

TOWN OF PHILIPSTOWN PLANNING BOARD
Regular Meeting
Phillipstown Town Hall, 238 Main St., Cold Spring, NY 10516
June 16th, 2022

The Planning Board held their regular monthly meeting on Thursday, June 16th, 2022.

Present:

Neal Zuckerman (Chair)
Kim Conner
Dennis Gagnon
Peter Lewis
Laura O'Connell
Neal Tomann
Heidi Wendel
Ronald J. Gainer, PE, Town Engineer
Steve Gaba, Town Counsel

Absent:

Please note that these minutes were abstracted in summary from the meeting and a taped recording.

Ms. Rockett took the roll call.

Correspondence

Chair Zuckerman opened the meeting and stated that they have something from Polhemus asking for a six-month extension for their site plan approval.

Ms. Rockett read the correspondence. *On Behalf of Polhemus Construction Co., Inc., We request a 6-month extension of the site plan approval. We are in the process of satisfying all conditions of the resolution and expect to have the site plan signed within the next few weeks. On the off chance that does not occur prior to the board meeting we ask for an approval of the extension.*

Mr. Gaba stated that they got their approval less than six months ago. They're entitled to the first one as of right, so it's really something the board has to grant.

Chair Zuckerman asked if there are any questions on this, any thoughts? He then asked for a motion to approve a six-month extension.

Kim Conner made the motion; Dennis Gagnon seconded the motion. The vote went as follows:

Kim Conner:	Aye
Dennis Gagnon:	Aye
Peter Lewis:	Aye
Laura O'Connell:	Aye
Neal Tomann:	Aye
Heidi Wendel:	Aye
Chair Zuckerman:	Aye

Opposed, Abstentions? Being none the motion passes.

Kingsley Tree & Landscaping, Old Albany Post Rd., Cold Spring NY 10516 TM#17.-1-72.2

Chair Zuckerman asked Mr. Gainer for any remarks on his site visit to the Kingsley property.

Mr. Gainer stated that he subsequently went to the project site with the design engineer later the following week, after the Board had visited the site. He thinks that the significant concerns are the environmental issues relative to the wetlands and its associated hundred-foot buffer. The development is right up against the limits of that buffer area, as well as the visual impacts of the project. They're in an OC zone. What they're proposing is permitted as of right, subject to receipt of special permit approval for the mixed use. The properties adjacent to it or across the street on Old Albany Post Road are residential, so he thinks that the visual impacts will be of concern. He's identified a variety of comments in the site walk memorandum that he's issued, including comments he had heard from the board as well as what he observed. They've been transmitted to the applicant's design engineer and he's sure they'll be responding to them. He had some suggestions on modifying the design to simplify the amount of disturbance and visual impacts. The applicant is prepared to make some adjustments to the site plan based on the site walk and comments from the board. The next step in that process would be to schedule it for a public hearing.

Chair Zuckerman asked if any board members want to comment on what they saw.

Mr. Tomann stated that they did talk about the neighbors. It's facing a residential neighborhood and if they would come up with some screening or something. What did Mr. Gainer tell them?

Mr. Gainer replied, if you can visualize the site plan, they've got a building generally across the intersection from Mountain Brook Road. That's where their access will be. But then the entrance drive turns to the south to access a long parking area and access aisle. He was proposing to eliminate some or all of that parking to the south, which is going to be very evident to the people across the street, and he wonders if they can stack more of that on the north side of the building so they can minimize any disturbance to the south may otherwise be necessary. The applicant is going to look at that in a modified design so they'll see what comes out.

Chair Zuckerman stated that he'd like to suggest they hold off on scheduling the public hearing until the revised plan is done because there is no reason for the public comment on something that is not going to be what they're commenting on.

Mr. Gainer stated if they schedule it for the July meeting, the applicant has to file new plans two weeks in advance.

Chair Zuckerman stated they'd probably want to see it too and discuss it publicly.

Hudson Highland Reserve, Route 9 & Horton Road, Cold Spring, NY 10516

Chair Zuckerman stated that their job was to follow up on the conversation last month. They are trying to adopt the Finding Statement. The Finding Statement was derived from the FEIS which the board accepted the month before. He knows there were some version control concerns in the last version. What he asked the board to do tonight is for folks to take the finding statement that Mr. Werner edited and added and it seems very complete what he put together at least for this review and to further give any specific comments the board has. If they are light edits the Board can actually adopt it tonight. If not, if they require further surgery, then we'll have to come back and adopt it at the next meeting. He added that he will just go in order to see if people have comments on the finding statement. He stated that, without being pedantic, if one voted against the FEIS acceptance chances are they'll not be supportive of what's written here and a rewrite would be very difficult because, again, this is derivative of the FEIS, a fairly obvious statement but he just wanted to reiterate that.

Ms. Wendel stated that she voted against the project and doesn't think the finding statement adequately reflects the nature of the project. Page 16 mentions the permanent loss of approximately 38.1 acres of forest habitat. So, page 16, the first sentence of the last paragraph states, *the permanent loss of 38.1 acres of forest habitat due to the proposed project is considered an unavoidable impact*. In her opinion, that is inconsistent with the statement on page 18 that there is only site disturbance of 7.6 acres. That's the second full paragraph on page 18. That there is an overall site disturbance of 7.6 acres and, actually, there is overall site disturbance of 38.1 acres. She thinks that the difference is that the applicant has stated, according to these finding statements, that nobody is going to have for example a lawn, that there's not going to be disturbance of anything but dead trees, etc. As best she could tell from this finding statements, which does not reflect in her opinion the reality of most homes in this area. There obviously are a few that leave all the trees up just to be clear but it should make it very clear that they're 38.1 acres.

Chair Zuckerman stated that he thinks she's misreading it. It says in the paragraph above on page 16, *there's a loss of 38.1 acres which is a decrease of 7.6 acres from the DEIS*, and so the on page 18 it repeats that it is a decrease of 7.6 acres in disturbance not an overall change, not an overall disturbance, a decrease in disturbance.

Ms. Wendel stated so it's there's a loss of 38.1 acres, a disturbance of 38.1 acres that's going to happen as a result of this project. So, it's both the impervious and the pervious portions because it's highly unlikely that there's not going to be any lawn. Also, she thinks that the finding statement should specify what enforcement mechanisms are in place with respect to the HOA. That's missing throughout the finding statement.

Chair Zuckerman asked Ms. Wendel if she can direct them to where she's talking particularly.

Mr. Wendel replied that it's really throughout, there's a mention of it on page 16. *In addition to conservation easement the HOA would impose rules and guidelines on the privately owned residential lots within the subdivision these rules would serve to regulate the development and maintenance of residential lots et cetera, et cetera.*

Chair Zuckerman asked Ms. Wendel what is she looking for them to edit in the document?

Ms. Wendel replied language that states what is the control that the town would have or this board would have to ensure that the HOA is enforced. So, for example on page 18 third full paragraph, *through the modifications proposed in the FEIS plan along with the measures to be included as part of the proposed project and memorialized as conditions of future site plan/subdivision approvals such as regulations to be enforced through the HOA and adherence to the tree clearing restrictions for bats the proposed project mitigates the potential impacts to wildlife habitat to the maximum extent practical*. She thinks it should say if the Planning Board is going to state that the proposed project mitigates potential impacts to the maximum extent practicable it should state, what is the enforcement mechanism for the HOA? We have heard from both the Conservation Board and the Hudson Highlands Land Trust, which are experts in this area, that there are not very many enforcement mechanisms for an HOA. She can imagine that at some point down the road instead of forests these properties could be surrounded by lawns which would greatly change the nature of the property. Another thing she wanted to note, and this is not necessarily a change, is that if there is not a requested zoning change from the Town Board then two of the units cannot be built.

Chair Zuckerman stated that's in multiple places.

Ms. Wendel replied correct, she's just noting that just to make sure everyone's aware. She continued on page 21 to say in the first full paragraph that the project sponsor's proposed design, *seeks to preserve as many trees as possible on the lots surrounding the proposed homes*, should be changed to, *states that they will do so*. In all the

places where the Planning Board seems to be adopting what the project sponsor is saying, without enforcement mechanisms she disagrees with that language.

Chair Zuckerman stated but it does say "the project sponsor", it doesn't say "we". It does state it's the project sponsor.

Ms. Wendel replied it looks like the board is adopting it if they say in the board's document, *the project sponsor seeks to preserve as many trees as possible*, or if we say in our document that *they've mitigated the effects to the maximum extent possible*. That is the board's adoption of what they're saying. In her view that's how she thinks anybody would read this document. She thinks they should change all that language to say that they're claiming that and if the HOA is enforceable that's what it will it's claimed to require. In other words, she thinks everything in the document should be changed to say this is what they're claiming they're going to do, but they don't have an enforcement mechanism.

Chair Zuckerman asked, language-wise on page 21, second paragraph it says, *the project sponsor's proposed design seeks...*, what would she propose specifically that they say instead of that language?

Ms. Wendel stated that she thinks that language should come out.

Chair Zuckerman replied, he's okay with that.

Ms. Wendel stated that she doesn't think the second sentence should be in there either, *forested areas to remain on lots as well as all forested areas to be preserved throughout the project site...* They don't know that that's going to be true. She just doesn't think there's any mechanism to enforce that. She doesn't think they should have that language in there.

Ms. Conner asked if it's not in there does that mean it's not required?

Ms. Wendel stated no, it should be required as part of the site plan.

Chair Zuckerman replied, they haven't even gotten to site plan.

Ms. Wendel stated it's not a finding of the boards. If they're going to have that sentence, they should say, *however we lack any mechanism to enforce it*.

Ms. Conner asked is that true, though? Whether they believe the HOA will enforce it or not, her understanding of these things is that when an applicant submits something they're supposed to assume that they're operating in good faith.

Mr. Gaba replied that's exactly right. To ask the applicant to draft a homeowners association agreement now before they have subdivision approval doesn't really make a lot of sense. What they're saying is as part of their approval, when they come back from the Town Board after seeking their zoning variance, they will submit documents to the board's satisfaction regarding the homeowner's association and the enforceability of the restrictions. So, they can't really put that in the finding statement. It's something that's going to come down the road.

Ms. Wendel stated that she does have a suggestion for editing, *is required to preserve as many trees as possible*, she thinks that would be fair.

Chair Zuckerman stated the more specific we can be, he's fine with that language.

Ms. Wendel continued on page 17, in the last paragraph, *setting aside the areas noted under a conservation easement constitutes*, she thinks that goes too far that sentence, *constitutes the permanent preservation of*

known box turtle habitat. She does not think they should be stating that it would serve to minimize potential impacts to box turtles to the maximum extent practicable.

Chair Zuckerman asked what would she like instead?

Ms. Wendel replied that she would take the sentence out.

Chair Zuckerman suggested that they could say that the plan proposes to or the applicant purports to, he's fine with that language.

Mr. Gagnon asked if they take that out does that mean that they have no obligation to protect the box turtle?

Chair Zuckerman suggested, *aspires to constitute*.

Ms. Wendel stated that she doesn't think that they should say *aspires*. She said she is okay with *purports to preserve the known box turtle habitat and purports to minimize potential impacts*. She continued that she disagrees obviously with on page 20 that, *the proposed project does not result in significant adverse land use or zoning impacts requiring mitigation*. But she doesn't know if she can make any edit.

Chair Zuckerman stated that the reality is when they come to take a vote if she's not going to vote in support of this.

Ms. Wendel stated, right, she's voting against. For the reasons stated by the groups that have opined on it as well as these comments she's making, namely the Conservation Board member and HHLT.

Ms. O'Connell stated that on page 8 it says, *all new homes will be individually sprinklered*. That's not necessarily required by code and so do they want that to be so? That's a huge lift.

Ms. Conner stated that if she remembers correctly that had something to do with the fire department and access or something like that can somebody confirm that? So that they wouldn't have to have a dry hydrant in the pond. That was to protect the pond.

Ms. O'Connell asked if there is some way to correlate that so if they're reading it?

Mr. Gagnon stated also on page 8 he had brought out why they deleted the consultation with the North Highlands Fire Department regarding the suction hydrant. They seem to address it with the sprinkler system but it would be nice if they highlighted the editing to it so they didn't have to go hunting and pecking.

Mr. Werner stated that was a comment that he and Mr. Gainer had addressed last time. That was because the applicant felt that would be more of a detriment to the pond and getting there with fire trucks would require more disturbance, more roads to go in. So, they're proposing just as part of the project to sprinkle the homes to avoid needing that.

Mr. Gagnon stated that his point is that all of a sudden it just disappeared. There was no comment in the edited version, so he had to go hunting and pecking to try to figure out what happened to it.

Ms. Conner stated that on an AKRF memo on the second page related to this project the memo of June 1st, 2022. It says, *language is revised to reflect the project sponsors expectations for the new homes total floor area and height and clarification that the HOA is not above the Town Building Department approval process for new home construction in the town and site plan review through the Planning Board for footprints over 3000 square feet is required by the town code*. So, one of the things they talked about last month was that the total building square footage was going to be 2500 sf, or less than 3000 sf. But there's a difference once again for "footprints". So, she just wants to be super clear that the total, and this also is on page 8 in the finding statement where it says, *the*

project sponsor anticipates that all 22 new homes will have approximately 2500 to 3000 square feet of total floor area. She wants to be super clear that a 3000 square foot "footprint" is not a "total floor area" and she doesn't want there to be confusion.

Chair Zuckerman stated that the memo is not a part of the permanent record. The board is adopting this document.

Mr. Werner asked if they want that edited because there's two additions that were made. Page 8, the second paragraph after the bullet points, right?

Chair Zuckerman replied yes, it says, *2500 to 3000 square feet*. They had a whole discussion with Mr. Liceaga last time where he said it was square foot of home, not footprint.

Ms. Conner stated that and then the other area that they have highlighted underneath that, *in accordance with the Phillipstown Zoning Code the development of any lot containing a dwelling with a proposed footprint greater than 3000 square feet*. She just wants to be clear that that's the zoning code, that is not this development.

Chair Zuckerman stated that he thinks that sentence should be struck. The, *in accordance with the Phillipstown zoning code through this Planning Board*, he thinks that should be struck because we're saying it's 2500 square feet.

Ms. Conner stated that she asked last time for it to be clarified, who is going to be the ruling authority if that was going to be the HOA or if that was going to be the Building Department, because it was unclear in the original whether the HOA was making that decision or whether it always had to go to the building department.

Mr. Werner stated that it's in the code that footprints of over 3000 square feet need site plan approval by the Planning Board so he just clarified that.

Ms. Conner stated that she just doesn't want to imply that there will be buildings here that could have a footprint over 3000 square feet since they are voluntarily limiting themselves to a total of 2500 to 3000 square feet.

Mr. Werner replied that makes sense.

Chair Zuckerman asked why are they adding that if they're just repeating what's in the code?

Ms. Conner stated that because the original language was not clear as to whether the HOA was in charge of that or whether the Code was in charge.

Chair Zuckerman stated that the code supersedes the HOA.

Ms. Conner replied, clearly, but in the same way that Ms. Wendel felt that it wasn't clear the way it read that's how she felt at that time.

Mr. Werner stated that he thought it was good to include it just so it clarifies that there are requirements above what they want to do if there's a footprint that's over 3000 the Planning Board has authority to review it on with a site plan review. Otherwise, it's just a straight building permit with the building department without Planning Board review. He thought they wanted him to put it in there last time so that's why it's in there.

Ms. Conner stated it did not need to be changed. She just wanted to make sure that they were clear.

Mr. Werner stated that he thinks it protects the board.

Mr. Tomann stated that he does have more questions about the nature of the HOA but that's not a ripe subject yet so he's going to pass.

Mr. Lewis stated that he feels the same way. He has his reservations about the HOA but otherwise and, in particular, missing last month's meeting he has nothing to change.

Chair Zuckerman stated page 4, bottom paragraph, third sentence it starts, *the project sponsor sees the inclusion*, he doesn't believe that sentence is necessary for this. *this historic road within conserved areas of benefit to the future management of the easement*, he stated that he thinks that's irrelevant and frankly a little self-serving. He then asked Mr. Gainer on page seven in the table they say if they don't get the zoning approval it goes from 24 to 22. He distinctly recalls 21?

Mr. Gainer replied that the correct number would be 22 without the re-zoning approval.

Chair Zuckerman continued page 9 there are some bullet points. He's referring to the fourth bullet point it states, *the use of pervious designs for driveways and parking pads will be encouraged* and then crossed out, *all driveways and programs will be designed to be pervious*, why did they get rid of that?

Mr. Werner replied yes, that was just upon a closer review of their draft HOA bylaws or in the DEIS. That was language that was specifically in there. For the analysis that they did for stormwater they assumed everything would be impervious.

Chair Zuckerman stated that's a more conservative number on impact, he's saying why not say all driveways and parking lots will be designed to be pervious? We would prefer in this community to have things be pervious, we don't want asphalt. He would like the return of what it said which is, *all driveways and parking lots will be designed to be pervious*, which is what most people who live in the rural part of this town have.

Mr. Werner stated that the issue is the draft bylaws don't say that currently but if that's something that the sponsor is willing to.

Chair Zuckerman replied that they're not adopting the draft bylaws. They're adopting this document. In the next section they crossed off the same thing again which is, *DEIS and FEIS all driveways and parking lots will be designed to be impervious*. They should not be impervious; they should be pervious. If they're saying for the analytics it was done for impervious, he understands that to prove the worst case in stormwater but the driveways and the pads should be pervious. He would like the property to remain as rural as possible. On page 21, the top paragraph that they have their regs, *while a view of the edge of the project site closest to East Mountain Road...no views would be provided to the area the project site proposed for development would be provided* is very strange language. He would rather say, *no views from Fahenstock could be seen*, that is more proper English than would be provided. God is not providing views they just exist. He added that is the end of his edits, he thinks these are relatively minor edits. Back to Ms. Wendel's point to respect the point she's raising about whether there should be something in here about enforcement mechanisms of HOA, he asked Mr. Gaba what could be added with respect to Ms. Wendel's point about expecting the HOA's to be enforceable, or some language about the role they play and if they don't do what they're supposed to do government steps in or something like that. What's the language that could be added?

Mr. Gaba stated that the board still has authority over that in the site plan approval process as far as that goes. The SEQRA determination that they're making is that through the HOA, which will subsequently be approved by the board, they're going to be able to enforce these restrictions and conditions which are being mentioned. He's not sure where exactly they would put in language like that in this document.

Mr. Werner stated that it's mentioned a few times that there's a lot of things that are going to be subject to site plan review.

Chair Zuckerman stated that he's got that, but Ms. Wendel has correctly referenced that a number of folks came before the board concerned about the HOA's ability to do what it's supposed to do so he thinks, in addition of a sentence that says something the effect of during the Planning Board site plan review the Planning Board will review the HOA's rules and mechanisms for enforcement to ensure what's listed here becomes a reality, some sentence like that around page 16.

Ms. Wendel stated that she forgot to mention on page 15 in the third full paragraph this is the second sentence. It's talking about lawn maintenance and pest control which is a little bit contrary to the idea that there's not going to be lawns, *have the potential to introduce contaminants that could impact groundwater etc., pesticide and herbicide use will be strictly regulated by the HOA.* According to the draft of the bylaws and general rules and regulations of the HOA contained in the DEIS the use of pesticides and herbicides will be prohibited unless the holder of the conservation easement otherwise expressly consents prior to use and unless such use is legal and in accordance with all applicable laws, rules, etc. Her question is under what circumstance who is going to hold the conservation easement, is there any requirement that it be a nationally accredited land trust?

Chair Zuckerman stated that says in the zoning code the standards for a conservation easement holder.

Ms. Wendel asked other than possibly for removal invasives or something like that why would herbicides and pesticides need to be used? It's very clear from the documents that there's flow of water down to the pond and she's concerned that at some point pesticides and herbicides will end up being used unless it's enforceable under the HOA that they not be used.

Chair Zuckerman stated that they are going to have an opportunity at site plan approval to review the HOA documents so he thinks they can cover that then. He thinks this is meant to basically convey that they are opposed to them unless strictly used for specific reasons.

Ms. Conner stated that just to be really clear on page 12, the top bullet point Ms. Wendel was saying that there would be no lawns but that's not correct. It says the total lawn area should be no more than 2000 square feet per residential lot, so there will be lawns.

Ms. Wendel stated she doesn't know how they have lawns if they're not going to cut anything down but dead trees so then that's inconsistent with the statement and the findings. How do they have lawn with nothing cut. It doesn't make any sense.

Ms. Conner replied but there's going to be disturbance, they're allowed to have disturbance.

Ms. Wendel stated that it states somewhere in here that no trees will be cut down, unless she's mistaken.

Mr. Werner stated that the restriction about lawns is they they're not going to be allowed to be greater than 2000 square feet. That's in the draft HOA.

Ms. Wendel stated that she thought that when it said they're going to cut select selective trees that said selective trees meaning only dead trees.

Mr. Werner stated that they're talking about lots that are about an acre. 2000 square feet of land on the acre lot is not covering the entire lot. They're talking about where those lawns will be they'll put them strategically in places where they can minimize tree removal.

Ms. Wendel stated that she doesn't see how we can adopt anything saying that there's going to be selective cutting of trees when that's so subjective.

Chair Zuckerman stated again they're going to cover that in site plan approval because like they do with most of issues, they ask for a tree inventory. They're not there yet, they're just doing SEQRA review right now.

Ms. Wendel stated that she doesn't think they should say there's selective cutting of trees then. She thinks that's not true.

Ms. Conner stated that's pretty standard language. What they have is a very large parcel with a lot of trees. If you look at that map and look at the green you can see that there's a lot.

Mr. Werner stated that he found language that Ms. Wendel is talking about. It starts on the last paragraph, page 16. This is about the tree cutting, *among the rules found in the project sponsors general loans and regulations of the HOA.*

Chair Zuckerman quoted, *clear cutting the prohibition of clear cutting and lots and the trees must be selected*, that's very consistent. Does anyone have a problem with that sentence?

Ms. Wendel stated that she's does. She thinks they should be saying, *must be reduced to the maximum extent possible.*

Ms. Conner stated that Mr. Gaba is always telling them that it should be to the maximum extent practicable. Practicable, not possible.

Chair Zuckerman stated he's fine trying to add that language. He then asked if Ms. Wendel is going to vote for this if they put this in?

Ms. Wendel replied no, because it's not a conservation subdivision.

Chair Zuckerman stated he's fine to add language, *the requirement that tree removal be minimized to the greatest extent practicable.* He then asked if the board members are comfortable voting to adopt this at this point given the edits that are made if Mr. Werner can deliver them.

Mr. Gaba stated if they want to adopt it with those edits, they can certainly vote to adopt it with those edits. They're going to need to see the document back.

Chair Zuckerman replied absolutely, it's conditional upon seeing the document. He then asked for a motion to adopt the finding statement as edited verbally in their conversation pursuant to having Mr. Werner provide a clean copy of that.

Ms. Conner made the motion; Mr. Gagnon seconded the motion.

Mr. Lewis asked if they are going to see this again.

Chair Zuckerman stated that they're accepting it right now.

Mr. Lewis replied but there are going to be changes to it down the road that they're going to want to see again.

Steve Gaba stated that what they're going to see back if there's something textually, some typo something left out that should have.

Chair Zuckerman stated this is the SEQRA review, they haven't even started site plan, they've got a whole bunch of fun yet. The vote went as follows:

Kim Conner: Aye
Dennis Gagnon: Aye

Peter Lewis: Aye
 Laura O'Connell: Aye
 Neal Tomann: Aye
 Heidi Wendel: Opposed
 Chair Zuckerman: Aye

The vote was 6 to 1 in favor to adopt the finding statement.

Mr. Werner asked if they would like a clean Word version.

Chair Zuckerman stated that they need a red line version so they can see the changes.

**Garrison Golf Club PDD/Hudson Valley Shakespeare Festival, 2015 Route 9 Garrison, NY 10524
 TM#60.-1-59.2 & 59.3**

Chair Zuckerman stated what they are going to do tonight. They're nearing the end of the second year of evaluating the Hudson Valley Shakespeare Festival. Some will say it's fast, someone will say it's slow. Here's what they've done - they've done three site visits, had nine hours of review of the part 3 EAF, had three months of public comments, read over a hundred letters, read many studies of noise and water and traffic and fauna and flora, and he thinks they've engaged a thoughtful discussion back and forth with the applicant. That's all been in service of what they've been doing, which is the SEQRA. They are completing the EAF, which by completing the EAF, by reviewing the submitted part one, then the applicant prepared, the board reviewed the part two and then they reviewed as necessary the part three. Now the Planning Board is at a point where they have sufficient amount of input to fulfill the next step in the SEQRA process which is the determination of significance stated in the SEQRA handbook, a state hymnal that is an extract of the law. It states that it is quote, *determining whether or not any aspect of the overall action may have a significant adverse impact upon the environment and following that preparing a legally sufficient determination of significance a positive or negative declaration that meets the standards of the paragraph*. SEQRA defines this step as the most critical step in this SEQRA process. They just saw the end of a seven and a half year SEQRA process tonight for those in the room (for another project). Here's how tonight's going to go. Steve Gaba is going to provide the board with a reminder of the choices they have in making the determination of significance, what the criteria is for negative and for a positive declaration and board members please feel free to ask clarifying questions. He will then turn to board members and ask them to share their individual views of whether there are significant adverse impacts that are not sufficiently mitigated. They will go in order of chapters A through O. These are the chapters they've been using for several months that were from the part three, also known as the narrative. If board members don't have comments that's fine, they don't have to have comments on everything. There are two ground rules. This is not a back and forth with the applicant. This is a conversation for the board to engage in, for them to understand where they stand. Unless a board member needs a clarification of fact from the applicant, he expects this to be a board discussion that's happening in the public venue. The second ground rule is he does ask for civility among our board members if there's disagreement. This is a long and important topic and he just wants to make sure they all respect the work they're doing. After that discussion he will ask the board if it's ready to vote in determining significance. If a super majority five of seven are ready to vote then he's going to ask for a vote and as they vote he's going to ask each board member to not only state negative or positive, but state the specific environmental considerations in keeping with the criteria. Last thing he's going to just state for everyone is they're all volunteers, mostly lay people and they arrive at their perspectives from their own judgment and experiences and this is, to quote the SEQRA handbook, an intentionally subjective process. If it wasn't this town, and many others would just have a building department and they would just go meet the criteria, next. That's why there are seven volunteers sitting up here. The SEQRA handbook states they recognize the subjectivity of the term "significance". Next Mr. Gaba is

going to remind the board again of the criteria. Chair Zuckerman shared with the board members before the extracts from the SEQRA handbook and chapter 617.2.

Mr. Gaba stated that on the issue of subjectivity yes, the ultimate determination of significance is necessarily to some degree subjective. But the determination has to be based on objective facts and materials in the record. They can't just say they don't like something. It's got to be either they're going to make a positive or a negative declaration, same criteria and here are the reasons why and here's the proof supporting their position on this, just so they're clear on the subjectivity issue. In regard to SEQRA the main tool for making a determination and conducting the review is the environmental assessment form, the EAF. And the purpose of an EAF is to assist the board in identifying potential adverse environmental impacts. The ultimate purpose of it is to help the board to decide whether the potential adverse environmental impacts are significant or not. Significant is a term of art. Under the SEQRA regulations in order to make a determination that a particular potential adverse environmental impact is significant the board must determine that it both has a significant magnitude and that it has importance. Those also are terms of art under these SEQRA regulations, so you have to understand what they mean. In regard to magnitude, as the chairman stated, an EAF has three parts. The first part is part one in which the project is described, facts about it are set forth, its location and so forth. Part two of the EAF lists a number of possible environmental impacts that could be the result of really any project, and it puts boxes to be checked by each one of them asking the board to determine if the potential environmental impact listed is none-to-small or is moderate-to-large. That determination, none-to-small, moderate to large is magnitude. If they determine that it's a small impact, the magnitude is small, it makes it less likely although magnitude is not the same thing as significance, it's only one consideration, makes it less likely that the impact is significant. By the same token, if it's moderate to large it makes it more likely that it's a significant impact, but again these are not interchangeable terms. Just because they check moderate to large doesn't mean that it's a significant environmental impact. They have to go on to consider importance. Importance was perhaps an unfortunate word for the DEC to choose because what's important to one person isn't important to another person. It really kind of carries the baggage of that subjectivity that Chair Zuckerman alluded to earlier. It's important to understand that importance is an umbrella term. What importance signifies is a number of objective considerations that are set forth in the SEQRA regulations that they go through when they look at any project and base their determination on things like the geographic scope of the project, how many people are going to be impacted by it, its duration and importantly the probability that the identified impact will actually occur or not. AKRF provided to everybody on the board copies of the SEQRA regulations 6 NYCRR 617.7 and that really lists the criteria, the considerations that going into determining the issue of importance. The DEC handbook gives an example of the interplay between magnitude and importance, it's not a great example but it kind of illustrates the point. The handbook says that if you had a project that involved a bridge crossing a stream and the lead agency, the board that was permitting the project, made a determination in the part two of the EAF that there was a potential large impact from erosion caused by the construction of the bridge to the creek that runs under it. If in looking into the facts the stream turned out to be a very muddy already sediment choked stream, the board could make a determination that notwithstanding the potential large impact, it didn't have importance because the temporary inflow of sediment into the stream wouldn't really have an impact on the nature of the stream which was already a muddy smaller stream. However, if the stream was a clear trout spawning stream you would find that there was importance because now, you're interjecting sediment into a stream that's going to have a significant environmental impact. Being a large magnitude doesn't necessarily mean that it's a significant impact. They have to look at the underlying facts. Again, in regard to consideration of importance the board bases its determination on the part 3 EAF and the supporting documents that are produced both by the applicant and by the board's consultants in regard to the impacts that have been identified in the part 2 as being moderate to large. Those documents can either lead the board to a conclusion that there needs to be further study, that the facts before it do not demonstrate that the potential

environmental impacts have been sufficiently avoided or mitigated and therefore they need a positive declaration and an EIS, or they can lead the board to a determination that either changes to the project or objective proof submitted in the course of studies shows that the potential moderate to large impacts identified either are very unlikely to occur or would have been avoided due to the changes to the project or have been sufficiently mitigated. Further study is not needed, a negative declaration can be issued. He continued that he realizes that that interplay is a little difficult to actually apply to the facts and he thinks the DEC does too. On their website under the part three information, that they have listed a few examples of how the interplay between magnitude and importance might be applied in a particular instance and candidly none of them really would apply very clearly to the type of project they have before them. But he found one of them which might be a little bit illustrative in helping understand how to marry magnitude and importance.

Mr. Gaba then read an example from the DEC website. *A 60-lot subdivision is planned on a 200-acre vacant lot in a suburban area that does not have public water sewer and storm water facilities. The area is zoned for residential use is similar to other subdivisions in the area and has adequate street access and road capacity. Using the part two of the EAF the board determined that there would be no impact in some environmental resources but they determined that there would be moderate to large impacts related to surface water and groundwater. This was because new water supply wells would need to be provided and require the construction of a new wastewater treatment plant. After reviewing the part three EAF the Planning Board found one; there are adequate water supplies and groundwater quality or quantity would not be affected as determined through test wells showing adequate capacity and high- quality potable water. Further the health department tests show soils on the site are supportive for individual septic systems as proposed. Erosion control methods will be used during construction to minimize erosion. The developer has included plans for a community sewer service to serve the new residents. The system has been approved by the department of health and the dec. The Planning Board found only short-term minor impacts due to the land disturbance and construction of the homes, water facilities and sewer systems. As a result of this analysis, that's the part three analysis the Planning Board has decided the impacts will be avoided or mitigated and thus small in magnitude and unlikely to occur. Given the context of this project in an area of similar scaled dense residential subdivisions the board did not find any impacts that they considered important. They made a determination that the impacts of the project were not significant and a negative declaration issued.* He added that obviously that's not the case for every project in which a part three is submitted. Often, they look at them and say that may well be the case but they don't feel that it's adequately addressed. The point is it can be and that's the determination that this board needs to make. They've reached a point where they've completed the part two of the EAF, they've identified several potential environmental impacts as being moderate to large and now need to look at their importance by looking at the criteria set forth in the SEQRA regulations.

Chair Zuckerman stated they're going to start A through O.

A- Land Use Zoning and Layout. He added the comments they're trying to get really are tied into significant adverse impact that has not been sufficiently mitigated the greatest extent practical. No board members had any comments on this topic.

Mr. Gagnon stated he just wants to clarify; this project still has to go through rezoning, correct?

Chair Zuckerman replied yes.

B- Geology and soils - No comments.

C- Topography and Slopes - No comments.

D- Vegetation and Wildlife- Ms. Wendel stated that she thinks that her reaction to this document is partly based on reviewing all the materials and a careful review of all the public comments, and there were many public comments in particular about wildlife and one of the issues that she thinks has not been sufficiently explored is the nighttime effects on wildlife of the project. It seems to her that there are significant potential nighttime effects that have not yet been looked at and hence not mitigated and those have to do with the fact that it seems a lot of the wildlife on the site, that's been both cited in the report and discussed in the public comments, is nocturnal and therefore will be heavily affected by noise, traffic, large numbers of people on the site, lighting and she would like to see a little bit more of a study, possibly wildlife cams that can be put up on the site to explore. She doesn't feel like she has a really good sense of what is the nocturnal activity on the site and how will it be affected. Obviously, this is an incredible project in terms of the amount of conserved land and the amazing sensitivity to studying it. But she thinks that particular element of studying the nocturnal aspects of the wildlife on the site is not here and so to her that's an important element particularly considering that a lot of wildlife has been kind of forced to be nocturnal due to human impacts in the area. People have made a lot of observations in the public comments about seeing lots of different types of wildlife and based on the public comments she finds that to be significant and not mitigated.

Ms. Conner asked Mr. Gaba when they went through the initial phase of the EAF they talked about scoping and the studies that got done were done because they came to some kind of an agreement about what they were going to require is that right?

Mr. Gaba replied they don't formally refer to that as the scope. Scoping, the technical term under SEQRA, applies to an environmental impact statement. So, she's just talking about the parameters of this study.

Ms. Conner stated that they asked for certain things. At this point would they ask for more things if they felt that the things that were done weren't mitigating, is that right? She just wants to know what their parameters are.

Mr. Gaba stated that if the board was so inclined and the issue here were impacts on nocturnal animals and they felt that what's missing is a study on that and they had reason to believe that a study on that might be able to show that any potential adverse environmental impacts were either being avoided or sufficiently mitigated, that it would make a difference in their determination under SEQRA, the board may want to hold off on making this determination and ask for that additional study certainly that's within their authority.

E- Wetlands and Watercourses – Mr. Gagnon stated that he is concerned with the talk about lowering the pond by four feet in lieu of doing proper repair of the dam. He doesn't know where that stands but that's something that he would like to have addressed and the impact of that with some of the wildlife and plants around that pond now and how that would take effect.

Chair Zuckerman stated that in regards to Wetlands and Watercourses this is particularly in relationship to the bridge. The bridge did come up late in the proposal design, he thinks it came after the part two was done so he doesn't believe they actually had the conversation the part two about it. His view is that this bridge is proposed to be built in the wetlands buffer and according the applicant's documentation would disturb 11% of the buffer on the site that this structure, which would have large concrete piers, 26 foot, one on each side and multiple intermediate piers stuck into the wetland buffer today only pierced by golf balls would go up while we have a failing bridge directly to its south, one holding back a large volume of water seems to be potentially misguided and maybe unneeded. There are alternatives that he believes are reasonable - to repair the existing dam bridge and route traffic through there, or have all traffic enter and exit through Route 9. Instead, the bridge, which he can't tell from the conversation, is meant to be either for the one the single-family home or for the property but the bridge seems to have a magnitude that could be avoided, would be irreversible and therefore he finds it significant and adverse that is related to watercourses and wetlands.

F- Storm Water Management- Ms. Wendel stated that she has a significant concern about the amount of the drawdown of the neighbor's wells and the extent to which that's been examined. She's thinks it needs further study. However, from what she has read it's possible that there could be things done but they aren't proposed yet such as rain gardens on page 66 which would hold water and possibly help with not having so much water leaving the water table. She was wondering if something like cisterns could be considered?

G- Utilities water sewer and energy -Ms. Wendel stated that based on the fact that they heard a lot of testimony about people whose wells have run dry over the last X number of years she thinks it was maybe 15 or so and thinks that just that for obvious reasons that requires further study. That's a highly significant consequence of any project but there may be things that could be done like cisterns, or possibly study whether those people's wells should be dug deeper. Obviously, someone's wells running dry would be in her opinion important significant.

Ms. O'Connell asked Mr. Gaba is he could help her understand in SEQRA the cumulative impact?

Mr. Gaba replied that the cumulative impacts are something that could be considered in SEQRA review. What they extend to is not only their project but other projects that may go forward in the future as long as it's reasonable to anticipate them. For example, the first commercial store along a strip of roadway that's zoned commercial and has sufficient infrastructures to support multiple retail stores along it, has to consider not only the traffic impacts that it will put out but also the potential cumulative impacts for future development along it. They can't be speculative about that future development. It's got to be something that's either proposed, in the works, what it was specifically zoned for, something along those lines.

Chair Zuckerman interjected that he thinks Ms. O'Connell is trying to address 617.7, number 12, which is, *two or more related actions undertaken funded or approved by an agency none of which would have a significant impact on the environment but when considered cumulatively would meet one or more of the criteria in this subdivision*, he believes that's what she's referring to.

Mr. Gaba stated if there was one modest sized development which didn't in and of itself pose potential for significant adverse environmental impacts, but if they considered its impacts along with another equally sized or perhaps even smaller development, the cumulative impacts of the two of them would reach that significance threshold then they could issue a positive declaration as to both of them.

Ms. O'Connell stated that as part of the project what they've done is they are decommissioning one of the wells and in actuality, with the already approved PDD, really all they are doing is just increasing it by two in order for them to make their flow. But the initial PDD was done X number of years ago. There's been a cumulative amount of development she would assume in the localized area. She understands that there's a flow test that was done and then it actually allows for the additional two, but then once you do that then how does it affect everybody else around for the future? She knows that they can't plan for the future but just to say that it does concern her that they already have a water problem there, it's been stated by the community. They're going to be tapping into that significantly and then what does that yield for the future?

Mr. Gagnon stated that they're stating that there's thirteen plus thousand gallons a day, but there's an asterisk that states it does not include irrigation. It would be nice to have a feel for what that might be and where that water is coming from if it's coming from a cistern, if it's coming from the stream.

Chair Zuckerman stated that it's coming from the stream, it's the pond that keeps it.

Mr. Gagnon stated that his other concern is the higher sanitary waste impact and then the higher energy consumption. It hit him when he saw that six million BTUs of energy annually are going to be used. He's not quite

sure how large that really is compared to what's being used now but it just jumped out at him so something that he would like to look into a little bit more come as a comparison.

Chair Zuckerman stated that as Ms. Wendel said the public was vociferous in their concerns for water. The analysis done here is it relies on calculations of recharge rates and budgets and so there's not an actual study done physically of water. The irrigation for the golf course activity that will stop is not that relevant to the water budget because the water for irrigation was supposedly from an irrigation pond fed by a service stream. They have a significant increase in water that will be taken from the aquifer. It says in the analysis current usage is 9,820 gallons per day. That will move up to 14,814 gallons a day, that's a 51% increase. There's one number that's a little strange in here. There was a reduction in the budget for no category except banquet attendees. In the 2005 analysis it was 20 gallons per attendee and that number was halved in the intervening number of years. He added that he doesn't know who came up with the number, but if they use the old 20 gallons, because again no other category was reduced, it would be 16,814 gallons per day or a 71 % increase. Now, whether it's 51% or 71% increase, it's a big increase. What they know is in 1999 is this document clearly states very clearly, even at the old usage, residents experienced failure of wells quote, *several wells showed influence*, which he guesses is a term of art to mean there was an impact, *as the irrigation wells were pumped and the last time an off-site well was investigated during this period was 2006*, there was a seven-year period where every couple of years they went back to go see what was happening with the local wells. As Ms. O'Connell said they're adding a net one new well, they're taking out one and adding two more. While increasing consumption either 51% or 71% depending on what you look at. He thinks the interesting thing is that water usage comes at punctuated moments. This is a lot of people coming at a specific period of time, it's not a constant drawdown of breakfast, lunch, dinner, bathroom, shower in the morning. There's a lot of punctuated moments and this is a community that's deeply embedded in the climate movement, whether Storm King or Clearwater, and so the notion that the environment has not changed in the last 25 years since the 1999 incident was identified would, actually for those of us in this community would probably agree, that the world has changed a little bit. Collectively he sees the increased volume of water as material. He sees the data as historic and non-specific to the site and he sees the need for greater diligence on that.

Ms. Conner stated that in the AKRF memo talking about the Geodesign memo on groundwater, AKRF and Mr. Gainer stated that that Putnam County Health Department would be potentially testing off-site wells as part of the permitting process. How does that get does that get triggered?

Mr. Werner stated that it's not potentially, it's required for any public water supply or any new wells they're going to drill they have to get a permit from the county to do that.

Ms. Conner asked if that's just for their individual wells, not for off-site wells?

Mr. Werner stated they do a testing program that does take a look at off-site wells too as part of the county permitting process so they are going to do it.

Ms. Conner stated because it says it would be at the discretion of the Putnam County Health Department, so she's wondering if it's really discretionary or is it required?

Mr. Galner stated it's going to be required.

Ms. Conner asked is that testing for flow and what the effect is going to be on off-site wells it's not just testing for whether the water is any good or anything like that. Because what you've said here is, *if the required test for permitting the new water system reveals an issue it will be difficult for the applicant to move forward with the project and the applicant understands this risk*. So, is that the mitigation for this concern about wells?

Mr. Werner stated that the bottom line is they have to go through a process of the county to get the wells put in and if they fail the tests as part of that they can't move forward. They understand that that's a risk at this point. They haven't done that testing but it's going to happen anyway with the county. So, that by default is in the argument that they've made and AKRF has agreed with because they've seen in other projects is that the mitigation is built into that process. The process of having the county do this review and permitting would be the mitigation for any concerns because they test for quality, they test for offsite impacts they test for general quantity for the project itself.

Ms. Conner asked so, how does that affect this concern that Chair Zuckerman just raised well?

Mr. Werner stated that it sounds like Chair Zuckerman is asking for them to do that testing now rather than wait for the county to require it.

Mr. Gagnon stated he has a question regarding that in their report it says it would be done at the discretion of Putnam County Health Department it sort of leaves it kind of open if it would be done or not.

Mr. Werner stated that he thinks for a project like this they would do it, but they do have discretion for different types. If it's just a single-family home that's getting a well put in, they might not do a testing program for all a bunch of off-site wells but for a commercial kind of project like this the discretion, is they probably would require that.

Ms. Wendel asked would they check all neighboring properties for example? How does that happen then, would they just go around the whole surrounding area and test it?

Mr. Werner stated that there's a process where they would most likely ask property owners if they want to be included in an off-site testing program if they think there's going to be an issue. There's a 72-hour test and the applicants have described that already how that would work. Obviously, they have to have permission to test somebody's well to see if it's getting impacted but that's the process that they can do.

H- Traffic/Transportation – Ms. Wendel stated that it's pretty clear that the traffic effects are significant. There obviously has been some effort to mitigate the traffic by cutting the project back. However, there's still clearly a very significant increase in traffic that will be entailed by the project and in her opinion the mitigation is insufficient to counter the significance of the effects. Even 387 vehicles moving through the project at a time which she thinks is the current estimate entering or exiting by the two main driveways, that's a lot of cars. She's wondering if something like staggering the exits could help? She thinks that there could be more mitigation of the traffic. Obviously, that amount of traffic is going to heavily affect all the neighbors and she appreciates the applicant's explanation that it won't really contribute to noise which she takes at his word that it's so noisy there already that it's not really going to change anything but she still thinks it's a big effect, the lights, everything about that amount of traffic. She is also very concerned based on the testimony about the new exit and she gets the idea that the old exit on Snake Hill Road has sight line problems with that level of traffic. Maybe not have very many people exit on Snake Hill and staggered exits on Route 9 would perhaps mitigate the effects on a lot of different people who live on Snake Hill a very rural road which will obviously have a hugely increased level of traffic from the project.

Ms. O'Connell stated that in the traffic study they talk about anticipated delay times coming out onto Route 9 and on to Snake Hill. The problem that she has is that the delay times is based upon on average a car on Snake Hill or at Route 9 assuming peak hours of performance. So, if she were to just think of it in her layman's brain it doesn't take into consideration that she might be four cars back or four cars behind another four cars so is that an average of 10 seconds for every car? So, if she's got eight cars in front of her that's cumulative so all to say that it's

not really 10 seconds additional of time spent. When you have traffic, it's traffic and just to be clear everyone who's driving Route 9 these days knows that work that's being done and we have a traffic light with a single lane and when that gets backed up, you're there for more than 10 seconds. So, she doesn't think that's sufficient in the way that it's stated. With that being said when the cars then back up, we don't actually look at what the tertiary road impact is going to be. Everyone knows that Travis Corners Road goes all the way through and goes through and connects into Old Albany Post Road. People find back roads and then they go the back roads then we're actually rerouting traffic onto roads that we're not currently studying at this point so that's another concern. Currently the bridge is designed in such a way that it's for two-way traffic. She feels that the mouth of the bridge at Snake Hill is a little bit of a pinch point. If they've got traffic or people coming out of the site going on to Snake Hill, they're going to end up with people backed up wanting to either make a right turn which is fine assuming that the traffic can flow or they can be going left and could be backed up and then that backs them up traffic wise. Even if they put a flagman that slows it all down. There's the potential that during design they may actually widen that to increase it by another lane. If they do that it actually impacts the overall design because they could potentially double the opening of that mouth which then increases the impact of the overall design of the bridge itself and, for her, that footing at that wall at Snake Hill is pretty massive. It's 35+ feet in length and that's full stone and that's a stone footing against the retaining wall, down the bed that leads down towards the water and then there's another one on the other side.

Chair Zuckerman asked Ms. O'Connell if her bridge point is a Community Character/Visual Resources point, a Traffic point or does she think it's both?

Ms. O'Connell stated she thinks it's both. There is a character point based upon the drawings and the overlay. When you're looking at it from Snake Hill and looking on the site it's hidden and then you add it with the vegetation but there are certain points leading into it coming from 9d on Snake Hill, the other side of the bridge is very viewable and that is very out of character because it's very large, it's monumental.

Mr. Gagnon stated, going back to the bridge new location versus trying to restructure the bridge at the existing location, last time it was brought up that it's being moved due to sight line concerns at the existing location. He doesn't think there has been any problems where the existing exit or entry is regarding sight lines. It is an existing driveway and he's questioning why again that cannot be reutilized for that exit. He's not quite sure if that is a valid point at this time and doesn't know how the county would address that or not so but something he wanted to throw back out on the table.

Ms. Conner stated that she just wanted to ask a question about thresholds because when they talk about how much traffic is too much traffic, she doesn't know that she has the means to assess that because sometimes when something that seems like the magnitude to her might be great and then the standard is something else, so are there standards, are there thresholds for these things that can guide them?

Mr. Werner stated that there are and the traffic study lays those out. Back in the fall they identified one possible actual impact if they look at the DEC and DOT criteria for impact and traffic which is a level of service at an intersection declining to a point that it's an impact. They identified that at Snake Hill and 9D and in response to that the applicant eliminated the matinee shows which got rid of that level of service deficiency so that was really the only quantifiable impact if they go by the guidance of DOT and DEC for traffic. They made that change to get rid of that impact, so there's really no true impact in this traffic study currently according to those guidelines.

Ms. Conner asked is there a number for how many cars is above that threshold and how many cars is below that threshold. Is it possible to say that? She'd like to have a number in her head.

Mr. Werner stated that the threshold to complete a traffic study is usually 100 trips in a peak hour. So, they've identified that already and they did a full traffic study of various intersections around the site as a result of the trip generation that they did. Once you get into that they look at the intersections and see if those intersections are going to be impacted as far as level of service which means how much delay is there now, how much more delay will there be with the project. If it goes from an A to a B, it's not necessarily a bad thing. If it goes from an A to an F level surface that's obviously an issue. That particular intersection that they called out, Snake Hill and 9D did have a reduction in level of service. They identified that as a problem as this is an impact according to the criteria so they modified the program to get rid of that.

Mr. Tomann stated that one of the earlier, if not the first site walk, they were walking along the bridge and there seemed to be an acknowledgement by the applicant that yes this is going to have to be repaired and widened and they're going to have to tweak the sight lines, they're going to have to shift a little bit and somehow along the way that's not what they're doing. He's in agreement with a few of his colleagues. He doesn't get the logic behind abandoning that and doesn't see it price wise. He brought this up a few times to the applicant both about drawings and about trying to get more information and those comments did not seem to make an impression on the applicant. This is all tied into Visual Resources and Community Character also because they're at that point they're running up against the comprehensive plan which is a document that essentially says look out in general for certain types of things and they've run into quite a few of those things.

Mr. Lewis stated that he really appreciates the fact that so much attention is being paid to possibilities of extra lanes and so on and so forth. He happened to run into a perfect example of going up Route 9 and getting a stop light at the intersection of Snake Hill then Travis Corner and 9 they had a sign at the top of the hill that said there was the usual traffic sign and then it flashed red when it was red. The dangers he thinks that have been brought up before can be mitigated by something as simple as that. It's a little electricity and it certainly slowed him down. He thought it was a great idea and if that could be maybe built into the idea of what possibilities are going to be happening with traffic, he'd like to see something like that.

Chair Zuckerman stated that he was struck in the criteria from 617.7 for determining significance by two lines. One is roman numeral I which states, *a substantial adverse change in traffic or noise levels*. The second is roman numeral 9 which states, *the encouraging or attracting of a large number of people to a place compared to a number of people who would come to such a place absent the action, and it states, for more than a few days*. In his analysis and assessment, he wants to thank Mr. Canning who has worked with the board in a number of these projects for the applicants and his work is thoughtful and clear. That said he's come to this view which is it's clear to him that the analysis that has several hundred new attendees to the area coming at nearly the same time and leaving off at the same time for days in a row for a number of months at length is a large change. It's clear the number of cars coming to this specific location and not just Philipstown is significant and adverse. It's clear to him that the arguments for these cars visiting a performance or that are already here in the town is unpersuasive as they'll notice in a number of the documents, they take the what the PDD would have or existing conditions then add the traffic from Boscobel to come up with a comparative number. He does not think adding the Boscobel numbers is an appropriate comparison because that's happening in a different location. He'll just give two examples. When they look at the Saturday night numbers the new model was 330 trips. This would be the total Saturday pm event hour trips and if you take the existing and subtract out the Boscobel numbers, it's 82 in the existing and it's 102 in the PDD that's an increase of 223% to 300%. In the Saturday midday it's less it's 184 trips vs. 93 in the existing and 63 in the PDD. That's an increase of 100-190 % and this activity in his opinion is highly punctuated, it is voluminous, it's late at night in a rural neighborhood. As he's said many times this is for a good cause but he does believe this is mitigatable. It's not his place to give the mitigations but he'll suggest a couple. The programming envisioned is inclusive of a restaurant and a wedding venue. That makes the traffic further

adverse it is not necessarily in the spirit of being putting on Shakespeare. He thinks that's a that's an adverse significant adverse impact that has not been sufficiently mitigated.

I- Visual Resources and Community Character -Mr. Gagnon stated that he just wanted to comment that the location of the performance tent really does seem to be a hot button issue in the community. The applicant wants to put it there. As far as he's concerned, he doesn't have a problem other than the high wind condition. Their engineer was here trying to reassure that it that is capable of withstanding that.

Ms. Conner stated that there seems to be a misunderstanding about ridgelines and what you can see and it's not what you can see from the ridgeline. It's whether you can see into that ridgeline. She just wanted to repeat that. As far as she can tell this tent isn't really going to be visible from much of anywhere. That was one of the places that they pointed out as places they wanted to be able to see it from, but many of the comments they got were directed the other way, so she just wanted to repeat that because it comes up a lot when they talk about people wanting to put a house on a ridgeline or something like that, they don't allow that if it's a protected ridge and that depends on where it can be seen from.

Mr. Gaba stated that he's sure Mr. Gagnon didn't mean it this way. He was just pointing out that it's an issue as far as visibility goes, but whether something is a hot button issue or the there's public opinion one way or another about it doesn't impact this board's SEQRA review. If they raise an issue of course it does but overall sentiment isn't what drives SEQRA review. The board's going to be looking at the criteria and determining if there are visual impacts which might require further study.

Mr. Lewis stated asked what the entire project is going to be able to add to the community in terms of public access, to walking spaces and other things. He doesn't feel like he has a sense here and it's early obviously to have an idea of where the public gets access, how the public gets access. Is this going to be taken away from the public to be able to walk? How much of the western lands are they really going to be able to get access to? He's surprised at the passion which is being exhibited by the need to keep this ridgeline tent free.

Chair Zuckerman stated there was a great amount of discussion about the location the tent and a viewpoint that could take up a vista that's important to the region. He was not understanding exactly where the tent was when they were in the part 2 and hence in chapter 18 of the part 2, letter F they checked, no or small impact may occur. He was moved by the commentary from the public at the public hearing and was also very moved by Mr. Davis' comments about the role of the tent as being emblematic of the brand of Shakespeare. He does think the commentary is meaningful and he has spent a lot of time staring at the computer-generated images and he's channeling what Mr. Gaba just said about additional study. Because of the volume of comments, because of the importance of ridges, because of goal number one of the 2030 comprehensive plan states, *sustain rule character protect elements including ridgelines*, he takes that meaningfully and so far at least from his attempts at staring at the pictures that are taken or the digital images that are rendered of what a tent would look like. No matter how much he zooms in not only does he not see any impact of a tent he doesn't see a tent anywhere and he worries that the quality of the study done is not representative of what they would possibly see. He added that he's not impinging upon those who did the work but he does not feel given the magnitude of the question being asked the study itself is sufficient for letting him feel comfortable that that location is perfect. It's clear from all the commentary that there are alternatives on that ridge to where it's being put. He's not suggesting the brand would not have some minor impact of Shakespeare but he's also conscious of as one speaker said, the brand of Philipstown.

Chair Zuckerman then said the last thing on community character is the bridge point they were discussing. It's large, it's 26 feet at the western end. It's sitting in area that's relatively open. He doesn't think the bridge is consistent with the existing architecture and landscape of the area. If you look at the same chapter 18, letter F of

part 2. When they did part 2, chapter 18, consistency with community character the bridge was not yet proposed and they checked, no or small impact to these two items, *the proposed action is inconsistent with the predominant architectural scale and character and the proposed action is inconsistent with the character of the existing natural landscape*. He would submit that the bridge of its magnitude is moderate to large impact in that area and if he had known at the time the bridge was being proposed he would have advocated for checking that as moderate to large. He does think this bridge is out of keeping with the community character and would be a meaningfully large impact for the immediate neighbors. It's certainly not reversible and leads him to call it a significant adverse impact.

J- Sound and Noise – Ms. O'Connell stated the sound study under the tent is for unamplified sound and/or light amplified sound which is fine because. She thinks they were told that the majority of the shows that they do are unamplified. However, it does not take into consideration if they are not doing a show, they do something else with amplified sound, then how is that impacted? So, that is uncertain and she doesn't know because they don't have any information on that. Regarding amplified sound they say that it's in the wedding venue and it's indoors only. Well indoors only with what? Doors closed, windows closed, garden not open, no access? Do they do amplify indoors and then someone brings a speaker outdoors then what happens? So, again unclear, not 100 % fully assessed in her mind. Also, she understands that sound studies can be done over time but they also have to take into consideration weather patterns, vibration and have to point speakers in a certain direction to make sure that they capture vibration and the effect of topography and landscape because that will affect sound and reverb and that is also unclear in the sound study.

Ms. Wendel stated that they actually heard testimony that already it's noisy on nights when there's weddings. It's hard to imagine how you could possibly enforce people staying indoors during a wedding. People actually spoke about it at the public hearing so that's already apparently a problem. What she wanted to bring up is golf courses are quiet at night and that's a very significant change. The fact that now the site would be noisy in the evening and into the night is a significant impact on wildlife for the site which has not been studied, namely that all the nocturnal creatures which is probably the majority of the wildlife living on the site at this point will be heavily impacted by the noise. Even if it doesn't blow the exceedance like it did at one of the sensors, she's not sure that seemed to be described by the noise expert as such a low exceedance that it's irrelevant. To her noise needs further study.

Chair Zuckerman stated that he has been a bit on the fence on this topic. He read the report and it seems reasonable the noise levels it described and he's cognizant about the continued activities of the festival focus on drama and theater. However, there is a real consideration that this enterprise if successful will also be used for other entertainment purposes. It could change hands and they are doing a SEQRA assessment of this property. He was moved by the comments, in particular by Al Smith who's a resident of Garrison, who spoke at the hearing and is a successful music executive. His point was in fact what would happen if something else played there? Chair Zuckerman continued that he's concerned from that comment as he thought it through and didn't realize this when he read the report the first time through that the noise levels were A, for unamplified and B, for lightly amplified. They were reviewing this SEQRA for outdoor theater that's what the zoning change would allow and not its programming therefore he is concerned about a potential impact and having an analysis for whatever is above lightly amplified, he guesses that's just amplified. He thinks that is something that begs further study.

Ms. Conner stated that she wants to echo that, she agrees that the outdoor music venue idea is something that the board would want to preclude and she thinks there's stuff in here that says that it won't become that but just that she agrees.

Mr. Tomann stated that he thinks it's going to be pretty tempting to not use that tent for other purposes. At the last meeting they had there their engineer who vouched for the structural integrity of the tent. He thinks it's going to be quite a temptation to use it for weddings and evening concerts. He's sure they can maybe mitigate some of that with some of these agreements towards the end of the process, but he is also concerned about the use of that tent and the noise.

Ms. Conner stated as a side note she did learn this week that a quiet dishwasher is 49 decibels.

Mr. Lewis asked does the code have a maximum limit?

Chair Zuckerman stated that at the lightly amplified level they were below the zoning codes requirements. What he's raising is they did not run a study for something above lightly amplified and it doesn't have to be Pearl Jam, it could be a beautiful orchestra that could be loud symphony if you've ever heard the 1812 overture, he doesn't know what the decibels are he's just suggesting that is a question he has.

Mr. Lewis asked about noise production the town code has a number, correct? Is that indoor or outdoor?

Chair Zuckerman replied that the applicant used the outdoor numbers for the study.

K- Cultural Resources – No comments.

L- Open Space and Recreation – No comments.

M- Construction – No comments.

N- Community Services and Economy – No comments.

O- Human Health and Site Assessment- Ms. Wendel stated that she's still concerned about the soil contamination that's on some of the greens and it does relate a little bit to construction because the concern is in part that without further study of the extent of the contamination deeper wells to examine the soil farther down and kind of look a little bit more closely at what how much of the soil will be disturbed it's hard to know if the construction will actually drag contaminants to other parts of the property, introduce them into the stream and the wetlands, basically disturb the contaminants that are presently contained under the soil to some degree and obviously that's going to be changed by construction. She knows they did do a study of that but the study actually leads to concerns about the fact that the soil is contaminated by the use of pesticides for all these years and it has heavy metals. It's well-known around here with Constitution Marsh it's a lot better to leave those metals where they are than to drag them up and without really any plan, basically they've been told the plan comes down the line later on. She thinks that there's significant concerns that the site is contaminated with heavy metals and that it will be disturbed and that she really doesn't know what's going to happen to those metals.

Chair Zuckerman stated that ends the run through the 15. He then asked all the members if they are ready to vote on a determination of significance, all members nodded that they are ready to vote. He stated that he's going to ask the question about how people wish to vote positive or negative and to please state the specific environmental considerations that has not been sufficiently mitigated to the extent practical or if they are voting negative that they don't believe there are any things that have significant adverse impacts. Positive means you believe that there are significant adverse impacts, negative means you don't, hence the oddity of inversion of state government rules. State how they wish to vote and then please provide whatever the key environmental impacts are if there are any if voting positive.

Ms. Wendel stated that she votes for a positive declaration. She thinks there are significant adverse impacts that require further study which is not to say they couldn't be mitigated at some point. On wildlife, water, traffic, noise related to wildlife and on human health and site assessment based on the soil contamination.

Ms. O'Connell stated that she's going to vote positive and the significant adverse impacts are water, traffic, noise, and she'll put the bridge under community character.

Mr. Gagnon stated that would be voting for a positive and that's based on the items that were checked off for moderate or large impact again, he's sure some of them can be mitigated through further study but impacts on surface water, groundwater, the bridge, transportation specifically, energy impact, the amount of energy being used falls under that category under the SEQRA regulation 617. Other items would be the bridge, the new bridge versus the old bridge or the existing location.

Ms. Conner stated that as she looks through this and if you look at the memo from AKRF they don't seem to have a lot of problems with this. She had concerns about traffic but it looks like traffic is within the threshold and one of the things that they talk about is does this meet the code, what are the significant impacts? Traffic is going to be a change. She doesn't quite understand how the specific project versus the town wide project comparison works. So, if this exists at Boscobel and they're re-routing traffic to a main arterial road from a minor artillery road is that mitigation? That doesn't count because it's too far away, is that right? She stated that she's trying to understand. This is traffic that's already existing within the town and it's just being moved from a minor road to the major arterial road, right? But we treat it as an utterly separate thing, correct?

Mr. Werner replied yes, they didn't compare it to Boscobel. It's a different location they looked at what this will generate in this area, they looked at the PDD from 2005 and other projects in the area as part of the scope.

Ms. Conner asked Mr. Werner what he thinks about what Chair Zuckerman said about taking out the Boscobel numbers and it being 200% and things like that?

Mr. Werner replied that that he would probably defer to his colleagues the traffic experts.

Ms. Conner stated that it just looks like everything's pretty much mitigated, the only thing that seems to potentially be out of line is the bridge. She's not sure how well they'll be able to see the bridge from the road and is not sure what the rule is because when they talk about the tent it's what can be seen from the highway. So, in terms of this bridge that's there they're supposed to follow certain criteria to follow the code and she just wants to understand what she's thinking about when talking about that stuff.

Mr. Werner stated when they're talking about visual impacts the guidance is specifically states, *from publicly accessible points can you see the project?* The applicant has showed us because the site is in the scenic protection overlay, they're going to propose a lot of screening along all the frontages to the point where as you're driving by someone in the vehicle is the publicly accessible in this case, those are roads that are publicly accessible and you're a driver driving by. It's not going to be easy to see the project. That's what they've shown with their simulations. We haven't seen a rendering or simulation of the entrance and he knows the board has asked for that it's still something they can ask for. It was something that was added after the part two, like the Chairman said. The visual impacts have been focusing on the tent visibility and the indoor theater when it was proposed and it's no longer proposed. The board can ask for a rendering of the entrance when it's finished, what is it going to look like from Snake Hill? Again, it's not about can one see it from their front porch or house, it's more about publicly accessible points. Snake Hill Road is a publicly accessible vantage point. To date they haven't really seen a visual perspective view of that from Snake Hill Road, they can very well ask for that. A lot of the stuff that he's hearing tonight can possibly be done as additional study on the course where they are on now. Obviously, it's the

board's decision. In many ways the board has treated this project from last spring as a positive declaration because they developed a scope, they had them write to part three, reviewed what the scope would be for that part three, reviewed the part three numerous times, they had three public hearings about it. so going through an EIS process would likely just be a repackaging of what they've been seeing.

Ms. Conner replied right, we're already there. They've done most of the studies that would be required.

Mr. Werner replied at this point the board could ask for more still within the vein of the EAF that they're trying to do which is an expanded EAF. That's the process this board has been taking since last spring. If they had concerns right away the board could have pos decked it out of the gate and had the applicant do an EIS out of the gate. The board decided to do it this way which is perfectly fine in accordance with the rules.

Chair Zuckerman asked Ms. Conner if she is voting for a negative declaration?

Ms. Conner stated that she doesn't think it matters. She thinks they are going to end up with the same thing they've got. She voted to abstain.

Mr. Tomann stated that he's going to vote for a positive declaration based on the environmental impacts of the bridge and he doesn't think that the potential environmental impacts have been minimized to the greatest degree practicable.

Mr. Lewis stated that he's also going to vote for positive declaration. He has three fairly simple things that just bother him, but he'd love to see them there. One is the bridge. He'd like to see it stay, he's not a structural engineer, he has no idea if that is a type of stone that can be used for bridges for long term or not. Two, his feeling as he said 100 times the vision and the access and the maintenance of this property for people who want to come and use it if there are going to be rules. He wants to know what the rules are and he'd like that before any big vote. And the other thing was wildlife, nocturnal and daytime animals have to be checked into a little bit more. All three of those he thought needed more thought.

Chair Zuckerman stated his vote is for a positive declaration. His role is ultimately to ensure transparency due to in this case state law as the code is really not as applicable with SEQRA as the state law is and ensure participation from the full set of stakeholders, property owners and community members. He added that he does want to thank the applicant for their consistency in providing their views and their flexibility with the process and also for their input from the public to reduce the scope, announced he believes in April. He's said many times especially the beginning of each of the public hearings that this is a good project in terms of its social benefit. He thinks what the Shakespeare Festival does is important for the community and the region. Second, he wants to thank the public for their input, they certainly got a lot of it, it was often researched it was always heartfelt. Third, he does want to thank his fellow board members. It's a tireless project for volunteers. He's been consistent on his he hopes, at least in my concerns since the part two with the exception of the bridge which didn't exist at the time. He's listed those in commentary to the public and the applicant. He thinks he's done his research and reading. He added that he does think this is a subjective process so they can have different views on the same facts, but he does believe there's several factors that are significant adverse environmental impacts that haven't been sufficiently mitigated. They are; the traffic, the tent siting, the bridge's size and location, the water usage and the potential for noise pollution. He's shared these views in detail earlier. He believes individually they meet the criteria for being high in magnitude and importance collectively they've required him to take a harder look through an EIS and require him to vote for a positive declaration. He then asked for a motion for a positive declaration. Ms. O'Connell made the motion; Mr. Lewis seconded the motion. The vote went as follows:

Kim Conner: Abstain

Dennis Gagnon: Aye
 Peter Lewis: Aye
 Laura O'Connell: Aye
 Neal Tomann: Aye
 Heidi Wendel: Aye
 Chair Zuckerman: Aye

Opposed, Abstentions? The vote passes 6 to 0, 1 abstention.

Mr. Werner stated that he can draft the actual positive declaration document based on the DEC's standard form if that's what the board wants to see. But he thinks the board wants to look at it first at the next meeting. So, they draft that, the board goes through and make sure the topics they want covered are in there and then it gets adopted.

Mr. Gaba added memorializing what they did same thing with the same principle as with the finding statement discussed earlier tonight, give it to the board to look over make sure there's nothing.

Mr. Werner stated but then it has to get posted to the ENB when it's final.

Mr. Gaba replied that won't happen until next month.

Chair Zuckerman asked how they deal with the fact that some topics were mentioned by many people, some topics were mentioned by one person, how do they take that into account. In 2018 for Hudson Highlands Reserve but there were three or four topics mostly said by the same people but there were a couple of minor reports if you will as well so how do they catalog? How do they determine which ones absolutely go in and which ones maybe not?

Mr. Gaba replied they write them all and they voted on them as a as a whole. He thinks they have to accept them as a whole. If they change their mind they can vote to amend of course.

Mr. Werner stated that he has notes about what everyone said. They can make sure each one of these is in there for now. For HHR it was a four topic EIS, it's what's called a targeted EIS, they're targeting it to certain topics. So, as they went through before there were a lot of topics with no comments so he's assuming those are not going to be part of the DEIS.

Mr. Werner stated that usually actually the draft scope is developed before the scoping hearing. He added that the first step is a draft scoping document has to be prepared by the applicant that's covering the topics that the board identified in the positive declaration of as concerned topics. Once that draft scope is acceptable to the board can set a scoping hearing where the public can review it and has an opportunity to present comments on it at the scoping hearing. Following that they can it can be revised into what's called the final scope and when you adopt that final scope that's the green light for the applicant to start preparing the DEIS in accordance with that final scope.

Mr. Gaba stated that as Mr. Werner rightly points out they are going to wait to receive the draft scope from the applicant and then after that they'll have the scoping session.

Chair Zuckerman then asked for a motion to adjourn. Ms. Conner made the motion; Mr. Lewis seconded the motion. The vote went as follows:

Kim Conner: Aye
 Dennis Gagnon: Aye

Peter Lewis: Aye
Laura O'Connell: Aye
Neal Tomann: Aye
Heidi Wendel: Aye
Chair Zuckerman: Aye

Opposed, Abstentions? Being none the vote passes.

The meeting was adjourned at 8:56 pm.

Date Approved: 9/15/22

Respectfully submitted by



Cheryl Rockett- Planning Board Secretary