

**From:** [Anthony Chiuppi](#)  
**To:** [Michele MacEachern](#)  
**Subject:** Legal letters?  
**Date:** Friday, March 19, 2021 6:47:49 AM

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Hi Michelle,

I understood that chairman Knox does not want to read letters from the public at the planning meetings, I mean if there are a bunch of people just complaining than I guess that's not helpful. However, with respect to legal letters, I would have liked to hear what the one said that John Jenkins was referring to. I think the public has a right to hear them. How many letters from lawyers has the planning board received? What is the basis of these letters? There are also a lot of people in town, elderly specifically that have a right to information, many are not internet savvy. I am a neighbor to many and they deserve information on a project this large. Town offices have been closed and town meetings virtual, has there been any consideration of a town mailing to address this fact?

Thanks,  
Tony Chiuppi

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March 18, 2021

Via email [cmurray@lakevillema.org](mailto:cmurray@lakevillema.org)

Lakeville Planning Board  
346 Bedford Street  
Lakeville, MA 02347

Attn: Mark Knox, Chairman

**Re: *Special Permit & Site Plan Review Application of Rhino Capital Advisors, LLC  
Regarding the Former Lakeville State Hospital Site, 43 Main Street;  
Statement of Opposition***

Dear Chairman Knox and Members of the Planning Board

This office represents Town residents Heather Bodwell of 13 Rush Pond Road and John Jenkins of 82 Pickens Street regarding the above-referenced matter. Ms. Bodwell and Mr. Jenkins are also representatives of the citizen group Lakeville Residents for Responsible Growth.

My clients are opposed to the issuance of a special permit and site plan review for this project. In addition to their concerns about traffic congestion and other detrimental impacts which have been expressed to the Board, they have another fundamental concern – that this site was never legally included within the Development Opportunities District, and the petitioner's application must be denied on that basis.

The Development Opportunities District was adopted pursuant to the vote of the Special Town Meeting on Article 27 of the Annual Town Meeting Warrant, on June 4, 2012. The Bylaw as approved by Town Meeting does not contain any description of the location of the DO District. The Bylaw does not state what properties are included within the DO District. Section 7.9.1 of the Zoning Bylaw states that the purpose of the DO District is “to authorize the innovative use of *certain portions of a defined overlay district*” and that “the Development Opportunities District superimposed over those underling districts *as shown on the Zoning Map* of the Town of Lakeville.” (emphasis supplied). Despite indicating that the DO District would be over those underlying districts “as shown on the Zoning Map”, the Town Meeting did not take any action to amend the Zoning Map to include any area within the DO District. To this day, the Zoning Map has never been amended to define any area in Town as being within the DO District.

Massachusetts law requires that zoning districts “be shown on a zoning map sufficient for identification” and that such map is part of the local zoning bylaw. M.G.L. c. 40A, § 4. Adoption and amendment of a zoning map constitutes a zoning change subject to the requirements of M.G.L. c. 40A, § 5. This means that only Town Meeting has the authority to amend a zoning map as necessary to define the location of a zoning district. See M.G.L. c. 40A, § 5 (requiring 2/3 vote of a town meeting to amend a town zoning bylaw).

With respect to the Lakeville DO District, the Town Meeting has never voted to identify the location of said district. It has never voted to amend the zoning map to include any property in Town within the DO District. For these reasons, the property at issue is not within the DO District. This is a fundamental, and fatal, flaw that requires this zoning petition to be denied.

The applicant’s site plans state that the property is in a Residential, Business and Mixed Use Development District, citing the Town of Lakeville Zoning Map. (See Zoning Summary Chart, sheet 2 of the Site Plans). This is accurate, as the Town Zoning Map places this property in said Districts and only said Districts. The Zoning Map does not identify any portion of this property as being within a DO District. A warehouse/distribution center is a prohibited use in the Residential, Business and Mixed Use Development Districts. See Zoning Bylaw § 4.1.3 (prohibiting warehouse and distribution facilities in the Residential and Business Districts); Bylaw § 7.5.3 (not listing warehouses or distribution facilities as a permitted use in the Mixed Use Development District).

Additionally, the applicant’s site plans allege that the property is in a DO District, but for that proposition they cite “Rules and Regulations for the Development Overlay District ... Adopted by the Planning Board 1/7/2021.” (See Zoning Summary Chart, sheet 2 of the Site Plan, footnote 1). **The Planning Board does not have the authority to establish the location of a zoning district without Town Meeting approval.** See Pearlson v. Town of Chilmark, Mass. Land Court Misc. 129860 (Jan. 9, 1990)(invalidating a zoning by-law as to which the boundaries were set by town officials without Town Meeting approval). Without question, Massachusetts law does not allow a Planning Board to set the location of a zoning district. See M.G.L. c. 40A, §§ 3, 4, 5. Establishing the boundaries of a zoning district is a legislative action that only the Town Meeting has the authority to do. For these reasons, the applicant’s site plans improperly, and without legal basis, represent that the property is within the DO District. Neither the terms of the Zoning Bylaw itself, nor the Town Zoning Map, place the property in a DO District. Therefore, the property is not within a DO District.

In a memorandum to the Planning Board dated October 28, 2020, project engineers Vanasse Hangen Brustlin represented that this site is in a DO District based solely on the Zoning Bylaw, acknowledging that it is not on the Zoning Map. However, the Bylaw does not describe the location of the DO District. In contrast to other overlay districts which do have a location described in the Bylaw, the DO District does not. There appears to be no basis for the project engineer’s assertion that this property is in a DO District.

In sum, because a warehouse/distribution center is prohibited in the Residential, Business and Mixed Use Development Districts, and this property has never legally been placed within a DO District, the special permit/site plan review application must be denied because the proposed use is prohibited.

For the above reasons, and on behalf of my clients, we urge the Planning Board to deny this Special Permit and Site Plan Review application.

Thank you for your attention to this matter.

Very truly yours,

GAY & GAY, P.C.

*Matthew J. Costa*  
Matthew J. Costa, Esquire

MJC/bd

cc: Michele MacEachern,  
Project 43D Coordinator  
*via email [mmaceachern@lakevillema.org](mailto:mmaceachern@lakevillema.org)*  
cc: Lillian Drane, Town Clerk  
*via email [ldrane@lakevillema.org](mailto:ldrane@lakevillema.org)*  
cc: Heather Bodwell  
*via email [mhmebodwell@msn.com](mailto:mhmebodwell@msn.com)*  
cc: John Jenkins  
*via email [johnj@oemtools.com](mailto:johnj@oemtools.com)*

Tuesday, March 9, 2021

To: 43D Committee

From: Richard Scott

Subject: Peer Review of Public Documents

I have completed my review of the peer review documents I received on March 4, 2021 that were dated up to Feb. 18<sup>th</sup> 2021. There were 10 documents from MADOT, VHB, Tech Environmental IBI and Gregory Lombardi, as you know there were over 300 pages to review. It is clear that the peer review is not complete and numerous items are still outstanding.

I am requesting all public documents dated after Feb. 18<sup>th</sup> for my review since there must be numerous letters to complete the peer review before the final Planning Board approval and conditions. I understand the "Plan documents" are dated 3-2-2021 and ask, will the Project Plans be finalized before the Planning Boards approval? I understand that the "Plans" drive the Project and "everything" must be on the "Plan". Is that correct?

To avoid confusion I am attaching all the documents provided under my previous FOIA request to the Town Clerks office.

My review starts with the following:

MADOT

I reviewed the document MADOT sent to VHB dated 1/6/20 for the Lakeville hospital-TSL over 216 pages. I also reviewed correspondence between EP and VHB regarding traffic.

I understand that EP and VHB are resolving all the outstanding traffic related peer review issues. It is not clear how these issues were resolved and ask what is the current status of the traffic peer review? My last correspondence documents only go to 2-18-21.

Has MADOT received any traffic comments from the Town of Lakeville regarding Traffic for this project?

Has MADOT received any unified comments regarding the EP peer review and VHB responses to comments for their review of the project?

I urge the Town of Lakeville to insure MADOT has the benefit of this information, especially EP comments, so that ALL relevant information is available to MADOT for their implementation of traffic improvements along Rt. 105.

Finally, will there be any conditions in the Special Permit for traffic mitigation beyond the TDM based on available MADOT, VHB and EP reviews and correspondence?

VHB

The last VHB correspondence I have is Jan. 18 th 2021. Are there any additional public documents from VHB to the Town of Lakeville or EP after this date? I am concerned that I have not been given all the documents and the opportunity to review this information before the Planning Board issues the Special Permit for the project.

Tech Environmental

I have much to say on the Tech Environment documents but it needs a separate letter.

IBI Group/Gregory Lombardi Design

One of the major problems with the 43D committee is the lack of an abutter in the membership. The close abutters were invited to a conference call in the spring of 2020 with the Town and Rhino. At that time the major concerns expressed were traffic and noise. These are the same concerns today, although progress is taking place on noise. By not having an abutter on the committee or helping the Planning Board there is no one to represent the closest residents MOST impacted by the Project.

In a letter from Gregory Lombardi Design to the Lakeville Open Space Committee dated 12-30-21 is the following, "One of the primary goals of the current landscape design is to gain "approval" by the Lakeville Open Space Committee."

Where are the abutter approvals? The abutters where not represented. There must be a condition in the Special Permit that assures that the direct abutters will be consulted regarding the landscape features next to their property. This was expressed in the "public hearing".

In a letter dated 12-21-20 IBI Group to 43D coordinator, Item 1, d- reads, "we recommend that the proposed vegetation be comprised of evergreen species to provide a year round visual screening of the parking and loading docks from the adjacent residential district."

Is this incorporated into the plan and Special Permit? Does this include 1 and 2 Lori Lane? Who will be responsible to see this is done properly?

In the letter dated Feb. 10, 2021 IBI Group to Michele, 43D coordinator has 5 pages of comments. What actions or conditions are in the "Plan" or the Special permit in response to this letter?

I look forward to answers to my questions and additional public documents.



**From:** [Jo-Ellen Kenney](#)  
**To:** [Michele MacEachern](#)  
**Subject:** Meeting Link  
**Date:** Friday, March 12, 2021 1:43:03 PM

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Hi Michele,

Would you please send me the Zoom link for the meeting on March 18 at 7:00 PM?

Please let me go on record to say that I oppose the hospital property being turned into a warehouse. This is not the correct fit for Lakeville. A mixed use scenario (as we were promised) is more fitting to keep some open space. Once we let the warehouse in, there is no turning back. We lose all that open space forever and gain all the headaches forever.

Thanks.

Jo-Ellen Kenney  
10 Bridge Street  
Lakeville



**From:** [mwschroeder379@gmail.com](mailto:mwschroeder379@gmail.com)  
**To:** [Michele MacEachern](#)  
**Subject:** one more opinion against the Rhino Capital plan for the former Lakeville State Hospital site  
**Date:** Saturday, March 13, 2021 2:39:41 PM

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To the Lakeville Planning Board:

Please consider my thoughts about this project. A giant distribution center built on the Lakeville Hospital site will be a tragic mistake. It will offer nothing to the Lakeville community except a few low paying jobs and tax payments that will be eaten up with road repair and traffic monitoring. Some nearby local businesses may benefit, but others will lose as access becomes more aggravating due to traffic. A few local businesses in other parts of Lakeville actually might benefit as truck traffic makes it more annoying to drive into Middleboro. That truck traffic will of course urbanize all the homes in its vicinity.

Rhino's landscape people have done a beautiful job planning what would remain of the property with visual buffers and native flora. However, as much as Rhino emphasizes this is a much disturbed site, vegetation has matured in the years of abandonment and Rhino will be removing more of it that it will be putting back (400,000 sq foot building, not to mention huge parking lots and new roadways).

Mature vegetation, even when a lot of it is invasive exotic plants, still cools in summer, stores carbon dioxide, supports some wildlife, and retains precipitation. We destroy too much of it at our peril.

It is said the property has sat vacant because of a lack of an adequate water supply and the presence of both contaminated buildings and a toxic disposal site. The State of Massachusetts caused the latter and then sold the property without taking any responsibility for clean-up. As for lack of water, Taunton sells water to Bridgewater State prison. The water tower, which was built by Lakeville to serve north Lakeville but then sold to Taunton, provides the pressure to reach the prison. Lakeville's allotment of water from the ponds still travels through that tower, but if Taunton has water to spare one would think Lakeville should have first dibs, not a more distant town.

Solution to this mess? Our elected boards should say no to Rhino. They should sue the State for the clean-up. Check on the legality of letting Taunton ship water from Lakeville's ponds to another area. Let the houses recently built near the train station be rented (the Board of Selectmen refused to let the developer make this change) so they can count towards our affordable housing requirement. This would help prevent the hospital site from having any more 40B dense housing developments.

An all-out effort should be made to attract commerce that the Town's people can enjoy. Such a campaign should emphasize the value of being close to the highway leading to the Cape. Yes, that would also mean traffic, but somewhat quieter and with less of the traffic-snarling turning radius of 53-foot truck trailers. Spend some Town money to make part of the area walkable green space. We might have that money available if all the sales the town has made in recent years (Howland Road 636 acres, the assessors' office building, old police station, water tower) had not gone into the general budget giving the Town's citizens the illusion that careful spending was keeping its taxes in line.

Are many of our citizens going without meals or falling behind in mortgage payments because their

taxes are too high? Instead of allowing projects like this, surely there are other more effective ways to keep taxes down. The cheapest kind of land with regard to expense to the Town is open space. If we raise taxes to buy it, we save taxes in the long run! That's what many towns have discovered over the years. Adopt the Community Preservation Act to start building a fund. Remember CPA requires only a tiny surcharge on our RE taxes and lower valued properties can be exempted.

Good luck, Lakeville. May the best decisions for the future be made.

Martha "Mike" Schroeder  
3 River Bend  
Lakeville, MA

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**From:** [Cathy Murray, Appeals Board Clerk](#)  
**To:** [Michele MacEachern; miknox05@gmail.com; Barbara; Pete Conroy; JFLyn678@gmail.com](#)  
**Cc:** [Nathan Darling, Building Commissioner & Zoning Enforcement Officer; Richard LaCamera](#)  
**Subject:** FW: Hospital Redevelopment  
**Date:** Thursday, March 18, 2021 3:51:06 PM

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**From:** m roche <mroche111@yahoo.com>  
**Sent:** Thursday, March 18, 2021 3:41 PM  
**To:** Cathy Murray, Appeals Board Clerk <cmurray@lakevillema.org>  
**Subject:** Hospital Redevelopment

Dear Cathy,  
Would you kindly forward this note to each member of the planning board.  
Thank you.

Dear Chairman Knox,  
Ms. MacEachern  
Mr. Lynch  
Ms. Mancovsky  
Mr. Conroy

Please do not accept the proposed trucking facility at the old hospital grounds.  
It would be a traffic nightmare and a neighborhood nuisance.  
It will add tremendously to light and noise pollution, and I have to assume, to air,  
soil, and water pollution as well. It will also put a tremendous strain on water  
resources.

In general, it would be a detriment to our community. It is simply a poor fit.

The town firmly rejected Sysco. This would be substantially similar.

Water and open space are the most valuable assets of this town.

If someone wants land for a specific purpose, it is up to him to find a suitable location  
that is appropriately zoned. Neighbors and townspeople should not yield to his whim  
or financial interests. Nor should they be harmed for his profit.

While not maximizing tax revenue, open space costs the taxpayer very little and, in  
many cases, far less than developed properties.

In this, and in future planning, please promote and protect the very things that make Lakeville so desirable.

Thank you for your service to the town.

That service comes with headaches, and your work is appreciated.

Sincerely,

Mary F. Roche and

Gerard J. Roche

Document listing

Pgs

3

5

7

6

13

3

8

18

10

3

7

5

11

15

15

8

9

40

216

467 pgs

November 9, 2020	ECR
December 14, 2020	ECR
December 16, 2020	Epsilon Associates Inc.
November 10, 2020	Environmental Partners
December 3, 2020	Environmental Partners
January 8, 2021	Environmental Partners
February 5, 2021	Environmental Partners
February 12, 2021	Environmental Partners
February 18, 2021	Environmental Partners
December 30, 2020	Gregory Lombardi Design
December 30, 2020	Gregory Lombardi Design
December 21, 2020	IBI Group
February 10, 2021	IBI Group
October 29, 2020	Tech Environmental
December 28, 2020	Tech Environmental
December 1, 2020	VHB
December 10, 2020	VHB
December 10, 2020	VHB
December 10, 2020	VHB
January 18, 2021	VHB
October 6, 2020	MassDOT

Lost file