



Friends ^{OF} THE Bay

Working to keep the oyster in Oyster Bay

Post Office Box 564 • Oyster Bay, NY 11771

March 6, 2006

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Matt Whalen
Vice President, Development
AvalonBay Communities, Inc
135 Pinelawn Road Suite 130 South
Melville, NY 11747

Re: Avalon at Oyster Bay

Dear Mr. Whalen,

Per your request, I am writing on behalf of Friends of the Bay to provide you with a more detailed explanation as to why our organization has concluded that AvalonBay's proposed luxury apartment complex for Oyster Bay does *not* illustrate smart growth.

We were pleased to see that AvalonBay's Draft Environmental Impact Statement will evaluate the proposed AvalonBay development for its consistency with generally accepted smart growth principles.

Defining Smart Growth

As you well know, there are various definitions for the term "smart growth," but it most often refers to a comprehensive development strategy that serves the economy, the community, and the environment.

According to the U.S. Environmental Protection Agency, smart growth can result in:

- **Healthy communities** that provide residents with a clean environment. Smart growth balances development and environmental protection; accommodating growth while preserving open space and critical habitat, reusing land, and protecting water supplies and air quality.
- **Economic development and jobs** that create more business opportunities, improve the local tax base, provide neighborhood services and amenities, and create economically competitive communities.
- **Strong neighborhoods** which provide a range of housing options giving people the opportunity to choose housing that best suits them. Smart growth provides the choice to walk, ride a bike, take transit, or drive. It maintains and enhances the value of existing neighborhoods and creates a sense of community.

Smart growth is about asking how our communities' growth can be shaped. Talking about smart growth changes the nature of the dialogue from a reactionary growth/no growth debate to proactive discussion of "how and where new development should be accommodated."

Smart growth helps community leaders and everyday citizens envision “What kind of community do we want?” This is the type of dialogue that Friends of the Bay wants to be engaged in.

Why AvalonBay’s Proposal for Oyster Bay Does Not Represent Smart Growth

There are many valid arguments as to why AvalonBay’s proposal would not serve the economy, the community, and the environment. (We will address these concerns further on in this letter.) But the overarching concern for us is that AvalonBay’s proposal is not part of a comprehensive “smart growth” strategy for the Hamlet of Oyster Bay. How can this or, for that matter, any stand-alone project be considered smart growth if it’s not part of an overall “smart growth” development strategy? It can’t. It’s that simple. Especially given the fact that the AvalonBay proposal includes an entirely new zoning district and a significant zone change.

This community has long recognized the need for a comprehensive approach to land use planning and development. Building upon the Oyster Bay Hamlet Plan, the Town should implement a comprehensive smart growth land use plan for the Hamlet so to guide future development and provide more direction to developers. We understand the Town is about to begin a visioning process. Friends of the Bay looks forward to participating in this process and strongly believes that a smart growth land use plan for the Hamlet must incorporate numerous watershed protection measures.

Without a comprehensive Smart Growth land use plan and a watershed protection plan for the area, AvalonBay is taking a giant gamble by proceeding with this project at this point in time. This is an essential point for the Town to consider in its review of the AvalonBay proposal. Nonetheless, AvalonBay must realize that to move forward with their proposal would, in essence, be jamming their project down the throat of this community.

In other words, this project will, by default, force a development strategy upon the community. It would be a “tail wagging the dog” scenario. There are several reasons why we believe this to be the case:

- 1) AvalonBay’s proposal will have significant growth-inducing impacts both by itself and in combination with other development some of which AvalonBay would have spurred;
- 2) AvalonBay’s proposal to the Town of Oyster Bay includes an amendment to the Zoning Code for a entirely new zoning district called a “RDR” (Residence - Downtown Revitalization) District; and
- 3) AvalonBay’s proposal to the Town includes what would be a significant Change of Zone from a “LI” (Light Industrial) District and “GB” (General Business) District to a proposed “RDR” (Residence - Downtown Revitalization) District.

Given the precedent setting nature of these three aspects – especially with respect to its proposed density (nearly four times the # of units per acre as the Town’s ‘Next Generation’ Zoning District and twice the # of units per acre as the Town’s ‘Senior Housing’ Zoning

District) – this project represents the tipping point. Not only will it alter the community character but it will adversely impact the watershed and water quality.

As you know, the Hamlet’s current disjointed development pattern is a fairly widespread concern among a diverse group of stakeholders. In a resolution that the Oyster Bay Sewer District passed last year, the District expressed the need to protect the community from “haphazard and uncoordinated future development.” (Through the passage of this resolution, the District adopted a policy to allocate remaining wastewater treatment plant capacity and to ensure that major developments did not use up a large amount of the remaining capacity. The need for this new policy was also triggered by the nitrogen limitations imposed by the Long Island Sound Study that essentially limits the treatment plant to its current permit capacity.)

We understand that AvalonBay has been very willing to dialogue with civic leaders, citizens and various groups. That’s not being questioned. However, the outreach you have conducted becomes irrelevant since the unavoidable outcome – should AvalonBay’s proposal be approved by the Town of Oyster Bay – is that it would exacerbate existing land use and development problems plaguing the Hamlet and have an adverse impact on the waters of the Oyster Bay/Cold Spring Harbor Estuary.

Environmental Concerns

Given our mission, Friends of the Bay’s key concerns relate to the impact on the waters of the Oyster Bay/Cold Spring Harbor Estuary Complex and the surrounding watershed. Friends of the Bay is a strong advocate for smart growth primarily because its principles can help to protect this unique estuary, especially if the Town adopts a smart growth comprehensive plan rooted in watershed protection, something we have been advocating for over the last several months.

As noted above, Friends of the Bay strongly believes that if approved by the Town of Oyster Bay, AvalonBay’s luxury apartment complex – whether by itself or in conjunction with other development some of which it may spur – will have an adverse impact on the waters of estuary and the surrounding watershed. (That is why Friends of the Bay, in their scoping comments, recommended that the Draft Environmental Impact Statement thoroughly examine the cumulative impacts and long-term impacts associated with the: 1) creation of new and precedent-setting zoning district; 2) significant and precedent-setting zone change; 3) construction of the AvalonBay complex and any other new development; and 4) AvalonBay complex and any other new developments over their respective operating lives. Given what’s at stake, this is a reasonable request.

Most relevant to this concern is the issue of additional treated sewage effluent being released into the Harbor and the subsequent impact this will have on water quality and aquatic life including the estuary’s bi-valve inhabitants, which play an important ecological role in the health of the estuary’s waters and a significant part in the local economy. (There is also the historical significance: “Commodious haven” was how in 1639 Dutch explorers described Oyster Bay for its finest resource. Today, New York’s oldest commercial oyster farm is still in business having begun operations at the time Theodore Roosevelt settled here.)

Which brings us back to the Oyster Bay Sewer District's new policy which serves to allocate remaining wastewater treatment plant capacity. The need for this policy was triggered by the nitrogen limitations imposed by both the Long Island Sound Study that essentially limits the treatment plant to its current permit capacity (1.8 million gallons per day) and the increase in the number of proposed developments within the Hamlet of Oyster Bay.

Sewage from the AvalonBay apartment complex would use up a significant amount of the plant's remaining permit capacity. That's a significant amount to be associated with one project. But it's not just this one project we are worried about. It's the fact that this project will set a precedent for other development in the area and trigger additional growth. The cumulative impact can result in the remaining capacity of the treatment plant being used up relatively quickly and prior to the implementation of a comprehensive "smart growth" land use plan for the Hamlet. Consequently, other property owners at some future point could find themselves in a position where they could not develop their property as allowed by current zoning because of the lack of available treatment plant capacity. That's troubling both from the comprehensive land use planning perspective and the water quality/watershed protection perspective.

With respect to the environmentally-relevant smart growth principle of development that provides a choice to walk, bicycle, take transit or drive. No matter how you slice it, the site of the proposed complex is in a very dangerous section of Pine Hollow Road and not close to most mass transit options. As a result the location is not conducive to environmentally friendly modes of transportation such as walking and bicycling.

Other Concerns

From the perspective of those concerned with the proposed complex's impact on local traffic, parking, aquifer protection and drinking water quality, the revitalization of the Hamlet's Main Street area, and the school district the AvalonBay proposal, again, does not necessarily embody smart growth. But that's an entire other discussion that we won't get into in the context of this letter. And, of course, these issues have already been written about in the local papers and will continue to be discussed.

High-density housing

There is no question that high-density housing has an important role to play in this area and Long Island in general, but AvalonBay's 270-unit proposal is overkill. It's equivalent to Wal-Mart proposing one of their superstores in this community. AvalonBay's current approach represents the 'big box' mentality that is afflicting many parts of Long Island.

AvalonBay, a publicly traded company with shareholders to please, is using a cookie cutter approach when in fact they should be thinking 'outside of the box' and proposing a development that fits in better with the small town character of this community. If an apartment complex with significantly fewer units is not economical for AvalonBay, then that's a matter to be dealt with by AvalonBay. As noted in our scoping comments, the

Town's evaluation of AvalonBay's proposal should not concern themselves with what *is* and *is not* in the financial interest of AvalonBay. As mentioned before AvalonBay, as a speculator, knew the risk they were taking on from the outset.

Informational Sources on Smart Growth

You will remember from our scoping comments with respect to the extent and quality of information needed to adequately address potentially significant adverse impacts, our recommendation that the Draft Environmental Impact Statement take into consideration several reports published by the U.S. Environmental Protection Agency. They are the following:

- Getting to Smart Growth: 100 Policies for Implementation (March 2002)
- Getting to Smart Growth II: 100 more policies for implementation (October 2003)
- Community-Based Watershed Management: Lessons from the National Estuary Program (February 2005)

As we noted in our scoping comments, this is a reasonable request given the fact that the Town is pursuing a Smart Growth plan as well as new ways to protect the local watershed.

We trust you will find the information presented in this letter helpful. Thank you for your consideration.

Sincerely,

Kyle Rabin

Cc:

The Honorable Carl Marcellino, Senator, New York State
The Honorable Thomas P. DiNapoli, Assemblyman, New York State
The Honorable Charles Lavine, Assemblyman, New York State
The Honorable Thomas Suozzi, County Executive, Nassau County
The Honorable Judith Jacobs, Presiding Officer, Nassau County Legislature
The Honorable Diane Yatauro, County Legislator, Nassau County
The Honorable John Venditto, Town of Oyster Bay Supervisor
The Honorable members of the Town of Oyster Bay Council
Acting Secretary Frank P. Milano, New York State Department of State
Commissioner Denise M. Sheehan, New York State Department of Environmental Conservation
Commissioner Richard W. Lenz, P.E., Town of Oyster Bay Department of Environmental Resources
Commissioner James Byrne, P.E., Town of Oyster Bay Department of Public Works
Chairman Thomas D. Galasso, Oyster Bay Sewer District
Deborah Long, Refuge Manager, U.S. Fish & Wildlife Service, L.I. NWR Complex

To read more about Friends of the Bay's position on the proposed AvalonBay development, click here:
http://friendsofthebay.org/issues/avalonbay/avalonbay_home.htm