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MEMORANDUM

TO: MOLLIE MESSENGER, CODE ENFORCEMENT OFFICER
WILL ILLING, P.E., TOWN ENGINEER
TOWN OF FALLSBURG

FROM: ROBERT GENESLAW, AICP

SUBJECT: DAVOS DEVELOPMENT PROPOSAL

DATE: JANUARY 9, 2012

C: DAVOS PROJECT SPONSORS

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The following narrative is a first cut at establishing the current status of Davos and a process to move forward with the recent concept plan. It is based on information in my file going back to 1988 -1990 +/- much of which was also available in Will's file. This draft is intended as an internal staff communication, not for public release, because it does not include a search of the Building Department, DPW and Town Clerk records, as well as other potential sources (County land records, NYSDEC, NYS DOT etc.). Please review, and if you haven't already had a change, have your department files reviewed for additional material. If you like, once the department files are assembled, I can review for any new information. Also, what would be the best way to review Town Clerk files?

The narrative is intended (once complete) to be a guidance document for all parties. The potential project sponsor may also have related documents that can be reviewed to supplement the information base.

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I. INTRODUCTION

The Town of Fallsburg has been informally approached by a potential project sponsor with a proposal to continue development of the Davos property. This office, as planning consultant to the Town, and particularly the Planning Board, has begun to research the approval status of the partially developed and occupied property and to recommend steps to be taken to reactivate the project. A concept plan has been prepared by the project sponsor and will serve as the basis for comparison of the originally approved plan and the current plan. This comparison will include at the least:

- For the residential portions, the number and type of dwelling units approved and their location on the property.
- The location of built and occupied dwelling units and conveyed lots that have not been built upon.
- The areas overseen by the homeowners association
- For the non-residential portion, the type and location of facilities already built.
- Identification of areas and facilities previously granted site plan approval by the Planning Board, and their current status
- Identification of areas and facilities having previously received concept plan approval and their status
- For water and sewer services, the status of approvals, construction, ownership, and available capacity.
- Identification of conditions related to approval under the State Environmental Quality Review Act, Town Board, Planning Board and other agencies.
- Identification of elements in the current concept plan that were not in the original approved plan and steps needed to evaluate the proposed changes.

II. LIMITATIONS OF INFORMATION

The information in this memorandum/report is based on documents in the consultants file, some of which is also available in the Town DPW file, concept plans prepared by the potential project sponsor, information offered at staff meetings with representatives of the project sponsor, Town zoning code, SEQR regulations and similar sources. The documents referenced are identified at the end of this report in the section entitled "Sources Consulted". A review of the Town Building Department, DPW, and Town Clerk official records is likely to result in identification of additional information which will be incorporated in the overall review process.

III. BACKGROUND AND HISTORY

The following is a summary of activities, more fully described in the environmental documents prepared in 1988 and 1989. At that time an application was made to NYSDEC for construction of a sewage treatment plant to serve additional proposed development. DEC required the preparation of an Environmental Impact Statement (DEIS, FEIS and Findings Statement) to evaluate the potential adverse impacts from the additional development that would be possible if the sewage treatment plant was built. See Figure "Master Plan, Davos in the Woods", July, 1988, prepared by Camp Dresser and McKee for SBC Enterprises, for location of various sections of the project at that time.

The following summarizes the DEIS narrative related to an area of 1,020 acres:

- Until mid 1960's – summer hotel
- Then Big Vanilla ski area – hotel converted to ski lodge
- 1967 approvals for a 49 lot subdivision – Davos Village
- Early 1970's, ODI built new ski trails & motel and restaurant in the former hotel. PUD established.
- Mid 1970's, w/ Davos PDD, approval for subdivision combining townhouses and single family detached lots.
- By 1975, four subdivision parcels had been recorded with the Town of Fallsburg – Sections I, II, III, IV. Original 49 lot subdivision is I and II. Section III, located adjacent to ski area, has 406 lots. Section IV was laid out adjacent to the original Davos Village (Sections I, II, & has 263 lots)
- In all, 718 house lots were recorded. Additional subdivision parcels of several hundred lots were anticipated in the future.
- 49 lots in Sec. I and II sold individually, 45 improved over the several year period by first two owners. In Sec. III, 31 of 406 lots sold by developer and improved by individual purchases in the 1970's.
- Davos Rd. extended and connected to Glen Wild Rd.
- 60,000 gallon water tank built at top of Davos Hill, water pumped from wells at the foot of the hill.
- Town of Fallsburg assumed ownership and maintains responsibilities for streets (including Davos Rd) and water supply. System. (To be verified.)
- Sewage service by proposed Davos Sewer District connected to Woodbridge Sewage treatment plan. System partially completed in Sec. III, no other residential sewer installation. 45 single family homes in I and II - with septic.
- Sewage for ski resort by open sand filter Wastewater treatment system.

- SBC Enterprises became involved in December 1986; by late 1987 was constructing 121 townhouses within approved Section III subdivision.
- Woodbridge decides its sewer capacity could only accommodate Sec. III.
- DEIS prepared in 1988. .
- Town of Fallsburg replacing existing 60,000 gallon storage tank with a 350,000 gallon tank and booster station , and investigating need for new wells.
- Approximately 2,000 housing units in total anticipated. 718 units scheduled for the four recorded subdivisions.
- Between 1,100 and 1,300 housing units to be constructed over a 9 year period in the 600 unplanned acres. Another 120-180 units proposed in condo hotel.
- Resort Complex
 - Administrative offices, restaurant, health club, motel, homeowners recreation facility, ski lodge; new circulation system with new divided roadway approach from Davos Road, reconstruction of entrance from Davos Road, new driveway to ski lodge, 600 parking spaces in six new and reconstructed parking lots.
 - Construction to begin 1988 on condo hotel 120-180 units, 30 retail stores with 36,000 sq ft
 - Wastewater treatment Plant
 - Phase I – 250,000 gallons per day
 - Phase II – 250,000 gallons per day
 - Phase III – 300,000 gallons per day
 - Street network for Sec. I, II, III, IV shown on site plan; balance to be planned.

Project Schedule

- Phase I – complete Sec III (406 units)
Construction of 100 units in I, II, and IV
120-180 unit condo hotel, restaurant, ski lodge, sales office, HOA rec. bldg.
- Phase 2 – complete Secs, I, II and IV (211 units)
Develop 445 units in 600 unplanned acres
Miscellaneous unspecified facilities to accommodate on-site community
- Phase 3 – 755 residential units to complete development of 600 unplanned acres

Regulatory Requirements and Permits

- Have obtained site plan approval for resort complex and subdivision approval for Sections I, II, III, IV. Building permits obtained for “1988” phase of resort completed and Section III. Balance will require permits and approval (p. 1-16)
 - NYSDEC – SPDE2 and Stream Disturbance
 - Delaware River Basin Commission (DRBC)
 - NYSDOH – Sewage and Septic Permits
Restaurant License
- Town – SEQR; Subdivision Sections I-IV; Building Permits as required

A summary of the proposal by section prepared for the 1988 DEIS is shown below:

DAVOS RESIDENTIAL DEVELOPMENT

	Acreage	Lots	<u>Dwelling Units</u>		<u>Coverage* (acres)</u>		Percent of Section
			1987	2000	1987	2000	
Sec. I & II	50	49	45	49	7	7.1	14
Sec. III	100	406	31	406	2.5**	22	22
Sec. IV	100	263	0	263	0	20	20
Unplanned Acreage	600	1200	0	1200	0	124	10

*Total ground surface area covered by buildings, roads, driveways, and other pavement.

**Does not include roads and 121 townhouse units under construction in 1987.

IV. STATUS OF APPROVALS

The following information is based on the DEIS, FEIS and Findings Statements, the consultant files and items identified in the “Sources Consulted” section at the end of this report. It is expected that as Town files and other agency sources are reviewed that additional information will be found which supplement and update the information in this section.

At this point, certain assumptions are made:

- For elements approved prior to the effective date of the SEQR regulations (1978) all project elements that resulted in sale of lots, construction of dwelling units, and amenities and infrastructure

received necessary approvals from Town and outside agencies and were not subject to SEQR.

- The sections analyzed in the 1988 DEIS, FEIS, and Findings Statements have completed the SEQR process. Phases or activities identified but not fully analyzed in the DEIS, FEIS and Findings Statement have not completed the SEQR process and are subject to its provisions. Activities where locations have changed from the 1988 Master Plan to the current concept plan are likely to need some level of environmental review that examines any environmental impacts due to change of location.

As shown on the 1988 “Master Plan Davos the Woods”, Sections I, II, the built portions of Sections III, IV, the extensions of Davos Road through Section IX, and a portion of the unnumbered Resort Complex were approved and built, at least in part.

From the information available to date it is not clear whether the balance of Sections III, IV, V, VI, VII, VIII, IX, and X of the 1988 plan received final approval from the Planning Board but the current concept plan changes these areas substantially so the question may be moot.

The portion of the Resort Complex that was built is shown on the 1988 plan to have the ski lodge, ski hill, shopping village, motel/restaurant/health club, a cluster of condominium units and parking fields for the amenity units. A swimming pool, a horseback riding facility and tennis courts, not shown on the 1988 plan were present, and some of the features shown on the 1988 plan and identified above were not built.

Elements of the 1988 plan for which an environmental review was not carried out include the golf course, lake and Sections V through X.

It is also assumed that any changes to operation /infrastructure elements, particularly water and sewer facilities, have received all necessary permits/approvals.

For a project of this size and anticipated duration, with a variety of proposed uses, amendments to the plan are to be expected for a variety of reasons – greater market acceptance of some dwelling types, more careful evaluation of development areas, changing economic conditions, etc.. One such proposed amendment was requested in mid 1990 to the area identified as Davos Pointe II condominiums. The proposal was to relocate 260 dwelling units

from Section VIII where there had been no physical disturbance to an area north of the resort complex which had already been disturbed as part of the construction of the resort complex, and to increase the size of the proposed lake in Section VIII from 6.5 acres to 40 acres. The proposal was reviewed by the Planning Board, but our files do not indicate whether the proposal was acted upon.

V. STATUS OF INFRASTRUCTURE (NOTE: Will – to review in detail)

The infrastructure elements of the Davos property include roads, water supply, sewer, and stormwater management facilities. Over the course of the development period starting in the mid 1960's various improvements, advances, changes in responsibility have occurred. The purpose of this section is to note those factors in outline form to serve as a basis for determining steps needed to advance the concept plan.

Roads

According to the 1988 DEIS, the Town of Fallsburg assumed ownership and maintenance responsibility for the roads (it is not clear from the documents reviewed to date whether this includes all roads, cul du sacs, lanes, etc. or only the major access and circulation roads, particularly since some of the internal roads exceed the Town maximum grades. The responsibility for maintaining these roads is a significant responsibility and should be clarified. Such records as Town Board resolutions, Highway Superintendent sign off on dedication, Town road maintenance records, snowplowing practices should shed some light on this issue. It is also likely that construction and dimensional standards for roads have changed since the original construction of the internal roads, and any changes may need to be harmonized.

Water Supply

The first large scale effort at providing potable water was the construction of a 60,000 gallon water storage tank built at the top of Davos Hill supplied by water from wells at the bottom of the hill, in approximately 19__, undertaken by the then developer. In about 19__the Town replaced the existing 60,000 gallon storage tank with a 350,000 gallon tank and booster station , and began investigating the need for additional wells. It appears that the town water supply will be adequate to serve the approved housing units and a portion of the resort complex, with 100,000 gallons per day approved for Davos.

Sanitary Sewers

Initially, homes were served by individual septic systems including 45+/- homes in Section I and II. In recognition of the need for a community type

system, a proposed Davos Sewer District (which could levy taxes and build or arrange for a centralized system) arranged for a connection to the existing Village of Woodridge Sewage Treatment Plant. The system was apparently partially completed in Section III. A separate system was provided for the ski resort – an open sand filter wastewater treatment system. By around 1987 the Village of Woodridge decided that its treatment plant could only serve Section III, when construction of 121+/- townhouses was under way. It was at this time that the project sponsor (SBC Enterprises) and the Town approached NYSDEC with a proposal to construct a separate sewage treatment plant, and DEC required the preparation of the DEIS to evaluate the impact of the new Section III construction and other plan elements. The plant was built and is operating privately and appears to have capacity for most of the previously approved housing units and some of the resort complex facilities. Additional sewage treatment capacity will be necessary to complete development as shown in the current concept plan. The Town of Fallsburg and Village of Woodridge have recently been discussing whether the former village sewage treatment plant can be made available to serve some or all of the additional demand.

Stormwater

Casual observations within Davos indicate the need for remedial maintenance of existing ditches, swales and culverts. Since the approval of the DEIS and various site plans in the late 1980's and into the 1990's the requirements and standards for stormwater management have changed in recognition of the need to address both quantity and quality aspects. As part of the detailing of the current concept plan a review should be made of the present stormwater management system and upgrades be incorporated into a Stormwater Pollution Prevention Plan meeting current state standards.

VI. CURRENT CONCEPTUAL PLAN

The current conceptual plan includes some elements of the original plan, some additional elements, and some modifications to the original plan by shifting the location of some of the proposed features. The current conceptual plan recognizes the existing residential development of Davos which, with surrounding buffers, occupy a significant portion of the overall property.

The current conceptual plan includes the following elements:

1. 200+/- room hotel – Phase One – Davos Resort USA
2. 18 hole championship golf course Phase One

3. Organic vegetable and herb greenhouses
4. 4 Season Recreation Area; skiing, 23 hiking trails, stable and indoor riding arena (Phase One and Two)
5. 600 proposed condominium units and water tower (Phase Two & Three)
6. 12 story – 700 unit condominium residential, with basement, first and second floor commercial (Phase Two or Three)
7. 510 Individually owned properties, many of which are developed – existing.
8. Winery with wine tasting room and boutique
9. Wind farm power center
10. Solar energy production area
11. Renovated (green) club house
12. Proposed lake or water features
13. Additional water supply facilities
14. Additional sewage treatment facilities
15. Potential high tech campus

It is important to note that the plan described above is conceptual and that modifications will be made – and that some of the elements are in the original 1988.

VII. APPROACH TO MOVING FORWARD

The project sponsors for the current conceptual plan seek to establish a path for review and the approval of the proposed conceptual plan, with any modification that may be made along the way. Based on the information reviewed to date, at least the following approvals/permits will be necessary”

- SEQR, by the Fallsburg Planning Board
- Possible zoning code amendments by the Fallsburg Town Board, after referral to the Fallsburg Planning Board and the Sullivan County Department of Planning and Environmental Management (GML Section 239 review). See below for further discussion
- Site plan amendments for any features already approved for which changes are proposed (general locations, building footprint, mix of uses, parking, landscaping, etc. (by the Fallsburg Planning Board).
- Subdivision review and approval, if necessary, to create lots, for purposes of ownership, financing, management, by the Fallsburg Planning Board.
- Review by the Fallsburg Architectural Review Board, if required by code or requested by the Fallsburg Planning Board.

- For infrastructure purposes, approval by the Fallsburg Town Board of any dedication of land or easements to the Town, changes in Town responsibilities, establishing service districts, or other measures that would affect the Town operationally, financially or legally.
- Approval by NYS Department of Environmental Conservation, the NYS Department of Health, and possibly the Delaware River Basin Commission for various elements of new wells, water supply, sewage treatment facilities, stream disturbance, wetlands disturbance.
- Approval by NYSDEC of Stormwater Pollution Protection Plan
- For several of the early steps, some additional background:
SEQR – The State Environmental Quality Review Act, essentially requires the preparation of an Environmental Impact Statement (EIS), for a proposal of this magnitude which has several steps – Draft EIS, Final EIS and Findings Statement. As already noted, these elements were prepared in 1988 and were completed before site plan approvals were granted by the Fallsburg Planning Board. However, as part of the review the NYSDEC indicated that the DEIS had the level of analysis typical of a generic EIS, which takes a broader, less comprehensive look at anticipated environmental impacts than would a site specific EIS. A generic EIS would typically be appropriate for the evaluation of a zone change request, but not for a site specific analysis.

In response, the FEIS included the following

- Discussion of generic vs site specific evaluations.. The elements of the Davos development that could be specifically described now would be so reviewed and evaluated. Those elements which could not yet be defined in site-specific detail would be outlined conceptually.”

“Certain elements of the project to be introduced in phases I and III are still not defined in detail and are therefore evaluated in generic or programmatic format. These are: 1) the proposed lake, 2) the proposed golf course, and 3) expansions of the water supply system proposed for phases 2 and III. The combination of site –specific and generic review will be adequate to assess the overall environmental review of the proposed development project.”

Clearly the intent in 1988 was to further evaluate the environmental impact of future sections of the development out a future time. That time would appear to be now, although it is more than twenty years later.

The SEQR process concludes with the adoption by the lead agency of a Findings Statement, which is defined in the SEQR regulations a “a written statement prepared by each involved agency...that considers the relevant environmental impacts presented in an EIS, weighs and balances them with social, economic and other essential considerations, provides a rationale for the agency’s decision and certifies that the SEQR requirements have been met.”

The 1988 environmental review process file has two Findings Statements. One, prepared by NYSDEC and dated September 26, 1989 describes the DEC approval action as “Construct the necessary expansions / modifications to sewage and water supply facilities to service the full Phase I development”, which was described as comprising 606 existing and proposed residential units and the “Davos in the Woods” recreation area complex consisting of Motel, Restaurant, Ski Lodge, Sales office, Homeowners Recreational Building and Retail Stores.” This would be the limit of development as understood by NYSDEC at that time.

The second was prepared by this office as a draft dated September 7, 1988 for review, potential modification, and adoption by the Fallsburg Planning Board. The conditions included receipt of all permits, traffic studies at 300 unit intervals, provision of traffic control devices and/or improvements, repair of any damage to Town roads by development activities, that elements of the plan that are conceptual in nature receive environmental review, that the Davos Road homestead be protected, that if school enrollment figures exceeded projections by more than 20% at intervals of 300 unit certificates of occupancy a per child impact fee would be paid, that the drainage plan in the DEIS would be implemented and updated as the project progresses, and that the provisions of a letter from Town Supervisor Darryl Kaplan to Robert Berman of SBC Enterprises of August 10, 1988 be met. The letter refers to the responsibility for and financing of various matters relating to water supply and sewage disposal, with specific conditions agreed to by both parties.

Based on the review of documents to date it appears that all the conditions enumerated in the two Findings Statement remain in force, except to the extent that subsequent plan changes and development may require modification, which would be under the purview of the Fallsburg Planning Board.

Earlier in this report there was reference to the status of projects that were approved prior to the effective date of SEQR, or, to put it in the vernacular, were “grandfathered”: In SEQR language this refers to the “development of individual lots in a subdivision where all approvals had been obtained before SEQR was enacted”. This provision would seemingly apply to site plan as well. Based on this language, individual lots in the earlier approved sections would not need an environmental review.

The SEQR Handbook, published by the NYSDEC provides the following guidance: “If an action was undertaken, funded or approved, or if substantial time, effort or money was expended prior to SEQR effective date, it may be a Type II.”; that is, exempt from SEQR review

But, the Handbook also indicates that:

“A grandfathered action may be ungrandfathered, if it is still practicable either to modify the action to mitigate potentially adverse environmental impacts, or to choose a feasible or less environmentally damaging alternative.” The DEC Commissioner may require preparation of an EIS on his or her own, or at a request of any person.”

One other aspect of SEQR that must be kept in mind is the concept of “segmentation”, which is defined in the SEQR regulations 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.”

Court decisions regarding segmentation have interpreted segmentation fairly broadly, and if a court holds that segmentation applies in a particular situation a project sponsor could be required to repeat the environmental review.

Planning Board approvals

The Planning Board granted site plan approvals for various elements of the original plan, some of which may have been fully built, some partially built and others not started, some before the effective date of SEQR and some after. It is unlikely that those site plan approvals had expiration dates, but the expiration dates of unstarted portions would have expired. For those in which construction had been started, if sufficient progress had been made, certain legal rights may have vested,

but since the properties have changed hands over the twenty +/- years since approval it is not clear at all whether the concept of vested rights remains applicable.

VIII. ZONING

One of the early issues to be evaluated in the review process is the applicability of the Fallsburg zoning code to the current concept plan. There are several proposed uses that, while accessory to or supportive of the primary uses, may not be permissible in the present code.

The Town of Fallsburg Zoning Code includes a number of specially designed districts intended to allow specific types of relatively large scale, often mixed use, developments. Planned Unit Development District No. 4, the Davos Planned Unit Development District, or PUD was designed to accommodate a proposed plan and offered some flexibility in the mix of uses. The Fallsburg code also has provisions that related to all PUD's. One alternative to consider to bring the proposed uses into conformity with PUD No 4 would be to modify the plan, while another would be to modify the provisions of PUD No. 4. Another alternative would be for the project sponsor to consider applying to the Town Board for a zone change to the more recently adopted Planned Resort Destination District, which may provide more flexibility but which also may have some limitations, such as building height, which would need to be resolved.

The choice of direction need not be made immediately. A prior step should be to establish whether approval of any portions of the proposed concept plan could be achieved by the modification of an existing site plan for a particular area, or a new site plan for previously approved area, or determine which areas of the proposed concept plan are to be subject to an environmental review and begin the environmental review process. As the environmental impacts and permitting requirements for the various elements are identified and considered, some plan elements are likely to be modified and the best procedure for resolving any plan/zoning code issues can be determined.

IX. NEXT STEPS

On the basis of the review to date, and subject to revision as additional file information is reviewed, the following is suggested.

- For the portions of the site that have received approvals and dwellings have been built, owners of individual lots may continue to make improvements to their property and homes, or construct additions or new dwellings subject only to building

permits and any other existing requirements. This would include Sections I, II, and the developed portion of Section III.

- For the Resort Complex, a new or revised overall site plan can be prepared for review by the Fallsburg Planning Board. An environmental review would only be necessary to examine any increase in impacts based on the changes between the approved (and partially constructed) original site plan and the current proposal as it evolves.
- The review of Building Department, Department of Public Works and Town Clerk filed should be completed to determine whether there is additional relevant information. This would help establish whether site plan review was completed by the Planning Board for some of the residential sections.
- An informal presentation should be made by the project sponsor to the Fallsburg Town Board and Planning Boards to begin to acquaint them with the proposal and to assist in identifying open issues. At the meeting with the Planning Board the discussion should also include the way in which the environmental review will be carried out, in particular whether the Planning Board or Town Board (should there be a need for a zoning amendment).be lead agency.
- The project sponsor should begin preparing a draft scoping document for a Supplemental Environmental Impact Statement (SDEIS). The scoping document will outline the subjects to be included in the SDEIS and the extent to which each subject will be examined. A supplemental EIS is appropriate when changes are proposed for the project or there is a change in circumstances related to the project (in this case the passage of 20+/- years and modifications to the prior plan)
- Staff meetings as necessary to establish the parameters of the environmental review.

X. REFERENCES

- Draft Environmental Impact Statement for the Davos Development, prepared for SBC Enterprises by Camp, Dresser & McKee, dated January 1988
- Final Environmental Impact Statement, dated July 1988
- Findings Statement prepared by NYSDEC dated September 26, 1989
- Draft Findings Statement prepared for the Fallsburg Planning Board, dated September 1988
- Letter from Fallsburg Supervisor Darryl Kaplan to Robert Berman of SBC Enterprises dated August 10, 1988

- Frequently Asked Questions on the NYS Stormwater Management Design Manual, prepared by NYSDEC, dated revised May 5, 2011
- 6NYCRR Part 617 State Environmental Quality Review, published by NYSDEC, dated June 30, 2001
- The SEQR Handbook, 3rd Edition, published by NYSDEC dated June 2010.

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