Proposed Zoning Code Amendment
Local Law No. 2 of 2025

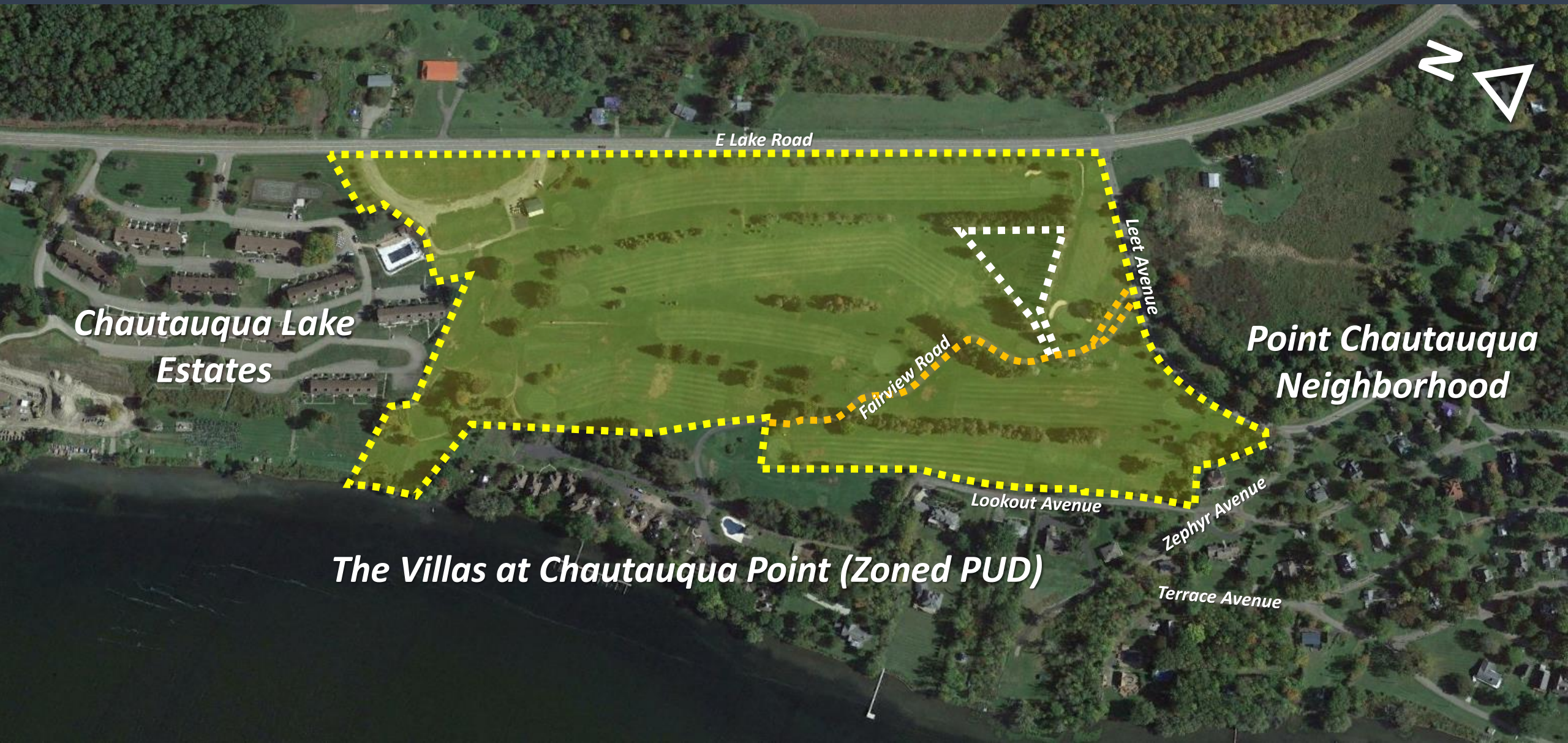
Town Board Meeting – September 10, 2024

Continuation of Public Hearing held on July 9th and August 13th

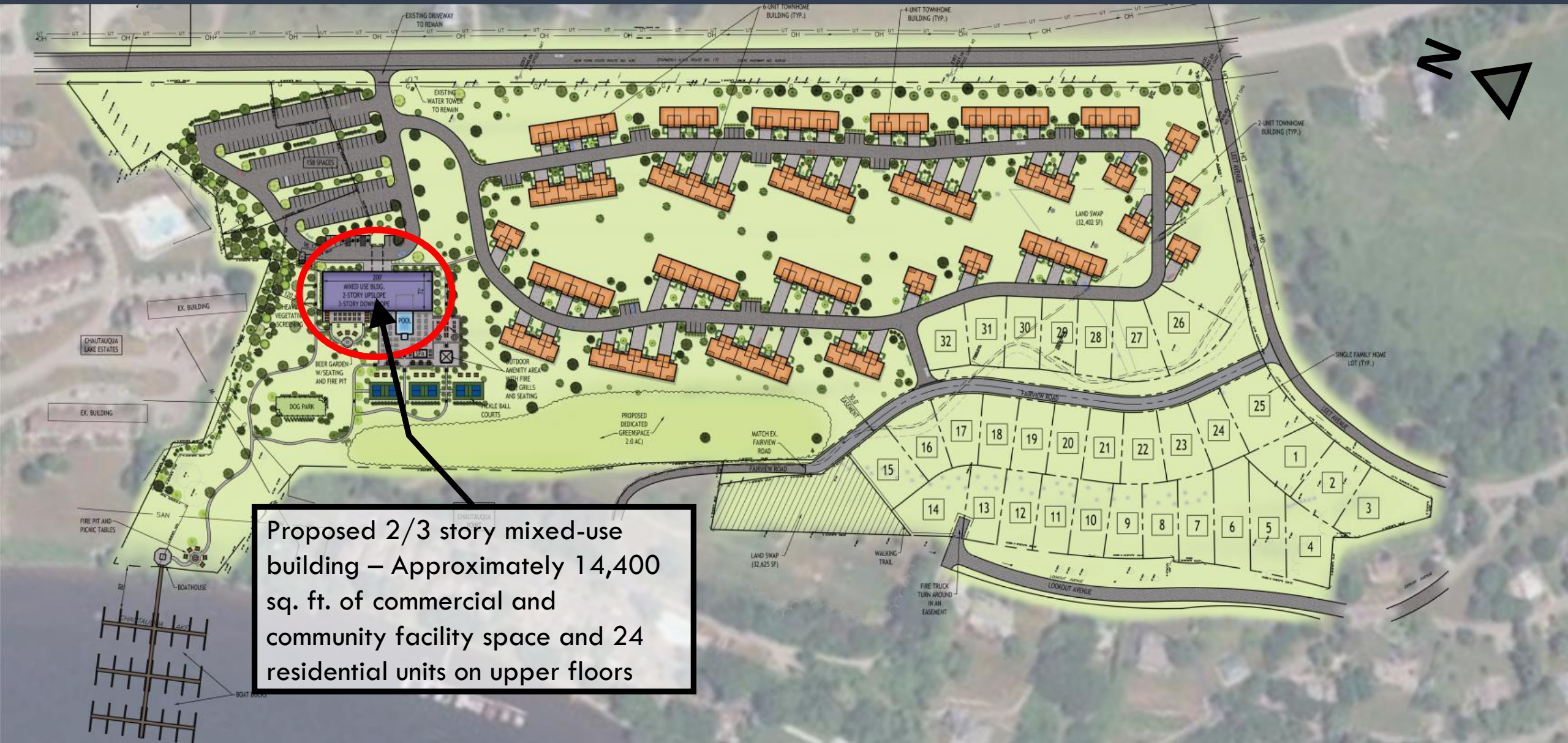
ELLICOTT DEVELOPMENT

SUNSET VIEW
A CHAUTAUQUA LAKE COMMUNITY

Project Site Aerial



Concept Site Plan [05/27/25] – 174 Res Units

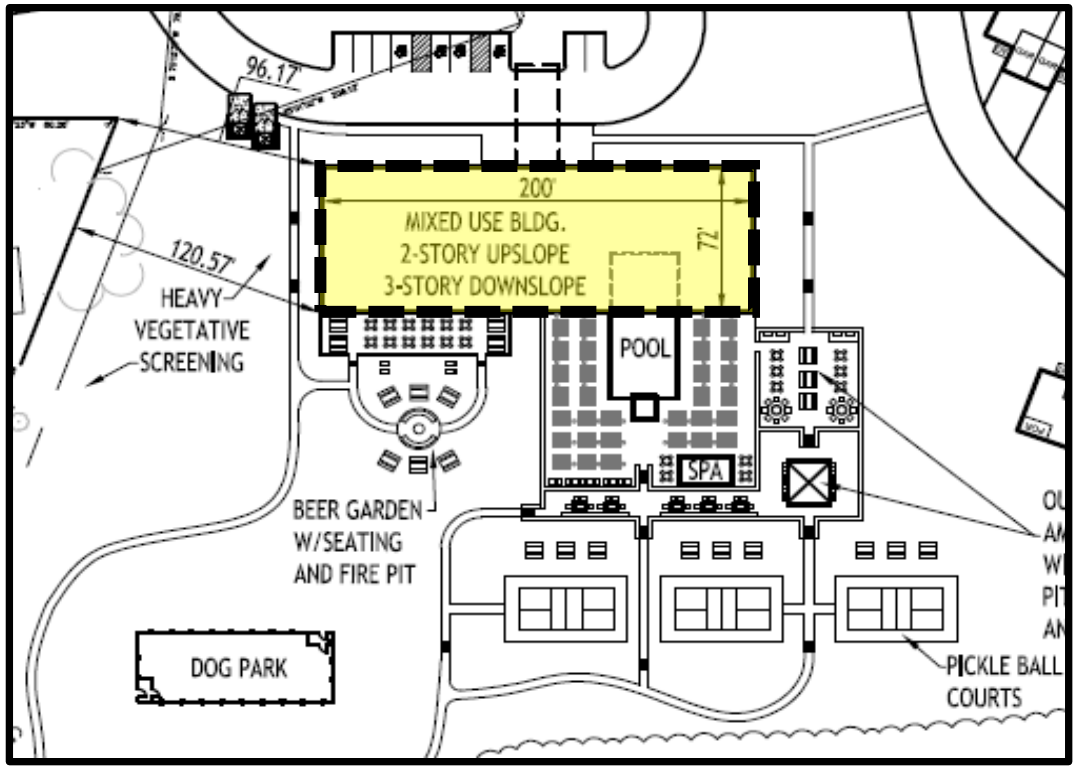


Proposed 2/3 story mixed-use building – Approximately 14,400 sq. ft. of commercial and community facility space and 24 residential units on upper floors

Concept Rendering for Mixed-Use Building

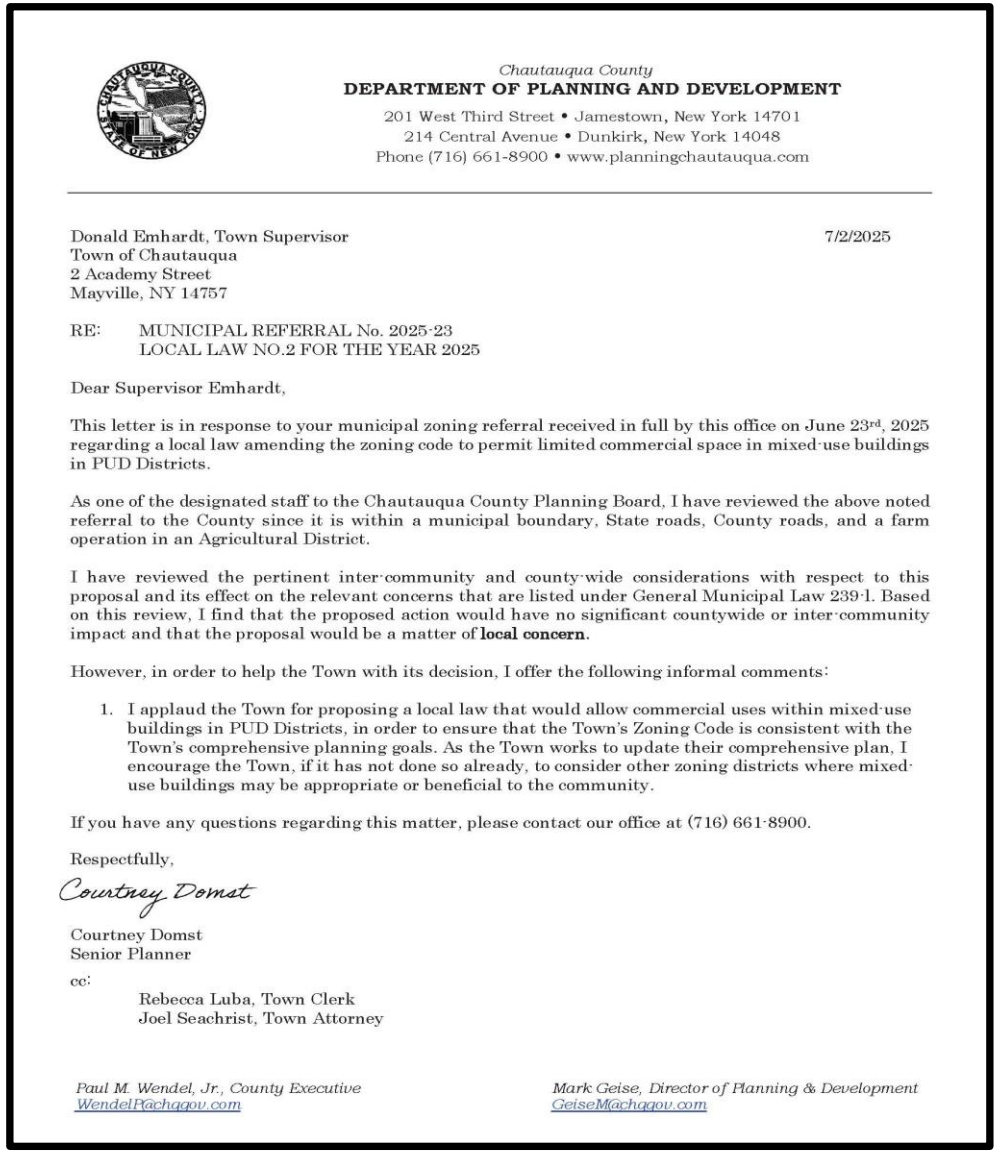
Proposed Zoning Code Amendment

- Amendment to Section 143-21 of the Zoning Code titled "Permitted uses; definitions; standards and application procedure."
- A. Permitted uses in a PUD. Permitted uses in a PUD shall be as follows:
  - (1) Any dwelling use or related structure permitted and as regulated in the R and/or R-L Districts.
  - (2) Any other variety of residential development or residential structure and ancillary land use as approved under this article, notwithstanding the requirements of R and/or R-L Districts that are still in keeping with the overall comprehensive planning of development within the Town as set forth in § 143-2 of this chapter.
  - ***(3) Commercial space including retail uses, restaurants, and office space if such commercial space is located in a mixed-use building that includes upper floor residential units so long as such commercial space does not exceed 15,000 sq. ft. in total. Additionally, the commercial space shall not include any drive-through facilities.***
- Proposed mixed-use building includes 14,400 sq. ft. of potential commercial space [Less than 1% of the Project Site]



Reply Letter from Courtney Domst of the Chautauqua County Dept of Planning and Development dated July 2, 2025

- "This letter is in response to your municipal zoning referral received in full by this office on June 23, 2025 regarding a local law amending the zoning code to permit limited commercial space in mixed-use buildings in PUD Districts."
- "I have reviewed the pertinent inter-community and county-wide considerations with respect to this proposal and its effect on the relevant concerns that are listed under General Municipal Law 239-l. Based on this review, I find that the proposed action would have no significant countywide or inter-community impact and that the proposal would be a matter of local concern."
- "However, in order to help the Town with its decision, I offer the following informal comments:
    - 1. I applaud the Town for proposing a local law that would allow commercial uses within mixed-use buildings in PUD Districts, in order to ensure that the Town's Zoning Code is consistent with the Town's comprehensive planning goals. As the Town works to update their comprehensive plan, I encourage the Town, if it has not done so already, to consider other zoning districts where mixed-use buildings may be appropriate or beneficial to the community."



Chautauqua County
DEPARTMENT OF PLANNING AND DEVELOPMENT
201 West Third Street • Jamestown, New York 14701
214 Central Avenue • Dunkirk, New York 14048
Phone (716) 661-8900 • www.planningchautauqua.com

Donald Emhardt, Town Supervisor
Town of Chautauqua
2 Academy Street
Mayville, NY 14757

7/2/2025

RE: MUNICIPAL REFERRAL No. 2025-23
LOCAL LAW NO.2 FOR THE YEAR 2025

Dear Supervisor Emhardt,

This letter is in response to your municipal zoning referral received in full by this office on June 23rd, 2025 regarding a local law amending the zoning code to permit limited commercial space in mixed-use buildings in PUD Districts.

As one of the designated staff to the Chautauqua County Planning Board, I have reviewed the above noted referral to the County since it is within a municipal boundary, State roads, County roads, and a farm operation in an Agricultural District.

I have reviewed the pertinent inter-community and county-wide considerations with respect to this proposal and its effect on the relevant concerns that are listed under General Municipal Law 239-l. Based on this review, I find that the proposed action would have no significant countywide or inter-community impact and that the proposal would be a matter of **local concern**.

However, in order to help the Town with its decision, I offer the following informal comments:

1. I applaud the Town for proposing a local law that would allow commercial uses within mixed-use buildings in PUD Districts, in order to ensure that the Town's Zoning Code is consistent with the Town's comprehensive planning goals. As the Town works to update their comprehensive plan, I encourage the Town, if it has not done so already, to consider other zoning districts where mixed-use buildings may be appropriate or beneficial to the community.

If you have any questions regarding this matter, please contact our office at (716) 661-8900.

Respectfully,

Courtney Domst

Courtney Domst
Senior Planner

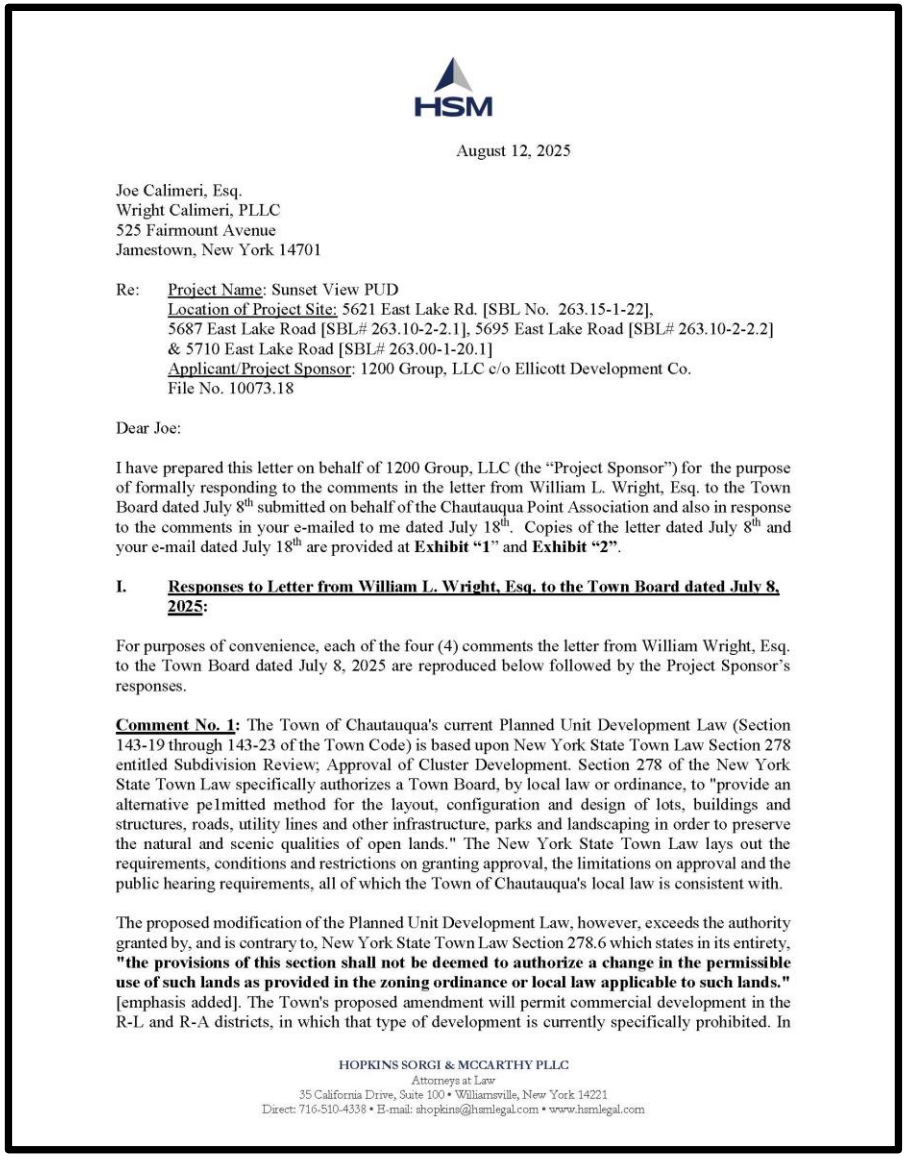
cc:
Rebecca Luba, Town Clerk
Joel Seachrist, Town Attorney

Paul M. Wendel, Jr., County Executive
WendelP@chqgov.com

Mark Geise, Director of Planning & Development
GeiseM@chqgov.com

Letter from Sean Hopkins, Esq. to Joe Calimeri, Esq. dated August 12th

- Letter submitted responding to the four comments in the letter from William L. Wright, Esq. to the Town Board dated July 8th submitted on behalf of the Chautauqua Point Association and also in response to the two comments in the e-mail from Joe Calimeri, Esq. dated July 18th.



HSM

August 12, 2025

Joe Calimeri, Esq.
Wright Calimeri, PLLC
525 Fairmount Avenue
Jamestown, New York 14701

Re: Project Name: Sunset View PUD
Location of Project Site: 5621 East Lake Rd. [SBL No. 263.15-1-22], 5687 East Lake Road [SBL# 263.10-2-2.1], 5695 East Lake Road [SBL# 263.10-2-2.2] & 5710 East Lake Road [SBL# 263.00-1-20.1]
Applicant/Project Sponsor: 1200 Group, LLC c/o Ellicott Development Co.
File No. 10073.18

Dear Joe:

I have prepared this letter on behalf of 1200 Group, LLC (the "Project Sponsor") for the purpose of formally responding to the comments in the letter from William L. Wright, Esq. to the Town Board dated July 8th submitted on behalf of the Chautauqua Point Association and also in response to the comments in your e-mailed to me dated July 18th. Copies of the letter dated July 8th and your e-mail dated July 18th are provided at **Exhibit "1"** and **Exhibit "2"**.

I. Responses to Letter from William L. Wright, Esq. to the Town Board dated July 8, 2025:

For purposes of convenience, each of the four (4) comments the letter from William Wright, Esq. to the Town Board dated July 8, 2025 are reproduced below followed by the Project Sponsor's responses.

Comment No. 1: The Town of Chautauqua's current Planned Unit Development Law (Section 143-19 through 143-23 of the Town Code) is based upon New York State Town Law Section 278 entitled Subdivision Review; Approval of Cluster Development. Section 278 of the New York State Town Law specifically authorizes a Town Board, by local law or ordinance, to "provide an alternative pe1mitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks and landscaping in order to preserve the natural and scenic qualities of open lands." The New York State Town Law lays out the requirements, conditions and restrictions on granting approval, the limitations on approval and the public hearing requirements, all of which the Town of Chautauqua's local law is consistent with.

The proposed modification of the Planned Unit Development Law, however, exceeds the authority granted by, and is contrary to, New York State Town Law Section 278.6 which states in its entirety, **"the provisions of this section shall not be deemed to authorize a change in the permissible use of such lands as provided in the zoning ordinance or local law applicable to such lands."** [emphasis added]. The Town's proposed amendment will permit commercial development in the R-L and R-A districts, in which that type of development is currently specifically prohibited. In

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Letter from William Wright, Esq. on behalf of Chautauqua Point Association dated July 8, 2025

- **Comment No. 2**: "The adoption of Local Law No. 2 would represent a sweeping change in the entire zoning structure within the Town. The proposed revision will allow the Town, at its discretion, to permit commercial uses up to 15,000 square feet in size in the vast majority of all property located within the Town, with the only requirement that it includes a residential secondary unit or units."
- **Response**: The requested Zoning Code Amendment would limit commercial space including retail uses, restaurants, and office space if such commercial space to a mixed-use building on PUD property that includes upper floor residential units so long as such commercial space does not exceed 15,000 sq. ft. in total. Additionally, the commercial space shall not include any drive-through facilities. As such, the Zoning Code Amendment does not open the vast majority of property in the Town to mixed-use building with limited commercial space.
- **Comment No 4**: "The review of the draft of Local Law No. 2 requires a coordinated environmental review pursuant to SEQRA since it would change the allowable uses of 25 acres or more of PUD zoned land in the Town."
- **Response**: The draft of Local Law No. 2 of 2025 is being reviewed as Type I action pursuant to SEQRA. The adoption of the draft of Local Law No. 2 of 2025 will not result in any potentially significant adverse environmental impacts.

Email from Alicia C. Rood to the Town of Chautauqua dated August 12, 2025

- **Comment No. 1**: "As set forth in the letter from the attorney for the Point Chautauqua Association the proposed amendment is unlawful under both New York's Town Law and is an impermissible segmentation of the review of the application by Sunset View under the State Environmental Quality Review Act."
- **Response**: The SEQRA regulations define segmentation as "the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance." [6 NYCRR § 617.2 (ah)].
- As established by case law, the relevant environmental danger to guard against is "when a project that would have a significant effect on the environment is broken up into two or more component parts that, individually, would not have as significant an environmental impact as the entire project or, indeed, where one or more aspects of the project might fall below the threshold requiring any review." Forman v. Trs. of State Univ. of N.Y., 303 A.D.2d 1019, 1019 (4th Dept. 2003) (citations/quotations omitted); see also Matter of Friends of Stanford Home v. Town of Niskayuna, 2008 NY Slip Op 3280, ¶ 2, 50 A.D.3d 1289, 1290(3rd Dept. 2008) ("Such division is impermissible when the environmental review of an action is divided into smaller stages in order to avoid the detailed review called for under SEQRA.")
- The draft of Local Law No. 2 of 2025 is not limited to the Project Site and the Town Board is in the process of conducting a very detailed coordinated environmental review of the proposed Sunset View PUD.

Email from Alicia C. Rood to the Town of Chautauqua dated August 12, 2025

- **Comment No. 2**: "Furthermore, as I stated at the prior public hearing the proposed amendment, particularly permitting restaurants within a PUD, is contrary to the interests of the existing businesses and residents of the Town. As I stated there are already multiple vacant restaurants within the Town. Furthermore, based on a review of publicly available information it appears that the auction of the former Webb's restaurant did not produce an acceptable bid. (There is still a for sale sign on the property and the auction site does not indicate that it was sold.)"
- **Response**: Local Law No. 2 of 2025 that would allow limited commercial space within a PUD upon issuance of a Special Use Permit by the Town Board will assist the Project Sponsor is accomplishing a project objective of encouraging an active lifestyle with on-site amenities for residents and guests.
- **Comment No. 3**: "Finally, as the Board knows the condition of the lake has deteriorated over the last several years, and as recent news reports have documented, many property owners on the south end of the lake have been unable to use the lake for boating, fishing and swimming this summer. I am sure I do not have to remind the Board that the lake is the life blood of both the Town and the entire county. That the Town would consider such a large development without demanding a detailed study of the impacts on the lake is negligent and jeopardizes the future of the area."
- **Response**: The proposed Sunset View PUD will not result in any potentially significant adverse environmental impacts to Lake Chautauqua. The project will include the installation of an on-site stormwater management system that will comply with the stringent stormwater quality and quantity standards of the NYS Department of Environmental Conservation.

Correspondence from CLE residents Daniel Fischer and Bob Gosden to the Town of Chautauqua dated September 2, 2025

- In summary, the letter attempts to ascertain that the Developer's "unadmitted intent" for Sunset View is simply the development of a "commercial operation centering on tourism" through the creation of short-term rental resort that would be more appropriate located in a Commercial-Tourism ("C-T") zoning district.
- In the letter, Mr. Fischer and Mr. Gosden construe various project particulars relative to unit counts and phasing along with the outcome of unrelated projects to support this theory.
- **Response**: As consistently presented by the Project Sponsor since initial public outreach on the proposed project, Sunset View will offer a variety of housing types including single-family homes, townhomes, and condominiums, in for-sale and for-rent opportunities to be governed by a series of Homeowner's Association's to ensure a cohesive community experience.
- Sunset View will offer a "resort-style" living experience through a range of on-site amenities to be offered including such things as a pool, sport courts, a dock area and open green spaces, similar to the range of amenities found in neighboring lakeside communities.
- While the primary focus of Sunset View is to create for-sale housing opportunities, the Project Sponsor intends to retain and lease a portion of the units for short-term rental which is consistent with Lake Chautauqua's historical attraction for recreation and tourism.
- An e-mail from CLE HOA President, Thomas Cornelius, dated September 2, 2025, to the Town of Chautauqua following the receipt of the abovementioned letter, advises that Mr. Fischer and Mr. Gosden do not represent the interests of the CLE HOA Board.

Letter from Stephen D. Daly, Esq. on behalf of Chautauqua Protect to the Town of Chautauqua dated September 9, 2025

- The letter requests that the Town Board immediately table any decision regarding Local Law No. 2 of 2025 based on 4 comments as follows:
- **Comment No. 1:** The environmental impacts of Local Law No. 2 cannot be considered separately from those of the Project's. The letter from Mr. Daly cites cases in alleged support of his position as follows:
- "Courts have repeatedly made clear that when, as here, a zoning amendment is a necessary and foreseeable step toward the future development of a property, the environmental effects of the two actions must be considered together in determining whether the overall action may result in one or more significant environmental impacts. See **Kirk-Astor Drive Neighborhood Ass'n v. Town. Bd. of Pittsford**, 106 A.D.2d 868, 869 (4th Dept. 1984); **Matter of Defreestville Area Neighborhoods Ass'n v. Town Bd.**, 299 A.D.2d 631, 633-34 (3d Dept. 2002) (When "rezoning" is "but the first step in the process of developing the property," the Board "was obligated to consider the impacts to be expected from such future development at the time of rezoning.") (internal quotation marks omitted). The failure to consider the two actions together constitutes unlawful segmentation and necessitates undoing the Board's action. 5 Id.; see also **Matter of Evans v. City of Saratoga Springs**, 202 A.D.3d 1318, 1322 (3d Dept. 2022) (city improperly segmented its environmental review of a zoning map amendment from a hospital's future plans to develop the affected parcel with a medical office building and parking)."

Kirk-Astor Drive Neighborhood Ass'n v. Town. Bd. of Pittsford

- **Kirk-Astor Drive Neighborhood Ass'n v. Town. Bd. of Pittsford, 106 A.D.2d 868, 869 (4th Dept. 1984)**: Petitioners sought to nullify the action of the Pittsford Town Board in rezoning 64 acres of vacant land from B-Residential (allowing multiple dwellings) to High Technology Manufacturing and Office Park District, a new classification simultaneously created by a text amendment to the town zoning ordinance.
- Petitioners contended that the Town Board violated the requirements of the State Environmental Quality Review Act by failing to take a "hard look" at the specific development proposed for the site and give "early consideration" to potential adverse impacts of the proposed development and to prepare an environmental impact statement (EIS) and by declaring itself to be the "lead agency" under SEQRA responsible for conducting the environmental review.
- The Town argued that its environmental review was extensive and complete and that at this stage the "project" was not ripe for a detailed environmental analysis which would be more appropriate during the site plan approval process.
- "Town Board must identify at the rezoning stage the relevant areas of environmental concern associated with the project. It must take a "hard look" at the impacts of the specific project proposal that prompted the application for rezoning at least on a conceptual basis"
- The EAF and project information report submitted by the developer failed to provide complete information relating to water table, soil, surface water runoff, plant and animal life and other aspects of the proposed development. The review undertaken by the Planning Board, however, did not include the detail required of an EAF; specific questions appearing in the model form were not answered and incomplete information was provided. From the PIF review the Town Board could not generally determine whether the project would have any significant environmental impact.
- **Decision**: The Court annulled the resolution approving rezoning annulled and remitted the matter to the Town Board to make a proper determination of environmental significance.

Defreestville Area Neighborhoods Ass'n v. Town Board of North Greenbush

- **Matter of Defreestville Area Neighborhoods Ass'n v. Town Bd.,299 A.D.2d 631, 633-34 (3d Dept. 2002)**: The proceeding arose out of the February 2000 application for the rezoning of property from a combination of professional business district and residential single-family designations to a general business zone to permit the construction of a 231,000 sq. ft. shopping center on the project site. The Town Board issued a negative declaration and approved the rezoning.
- The lower court concluded that the negative declaration was issued without the Town Board even considering most of the obvious negative environmental effects on the neighboring residential areas and the town that would result once the land is redeveloped after the proposed rezoning.
- The Town considered the rezoning genetically - comparing the impacts of retail development of the property as opposed to development of the property as currently zoned - and specifically declared that no determination would be made on "issues that will arise only when an actual construction project is proposed for the site. We conclude — and respondent conceded at oral argument — that this separation of the zoning phase of the project from the development phase is a form of segmentation of the environmental review process.
- The record of this proceeding clearly reveals an effort by respondent and the Town to dilute the nature of the action subject to environmental review from the construction of a 231,000 sq. ft. retail shopping center with public water and sewer service," as described in the EAF - which included estimates related to the proposed retail complex, such as the number of jobs created, parking spaces required, number of vehicular trips per hour generated, tons of garbage per month and gallons of water consumed per day — to, simply, the "proposed rezoning of Gallogly property" as stated in the fourth and final EAF.
- Postponing review of the full impacts of future development gives the illusion that the zoning change is insignificant from an environmental perspective
- **Decision**: The Court remanded the environmental review back to the Town Board.

Matter of Evans v. City of Saratoga Springs

- **Matter of Evans v. City of Saratoga Springs, 202 A.D.3d 1318, 1322 (3d Dept. 2022)**: Petitioners challenged the city's rezoning for a single parcel on a hospital campus, which was a component of a previously proposed redevelopment plan.
- The City Council rezone the relevant property from Urban Residential-1 district, a district for the purpose of "providing medium density single family residential uses where public infrastructure is available," to an Office/Medical Business-2 district, a district for the purpose of "accommodating business, medical and professional office uses as well as health related institutional facilities."
- Although no formal plans had been submitted for the larger project, prior communications indicated that the rezoning was the first step in the broader development scheme.
- The Third Department held that the reasonably foreseeable future developments, which would be "green li[t]" by the rezoning activity, could not be permissibly segmented pursuant to SEQRA.

Concept Site Plan [05/27/25]

Proposed 2/3 story mixed-use building – Approximately 14,400 sq. ft. of commercial and community facility space and 24 residential units on upper floors

Letter from Stephen D. Daly, Esq. on behalf of Chautauqua Protect to the Town of Chautauqua dated September 9, 2025

- **Comment No. 2**: The Town Board should either prepare or require the Developer to prepare an Environmental Impact Statement ("EIS") for the Project (including Local Law No. 2), in line with other large residential and mixed-use developments that have required EISs.
- "An EIS is required because both Local Law No. 2 and the Project are presumed to require an EIS under SEQRA, and there is extensive evidence showing that the combined actions will result in one or more significant environmental impacts."
  - **Response**: The Project Sponsor has provided the Town with extensive documentation in connection with its review of the Sunset View PUD, including numerous professionally prepared reports and studies, in support of its position that the project will not result in any potentially significant adverse environmental impacts.
  - The issuance of a Negative Declaration by lead agencies for proposed projects consisting of Type I actions has routinely been upheld by courts. See, **Matter of Wooster v. Queen City Landing, LLC**, 150 A.D.3d 1689, 1692 (4th Dept. 2017) (holding that "designation as a type I action does not, per se, necessitate the filing of an environmental impact statement."). This project consisted of a 23-story mixed-use tower on a site along the edge of Lake Erie in the City of Buffalo that received a negative declaration from the City of Buffalo Planning Board. Accordingly, "[w]hen the lead agency finds that there will be no adverse environmental impacts or that such impacts will be insignificant, it can issue a negative declaration without the necessity of an EIS," and it is not "[t]he court's role … to second-guess [that] determination." **Matter of Brunner v Town of Schodack Planning Bd.**, 178 A.D.3d 1181, 1182-83 (3d Dept. 2019); see also **Matter of Hartford/North Bailey Homeowners Assn. v. Zoning Bd. of Appeals of Town of Amherst**, 63 A.D.3d 1721, 1723 (4th Dept. 2009) (upholding the issuance of a negative declaration for Wal-Mart Supercenter); **Wal-Mart v. Planning Board of Town of Greece**, 60 A.D.3d 1343, 1344 (4th Dept. 2009) (also upholding the issuance of a negative declaration for a large Wal-Mart Supercenter).

Letter from Stephen D. Daly, Esq. on behalf of Chautauqua Protect to the Town of Chautauqua dated September 9, 2025

- **Comment No. 3**: Local Law No. 2 is impermissible spot zoning, especially without the benefit of a written and updated Comprehensive Plan to evaluate it against.
- **Response**: The request to establish the Sunset View PUD is not spot zoning and the completion of an updated Comprehensive Plan is not a prerequisite for adoption of Local Law No. 2 of 2025 or the approval of the Sunset View PUD.

- **Comment No. 4**: The Code Enforcement Officer and the Zoning Board of Appeals should complete their evaluation of the Project's other obvious zoning deficiencies, namely its proposed inclusion of a residential subdivision as part of the PUD and its non-conformance with the Town's requirements for lakeside lots offering lake access.
- Local Law No. 2 does not solve the Project's other zoning problems, which will likely necessitate either requests for substantial variances or significant redesigns.
- **Response**: The proposed Sunset View PUD does not involve any "obvious zoning deficiencies".

Conclusion

- Requesting that the Town Board issue a Negative Declaration pursuant to SEQRA and adopt Local Law No. 2 of 2025
- Questions…