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July 7, 2021

Bruce Flowers, Chairman
Town of Wappinger Planning Board
20 Middlebush Road
Wappinger Falls, NY 12590

NICHOLAS M. WARD-WILLIS
Principal Member
nward-willis@kblaw.com
Also Admitted in CT

Re: Gas Land Petroleum, Inc- Amended Site Plan Submission
Application for Subdivision, Site Plan and
Special Use Permit Approvals
Premises: 123 – 125 New Hamburg Road and 2357
and 2361 – 2365 NYS Route 9D
Tax Parcel IDs: 048643, 057642, 057654, 059643, and 04063

Dear Chairman Flowers:

Our firm represents Gas Land Petroleum, Inc. (“Gas Land”) in connection with the site plan approval application referenced above. This letter is submitted in opposition to the letter submitted by Kenneth M. Stenger, Esq. (“Counsel”), dated July 6, 2021 (“Letter”), requesting the Town of Wappinger Planning Board (the “Planning Board”) stay its consideration of Gas Land’s site plan application, pending appeal. The relief sought by Counsel should be denied because New York State Town Law (“Town Law”) § 267-a(6) is inapplicable.

By letter dated June 1, 2021, Counsel requested the Director of Planning & Municipal Codes, Barbara Roberti (“Zoning Administrator”), to interpret a certain provision of the Town of Wappinger Zoning Code (“Town Code”), and proffering that Gas Land must obtain an area variance prior to proceeding with the site plan application. The Zoning Administrator opined that such area variance is not required, and that, subject to the grant of a Special Use Permit, the site plan application may proceed. Counsel’s Letter indicates that he intends to appeal this determination to the Town of Wappinger Zoning Board of Appeals (the “Third-Party Appeal”).

Counsel now argues that, by way of the awaited Third-Party Appeal, Gas Land’s site plan approval process must be stayed. This is not the law. Specifically, Town Law § 267-a(6) provides:

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An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the board of appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

The Second Department has conclusively held that this provision is not applicable to appeals by third parties, such as Mr. Stenger's clients. *See Mamaroneck Beach & Yacht Club, Inc. v. Fraioli*, 24 A.D.3d 669, 808 N.Y.S.2d 303 (2d Dep't 2005) (stay provision of Village Law 7-712-a(6) does not apply to the filing of an appeal by a third party, which conclusion is consistent with the legislative intent of the identical provision of Town Law §267-a(6)). Rather, the automatic stay is intended to provide protection for the property owner against enforcement proceedings by a municipality while the property owner is challenging the enforcement official's interpretation of the zoning code. *See, People v. Baris Shoe Co., Inc.*, 174 Misc.2d 529, 664 N.Y.S.2d 1004 (Dist. Ct Nassau Cnty. 1997). It is clear that this provision of NYS Town Law is not to act as a sword for opposing neighbors to delay a property owner's application to improve its property.

In *Mamaroneck Beach & Yacht Club, Inc.*, staunch opponents of the Club's development plans appealed a zoning determination to the zoning board of appeals. 24 A.D.3d at 670, 808 N.Y.S.2d at 304–05. Relying on the automatic stay provisions of the Village Law, the planning board declined to proceed with review of the Club's application while the opponents' appeal was pending—precisely the relief Counsel seeks here. The Club brought a mandamus proceeding to compel the planning board to act and the Supreme Court determined that such relief was warranted. The Second Department affirmed and concluded that the opponents' appeal to the zoning board does not stay the planning board from acting on the Club's application—noting that this conclusion is consistent with the statute's legislative intent. *Id.* at 671, 808 N.Y.S.2d at 305. Similarly, here, the impending Third-Party Appeal, noticed by Counsel, does not stay the Planning Board from proceeding with its consideration of

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Gas Land's site plan application. In fact, given the statutory timeframes by which the Planning Board must make its decision on the Applicant's land use application, it must proceed with consideration of the application.

For the reasons stated herein, the Planning Board must disregard the relief sought by Counsel and proceed with the processing of Gas Land's site plan approval process.

Very truly yours,



Nicholas M. Ward-Willis

NMW/

cc: Thomas F. Wood, Esq.
Kenneth M. Stenger, Esq.