

May 20, 2014

A MEETING OF THE PLANNING BOARD of the Town of Ossining was held in the Ossining Public Library, 53 Croton Avenue, Ossining, New York, on the 20th day of May 2014. There were present the following members of the Planning Board:

George Weeks, Chairman  
Gregory McWilliams, Vice Chair  
Dennis Kirby  
David Krieger  
Gareth Hougham

Also Present:

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

**Jim Zappi, High View Farm, Barnes Road & 123A, B, & C Morningside Drive 24 Lot Cluster Subdivision**

Mr. Weeks opened the meeting and announced the only item on this agenda was High View Farm. Future meetings for this application will be held either at the Community Center or here at the Library. He said there are going to be certain ground rules which will be presented by Mr. Spector in an effort to keep the meeting orderly and productive.

Mr. Spector clarified that these are not his own ground rules. They are established ground rules on public meetings and proper decorum on public meetings. All comments by any individuals during the course of the meeting are to be addressed directly to the Board. The Board will then, through the Chairperson, make a determination whether to request responses from either one of the consultants or from the applicant. There should be no cross discussions between members of the public directly at the applicant or at the applicant's representations. The goal here is to maintain a level of civility on all levels as the meeting progresses so that the process can unfold properly and the record can be clear. Also, anybody who would like to make a comment can have the microphone. Everyone should give their name and address so they can be on the record and proper procedure is followed.

**Mr. Adam Wekstein**, Hocherman, Tortorella & Wekstein, LLP, representative for the applicant, addressed the Board. They are seeking a determination based on the conventional plan submitted as a maximum number of units to be developed in cluster subdivision. They believe they have shown that the plan meets the applicable regulations; subdivision, zoning, and other applicable regulations. It is the Board's choice to make that final determination. At the last meeting, there was an impression put upon the Board that somehow this will cut off public comment or be a truly defining point in the review process, when a point of fact, once given this number it will enable the applicant to go off and study both conventional and a more detailed cluster. The public will have the opportunity for comment in public hearing on preliminary subdivision approval and they anticipate doing an environmental impact statement. Then it is the Board's choice whether to issue a positive declaration. The public will have their opportunity to put their written comment on that. It is a common practice that is followed. The Public will also have an ability to comment on the final environmental impact statement as well. Mr. Wekstein asked the Board to move forward with the process. He asked the Board if the applicant should do a brief presentation.

In response to Mr. Wekstein, Mr. Weeks said this wasn't necessary. Mr. Stolman asked the applicant if there was anything new or any changes. Mr. Zappi said no. Mr. Weeks asked Mr. Spector to read a statement. Mr. Spector read the following statement:

In accordance with Section 200-31 cluster developments in the Town of Ossining Zoning Code it is authorized under New York State Town Law. The Planning Board can take into consideration, comments of the consultants in reviewing the conventional sketch plan submitted by the applicant acknowledges that utilizing the limited scope of sketch plan review the theoretical maximum number of lots that could meet the basic zoning dimensional frontage, setback, and other applicable requirements on the High View Farm property is twenty-four (24).

This acknowledgement by the Board is not an endorsement of the specific lot count for the property. Furthermore, no vesting of any rights is intended to result from this acknowledgement which is based on the limited level of review required of sketch plan. The Board further reserves its rights in connection with its review of any subsequent submission during the SEQRA process or otherwise including a potential lot number reduction if appropriate.

If the applicant so chooses, it can now prepare a cluster layout which is to be accompanied by a new full environmental assessment form.

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Mr. Weeks asked the Board if there were any comments. Mr. Kirby acknowledged understanding of the conventional sketch plan shown then asked if the applicant will be preparing a cluster layout.

In response to Mr. Kirby, Mr. Stolman said yes, the applicant will be preparing a cluster layout. Mr. Weeks asked the Board if anyone was in disagreement with the statements as read by Mr. Spector. There was no disagreement by the Board Members.

Mr. Weeks opened the meeting to the public for comment:

**Mr. Howard Fleischer:** 22 Tavano Road. Further comments of the “Concerned Citizens of Ossining”. He thanked the Board for their diligence in reviewing the applicant’s filing. He asked to the Board to consider comments they are going to be presenting, especially by Dan Chess their representative engineer.

He said, in all of our statements this evening we will make every effort to abide by statements made by Frederick P. Clark Associates, Planning Consultant from the minutes of the planning board meeting held March 13, 2013. A portion of those minutes reads as follows:

Mr. Stolman reiterated the fact that the Planning Board is an Administrative Board which has to follow to the letter of the law of the Code of the Town of Ossining. The two primary chapters that are going to be used to review this project are the Zoning Chapter and the Chapter on Subdivision Regulations, but also the plans are reviewed with respect to the Tree Protection chapter, the Steep Slopes chapter and Wetland Protection chapter. Overlaying all of this is the State Environmental Quality Review Act, (SEQRA). This will be review of all environmental matters included. The Planning Board, being an administrative board, didn’t create the zoning regulations. This was done by the Town Board, so if one was looking for the zoning to be changed on this property; that would be a Town Board matter.

With that he introduced Dan Chess. Mr. Chess’s comments were deferred to a later time in the meeting as Mr. Ciarcia, Town Consulting Engineer, was running late. He arrived at 8:00 p.m.

Mr. Fleischer introduced Mr. Jaenike.

**Mr. Bill Jaenike:** 12 Morningside Court., thanked Board for the facility and then made special mention and a thank you to myself. He referred to Mr. Stolman’s May 13<sup>th</sup> memo to the Chairman “Next Steps” point number 2 where it calls for a preliminary plat application for the cluster arrangement. He asked if this means a cluster sketch. Mr. Stolman said yes. Mr. Jaenike said they are eagerly awaiting that. The second thing is a new emphasized Full Environmental Assessment Form. It’s important the new EAF be vetted with the Environmental Advisory Committee which is an arm of the Town and report its findings to the Planning Board, before the Planning Board makes any final decisions on environmental issues or impacts. Regarding Mr. Stolman’s 4<sup>th</sup> point, Draft Environmental Impact Statement (DEIS), has the Board decided to require a DEIS from Zappico?

Mr. Stolman noted as the memo says, these are “Next Steps” we have to take these steps one at a time. The Planning Board has not decided whether or not to ask for a DEIS but tonight the applicant suggested that is likely. The Board will be asking them and they don’t seem object to doing one.

Mr. Jaenike continued with the last point; If the Board were to continue this process, as the Lead Agency, shouldn’t the Board designate the High View Farm to be a Critical Environmental Area (CEA) under SEQRA Section 617.12g. This paragraph has a list of exceptional or unique characteristics two stand out, (1) To be designated as a CEA, an area must have an exceptional or unique character covering one or more of the following (ii) a natural setting (e.g., fish and wildlife habitat, forest and vegetation, open space and areas of important aesthetic or scenic quality); (iv) an inherent ecological, geological or hydrological sensitive to change that may be adversely affected by any change.

In closing he asked Mr. Weeks to put CEA on the agenda. Again, he thanked the Board.

**Mr. Mark Hoefflich,** 98B Morningside Drive, read a statement as follows:

At the April 9<sup>th</sup> Planning Board meeting Mitzi Elkes, Chair of the Environmental Advisory Committee asked a question regarding the procedure for submitting sketch plans. She referred to Section 176 of the Town Code for Cluster Development. She asked if the sketch plan for the cluster housing was supposed to be submitted with the conventional sketch plan. Both Chairman Weeks and Mr. Stolman said that this was not the case at the April 9<sup>th</sup> meeting.

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Upon review of Section 176-11 Cluster Developments, it states “A. Procedure – In the case of a property owner applying for modifications pursuant to this section, both conventional subdivision and cluster development sketch plans shall be presented to the Planning board, instead of the just the conventional subdivision sketch plan described in 176-4 of these regulations.”

It seems clear that both sketch plans were due at the beginning of the process. We would like to see the cluster plan. When will we see the cluster sketch plan?

These plans right here were the original plans given to us on April 2, 2013 which is the same plan that is up there. This plan which was given at the first meeting hasn't changed in one year and one month. In addition, at the first meeting the applicant did submit a cluster plan. We would like a copy of that cluster plan submitted to the Town the one from April of last year, so we can review that plan and any change that the applicant would give for the future cluster plan because we had concerns at that first meeting about the cluster plan and seems to have vanished. We would like a copy of that plan submitted to the Planning Board last year so the Concerned Citizens of Ossining can review that. Thank you.

In response to Mr. Hoeflich, Mr. Weeks said, the sketch for a cluster was kind of out of the question. The simple reason is what we have been trying to do since the beginning of the process was to come up with a “not to exceed number.” So whatever cluster plan comes in it will have to be a not to exceed twenty-four. I do recall the applicant coming in with a layout with everything into one spot. Whether or not that is what they are going to come up with now, I have no idea. We didn't take that drawing. We were not given that drawing. If he has that drawing he can probably give us a copy.

**Mr. Richard Sieminski**, 52 Edgewood Road stated: I would like to thank Supervisor Donnelly and the Planning Board for conducting the informational meeting several months ago and allowing our community to share its thoughts with you this evening.

My name is Richard Sieminski and I reside within the Town of New Castle, on Edgewood Road which is nearby both Tavano and Barnes Roads. I have many concerns regarding the obvious negative impacts which this development will have upon my neighborhood's quality of life, and property values, impacting the tax base of Ossining's School District, within which I reside.

My understanding is that although a conventional sketch plan has been submitted for 24 homes, cluster homes ultimately are being sought for 5,000 square foot lots, and that the number of homes to be clustered will be established based upon how many homes theoretically can be approved within the conventional site plan, and that these conventional homes must theoretically be in compliance within the relevant R-40 zoning. If this is not the case, then I request the Planning Board clarify this point in the near future so we better understand how the not to exceed number has been established.

Clustering is inherently unpopular due to the inconsistent use of land relative to its surroundings. As such, clustering detracts from surrounding property values, regardless of whether zoned as R-40, R-5, or anything else. However, as we learned at the informational meeting, property owners cannot legally be denied their right to the cluster development of their property, even to the detriment of their neighbors.

So then, the question arises: How many units are allowable under the law for the High View Farms development?

We're now aware that one of the 24 units is situated directly above the New Croton Aqueduct, and is not allowed as such by the NYC Environmental Protection Bureau of Water Supply. According to Mathew Warne, the Acting Deputy Chief of Eastern Operations, ( (C) 917.734.9666 | [mwarne@dep.nyc.gov](mailto:mwarne@dep.nyc.gov) ) “no permanent aspects of the project may be built directly over the aqueduct”. The Board needs to clarify whether this particular unit and any other related structures must be removed from consideration, when reviewing the conventional sketch plan in order to determine the allowable number of theoretical units.

According to the Ossining Town Code regarding street layouts (in Chapter-Section 176-14 item C:  
“Minor streets shall be so laid out that their use by through traffic will be discouraged” .

Development of High View Farm will conflict with this section of the town code since residents from the surrounding areas will be encouraged as a convenience, to use BOTH Tavano Road and Morningside Court in order to access the North State Road commercial district. Currently the residents of Vails Lane, Carriage Hill, Derby Lane, Taconic Road, Inningwood and Edgewood Roads would use either Saddle Ridge or Barnes Road. It will be much quicker for them to use Route 133 to access Tavano Road, and so forth.

Of greatest concern is that the cul-de-sac roads which are being proposed run ***immediately adjacent*** and parallel to the back yard property lines of many adjoining homes located on Tavano Road and Morningside Court.

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As such, this site plan raises several legal concerns:

Homes on these currently existing roads would have new “frontage” created in their back yards as a result of the cul-de-sac roads being built. I spoke with Town of New Castle’s engineer (for a neutral opinion), who tells me that double frontage would be illegal, or at least in New Castle.

With roads as such, those residents would be forced to surrender through *eminent domain*, to a new *utility easement* or right of way (to accommodate snow plowing, Con Ed, Cable & Telephone services, etc.) regarding the new roads. Such right of ways are deemed to run 25’ outward, from the center of public roads, and would encroach ~ 10’-15’ into their property, which means that trees and other plantings would now exist at the mercy of the town (This is not a good thing, as I’ve personally had specimen trees demolished by Con Ed).

Per a conversation I had with ‘Sandy’ from Ossining’s Planning Department: The setback requirement for structures attached to a primary residence is 38’, but detached sheds can be constructed up to 10’ from the rear property line. Therefore it would appear that any such structures would become illegal (through eminent domain) under the current plan. Even if these cul-de-sac roads are deemed to be just a driveway, driveways must be at least 4’ from the boundary line, which is not how the sight plan depicts these roads.

Sketched as they are, these new roads apparently need to be squeezed up against the adjoining property lines and away from the core wetlands at the center of the sub-division in order to create the 24 plots. To avoid creating new frontage and the associated utility rights of way for the homes on Tavano Road and Morningside Court, the center of these new cul-de-sac roads should be set back at least 25’ from the edge of adjoining properties.

Moving the road back from boundaries as such will either nullify the concept of this sub-division, or would significantly increase the width for plots of land (reducing the number of plots) in order to attain the theoretical acreage within R-40 zoning.

In my opinion, the Town of Ossining will exercise theoretical eminent domain upon the current residents of Tavano and Morningside, by not accounting for the theoretical utility easements that would be entailed with the conventional sketch plan currently on file. This land is not being developed to benefit the general public, which, is the only legitimate reason for exercising eminent domain. Therefore I suggest the Planning Board take this into account prior to determining the theoretical allowable number of units.

Lastly, The Frederick P. Clark Associates memo presented by David Stolman at the 11/13/13 Planning Board meeting states:

“Purposes and Intent of Clustering - A. The general purposes and intent of cluster development are to enable and encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economical provision of streets and utilities, to preserve the natural and scenic qualities of open lands, to protect areas of meaningful ecological value and to reserve suitable lands for park and recreation purposes.

Planning Board's Authority – B. The Planning Board is hereby authorized, simultaneously with the approval of a subdivision plat, to modify applicable provisions of this chapter, subject to the conditions set forth herein and in § 281 now [278] of the Town Law.

For reasons unknown, this memo (presumed to be unbiased) fails to state the full content and spirit of section 278 which is highly relevant, as follows:

“1) When applied for by the owner of the land to be subdivided if, in the judgment and discretion of the Planning Board, its application would benefit the Town by satisfying one or more of the purposes set forth in Subsection A above; or

2) Where the Planning Board determines that its application would benefit the Town by satisfying one or more of the purposes set forth in Subsection A above and where the Planning Board determines that one or more of the criteria for cluster development, as set forth in the Town of Ossining Land Subdivision Regulations, [2] would be met. In this case, the Planning Board may require the owner of the land to submit an application which reflects such modifications of applicable provisions of this chapter.

[2]: Editor's Note: See Ch. 176, Subdivision of Land.

This brings us back to cluster development 176-11 B. “...Board shall determine that the modifications would benefit the Town by satisfying one or more of the purposes set forth in 200-31A of the Zoning Ordinance and that the modifications are necessary to satisfactorily achieve one or more of the following specific objectives”

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The preservation of a unique or significant natural feature of the site, including but not limited to a vegetative feature, wildlife habitat, surface water supply, underground aquifer, endangered species, rock formation etc.

Preservation is the key word here. We have already pointed out that this sketch plan does not accurately depict the effects on the wetland. Grading, on Road D, will extend an additional 20 feet into the wetlands. This road will be present on any cluster plat (preliminary or final). This sketch plan shows basins in moderate to extremely steep slopes (with the potential for mud slides). The EAC cited many reasons that this plan should be better scrutinized.

In the EAC's 9/19/13 review of the Environmental Assessment Form submitted by the applicant ( Zappico ), it states "...it's hard to imagine that the costs and impact from this development will not significantly, adversely impact open space, water quality, and flooding, the cost of which will very likely exceed any benefits the Town could expect from the subdivision."

Thanks again for your consideration of these comments.

**Ms. Sara Brewster:** Liaison to the Millwood Task Force on matters concerning a proposal submitted by James Zappi, PE for a 24-lot Subdivision known as High View Farm.

### Introduction

As a resident living in the West End of the Town of New Castle I attended the April 9, 2014 continued public hearing regarding the above application. I was concerned about off-site impacts that could occur on lands in our town. Subsequently, at the request of New Castle Town Supervisor Robert Greenstein along with Millwood Task Force co-chairpersons, Mike Stern and Dianne Kleinmann I agreed to act as a liaison for the Task Force for this application.

### Background

For 18 or more years, I served as both a member and/or chairman of the Millwood Task Force. The Task Force was created to act as an advisory to the Town Board, Planning Board and others on matters that could have an impact on the Hamlet of Millwood and the area known as the West End. I also served on the New Castle Planning Board both as a member and as its chairman.

### Town of Ossining Planning Board Meeting of April 9, 2014

At this meeting, I asked Chairman Weeks whether or not the Town of New Castle, as an adjoining municipality, was receiving copies of material regarding this application. Chairman Weeks replied "No" but agreed that it would be a good idea. On April 11, 2014, I wrote to New Castle Planner, Sabrina Charney Hull advising her of your comment. Has any action been taken regarding distribution of these documents?

The Millwood Task Force, believes that at a minimum, our town should receive copies of the sketch plans for both the conventional and cluster subdivision layouts for the proposed 24-lot subdivision, copies of topographical maps showing steep slopes, and the extent of the wetlands, water courses and water bodies etc. A copy of the report made by your Environmental Advisory Committee should also be included.

As is appropriate, the Task Force is primarily concerned about possible off-site impacts from this proposal. The report by your EAC suggests the "severity of flooding which already occurs along the tributaries and rivers in neighboring residential areas, including Route 100 and along Barnes Road in New Castle, could be exacerbated. The EAC report also states that this site is adjacent to Ryder Park and is a significant component of an open space corridor that includes Teatown Lake Reservation. As you know, a portion of Teatown Lake is in New Castle.

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At this time, I have several questions:

1. Has the applicant filed a Wetlands Permit Application? If so, when and how can we obtain a copy?
2. At the April 9, 2014 meeting, we heard Mr. Zappi say that the EAC would now have access to this site. If so, have members of the EAC made a field trip and has it had an opportunity to file an updated report?
3. Chapter 105-3, Section A of your Wetlands Ordinance states "the approval authority can seek outside consultants to determine the boundaries of the wetland(s) and buffer area(s). The section also states in part that **"The approval authority may also consult, at the expense of the applicant, and/or may also require the applicant to consult with biologists, hydrologists, soil scientists, ecologists/botanists or other experts and professionals as deemed necessary to make this determination.**  
Question: What is the Board's position on this option?

#### **HIGH VIEW FARM POTENTIAL IMPACT OF BLASTING ON TOWN OF NEW CASTLE RESIDENTS LIVING IN THE VICINITY OF HIGH VIEW FARM**

The Environmental Assessment Form filed by the developer of the proposed 24-lot subdivision known as High Farms acknowledges that blasting will occur during construction. See page 6 of 21 in the submitted Environmental Assessment Form – question number 8. Given the proximity of this site to homes in New Castle. I believe, based on experience that residents living in New Castle could be adversely impacted.

Blasting is an inexact science and damage can occur both on and off-site, frequently at a considerable distance from the blast site. At the meeting of the Millwood Task Force that took place in New Castle Town Hall on May 5<sup>th</sup>, 2014, I voiced my concerns. An engineer on the Task Force supported my concerns and iterated that blasting is more of an art than a science and depends largely on the care and control of all blast charges. Careful monitoring is essential and even then contractors can be less than meticulous as they hasten to get the job done.

I have lived in the West End for more than 46 years and in the early 90's, IBM constructed a sewer line along Pinesbridge Road down into the Ossining Sewer Treatment Plant. I should point out that IBM was not directly to blame but nevertheless, during construction there were a number of incidents of poor practices by the construction company. Basically, it was a nightmare. Four homes along the route were damaged and at least one home required more than \$4,000 worth of repairs. Noise, dust and inconvenience were constant.

In addition, a home at the corner of Pinesbridge Road and Highview Road not only sustained structural damage but also had fly rock land in its yard – the direct cause was failure by the construction employees to use the required protective mats and a failure to control the size of the charges.

Unfortunately, damage is often not immediately apparent because of the concussion element. I can speak from personal experience regarding this unpredictability. I lived through WWII bombing raids. On occasion, just like a tornado, one side of the road could lose all its windows while homes across the street remained unscathed. The existence of the NYC Aqueduct on the site is troubling, and I trust that the NYC DEP will be kept informed of blasting potential as this process moves along.

A copy of a letter dated April 11, 2014 to Ms. Sabrina D. Charney Hull, AICP, New Castle Town Planner was attached to Ms. Brewster's comments as follows:

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Sara L. Brewster

51 Grace Lane, Ossining, NY 10562

April 11, 2014

Ms. Sabrina D. Charney Hull, AICP

New Castle Town Planner

200 South Greeley Avenue,

Chappaqua, NY 10514

Dear Ms. Charney Hull,

**Re: High View Farms, Barnes Road**

On Wednesday, April 9, 2014, the Town of Ossining 's Planning Board held a continued public hearing on an application known as High View Farms, Barnes Road. The developer is proposing a subdivision of 24 houses on 31 acres. Cluster rather than a conventional layout is currently his first choice.

An article in the Chappaqua Patch of April 7, describes the property as having at least five acres of wetlands plus steep slopes. It is also currently part of the open-space corridor recommended in *Open Space 2025* by the County Planning Board. The New Croton Aqueduct runs under the property.

As a long time resident in the West End, I attended this hearing because of my concerns for New Castle residents. At the appropriate time, I asked the Chairman, Mr. George Weeks, whether or not the EAF and other relevant documents had been shared with New Castle. He replied "No" but agreed that this would be appropriate. As this proposal has been in the pipeline since late Fall 2013, I am surprised they have not shared this before as clearly there could be negative impacts in the area of Barnes Road.

After this meeting, I shared my concerns with Millwood Task Force Co-Chairman Dianne Kleinmann and Mike Stern who have asked me to send you this letter. You can reach me at [sara.lbr@verizon.net](mailto:sara.lbr@verizon.net).

Thank you for your help in this matter.

Sara L. Brewster

Former Chairman of the Millwood Task Force and New Castle Planning Board.

Ms. Brewster thanked the Board.

**Mrs. Barbara Chakravarty:** 33 Stonegate Road, a resident of Ossining for twenty years has noticed how many Townhouse complexes have grown up here and how there has been no response from the Village to provide additional parking at the station. If you are limiting the application to twenty-four units most of us have two cars, so we are talking about fifteen more parking spaces required. Is the builder proposing in any way to take care of the need for extra parking? I am talking about a two level garage. I know it is in the Village and we are from the Town outside, but we all commute from the same place.

Her second question: When I was looking at the rating of High Schools and what percentage the population of Ossining lives under the poverty line. We were quite high on the list followed only by Peekskill and 16% of the people that live in Ossining, live below the poverty line. If this were to be a Townhouse development, like Fox Hill or some of the others I would ask you to please consider setting aside at least two units for people who cannot afford the housing they have now. Thank you.



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**Mr. Daniel Chess:** 19 Tavano Road submitted and read a letter dated April 29, 2014 as follows:

Dear Board

My name is Daniel Chess. I live at 19 Tavano Road. I am an environmental and licensed professional engineer. My apologies for not making the last board meeting.

At that meeting, Wendy Masserman presented my comments regarding the sketch drawing submitted by Zappico on the proposed High View Farms subdivision. Schematically, it appears that the applicant can carve out 24 lots but in practicality there are a number of issues with the constructibility on this land.

There are 4 stormwater retention basins proposed. Mr. Ciarcia's letter identified only 3 basins. Basin one is on a steep slope with a bottom elevation of 490 and a top elevation of 514. This is a 24-foot change in elevation across 140 feet of length. This basin is located between a proposed house and road. If the retention basin is 10 feet deep, would it not require a retaining wall or stabilized rock cut of over 30 feet high?

The other three basins are also located on sloped topography. Is this the best location for the stormwater retention basins or were they placed there out of convenience?

The wetlands buffer line extends right to the proposed houses on Lots; 6, 21, 22, 23, 24. How would a developer propose excavating the foundations and grading around the houses without excavating or grading within the wetland buffer? In my many years of experience in construction, this would be virtually impossible to do practically.

The subdivisions regulations Chapter 176-18 states that "driveway grades between the street and the set back line shall not exceed 10% " With a set back limit of 40 feet, this would allow 4 feet of elevation change. Four feet would be two contour lines. How would driveways on Lots 3, 6, 10, 11, 12 and 21 comply with the subdivision code?

Lastly, what is going on with the expansive wet meadow and wetlands. I highlighted the 518 contour (figure 1) around the wetland and that raises the question, "Where is the outlet and controlling structure for the wet meadow?" From aerial photographs there appears to be a barrier or damming structure on the Town of New Castle portion. How is the water elevation controlled? We do

see a water feature on the southwestern side of the meadow labeled "water course" but it disappears after a hundred feet. We know that water flows perpendicular to the topographic contour but in one area water has the potential to flow in two directions.(figure 2) Could this be the source of the springs on Morningside Court? Also there is not a well developed surface expression of the water course. Could the water be going underground and be the source of the water for the three pocket wetlands down gradient?

The biggest concern I have is the grading the applicant is proposing between stations 3+00 to 5+00 on Road A. As we see on the profiles, he is proposing a very large road cut. Where is the water going to flow after the road is cut in? This is the same critical area that is supplying water to the pocket wetlands. It also looks like all the wet meadow flow and stormwater is going down to Morningside Court. Where is the subsurface water going to go after the water main is trenched even deeper? It is essential to remember that this road will be a constant in either the conventional or cluster plans. These are important questions that need to be answered. Some of these issues, whether conventional or cluster will be very difficult to mitigate without extensive engineering studies. This project as proposed rises to the level of a full SEQRA review.



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The biggest concern I have is the grading the applicant is proposing between stations 3+00 to 5+00 on Road A. As we see on the profiles, he is proposing a very large road cut. Where is the water going to flow after the road is cut in? This is the same critical area that is supplying water to the pocket wetlands. It also looks like all the wet meadow flow and stormwater is going down to Morningside Court. Where is the subsurface water going to go after the water main is trenched even deeper? It is essential to remember that this road will be a constant in either the conventional or cluster plans. These are important questions that need to be answered. Some of these issues, whether conventional or cluster will be very difficult to mitigate without extensive engineering studies. This project as proposed rises to the level of a full SEQRA review.

**Ms. Ingela Rodriguez:** 69 Morningside Drive submitted and read the following report dated May 20, 2014:

Good evening,

My name is Ingela Rodriguez and I live at 69 Morningside Dr. I have lived by Ryder Park for over 25 years. I have seen firsthand that the water level is higher than it used to be. The ground is wetter since many trees were taken down two years ago to make room for the sewer line that goes through the park. I have serious concerns that more trees will be taken down for this development and that will have an even more negative impact.

I am very passionate about plants and animal life. I am concerned that the Environmental Assessment Form submitted by the applicant does not accurately list all the plants and animal life that could be affected.

In a quote from the Environmental Committee Report dated September 12, 2013:

-The omission of spring ephemerals and commonly found native and invasive plants in existence in surrounding properties could indicate an incomplete listing; Scientific identification, to include genus and species, of plants and animal

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species is required for identification on the New York State Dept. of Environmental Conservation (NYSDEC) or Federal or State endangered or threatened species list.

NYSDEC Protected species: <http://www.dec.ny.gov/animals/7494>

Federal protected plants: <http://www.dec.ny.gov/animals/7133.html>

New York State Protected native plants: <http://www.dec.ny.gov/regs/15522.html>

Michael J. Rubbo, Ph.D., Director of Conservation Science, Teatown Lake Reservation, stated on June 26, 2013:

“(Regarding the fact that the plant list seems to omit spring ephemerals and therefore would be incomplete), frequently consultations only go out once or so and depending on the timing of the visit they will miss species. It would be up to your Planning Board to require additional visits.”

I am begging the board to take a very serious look at the property that is the home for a lot of the wild animals like deer and coyotes, and also where a lot of plants might grow that are now endangered.

Thank you for the opportunity to speak at this meeting.

**Mrs. Wendy Masserman:** 10 Morningside Court. At the April 9<sup>th</sup> Planning Board meeting Mr. Stolman from F.P. Clark said we need to put a hypothetical number or float a number out there. We’ve just listened to Dan Chess speak. Dan has identified 9 houses that are not what he would consider, and he is an experienced environmental engineer, viable. If you look at the Planning Board meeting minutes dated 4/10/13 Chairman Weeks stated, there will be a determination as to whether or not this is a viable plan for the number of lots shown. Dan has pointed out several issues with a sketch plan that bring into question the number of lots shown. If we remove the 9 houses, how about a hypothetical or theoretical number of 15. Nine or ten houses, even if it is eight houses, we are getting a hypothetical theoretical number much less than 24. From the 4 basins that are set in moderate to steep slopes, and I need to point out Mr. Ciarcia’s letter of April 9<sup>th</sup> only mentions 3 slopes, his review was far less complete than what we have tonight. I think he needs to scrutinize this plan a little bit more. The EAC, as quoted by Mr. Sieminski, has already said that we are going to get less out of this. The Town is not going to get enough out of this for the aggravation and the possibility of the damage to the slopes.

I am asking the Planning Board to consider the higher elevations on the slopes in the need to balance the eco system before it allows the applicant to go to 24 house cluster. I believe that given the sensitive nature of this site and the potential for negative impacts both on and off site. I think it is time for the Planning Board to make a positive declaration under SEQRA. I also have one more question and it goes to Mark Hoeflich’s question about Section 176-11. The cluster sketch plan has not been submitted and according to 176-11 it is at the beginning of this process. That is when we should have seen this cluster plan and it should be on topography so

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that we can see the impacts on these slopes and on these wetlands. Again to tell you, it says that both conventional subdivision and cluster development sketch plans shall be presented to the Planning Board. Shall be presented! Not may be presented, instead of just the conventional subdivision sketch plan. Instead of just. We should have seen both. They should have been put in at the beginning of this process. This is code. You answer to the law. I am asking that before you make any further decisions you insist that we get that plan. Thank you.

**Ms. Ellen Joseph:** 45 Morningside Drive. Ms. Joseph has lived there for 28 years. Her question is to the Chairman: At a previous planning board meeting Mr. Spector said that the planning board is not required to agree to 5,000 square foot lots. She asked the Board if they have decided roughly what square footage they will accept.

**Mr. Chris Wyser-Pratte:** 9 Barnes Road. Mr. Wyser-Pratte made the following comments: I am not going to talk about theory. I am going to talk about a couple of things that are of great interest to me from an empirical standpoint. Have you ever seen water come up through the street? Paving? Go to the corner of Barnes Road & Route 133 there is a place that has been paved over last year, and the year before, and the year before that, and the year before that, and I assume they will do it as soon as they get around to it this year. Every winter it oozes ice and if you don't prepare for it you slide into 133. Every spring during the heavy raining season, it is just gushing water. Why? I gather there is water down there. There is an aqueduct too. There is something called the New Croton Aqueduct which supplies 10% of the water to the City of New York. New York shut down agriculture at Ulster County where I used to live about 30 years ago under the law. There used to be large scale farms up there. There aren't any more. Why? Too much animal shit! (excuse me). The simple fact is if you read the law amended in the late 80's New York City has total control absolutely total control over everything done in certain specified distances not only on top of the Croton Aqueduct, distances from aqueducts and distances from underwater emanations. I think that would include the New Croton Aqueduct. It has control over the amount land which is entitled to be non-permeable within those distances including; roofs, driveways, roads, etc. I have a question for you folks. When the City of New York finds this water has been poisoned by some bozo in this development which is not supposed to be there and sues us for however many thousands of dollars per day that it is entitled to. Sues you personally within your roles, threatens to bankrupt the City with its fines. Who's going to indemnify you and us?.... Mr. Zappi? Thank you.

**Ms. Sandra Dellano:** North State Road, I am asking this Board to look beyond this development and look at the full impact. In other words think out of the box. Because as I stand here today, I have had report an environmental issue coming through my property onto North State Road. I have got soap coming down. From where? It's coming from above. Now it is up to the powers to be to find out where it is coming from. Again, it's an environmental issue. It's not just this development. It is going to impact everybody especially those at the bottom.

**Mr. Howard Fleischer:** I just have one follow up, if you don't mind. In light of all of the points that have been brought to the table. Some new discoveries, some new critique of the submitted plan. I would ask the Board to reconsider their determination of not more than 24 home allowance for this cluster development and go back into session and review all of the facts that have been presented today and please give the community to be heard, evaluated and then come back with a new decision whatever it may be at the next meeting.

**Mr. Michael McDermott:** Litigation Counsel for Mr. Zappi. He asked what the proper spelling of Mr. Chess? Then he asked Mr. Chess; In what state is he licensed. **Mr. Chess** replied, in the state of Connecticut.

**Mr. McDermott:** Not in New York? Mr. McDermott told the Planning Board that they cannot be sued personally. They are a volunteer Board.

**Mr. Wekstein:** I have a couple of brief comments. As the applicant we are going to be constrained by the empirical evidence that comes through the process. What I have heard tonight is speculation, guess work. The detail they have on this sketch plan is what was required by our ordinance to make a determination. You don't do an analysis based on this of everything that might turn up at the end of the process being turned on its head. I would also like to say to the extent people are threatening the Board about watershed impacts this property happens not to be on the New York City Watershed. The aqueduct runs through, but the drainage does not go into the New York City water supply. Again, there are probably a dozen statements that were made tonight that just have no basis whatsoever. There are others that we will be required to study and we will study. We are not trying to hide from you. It is the time and the place and I think your Board determined to allow us to get on with that study and see what impacts there are. The significance of it so the Board can make a judgment.

**Mr. Andrew Pointer:** 19 Claremont Road, I have lived here all my life. My daughter and myself are generation 6 and 7 of my family in this community. The thing that bothers me most when I drive around this community now is the amount of development all over. We've heard about birds, plants and everything, the bottom line is the sewer treatment plant that we now have that all of our homes flow into is barely adequate, if it is at all. Who's on the hook to modernize the sewage treatment plant when that time comes.

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I grew up on the Hudson river and at times of heavy water there's an awful lot of rain water that finds its way into the sewer system via sump pumps and everything else. We get overflows of sewage right outside the Ossining sewage treatment plant. With all of the developments, this one and all the other ones that have come and gone in recent times it just seems to me that not enough attention is being paid to the people that actually live here and it's all about bringing in more and more people here so it increases coughers of the tax dollars. I don't really understand it.

**Mr. Weeks** thanked the public for their contributions and questions and reports in writing. These comments will be taken into consideration. When this applicant is ready to appear again with the cluster, we will have another meeting here or at the Community Center. The meeting will be advertised. The cluster plan will be a not to exceed number of 24. Twenty four is the cluster.

**Mrs. Masserman:** Not taking into consideration the houses as stated by Mr. Chess and the people here. The EAC have already said there are issues with this plan. How can you say go ahead with 24 houses when we're pointing out all of these issues. We've identified 8 houses, 10 houses that are questionable. Why aren't you identifying them?

**Mr. Ciarcia:** The key to this whole thing is the way the process works. This is a sketch plan. There is a big distinction between a sketch plan and an actual plan. A sketch plan doesn't have the grading. We can debate the storm water around and around, but we never get there until you have real plan, fully graded, utilities designed and so forth. The only way we get there is to have a number so that we can make the comparisons. Then there will be a grading plan and if some of these lots are not viable then that is going to shake out during that detailed analysis.

**Mrs. Masserman:** I understand that. Mr. Ciarcia what I'm saying to you is, we were told that this would be viable by the means that you can do what you are showing us here. That's what viable means. We have already pointed out there houses on the buffer line that cannot be excavated. They need to be taken off the subdivision. These need to be buildable. You can't just say the grading is wrong. When he gets to cluster them he's not going to be dealing with the slopes so it's okay he's going to fit his 24 in the flat areas. That's not the issue. This sketch plan, we were told from day one that this would have to be viable. We are questioning the viability and you are not listening to us.

**Mr. Ciarcia:** I am listening. We are losing the understanding of what a sketch plan is. We can debate whether there is going to be blasting, whether there is going to be hammering, they could build smaller houses. We are not looking to take it to that level.

**Mrs. Masserman:** I am not questioning the detail. I am questioning the viability of the houses like they are laid out. You cannot dig out a buffer, so that house has to come off.....

**Mr. Ciarcia:** You realize the Planning Board can issue a permit in the buffer. It is regulated, not prohibited.

**Mrs. Masserman:** Mr. Chess has identified driveways that are not to code. He's identified at best basins in slopes that can't work and Mr. Ciarcia we have talked about these slopes you and I and the last time we met I said it will collapse the slope, you said so it will collapse. We live below those slopes they can't just collapse.

**Mr. Ciarcia:** That is not what I said to you.

**Mrs. Masserman:** I would ask the Board to remove the houses that are not viable.

**Mrs. Chakravarty:** A very short comment which goes to viable drawings. I have had my training as an architect, at the Pratt Institute and I have done a lot different types of work. If we were in an architectural studio that would be on yellow trace paper. It means ideas about. The ideas are viable because we can talk about them and they are manipulatable and re-designable. That is not a blueprint. That is an idea drawing. This is a conceptual drawing. A valid conceptual drawing. So don't get hung up on which house is there and what is here because that is not what that drawing is about. It is about ideas which is by the way the land has been cut up. It is a suggestion for how the lots might live together. It is a preliminary kind of drawing. If I were to go back to my school days that would be a picture drawing. The final drawing will have to have a topographical drawing, all of the drainage, everything necessary to protect the environment and the aqueduct. There would be a site plan that shows exactly where the aqueduct goes and where the natural springs are. So don't get hung up on this. This is an idea drawing which brings us together in order to talk.

**Mr. Hoeflich:** I am also an architect in the state of New York. That plan is the exact same plan that he had last year. Every single person in here who has spoken. That's 24 he's asked for. You have got to drop that by at least 10 because if it is not dropped by at least 10....Where is the cluster housing drawing?

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Why has he not shown that again? We want that on record so we can study it. So 24 minus 10 brings it down to 14. That is all he is permitted to put on that property. Fourteen, not 24!

**Ms. Brewster:** Asked the Chairman what the process is from here on in so they have some idea what the next meeting will consist of.

**Mr. Weeks** referred to Mr. Stolman's memo about Next Steps.

**Mr. Stolman:** There is a memo on the Town's website that talks about next steps. There is also a copy of a flow chart on the Town website which is the SEQRA process so you can see what I am saying if you go to the Town website. Mr. Stolman read the memo:

Date: May 13, 2014

Subject: **Highview Farm Application – Next Steps**

As requested, we have prepared this memorandum for the purpose of outlining the next steps in reviewing the Highview Farm application, which would be for the:

1. Planning board to give the applicant a theoretical maximum number of lots/dwelling units to use for the applicant's preparation of a cluster layout.
2. Applicant to prepare and submit a preliminary subdivision plat application which clusters the proposed lots, along with a *new* Department of Environmental Conservation Full Environmental Assessment Form (EAF) with appropriate attachments.
3. Planning Board to refer the application and EAF to the appropriate entities in accordance with the Town code and other laws.
4. Planning board to determine whether it will require that the applicant prepare a Draft Environmental Impact Statement (DEIS) in accordance with the requirements of the State Environmental Quality Review Act (SEQRA).
5. Planning board to continue processing the subject application in accordance with the Town Subdivision Regulations, SEQRA and other applicable regulations. Please see the SEQRA flowchart which accompanies this memo.

**Mr. Weeks:** That will end our session. The planning board has a couple of housekeeping items to do. Thank you.

### **Minutes**

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Mr. Krieger made a motion, seconded by Mr. Kirby, and unanimously approved to adopt the draft of Planning Board minutes for the meeting held April 9, 2014.

### **Adjournment**

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There being no further business to come before the Planning Board of the Town of Ossining, Mr. Kirby made a motion, seconded by Mr. Krieger that the meeting be adjourned to June 11, 2014.

Time noted 9:00 p.m.

Respectfully submitted,

Sandra Anelli, Secretary  
Town of Ossining Planning Board  
APPROVED: June 11, 2014