

KEANE & BEANE, P.C.

445 HAMILTON AVENUE, 15<sup>TH</sup> FLOOR  
WHITE PLAINS, NEW YORK 10601

(914) 946-4777

FACSIMILE (914) 946-6868

www.kblaw.com

**M E M O R A N D U M**

**TO:** Memorandum to Residents of Belle Fair, Doral Greens  
and Other Interested Village of Rye Brook Residents and Property Owners

**FROM:** Edward F. Beane, Village Attorney *efb*

**RE:** The Village of Rye Brook – The Garden Inn

**DATE:** January 27, 2006

---

As you know, my firm is Village Attorney to the Village of Rye Brook. As a follow-up to the Board of Trustees' discussion of the timetable for the implementation of the Village of Rye Brook – Garden Inn Settlement, at its January 10, 2006 meeting, I will describe in this Memorandum, in general terms, the provisions of the Stipulation of Settlement stressing the time frames each party must satisfy to comply with its terms.

**The Stipulation**

Pursuant to the terms of the Stipulation, which was "So Ordered" on December 23, 2005 by the Honorable Louis Barone, Justice Supreme Court, County of Westchester, the parties agreed to a three phase process, each of which has specific deadlines. Phase I is the completion of the Garden Inn Hotel Application. To do so, the Garden Inn Applicant was required to submit certain modifications to its Final Environmental Impact Statement ("FEIS") and the Board of Trustees is required to complete consideration of this Application for a hotel within certain time frames. What is unique about this Phase of the process is that although the Village is required to complete consideration of the Hotel Application, and act upon it, the Garden Inn Applicant is required by the Stipulation not to proceed with construction of the proposed Garden Inn Hotel. Instead, Phases II and III of this Settlement proceed.

Phase II of the Settlement is the consideration of Residential Zoning Text Amendments by the Village of Rye Brook. These Amendments, have to be introduced and considered by the appropriate Village Boards within a specified time frame. If adopted by the Village Board, the parties proceed to Phase III of the Stipulation. Phase III is the Residential Application for 43

residential dwellings, pursuant to a site plan which the Garden Inn Applicant has annexed as a "Concept Plan" to the Stipulation. The Garden Inn Applicant must prepare and submit the Application for the Residential Project for the Village's consideration within a certain time frame. Thereafter, the Village Boards must consider and determine the Residential Application within a specified time frame. As long as these time frames are met by the Village and the appropriate approvals issued (approval of the Residential Zoning Text Amendments and thereafter approval of the specific Residential Application) forty three (43) luxury residences, not a hotel, will be constructed on the site.

### **Time frames**

As stated above, each of these three Phases are subject to strict time frames, which are as follows:

#### **Phase I**

Within ninety (90) days of December 23, 2005 (the date on which the Stipulation was "So Ordered", the Village and Board of Trustees are required to take the following actions.

1. Accept the FEIS for the pending Hotel Application as complete and circulate a Notice of Completion to the appropriate governmental agencies. This was completed on January 10, 2006. A copy of the Notice of Completion and the accepted FEIS is available for review at Village Hall.
2. Issue a Findings Statement by no later than March 10, 2006. The Findings Statement for a 125-room Hotel presently is being prepared.
3. Issue a Site Plan Approval and Wetlands Permit valid for construction of a Hotel in the configuration selected by the Village Board in the Findings Statement, together with all roadways, drainage structures, utilities, signs, landscaping and other appurtenances which site plan must be valid for no fewer than five years. The Site Plan Approval Wetlands Permit can be conditioned only upon the issuance of variances specifically set forth in the accepted FEIS and any variances required by the Scenic Road Overlay District Law and other permits from the Village that are necessary for the construction of the Hotel.

Once these steps have been finished, the Village has completed its obligations under Phase I. The Applicant is able to proceed to the ZBA to obtain any necessary variances. There is no time frame in the Stipulation for the ZBA to issue a decision with respect to the variances. The Applicant, has agreed that the Hotel will not be constructed. Instead, Phases II and III of the Settlement will proceed.

## **Phase II**

1. Within ninety (90) days after the Settlement is "So Ordered" (December 23, 2005), the Village Board is required to introduce appropriate legislation to amend the Zoning Code and other provisions of the Village Code necessary to permit the subject property to be used for a Residential Development, which shall consist of no fewer than forty-three (43) residential dwelling units averaging no less than 2,600 square feet of habitable floor area per unit, together with roadways, drainage structures, gate house, utilities, signs, landscaping and other such appurtenances. The forty-three (43) unit development is depicted on a Concept Plan, which is annexed to the Stipulation as Exhibit "A" and available for review in Village Hall. The Village's Planner and Counsel already are preparing this legislation, which will be introduced and considered within the requisite time period.

2. Within ten (10) months after the Stipulation is "So Ordered" (December 23, 2005), the Village Board must adopt a determination with respect to the implementation of the Residential Zoning Text Amendments. The Stipulation includes a two month safety valve period. If the Text Amendments have been submitted to the Village Board in a timely manner and the Village is diligently processing these Amendments in good faith, the ten months will be extended by an additional sixty (60) days, to a maximum of twelve (12) months from December 23, 2005.

3. The Stipulation includes requirements, which precludes the Residential Amendments from eliminating the existing "H-1" Zone for the Hotel use, or imposing additional or different restrictions upon a Hotel that is allowed in the "H-1" Zoning District as of the date of the Stipulation. The Garden Inn Applicant's commitment not to proceed to construct the Hotel continues in full force and effect.

Assuming that the Board of Trustees adopts Residential Amendments conforming to the requirements of the Stipulation, the process moves forward to Phase III.

## **Phase III**

1. Within ninety (90) days of the date on which the Residential Amendments are adopted by the Village Board, the Applicant (Garden Inn) at its sole cost and expense is required to submit to the Village and thereafter diligently pursue, applications for all Village approvals (Site Plan Approval, Subdivision Approval, Wetland Permit, Tree Removal Permit, etc.) required to develop the specific residential development set forth in the Concept Plan as Exhibit "A" to the Stipulation.

2. Within four months after the date on which the Applicant submits the last of its applications for Village Approval/Permit concerning the specified Residential Development, the Board of Trustees must fully consider said development and complete all of its obligations under

SEQRA and adopt the determinations and final decisions as to whether this Residential Development on the subject property shall be permitted.

3. Throughout the entire process (Phases I, II and III) described above, notwithstanding the Applicant's approval to construct a hotel, no hotel shall in fact be constructed on the site. Upon completion of Phases I, II and III, only the residences shall be constructed and, upon their completion, the Applicant is required to relinquish all rights to construct the approved Hotel Development.

Thus, the total time frame for completing all of the Phases is a minimum of nineteen (19) months, as long as twelve (12) months to proceed through Phases I and II, and seven (7) months to proceed through Phase III. Please note that if the Garden Inn Applicant takes more than 90 days to submit the last of its applications for Village Approval Permit of the Residential Development, this seven (7) month period will be expanded.

While the Village Board recognizes these time frames are relatively tight, we are committed to meeting its obligations.