

April 8, 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 8th day of April 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. Stolman submitted and reviewed a memo dated April 8, 2015 regarding High View Farm Subdivision Application SEQRA as follows:

The applicant submitted a draft scoping outline stamped "Received" by the Town on March 16, 2015 for the Draft Environmental Impact Statement (DEIS).

Part 617.8(i) states:

"(i) 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 EIS consistent with the submitted draft scope."

The Applicant's Attorney has informed me that the Applicant is not willing to give the Planning Board an extension with respect to the 60-day time frame quoted above.

Further, the SEQR Handbook published by the New York State Department of Environmental Conservation states the following:

"30. What can the lead agency do if a project sponsor submits an inadequate draft scope?"

"The regulations do not allow the lead agency to reject a draft scope, so the lead agency should simply proceed with the scoping process and offer the draft scope for public comment as received. The lead agency can state in any notices and cover letters that the draft scope is, 'as received', and that the lead agency anticipates making substantial changes before issuing its final scope." (page 115)

Therefore, the Planning Board should:

1. Circulate the Applicant's draft scope to the other Involved and Interested Agencies and parties as soon as possible;

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2. Schedule and hold a public scoping session reasonably soon;
3. Convert the Applicant's deficient draft scope into a complete and comprehensive final scope;
4. Adopt the final scope; and
5. Provide the final scope to the Applicant within the 60-day time frame in accordance with the SEQRA regulations.

Mr. Spector read additional provisions from the SEQRA Handbook as follows:

The regulations do not allow the lead agency to reject the draft scope. The lead agency should simply proceed with the scoping process and offer the draft scope for public comment as received. The lead agency can state in any notices and cover letters that the draft scope is "as received" and that the lead agency anticipates making substantial changes before issuing its final scope.

This approach may well require the lead agency to devote additional effort to developing or soliciting specifications for sections of the EIS, for example; criteria for a traffic study, or designating sensitive receptors for a visual impact analysis. In any event, the final scope is the lead agency's responsibility so it must include all elements that the lead agency believes are necessary to thoroughly analyze all identified potential adverse environmental impacts of the proposed project and alternatively that there is a reasonably good communication with the project sponsor. Lead agency staff may wish to informally advise the project sponsor of weaknesses in the draft scope, explain that these could create confusion or added effort for all involved during the public review and offer the project sponsor to resubmit a revised draft. For this approach to be feasible and effective, the project sponsor and lead agency will also need to develop a mutually agreed upon revised schedule for public comment and completion of the final scope. Should the project sponsor choose to resubmit, the lead agency may wish to provide the project sponsor with informal comments or other direction in preparing a revised draft scope.

In deciding which course to take in handling an inadequate draft scope, the lead agency should evaluate all aspects of the project. In a case of a highly contentious proposal or sponsor, where the lead agency believes that any resubmitted draft would not be a significant improvement over the original draft, proceeding straight to public comment and developing an explicit and prescriptive scope may be the lead agency's most effective choice.

Mr. Richards asked the Board if they are in agreement that it is in the best interest of the Board to move forward and develop a proper scope for the project at this time. Mr. Kirby said yes, but recommended going to public comment as soon as possible. Mr. McWilliams raised the question with regard to the resolution at the last meeting for this scope. He asked if this something that has to be done to immediately to get to the public scoping session. Mr. Stolman said yes and recommended adoption of the resolution.

Dr. Hougham reviewed that Board members will be sending in their comments concerning items that they would like to see included and the Board will get copies and be able to vet drafts as they go along. He asked how quickly Mr. Stolman's office could compile those comments into a first draft which could be passed around for vetting and commenting by the Board, in keeping with the May 15th deadline and open public comment periods, the Board should decide on a time when there is a working draft to comment on among the Board. Mr. Stolman said it would be about two weeks. The intention is to have a complete and comprehensive draft scope will be provided for the public scoping session and to go over that complete and comprehensive draft at the outset of the public scoping session and then give the public and the Planning Board an opportunity to add in anything that is left out.

Mrs. Richards moved to the set the public scoping hearing for April 29, 2015, the Board agreed.

Mr. Stolman submitted and reviewed High View Farm Subdivision, Resolution Regarding Circulation of Applicant's Draft Scope for Draft Environmental Impact Statement (DEIS) and Scheduling of Public Scoping Session Regarding DEIS, dated April 8, 2015.

A motion was made by Mr. McWilliams, seconded by Dr. Hougham and unanimously passed to adopt the **High View Farm Subdivision, Resolution Regarding Circulation of Applicant's Draft Scope for Draft Environmental Impact Statement (DEIS) and Scheduling of Public Scoping Session Regarding DEIS**, dated April 8, 2015.

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The public scoping session is set for April 29, 2015. Mrs. Richards asked Mr. Stolman to clarify the process and if the scoping session can be advertised the same way a public hearing would be handled. Mr. Spector said there are no specific notice requirements under the DEC requirements. It is up to the Board to determine how best to notice it. Typically, interested and involved agencies are defined. Also, a copy will be provided on the Town's website. Dr. Hougham suggested following standards that the Town uses for regular public hearings. The Town's current requirements are sending a notice to all property owners which lie within 200 feet of any lot line of the property. The Board agreed this would be appropriate.

Mrs. Richards asked Mr. Stolman to review what would be included in the scoping document and what it means for the DEIS. Mr. Stolman said Part 617 of the NY Code of Rules and Regulations defines what must be contained in an environmental impact statement. The scoping outline has to cover those things that are required to be covered in Part 617, for example; there is a chapter on alternatives and we're going to explain to what level of detail those alternatives must be analyzed and we are going to list the various alternative as far as lot size project layout, a variety of things and a number of alternatives. What the draft scoping outline is, is a detailed table of contents for what must be included in the DEIS and for each issue area, for example; traffic, the existing conditions, the potential adverse environmental impacts and whatever mitigation measures are called for to mitigate the potential environmental impacts. So what is being put together is a very detailed outline, or a table of contents, for what must be analyzed and contained in the DEIS.

Mrs. Elkes, Town Environmental Advisory Committee (EAC) Chair, said the EAC is currently finalizing comments regarding the applicants draft scope and their past two reports regarding the applicants EAF form will be helpful as well.

Mrs. Wendy Masserman, 10 Morningside Ct., read a letter to the Board as follows:

In the weeks since the last planning board, I have done review of my files of since this project was proposed in March 2013. From the onset we have expressed concern with viability of the 24 houses in the conventional sketch plan based on the environmental constraints of the property. At the last planning board meeting I was very insulted when Mr. Brandon Zappi said, "he knows it is our intent to stall". On April 19, 2013 I presented a report at the planning board meeting on behalf of a retired environmental engineer who is a member of our group, Concerned Citizens of Ossining, at that meeting we asked the Board to make a positive declaration and begin the SEQRA process. The Chair of the EAC, Mitzi, also requested that our Planning Consultant, Mr. Stolman, recommend a positive declaration. We are here two years later. Who stalled the process? Not us. No one has ever asked that this property not be developed, we've just asked that it not be over developed and that very strict attention be paid in regards to this highly environmentally sensitive area. I think our legal counsel said it best when he said that he has a high level of concern over this applicant. We have seen a very aggressive approach to the land and the lot count. An important issue was raised at the last meeting about what will happen if this project is never completed. Zappico's full Environmental Assessment Form (EAF) Section D. (1) (E) (I) Anticipated period of construction - 24 months. Anything can happen in two years. We have already seen this at Hawkes Crossing. According to a Journal News Article dated February 5, 2015 these lots were part of a 16-lot Hawkes Crossing Subdivision that became snarled in a legal feud between its former developer and its investors which eventually led to tax foreclosure. It goes on to say that even though the Town sold it in auction, problems arose. The former builder made a last minute change to the subdivision which was approved by the Ossining Planning Board creating a reservation strip of land across the development's road that required any future owner to negotiate with him for access. We have repeatedly stated how we feel regarding the guarantees that we will be protected. We will expect a very large bond that is long term. Mr. Jaenike raised concerns with regard to retaining walls and who becomes responsible if they fail, the Town, the homeowners, certainly not the applicant he's gone on to the next project. We are counting on you.

Mr. Bill Jaenike, 12 Morningside Ct., asked why at the last meeting when the Board agreed to table the resolution this didn't reset the 60 day clock. Mr. Stolman said that the SEQRA process is pretty clear that the clock starts with when the applicant submits his draft scope and that was stamped into the Town on March 16, 2015. That is the start of the 60 day clock.

Mr. Howard Fleischer, 22 Tavano Rd., member of the Concerned Citizens of Ossining, urged the Board to look into additional experts to address issues that need to be looked into. He said that he is very pleased that the community is standing and showing up at these meetings in growing numbers and the video tapes are being disseminated amongst the community (all the meetings) so they can follow as much as they can what's been going on and the time clock is ticking, we have to come up with some very serious documents and decisions and investigations.

Mr. Fleischer's first question is, when it comes to doing the scoping process is the Board prepared to go outside of the existing consultants or have the existing consultants go outside of their company to accelerate the process by engaging experts in the fields that need to be looked into, for example, there are a lot of coyotes showing themselves in public, there's going to be an excess of wildlife that is going to be displaced. We are going to need experts in this field.

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Mr. Fleischer continued that there may be things that are missed and urged the Board to question things that may seem normal. The property is quite large. There have been sightings of certain turtles, considered endangered, in the vicinity. There is a particular scoping document where the endangered turtle was seen and sighted within the area, which means a couple of hundred feet of this property. This is something that is very key in having those experts that understand what possibly could be in the vicinity. This is a disadvantage that the applicant has placed on us in because this is really their job to do an in-depth analysis of the property to point out these things, now we are forced to learn, or engage people who should know.

Mr. Fleischer further asked how he could get onto the property to look for these types of things, or perhaps the EAC. The EAC is an appointed committee by the Supervisor of the Town where at a meeting a couple of months ago they were to be engaged in all projects because there was a project that they were not involved in and there is a serious problem between the buffer zone of the community that was done on North State Road which would have been avoided if the EAC was engaged. We need to call in all of the resources that we have in the Town. Mr. Stolman asked Mr. Fleischer to put his concerns in writing so these things can be incorporated into the draft scope meeting. Mr. Fleischer stated he would like to voice certain points at this time as well as put them in writing:

1. Experts regarding wildlife such as skunks, raccoons, turkeys, deer.
2. Bond requirements.
3. Videos of meetings, sharing and distributing.
4. Steep slopes – lawsuit in another municipality.
5. Installing a bridge over the wetlands on site instead of disturbing wetlands.
6. Square footage of lots, number of lots, and affordable component.
7. Blasting, insuring safety and protection of surrounding homes.
8. Experts engaged for plants and species more than spring season, include fall season 2 times during DEIS.
9. Same for soils and water.
10. Access road designated for emergency vehicles.
11. Requirements to build sidewalks and repave roads.
12. Runoff.
13. Lawn maintenance.
14. Sewage management.
15. Green development methods and green materials.
16. Cost issue to the Town, schools and services.
17. Architecture, keeping with surrounding architecture.
18. Noise conditions during construction.
19. Sighting other projects being done in the vicinity.

Mr. Fleischer asked if an access road is proposed through New Castle. Mr. Stolman clarified that there is an existing driveway on the New Castle side of the property but it is used to access an existing residence which is also located in New Castle. Mr. Fleischer thanked the Board.

Mr. Stolman thanked Mr. Fleischer for his points which are important and asked him to submit these in writing. Mr. Stolman further noted that in the draft scope the Board can say what they want studied and how they want these things studied and when the DEIS comes back the Planning Board may want to enlist the services of specialized consultants. That is available to the Board at the applicant's expense.

At this time, Mrs. Richards asked that the scoping document be shared with all Town department heads for an opportunity to comment and give their thoughts and ideas. Mrs. Jean Micallef, 17 Tavano Rd., asked because of the fauna and flora on site, could the Audubon Society be added to the list. However, Mrs. Richards clarified that the Planning Board can only send notices as permitted by Town code for public hearings and if anyone from the public would like to spread the word to additional agencies they may do so and it is recommended that they do so.

Mr. Bossinas raised concern and expressed opposition to the proposed cluster plan and the proposal of 28 lots. Mr. Stolman said as part of the scoping process the Planning Board can ask for alternative site plans such as a conventional subdivision, or a cluster with 20,000 sq. ft. lots or a cluster with 15,000 sq. ft. lot sizes instead of 5,000 sq. ft. lots. The Board can give direction with regard to the size of lots and where they are located in terms of layout. The Board can describe these alternatives and have the applicant provide those alternatives which can be incorporated into the DEIS. Mr. Kirby asked if the New York City Department of Environmental Protection can be considered an involved agency because of the aqueduct. The Board agreed to add NYC DEP to the list of involved agencies.

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Mrs. Elkes asked about how in the final scope, if there were a request for a complete and full study of the biodiversity and habitat community on the property in terms of a full year, how can that be incorporated into the DEIS. Mr. Stolman suggested further research and looking into the lawful feasibility of doing this. Ms. Sharratt added that if the Board is proposing to adopt the DEIS on May 6th, or by May 15th, this takes out a good part of the spring season assessment out and already going into summer. How could there be an accurate and complete assessment done when a season has closed.

Mrs. Richards explained that in DEIS studies it is well defined as to what types of analysis have to be done. Our own consultants can recommend appropriate seasons to complete these studies. Mr. Stolman reminded Ms. Sharratt that the Town must comply with SEQRA regulations in terms of timing and follow proper administrative procedures. Ms. Sharratt said in her talks with DEC they said it is a matter of fact that it has to be looked at over a year. If turtles are breeding in the springtime, you won't see them in summer. Mrs. Richards said this can be looked into further.

Dr. Hougham said that in some informal discussions with Professor Robinson of Pace University, who has written much of our State Environmental Law, believes that a one year study is an absolute minimum for understanding hydrological cycles and many environmental issues. If there is some legal research that needs to be done to find out if a one year annual study is allowed by SEQRA, Professor Robinson may be a good resource to consider. The Board agreed and thanked Dr. Hougham.

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 29, 2015.

Time noted 9:05 p.m.

Respectfully submitted,

Sandra Anelli

Sandra Anelli, Secretary
Town of Ossining Planning Board

Approved: May 6, 2015