

February 1, 2006

William Tully – Town Supervisor
Chester Town Hall
1786 Kings Highway
Chester, New York 10918

Re: C&S Expansion

Dear Supervisor Tully:

Our group of concerned citizens wants to work together with the town to provide input and ask questions. Our mission is the same today as it was over three years ago and that is to raise public awareness and foster involvement in the planning and development of our town.

In regards to the C&S project, we responded based on the negative responses from residents we spoke with and wanted to make you (the Town) aware of these concerns. Taking legal action is not our goal and would be a last resort, as it was believed to be the case with our past experience with the Town of Monroe. Since we want to serve as a resource to the community, we followed up a variety of questions from residents by consulting with our lawyer.

Here are just a few of the questions raised in regards to an Article 78 (with limited review) that we wanted to share with you:

1. An argument might be made that the Town Board violated SEQR when it approved the 90 foot height of the building before the SEQR review was done by the Lead Agency (Planning Board). However, since this was done in 2004, the statute of limitations ran out a year ago.
2. Why would the Planning Board allow C&S up to two years to install the traffic mitigation measures, when the impacts will begin well before that? This might have been discussed in the minutes that were not available but an argument might be made that this violates SEQR since the mitigation will not mitigate the recognized traffic impacts to the maximum extent practicable, as required by SEQR, at least for two years. However the Court would probably accept any rationale that may be offered, and the Planning Board could just fix this by moving up the timetable for installation.
3. The noise study did not seem to be a very good one, but without any expert evidence in the record to contradict it, a court will not question the methodology. The noise study provided found that noise levels may increase by about 6 dBA. DEC's Policy for "Assessing and Mitigating Noise Impacts" under SEQR says that an increase of this magnitude may be "intrusive" but not "objectionable" for most receptors. However, the supplemental noise study projected increase at 3.5 to 4 dBA, which the DEC considers tolerable. The DEC policy is not binding on local governments, but it is a good reference. It is available at: www.dec.state.ny.us/website/dcs/policy/noise2000.pdf

4. There was a question that the building might actually be taller than 90 feet (approx. 94 feet on one side) based on natural grade of the site. If this is the case, he suggests we inquire about the Town zoning law that would define the way to measure the building height either from finished grade or the original grade.

While I'm not alone in the concerns about the visual impacts of this building, you might not be aware there is also correspondence in the file that the Village Planning Board *"believes that the architecture, color and design are an important part of the project and should be clarified before final approval. The Town Planning board should consider alternate color schemes including a dual color scheme to help break up the mass of the building"*. To our knowledge, the Town Planning Board did not review visual simulations of other colors to compare in order to see if they could reduce the impact. Of course, the lawyer indicted that in the end, it is a subjective issue and courts do not usually overturn local boards decisions that come down to a judgment call.

All in all, our lawyer was not in favor of an "expanded" EAF (environmental assessment form). It is a way of getting around doing an EIS (environmental impact study) and avoiding the public participation processes that go with that, but he did not think a court would overturn this approval on this basis. Of course, he suggests our group (or anyone challenging a project) get a lawyer and/or appropriate expert witnesses involved before SEQR process gets too far along. This may allow someone to counteract the applicant's consultants to obtain a better result or at least build a better record for judicial review.

We would hope this information and any other we provide you and residents will assist in the planning of Chester. Our group of concerned citizens wants to help the process, not hinder it.

If you have any questions or wish to discuss this further, please contact me directly at 782-7017.

Thank you.

Truly yours,

Tracy Schuh
TPC, Chairman

cc: Town Board (4)
Town Planning Board (7)
Village Planning Board Chairman (1)