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May 26, 2020

Town of Guilderland Planning Board
Western Avenue
Guilderland, NY 12084

Regarding: Draft Environmental Impact Statement for the “Rapp Road Residential Development/Mixed Use Redevelopment Projects”

Sent via email

Dear Town of Guilderland Planning Board,

The Pine Bush is a very significant resource in New York State.

It is important to remember how the Albany Pine Bush Preserve Commission’s Management Plan describes the Pine Bush:

The Albany Pine Bush is a National Natural Landmark (Federal Register 78, No.161 51207, 2013) located between the cities of Albany and Schenectady, New York on one of the most extensive inland areas of sand dunes in eastern North America. It contains the best remaining example of a globally-rare inland pitch pine-scrub oak barrens; a locally distinct ecological community characterized by a sparsely treed grassy shrubland that is adapted to dry conditions and frequent wildland fires. The Albany Pine Bush supports the Karner blue butterfly, a state and federally listed endangered species, 74 other animals listed as Species of Greatest Conservation Need in New York State and two rare plants. The area also includes other natural communities, such as oak and pine forests, a diversity of wetlands, and several successional communities that have resulted from historic land use and fire exclusion. In addition to these ecological features the Albany Pine Bush Preserve contains more than 20 miles of recreational trails and the Discovery Center, the only educational facility dedicated to interpreting the history and management of inland pitch pine-scrub oak barrens.

Wikipedia describes the Pine Bush as:

one of the largest of the 20 inland pine barrens in the world.

The Pine Bush is a special place. We often criticize people in far-away parts of the world for not protecting their elephants, tigers, orangutans and other endangered species. However, the Town of Guilderland has its own unique ecosystem with endangered, threatened, and species of special concern. The Town of Guilderland has an obligation to protect the Pine Bush ecosystem located within its boundaries.

Economic Viability and Effect on the Environment: Pyramid must re-do its economic analysis in light of the recession/depression caused by the COVID-19 public health crisis. The May 14, 2020 edition of the Altamont Enterprise stated:

“Pyramid Management Group, the owner of Crossgates Mall, missed its most recent mortgage payment on a \$388.5-million loan for its Palisades Center mall in West Nyack in Rockland County.

“The loan was then transferred to a special servicer due to “imminent monetary default,” the Rockland County Business Journal reported in April.

“In the commercial mortgage-backed securities (CMBS) industry, a special servicer assumes responsibility of a loan from its original administrator, known as a master servicer, when the borrower has “defaulted mortgage loans or loans that are designated as ‘specially serviced’ as a result of credit events,” according to the Practising Law Institute.”

The current public health crisis has had a dramatic impact on the economy, and many businesses will not survive. Closed businesses cannot pay their rent. The Town Planning Board must evaluate whether or not Pyramid will be viable. Will Pyramid have enough funds to even finish the three projects? Beginning construction only to stop because of lack of funds will cause serious environmental harm. To build these projects, only to discover later that they are not viable and to close them would mean destroying Pine Bush ecosystem for no reason at all.

Financial Assistance: The Costco proposal has generated a lot of the comments on the DEIS and at the May 13 public hearing. Many of the comments are people saying how much they look forward to shopping at Costco and how much they want a Costco locally. On page 35 of the DEIS, it says that Pyramid is asking for financial assistance for sales and mortgage tax exemptions for the Costco. For such a popular store, why are tax breaks needed? Why should tax payers have to pay to have a Costco built? No tax breaks should be sought by Pyramid or given to Pyramid for this project and the DEIS should specifically state this. In this time of a public health emergency, money is needed for the public benefit, not for a Costco.

Environmental mitigation: Pyramid is proposing to give 8.4 acres of full-protection area Pine Bush that it owns to the Albany Pine Bush Preserve Commission as mitigation for the approximately 46 acre development. The amount of land is not 8.4 acres which could be developed, but less. Looking at Figure 9 in the Draft Environmental Impact Statement - Figures, the map provided shows that at least one or two acres of this 8.4 acres is currently “Karner Blue Butterfly Preserve” and cannot be built on. Thus, the mitigation offered is much less than stated, possibly as much as 25% less. The DEIS should accurately reflect the exact amount of land being donated which could actually be developed, so that an accurate evaluation of this proposed mitigation could be made.

This 8.4 acre site currently functions as Pine Bush ecosystem. Pyramid giving this land

to the Preserve is not adding land to the Pine Bush ecosystem. Real mitigation for paving over and building on all three sites should require Pyramid to restore land to Pine Bush ecosystem. The mitigation should be the same as how wetlands mitigation is accomplished. If wetlands are destroyed, then an equal or greater amount of wetlands needs to be created.

It is important to note that all three sites are included in the Pine Bush Study Area (see Figure 8 - Management Plan for the Albany Pine Bush Preserve in the DEIS). Site 1, area 57, is designated as partial protection. The DEIS notes that Sites 2 and 3 are not included in the Albany Pine Bush Preserve Commission's evaluation of whether the land should be considered full protection, partial protection or recommended for open space. The Commission's "Vision Map" was created in 2002. At that time, Sites 2 and 3 were an inhabited suburb. Since 2002, Pyramid purchased most of the houses located on Sites 2 and 3, and left them to go vacant, creating a "ghost suburb." Some of the houses have been left to deteriorate, even being marked with the red "X" which marks the house as being dangerous to enter. Left to its own devices, this abandoned neighborhood will eventually be over taken by the plants and animals nearby — the Pine Bush. Should this land be evaluated today, the Commission may very well give it a different designation because the land is reverting back to what it was before it was a suburb.

Environmental Assessment Form - The DEIS includes "Appendix B - SEQRA FEAF". However, only one site is evaluated in the EAF, Site 1. Sites 2 and 3 should be included.

Cummulative Impacts - The Planning Board has required the DEIS is to address the area outlined on the "Site Plan" found in Part 3 of the Environmental Assessment Form. This site consists of the approximately 20 acres on Rapp Road, and two additional sites on Western Avenue, identified as "Site 2" (15 acres) and "Site 3" (11.34 acres) for a total of approximately 46 acres. However, Pyramid owns much more land than is included here (please see attached maps). Pyramid owns approximately 77.5 acres of forested land and approximately 12 acres of open space for a total of approximately 97.5 acres in the area between Western Avenue and Washington Avenue (see attached chart). Butterfly Hill and the National Grid ROW are approximately 16.1 acres. Subtract Butterfly Hill and the power line ROW, and Pyramid could build on approximately 81.4 acres of land it owns.

The DEIS should cover all of the land owned by Pyramid, not just the three parcels outlined in the Site Plan. There is no doubt Pyramid has plans for much of the land they own, much like they knew they were going to propose a Costco long before it became part of this SEQRA process.

Segmentation has already taken place — the 5-story hotel built by Pyramid was proposed in March, 2017 (see Altamont Enterprise of March 3, 2017 "Pyramid plans five-story hotel next to Crossgates"). The first recorded visit to Site 1 in the vegetation report (Appendix F of the DEIS, page 41) is December 7-8, 2016. Clearly, Pyramid was planning a development on Site 1 at the same time it was proposing the hotel. Pyramid appears to be proposing developments one-at-a-time, in violation of SEQRA. The Town Planning Board should be able to consider the cumulative impacts of all of the planned development. The scope of the SEQRA should be expanded to include all of the property Pyramid owns and plans to develop so the cumulative impacts can be considered.

Reconsider Lead Agency Status - This project, if built, will impact not only Guilderland residents, but Albany residents too. Pyramid owns land in this area (see attached maps) in both municipalities. In addition, the DEIS offers several different alternative road configurations, some of them require changes in the roads in Albany. The Town of Guilderland Planning Board should not be the lead agency on this project, as it has no control over mitigation in another municipality. The lead agency should be an agency with jurisdiction in both municipalities, such as the NYS Department of Environmental Conservation. NYSDEC was the lead agency for the original construction of Crossgates; they should be the lead agency on this major expansion.

The Town Planning Board changed the scope of the project between the adoption of lead agency status and the issuing of the Draft Scope. The project doubled in size, and added different types of businesses with more intense uses. The project is one that will draw people from the region, not just locally.

The proposed traffic alternatives alone would require a different lead agency for consideration. Many of the road alternatives are located in the City of Albany and the Town of Guilderland Planning Board has no jurisdiction over road configurations in the City of Albany.

Remove Traffic Alternatives: The road re-configurations outlined in Alternatives 1, 2, and 3 are located in the City of Albany, and all three propose destroying existing Pine Bush ecosystem. The Town of Guilderland should not entertain these road alternatives and these should be removed from the DEIS. These alternatives would more than negate any mitigation proposed by Pyramid because of how much Pine Bush ecosystem would be destroyed and the environmental impact of building roads in the Pine Bush. These alternatives themselves would require a SEQRA process, with a different lead agency.

The two Vegetation Wildlife and Soil Conditions Reports for Site 1 and Sites 2 and 3 are woefully inadequate to evaluation the impact on the Pine Bush ecosystem. These unsigned reports do not describe methods, the qualifications of the people doing the surveys, or the times of day that surveys were completed. The Town of Guilderland Planning Board needs an accurate assessment of the vegetation, wildlife and soil conditions on the sites in order to evaluate the environmental impacts of this proposed development. These reports are inadequate to provide this information.

Sixth major extinction: The earth is currently undergoing the sixth major extinction of animals, and this extinction is caused by human activity. Paving over these three sites will add to this extinction. The DEIS should address how the loss of the plants and animals on these three sites can be mitigated in light of the mass extinction happening now.

Serious consideration of constructing the apartments and Costco on Crossgates Mall property: On page 18 of the DEIS, Pyramid states that building the apartments or the Costco on land in Crossgates mall is not possible because different entities own the mall than own Sites 1, 2 and 3 and various agency approvals needed. Also, the alternatives just imagines picking up the 5-story buildings and plopping them down near the mall. Pyramid needs to look at more innovative alternatives. For example, building apartments in vacant

stores in the current mall, not just building additional 5-story buildings. Pyramid should consider actually taking current empty stores, and design apartments within the footprint. Of course, innovation will be required, especially to bring sunlight into the interiors of the apartments. As the retail sector is very likely to continue to shrink, re-purposing vacant stores would be one way to keep the mall viable. Sites 1, 2 and 3 could be completely protected and remain undeveloped, while re-purposing unused buildings.

Such an innovative plan, that protected open space and truly re-used empty buildings, might face some administrative road-blocks, but, Pyramid clearly has enough influence with the Town to be able to prevail. After all, in a letter date January 17, 2020 from the Town to attorney James Bacon, the Town explained that the preliminary DEIS was not subject to FOIL because it was considered “intra-agency documentation and not subject to FOIL.” Since the Town considers correspondence with Pyramid to be “intra-agency” clearly this close relationship would allow Pyramid to design an innovative project. In addition, with the shrinking of the retail economy, some stores may be quite willing to renegotiate their leases or end them all together.

Incorrect description of Site 1: On Page 23, paragraph 4, the DEIS describes the area surrounding Site 1. The description completely omits that land directly north of Gipp Road is protected Pine Bush ecosystem. And to the north of that, is more Pine Bush ecosystem. This omission gives an incorrect description of Site 1. It is important to acknowledge that the only thing separating Site 1 from the Pine Bush Preserve is a narrow road.

Pyramid should include information regarding its appeal of its taxes, including the tax assessment and Pyramid’s requested tax reduction. Much is made of how much Pyramid will pay in taxes and what a tax benefit Pyramid will bring to the Town of Guilderland in the way of school and property taxes. But, the fact remains: Pyramid appealed its taxes every year for approximately a 10-year period. This appeal cost the taxpayers money to defend this appeal. A complete description of Pyramid’s legal actions to appeal its taxes should be included, plus a description of how Pyramid plans to handle tax assessments in the future. The Planning Board needs to have all of the facts regarding Pyramid’s handling of tax assessments in order to make a decision about this proposed development.

Pyramid should include any PILOT agreements it has with the town and whether Pyramid will seek other tax relief. Pyramid should also note any tax relief it received for its recently constructed hotel. None of this tax information is in the DEIS. The Planning Board needs this information to correctly evaluate the impact of this project.

SPDES Permits - In order to ensure compliance with the SPDES permit, Pyramid should be required to include a full copy of the SPDES permit: Karner Blue Hill Preserve NYSDEC Permit #4-0130-00007/0002, issued December 10, 1996. All copies of this permit, from at least 1996 to the present, should be included. The DEIS is not complete until it is confirmed that Pyramid is conforming to all of the requirements of the permit and that this proposed development complies with all requirements in the permit.

Special Conditions in SPDES Permit: In the special conditions section of the SPDES permit, it states that the Butterfly Hill Preserve was to be protected and restored for the

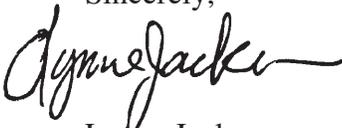
conservation of the vegetation, the Karner Blue Butterfly and “the wildlife native to the Pine Bush.” This special condition was not limited to listed wildlife species. It said the wildlife of the Pine Bush. The DEIS needs to address how this project may impact all species living on the site, including songbirds which may crash into 5 story buildings, any take of any wildlife species including butterflies, birds, amphibians and reptiles which may eaten by house cats, run over by cars or affected in other ways by the project. The inventory of plants and animals in the DEIS should address all plants and animals, as this special condition in the SPDES permit appears to say that the original intention of this continuing mitigation was to conserve all species native to the pine bush, not limited only to listed species.

DEC Approval Needed: Special Conditions (b) p.7 in the SPDES permit requires that Pyramid obtain approval from NYSDEC for any alteration in adjacent lands to preserve the integrity of the Preserve. The DEIS should be required to include any approvals given by DEC.

Pyramid was required to pay up to \$10,000 per year for activities of habitat management and restoration, vegetation changes, planting seed by hand, etc. The DEIS should include a list of the dates the payments were made, the amounts and to whom the payments were paid to. If Pyramid has made other payments for habitat management, information on those payments should be included. The DEIS provides an opportunity to look at the history of Pyramid’s compliance with requirements, so that the Town of Guilderland Planning Board can evaluate Pyramid’s past compliance.

The DEIS submitted for this project is inadequate to evaluate the environmental impacts. The SEQRA process should be restarted, and a new lead agency chosen.

Sincerely,



Lynne Jackson

Attachments:

Map - Pyramid Properties Land Use Map, dated September 15, 2019

Map - Pyramid Corporation Properties in Albany Pine Bush Area, dated September 15, 2019

Chart - Pyramid Properties Land Use Map — Analysis of Land Use by Acre - Save the Pine Bush, September 15, 2019



Pyramid Properties Land Use Map — Analysis of Land Use by Acre
 Save the Pine Bush, September 15, 2019

Land Use	Acres	Percent
Commercial	41.4	15.9%
Forested	77.5	29.8%
Open Space	12.0	4.6%
Parking	115.8	44.5%
Residential	8.2	3.1%
Water	5.3	2.0%
Total	260.1	100.0%
Owner	Acres	Percent
Best Homes Of Guilderland Llc Guilderland 2	0.5	0.2%
Best Homes Of Westmere Llc	0.5	0.2%
Brooks Realty Partners Llc	6.5	2.5%
Crossgates Mall Company Lp / Macy's Real Estate	11.9	4.6%
Crossgates Mall Devco Llc	0.8	0.3%
Crossgates Mall General	94.4	36.3%
Crossgates Releaseco Llc	47.5	18.3%
December Hill Associates	0.2	0.1%
Eice Ny Llc	3.0	1.1%
Hotel Devco Llc	3.9	1.5%
Mountain Ridge Associates	1.6	0.6%
O Ice Llc	0.5	0.2%
Ogitap Llc	2.4	0.9%
Pcc Newco Llc	11.5	4.4%
Pyramid Crossgates Co	18.1	7.0%
Stewarts Newco Llc	0.7	0.3%
Vandy Assoc Llc	0.6	0.2%
Wal-mart Stores East Lp	18.8	7.2%
Washington Commons	36.1	13.9%
Washington Commons Newco Llc	0.7	0.3%
Total	260.1	100.0%