

Philipstown Planning Board  
Meeting Minutes  
February 19, 2015

The Philipstown Planning Board held its regular monthly meeting on Thursday, February 19, 2015 at the Butterfield Library in Cold Spring, New York. The meeting was opened at 7:30 p.m. by the Chairman.

Present: Anthony Merante, Chairman

Kim Conner

Mary Ellen Finger

David Hardy

Neal Zuckerman

Steve Gaba, Counsel

Ron Gainer, Engineer

Susan Jainchill, Planner

Absent: Joseph Giachinta

**Approval of Minutes:**

- *October 16, 2014*

Ms. Conner made a motion to adopt the minutes. Mr. Zuckerman seconded the motion.

The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Mary Ellen Finger	-	In favor
Joseph Giachinta	-	Absent
David Hardy	-	In favor
Neal Zuckerman	-	In favor

- *November 20, 2014*

Mr. Zuckerman made a motion to adopt the minutes. Mr. Hardy seconded the motion.

The vote on above motion was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Mary Ellen Finger	-	In favor
Joseph Giachinta	-	Absent
David Hardy	-	In favor
Neal Zuckerman	-	In favor

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

Mr. Luke Hilpert stated that the applicant wished to have an extension granted, and as he had expressed earlier to Mr. Gaba, it would be retroactive (as the Board did not hold a meeting in January 2015) and would extend to April 6, 2015.

Mr. Zuckerman made a motion to approve the extension. Ms. Conner seconded the motion. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Mary Ellen Finger	-	In favor
Joseph Giachinta	-	Absent
David Hardy	-	In favor



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Neal Zuckerman - In favor

**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)**

Mr. Merante stated that the Board is still in the preliminary stage with regard to the application and asked Mr. Gainer to bring the Board up to date with regard to the application.

Mr. Gainer referred to the memorandum (referenced above) and said that it summarized the current application before the Board. He said that the applicant has submitted a conservation analysis, which is mandatory for the processing of a conservation application. Mr. Gainer said that they met informally with the applicant and Mr. Klotzle back in December of 2014 to review an informal draft of that initial document. He said that the applicant then resubmitted in January, 2015 a more complete document to attempt to respond to comments they offered in December. Mr. Gainer said that in summary, they find the current analysis still incomplete and he tried to outline in some depth the variety of technical issues and environmental concerns that they believe still exist in the document. He said that the memorandum had been given to the applicant and Mr. Watson's office. Mr. Gainer said that Ms. Jainchill would review in summary some of those technical issues and then determine if the Board has any further issues/concerns or if the applicant has any questions on the technical studies they recommended, to accomplish making that conservation complete and something the Board can accept.

Ms. Jainchill went over the memorandum that she and Mr. Gainer put together stating that there were many technical recommendations from their Natural Resources professionals. She said that there are still a lot of environmental analysis that has to go on before they find out what the conservation value is on this site. She went on to summarize the highlights of the memo (copy on file at Town Hall). Ms. Jainchill said that the memo included introducing the process of the State Environmental Quality Review Act (SEQRA) and the fact that it will be going on at the same time as the conservation analysis and the whole process of the municipal review of the application. She also said that the EAF they had to review had not been updated to the current application and should probably be updated to go along with the next submission. Ms. Jainchill said that they went on to talk about the density calculations and asked Mr. Gainer to speak to that.

Mr. Gainer said that the Ordinance also discusses the manner in which conservation subdivisions may consider determination of a permitted density. It provides a formula that the applicant can consider, which actually the applicant has performed. He said that it was included in the conservation analysis and one comment they had was that it was not the appropriate location for that information. Mr. Gainer said that the conservation analysis is strictly intended to identify the conservation value of the project and isolated areas where the Board should consider permitting the density to occur on the project. He said that the conservation analysis is just trying to identify what areas need protecting and what areas are may be most suitable for development. Mr. Gainer said that separately and subsequent to the determination

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of where development may be permitted would be the determination of what's a permitted density. He said that the applicant has evaluated the density formulas that are identified in the ordinance that he's permitted to do and he's come up with a calculation. Mr. Gainer said that they've identified some questions relative to that and noted that it should be done as a separate document. He said that the specific goal at this stage is to determine where development should be focused on the property. Mr. Gainer said that they've identified issues with the density calculations that were provided and have noted for the Board's information that if at the time it goes through the analysis, they consider the formula may be overgenerous of what they think is appropriate given the area where they believe the development can occur, it is within their right to ask for a conventional yield plan – which is a typical subdivision plan that's submitted that conforms to all bulk regulations. Mr. Gainer said that is something that will trail the conclusion on the conservation analysis and the determination in where the Board considers development to be appropriate.

Mr. Merante said that some of the studies seem to be time sensitive and that the applicant needs to keep in mind that Spring is coming. He asked what the applicant had to do now to take that into consideration and bring in a professional to do these studies.

Ms. Jainchill said they should bring in a professional as soon as possible – a consultant that can perform these studies to a level that is expected for a similar application. She said that the Open Space Plan does have some habitat guidelines.

Mr. Merante referred to the statement about Clove Creek and said that it was always considered a Class A stream because there was trout stock. He asked if that mattered and what the story was with Clove Creek.

Mr. Gainer said that all of that should be provided within the document, but was not in there presently.

Ms. Jainchill agreed and said that they need more information.

Mr. Gainer said that for the most part the applicant is not disturbing too much within that watershed, but does have the main access road that he is proposing.

Mr. Zuckerman asked the Board if it had an opinion about the twenty-eight units and whether it is an appropriate calculation from the analysis so far.

Mr. Gainer said that he thought they had identified some issue they had in terms of counting the land within the industrial zone. He said that was the only specific issue they had.

Mr. Hardy asked if they would ask for the yield analysis after they got the whole conservation assessment piece done.

Mr. Gainer said that the Board's goal is specifically to identify where it thought development might be appropriate and what areas are environmentally significant and worthy of protection. He said that the

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Board is specifically going to identify where the density is and the applicant is going to refine the formula for the analysis that he's done.

Mr. Gaba said that the yield is the yield, but the Board might wind up with smaller lots as a result of being required to put the dwellings away from the environmentally sensitive areas. He said that he did not think that the environmental factors decrease the yield.

Mr. Gainer said that again, there is a specific formula that's applied, but the goal of the conservation analysis is to identify environmental significance.

Mr. Watson asked if it meant if 155 acres is all of significant conservation value, they don't get to develop or that they get to develop only on the area with the least conservation value.

Mr. Gaba said that's what it means.

Mr. Watson said the second one – so it doesn't preclude development of the property. It simply says, "this is where you're going to do the least damage".

Mr. Gaba said that you have to distinguish between the conservation analysis report and SEQRA and the final approval. He explained that in the conservation analysis report, the Board is taking a good look at the property and evaluating the conservation value of the various features on the property. Mr. Gaba said that some of those features are going to be very high priority and some are not. He said that once they have the list of site features and assign values, then they start moving toward how they're going to design this around those features to minimize the impact on them, and that's where SEQRA steps in. Mr. Gaba said that at the end of day, after you have your analysis, design, gone through SEQRA, they'll come up with a plan and it may be there will be some impact on some environmental features of this property. He said that it doesn't mean it can't be built on it at all. Mr. Gaba said that if the entire property was equally significant, they might have some problem.

Mr. Watson said to suppose the conservation analysis results in finding that a significant portion of the property, which they traditionally think is of significant value. He said that for instance, the Board concludes by adopting the conservation analysis and accepting it that the wetlands are of no environmental value. Mr. Watson asked if that meant they could disregard what they'd normally do to protect the wetlands.

Mr. Gaba said no. He said that if they're wetlands, they have to be protected.

Mr. Merante asked where the hierarchy or values of particular items for protection come from.

Mr. Gaba said that it's not numerical.

Ms. Jainchill said from experience, knowledge of the policies of the United States Fish and Wildlife

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Service, as well as NYS DEC. She said that there is mitigation that can be done once you know what is there, so it's not just where you can and can't do things, but how you're going to go about doing it. Ms. Jainchill said it's just having as much knowledge out there to be able to do smart planning.

Mr. Merante asked if there were any comments from David Klotzle/Conservation Board.

Mr. Gainer said that generally, just more generic statements for the same issues.

Mr. Merante said that the riding stables could be a significant impact on this property.

Ms. Jainchill said those can be mitigated, as stormwater concerns, etc.

Mr. Gainer said that it would be addressed, but down the road.

Mr. Liceaga stated that they have done a lot of work that's required and are ready to do more work. He said that for them, he had no idea it would be this involved. Mr. Liceaga said that in order for them to have a conservation analysis, they have to know what they're proposing to have. He said that he did not think the observation that they are "putting the cart before the horse" was fair. In order for them to go on with this big effort, they have to know what they're developing and see calculations. He said that's why they sent a sketch. Mr. Liceaga said that the Board has a choice of developing a yield plan instead of their calculations through formulas and he thought it was important to know if that was their choice, the Board's choice or is something for their lawyer to look into or the Board's lawyer to make reference to. He said that it would be very helpful for them to know that, because if they go into more work on this, which they will, it would be senseless for them to be told they can't do the work they intended.

Ms. Jainchill said that the Board may waive some of the requirements for the areas that are not going to be developed. She said that the applicant could request a waiver of some of these if they're not going to develop the entire area.

Mr. Gainer said to be clear, they tried to identify conservation area topics that need further study – rattlesnake, Indiana bat, etc. They have to start with identifying where that resource may be located on the property. He said that if they can identify that it's all remote to any area they propose to develop, they can just acknowledge in the analysis where whatever research or records exist, indicate where the resource may exist and then identify that they're not going to disturb it and then the Board would have no interest in further study of that. However, if there are migration issues or anything that may impact areas where they propose development on, that's where the Board will want further understanding.

Mr. Gaba said that one more thing to keep in mind is that at the end of day, you're going to end up with a conservation easement on the property and if there's an area that the applicant is going to say it is not going to be developed, they're probably going to wind up with that tract wove into the conservation easement and if it isn't, at a minimum, he thought they would want some sort of deed restriction.

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Ms. Conner said that they are looking at land that is not all in the same zone. She said she wanted to understand how the Board deals with that and what that means. Ms. Conner said that they are talking about dwellings and how to calculate how many they can have, so she wants to understand what that relationship is to the equestrian center.

Mr. Gaba said that he thought they had to divorce the impacts of the equestrian center from the conservation analysis report. The conservation analysis report is going to find out for them what the environmentally significant values/properties on the land are, and then they're going to look to preserve those eventually roll protection of them into a conservation easement. Mr. Gaba said that once they've identified those, then they can turn to the issue of "all right...this is what's being proposed to be built and is it going to impact the most significant environmentally sensitive aspects of the property". He said that if the answer is yes, then they'll have to cut down on what's being built there. Mr. Gaba said that the uses that can go on the property are something that will certainly be addressed once they have the conservation analysis. He said that a conservation subdivision (although it's not spelled out as clearly as they would like in the Code), is really a residential use. Mr. Gaba said that maybe there are other uses that are allowed in the RR District, but he didn't know if they were allowed as part of conservation subdivision. He said that the Code says (Section 175-20G) both residential and non-residential accessory uses may be combined in a conservation subdivision provided the applicant complies with residential density, impervious surface, etc. Mr. Gaba said that Number 5 is Recreational Facility for use by Residents and their Guests, so if this is a riding academy with people who lived there and their guests, he would say that there is no problem with that. Mr. Gaba said that if they're going to say it isn't really an agricultural use, which is permitted in the RR or it's a separate riding academy or public stables, he was not sold it's a use you can fold into. He said that there may be ambiguity in the Zoning Code and he referred to Section 179-19B, and read the section aloud. He said to the extent that consistent with the Board's obligations to apply the Code, he would expect the Board would want to give the benefit of the doubt to the applicant. Mr. Gaba said that if it can't be resolved by the Board, it may refer it to the Zoning Board for an interpretation. He said that the same is true for the Conservation Analysis Report. Mr. Gaba said that a portion of the property is in the "M" District and conservation subdivisions are not allowed in that district. He said that you can have the drainage from one development into a separate lot and he did not think that would be a problem. Mr. Gaba said that he did not know how far they planned on integrating the piece of M property and there should be a separate lot line and not into the development. He said that he found the section of the Code – 1758E, which talks to zoning district boundary divides a lot. Mr. Gaba read the section aloud and said that they've got some wiggle room.

Mr. Watson asked a question (inaudible).

Ms. Jainchill said that he should be able to go to any of the GIS mapping and topo and wetlands and things like that.

Mr. Merante asked how this would impact...(did not finish sentence).

Ms. Jainchill said that the whole impact of it is to recognize that the human boundary is not the natural

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boundary and to recognize that animals will go over those boundaries. She said that she did not think there was going to be a need to go onto other people's properties, but to recognize that if there is a pond on the next property over, there's probably something that might want to get over to another area.

Ms. Finger asked of the 155 acres, how many were in zoning.

Mr. Gainer said he thought about eleven.

Ms. Finger said that it was her understanding that agriculture is permitted as a use in all zoning districts and in recent years, New York State Agra Markets now considers boarding stables and riding academies as agricultural use. She said that she thought one consideration would be if the property owner wanted to apply to get his riding academy into an agricultural district, which would allow him certain exemptions like building a larger barn without having to go for a site plan approval, but one of the main considerations to be accepted is that prime farm land has to be available for use. Ms. Finger said that should be a consideration that's calculated now so it doesn't get built over by housing units so that it would then no longer be available for that calculation.

Mr. Watson said that he appreciated Ms. Finger's comment.

Mr. Gainer said that he thought the applicant clearly understood the issues raised in both the Building Inspector's memo and the Planning Board's memo. He said that he'll work on his side to determine appropriateness of responses and then move it along. Mr. Gainer said that the next step will be that there will likely be a re-submittal of the document and it will be more complete.

Mr. Hardy said pursuant to the hypothetical's about how much they can and cannot build, there was some comparison in there and he thought he saw that if you ask for the yield analysis, that then they had set up a relationship and the density calculation such that they were supposed to take a look at it and see if one was wildly off from the other.

Mr. Gainer said that in the one section of the February 10 memo, he would confirm with Mr. Gaba whether it's valid for the Board to consider...because that's appropriate if they consider the density calculation to be excessive. He said that they'll respond to that subsequent to this meeting.

Mr. Gaba said that he could tell Mr. Hardy now that at least at first blush when you read the Code, you leave it up to the applicant to decide which method to submit as far as the density calculations.

Mr. Hardy said that he thought they were looking for some guidance about what was going to be reasonable or not going forward and he wondered if that provided any sort of help in that area.

Ms. Jainchill said that while it might now be feasible to do twenty eight one-acre lots, it might be feasible to do twenty eight dwelling units in a different format. She said that they should analyze now to see if that's what it comes to, to see what other configurations...also, the Board has the discretion to give

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density bonuses – they could actually get additional dwelling units for doing a better design in terms of preserving the character of the land.

**Adjourn**

Mr. Zuckerman made a motion to adjourn the meeting. Ms. Conner seconded the motion. The meeting ended at 8:50 p.m. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Mary Ellen Finger	-	In favor
Joseph Giachinta	-	Absent
David Hardy	-	In favor
Neal Zuckerman	-	In favor

Respectfully submitted,

Ann M. Gallagher

Note: These minutes were prepared for the Philipstown Planning Board and are subject to review, comment, emendation and approval thereupon.

Date approved: \_\_\_\_\_