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MEMORANDUM

To: Town of North Castle Town Board

Date: December 29, 2011

Subject: **"Formula Business" Planning & Zoning Study**

In accordance with your request, we are pleased to submit herewith our summary report on the prospective regulation of "formula businesses" in the Town of North Castle. Based upon the work program approved by your Board, we have completed research on the regulation of such uses, evaluated alternative regulatory techniques, and identified several recommended strategies for the Board's consideration.

The results of our examination of this topic, including our recommendations, are presented below.

A. Planning Considerations

Based upon initial discussions with the Town Supervisor, Town Director of Planning, and Town Attorney, it is our understanding that the Town would like to ensure that the establishment of new businesses within the hamlet business centers of North Castle is accomplished in a manner that fully respects the scale, design, and character of those business centers. In the Town's view, those hamlet business centers (Armonk, Banksville, and North White Plains) should continue to be maintained and developed as places that are unique to North Castle so they do not gradually evolve into commercial centers that resemble so many others all over the country that are composed of formulaic business enterprises with their prototypical architecture, colors, signage, product offerings, and operational practices, to name a few features that are often standardized for such businesses. Though some variations may exist in how these commercial enterprises are defined, as a group they have generally come to be known as "formula businesses."

It is our understanding that the Town does not wish to prohibit any type of business that is already permitted in those hamlet centers, including but not limited to those that might be considered "formula businesses." Rather, the Town wishes to regulate business development in a manner that will

ensure the protection, preservation, and enhancement of the Town's community character, as it may already be defined in the three hamlet business centers or as the Town envisions it to become in the future based upon broader planning objectives. To that end, Frederick P. Clark Associates was requested to evaluate the Town's existing zoning regulations to determine how effective they are at addressing the issues of concern; to conduct research on alternative regulatory techniques that have been used elsewhere to guide the development of "formula businesses" and that could potentially be considered for use in North Castle; and to identify specific zoning amendments that the Town may wish to pursue in order to ensure that "formula businesses," if and when proposed in North Castle, can be integrated into the Town's hamlet business centers in an appropriate manner.

B. North Castle's Current Regulatory Approach

The North Castle Zoning Ordinance, found in Chapter 213 of the Town Code, does not currently include any type of provisions that are specifically intended to regulate "formula businesses" in the zoning districts that encompass the Town's three hamlet business centers. These zoning districts include the following:

- **Armonk**: *Central Business (CB) District* and *Central Business A (CB-A) District* along the Main Street (N.Y. Route 128) corridor and along the easterly portion of Bedford Road, along with *Roadside Business (RB) District* and *Nursery Business (NB) District* in nearby areas along Old Route 22 and Bedford Road.
- **Banksville**: *Central Business B (CB-B) District* along Bedford-Banksville Road and *General Business (GB) District* further to the west of Bedford-Banksville Road and along the northern side of Banksville Avenue.
- **North White Plains**: *Central Business (CB) District* along North Broadway (N.Y. Route 22) and *Shopping Center (SC) District)* at the southwest corner of the intersection of Cloverdale Avenue and Reservoir Road.

Furthermore, there are only a limited number of regulations in the North Castle Zoning Ordinance that would give the Town any type of special regulatory oversight over the prospective establishment of such uses, and some of those existing provisions are not applied in a uniform manner. The existing regulatory provisions of the Zoning Ordinance that may indirectly have the effect of providing the Town with some additional regulatory oversight include the following:

- **Floor area limitations**: In the CB-A District and effectively in the CB and RB Districts as well, a distinction is currently made between permitted "stores and shops for the conduct of retail business" and "restaurants, taverns, cafés, and bakeries" having 5,000 square feet or less in gross floor area and those same uses

when they have more than 5,000 square feet in gross floor area. The significance of this distinction lies in the type of approval required to establish such uses. This same distinction is not made in SC, CB-B, or GB Districts where most of those same uses are also permitted.[1]

- **Special permit approval requirements for selected uses**: The establishment of most permitted uses in the Town's business districts generally requires site development plan approval in accordance with the provisions of Article VIII of the Town Zoning Ordinance (§§ 213-34 to 213-41 inclusive), although changes of use in already established buildings may not always require such approval.[2] Currently, there are also a number of permitted uses that require special permit approval in accordance with the provisions of Article VII of the Town Zoning Ordinance (principally §§ 213-26 to 213-32 inclusive). They include "stores and shops for the conduct of retail business" and "restaurants, taverns, cafés, and bakeries" having more than 5,000 square feet of gross floor area in the CB-A, CB, and RB Districts; "fast-food restaurants" in the CB-B District; and "gasoline filling and service stations" in the GB District.[3] By contrast, there is no special permit requirement for "stores and shops for the conduct of retail business, restaurants, cafeterias, bars, cabarets, permitted types of personal service establishments, banks and business and professional offices and studios" in the SC, CB-B, or GB Districts, "property-owner operated accessory cafés" in the NB District,[4] or "banks" and "carry-out restaurants" in any of the districts where such uses are permitted (SC, CB-A, CB-B, CB, RB, and GB Districts).

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[1] In the GB District, "printing establishments" are not permitted to have more than 3,000 square feet of gross floor area. However, that type of use would not be considered an example of a "formula business" so is not addressed further in this memorandum.

[2] According to Town Code § 213-34, the criterion that is applied to a determination of whether site plan approval is required to authorize a change of use or occupancy is whether the proposed use would increase the number of required off-street parking spaces or loading spaces beyond the number required for the previous use or beyond the number that actually already exist on the site where the new use is proposed to be established. If the proposed use would require fewer parking spaces, then "site plan approval requirements *may be* waived" by the Planning Board [emphasis added]. It is not clear if such waivers are routinely authorized in these circumstances or if there are other criteria that the Planning Board applies to that type of determination. It is noted that no other criteria are specified in the Zoning Ordinance. When the requirement to obtain site development plan approval from the Planning Board is waived, presumably the establishment of the new use requires only compliance with the conditions that must be satisfied in order to obtain a building permit. It is unclear if the performance standards enumerated in Article X of the Town Code can be applied when only building permit approval is needed since the provisions of § 213-51 seem to suggest that the review of a proposed use's compliance with applicable performance standards can only be done in the context of a site development plan review.

[3] In the GB District, special permit approval is also required for "public utility exchanges or substations," "storage of contractor's equipment," and "recreation centers," but those uses would not be considered examples of "formula businesses" so are not addressed further in this memorandum.

[4] It is our understanding that the owner of Mariani Gardens in the NB District in Armonk has proposed text amendments to these zoning provisions, which the Town has begun to review. Some of the proposed text

- **Supplementary standards for selected uses**: In order to take action to approve an application for special permit approval authorizing the establishment of one of the uses requiring that type of approval, the approving authority must first determine that certain criteria have been met. For all uses requiring special permit approval, these criteria are enumerated in Town Code §§ 213-30.A through 213-30.F inclusive. The Town Code also sets forth in § 213-33 supplementary standards and regulations that apply to selected uses. Of the previously mentioned uses that require special permit approval in the Town's hamlet business centers, additional standards and regulations have been established for only one of them to date: "fast-food restaurants" (as described in Town Code § 213-33.K). Compliance with only the more general standards of § 213-30 is required in order to obtain special permit approval for the other uses.

- **Site planning and design considerations**: The North Castle Zoning Ordinance also contains some other provisions that can be used to generally guide and influence the way in which hamlet business center sites and the buildings located on them are designed and function. Under Town Code § 213-37, the Planning Board is given broad authority as part of its site development plan review jurisdiction to consider many different features of a proposed site plan in order to ensure that "the impact of development on the environmental quality and scenic character of the site will be minimized," that such development will "have a harmonious relationship with the existing or permitted development of contiguous land and of adjacent neighborhoods," and that "pedestrian and vehicular traffic will be handled adequately and safely within the site and in relation to the adjoining street system."

  The Town of North Castle also has an empowered Architectural Review Board, which has been given broad authority under Town Code Chapter 7 to review and consider features of a proposal that will directly affect the visual environment, such as building design and materials, landscaping, and signage, before it takes

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amendments would result in elimination of the existing limitation on the maximum amount of floor area that can be devoted to the sale and display of ancillary nursery and garden accessories and household decorations, office space relating to on-site nursery management functions and landscape design services, and property owner operated cafés. The proposed zoning text amendments also include the introduction of several new permitted uses, including "restaurants, spas/salons, gourmet food markets, wine shops, art galleries, furniture stores, and other retail stores and shops," which would require Town Board special permit approval before they can be established on a site in the NB District. While these proposed zoning text amendments are not directly related to the "Formula Business Planning & Zoning Study" that is the subject of this memorandum, it may be appropriate to examine the proposed zoning text amendments to the NB District provisions in relation to the broader planning policy objectives that the Town has highlighted as being important to the future of North Castle's three hamlet business centers.

action to approve, conditionally approve, or disapprove any proposed new commercial project, commercial alteration or renovation project that alters the exterior appearance of a building or new or altered building mounted or freestanding sign. Review and action by the ARB is required prior to the issuance of any required building permit.[5]

The North Castle Zoning Ordinance also includes supplementary design guidelines that apply in the CB-A District. As set forth in Town Code § 213-23.B.(7), these guidelines were specifically created for the purpose of establishing "a general design framework for creating and/or preserving the desired architectural character and scale of buildings in the CB-A District; to help assure that such areas will be visually attractive and will blend landscaped open space and structures in a manner which relates harmoniously to the existing and/or planned character of the Armonk Hamlet; and to create visual interest in the treatment of architectural surfaces." The guidelines address multiple aspects of building and site design, with emphasis on the objectives of enhancing the pedestrian experience (including attention to handicapped access considerations); creating a village-like character on development sites with public spaces, focal points, and connections to adjacent properties; minimizing the visual impacts of paved parking areas; designing appropriately scaled buildings reflecting varied façade treatments and integration of architectural details; creating a coordinated landscape plan in order to integrate open spaces, walkways, access roads and parking areas; carefully integrating needed signage and lighting into the site; and maintaining a minimum amount of window and door transparency along street level building façades. While the application of these guidelines is currently limited to properties in the CB-A District, it is likely that the principles advanced by these guidelines would be equally relevant to other business districts in the Town's hamlet business centers.[6]

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[5] According to Town Code § 7-3.B.(2), "determinations of the ARB shall be advisory to the Planning Board on any matter for which the Planning Board has site plan approval authority." Normally, the action that would trigger the involvement of the ARB is the submission of an application for building permit approval to the Town Building Department. According to Town Code § 213-37, however, the Planning Board may forward a copy of an application for site development plan approval to the ARB for review and report where determined appropriate. In that event, the ARB would have an opportunity to provide advisory guidance to the Planning Board before the ARB is formally required to review an applicant's proposal. However, such referral to the ARB is not mandated and there is no specific guidance set forth in the Town Zoning Law that would help the Planning Board to determine when such a referral is appropriate.

[6] After the Town Board approved the work program for the "Formula Business Planning & Zoning Study," it was brought to our attention by the Town Director of Planning that the Town has also undertaken another special project to create design guidelines for each of the Town's three hamlet business centers. A draft *Hamlet Design Guidelines* document dated October 2011, which was prepared by Sullivan Architecture, P.C., in consultation with Town staff, Planning Board members, and Architectural Review Board members working collaboratively as part of a Hamlet Design Study Committee, was provided to our office for general background information. It is our general

C. Alternative Regulatory Techniques

The quest to exert greater control over the establishment of "formula businesses" is not unique to North Castle. Throughout the country, many municipalities have wrestled with the challenges posed by introduction of national or regional retailers and restaurants as well as other types of "chain" stores and businesses into their communities, largely driven by concerns over community character and aesthetics, potential impacts on the local economy, and—often depending on the scale of operation—other types of environmental impacts relating to traffic, air quality, noise, water quality, and stormwater, to name a few. While some communities have taken action to prohibit "formula businesses" altogether, those communities are in the minority. The more common approach is to permit these businesses but to regulate them in a manner that is consistent with the community's overarching planning goals and is intended to minimize potential adverse community impacts. That is the approach favored by North Castle as well.

As part of this special study, we have reviewed and evaluated a variety of alternative techniques that have been established to regulate "formula business uses." Though some of them may be better suited to North Castle than others, we have presented below a brief synopsis of all these techniques to better acquaint the Town Board with the multiple options that it may wish to consider. As part of its evaluation of these strategies and preferred next steps, it is also recommended that the Town Board seek legal counsel on any of the options that it may wish to pursue.

Procedural Requirements

In some communities, the principal approach to regulating "formula businesses" involves the establishment and application of procedural requirements that make it necessary for proposed "formula businesses" to undergo potentially more rigorous review than other types of business uses before they are approved. In some instances, these additional procedural requirements are also combined with the application of supplementary standards of a substantive nature, which are discussed at greater length in the next subsection of this memorandum.

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understanding that the Town may be contemplating the establishment of overlay design districts, in which the supplementary design guidelines would be applied.

Examples of procedural requirements include the following:

1. Special Permit Approval Requirements

   When a community wishes to exercise additional control over certain land uses that have the potential to exhibit problematical characteristics if not subject to more regulatory scrutiny, it is fairly common to require that such uses obtain special permit approval before they can be established. However, the use of such a procedural technique sometimes creates a false sense of control over such uses. Special permit uses, in fact, are considered to be permitted uses that simply require compliance with supplementary standards. Sometimes those standards are general requirements that must be met by all special permit uses. In other cases, supplementary standards are created for specific types of special permit uses. If a proposed special permit use meets all the applicable standards, and no other potential adverse impacts would be generated that cannot be adequately mitigated, it would be difficult to deny the approval of a required special permit if the principal reason is a perceived lack of compatibility with existing community character. For any use to have been identified as a permitted principal use in a particular zoning district, a legislative decision has already been made that such a use would be appropriate in that district provided that it also meets the general and/or supplementary special permit criteria.

2. Site Plan Review Requirements

   Even where special permit approval requirements do not exist, most communities require site plan approval prior to the establishment of a new business, including but not limited to those that would be considered "formula businesses." Typically, site plan reviews are conducted by a municipal planning board, which can examine such features as parking, vehicular and pedestrian access, buffer screening, signs, landscaping, lighting, stormwater drainage, location and dimensions of buildings, and relationship to adjacent uses. Using the site plan approval procedures, most communities have fairly broad authority to examine the scale, dimensions, location, and other features of a proposed project to determine if it meets all applicable requirements or may have unanticipated impacts upon the community's planning goals, and to impose reasonable conditions or restrictions upon such uses provided they are directly related to the proposed site plan.

3. Design Review Requirements

In some communities, another type of review is also required before new business uses, including but not limited for "formula businesses" can be established. A requirement for additional levels of oversight may be created when it has been determined that the community has some type of special resource that is worthy of protection. Typically, these take the form of landmark districts, historic districts, or overlay zoning districts. These special districts may be created for the purpose of providing for heightened review of new development proposals when they are located in an area having important historical characteristics, architectural features, streetscapes and other aesthetic features, and/or natural resources. This technique is usually most successful in areas where the attributes worthy of protection and preservation have already been documented—ideally prior to the creation of the special district and preferably prior to the review of the new development proposal. It is much more difficult to successfully identify some type of area-wide distinctiveness after a proposal of concern has been submitted for approval, without making it appear that the new regulations are directed specifically at that proposal. Of all the design review techniques that may be established, the most frequently employed regulatory tool is to require architectural review board or some other type of design review board approval of proposals for new development and/or major changes to the exterior design of an existing building, thereby providing an opportunity for a spotlight to be focused specifically on architectural design and/or other aesthetic attributes that may not be examined as part of the review of most site development plan or special permit applications. Oftentimes, these boards are charged with the review of proposals against a prescribed set of design standards and/or guidelines. In some communities, architectural review or design review boards operate only in an advisory capacity. In many others, however, they are an empowered board and are authorized to take action to approve, conditionally approve, or disapprove proposals.

Substantive Requirements

Other techniques that may be used to either justify the regulation of "formula businesses" as a special category of land use or to apply supplementary requirements to those uses include the articulation of long-range planning policies pertaining to such uses as well as the establishment of supplementary requirements that must be met on a case-by-case basis whenever approval is sought for the establishment of a "formula business" use.

Examples of these other techniques and/or standards include the following:

1. Comprehensive Plan Policies

   One of the more important elements in a community's regulatory "tool box" is the "comprehensive plan." Since local zoning regulations are supposed to be adopted in accordance with a comprehensive plan, the philosophical underpinning for any zoning provisions that a community may wish to enact in order to more directly regulate selected land uses, including but not limited to "formula businesses," should initially be articulated in the comprehensive plan. It is essential that the comprehensive plan create a proper record, documenting the community's long-term interest in the matter to be regulated and demonstrating how the proposed zoning regulation(s) will meet the community's planning goals and objectives. With a proper foundation in place providing a justification for the regulation of "formula businesses" or other type of land use requiring special treatment, those regulations are more likely to be defensible.

2. Environmental Impact Analysis under SEQRA

   The New York State Environmental Quality Review Act (SEQRA) regulations also provide an additional mechanism for creating a record that can be used to support the regulation of "formula businesses" and/of the establishment of special conditions to be met by those uses. Such a record is typically created either as part of the preparation of a generic environmental impact statement (GEIS) on the prospective adoption of a comprehensive plan or local legislation, or as part of site-specific investigations for a specific project. If a proper "hard look" is taken and all potential impacts are identified and thoroughly analyzed, it is usually possible to determine if a particular project will have adverse impacts on community character or other resources of local concern. These can be accomplished through a variety of technical analyses, including but not limited to examination of visual resources, traffic conditions, air quality, noise conditions, and economic conditions. Regulations whose sole purpose is to advance economic protection objectives are generally not considered appropriate. However, indirect and/or secondary economic impacts can be legitimately evaluated as part of a SEQRA review if the environmental analysis is designed to assess the likelihood and potential

extent of change in overall community character resulting from increased vacancy rates or local business dislocation and subsequent blight in a particular geographic area. The results of these analyses can provide ample justification for the adoption of new regulations and/or the establishment of reasonable conditions of approval for such uses on a case-by-case basis when it can be clearly demonstrated that such conditions are needed to mitigate already identified potential adverse impacts. Of course, this process is most effective when the proposed project is subject to the SEQRA regulations. For those projects that do not require compliance with SEQRA regulations because they are classified as "Exempt" or "Type II" Actions, a municipality may still require examination of potential issues of concern, but the process by which that is done may be far less structured and/or predictable.

3. Supplementary Zoning Requirements

a. Locational Requirements

While it was previously noted that few communities have an outright ban on the establishment of "formula businesses," some municipalities enact regulations permitting such uses in certain zoning districts and prohibiting them altogether in others. Zoning districts where such uses are more likely to be permitted typically include the more urbanized commercial centers. Those where they may be prohibited or strictly regulated often include small hamlet business centers, particularly if such centers have particular cultural, historic, or visual significance. Furthermore, a distinction is sometimes made between different types of "formula businesses." For example, "formula based retail businesses" may be allowed in a specific zoning district (oftentimes subject to supplementary requirements) whereas "formula based food service establishments" may not be permitted in that same district. In addition, the size and scale of a "formula business," typically measured in gross floor area or building footprint size, may determine where such uses are permitted within a community, with the larger "formula businesses" only being permitted in the more intense commercial zoning districts.

b. Numerical Restrictions and/or Dispersion Requirements

In some communities, rather than creating special regulations that pertain specifically to "formula businesses," techniques are being established to ensure that a business district includes a diverse mix of land uses. To achieve that objective, some communities have established numerical limits on how many uses of the same type may be permitted to exist in a specific zoning district or some other specially defined geographic area. Another technique is to establish distance separation requirements between two uses in the same category. Both approaches are intended to ensure that the community's business district is not dominated by what is perceived to be an overabundance of similar or identical business enterprises. While most communities have historically allowed market forces to dictate the type and number of businesses of the same type that are established within its borders, other communities are beginning to feel that market forces do not always produce the best result in terms of creating vibrant business districts and preserving local community character. For that reason, those communities are becoming more proactive in determining how commercial floor space should be used in their business districts. Such an approach requires a community to take stock of existing conditions in its business districts and to identify uses that are either considered to be over-represented relative to the market area likely to be served by such uses or are likely to create undesirable impacts if there are too many of the same type in a specific geographic area. "Formula businesses" may be one category of land use that is specifically regulated under these types of zoning requirements, but other land uses (e.g., nail salons, banks) may also be subject to the same type of restrictions. It is noted, however, that regulations of this type do not always guarantee that a thriving business district will result; it is also possible that the number of vacancies could increase if the general state of the economy is not robust and new businesses in other categories are not seeking to locate in that area.

c. Size Restrictions

In an effort to more directly control the scale of development in commercial areas, some communities establish maximum floor area requirements for certain types of businesses, including but not

limited to "formula businesses." In some cases, businesses exceeding a certain size are not permitted at all. In other cases, they are permitted only in some but not all commercial zoning districts. In addition, businesses exceeding a specified floor area threshold are sometimes subject to supplementary review requirements such as the need to obtain special permit approval. Most often these floor area limits apply to individual businesses; in some cases, however, they may apply to an entire shopping center composed of multiple businesses. Some communities also establish regulations on the maximum amount of street-level frontage or building height a formula business establishment may have. Dimensional restrictions may be reasonable when it can be demonstrated that they are actually intended to ensure compatibility of new uses with the prevailing scale of development in the communities in which they are proposed. Regulations of this type are less likely to be supportable if they are motivated by economic protectionism objectives. The establishment of dimensional standards should be preceded by an examination of existing conditions in the business district to be so regulated so that a community has a good grasp on its existing community character as defined by building size and can identify floor area, building footprint, or other type of dimensional thresholds that are considered appropriate in a given geographic area and are clearly intended to advance the community's long-range planning objectives.

d. Site Planning Regulations

The site plan review process can be used to accomplish many objectives, including but not limited to the protection and preservation of community character. It is most successful when a municipality's planning policies and objectives have been articulated and the regulations to be applied to the review of new proposals have been memorialized in advance of the submission of a specific development application. While the site plan review process is typically based upon an evaluation of criteria that would apply to site plans for all businesses, sometimes supplementary site design regulations are established for certain types of businesses. The primary purpose of these regulations is to minimize the adverse impacts of new businesses without prohibiting the business altogether. In some communities, supplementary site design

regulations have been crafted to address such features as maximum building wall length, façade design and colors, roof line design, exterior building materials, exterior site lighting, customer entrance locations and design, supplementary setbacks near residential neighborhoods, buffer screening, pedestrian and bicycle circulation, service areas (for loading, trash collection, outdoor storage, etc.), and parking area locations and design. Typically, supplementary regulations of this type are established for land uses that may pose particular concerns. They are commonly established for large-scale retail uses, but they can also be tailored to regulate "formula businesses" of any size.

e. Design Control Regulations

In some communities, new business development is strictly governed by design controls, which typically take the form of architectural and/or exterior design regulations that must be met in order to obtain approval for the new business. It is the "formula businesses" that often find themselves in conflict with these design controls because they wish to employ their own "trademark architecture." Because it is that specific feature of "formula businesses" that many communities find so objectionable, some communities have enacted an outright ban on the use of "trademark architecture" (which obviously requires that the term also be defined). Other communities have required strict compliance with local design controls, which may address such features as materials, colors, building forms, roof lines, signage, and lighting, etc. Across the country, there are examples of "formula businesses" that have been established in historic districts, where such businesses have been willing to forego many features of their "trademark architecture" in favor of modifying their prototypical building, and even signage, designs to abide by local preferences and/or regulations. In fact, the National Trust for Historic Preservation (NTHP) has entered into collaborative agreements with several major drugstore chains (including CVS, the former Eckerd company, Rite Aid, and Walgreens) in an effort to prevent the demolition of historic buildings on sites proposed for new drugstores and to encourage the adaptive reuse (and occasionally relocation) of those buildings instead. The NTHP boasts of several success stories across the country as a result of that initiative. Outside of historic

districts or other special districts that have been created to protect neighborhoods, districts, or areas of a community having some distinguishing attribute(s), new business development can still be controlled by design controls, but it is often necessary to first take inventory of the important community character features that define those other places in order to establish design controls that will ensure the protection and/or preservation of existing desirable features and to prevent the replication of undesirable features.

f. "Town-Serving" Regulations

In a few communities, efforts have been made to ensure that new businesses draw their clientele principally from the local community by establishing regulations to that effect. For example, if a proposed business exceeds a specified floor area, approval of a special permit may be required. In order to be eligible for the special permit, the proposed use may also need to meet supplementary requirements. One of those requirements may specify that at least 50% of the customers must be drawn from the municipality where the business is proposed. Regulations of this type are intended to prevent the displacement of local, typically one-of-a-kind, businesses but they do not necessarily prevent the entry of "formula businesses." In many cases, the trade area of some "formula businesses" is small enough that the customer base is largely drawn from the local community anyway.

D. Recommended Zoning Amendments

The North Castle Town Code already contains a few existing provisions that can be used to regulate the establishment of "formula businesses" as previously described. However, some of those provisions could be used more effectively. Furthermore, even if those provisions are improved, they may still not provide the Planning Board with sufficient tools to ensure that new "formula businesses" will be properly integrated into existing hamlet business centers in a manner consistent with the Town's long-term planning objectives for these places. For that reason, we believe the most successful strategy for regulating "formula businesses" may involve a two-pronged approach: the adoption of zoning text amendments that are intended to clarify existing provisions pertaining to nonresidential uses generally and the adoption of new zoning text provisions that would provide the Town with greater regulatory authority over "formula businesses" specifically.

Based upon our review of North Castle's existing zoning provisions as well as the array of regulatory techniques that could be applied to "formula businesses," we offer the following recommendations for the Town Board's preliminary consideration:

1. The Town Zoning Ordinance contains a number of existing provisions that we believe could be strengthened for the purpose of providing greater clarity and regulatory authority over permitted uses, especially business uses such as but not limited to "formula businesses." These include the following:

   a. As previously noted, Article VIII of the Town Code describes the site development plan approval procedures that are applicable to the establishment of many types of new uses as well as to changes of use or occupancy on already developed sites. In our judgment, the criteria to be applied to a determination of whether site development plan approval is required for a proposed change use or occupancy should be modified to include more than a comparative evaluation of off-street parking and/or loading requirements. There are many other components of a proposed land use that may determine whether a new use or occupancy could have impacts that should be examined before a site development plan review requirement is waived. For example, the Town may also wish to consider whether the new use or occupancy could result in an increase in intensity of use that could affect the characteristics of the site in terms of access, traffic circulation, stormwater drainage, water supply, sanitary sewage disposal, site lighting, and noise. As noted previously, Town Code § 213-34 only singles out off-street parking and loading requirements; it does not identify any of these additional factors as being relevant to a determination of whether site development plan approval is required. At the same time, however, the way in which that subsection is written also seems to suggest that the waiver provision is discretionary, not mandatory, leaving one to speculate as to what other factors may be considered before a determination is made to either require site development plan approval for changes of use or occupancy or to waive that requirement altogether.

      So that the provisions of the Town Code clearly set forth the applicable requirements and provide adequate guidance to Town staff, the Planning Board, and prospective applicants, it is recommended that existing Town Code § 213-34 be reexamined and modified as needed to address these issues. At a minimum, it is recommended that the criteria for determining whether site development plan approval is required be expanded to include

additional factors such as those identified above. If there are other factors that the Planning Board customarily examines before applying the waiver provision, then those factors should also be called out in Town Code § 213-34 as examples of what may be considered by the Planning Board without necessarily limiting the Board's purview. Clarification may also be needed on what constitutes a "change of use." In some communities, each separately numbered use enumerated in a schedule of permitted principal uses is considered a different type of use so a change from one to another would automatically be considered a change of use requiring site development plan approval even if the off-street parking or loading requirements for both uses are identical. The Town may also wish to define a procedural sub-category on the types of changes to previously approved site development plans that do not require amended site development plan approval by the Planning Board if it can be demonstrated to the satisfaction of the Town Building Department that such proposed changes will meet certain specified criteria and/or performance standards.

While zoning amendments of this type could benefit the Town as a whole whenever new and/or substantially modified nonresidential uses are proposed in the hamlet business centers and elsewhere in the Town where they are permitted, such modifications could have particular value when new "formula businesses" are proposed to be established on previously developed sites in buildings that were previously occupied by other types of uses.

b. The preliminary notes included at the beginning of Town Code § 213-20. *Schedule of Business District Regulations* state that all nonresidential uses are subject to site plan approval and performance standards in accordance with Articles VIII and X. Those same notes also indicate that uses marked with an asterisk (*) are also subject to conformance with additional standards set forth in Article VII (i.e., the requirement to obtain special permit approval in accordance with supplementary standards). Notwithstanding the provisions of Town Code § 213-34, which provide for the possibility of a waiver of the requirement to obtain site development plan approval, it is recommended that such approval always be required if a new use requiring special permit approval is proposed to be established on a previously developed site. In some cases, a previously approved site development plan may need to be amended as a direct result of the proposed establishment of a new special permit use. In addition, where no

site development plan approval was previously issued for a developed site, it may be appropriate to have such an approval on record.

c. As previously noted, the Town Zoning Ordinance contains a separate subsection on performance standards that applies to all nonresidential uses established subsequent to the data of enactment of that subsection (Article X). Those performance standards address such factors as noise; vibration; smoke, dust, and other atmospheric pollutants; odorous matter; toxic or noxious matter; radiation and electromagnetic interference; fire, explosive hazard, heat and glare; liquid or solid wastes; and vehicular traffic. In addition to being required to demonstrate compliance with such standards when the nonresidential uses are initially established, such nonresidential uses are required to operate in continued conformance with such performance standards for as long as those uses exist. While that intent is clearly stated in Town Code § 213-48 and the same requirement is also repeated in the preliminary notes set forth in Town Code § 213-20. *Schedule of Business District Regulations*, it appears that there may be circumstances where new nonresidential uses could potentially be established without the need to demonstrate compliance with those performance standards. This is because the discussion of procedural requirements set forth in Town Code § 213-51 presumes that the proposed nonresidential use is initially subject to site development plan review by the Planning Board, at which time the Board is required to determine if such use will conform to the performance standards. However, if a change of use or occupancy is proposed, and the Building Department determines that the off-street parking or loading requirements for the new use would be lower than for the prior use, Town Code § 213-34 states that the Planning Board may waive the requirement for site development plan approval. If such a waiver is granted, the Planning Board may also inadvertently forfeit its ability to confirm that the proposed use will conform to the performance standards at the time of initial establishment of such use. If that occurs, the Building Department may then not be in a position to identify the performance standards to be met as a condition of the issuance of a certificate of occupancy.

To avoid that outcome, it may be appropriate to identify the need to demonstrate conformance to the performance standards of Article X as another criterion to be satisfied before the Planning Board can waive the site development plan approval requirements of Article VIII, as set forth in Town Code § 213-34. In addition, it is recommended that Article X clearly

indicate if the Town Building Department is authorized to independently evaluate conformance to the performance standards when site development plan approval is not required. If the Building Department is already acting in that capacity (in addition to carrying out its primary enforcement role of ensuring that performance standards are being met when such conditions are attached to a certificate of occupancy), then it would be advisable to more clearly describe that authority in Article X.

It is noted that there are several performance standards that would have particular relevance to prospective "formula businesses." The requirements of Town Code §§ 213-50.A, 213-50.E, and 213-50.F regarding noise, smoke, dust and other atmospheric pollutants, and odorous matter, respectively, could have particular relevance to restaurants, carry-out restaurants, and fast-food restaurants. The requirements of Town Code § 213-50.K regarding traffic impacts and air quality associated with such traffic could potentially be germane to any proposed "formula business" and provide the Planning Board (but only when site development plan approval is required) with specific authority to examine this potential impact (outside of the SEQRA review process, which may also be applicable in some instances), as described below:

> *Vehicular traffic. No nonresidential use shall be permitted where it is determined by the Planning Board that the type and number of vehicle trips it is estimated to generate would be expected to produce unusual traffic hazards or congestion or cause or induce emissions which may be expected to interfere with the maintenance of air quality standards established by the United States Environmental Protection Agency, the New York State Department of Environmental Conservation or other regulatory agency having jurisdiction, due to the design or capacity of the state or local highway system, the relationship of such proposed use to surrounding or nearby industrial, commercial or residential uses, or other factors affecting air pollution arising from mobile source activity.*

If the Town wishes to ensure that nonresidential uses, including but not limited to "formula businesses," are established and operated in conformance to the performance standards of Article X, it is recommended that the procedural provisions describing the Town's authority to apply and enforce those standards be reexamined and modified as necessary to make

sure such provisions are internally consistent with the Town's policy intent as set forth in Town Code § 213-48.

d. As previously noted, Town Code § 213-37 gives the Planning Board the authority to seek early input from the Architectural Review Board when an application for site development plan review is underway. Oftentimes, informal guidance from the ARB can be most helpful during the early stages of review of a site development plan application before too much has been invested in a particular site layout and/or building design. However, the Planning Board is not compelled to seek such input and there are no criteria specified in the Town Zoning Ordinance that would provide any guidance to the Planning Board on when such a referral to the ARB may be particularly appropriate. It is also important to note that the provisions of Town Code § 213-37 only apply when an application for site development plan review is underway. If such a requirement is waived, the ARB would not typically have an opportunity to evaluate a development proposal until an application for building permit approval has been submitted. By then, it could be much more difficult to modify a proposal in any meaningful way if the Town believes it is not in harmony with community character features in the area where it is proposed. In a similar way, the procedures pertaining to the approval of special permit uses may not adequately take into consideration the value of early input from the ARB. While Town Code § 213-28 identifies a number of other boards that are required to receive copies of an application for special permit approval so they can provide advisory review comments to the Town Board, no mention is made of the ARB in that subsection. In our judgment, in an effort to take full advantage of resources that already exist in the Town and procedures that are already in place or could easily be implemented, it is recommended that the Town Zoning Ordinance be modified to more directly address these issues.

2. Before the Town proceeds to draft any specific zoning text amendments that are intended to directly regulate "formula businesses" as a special land use category, it would be appropriate to discuss and confirm which types of land uses the Town wishes to regulate as "formula businesses," and to determine whether it wishes to create special regulatory provisions for all of them, or just some of them. Businesses that could potentially be viewed as "formula businesses" include not only retail businesses and multiple types of eating and drinking establishments, but also banks, hotels, gasoline service stations, and potentially even real estate or financial brokerages. With the exception of hotels (as well as professional business and conference facilities), all of the other uses are currently permitted in

one or more of the zoning districts that are found in the Town's three hamlet business centers, as summarized below:

- *Stores and Shops for the Conduct of Retail Business* – Currently permitted in SC, CB-A, CB-B, CB, RB, and GB Districts, and to a limited extent in the NB District (i.e., effectively in all three hamlet business centers).
- *Restaurants*[7] – Currently permitted in SC, CB-A, CB-B, CB, RB, and GB Districts (i.e., effectively in all three hamlet business centers).
- *Carry-Out Restaurants* – Currently permitted in SC, CB-A, CB-B, CB, RB, and GB Districts (i.e., effectively in all three hamlet business centers).
- *Fast-Food Restaurants* – Currently permitted in CB-B District (i.e., effectively only in Banksville hamlet business center).
- *Cafeterias* – Currently permitted in SC, CB-B, and GB Districts (i.e., effectively in North White Plains and Banksville hamlet business centers).
- *Bars* – Currently permitted in SC, CB-B, and GB Districts (i.e., effectively in North White Plains and Banksville hamlet business centers).
- *Taverns* (undefined term but is likely to have the same meaning as *bars*) – Currently permitted in CB-A, CB, and RB Districts (i.e., effectively in Armonk and North White Plains hamlet business centers).
- *Cabarets* – Currently permitted in SC, CB-B, and GB Districts (i.e., effectively in North White Plains and Banksville hamlet business centers).
- *Cafes* (undefined term) – Currently permitted in CB-A, CB, and RB Districts as principal use and in NB District as accessory use (i.e., effectively in Armonk and North White Plains hamlet business centers).
- *Personal service establishments* - Currently permitted in SC, CB-A, CB-B, CB, RB, and GB Districts (i.e., effectively in all three hamlet business centers).
- *Banks* – Currently permitted in SC, CB-A, CB-B, CB, RB, GB, PBO-2A, and PBO Districts (i.e., effectively in all three hamlet business centers).
- *Gasoline Filling and Service Stations* – Currently permitted in GB District (i.e., effectively only in Banksville hamlet business center).
- *Hotels*[8] – Currently permitted in OBH District (this zoning district does not exist in any of Town's three hamlet business districts).

[7] "Cafeterias," "bars," and "cabarets" are considered different types of land use since they are separately identified in the *Schedule of Business District Regulations* set forth in Town Code § 213-20. Definitions of each of these uses are provided in Town Code § 213-3.

[8] Though "motels" are defined in Town Code § 213-3, there is no mention of them in the *Schedule of Business District Regulations* set forth in Town Code § 213-20 or the *Schedule of Business District Regulations, Part I* set forth in Town Code § 213-21.

- *Professional Business and Conference Facilities*[9] – Currently permitted in OB and DOB-20A Districts (none of those zoning districts exist in any of Town's three hamlet business centers).

As part of its evaluation of which types of land use to categorize as "formula businesses," the Town may also wish to reconfirm that each of the business uses currently permitted in the zoning districts found in the three hamlet business centers are appropriate for those specific hamlets. We believe that such an exercise is an important step in the process of establishing new regulatory provisions concerning "formula businesses." If certain categories of land use are considered inappropriate in certain zoning districts, those land uses should be eliminated from the list of permitted uses rather than trying to craft supplementary regulations pertaining to those uses. The summary listing presented above should assist the Town in conducting such an evaluation.

To ensure that the proposed regulations are tailored to meet the Town's objectives, it would also be appropriate to discuss the features of "formula businesses" that are viewed as problematic so that the relationship between the potential concern and the proposed solution can be clearly identified in any future local law provision concerning legislative intent.

3. For purposes of identifying potential new regulatory techniques that the Town may wish to evaluate further, we have made a number of initial assumptions as described below:

- Any proposed new regulations that the Town may wish to enact should apply on a Town-wide basis to all three hamlet business centers.

- Any proposed new regulations that the Town may wish to enact should have applicability to all types of formula businesses. If the Town wishes to make a distinction between retail businesses, food service businesses (e.g., restaurants, carry-out restaurants, fast-food restaurants, etc.), and other types of business that could qualify as "formula businesses" or to not impose supplementary regulations on certain types of formula businesses, it could do so by modifying the proposed definition of "formula business establishment" to exclude certain uses or by establishing multiple definitions for different categories of formula businesses.

[9] "Professional business and conference facilities" are distinguishable from "hotels" since they are separately identified in the *Schedule of Business District Regulations, Part I* set forth in Town Code § 213-21. A definition of this specific land use is provided in Town Code § 213-3.

- As long as the various types of businesses that could qualify as "formula businesses" are permitted in a variety of zoning districts that exist in each of the Town's three hamlet business centers, the regulatory treatment of "formula businesses" should focus on the establishment of new special permit requirements and the application of supplementary standards that are specifically tailored to "formula businesses," rather than by introducing new zoning district specific standards. If the Town wishes to more closely regulate one of the land uses identified above and such a land use is permitted in only a single zoning district or in areas outside of any of the hamlet business centers, then a different regulatory approach may be equally feasible and/or appropriate.

- Since concerns about compatibility of new business development with the scale, design, and prevailing character of the Town's three hamlet business centers is a prominent theme, and a key factor that has prompted the Town to consider the establishment of new regulations governing "formula businesses," it has also been assumed that the Town wishes to limit and potentially prohibit the use of "trademark architecture" in its hamlet business centers since it is often the imposition of such architecture that detracts from local community character. For purposes of initiating discussions on the recommended zoning text amendments, no distinction has been made between any of the three hamlet business centers in North Castle. If the Town does not view each of its three hamlet business centers in exactly the same manner and determines that such restrictions on the use of "trademark architecture" should apply in some, but not all, of the hamlet business centers, the zoning text amendments recommended in this memorandum would require some further modification.

Based upon the foregoing preliminary working assumptions, we have identified below a number of additional zoning text amendments pertaining to the establishment of new requirements that the Town Board may wish to consider for the purpose of more directly regulating "formula businesses":

a. In order to enact new zoning provisions concerning the regulation of "formula businesses," we anticipate that it will be necessary to first reach a consensus on precisely what it is that the Town wishes to regulate and then to define such uses in a manner that sets them apart for regulatory purposes. Initially, we are suggesting a broad definition of these uses to encompass all of their many variations. Based upon our review and consideration of

definitions that are being employed elsewhere in the country for these types of uses, we have identified below one that may be appropriate for North Castle if it wishes to treat all types of formula businesses similarly:

FORMULA BUSINESS ESTABLISHMENT

A type of retail sales activity or retail sales establishment, food service establishment (including restaurants, carry-out restaurants, fast-food restaurants, bars, taverns, cabarets, and cafés), personal service establishment, office, bank, financial institution, or gasoline service station that is required by contractual or other arrangement to maintain any of the following: standardized ("formula") array of services and/or merchandise, trademark, logo, service mark, symbol, décor, architecture, layout, uniform, or similar standardized feature. Any other type of business that includes retail sales as an incidental activity or as an accessory use to the principal permitted use shall not be considered a formula business establishment. For purposes of this chapter, a formula business establishment shall not include a hotel or professional business and conference facility.[10]

In order to establish regulations pertaining to the type of architectural treatment that the Town finds acceptable and/or unacceptable in its hamlet business centers, it would also be necessary to add a definition of "trademark architecture." One such definition is suggested below for the Town Board's consideration:

TRADEMARK ARCHITECTURE

A building design that is trademarked or commonly identified with a particular business enterprise or corporation that operates facilities in more than one location. For purposes of this chapter, "trademark architecture" shall also include other related components of building or site design such as signage, lighting, colors, materials, and/or other types of branded features that are typically associated with such businesses and are intended to enhance or promote brand identity through visual recognition.

Once the Town Board reaches a consensus on the definitions to be added to the Town Zoning Ordinance, text amendments would need to be prepared describing the proposed additions to Town Code § 213-3.

[10] "Hotels" and "professional business and conference facilities" are proposed to be excluded from this definition because those uses are not permitted uses in any of the Town's three hamlet business centers.

b. In the Town of North Castle, as previously noted, some types of uses that could be considered "formula businesses" require special permit approval in certain zoning districts; those same uses and others that might be considered "formula businesses" do not require special permit approval in other zoning districts where they are also permitted. In addition, only one of the uses requiring special permit approval must also comply with supplementary requirements pertaining specifically to that type of land use. The remainder must only comply with the general standards that apply to all special permit uses. To provide greater oversight over the establishment of "formula businesses" in the future, we believe that such uses should require special permit approval and should be subject to compliance with supplementary standards in addition to the general standards of Town Code §§ 213-30.A through 213-30.F.

In order to integrate this new requirement into the Town's Zoning Ordinance, Town Code § 213-20. *Schedule of Business District Regulations* would need to be amended in multiple respects. In each of the zoning districts where retail uses, restaurants, carry-out restaurants, fast-food restaurants, bars, taverns, cabarets, cafés, personal service establishments, offices, banks, financial institutions, and gasoline service stations are currently identified as permitted principal uses, a distinction would need to be made between uses that fit the definition of "formula business establishment" and all other similar uses not meeting that definition. In order to make this distinction, the existing text provisions that cover those types of land uses would need to be modified to specifically exclude "formula business establishments." In addition, the list of permitted principal uses would need to be expanded to separately list "formula business establishments" as a new numbered land use classification preceded by an asterisk to denote the additional requirement for review in accordance with the provisions of Article VII of the Town Zoning Ordinance. At a minimum, it is anticipated that text changes of that type would need to be integrated into the existing provisions for permitted principal uses in the SC, CB-A, CB-B, CB, RB, and GB Districts.

It is anticipated that Town Code § 213-23.B would also need to be similarly amended since there is some overlap between the content of that subsection and Town Code §§ 213-20. Specifically, provisions on permitted principal uses, accessory uses, and special permit uses in the CB-A District are enumerated in both subsections of the Town Zoning Ordinance. It is noted,

however, that these two subsections are not entirely consistent with each other. "Carry-out restaurants" are listed as a principal permitted use in Town Code § 213-20, but there is no mention of that use in Town Code § 213-23.B. Unless there is a specific reason why the list of uses permitted in the CB-A District needs to be enumerated in § 213.23.B, we believe that it would be more appropriate to eliminate that type of information from § 213-23.B and to instead rely on the content of § 213.20 for guidance on permitted uses in the CB-A District.

c. So that the Town has the additional regulatory tools that it may need to ensure that "formula business establishments" can be accommodated in a manner that respects the scale, design, and character of the hamlet business centers in which they are proposed and so that such uses do not generate the types of adverse impacts that are often associated with "formula businesses," it is also recommended that Article VII of the Town Zoning Ordinance be amended to include a new § 213-33.V containing supplementary standards for "formula business establishments." Presented below are some of the supplementary standards that the Town may wish to consider:

V. Formula business establishments. In zones where permitted, formula business establishments shall be subject to the following additional requirements:

(1) Special permit approval shall be required for any new formula business establishment. Any existing business that would now be classified as a formula business establishment, but which was not at the time of its original establishment, shall be also subject to review in accordance with these provisions in the event of any proposed expansion of such business and/or any proposed modification to the building housing such use or the site on which such business is located. Compliance with these supplementary standards shall be required for any feature of the use that is proposed to undergo some change.

(2) An individual formula business establishment shall not have more than ___ square feet in gross floor area, ___ square feet in building footprint size, or a building façade length exceeding ___feet.

[Ed. Note: The specific numerical values to be inserted should be based upon analysis of existing conditions in the Town's three hamlet business centers. As part of that analysis, the Town should determine if the existing character of those places is acceptable or should be modified in some manner before determining what size threshold would be appropriate. If the Town decides that it does not wish to establish dimensions restrictions of this type, then it may be appropriate to instead consider the introduction of other types of design standards that are intended to ensure that the size and proportions of newly constructed or enlarged buildings are compatible with the prevailing scale of development in the Town's hamlet business centers.]

(3) *The use of trademark architecture shall be prohibited.*

(4) *Building façades facing a street or common driveway shall include transparent windows that are used for display purposes and/or to provide a visual connection between nearby sidewalks or the street and activities taking place within the building. At least 60% of the façade area between two feet above grade and 12 feet above grade shall consist of transparent windows and doors, except for buildings that were lawfully in existence prior to the enactment of this provision. In no case shall the amount of transparency present in existing buildings be reduced.*

(5) *New building construction and modifications to existing buildings shall be designed to respect the existing scale of development and streetscape character within the business districts in which the formula business establishment is proposed to be located. The acceptability of proposed building architecture (including but not limited to proportions, rooflines, and fenestration), proposed signage, and proposed building-mounted lighting, including proposed materials and colors for each, shall be reviewed by the Architectural Review Board when the application is referred to such board in accordance with the provisions of § 213-28 of this chapter.*

[Ed. Note: In an earlier subsection of this memorandum, it was recommended that § 213-28 be amended to include a requirement for referral of special permit applications to the Architectural

Review Board. If that type of amendment is not enacted, it is recommended that such a requirement instead be established as part of this new subsection containing supplementary standards for "formula business establishments."]

(6) *Formula business establishments containing drive-through service windows ("drive-through formula business establishments") shall not be permitted unless they comply with the following standards:*

(a) Only one drive-through formula business establishment shall be permitted on a lot.

(b) Any lot containing a drive-through formula business establishment shall be separated from any other lot containing a drive-through formula business establishment along the same street frontage by a distance of at least 2,500 feet, measured between the nearest corners of such lots along such street frontage.

(c) Only one point of ingress and one point of egress, or one point of combined ingress and egress, shall be provided per street or common driveway frontage for each drive-through formula business establishment. Where the point of ingress is provided separately from the point of egress on the same street or common driveway frontage, such points of access shall be separated by a minimum distance of 1,000 feet, measured from the centerline of each point of access at the street line.

(d) The layout of a site containing a drive-through formula business establishment shall be designed to accommodate safe and convenient traffic circulation by pedestrians and vehicles, to avoid conflicts between motorists using drive-through windows and the turning movements of service, delivery, and emergency vehicles as well as cars entering and exiting parking spaces, to provide an opportunity for vehicles to exit the site of a drive-through formula business establishment without driving through the stacking lane of a drive-through window, and to prevent illegal turning movements.

(e) Drive-through windows shall be located along the rear façade of a building farthest from the principal street frontage of the lot on which such use is established, unless it can be demonstrated to the satisfaction of the Town Board that an alternative location is necessary and will not have adverse impacts on building aesthetics or streetscape character. Drive-through windows shall not be permitted in the front yard of any lot or, in the case of a corner lot, in the side yard adjacent to a public street.

(f) Where more than one drive-through window is proposed for a drive-through formula business establishment, such windows shall be located on the same side of the building and be separated by a distance of at least 40 feet so as to allow one vehicle to be stacked between the vehicles located at each drive-through window.

(7) *Fast-food restaurants meeting the definition of a formula business establishment shall also comply with the provisions of § 213-33.E of this chapter.*

(8) *In addition to all of the findings required by §§ 213-30.A through 213-30.F of this chapter, the following additional findings shall be made prior to the issuance of a special permit for a formula business establishment:*

(a) The proposed formula business establishment will promote diversity and variety in the arrays of goods and services offered in the business district in which it is proposed to be located in order to ensure that there is a balanced mix of commercial uses.

(b) The proposed formula business establishment, together with its design and improvements, will be in harmony with the prevailing character of the business district in which it is proposed to be located and will not detract from that character in any way.

(c) The proposed formula business establishment will primarily serve the local needs of residents of the Town of North Castle

as well as employees of businesses and government agencies located in the Town.

(9) *The Town Board may, in connection with its action on a special permit application, set any other additional requirements it deems appropriate, including but not limited to establishing hours of operation, in order to ensure that any potential adverse impacts associated with the proposed formula business establishment have been reduced to the maximum extent practicable.*

4. As previously noted, as part of its ongoing implementation of *1996 Town Comprehensive Plan Update* policy recommendations, the Town has embarked on a separate initiative to create hamlet design guidelines that are intended to guide future development in the hamlets of Armonk, Banksville, and North White Plains. Some of the proposed guidelines are general and are intended to apply to all three hamlet business centers, while others have been crafted specifically for application in a specific hamlet business center. Those guidelines are not yet finalized and review of them was not included in the approved work program for the Formula Business Planning & Zoning Study. However, a copy of the proposed draft *Town of North Castle: Hamlet Design Guidelines* document dated October 2011 was provided to our office for general background information. Based upon our preliminary review of that document, we have identified a few items that may require further discussion and/or clarification.

At the outset, it should be noted that the *Hamlet Design Guidelines* document contains a great deal of useful information which, if successfully applied, should help the Town to achieve its stated goals of "foster[ing] a vibrant downtown environment for each of the three hamlet areas and creat[ing] a clear 'sense of place' with harmonious buildings, signage, streetscapes, walkways and plantings." In our view, however, the discussion of "Implementation" may need some further clarification. In some respects, the guidelines identified in the *Hamlet Design Guidelines* document are presented as recommendations that applicants are urged to embrace and follow as they design their own site-specific plans for properties located in the Town's three hamlet business centers. At the same time, however, the October 2011 draft document makes reference to "Hamlet Design Overlay Zones" and includes graphic depictions of the boundaries of those proposed zones, suggesting that these overlay zones may become a secondary layer of zoning regulation superimposed over a variety of different zoning districts that may already exist in each of the Town's three hamlet business centers. As part of the Town's efforts to finalize the *Hamlet Design Guidelines* document, it will be

important to determine how those guidelines will be integrated into Town Code Chapter 213—if at all—so that it can be better understood if applicants will be required, or just strongly encouraged, to follow those guidelines. It will also be important to evaluate the relationship between the content of the proposed *Hamlet Design Guidelines* document, the existing design guidelines that are currently applicable in the CB-A District pursuant to Town Code § 213-23.B.(7), and any new zoning text amendments that the Town Board may wish to establish in regard to the regulation of "formula businesses." Because it is possible that there may be some overlap between these various initiatives, it is recommended that the multiple regulatory techniques under consideration be integrated to the maximum extent practicable to avoid confusion and/or redundancy.

5. Before it takes action to enact any new zoning text amendments that are specifically aimed at the regulation of "formula businesses," it is also recommended that the Town reexamine its *1996 Town Comprehensive Plan Update* to reconfirm that it contains a sufficient basis for enacting supplementary regulations concerning "formula businesses" and to verify that the *Town Comprehensive Plan Update* does not include any information that would be at variance with the initiative to specifically regulate such businesses as a special category of land use. Ideally, the *1996 Town Comprehensive Plan Update* should include sufficient discussion of the Town's policy goals and objectives for business development, including statements that could be relied upon to support the establishment of supplementary requirements for "formula businesses." With the passage of time since the *1996 Town Comprehensive Plan Update* was prepared, however, it is possible that the Town has and will continue to embark upon new planning initiatives based upon newly identified goals and objectives. If the Town Board concludes that the *1996 Town Comprehensive Plan Update* may not sufficiently address community character preservation objectives in the business district context to the extent desired or recommended, it may be necessary to amend that document's discussion of "Retail and Service Business" land use to provide a stronger foundation for the subsequent enactment of new zoning text provisions concerning "formula businesses."

6. As previously noted, it is recommended that the Town Board seek input from its Counsel before it prepares to draft any proposed zoning text amendments concerning formula businesses and/or draft local law concerning the proposed adoption of such amendments. Based upon our research, however, it appears that regulations of this type are likely to be most defensible if they are drafted with the following guidelines in mind:

- Generally applicable regulations that are enacted by legislative action are less likely to receive legal scrutiny than those that are imposed on an ad hoc or administrative basis.

- Regulations should be drafted to achieve their stated purpose. There should be internal consistency between the Town's objectives with regard to formula businesses and the regulations that are enacted to achieve those objectives.

- Regulations that discriminate against out-of-state businesses or "chain stores" are likely to be problematical, but concerns of this type can often be avoided if such regulations are applied uniformly to all types of formula businesses, whether they are local, regional, or national.

- Supplementary regulations on formula businesses should be applied primarily in key areas where commercial diversity is needed to retain a robust mix of land uses and/or to protect distinctive community character attributes.

- The draft local law that is prepared to enact the recommended zoning text amendments may need to be adopted on the basis of the Municipal Home Rule Law in addition to any normally applicable enabling legislation in order to provide the strongest possible authority for the establishment of new regulations that are primarily intended to advance aesthetic objectives.

* * * * *

Please let us know if you have any questions. We are also available to attend a Town Board meeting to review this report and discuss our recommendations at greater length.

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