



**Statement of Jim Waltman, Executive Director
Before the Hopewell Township Planning Board
March 21, 2013**

The Stony Brook-Millstone Watershed Association appreciates this opportunity to comment on the proposed redevelopment at the Pennytown-Kooltronic site.

The Watershed Association is headquartered on Titus Mill Road in Hopewell Township and our 930-acre Watershed Reserve is located approximately one-quarter mile from the Kooltronic property. That property is near a tributary to the Stony Brook, which runs through our Reserve. The brook provides important habitat to a number of species and also provides a wonderful teaching platform from which our staff educators teach environmental science to school children from the Hopewell Valley's public schools and more than a dozen other school districts in our region.

We are extremely concerned that the proposed development could cause serious harm to water, wildlife, and land on our 930-acre Watershed Reserve, as well as the landscape around us.

We are also very troubled by the recent acceleration in the timeline for this process. For several months, the public was told that the Planning Board would make a decision on its recommendation to the Township Committee at a meeting on Thursday March 28.

Yesterday, the Township's website was changed to announce that this critical decision would take place tonight. This abrupt change in scheduling denies us, the public, and the Board adequate time to review the various reports, including one report that was just presented tonight.

Because there are so many unanswered questions, and frankly so many contradictory answers, the only appropriate decisions that the Board could make tonight would be to either postpone any decision until a future date or to vote against the proposal to move forward as a development "partner" with Kooltronic.

The argument *for* the township embracing Kooltronic as a partner is based on the faulty premise that Kooltronic has an absolute right to build 255 homes and would have the unfettered ability to build something even more intensive than the pending conceptual plan that includes 350 housing units for the Kooltronic and Pennytown properties.

But Kooltronic's rights were very carefully balanced in the Township's settlement agreement with the company. The current zoning ordinance places at least four contingencies on Kooltronic's potential development of the property:

First, Kooltronic must preserve land for each home over and above the 14 that are provided for in the base zoning. The base zoning is made clear in section m(1)(c) of 17-172 of the Hopewell Township Code:

“The base density for the hamlet tract shall be calculated on the basis of 60 acres minus ten percent of the area for infrastructure, and be based on a minimum lot size for residential development of four acres/unit.”

Kooltronic must preserve land in the Valley or Mountain zones of the Township for each housing unit over the base allowance. They can't write the Township a check, they must preserve land before they build such homes. That means identifying land owners willing to sell their development rights, negotiating a price, completing the legal documents, and closing on these conservation deals. This is not easy. I've done it. The crafters of the settlement agreement did not intend to make it easy.

Second, Kooltronic must demonstrate adequate water supplies that don't impact other water uses. A report from a Township consultant suggesting that he believes that there is “probably” water there does not suffice. And by the way, Kooltronic does not have a *right* to be served by public water if adequate groundwater is not present to serve development on their property. That is a question that is controlled by the Township Committee. It should not be given away. No one should just assume that the Township would approve this service if Kooltronic prepared its own separate development plans for this land. The Township could take the reasonable view that if there is not sufficient on-site water to sustain such a large development, it must be scaled back.

Third, Kooltronic must demonstrate the ability to treat and dispose of wastewater. Again, this is not easy, or cheap. Yes the firm that the Township has hired to evaluate wastewater treatment options is very good. Yes they are the same firm we have retained to design and construct a waste water system at the Watershed Reserve. But our system will be for the equivalent of 6 or 7 homes on our 930-acre Reserve, not 350 homes on 100 acres. This is 50 times more wastewater on a property that is one-tenth the size.

And forth, an issue that seems to have been completely ignored to date: the existing zoning ordinance balances the allowable residential development on the Kooltronic property with the amount of commercial development on the property. The larger the commercial footprint is, the smaller the size of a potential residential hamlet.

The 100-acre Kooltronic property would need to be divided into a residential tract and a non-residential, commercial tract. Section 17-172 (l) of the Township code establishes the “bulk requirements” for the non-residential tract. The non-residential tract must be sufficiently large so that the coverage of the tract by buildings, parking, roadways and other infrastructure can be no more than 45 percent of the area. The buildings themselves cannot cover more than 20 percent of the non-residential tract and there is also a maximum floor area ratio of 20 percent on the tract.

On its website, Kooltronic indicates that its building is 170,000 square feet. That's about 4 acres. For the building coverage to be no more than 20 percent of the non-residential tract, the tract must be no less than 20 acres and the residential hamlet can therefore be no more than 80 acres.

Kooltronic cannot have an 85 acre residential hamlet and they can not therefore build 255 houses.

Moreover, the concept drawing shows a substantial addition to the existing commercial building and expansion of the related parking on the site. This means that the non-residential tract has to be larger and the residential hamlet must be smaller, further reducing the number of housing units that can be built on the property. By our estimate, based on the drawing of the proposed expansion of the commercial enterprise on the Kooltronic property, the residential hamlet can only be about 60 acres. The ordinance allows between 2.5 and 3 units per acre, assuming the other measures are met. That would mean between 150 and 180 housing units. And again, only if Kooltronic satisfies at least three other criteria. This is a far cry from 255.

Not only has the Township and the Task Force assumed a surprisingly large number of housing units on the Kooltronic property, it has also assumed an extremely large number of units on the adjacent Pennytown property. The Township bought the Pennytown site for the purpose of constructing 70 affordable housing units. Now the plan is for 122 units on that site, plus retail, plus a community center. This is a dramatically different proposal, constituting 74 percent more housing units than what the Township previously told the public it would build on the property.

But not only has the Township appeared to change the plans for this area quite dramatically, it has also changed its argument. Hopewell Township bought the Pennytown property in 2009 intending to build 70 affordable housing units there as part of its affordable housing plan. At the time, the Township argued that this was a fiscally and environmentally sound way to build state-mandated affordable housing and a way to avoid a “builder’s remedy” lawsuit.

Towns that do not comply with the state’s affordable housing rules are vulnerable to “builder’s remedy” lawsuits from developers. Under previous court rulings, developers filing such lawsuits have been granted the right to build not only the affordable units at issue but also a much higher number of “market rate” housing alongside those units. The Township’s justification statement for purchasing Pennytown (which I believe can still be found on the Township’s website) explained the dreaded “builder’s remedy” possibility this way: “By including market rate units in the development, a developer could build five times the amount of housing that would otherwise be required [by the affordable housing rules].”

Allowing a developer to build 350 homes in order to secure 70 affordable units was thought to undermine the town’s rural character and potentially create a financial burden. New school and other services could cost taxpayers more than would be collected in property taxes on the new homes. Buying the Pennytown site was supposed to allow the Township to protect against such a huge new increase in housing.

Now some in the Township appear prepared to abandon the Kooltronic zoning and the original argument behind purchasing the Pennytown site.

Instead of building the 70 affordable housing units on the adjacent 25-acre Pennytown site itself or finding a non-profit organization to do so (which Township officials affirmed is still an option at the last Planning Board meeting), some in the Township now appear ready to embrace the “builder’s remedy” scenario that buying the site was supposed to avoid in the first place!

Suddenly, some of the same people who argued that buying Pennytown would help avoid builder's remedy are now arguing that for affordable housing to work, it must be integrated in a new development, 80 percent of which is "market rate" housing. This is the exact opposite of what the same people argued three years ago.

But the most disturbing part of the plan may be the Township's apparent willingness to consider abandoning the provision in its current zoning ordinance that would require Kooltronic to preserve land elsewhere in Hopewell Township in exchange for building more than the 14 houses allowed in the base zoning for that tract. After repeated requests to recommit itself to that provision, Township leaders appear unwilling to guarantee that they won't abandon this provision of the existing zoning. In fact, several members of the Planning Board and Township Committee have indicated that this provision is "under negotiation" with Kooltronic, suggesting that they are willing to bargain away a requirement that could preserve 1,000 or more acres in the Township.

In a Township that has consistently sought to slow growth, based on what we believe to be a sincere interest in not exceeding the carrying capacity of the land, we are surprised, confused and troubled.

Again, we urge the Planning Board to delay action tonight. Otherwise, the Township should either proceed with its original plan for Pennytown or substantially revise the conceptual plan to be consistent with the Township's history of careful planning and zoning that seeks to preserve its rural character and water and land resources.