

GYRODYNE COMPANY OF AMERICA, INC.

v.

THE STATE OF NEW YORK

**STATE OF NEW YORK: COURT OF CLAIMS
CASE NO. 112279**

**ZONING ANALYSIS – GYRODYNE PROPERTY
Town of Smithtown and Town of Brookhaven**

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I. EXECUTIVE SUMMARY

The subject property is located in the Towns of Brookhaven and Smithtown. It is situated in the northeast corner of the Town of Smithtown and the northwest corner of the Town of Brookhaven. It is bounded by NYS Route 25A to the north, Stony Brook Road to the east and Mills Pond Road to the west. Elderwood Drive North and University Heights Drive also bound the property to the south.

"Reasonable probability" is the standard used to determine the likelihood of development associated with a particular parcel. Reasonable probability is determined by a number of factors. These include the existing zoning, the nature and character of development surrounding the property, site constraints such as access, topography, property shape and environmental limitations, the municipality's policies as embodied in a comprehensive plan and recent policies of the municipality as reflected in specific amendments to the zoning map through change of zone applications and Town Board Own Motion change of zones.

Based upon an analysis of these criteria, a change of zone to Planned Development District (PDD) in order to allow for the development of a residential community is the use with the highest reasonable probability.

The nature and character of development surrounding the subject property, both within the Town of Brookhaven as well as the Town of Smithtown, consists overwhelmingly of single-family residential development. The development of the subject parcel under its existing light industrial zoning would be inconsistent with this predominantly residential pattern of land use. The variety of manufacturing, warehouse and other industrial uses that would be permitted under the existing zoning pattern would be inconsistent with existing development, result in significant adverse impacts to surrounding homes and would have a deleterious effect on surrounding property values. Traffic resulting from the development of light industrial uses, which could potentially include medical office uses resulting in significant trip generation, also is likely to result in significant adverse impacts to surrounding single-family residential development. Heavy truck traffic associated with manufacturing and warehouse uses would also result in a decreased quality of life for surrounding residents and a diminution of property values.

Development of the subject property under the existing light industrial zoning category would also be limited by the site's location with limited access to major commercial roadways. Route 25A in the vicinity of the subject parcel is a two-lane roadway comprised of residential single-family development and low density uses such as a farm. Retail development is limited to scattered strip commercial zoning with little or no regional retail development. Mills Road is a two-lane substandard width residential street running north to south along the west side of the property. Commercial or industrial development would be inconsistent with this residential roadway. In addition, the substandard width of this roadway for even residential purposes coupled with the frequent flooding associated with the northern terminus of the roadway make it ill suited for the heavy traffic patterns associated with commercial or industrial development.

Stony Brook Road adjoins the subject parcel to the east. This winding, and at times narrow, two-lane roadway is also primarily developed with residential uses in the vicinity of the subject parcel and is similarly ill suited for commercial or industrial development.

Perhaps the most important elements in determining the "reasonable probability" of development of a parcel are the policies and guidelines of the community as contained within the municipality's comprehensive plan. Indeed, the comprehensive plan has been described as the essence of zoning. It represents a blueprint for development as courts have consistently found that zoning actions must be made in accordance with a comprehensive plan.

The Town of Brookhaven 1996 Comprehensive Land Use Plan specifically recommends that the subject property be rezoned to Planned Development District (PDD). It specifically identifies the need to consider rezoning "inappropriate spot industrial zoning" such as the subject parcel. The 1996 Plan, as will be discussed in more detail, specifically states that the Town should:

- Consider eliminating inappropriately zoned and surplus industrial properties. Eliminate industrial zoning that is isolated and located too far from major roadways and other transportation access and that is unlikely to be developed.
- In addition, spot industrial zoning should be eliminated and industrial zoning that intrudes into, accessed through, or is surrounded by residential areas should be eliminated.

Finally, in reviewing the recent policies of a Town, as reflected in recent amendments to the zoning map effectuated through change of zone applications, it is noted that there have been two prior rezonings to Planned Development District (PDD) ranging in density from 3.33 units per acre to 10.97 units per acre within the Town of Brookhaven as well as a series of rezonings within the Town of Smithtown which have similarly allowed for the development of residential uses with densities ranging from 1.6 units per acre to fourteen (14) units per acre.

This analysis concludes that the development alternative that has the most reasonable probability involves a change of zone to Planned Development District (PDD) with a density of between three (3) to six (6) units per acre. Based upon an analysis of the nature and character surrounding the subject property, an evaluation of site constraints, a review of Town zoning polices contained within its comprehensive plan and analysis of recent rezonings it can be said with 90-95% certainty that the Change of Zone to PDD would have been granted by the Town Board of the Town of Brookhaven. Similarly, it can be said with 70-75% certainty that such a rezoning would have been granted by the Town Board of the Town of Smithtown based upon analysis of the above criteria.

II. GEOGRAPHIC SETTING:

The subject property is located in the Towns of Brookhaven and Smithtown, being situated in the northeast corner of the Town of Smithtown and the northwest corner of the Town of Brookhaven.

The property is bounded by Stony Brook Road to the east and New York State (NYS) Route 25A to the north. To the southeast the subject property is bounded by University Heights Drive (within the Town of Brookhaven) and to the southwest the subject property is bounded by Elderwood Drive North (within the Town of Smithtown). The subject property is bounded on the west by Mills Pond Road. The subject property is also segmented by the Long Island Rail Road (LIRR) which bisects the property in a northeasterly-southwesterly direction.

The subject property, formerly the site of a helicopter manufacturing facility, encompasses a total of approximately 308 acres and is zoned for light industrial development. Access to the subject property is currently provided via Mills Pond Road, NYS Route 25A and Stony Brook Road.

Development surrounding the subject property consists primarily of residential uses. To the south of the subject parcel within both the Town of Brookhaven and the Town of Smithtown there are single-family homes along with an elementary school. To the east along Stony Brook Road development consists of single-family residential homes and the State University of New York (SUNY) at Stony Brook. North, along NYS Route 25A, development consists of a mixture of residential (single-family homes and a place of worship) and commercial uses with increasing amounts of retail development as one moves south and west along NYS Route 25A.

III. SITE STATISTICS:

The subject property consists of several properties totaling approximately 308 acres within the Towns of Smithtown and Brookhaven. That portion of the property within the Town of Brookhaven includes approximately 182 acres, zoned L-1 Light Industrial District. That portion of the property within the Town of Smithtown consists of approximately 126 acres within two tracts bisected by the Long Island Rail Road (LIRR).

IV. PROCEDURAL SETTING:

On November 2, 2005 the State of New York through SUNY Stony Brook vested title in approximately 245.5 acres of the 308-acre subject property through the use of eminent domain. SUNY Stony Brook had previously declared its interest in the property in order to facilitate the expansion of its campus and the development of a "Research and Development Park" referred to as the "Center for Excellence in Wireless and Information Technology" (CEWIT). The 245.5 acres includes property within both the Town of

Brookhaven (182 acres) and the Town of Smithtown (63.5 acres) and encompasses that portion of the property west of Stony Brook Road and south or east of the Long Island Rail Road (LIRR).

The purpose of this analysis is to consider the potential development of the approximately 308-acre property prior to the State acquisition (the entirety) as well as that portion of the property not acquired by the State (the remainder). This will involve a review of development under the existing light industrial zoning as well as potential development through a change of zone action.

V. AS-OF-RIGHT ANALYSIS

Light industrial development allows for a variety of office, warehouse and manufacturing uses as of right subject to the provision of adequate improvements in the form of drainage, parking, landscaping and buffers.

L-1 Light Industrial zoning within the Town of Brookhaven requires a minimum lot area of 40,000 square feet along with a minimum lot width of one hundred (100) feet. Typically, a minimum of twenty percent (20%) of the property is required to be reserved for landscaping and buffers with variations required in connection with specifically identified uses. A maximum Floor Area Ratio (FAR) of .35 is permitted.

L-I zoning within the Town of Smithtown is also a light industrial zoning district with a minimum lot area requirement of 80,000 square feet (Note: Lot area may be reduced to 43,560 square feet for Planned Industrial Parks as defined by Town Code). A minimum width of one hundred (100) feet is required at the setback line and a minimum street frontage of 50 feet (50') is also required. A maximum permitted FAR of .42, along with a minimum landscaped area of eighteen percent (18%), are also required.

Based upon the above, it has been estimated that development under the existing zoning would permit approximately 1,710,000 square feet of commercial development, including 11,400 parking spaces, 1,320,000 square feet of industrial development, including 3,940 parking spaces, along with 30,000 square feet of central services and approximately 15 acres of open space and recreation areas. (Yield analysis provided by BFJ Planning)

VI. ZONING DISTRICT ANALYSIS

As indicated by the above, the subject parcel is primarily surrounded by a variety of residential development with some limited retail services. In addition, while the property maintains frontage to New York State Route 25A, Stony Brook Road and Mills Pond Road access to accommodate the potential industrial/commercial development is limited.

The following analysis considers potential yield associated with a variety of residential zoning districts within the Town of Brookhaven and the Town of Smithtown.

Town of Brookhaven:

MF/PRC Residence Districts:

MF Residence District and PRC Residence District contain the same dimensional, density and other standards with one important distinction. The PRC Residence District is limited to senior citizens, as defined by the Town Code, while the MF Residence District allows for the development of non-age restricted housing units. For the purposes of the following discussion, MF Residence and PRC Residence Districts will be discussed collectively based upon their similar composition.

Permitted uses within the MF and PRC Residence Districts include rental housing units, attached or semi-attached single-family residences and detached single-family residences.

Site location is based upon criteria within the Code which established three tiers of appropriate locations for the development of MF or PRC units. Preference is given to "Primary Zones" defined as those areas of the Town within approximately 500 feet of a Main Street Business Districts. In addition, "commercial sites or industrially zoned sites used for commercial purposes, which provide opportunities for redevelopment as housing sites, or housing sites designated pursuant to an approved Hamlet Center Plan or Corridor Study, may be considered as primary zones."

"Secondary Zones" consist of those areas of the Town, outside of a Main Street Business District, which are located on connector roadways and which maintain convenient access to commercial centers and public or private transportation services.

Finally, "Tertiary Zones" are defined as those areas of the Town NOT designated as a primary or secondary zone which may be appropriate for moderate density housing based upon the creation of public amenities for the benefit of both residents and the general public.

Density within the MF and PRC Residence Districts varies, with the highest densities permitted within Primary Zones and the lowest densities within Tertiary Zones. In addition, all developments are required to maintain a minimum of ten percent (10%) of all units as affordable units, pursuant to Town guidelines. Maximum permitted densities may also be increased through the use of the transfer of development rights associated with environmentally sensitive land, state or locally designated open space acquisition sites or Pine Barrens credits. In addition, maximum permitted densities may be increased through the provision of affordable housing in excess of the minimum requirements.

In summary, base density within a Primary Zone is 6 units per acre. Density may be increased to 9 units per acre provided that for each additional market rate unit above 6 units per acre, two additional units are designated as affordable units. A maximum of 12

units per acre may also be permitted within a Primary Zone, provided 100% of the units are maintained as affordable or workforce units pursuant to town guidelines.

Base density within a Secondary Zone is 4 units per acre with yield based upon a combination of the as-of-right yield of the subject property together with the transfer of development rights associated with environmentally sensitive land. Similar to a Primary Zone, a minimum of ten percent (10%) of all units must be maintained as affordable or workforce units pursuant to Town guidelines. Similarly, density may also be increased within a Secondary Zone to 6 units per acre, provided that for each unit above 4 units per acre, two additional units are designated as affordable or workforce units. Finally, the maximum permitted density within a Secondary Zone may be increased to 8 units per acre provided that all units are maintained as affordable or workforce housing units pursuant to Town guidelines.

Densities within a Tertiary Zone range in similar fashion to Primary and Secondary Zones with a range of between 2-4 units per acre depending on transfer of development rights and the percent of workforce or affordable units.

MF and PRC Residence Districts require a minimum lot area of one acre for Primary Zones and a minimum lot area of eight acres for Secondary or Tertiary Zones.

PRCHC Residence District:

PRCHC Residence District allows as-of-right adult care facilities as defined and licensed by the New York State Department of Health. In addition, via a special use permit, PRCHC Residence District permits dining, recreation, social and cultural facilities for the sole use of residents of the community and medical offices – provided that such uses are intended primarily for the benefit of the residents and further provided that said use does not exceed 5,000 square feet or 3% of the total gross floor area of the site.

Maximum permitted density within a PRCHC Residence District is 8 units per acre or 12 beds per acre, whichever is less. A minimum lot area of ten (10) acres is required along with a minimum lot width of two hundred (200) feet.

It is important to note that density may be increased through a “hardship” provision within the code and that a minimum of ten percent (10%) of all units are required to be maintained as affordable.

Planned Development District (PDD):

The Planned Development District within the Town of Brookhaven was originally enacted March 1, 1994, and subsequently repealed and reenacted July 11, 1995. The purposes of the PDD are the following:

- (1) It is hereby found and determined by the Town Board of the Town of Brookhaven that there

exist in the Town vast but diminishing natural resources and tracts of land which must be preserved and protected for the benefit of this and future generations. This need is balanced by a need to accommodate and provide for the future economic welfare and development of the Town.

- (2) The purpose of this Planned Development District legislation is to create the type of planning and zoning flexibility which is necessary to achieve environmentally sensitive, economically beneficial and socially desirable development which is more creative and imaginative in its land use and design than is possible under the more rigid, conventional regulations currently in place. This type of sound planning is designed to achieve a commonality of benefits for the otherwise sometimes competing interests of planners, environmentalists, residents, civic groups, business people and developers by recognizing the unique locational, servicing and physiographic characteristics of varying parcels of land, and then shifting and modifying the development permitted on each in order to achieve benefits to the public and to the owner of the property.
- (3) It is, therefore, the intent of the Town Board to enact zoning which can be used as a positive planning tool by offering incentives to encourage comprehensive, coordinated planning and design, and the creation of developments and communities which are visually attractive, fiscally responsible, economically feasible and environmentally sensitive.

In addition, the stated goals of the PDD included:

- (1) To encourage more desirable and publicly beneficial arrangements and designs of land uses in accordance with the comprehensive plan of the Town of Brookhaven (including the draft 1987 Land Use Plan, the 1985 Open Space Study and this Zoning Code), the Long Island Pine Barrens Protection Act (Article 57 of the New York State Environmental Conservation Law), the Central Pine Barrens Comprehensive Land Use Plan (prepared by the Central Pine Barrens Joint Planning and Policy Commission), the Long Island Comprehensive Special Groundwater Protection Area Plan (prepared by the Long Island Regional Planning Board pursuant to Article 55 of the New York State Environmental Conservation Law) and other applicable plans of Town, county, regional, state and federal agencies.
- (2) To help implement the Central Pine Barrens Comprehensive Land Use Plan by providing a zoning mechanism designed to facilitate the transfer of Pine Barrens Credits (PBC's) from the core area of the Central Pine Barrens to receiving sites which are located and designed in a manner capable of accommodating the transferred development rights.
- (3) To encourage preservation and protection of the Town's natural environmental resources, including groundwater quality and quantity, the diversity of plant and animal communities, and significant habitat areas for rare, endangered, threatened and special concern species.
- (4) To encourage the preservation of large, undisturbed, contiguous areas of naturally vegetated open space, wherever possible adjacent to existing large public/quasi-public open space areas. Where adjacent location is not possible, to create natural open space linkages which are of appropriate size, location and character so as to maintain the connectivity of open space for environmental, visual and recreational functions so as to create, as far as is practicable, continuous and contiguous open space systems.
- (5) To encourage protection of scenic vistas, historical buildings and sites, sensitive archaeological areas and other important cultural resources.
- (6) To encourage the conservation and enhancement of the visual quality and rural character of undeveloped areas of the Town by protecting visible open space, farmland and wild and scenic and recreational rivers, encouraging the creation and/or preservation of vegetative buffers along highways and between potentially conflicting land uses, and by the careful siting, design and buffering of building development.

- (7) To minimize flooding and erosion by protecting the functions of wetlands, waterbodies, watercourses, floodplains, areas of high water table, steep slopes, erosion hazard areas and natural vegetative cover.
- (8) To minimize stormwater runoff and maximize the quality and quantity of groundwater recharge by reducing land disturbance, using natural drainage systems wherever possible, filtering runoff from impervious surfaces, and maximizing on-site recharge.
- (9) To encourage protection of aquifers and minimize pollutants entering the soil and groundwater by maximizing the preservation of naturally vegetated areas, planting appropriate native species in areas which are to be landscaped, and utilizing proper fertilizer, pesticide, fungicide, and herbicide management techniques.
- (10) To locate, plan and design or redesign communities so that they will have a clear "sense of place" and will enable residents to reside, work, shop and enjoy recreational and cultural activities in the same area.
- (11) To offer the opportunity for a balanced array of housing designed to meet the needs of the Town and the region.
- (12) To encourage high-quality, environmentally sensitive industrial and commercial land uses on suitable and appropriately located parcels well served by transportation facilities and utility services.
- (13) To encourage the efficient use of existing and planned infrastructure, and to encourage the clustering of development so as to facilitate the economical and efficient construction and operation of wastewater treatment plants to service as much of the Town's development as practical.
- (14) To encourage the efficient provision and delivery of governmental services, including educational, cultural, recreational and emergency services.
- (15) To help assure that new development will be fiscally sound in terms of revenues produced versus expenditures required, including consideration of operating as well as capital costs for the services and facilities required for its residents.
- (16) To encourage protection of air quality by the clustering of development so as to encourage the use of public transportation and car pooling, as well as the provision of trails to encourage biking and walking.
- (17) To provide an efficient system of transportation infrastructure designed to maximize safety and minimize vehicular travel.
- (18) To provide for the efficient use of land and other finite resources.
- (19) To minimize the consumption of energy through the appropriate siting and design of communities, buildings and infrastructure.
- (20) To encourage the properly planned revitalization, rehabilitation and/or redevelopment of existing downtowns, shopping centers, strip commercial and industrial areas.
- (21) To reclaim and allow the proper redevelopment of environmentally impacted sites.
- (22) To prevent inappropriate development on stale, previously filed subdivision maps encompassing wetlands, high water table areas, steep slopes and other terrain generally considered to be unsuitable for development.

Procedurally, implementation of a PDD involves a two-step process: including (1) an application to the Town Board for a Change of Zone and approval of a PDD Master Plan; and (2) an application for site plan and/or subdivision approval by the Planning Board within the approved PDD, subject to the requirements of the approved PDD Master Plan.

In reviewing the PDD, the Town Board must consider the extent to which the application serves to implement the legislative intent, purposes and goals set forth within the PDD, the proposed mix of land uses and their planned design and arrangement on the site, including compatibility with site environmental conditions, and with neighboring streets and land uses, the potential impact of the proposed development upon the area in which it is located, and upon the Town and the region as a whole and the adequacy of the proposed phasing plan to insure that each phase will be self-sustaining if future phases shall be delayed or abandoned.

Development within the PDD may consist of any mixture of uses in an amount and intensity consistent with the maximum permitted densities within the underlying zoning categories. In addition, the Town Board is empowered to allow an increase in the maximum permitted densities pursuant to the transfer of development rights from environmentally sensitive land identified pursuant to the Central Pine Barrens Comprehensive Management Plan, or through the provision of special public benefits. A special public benefit is defined as:

A feature or amenity offered by a PDD applicant which exceeds the minimum requirements of this article and any other applicable regulations, and is intended to help further the achievement of the legislative intent, purposes and goals of PDD zoning. Examples include increased land preservation, the construction or improvement of public facilities, services or utilities, the provision of special design amenities, and other such public benefits which exceed normally applicable requirements.

Town of Smithtown:

R-6 Townhouse District:

R-6 Townhouse District allows for the development of townhouses with a minimum lot area of 217,800 square feet and a minimum lot width of 100 feet. The maximum permitted density within the R-6 Townhouse District is one unit per 7,260 square feet or 6 units per acre (excluding land required for public facilities such as highways, recharge basins, parks and similar facilities).

RC Retirement Community District:

RC Retirement Community District allows for the development of senior housing units with a minimum lot area of 435,600 square feet and a minimum lot width of 200 feet. The maximum permitted density within the RC Retirement District is one unit per 4,356 feet or 10 units per acre.

RM-GA Garden Apartment District:

RM-GA Garden Apartment District allows for the development of garden apartments or rental units provided a minimum lot area of 87,120 square feet is maintained along with a minimum lot width of 200 feet. The maximum permitted density within the RM-GA Garden Apartment District is one unit per 2,500 square feet or 17.4 units per acre.

VII. COMPREHENSIVE PLAN ANALYSIS:

State Courts have described the Comprehensive Plan as the "essence of zoning" and have determined that all land use regulations must be made in accordance with a comprehensive plan. New York State defines a comprehensive plan as...

Materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, report, and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices, and instruments for the immediate and long-range protection, enhancement, growth, and development of the locality."

The 1996 Comprehensive Land Use Plan is the most recent town-wide land use plan for the Town of Brookhaven. It offers the following comments with respect to industrial development:

- *Inappropriate spot industrial zoning is present in certain locations in the Town. In other cases, the existing industrial zoning is located too far from major roadways and other major transportation access to be considered viable. Some industrial zoning was found to be inappropriate because it was surrounded by or intruded into residential areas.*

Analysis of the subject property reveals that it is in all respects consistent with the inappropriate pattern of land use contained within the above-referenced comprehensive plan provision. It is reflective of "spot zoning" in that it is the only industrial tract in the vicinity and it is surrounded by both residential zoning patterns (primarily single-family residential districts) and residential uses. In addition, it is not located in close proximity to major commercial roadways such as the Long Island Expressway, Sunrise Highway or Middle Country Road. In addition, it does not maintain convenient access to public transportation such as the LIRR. Finally, as stated previously, the property is surrounded to the south, east, north and west by primarily single-family residential development.

- *In many cases the tax base issue has become the impetus for the location of industry rather than a relationship between the amount of industrial zoned land and the potential demand regardless of whether or not it is located properly to serve its intended use (proximity to transportation such as highways, water and rail) and in some cases, without consideration of its*

impact on adjacent properties or the environment....This "fiscal" theory of zoning (that each school district requires some industrial zoning) however becomes counter-productive as the taxing district may benefit from the scattered industrial users (although the tax benefits of industry are often overstated) but the Town loses in its attempt to rationally control development.

The above Comprehensive Plan provision once again accurately describes the inappropriate nature of the existing industrial zoning pattern. Manufacturing and warehouse uses, permitted "as of right" within a light industrial zone, are properly located adjacent to major transportation facilities in order to better accommodate anticipated truck traffic and heavy trip generation. While good planning and smart growth principles advocate mixed use development consisting of residential uses and retail and personal service uses, they also dictate that light industrial and heavy commercial uses continue to maintain appropriate buffers and separation from residential development, particularly single-family residential development.

Recommended industrial land use and zoning changes contained with the Comprehensive Plan offer the following additional comments:

- *Consider eliminating inappropriately zoned and surplus industrial properties. Eliminate industrial zoning that is isolated and located too far from major roadways and other transportation access and that is unlikely to be developed.*

The above referenced Comprehensive Plan recommendation also reflects the inappropriate nature of the subject parcel due to its lack of access and its distance from major transportation services. While the subject property has been utilized by a variety of marginal industrial uses over the years, its distance from major roadways makes it unlikely that it would be successful in attracting significant industrial users. This is particularly true when viewed in context with available industrial holdings south in the vicinity of the Long Island Expressway.

- *In addition, spot industrial zoning should be eliminated and industrial zoning that intrudes into, accessed through, or is surrounded by residential areas should be eliminated.*

The above Comprehensive Plan provision once again advocates for the rezoning of parcels, such as the subject parcel, which are spot zoned, accessed through, or surrounded by residential areas. Access to the subject parcel from NYS Route 25A, Stony Brook Road or Mills Pond Road would involve direct access via primarily residential roadways. It is again noted that Mills Pond Road, like Stony Brook Road, is a narrow and winding roadway, substandard in width, with the predominant land use pattern being comprised of single-family residential development.

- *Underutilized or inactive industrially-zoned parcels should be considered for rezoning.*

The subject parcel has been underutilized for industrial purposes for many years. The availability of hundreds of acres of vacant industrial land adjacent to the Long Island Expressway make it unlikely that the subject parcel would be fully utilized for industrial purposes in the near future.

- *Industrially-zoned parcels located along undeveloped major roadways with unlikely future development should be considered for rezoning.*

The above Comprehensive Plan provision once again recommends that parcels similar to the subject parcel which are located along undeveloped major roadways such as this portion of NYS Rote 25A and are unlikely candidates for future development, should be considered for rezoning.

- *Where large industrial zoned parcels or assemblages of parcels exist, the Town should consider rezoning to a PDD to promote future flexible development.*

The subject parcel is in fact one of the largest privately held assemblages of property within Stony Brook. Not only is it consistent with the above criteria and thus should be considered for rezoning but it is "specifically" recommended for rezoning to PDD within the Town's 1996 Comprehensive Land Use Plan (See Proposed Zoning Map annexed as Exhibit 2).

Based upon the above analysis and recommendations, the Town of Brookhaven 1996 Comprehensive Land Use Plan recommended that the Gyrodyne property be rezoned to Planned Development District (PDD).

NOTE: It is noted that the Town of Smithtown is in the process of updating its Comprehensive Plan at the time of this study. In view of the dated nature of existing Smithtown comprehensive planning materials, this analysis places a greater emphasis on other factors discussed herein.

VIII. ANALYSIS OF RECENT CHANGE OF ZONE AMENDMENTS:

Amendments to a Town's zoning map in the form of Changes of Zone or Town Board Own Motion Changes of Zone are an important element in consideration of the reasonable probability of development of a parcel as they reflect the Town's current thinking with respect to individual land use policies. While the Comprehensive Plan serves as a blueprint for development and a guide for individual applications before the Town Board, individual rezoning applications reflect the implementation of the municipality's land use policies on a daily basis.

The following rezonings reflect the Town of Brookhaven as well as the Town of Smithtown's comfort with support for rezonings to allow for the development of

moderate and higher density housing developments. The greater number of applications within the Town of Brookhaven is a reflection of the greater availability of land for development within Brookhaven Township as well as the more mature nature of Smithtown's population. As a western Suffolk County Town, Smithtown has matured more quickly with respect to development build out than the Town of Brookhaven which serves as the dividing point between western Suffolk County and the five eastern Suffolk County Towns.

The number of rezoning applications within the Towns of Brookhaven and Smithtown to multiple-family and planned retirement or senior citizen housing types is also a reflection of the support for the diversification of each town's housing stock. Long Island as a post World War II suburban community has developed predominantly with single-family residential homes. As Long Island's population continues to age and mature, its housing needs continue to diversify. The number of rezoning applications which allow for the development of multiple-family and senior citizen housing types reflects both the support for the diversification of Long Island's housing stock as well as the market demand for these housing types.

The following is a summary of recent Change of Zone amendments within the Towns of Brookhaven and Smithtown.

Town of Brookhaven:

There have been several zoning actions relevant to the subject analysis within the Town of Brookhaven. The following is a brief summary of the most relevant actions:

- Silver Corporate Park. Involved a Change of Zone from L-1 Industrial District to PRCHC District in order to allow for the development of 620 housing units on a 117-acre tract involving a density of 5.2 units per acre. It is located in the community of Yaphank adjacent to the Long Island Expressway.
- Heritage Square. Involved a Change of Zone to PRCHC District in order to allow for the development of 582 units of housing on 51.5 acres resulting in a density of 11.4 units per acre. It is located in the Community of Moriches.
- Mile Development. Involved a Change of Zone from Residence A-1 District, L-1 Industrial District and L-3 Industrial District to PRC District in order to allow for the development of 477 senior citizen housing units on 128 acres resulting in a density of 3.7 units per acre. It is located in the community of Mastic, adjacent to Sunrise Highway.
- Fairfield at Ronkonkoma. Involved a Change of Zone from J-7 Business District to MF2 District in order to allow for the development of a 60-unit apartment complex on 5.5 acres resulting in a density of 11 units per acre. It is located in Ronkonkoma, just north of the Ronkonkoma train station.

- **Setauket Meadows.** Involved a Change of Zone from L-1 and B-1 Districts to PRC District in order to allow for the development of 150 senior citizen housing units on 49.4 acres resulting in a density of 3 units per acre. It is located in the community of Setauket.
- **Earth Grow at East Moriches.** Involved a Change of Zone from L-1 to PRC District in order to allow for the development of 324 senior citizen housing units on 46.2 acres resulting in a density 7 units per acre. It is located adjacent to the north side of Frowein Road in the community of East Moriches.
- **Eastport Senior Living.** Involved a Change of Zone from Residence A-1 District to PRC District in order to allow for the development of 240 senior citizen housing units on 74.3 acres resulting in a density of 3.23 units per acre. It is located adjacent to C.R. 51 in the community of Eastport.
- **Parkshaw Associates.** Involved a Change of Zone from A-1 Residence District to PDD. The application involved the development of 450 units of rental apartments along with the development of an 18-hole golf course, restaurant and park on 243.7 acres. The golf course encompassed 152 acres, the restaurant 2.1 acres, parkland 47.2 acres and the municipal dedication was 2.1 acres. The remaining 41 acres involved the development of 450 units, resulting in a density of approximately 10.97 units per acre.
- **Laurel Hill Associates.** Involved a Change of Zone to PDD of several tracts of land in the community of Mount Sinai. The Change of Zone ultimately involved the development of 720 units of housing consisting of single-family homes, senior housing units, nursing home units and congregate care units along with the development of a golf course. The total density for the project is 3.3 units per acre.

Town of Smithtown:

- **Hamlet Estates.** Involved a Change of Zone to R-6 Townhouses in order to allow for the development of 167 units on 104 acres, resulting in a density of 1.6 units per acre. It is located on the northwest corner of NYS Route 347 and Moriches Road.
- **Galleria (Avalon Commons).** Involved a Change of Zone to R-6 Townhouses and RM-GA in order to allow for the development of townhomes and rental apartment units with a maximum density of 14.8 units per acre.

The above zoning actions reflect a broad range of densities associated with residential Change of Zone actions. Residential densities within the Town of Brookhaven ranged from 3 units per acre to 11 units per acre. Residential densities within the Town of Smithtown ranged from 1.6 units per acre to over 14 units per acre.

Collectively, these rezoning applications represent support within each town to diversify the community's housing stock in order to meet the needs and tastes of all residents at all income levels. As Long Island's population continues to mature and as our population continues to age, commonly referred to as the "graying" of our population, the need to provide for multiple-family and senior citizen housing types will also continue to grow. As mentioned previously the significant number of rezoning applications to multiple-family and senior citizen housing types also reflects the demand for such housing types within the market and within the region.

IX. CONCLUSION

Based upon the above, the development of the subject property with the most reasonable probability involves a Change of Zone to Planned Development District (PDD) in order to allow for the development of a residential community.

"Reasonable probability" is determined through the analysis of several factors. These factors include the nature and character of development surrounding the property and its compatibility and consistency with the predominant land use patterns within the community. As discussed previously, the subject property is surrounded by overwhelmingly residential zoning patterns and residential land uses. Development of the subject property in accordance with the existing light industrial zoning designation would be inconsistent with surrounding residential development and would likely result in significant adverse impacts to surrounding residential uses.

Additional factors to be considered include an analysis of the site itself and its suitability for a variety of land use types. As stated previously, the subject parcel does not maintain convenient access to major commercial corridors such as the Long Island Expressway, Sunrise Highway or Middle Country Road. NYS Route 25A, located adjacent to the northerly border of the subject parcel, is a two-lane roadway developed with a mixture of residential and local commercial uses. There are no regional commercial uses in close proximity to the subject parcel. Mills Pond Road, which adjoins the parcel to the west, is a narrow and winding substandard width road developed with primarily residential uses and it is thus ill suited to industrial development. The same can be said of Stony Brook Road, which is also a narrow and winding two-lane roadway, primarily developed with residential uses.

Recent zoning actions by a municipality reflect the policies and attitudes of the community and are thus also important when considering the reasonable probability of development of a parcel. Recent rezoning actions within the Town of Brookhaven have demonstrated a willingness to rezone parcels from both residential as well as industrial zoning categories in order to allow for the development of moderate and high density residential communities. Two such actions involved the change of zone of large assemblages of land, similar in context to the subject parcel, to PDD. Density for these projects ranged from 3.33 units per acre to 10.97 units per acre. Similarly, within the Town of Smithtown recent rezonings have permitted residential densities of up to 14 units per acre.

Lastly, determinations regarding the reasonable probability of development of a parcel are based upon an analysis of the Town's vision for future development as embodied within its comprehensive plan. The Comprehensive Plan has been described as the "essence of zoning" and courts have consistently reinforced the notion that zoning must be in accordance with a comprehensive plan. The Town of Brookhaven 1996 Comprehensive Land Use Plan specifically identifies the need to:

Consider eliminating inappropriately zoned and surplus industrial properties. Eliminate industrial zoning that is isolated and located too far from major roadways and other transportation access and that is unlikely to be developed.

In addition it recommends that:

...spot industrial zoning should be eliminated and industrial zoning that intrudes into, accessed through, or is surrounded by residential areas should be eliminated...and...

Where large industrial zoned parcels or assemblages of parcels exist, the Town should consider rezoning to a PDD to promote future flexible development.

Based upon the above, the development of the subject parcel that maintains the most reasonable probability involves a Change of Zone to Planned Development District (PDD) at a density of between 3-6 units per acre. In consideration of all of the previously discussed factors it is with 90-95% certainty that the Town Board of the Town of Brookhaven would approve such an action. It is with 70-75% accuracy that such an action would be approved by the Town Board of the Town of Smithtown.

Remainder Analysis:

The remainder consists of approximately 62.5 acres of property located within the Town of Smithtown. Residential development maintains the highest reasonable probability of development at a density of 3-6 units to the acre based upon similar considerations to the above discussion for the entirety. It is with 70-75 % accuracy that such an action would be approved by the Town of Smithtown.

References

1. Town Code of the Town of Brookhaven (Online version)
2. Town Code of the Town of Smithtown (Online version)
3. Silver Corporate Park. Town Board Resolution, Office of the Town Clerk of the Town of Brookhaven.
4. Heritage Square. Town Board Resolution, Office of the Town Clerk of the Town of Brookhaven.
5. Mile Development. Town Board Resolution, Office of the Town Clerk of the Town of Brookhaven.
6. Fairfield at Ronkonkoma. Town Board Resolution, Office of the Town Clerk of the Town of Brookhaven.
7. Setauket Meadows. Town Board Resolution, Office of the Town Clerk of the Town of Brookhaven.
8. Earth Grown at East Moriches. Town Board Resolution, Office of the Town Clerk of the Town of Brookhaven.
9. Eastport Senior Living. Town Board Resolution, Office of the Town Clerk of the Town of Brookhaven.
10. Parkshaw Associates. Town Board Resolution, Office of the Town Clerk of the Town of Brookhaven.
11. Laurel Hill. Town Board Resolution, Office of the Town Clerk of the Town of Brookhaven.
12. Hamlet Estates. Town Board Resolution. Office of the Town Clerk of the Town of Smithtown.
13. Galleria (Avalon Commons). Office of the Town Clerk of the Town of Smithtown.
14. Town of Brookhaven Comprehensive Land Use Plan, 1996

This report was prepared by Daniel J. Gulizio.

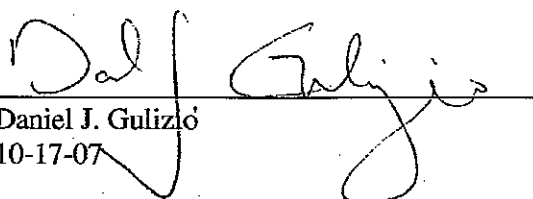

Daniel J. Gulizio
10-17-07

EXHIBIT 1

Daniel J. Gulizio
18 Sabbath Day Path
Huntington, New York 11743
(631) 681-3189

EXPERIENCE

December 1, 2006-
Present

SUFFOLK COUNTY PLANNING DEPARTMENT

Deputy Director Of Planning

Responsibilities include the management of the Department's land use staff, and administration of a variety of planning projects including open space preservation, the Sagtikos Corridor Regional Growth Management Study and the County's Yaphank Redevelopment Plan. Additional responsibilities include oversight of SEQR review processes and the Suffolk County Planning Commission review process.

February 27, 2006-
October 2006

NASSAU COUNTY PLANNING COMMISSION

Deputy Commissioner of Comprehensive Planning

Responsibilities include the administration of the Nassau County Planning Commission calendar including all subdivision, zoning and open space preservation applications along with the administration of the State Environmental Quality Review Act (SEQRA). Additional responsibilities included the administration of a variety of long range planning projects, legal analysis associated with the administration and update of the Nassau County Charter and coordination with other county departments including the Department of Real Estate and Development, the Department of Public Works and the Office of the County Attorney.

June 2006-Present

LONG ISLAND UNIVERSITY (LIU) – Center for Management Analysis
Special Professor of Land Use

September 2005 -

DOWLING COLLEGE - SCHOOL OF BUSINESS
Adjunct Professor -- Government and Business

October 2002 –
July 2005

**TOWN OF BROOKHAVEN – DEPARTMENT OF PLANNING,
ENVIRONMENT AND LAND MANAGEMENT**
Commissioner

Responsibilities included the supervision of a staff of approximately ninety employees including the Divisions of Planning, Environmental Protection, Land Management, Engineering and Traffic Safety. The Department is responsible for the oversight and administration of land use rules, regulations and policies including the maintenance of the Comprehensive Plan, Zoning Code and Town Code. The Department also represents the Town Board, Planning Board and Zoning Board of Appeals at all public hearings in addition to processing all subdivision, site plan, land division, change of zone, special permit and wetland applications. Responsibilities also include representation on the Pine Barrens Commission, Open Space Committee, Council on Environmental Quality, Suffolk County Workforce Housing Taskforce and all civic associations including the Affiliated Brookhaven Civic Organization, Inc. (ABCO).

**TOWN OF ISLIP – DEPARTMENT OF PLANNING AND
DEVELOPMENT
COMMISSIONER**

July 1999 –
July 2002

Responsibilities involved the supervision and administration of a staff of approximately seventy-five employees including the Divisions of Planning, Engineering and Contracts, Building, Land Management and Economic Development. The Department is responsible for the maintenance of the Comprehensive Plan, the Zoning Code and Capital Programming, the administration and enforcement of all zoning laws and applicable local laws, the processing of all permits, the administration of industrial and business programs, the supervision and administration of all engineering duties including the design of all roadways, bridges, drainage structures and parks, grounds and other structures in the nature of public works, the coordination and management of all town-owned real properties and the representation of the Town Board, Planning Board and Zoning Board of Appeals at all public hearings.

August 1997 –
July 1999

CHIEF PLANNER

Responsibilities involved the supervision of entry level planning staff, coordination with the Divisions of Code Enforcement, Law Enforcement and the Building Division, the drafting of code amendments and the subdivision and land development regulations. Additional responsibilities included the development and implementation of the town's open space plan in conjunction with the Suffolk County Legislature, Suffolk County Planning and the Long Island Regional Planning Board.

January 1996 –
August 1997

SENIOR PLANNER

Responsibilities involved the preparation of Comprehensive Plan documents, the administration of individual zoning applications and the drafting of code amendments. Additional responsibilities involved the updating of the town code including the zoning ordinance and the Town's land development regulations.

March 1989 –
December 1996

PLANNER

Responsibilities involved the administration of zoning policy within the Planning Department including the review of all applications for rezonings and special permits. Served as Departmental representative at all Town Board and Planning Board public hearings along with the preparation of all staff reports and amendments to both the comprehensive plan and the zoning ordinance. Previous responsibilities included the review of all commercial and industrial site plan applications in addition to the processing of all site plan modification applications to the Planning Board.

October 1986 –
March 1989

PLANNING AIDE

Responsibilities included the review and administration of all minor subdivision applications along with assisting in the development of comprehensive plans and various zoning, land use and planning studies. Additional duties included the review and analysis of applications before the Zoning Board of Appeals including the preparation and presentation of staff recommendations during the public hearing process as a representative of the Department of Planning and Development.

May 1986 –
October 1986

PLANNING INTERN

Responsibilities included research, field studies, survey and graphic functions and report preparation conducted for various land use studies conducted by the Department of Planning and Development.

EDUCATION

ST. JOHN'S UNIVERSITY – SCHOOL OF LAW, Jamaica, New York
Juris Doctor (J.D.) December 2001

COLUMBIA UNIVERSITY – SCHOOL OF ARCHITECTURE – Division of Urban Planning, New York, N.Y.
Master of Science Degree in Urban Planning, May 1993

COLBY COLLEGE, Waterville, Maine
Bachelor of Arts, May 1986

HONORS

100 Most Influential Long Islanders – Long Island Business News (2005)
40 Under 40 -- Long Island Business News (2004)
Man of the Year in Government – Times Beacon Record (2003)
Man of the Year in Government – Rocky Point Lions Club/Rotary Club (2004)
Hauppauge High School Hall of Fame (2004)

Guest lecturer on land use and public policy issues before the following organizations: The Real Estate Practitioner's Institute Symposium (REPI), Long Island Business Development Council, Bi-County Commission on the Long Island Regional Planning Board, Suffolk County Planning Commission, Suffolk County Planning Federation and the American Planning Association Land Use Symposium, Smart Growth Summit - Vision Long Island, Suffolk County Bar Association, Touro Law School, Affiliated Brookhaven Civic Association (ABCO), Newsday Editorial Board and the League of Woman Voters.

PROFESSIONAL AFFILIATIONS:

American Institute of Certified Planners (AICP), American Planning Association - New York Metro Chapter (APA), New York State Bar Association (NYSBA)

EXHIBIT 2

