

March 25, 2015

A MEETING OF THE PLANNING BOARD of the Town of Ossining was held in the Joseph G. Caputo Ossining Community Center, 95 Broadway, Ossining, New York, on the 25th day of March 2015. There were present the following members of the Planning Board:

Ingrid Richards, Chair
Greg McWilliams, Vice Chair
Dennis Kirby
Gareth Hougham
Jim Bossinas

Also Present:

Wayne Spector, Town Attorney
David Stolman AICP, PP, Frederick P. Clark Associates, Inc.
Daniel Ciarcia, PE, Consulting Town Engineer
Sandy Anelli, Secretary

High View Farm, 123A, B & C Morningside Dr. & Barnes Rd., Scoping Outline, Draft Environmental Impact Statement

Mr. Brandon Zappi appeared on behalf of Zappico Construction. He presented a Scoping Outline for their Draft Environmental Impact Statement (DEIS) for the High View Farm Subdivision. Copies of the outline were received March 16, 2015 which are on file. Copies were submitted to the Board, sent to the Town of New Castle by email and posted on the Town's website where it is available for public review. Mr. Zappi asked the Board to set a meeting date for the scoping outline and further noted they will be submitting the scoping outline to all involved agencies. He also asked the board and the public to submit their comments in writing.

Dr. Hougham provided a review memo dated March 24, 2015 which is on file and submitted to the Board. Copies of a letter from the Town of New Castle, dated March 25, 2015 from Sabrina Charney Hull, AICP, Director of Planning was also reviewed by the Board and on file.

Mrs. Richards asked Mr. Stolman to review this process for the Board and the Public. Mr. Stolman submitted and read his memo titled High View Farm – Next Steps, dated March 25, 2015 as follows:

1. The Planning Board circulates the Applicant's draft scoping outline for the Draft Environmental Impact Statement (DEIS) to the Involved and Interested Agencies and parties.
2. The Planning Board schedules and conducts a public scoping session to solicit input from the public regarding the content of the DEIS.
3. The Planning Board adopts a final scoping outline and provides the final scope to the Applicant and to all Involved and Interested Agencies and parties.
4. The Applicant prepares a proposed DEIS and submits it to the Planning Board for review.

Mr. Stolman further noted that there is a time when the proposed DEIS goes through a number of iterations. This is before the Planning Board finds the document to be complete with regards to content and accuracy. Then the Planning Board schedules a hearing on the DEIS. In the near term, the board can get a copy in Word format and review and modify it to make it more comprehensive and complete. Mr. Stolman submitted and read an example of "Notice Regarding Circulation of Applicant's Draft Scope for Draft Environmental Impact Statement (DEIS) and Scheduling of Public Scoping Session Regarding DEIS".

Dr. Hougham noted that the Town of New Castle has expressed interest and would like notification. Mr. Stolman agreed that the Town of New Castle is an interested agency and anyone that expresses interest can be notified and considered an involved agency. Mr. Kirby asked Mr. Stolman to explain what a scoping session is. Mr. Stolman said a scoping hearing is a public hearing and the subject is the content DEIS. It is just like any other public hearing where there can be a presentation at the beginning of the modified scoping outline and the public has an opportunity to say what they think should be in the scoping outline or things that are not in the scoping outline which the public thinks should be in the scoping outline to be addressed in the DEIS. It is a public hearing and the subject is the scoping outline DEIS. Mr. Kirby asked if legal notifications are required. Mr. Stolman said there are no guidelines with respect to that in Part 617 which are municipal regulations with regard to SEQR. It says that you have to give the public an opportunity to participate. Mrs. Richards opened the meeting to the public.

Mrs. Masserman, 10 Morningside Court, read her letter to the Board. In her memo, she reviewed New York State DEC Section 617. 8. and also read a letter from The Town of New Castle Planning Department which was already on file and reviewed by the Board.

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Mr. Stolman clarified that the draft scoping outline doesn't address a number of items. It is the Planning Board's obligation to take the draft scoping outline and circulate it to the involved and interested agencies and parties. That is the step that the Planning Board could do tonight. The second step is the scheduling of a public scoping session on this draft scoping outline, solicit input from the public both orally and in writing. Also, the next step is to turn the draft scoping outline into something that is completely comprehensive for the Planning Board to entertain and for the public to entertain. This would be done at the outset of the public scoping session. Then all of the input from the public and work on a final scoping outline and ultimately the Board will adopt a final scoping outline, circulate it, give it to the involve and interested agencies and parties and then the applicant will have an opportunity to work on a draft environmental impact statement.

Mrs. Masserman asked why the applicant doesn't have to put detail into the document before it is circulated. In her opinion, the draft scoping document gives no information. Mrs. Elkes, Chair of the Town's Environmental Advisory Committee, asked if there were any minimum standards that apply to the draft scope that would be circulated to the involved agencies. In response, Mr. Stolman indicated that in his experience, he has never seen a draft environmental scope prepared by an applicant rejected. The draft that the applicant puts together is worked on. Practically, all draft scoping outlines are defective and it is up to the Planning Board, the public, and professionals to turn it into a good document.

Ms. Sharratt, 84 Morningside Drive, asked if this incomplete document is what gets circulated to different agencies. Also, how will the agencies be expected to understand what it is they are reviewing if all of the information is not there yet. Mr. Stolman said the scoping outline doesn't have any substance to it. It is an explanation as to what needs to be addressed in the DEIS. Mrs. Elkes raised concern with certain language in the document with regard to lot count and trees that need to be removed during construction. She said there is a presumption in the document that goes beyond what has been discussed at prior meetings and what is reasonable.

Mrs. Richards clarified that this is a document that has been submitted by the applicant. It is the Planning Board's job and duty to listen to interested and involved agencies, and the public, and committees and put that information into the document. The applicant may not want to do that for their own reasons, but the Board is going to go through all of the information and put into our document. One of the items would be to look and demonstrate different alternative of lots, the layout, and we, the Planning Board, have to hold them to that. It is the Board's job to ensure that the document is what we want it to be. We are going to do our homework, look into the code, look at the environmental aspects, look at lot count, layout, and ensure that the applicant will do that.

Mr. David Gordon, Attorney for the Concerned Citizens of Ossining, said the document is somewhat of a boilerplate document. Further, with respect to the technical issues and ecological issues that are going to have to be in the scope which involves a very significant level of knowledge of the site and neighborhood, this is why it is so important for the applicant to do it. Mr. Gordon further noted, the onus is now on the Board and the consultants who will have to do a lot of research, over a particular site, the slopes on the site, the wetlands on the site and impacts on the neighborhood. It is going to take a lot of work. The Board will have to look at all of those issues on a very technical basis. Mr. Gordon also expressed concern with the lot count which was originally a 24 lot standard subdivision count. He said it was inappropriate for the site and then they increased it to 28 with the theory that they get four more lots because of affordable housing. He said when this issue was raised to the Board, he was told there are two ways to handle it; call a timeout, or if necessary it could be done as part of the scoping process. Mr. Gordon urged that now is the time to come up with a more realistic smaller lot count that gets around some of the more serious problems with the site including problems with the neighborhood. This was a specific situation brought before the Board a couple of months ago. This is something that is very important to the community and it is something that needs to be done.

Mr. Bill Jaenike, 12 Morningside Court, expressed that his property is located at the epicenter of this whole affair. They have the steepest slopes coming down from the Zappi property. If anyone is going to get inundated by water or mudslides, or other problems related to that, it is going to be his property. Further, Mr. Jaenike said that he was very reassured by what was said by the Board, that the document is not a final document and it is not a document that is going to constrain the Board in terms of next steps. The next step is something that will expand upon and/or give an opportunity to expand upon this document so nothing is carved in granite at this point. Mr. Jaenike also noted that the people came to this meeting fearing that whatever was said by Zappi and Co. was going to become the law of this land and that's not true which is a big relief. Also, there have been mudslides and tremendous runoff during hurricanes and rains and are very concerned that with the construction that is going to be done will so disrupt the natural land there that it will no longer be able to handle heavy runoff and bigger problems mentioned. He noted that if the plan were to go ahead as now proposed, the potential cost to the Town of Ossining could be huge, if the development is in place, Zappi is gone and now we have these problems of mudslides and the Town gets stuck with the bill. When this is further along, Mr. Jaenike requested that the Board spend some time on that subject to better understand the responsibilities of Zappi and what the consequences could be to the Town economically from the law of unexpected consequences.

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Mr. Jaenike said at the next scoping session, this will be circulated, commented on oral and written, institutional as well as individual and the scheduling of that will be such that we will all be able to read and digest what has been submitted. Mr. Jaenike then asked if the next step would be weeks away or months away.

In response, Mrs. Richards said weeks away because we want to get as much information as possible in the document. We can review it and go over it with input from the public, our committees, involved agencies and the applicant, who will assist us in creating a document that is most appropriate for this application. This is an important project to the community.

Mr. Zappi offered that section 617.8, as read by Mrs. Masserman, Subsection I states that if the lead agency fails to provide a final written scope within 60 calendar days of its receipt of a draft scope the project sponsor may prepare and submit a draft DEIS consistent with the submitted draft scope. Mr. Zappi said the intent here is to stall the project and for all practicable purposes the sooner we can get to a public scoping session, the sooner they can hear comments and address them.

Mrs. Richards clarified to Mr. Zappi that the idea here is not to stall the project. The idea is to ensure we have an appropriate document. The document submitted doesn't suffice. Now the Board will have to take time to put information into it. Also, in response to Mr. Zappi's comment, Mr. Spector said that the Board does have options with regard to the 60 day rule such as rejecting the document as of this evening. Also, if the applicant expects cooperation from the Board, their cooperation is equally expected. At this time, Mr. Zappi left the meeting abruptly.

Mr. Howard Fleischer, 22 Tavano Rd., expressed gratitude to the Board with the way they are handling the project to date. He said it is a new leaf for the future of Ossining. He further stated, the document submitted is insulting to the collective community. Also, the document should be rejected even if this is a first time this type of thing is sent back. The second point Mr. Fleischer discussed is experts, when it comes to the environmental implications and wetlands and special fauna and birds, is there going to be a specific walking of the property to take a very serious look at what's going on at the property. Mr. Fleischer asked if there has been consideration to the different type of bonds that are required for this type of project such as completion bonds, fulfillment bonds to make sure whatever is proposed by a contractor is not left abandoned. Mr. Fleischer thanked the Board.

Questions were raised again regarding the policies and procedure of handling the draft scope with regard to 60 days. Mr. Stolman referred to Part 617 and read the section that Mr. Zappi made reference to earlier. If the lead agency fails to provide a final written scope within 60 calendar days of its receipt of a draft scope (the applicant's draft scope) the project sponsor may prepare and submit a DEIS consistent with the submitted draft scope. Mr. Stolman and Mr. Spector said they will contact the Applicant's Attorney, Mr. Adam Wekstein for clarification on this.

Ms. Janet Brand, a resident of New Castle, asked the Board if an applicant submits an incomplete draft, why does the Board only have 60 days to respond and/or fix it. Ms. Brand urged the Board to say the information is unacceptable and send it back so the clock resets. This type of thing seems like it should fall on the applicant.

Mr. Bossinas said at the last meeting he said he is uncomfortable with the size of the lots that are being proposed and the number of homes. He is expecting to see the applicant come back with an alternative. He asked the audience for their patience through the project procedures and assured everyone that he is not comfortable with what has been proposed to date.

Mr. Gordon expressed concern with the applicant regarding a very aggressive approach to the land. They have a hostile approach to the level of scrutiny that is necessary as we look at this application. They have an aggressive legal theory that expands the lot count. The applicant provided a minimalist, bare bones, boilerplate, scope and now have added the 60 days along with storming out. Mr. Gordon again stated that the onus is going to be on the Board to drive the process in terms of the specifics of the scope at every level.

Mrs. Richards announced that the Board has resources and we are going to treat the project appropriately. A balancing of the needs of the applicant, the residents, the interested and involved agencies, we are committed to doing that. We are moving forward with the process and ensure that we do a diligent job in understanding all of the issues that we face.

Mr. Stolman submitted and read a resolution titled High View Farm Subdivision, Resolution Regarding Circulation of applicant's Draft Scope for the Draft Environmental Impact Statement (DEIS) and Scheduling of Public Scoping Session Regarding DEIS, dated March 25, 2015.

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Mr. Kirby asked Mr. Stolman to expand upon the 60 day clock for the Board and the audience. Mr. Stolman said the 60 day clock is something in SEQRA. All time restrictions to SEQRA can be waived by mutual consent by the applicant and the Planning Board. We intend to contact the applicant's attorney to see if they can waive that 60 day clock and we would get back to the Planning Board with a response. Mr. Kirby emphasized the fact that it is mutual consent, so if the applicant doesn't agree then there is a 60 day clock. Also, Mr. Kirby asked what the alternatives are. Mr. Spector said the Board can reject this particular document.

Mr. Bossinas said he is inclined to reject it based on the description of the property is for a cluster development 28 units and doesn't feel that this is a proper description for it. After a lengthy discussion, Mrs. Richards moved to table the resolution until the next meeting of the Planning board, the Board agreed.

Minutes

A motion was made by Mr. Kirby, seconded by Dr. Hougham and unanimously passed to approve minutes of Planning Board meeting February 25, 2015 as amended.

Adjournment

There being no further business to come before the Planning Board of the Town of Ossining, Mr. Kirby made a motion, seconded by Mr. Bossinas that the meeting be adjourned to April 8, 2015.

Time noted 8:35 p.m.

Respectfully submitted,

Sandra Anelli

Sandra Anelli, Secretary
Town of Ossining Planning Board

Approved: May 6, 2016