

# YOUNG, SOMMER ... LLC

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March 26, 2008

## VIA FACSIMILE AND HAND DELIVERED

Supervisor Ryan Courtien and Members of the  
Town Board of the Town of Dover  
126 East Duncan Hill Road  
Dover Plains, NY 12522

**Re: The Knolls of Dover**

Dear Supervisor Courtien and Members of the Board:

We represent the Coalition for the Responsible Growth of Dover, an unincorporated association comprised of numerous residents and property owners who support responsible development in the town and are concerned that the redevelopment of the Harlem Valley Psychiatric Center proposed by the Dover Knolls Development Company II, LLC, fails to meet those standards. Members of the Coalition include property owners adjacent to the above-referenced application.

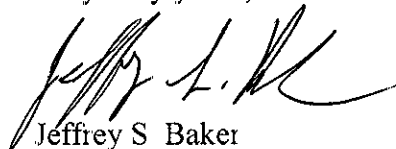
We are writing in regards to the agenda item for tonight's Town Board meeting which purports to reaffirm the Town Board's status as Lead Agency under SEQRA for the review of the project and to undertake a new scoping process. It is our position that such a course of action is illegal and if pursued as proposed will result in fatal legal infirmities to the Town's process. The Town Board cannot act to "reaffirm" its position as Lead Agency because the previous application was withdrawn by the Applicant on August 6, 2007. Thus, the Applicant must restart the process and the Town Board must begin anew the process for establishing itself as Lead Agency and issue a Determination of Significance. In the alternative, if the Applicant is somehow disavowing its earlier unequivocal withdrawal of the application, it cannot seek to obviate the Final Scoping Document duly adopted by the Town Board and seek to undertake a new scoping process. In essence, the Applicant cannot seek to have the best of both worlds.

The application by the Benjamin Companies was pending before the Town Board for a significant period of time and underwent considerable review. The process included the establishment of the Town Board as Lead Agency, a Positive Determination of Significance under SEQRA and the initiation and completion of the Scoping Document. Sometime thereafter, the Applicant, upset that the Town Board was seeking to undertake a further detailed analysis, unilaterally and unconditionally withdrew its application in the August 6<sup>th</sup> letter written by its attorney, Mr. Zarin. The Applicant reiterated its withdrawal in a press release. Now, with the belief that it has a more compliant Town Board, the applicant seeks to "renew" its application and to proceed as if the application was never withdrawn. However, while the applicant assumes the Town Board is still Lead Agency, it seeks to ignore the previously adopted Final Scope and has submitted a new Draft Scoping Document that is materially less comprehensive than the adopted Scope.

Since the application was withdrawn, this must be treated as a new application and the process must begin anew. Only then can a new scoping process be undertaken. If, however, the applicant considers that its application was only on "hiatus", then it is bound by the Final Scope. There is no provision in the SEQRA regulations for the withdrawal of an adopted scope. If there are changes in a project, those changes can be considered within the context of the DEIS. The Lead Agency, if it never lost jurisdiction, cannot unilaterally ignore its previous document and seek to approve another, especially when the subsequent scope is less protective of the environment.

Recognizing that the Courts require strict and literal compliance with the SEQRA's procedural requirements, the Town Board cannot proceed in the manner dictated by the Applicant. It must treat this as a new application over the withdrawn application and properly seek Lead Agency status. Alternatively, it must act in accordance with the previously adopted Final Scope. It cannot simply act as if it is the same application and try and adopt a new scoping document.

Very truly yours,



Jeffrey S Baker

cc: Town Clerk  
Thomas Jacobelis, Esq  
Michael Zarin, Esq