

Town of Philipstown Planning Board

Meeting Agenda

Butterfield Library, Cold Spring, New York 10516

February 19, 2015

7:30 PM

Pledge of Allegiance

Roll Call

Approval of Minutes: October 16, 2014 and November 20, 2014

Gex – Property realignment – 24 Hummingbird Lane, Garrison: Request for extension

Hudson Highlands Reserve – Conservation subdivision – East Mountain Road North and Horton Road, Cold Spring: Discussion of comments, technical issues and overall status of project [Memo dated February 10, 2015 from Susan Jainchill and Ron Gainer re: HHR Conservation Subdivision Application (forwarded via email 2/10/15)]

Adjourn

Anthony Merante, Chairman

Note: All items may not be called. Items may not always be called in order.



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Memorandum

To: Town of Philipstown Planning Board
From: Susan Jainchill/Ronald J. Gainer, PE
Date: February 10, 2015
Re: Hudson Highlands Reserve Conservation Subdivision Application
cc: Applicant; Glenn Watson

As the Board is aware, this project represents the first application filed under the provisions of the Town's new "Conservation Subdivision" zoning provisions that were enacted in 2011. As such, on behalf of the Planning Board AKRF and Ronald J. Gainer, PE, PLLC have reviewed the documents recently filed by Horton Road LLC for compliance with these new Code requirements.

The purpose of this memo is to assist the Planning Board in guiding the Applicant through the initial steps of the application process. This memorandum specifically presents a compilation of both office's joint comments on these materials, summarizes technical issues which we believe remain to be addressed before the Applicant's Conservation Analysis is accepted, and discusses the overall status of the project.

PROJECT SUMMARY

The Applicant is proposing to subdivide a 155.394 acre property, made up of 4 separate tax lots, into 28 single family residential lots with average size of 0.95 acres each (as currently proposed). The proposed development also includes, a parcel for an equestrian facility with one dwelling unit, a club house parcel and an open space parcel. The submitted materials indicate that between 70% and 79% (depending on the method of calculation) would be considered a 'Conservation Area'.

The property is located adjacent to and contiguous with large expanses of undeveloped forested land of high value including nearby Fahnestock and Hudson Highlands State Parks. For a parcel of this size and ecological importance, owing to its habitat and regional setting, thorough onsite ecological investigation and documentation are warranted.

APPLICATION BACKGROUND

Horton Road LLC submitted the current subdivision application last October, and to date has been the subject of discussions at subsequent Planning Board meetings and a site inspection on November 9, 2014. To assist the Applicant, AKRF, Ron Gainer, and David Klotzle (Town Natural Resource Officer) later met with the Applicant on

12/19/2014 to discuss the required contents of the Conservation Analysis, which Code requires for applications filed pursuant to the Town's "Conservation Subdivision" regulations. Additionally, the Applicant also met with the Town Conservation Board, and with the Hudson Highland Land Trust.

The initial step in the conservation subdivision application process is to determine the areas of the property with 'conservation value'. As part of the sketch plan submission the Applicant is required to submit a conservation analysis which describes current and potential conservation value of all land on the site and the importance of the site features with conservation value (§175-20A.2). From this information, the Planning Board will ultimately determine which of the lands are most important to preserve as well as the preferred location for intensive or less dense development.

APPLICATION STATUS

These prior meetings and discussions with the project sponsor have culminated in the Applicant's filing of a "Draft Conservation Analysis Report, Hudson Highlands Reserve", prepared by Fractal Group, LLC, dated 1/5/2015, which included supporting environmental documents and site constraints mapping. These documents are currently before the Planning Board for their formal review.

Once the Conservation Analysis is deemed complete, these environmental documents will form the basis for the Planning Board's determination as to which land has the most conservation value and should be protected from development by conservation easement. This will be done through issuance of written findings supporting the Board's decision (deemed the "conservation findings"). These findings shall be incorporated into the Applicant's Sketch Plan, denoting land to be permanently preserved by conservation easement, as well as recommended conservation uses, ownership, and management guidelines for such land. This Sketch Plan shall also show preferred locations for intensive development as well as acceptable locations for less dense development. It is therefore critical that this conservation analysis be in sufficient detail so as to allow the Board to make its conservation findings.

EVALUATION OF DRAFT CONSERVATION ANALYSIS SUBMITTED

As noted above, the Hudson Highland Reserve is the first application for a conservation subdivision being reviewed under the new Zoning Ordinance. As the Board is aware, the intent of this provision of the Code is to encourage 'development on portions of the property most suitable for development, while leaving substantial portions as undeveloped open space' (§175-19B) and to 'allow design flexibility while preserving important natural attributes of the land' (§175-20).

As the Board's consultants we have reviewed the Draft Conservation Analysis Report, the Wetland Delineation and Environmental Assessment and the Timber Rattlesnake Habitat Assessment Report (TRS) submitted and offer the following comments and recommendations:

GENERAL COMMENTS

- Section 175-20(A) specifies the specific resources to be evaluated in the conservation analysis. While most identified resources are discussed, the following remain to be addressed and so should be incorporated into the document:
 - Recreational resources, both on-site and within the larger regional setting, given the large NYS and private preserves existing in the general area of the site. While the report notes various large preserved lands in the area, this could be better identified through mapping of these regional resources, which could then permit understanding of their value in a regional context.
 - the analysis must illustrate lands with conservation value both on the parcel and within 200 feet of the boundaries of the parcel.
 - identification of un-fragmented forest lands, both on-site and within the larger regional setting.
- The exclusive purpose of the conservation analysis is to determine the conservation value of various site features. The Applicant should be advised to omit from the Conservation Analysis Report all information directly related to the proposed development project including density calculations, septic fields, increased

impermeable pavement, locations of proposed roadways, etc. However, this information could be included in separate documents, outside of the realm of the Conservation Analysis, for the Board's review later in the proposal process.

- Per §175-20A.3, the Applicant should be advised to submit an initial draft of the sketch plan showing “land to be permanently preserved by conservation easement ...also show[ing] preferred locations for intensive development as well as acceptable locations for less dense development.”
- The Applicant should be directed to submit copies of all pertinent past studies and any additional available ecological information/reports for public record and Planning Board review. This would include the ‘original’ 2009 Lyons Ulmar Soil Mine study/report and the earlier Timber Rattlesnake habitat surveys conducted in 2010 and 2011 (cited in Coleman’s 2014 Timber Rattlesnake Habitat Assessment Report Update), unless this information has already been incorporated into Coleman's latest update.

COMMENTS ON THE WETLAND DELINEATION AND ENVIRONMENTAL ASSESSMENT

- The Applicant should be asked to clarify if the wetland delineation conforms to the USACE and NYSDEC methodologies. The report should also make clear that the delineated wetlands and pond onsite are part of NYSDEC Wetland WP-19, and so are regulated by NYS.

COMMENTS ON THE TIMBER RATTLESNAKE HABITAT ASSESSMENT REPORT (TRS)

- The recent Timber Rattlesnake survey did not occur during the April 15-May 15 emergence period used by NYSDEC for denning/basking/gestating habitats. To the extent the potential critical habitat occurs, a survey during this period in Spring 2015 is recommended.
- The TRS Report doesn’t indicate the presence of known denning or other critical Timber Rattlesnake habitat in proximity to the site. This must be provided by New York State Natural Heritage Program (NHP), with such information presented in the report.
- The size limitations and descriptions for Critical Habitat cited by the TRS report (Ruhe 9/11/14) should be explained – e.g. the > 0.15 acre basking/gestating habitat size requirement.
- It should be noted that as part of the State Environmental Quality Review (SEQR) the NYSDEC will review the Applicant’s Timber Rattlesnake report and any mitigation recommendations. All past and future correspondence to and from DEC on this property must be made part of the public record to assist the Lead Agency in its review of the project’s potential impacts to threatened and endangered species, including the Timber Rattlesnake. DEC review is usually initiated with the Town submitting its intent to be lead agency under SEQR (although, if desired by the Applicant, they could make formal request for NYSDEC Jurisdiction under ECL Article 11 Part 182).

RECOMMENDATIONS FOR FURTHER ECOLOGICAL STUDIES

Further ecological studies are warranted to address the following issues and areas of concern:

- The NYS Environmental Mapper indicates records of rare plants and animals are known for the area. Therefore it is critical that the Applicant request records of listed species on or in proximity to the project site information from NHP. The Applicant should then provide an assessment of such flora/fauna within the body of the report, and such include copies of all correspondence with the NHP as part of the Conservation Analysis Report.
- Additional expected species listed for the County by the United States Fish and Wildlife Service’s iPac system should be included in the report and examined.
- The Applicant should perform a comprehensive survey of the on-site pond (depth, species, etc.), and offer a management plan to protect this resource from degradation.
- The Applicant should perform a comprehensive vegetation inventory with a focus on NYS-listed plant species.

- The Applicant should provide additional information on forest age and diversity of species found on the project site.
- In addition to the Timber Rattlesnake, targeted wildlife surveys are warranted.
 - The Applicant should be required to provide a breeding bird survey performed in Spring 2015.
 - An Indiana Bat habitat assessment with reference to the USFWS Recovery Plan should be included.
 - The Applicant should provide a vernal pool survey (to determine the presence or absence of vernal pools). If present, an investigation should be conducted in the late winter/early spring for NYS-listed amphibian egg masses/larvae/adults [See "*Conserving Pool Breeding Amphibians in Residential and Commercial Developments in the Northeastern U.S.*", Calhoun and Klemens, 2002].
- While the Applicant reports that Appalachian Oak-Hickory and Oak-Tulip Tree forests exist within the tract, the analysis does not acknowledge that the NYSDEC has mapped these significant natural communities in proximity to the project site. As the DEC typically doesn't map these unless they are a unique or exceptional representations of the community, further characterization and mapping of these habitat types onsite, and discussion of their protection from disturbance, is warranted.
- The report gives only cursory attention to Clove Creek, lying on the western border of the site. As this stream is designated by NYSDEC as C(ts), any available records from DEC Fisheries Division should be obtained for this stream (trout, WQ, etc.). In summary, a more detailed discussion is warranted of its ecological/regional significance, and appropriate measures warranted to avoid any degradation of this resource. If impacts can't be avoided, consideration should be given to conducting a "Rapid Bioassessment Protocols For Use in Streams and Wadeable Rivers: Periphyton, Benthic Macroinvertebrates, and Fish, Second Edition", Barbour et al, EPA 841-B-99-002.
- Mapping of habitats onsite should be provided along with a discussion of the value of this habitat. For reference, see the Habitat Assessment Guidelines provided as an Appendix to Philipstown's Natural Resource and Open Space Plan, and Hudsonia's Biodiversity Assessment Manual for the Hudson River Estuary Corridor, by Erik Kiviat and Gretchen Stevens, 2001.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

The subdivision application review, including the provisions for conservation subdivision applications as required by the Town of Philipstown Zoning Ordinance, is intended to be conducted concurrent with the environmental review process required by State Environmental Quality Review Act. It is acknowledged that the Board has previously declared their intent to become Lead Agency pursuant to SEQRA, and circulated this notice to all other involved agencies so as to provide more opportunity for public review and permit more detailed evaluation of the project's potential environmental impacts by all other involved organizations. At this time, any responses received from these agencies should be reviewed, and shared with the Applicant, and any other identified ecological studies be incorporated into project record. Further, the EAF previously submitted with this application should be reviewed and updated as necessary by the Applicant, using all such information to be developed, and re-submitted to reflect the current proposal. Eventually, a SEQRA determination must be made by the Planning Board, acting as Lead Agency.

REVIEW OF DENSITY CALCULATIONS

While not an issue to be studied as part of the Applicant's "Conservation Analysis" report, it is acknowledged that information has been filed by the project sponsor in an effort to define expected project density. As a result, we have also reviewed this preliminary information and offer the following comments.

As permitted pursuant to §175-20B(1), the Applicant has utilized a formula, taking into account the various environmental constraints existing on the tract, in order to establish a permitted overall project density. The Applicant has provided these calculations, and this forms the basis for the 28 units currently being proposed. From our very preliminary evaluation, this analysis appears to warrant further review by the Applicant with respect to the following:

- The text of the Conservation Analysis document acknowledges that lands within the Manufacturing/Industrial Zone (11.1 acres) are to be excluded from the density calculations. However, the calculations provided appear to include this land in the formula.
- The Conservation Analysis illustrates the many significant environmental constraints which exist on the tract. While the Ordinance does allow the Applicant to seek to use the density formula provided, the Planning Board does retain the option to require a yield analysis (subdivision layout plan) from the Applicant when they may believe that there could be a significant difference in the permitted project density resulting from use of a yield analysis. Therefore, to assure themselves that an appropriate project density is determined, the Board may wish to seek to have the Applicant first develop a layout plan conforming to all bulk dimensional requirements applicable to the Zoning and Overlay Districts with encompass the tract, for comparison with the density provided by formula.
- In the evaluation of a yield plan, should the Board wish to have the Applicant pursue this option, it is recognized that per §175-18C, within the OSO District the following density criteria must also be met by the sketch plan:
 1. The maximum density for a conservation subdivision shall be 5 acres per dwelling unit; and
 2. The minimum lot area for a conventional subdivision shall be 15 acres.

CONCLUSIONS

We believe that the scope of the present Draft Conservation Analysis submitted is inadequate for the Board to make the required determination as to which land has the most conservation value and should be protected from development, that will ultimately be done through issuance of written "conservation findings" supporting the Board's decision. Upon the Applicant's resolution of the above-noted matters of concern, and resubmittal of a revised and more thorough Conservation Analysis, we will again assist the Board as may be requested in moving this very significant project through the review/approval process.