in Subsection 255-5-50(6)(e) above. The ranking of the proposed personal wireless service facility and each alternative shall be submitted to the Planning Board along with each application for review by the Planning Board. The Planning Board shall consider the alternatives along with the proposed personal wireless service facility.

(7) Radio frequency radiation emissions.

(a) FCC Guidelines. A statement certifying that as proposed, the personal wireless service facility complies with the FCC Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (FCC Guidelines) concerning radio frequency radiation and emissions shall be provided at the time of final site plan review, or building permit application for facilities not requiring site plan review.

(b) No contravention of FCC Guidelines. A personal wireless service facility that meets the FCC Guidelines shall not be conditioned or denied on the basis of radio frequency impacts.

(8) Noise.

(a) No equipment shall be operated at a personal wireless service facility so as to produce noise in excess of the applicable noise standards under § 255-1-90, except for emergency situations requiring the use of a backup generator, where the noise standards may be exceeded on a temporary basis until such emergency has passed.

Section 255-2-90 Location Standards

The approval of personal wireless service facilities shall be subject to meeting or exceeding the following standards:

A. Opportunity sites. A personal wireless service facility should be located at one of the following opportunity sites:

(1) Public rights-of-way utility poles, including telephone poles, utility-distribution poles, streetlights and traffic signal stanchions.

(2) Religious institutions.

(3) Rooftops.

(4) Tree masses.

(5) Town-owned properties (except designated open space), depending upon siting and design standards.

B. Avoidance areas. A personal wireless service facility should not be located in the following avoidance areas:

(1) Open spaces, including:

(a) Woodlands.

(b) Wetlands.

(c) Moorlands (dwarf forest).

(d) Meadow/old fields (open or formerly farmed areas).

(e) Downs (prairie).

(f) Duneland/beach.

(g) Farmland (active agriculture).

(2) Other areas attendant to water bodies and shorelines.

(3) Flood-prone areas.

(4) Historically and culturally significant resources, including historic sites, historic districts as well as structures.

(5) Areas identified in the Scenic Resources Study and Scenic Areas of Statewide Significance, not otherwise classified above.

C. These location standards shall be considered directory but not mandatory. Interpretation of opportunity sites and avoidance areas shall be based on the Town of East Hampton Department of Planning maps or aerial photographs provided by the applicant.

D. Personal wireless service facilities may also be permitted in areas that are not opportunity sites subject to the siting, design and safety standards in § 255-5-50 and permitted in avoidance areas subject to the siting, design and safety standards in § 255-5-50.

E. These standards apply regardless of radio frequency (RF) engineering considerations.

PLANNING BOARD OF THE TOWN OF EAST HAMPTON
EAST HAMPTON, NEW YORK

In the Matter of the Application

of

SITE PLAN/
SPECIAL PERMIT
APPROVAL

Northwest Fire Sub-Station Site Plan/Special Permit
SCTM#300--135-02-15.2, 19 & 34.2

ADOPTED: ____/____/____

FINDINGS AND DETERMINATION OF THE BOARD

The findings of fact, conclusions, and determination set forth herein are made after consideration of the application, any presentations, memoranda or correspondence made or submitted to the Board by staff or interested parties, comments taken at any public hearing on the application, and inspection of the subject property.

A. PROJECT DESCRIPTION

1. TYPE OF APPROVAL SOUGHT:

(a) Site plan approval pursuant to Article VI of Chapter 255 (Zoning) of the East Hampton Town Code.

(b) Issuance of a special permit pursuant to Article V of Chapter 255 of the Town Code.

2. USE REQUIRING SPECIAL PERMIT: Semi-Public facility

3. DESCRIPTION OF PROPOSED WORK: Construction of a one story, 3,800 sq. ft. building having four bays, a 250 sq. ft. (13' x 19') office, and a small kitchenette and no basement. Additionally, seventeen parking spaces, a 1,000 gallon propane tank, a generator, and an enclosed dumpster are proposed.

4. SIZE OF PROPERTY: 30,000 sq. ft. leased site

5. OWNER OF PROPERTY: Town of East Hampton

6. APPLICANT: Village of East Hampton

7. PROPOSED SITE PLAN C1 Site Plan prepared by D. B. Bennett, P.E and dated revised July 27, 2017

8. DATE OF PUBLIC HEARING ON APPLICATION: October 25, 2017

B. PROPERTY LOCATION AND DESCRIPTION

1. SUFFOLK COUNTY TAX MAP DESIGNATION: #300-135-2-15.2, 19 & 34.2

2. STREET LOCATION: Old Northwest Road

3. CONTIGUOUS WATER BODIES: N/A

4. HAMLET OR GEOGRAPHIC AREA: East Hampton

5. **SITE DESCRIPTION & EXISTING IMPROVEMENTS:** The property is the site of a former municipal solid waste landfill and is largely cleared and presently vacant.
6. **FILED MAP NAME:** N/A
7. **FILED MAP NUMBER:** N/A
8. **DATE OF MAP FILING:** N/A
9. **BLOCK NUMBER IN FILED MAP:** N/A
10. **LOT NUMBER IN FILED MAP:** N/A

C. ZONING CLASSIFICATION

1. **ZONING DISTRICT:** A3 Residence
2. **ZONING OVERLAY DISTRICT:** Water Recharge

D. SEQRA REVIEW

1. **SEQRA CLASSIFICATION:** Unlisted
2. **LEAD AGENCY:** Planning Board
3. **DETERMINATION OF SIGNIFICANCE:** Negative declaration
4. **DATE OF DETERMINATION:** December 6, 2017

E. COUNTY COMMISSION REVIEW/ADDITIONAL FINDINGS OF FACT

1. Pursuant to the inter-municipal agreement between the Town of East Hampton and the County of Suffolk, the subject application does not require referral to the Suffolk County Planning Commission (SCPC).

2. By letter dated December 4, 2017, the East Hampton Fire Marshal has informed the Board that no additional fire protection devices are needed for this project.

3. My memorandum dated September 15, 2017, the Town Engineer found the engineering elements of the project to be satisfactory.

4. The active landfill and the closing of this landfill are under the jurisdiction of the New York State Department of Environmental Conservation (NYSDEC). A letter dated April 13, 2017 from the New York Department of Environmental Conservation, states that it has reviewed the plans for the Northwest Fire Substation and has no objections provided that the following conditions are met.

1. Prior to the beginning of construction, the existing groundwater monitoring well on the subject property must be maintained until it is decommissioned in accordance with 6 NYCRR Part 360-2.11 (a.) (8)(vi). Prior to decommissioning, the well needs to be sampled for Baseline parameters outlined in 6 NYCRR Part 360-2.11 (d) (6). In the event sampling is scheduled, it must be coordinated with the Department to offer Department staff the opportunity to witness the sampling.

2. Within 30 days of project completion, a certification report shall be submitted to the Department demonstrating construction was done in accordance with the approved plans, and copies of the scale receipts for disposal of any wastes removed from the landfill as a result of the construction.

5. A Landfill Gas Monitoring Report dated January 20, 2017 prepared by D. B. Bennett and dated February 3, 2017 at the request of the NYSDEC was submitted for the project. The report provides information on levels of methane, carbon dioxide, and oxygen gas in monitoring wells for the former landfill. In the narrative on Landfill Gas Potential from D.B. Bennett, P.E dated July 28, 2017, no methane was detected during the survey. The Landfill Gas Protection Plan (Sheet C6) dated February 1, 2017 and prepared by D. b. Bennett depicts safety measures that have been incorporated into the project that are designed for any potential landfill gas that is encountered during or after construction of the project.

6. Water quality tests performed by EMSL Analytical, Inc. on May 2015 indicate that no volatile organics were found in the groundwater. According to the applicant's representative, the samples exceeded drinking water standards with regard to iron and manganese and were slightly over the limit for chromium. If resampling indicates high levels of these elements, the Suffolk County Department of Health will require water treatment as a condition of their approval.

7. A soil test boring report prepared by Slacke Test Boring dated February 27, 2007 indicated that subsoil test borings conducted on the site revealed soil conditions that included fill and surficial water that could be potential project factors during construction. The report makes recommendations for construction that are designed to mitigate these factors.

F. COMPLIANCE WITH TOWN CODE OR OTHER REQUIREMENTS OF LAW

Based upon the foregoing, the Planning Board finds that the application as approved, subject to any conditions or modifications specified in § H below, meets the following requirements:

1. The application contains all necessary elements of a site plan as enumerated in § 255-6-50 of the Town Code.

2. The application meets the standards enumerated for review of site plans in § 255-6-60 of the Town Code.

3. The application meets the general standards required for the issuance of a special permit by § 255-5-40 of the Town Code, in that:
 - (A) Nature of use. The use proposed will be in harmony with and promote the general purposes of Chapter 255 of the Town Code as the same are set forth in § 255-1-11 thereof.

 - (B) Lot area. The lot area is sufficient, appropriate, and adequate for the use, as well as reasonably anticipated operation and expansion thereof.

(C) Adjacent properties. The proposed use will not prevent the orderly and reasonable use of adjacent properties, particularly those which are in a different zoning district].

(D) Compatibility. The site of the proposed use is a suitable one for the location of a semi-public facility in the Town, and the proposed use will be compatible with its surroundings and with the character of the neighborhood and of the community in general, particularly with regard to visibility, scale, and overall appearance.

(E) Effect on specific existing uses. The characteristics of the proposed use are not such that its proposed location would be unsuitably near to a church, school, theater, recreational area, or other place of public assembly.

(F) Use definition. The proposed use conforms to the Town Code's definition of "semi-public facility" as that definition is used in § 255-1-20 of the Town Code.

(G) Circulation. Access facilities are adequate for the traffic estimated to be generated by the proposed use on public streets and sidewalks, so as to assure the public safety and to avoid traffic congestion; and vehicular entrances and exits are clearly visible from the street and are not within seventy-five (75) feet of the intersection of street lines at a street intersection.

(H) Parking. The seventeen off-street parking spaces proposed for this application satisfy the requirements of the applicable provisions of Chapter 255 of the Town Code, and are in any case more than adequate for the actual anticipated number of occupants of the proposed use. Furthermore, the layout of the spaces and related facilities will be convenient and conducive to safe operation.

(I) Buffering and screening. Adequate buffer yards and screening have been provided to protect adjacent properties and land uses from possible detrimental impacts of the proposed use.

(J) Runoff and waste. Adequate provision has been made for the collection and disposal of stormwater runoff, sewage, refuse, and other liquid, solid, or gaseous waste which the proposed use will generate.

(K) Environmental protection. The natural characteristics of the site are such that the proposed use may be introduced there without undue disturbance or disruption of important natural features, systems, or processes and without significant negative impact to groundwater and surface waters on or off the site.

(L) Compliance with other laws. The proposed use can and will comply with all provisions of the Town Code which are applicable to it, and can meet every other applicable federal, state, county, and local law, ordinance, rule, or regulation.

G. DISPOSITION OF APPLICATION

The application is approved as described herein, subject to any conditions or modifications specified in § H below.

1. TYPE OF APPROVAL GRANTED:

- (a) Site plan approval pursuant to Article VI of Chapter 255 of the Town Code.
 - (b) Issuance of a special permit pursuant to Article V of Chapter 255 of the Town Code.
- 2. NATURE OF APPROVED USE:** Fire Substation classified as a semi-public facility
- 3. DESCRIPTION OF APPROVED WORK:** Construction of a one story, 3,800 sq. ft. building having four bays, a 250 sq. ft. (13' x 19') office, and a small kitchenette and no basement. Additionally, seventeen parking spaces, a 1,000 gallon propane tank, a generator, and an enclosed dumpster are proposed.

H. CONDITIONS OF APPROVAL

The approval hereby granted is contingent upon full compliance with the conditions set forth in this section. The property may not be used except in accordance with this conditional approval, and all improvements shall be made, built, or installed in accordance with the plans described below.

- 1. **APPROVED SITE PLAN:** C1 Site Plan prepared by D. B. Bennett, P.E and dated revised September 14, 2017;
 - 2. Survey prepared by George Walbridge Surveyors dated revised August 16, 2016.
- 2. APPROVED BUILDING OR CONSTRUCTION PLANS:**
- C2– Civil Details dated revised July 27, 2017;
 - CO – Title page,
 - C3 Elevations,
 - C4 First Floor Plan,
 - C5 Pile/Grade Beam Plan,
 - C6 Landfill/Gas Protection Plan,
 - C7 Section,
 - C8 Foundation Details,
 - C10 – General Notes, all prepared by D. B. Bennett, P.E. and dated revised February 1, 2017; and
 - C9 – Landscape & Lighting Plan; prepared by D. B. Bennett, P.E. dated revised November 3, 2017.

3. ADDITIONAL CONDITIONS AND TIME LIMITATIONS:

3.1 No building permits may issue, nor may clearing, grading, or construction activities be commenced, until and unless the conditions enumerated in sub¶ 3.2 and 3.3 below have been met, as evidenced by the report of the Planning Board Chair.

3.2 The applicant shall obtain the approval of the Suffolk County Department of Health Services. One copy of the approved map containing an original stamp of approval from this agency, not a photocopy, shall be submitted to the Planning Board as well as a copy of any Covenants & Restrictions required by that agency.

3.3 The applicant shall obtain the final written approval of the Architectural Review Board.

3.4 The applicant shall perform the parking, access, drainage, and landscaping improvements

shown on the approved site plan and approved building or construction plans described above.

3.5 All landscaping shall be maintained by the applicant in accordance with the approved site planting plan for so long as the improvements approved as part of this site plan are in use. This requirement shall be a continuing condition of this approval, and the applicant and any successors in interest shall replace and replant the landscaping on the site as may be necessary to satisfy this condition.

3.6 The areas to be planted with native grasses and labeled "lawn" on the approved plans will not be mowed or cut, but will be allowed to reach and be maintained at their natural height.

3.7 The parking, access, and drainage improvements required by this site plan approval (including any devices for delineating parking spaces or directing traffic flow) shall be maintained by the applicant for so long as the improvements approved as part of this site plan are in use. This requirement shall be a continuing condition of this approval, and the applicant and any successors in interest shall repair, replace, and maintain these improvements as may be necessary to satisfy this condition.

3.8 Applicant shall submit to the Planning Board a copy of its certification report to the New York State Department of Environmental Conservation (NYS DEC) upon project completion, demonstrating construction was done in accordance with the approved plans, and copies of the scale receipts for disposal of any wastes removed from the landfill as a result of the construction.

3.9 No Certificate of Occupancy shall be issued for this site or for the improvements thereon until and unless all of the foregoing conditions have been met.

3.10 The applicant shall apply for and obtain a building permit no later than three (3) years from the date of this resolution.

3.11 The applicant shall apply for and obtain a Certificate of Occupancy no later than four (4) years from the date of this resolution.

I. VALIDITY OF APPROVAL

If any condition of this resolution is not met, or is not met within the prescribed time period, all approvals, permits, or authorizations granted hereby shall be deemed void and of no effect.

DATED: December 6, 2017

cc: Village of East Hampton
Planning Department
Building Inspector
Architectural Review Board

SETTLEMENT AGREEMENT

This Settlement Agreement (hereafter "Settlement Agreement") is among New Cingular Wireless PCS, LLC d/b/a AT&T Mobility ("AT&T"), and the Planning Board of the Town of East Hampton ("Planning Board"), and the Town of East Hampton ("Town") on behalf of itself and its boards, agencies, departments and instrumentalities, in particular, defendants Town of East Hampton Architectural Review Board, and the Town of East Hampton Building Department (collectively, "Defendants"). Defendants and AT&T are also referred to individually as a "Party" and collectively as "Parties."

RECITALS

WHEREAS AT&T commenced Civil Action No. 2:18-cv-00242 (the Action) arising out of the Planning Board's denial of an application to erect a personal wireless facility on an existing wind turbine tower at 100-06 Long Lane, East Hampton, NY (the "Iacono Farm Facility");

WHEREAS Defendants admit the existence of the gap in personal wireless services alleged in the Action and their obligation to permit AT&T to remedy that gap;

WHEREAS a material premise of the Planning Board's denial of the application for the Iacono Farm Facility was the belief that location of a personal wireless facility on Town-owned property (SBL 135.-2-19, SBL 135.-2-15.2 and/or SBL 135.-2-34.2) located between Bull Path and Old Northwest Road (the "Brush Dump") would be both feasible and preferable to the Iacono Farm Facility;

WHEREAS AT&T filed the application for the Iacono Farm Facility on January 26, 2015, and the gap has remained without remedy since at least that date;

WHEREAS AT&T and Defendants desire an amicable resolution of the Action consistent with the obligations imposed by the Telecommunications Act of 1996, in particular, 47 U.S.C. § 332(c)(7) (the "TCA"), to resolve applications for personal wireless facilities in a reasonable period of time and conclude litigation concerning such applications on an expedited basis;

WHEREAS the Town Board finds that, as part of an amicable resolution of the Action, it would be just, reasonable and in the interest of the Town and the parties' rights and obligations under the TCA to lease, on mutually agreeable terms, a portion of the Brush Dump to AT&T for use as a personal wireless facility;

WHEREAS AT&T is amenable to resolving the Action if it can construct, on an expedited basis and subject to mutually agreeable lease terms, a personal wireless facility at the Brush Dump of a height sufficient to permit AT&T to locate its highest antenna at a height of at least 160 feet above ground level (the "Brush Dump Facility"); and

WHEREAS all Defendants find that it would be just, reasonable and in the interest of the Town and consistent with the Town Code and the parties' rights and obligations under TCA

for AT&T to be permitted to construct the Iacono Farm Facility if AT&T is unable to construct, on an expedited basis, the Brush Dump Facility;

WHEREAS In anticipation of this settlement, on March 8, 2019, 2019, AT&T filed an application requesting FAA approval of the Brush Dump Facility (the "160 Foot FAA Application"), and an alternate application for a facility at the Brush Dump of sufficient additional height to accommodate Town Public Safety Communications Equipment (the "Alternate FAA Application") (collectively, the "FAA Applications") and on April 30, 2019 FAA approved the Alternative FAA Application;

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

In consideration of the foregoing Recitals, which expressly are incorporated by reference herein and in further consideration of the covenants, representations, terms and conditions contained below, the sufficiency of which is acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Brush Dump Facility Lease.

The Town shall Lease property at the Brush Dump to AT&T, upon terms consistent with the term sheet set forth in Appendix A to this Agreement and conditioned on AT&T securing all variances, approvals and permits necessary and within the time periods set forth in this Settlement Agreement, to construct the Brush Dump Facility.

2. Required Application Materials.

Defendants agree that all materials AT&T is required to submit to complete all application(s) necessary to permit the Town and its boards, agencies, departments and instrumentalities to review and approve the Brush Dump Facility, and to permit AT&T to construct the Brush Dump Facility, are set forth in Appendix B.

3. Terms of Order Resolving Action.

Upon execution of this Agreement, the parties shall submit to the Court for entry the Order Resolving Action set forth in Appendix C. As set forth in that Order:

A. The Town, and its boards, agencies, departments and instrumentalities shall accord AT&T all reasonable cooperation and assistance, including access to the Brush Dump, necessary to facilitate AT&T's submission of the materials agreed upon in Appendix B. Said cooperation shall include responding, within seven business days, to any request by AT&T for a written confirmation that a submission, or a proposed submission provided in advance for review (collectively, "submission"), is sufficient to be deemed materially complete for the purpose of proceeding with the application. The response to the request shall consist either of a confirmation the submission is sufficient to be deemed materially complete or a complete description of any and all deficiencies requiring remedy to permit the materials to be deemed materially complete. The failure of the Town or the responsible board, agency, department or instrumentality to respond in writing within seven business days to such a

request shall be an admission that the submission satisfies any and all requirements to be deemed complete and a waiver of any right to request additional information with respect to that submission.

B. The Town, and its boards, agencies, departments and instrumentalities shall, by the "Date for Approval" as defined below, reach a final decision on those applications and issue all approvals required for construction of the Brush Dump Facility. The "Date for Approval" is the first business day 60 (sixty) days after submission of the applications described in Paragraph 3.B., extended only by agreement of the parties, or for good cause shown, for a period no longer than 21 (twenty one) days after the expiration of the 60 day period, if necessary due to unforeseen and unavoidable circumstances (e.g. force majeure).

C. If AT&T receives, by the Date for Approval, all variances, approvals and permits necessary to construct the Brush Dump Facility, the Action will be dismissed pursuant to the Order Resolving Action, which under the circumstances set forth in this Paragraph 2.C. would permit AT&T to construct the Brush Dump Facility.

D. 1). If any board, agency, department or instrumentality of the Town should fail to grant any variance, approval or permit necessary to construct the Brush Dump Facility by the Date for Approval, or affirmatively denies any such variance, approval or permit, Defendants shall be deemed to have granted all variances, permits and approvals necessary for construction of the Iacono Farm Facility, and AT&T immediately shall be authorized to construct the Iacono Farm Facility without any further action by AT&T.

2). The following shall also permit AT&T, at its sole option, to deem the application for the Brush Dump Facility to have been denied for purposes of this Settlement Agreement:

a). Issuance of a positive declaration under the State Environmental Quality Review Act ("SEQRA");

b). The Town's failure to agree, in the manner set forth in Appendix A, to include in the Lease Rent Abatement defined in Appendix A any increase in cost of developing the Brush Dump Facility due to any need, arising after execution of this Settlement Agreement, for AT&T to incur increased cost to address physical conditions present at the Brush Dump or satisfy requirements imposed as conditions of federal, state or local approvals; or

c). The need, arising after execution of this Settlement Agreement, for AT&T to address physical conditions present at the Brush Dump, or satisfy requirements imposed as conditions of federal, state or local approvals, that would result in an estimated cumulative delay of more than 90 days in the completion of the Brush Dump Facility.

E. If the authority of any Defendant to enter into this Settlement Agreement, or to have approved the Brush Dump Facility, is subject to legal challenge and that challenge is not resolved within 90 days of the Date for Approval, AT&T, at its sole discretion, may deem the application for the Brush Dump Facility to have been denied and Defendants immediately shall be deemed to have granted all variances, permits and approvals necessary for

construction of the Iacono Farm Facility and AT&T shall be authorized to construct the Iacono Farm Facility without any further action by AT&T.

4. Authorization to execute this Settlement Agreement.

Each Defendant shall take all steps required by the laws of the State of New York to be authorized to enter into and be bound by this Settlement Agreement and, by designating a representative to sign this Settlement Agreement on its behalf, affirm, certify and warrant that the persons signing this Settlement Agreement has been duly authorized to do so. If the authority of any Defendant to enter into this Settlement Agreement or to approve the Brush Dump Facility is subject to legal challenge and that challenge is not resolved within 90 days of the Date for Approval, at AT&T's sole discretion, for purposes of this Settlement Agreement the application for the Brush Dump Facility shall be deemed denied and Defendants shall be deemed to have granted all variances, permits and approvals necessary for construction of the Iacono Farm Facility and AT&T immediately shall be authorized to construct the Iacono Farm Facility without any further action by AT&T.

5. No Admission.

This Settlement Agreement is the result of a compromise settlement of disputed claims and defenses. Nothing in this Settlement Agreement may be construed as an admission of any issue of law or fact, an admission or concession of liability or wrongdoing on the part of any Party, an acknowledgement as to the validity or invalidity of any claim or defense asserted, or an acknowledgement as to the validity or invalidity of any relief or damages sought. This Settlement Agreement may not be used as evidence in any proceeding other than a proceeding to enforce its terms.

6. Costs, expenses and attorneys' fees.

Except as otherwise noted, each Party will bear its own costs, expenses, court costs, and attorneys' fees arising out of or related to this Settlement Agreement, the Lawsuit, and the underlying disputes.

7. Severability.

In the event that any provision hereof is found unenforceable or invalid, the objectionable provision shall be revised to comport with law and preserve intact as nearly as possible the intent of the Parties as expressed herein, or if not feasible or permissible, severed so as not to affect the Settlement Agreement as a whole and the remaining provisions hereof. To the fullest extent permitted by law, the Parties waive any and all statutes, regulations, rules, judicial decisions and other legal authorities that render any provision of this Settlement Agreement wholly or partially unlawful, invalid, void or unenforceable.

8. Modification, waiver.

This Settlement Agreement may not be modified and no provision, term or condition hereof may be waived, except by a writing signed by the Parties. Any failure by the Parties to enforce their rights under any provision of this Settlement Agreement shall not be

construed as a waiver of such provision or the right of a Party to enforce such provision. No course of dealing, custom or usage between or among any persons having any interest in this Settlement Agreement shall be deemed effective to modify, amend, or discharge any part of this Settlement Agreement or any rights or obligations of any Party under or by reason of this Settlement Agreement.

9. Effective Date.

This Settlement Agreement is effective as of the date it is fully executed.

10. Successors and assigns.

This Settlement Agreement is binding upon, and inures to the benefit of, the Parties and their respective successors and assigns. This Settlement Agreement is assignable upon written agreement by all of the Parties, said agreement not to be unreasonably withheld.

11. Governing law.

This Settlement Agreement is made pursuant to, and shall be construed and enforced in accordance with, the laws of the State of New York, without giving effect to otherwise applicable principles regarding choice of law or conflicts of law.

12. Entire Agreement.

This Settlement Agreement contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements, understandings and negotiations, whether written or oral.

13. Joint Preparation.

This Settlement Agreement is the result of a negotiated compromise between the Parties and was jointly prepared. This Settlement Agreement must in all cases be construed as a whole according to its meaning and not strictly construed for or against either of the Parties.

14. Reading, understanding, judgment, reliance on counsel.

The Parties represent and warrant that they have carefully read this Settlement Agreement and that the terms and conditions of this Settlement Agreement are fully understood and voluntarily accepted by them. The Parties further represent and warrant that they have relied upon their own judgment and that of legal counsel of their own choosing regarding the proper, sufficient, and agreed upon consideration for this Settlement Agreement and that no statement or representation by any of the Parties influenced or induced them to execute this Settlement Agreement.

15. Captions.

The captions to the paragraphs of this Settlement Agreement are illustrative only and will not be deemed to affect the construction or interpretation of the provisions hereof.

16. Notice.

All notices required by this agreement, including requests for written confirmation of completeness of submissions and written responses to those requests, shall be made by e-mail and overnight mail. If to AT&T the notice shall be directed to Kimberly R. Nason, Phillips Lytle, LLP, One Canalside, 125 Main Street, Buffalo, NY 14203-2887, knason@phillipslytle.com, and if to Defendants, or any board, agency, department or instrumentality thereof, to Kelly Wright, Picciano & Schahill, P.C., 1065 Stewart Ave. - Suite 210, Bethpage, NY 11714, kwright@psnylaw.com

17. Execution.

This Settlement Agreement may be executed in multiple counterparts, each of which shall constitute an original. A facsimile or electronic signature (e.g., PDF) shall be deemed an original for all uses and purposes.

[Signature Page Follows]

[Signature Page to Settlement Agreement]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Settlement Agreement on the latest day and year below written.

New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation, its Manager

By:  Date: 10/8/19

The Planning Board of the Town of East Hampton

By:  Date: 8/1/19
SAMUEL KRAMEY, CHAIR

The Town of East Hampton

By:  Date: 8/1/19



TOWN OF EAST HAMPTON

300 Pantigo Place – Suite 105
East Hampton, New York 11937-2684

Planning Department
JoAnne Pahwul, AICP
Director

Telephone (631) 324-2178
Fax (631) 324-1476

December 31, 2019

TO: Planning Board

FROM: Eric Schantz *E.S.* *JP*
Senior Planner

RE: Springs Fireplace Car Wash - Site Plan/Special Permit
SCTM#300-145-2-11
238 Springs – Fireplace Road

Last Review Date: August 14, 2019

Items and Date Received: 08/20/19 Public comments – C. Ganitsch 08/26/19 Public comments – P. Italiano 08/28/19 Memo to A. Glenonn; RE: Request for determination 10/31/19 Applicant submission; cover letter re: Ten (10) copies of Saskas Surveying Co dated October 29, 2019. 12/11/19 Applicant submission; cover letter, re: ten (10) copies of Saskas Surveying Co. site plan/survey dated December 8, 2019

Background Information: Site plan application has been made to construct a 5,455 sq. ft. building along with associated parking, landscaping, drainage, sanitary & associated accessory structures to be utilized as part of a “major car wash” use, as defined in section 255-1-20 of the Town Code.

The property is situated along Springs – Fireplace Road in East Hampton and is zoned CI: Commercial Industrial. It is 100% un-cleared of natural vegetation. The neighboring properties to the west, east, north and south are also zoned CI: Commercial Industrial. The property is immediately adjacent to two (2) access points of the Town’s recycling center.

Issues for Discussion:

Scenic Easement Setback

The applicants have amended the site plan to provide a minimum 10’ setback from the required scenic easement along Springs – Fireplace Road. It appears that all applicable dimensional regulations have been met.

Car Wash Water Usage

The Board stated at the time of the last review that the Natural Resources Department would be contacted in order to determine what information pertaining to the car wash system should be required. The Planning Department spoke with Kim Shaw the Director of this department. She re-iterated a point made by the applicants that this is proposed as a closed system for water recycling, which is required in all of New York State. The Suffolk County Department of Health Services (SCDHS) has standards and monitoring policies that have been established to prevent groundwater contamination from the car wash operation. However, these are not published otherwise they would be attached to this memo.

The applicants have submitted an application to the SCDHS which is incomplete as of 2018. When the Office of Wastewater Management receives applications of this type (e.g. car wash, public swimming pools, hazardous materials storage, etc.) which deal with on-site storage of volumes of chemicals, they automatically route it to the Office of Pollution Control. Pollution Control checks whether or not the volume of materials on-site exceeds thresholds in Articles 6, 7 & 12 of the Suffolk County Sanitary Code. They do not conduct environmental review but only check for compliance with design and permitting.

The applicants previously submitted a memo from Z Wash Distribution LLC dated October 30, 2018 which addresses some of the functions of the washing mechanisms. It states that roughly 16% of the water used to wash each car will be lost mostly due to evaporation. This report also mentioned that roughly 11 Gallons of new (fresh) water would be needed per car.

Although most of the “lost water” would be through evaporation, there is a potential for run-off from water dripping from the cars. It is recommended that one or more catch basins and drywells with filters be provided in order to control residual water run-off from cars exiting the car wash. If the Board agrees, this should subsequently be reviewed by a licensed engineer.

Conclusion

In conclusion, the application appears to be otherwise complete at this time and ready to be scheduled for a public hearing, provided the Board does not require any additional information at this time.

ES

Planning Board Consensus

Is the application complete and ready to be scheduled for a public hearing?

Additional comments: _____

Additional Board Comments:



TOWN OF EAST HAMPTON

300 Pantigo Place – Suite 105
East Hampton, New York 11937-2684

Planning Department
JoAnne Pahwul
Director

Telephone (631) 324-2178
Fax (631) 324

January 3, 2020

To: Planning Board

From: JoAnne Pahwul, AICP
Planning Director

Re: Lakeview Condominiums Site Plan/Special Permit Modification Request
SCTM#300-12-1-3, 13

Background Information

The subject 2.28 parcel is located on West Lake Drive in Montauk in a Resort/Harbor Protection Overlay zoning district. On February 6, 2013, the Planning Board approved a site plan/special permit for the construction of seven, two-story condominium units in two buildings, each having a 500 sq. ft. foot footprint, 10' x 17' or 14' x 17' rear decks, and a second floor balcony. The project also included a parking area containing nineteen parking spaces and an enclosed dumpster area. The Board approved a modification request on June 25, 2014 with regard to a change to a notation regarding the conservation easement on a number of the approved plans.

The project was constructed and a request was submitted to modify the approval with regard to the dumpster location and extent and amount of clearing. Under the Harbor Protection Overlay District regulations, 50% of the parcel is permitted to be cleared. The previous site plan approved reducing clearing on the site to 31,771 sq. ft., representing 32%, after a significant amount of revegetation. At this time, the applicant is requesting that the amount of clearing permitted be increased to 49,381 sq. ft., representing 49.6% of the lot. The Planning Board previously found the additional clearing to be acceptable given the reduction in the scale of the project and since the proposed clearing limits comply with the clearing restrictions in a Harbor Protection Overlay District. The applicant offered to file covenants and restrictions that would ban the use of fertilizers, pesticides and irrigation on the site as mitigation for this additional clearing.

Several other minor changes require modification of the approval. The mechanical equipment that was approved as being located on the roof, is located on the ground on the northerly and southerly sides of buildings. The decks and staircases are larger than on the approved plan.

During the last review, the Planning Board agreed to waive the public hearing pursuant to § 255-6-63 of the Town Code.

Issues for Discussion

The applicant has submitted a revised site plan, C1 prepared by D.B. Bennett, P.E. and dated December 18, 2019 containing a revised key to the lighting on the site. This plan indicates Kelvin levels that comply with the Board’s lighting policy and the Town Code. However, the manufacturer’s specification sheets submitted for the proposed fixtures indicate that two of the three proposed fixtures will exceed the recommended 2700 Kelvin level. The lighting plan indicates that a roscolux 3401 film will be applied to the light fixtures to convert the color temperatures of the bulbs from 5000 to 2700 and 3000 Kelvin.

The Planning Department is unaware of the proper use of this film and finds that adding film coverings to lighting may be difficult to enforce and result in noncompliant fixtures. The Planning Department recommends that the applicant propose bulbs that comply with the recommended 2700 Kelvin temperature.

Planning Board Consensus:

The Planning Board should discuss whether the lighting plan should be revised to provide bulbs that comply with the Board’s lighting policy with regard to Kelvin levels or whether to accept the applicant’s proposal to put film over the bulbs to bring the Kelvin levels into compliance.

Additional comments: _____

Additional Board Comments:

JP