

# Planning Board Meeting Minutes – April 12, 2021

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A meeting of the Town of Yorktown Planning Board was held on **Monday, April 12, 2021 at 7:00 p.m.** via Zoom video conference.

Chairman Rich Fon called the meeting to order at 7:00 p.m. with the following Board members present:

- John Kincart, Secretary
- Rob Garrigan
- Bill LaScala
- Aaron Bock
- Roxanne Visconti, Alternate

Also present were:

- John Tegeder, Director of Planning
- Robyn Steinberg, Town Planner
- Nancy Calicchia, Secretary
- James W. Glatthaar, Esq.
- Councilman Ed Lachterman, Town Board Liaison
- Dan Ciarcia, Acting Town Engineer

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**In accordance with the Governor’s Executive Order 202.1, the Town of Yorktown Planning Board will not be meeting in person until further notice. All Planning Board meetings will be held via video conferencing and will be uploaded to the Town of Yorktown’s website and Yorktown’s YouTube channel after the meeting. All meetings will be broadcast on the Town of Yorktown Government Channel.**

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## **Correspondence/ Liaison Reports**

- On behalf of the Board, Chairman Fon welcomed Roxanne Visconti to the Planning Board in her new role as an alternate Board member.
- The Board reviewed all correspondence. Mr. Kincart noted that correspondence was received with respect to the proposed District Overlay Zone. Chairman Fon also noted that additional correspondence was received for various agenda items that will all be part of the record.
- There were no liaison reports.

## **Motion to Approve Meeting Minutes**

Upon a motion by Bill LaScala and seconded by John Kincart, and with all those present voting “aye”, the Board approved the meeting minutes of March 22, 2021.

## **Motion to Open Work Session**

Upon a motion by Chairman Fon, and with all those present voting “aye”, the Board opened the Work Session.

## **WORK SESSION**

### **Martinez Subdivision - Lot 2**

Discussion: Request for SWPPP Permit  
Location: 35.16-1-2; 1767 Jacob Road  
Contact: Westchester Modular Homes  
Description: Applicant is requesting a SWPPP permit be granted by the Planning Board pursuant to Resolution #05-23 dated September 26, 2005, which required the approval of a permit prior to building permit.

Comments:

Anthony Pisarri was present. Mr. Pisarri stated that the plan submitted is almost identical to the plan that was approved by the Planning Board in 2005. The only difference being that the house was raised a few feet, and shifted 6 feet to the right to provide more space for the drainage area that was designed by the previous engineer.

Mr. Tegeder asked about the elevation change. Mr. Pisarri responded that the FFE was changed from 482 to 484. Chairman Fon asked Mr. Ciarcia if there were any concerns. Mr. Ciarcia responded that he had no concerns as this subdivision was reviewed by the Planning Board and Engineering Departments at that time and is essentially unchanged from the original application. Mr. Kincart asked if there were any regulatory changes since 2005. Mr. Ciarcia responded no and that the analysis was done for the whole subdivision. This permit is just for Lot 2. Mr. Ciarcia asked Mr. Pisarri about the disturbance. Mr. Pisarri responded that the limit of disturbance is roughly 25,000 sf and is the same as to what was previously proposed and showed the plans to the Board. Mr. Tegeder asked about the trees. Mr. Pisarri responded that the area is mostly open field and the existing conditions map didn't indicate that there are any trees. Mr. Tegeder noted that if there are any trees, they will need to be marked. If the 10 tree threshold of 8 inches or larger in diameter is exceeded, a tree permit will be required per the new Tree Law. Mr. Garrigan asked if there were any significant changes to the adjacent properties. Mr. Pisarri responded that there were none to his knowledge. Mr. Kincart stated that he had no planning issues for this lot as long as the regulations are the same.

**Upon a motion by John Kincart, and seconded by Aaron Bock, and with all those present voting “aye”, the Board approved the resolution approving stormwater pollution prevention permit for the Martinez subdivision, Lot 2.**

### **Alek-Tris Subdivision**

Discussion: Zoning Board Referral

Location: 16.10-3-26; 1075 East Main Street, Shrub Oak

Contact: Architectural Visions, PLLC

Description: Applicant has requested the Zoning Board revisit their 1981 decision prohibiting future subdivision of Lot 26.

#### Comments:

Joel Greenberg was present. Mr. Greenberg stated that he was before the Board a while back with respect to the 1981 ZBA decision for the subdivision. The subject property is located on East Main Street and currently improved with an existing two-family house and cottage. The lot is a total of 72,000 sf. The applicant is requesting for the Zoning Board to eliminate condition number one of the decision stating that no further subdivision on this lot facing East Main Street shall be permitted. The current proposal is for two 18,000 sf lots leaving approximately 36,000 sf for the front lot that contains the two-family house and cottage. The property is zoned R1-10 which requires 20,000 sf per lot. An analysis of the lot sizes within the area was prepared for review and is shown on the subdivision map. The proposed lots will be supported by town water and septic systems. The development would be in keeping with the neighborhood. The application is scheduled for the 4/22/2021 ZBA meeting agenda.

Chairman Fon asked if the existing structures have septic systems. Mr. Greenberg responded that the existing house and cottage have their own septic system and showed the location on the plans. Chairman Fon questioned if there would still be enough area to replace the systems for those existing structures should they fail. Mr. Greenberg responded that there is since there are no wells. Mr. Kincart asked if there were any details on what the history of the original decision was that prohibited further subdivision of the lot. Mr. Greenberg responded that a copy of the June 25, 1981 ZBA decision was submitted to the Board. Mr. Bock noted that there is a letter from former Building Inspector Bill Gregory dated June, 1981 which appears to be the origin of the restriction. In the memo it was noted that these new lots would be in conformity with the neighborhood but his recommendation was that the variance be granted with the condition that the applicant is now seeking to remove. Mr. Greenberg stated that he will look into this further. Mr. Kincart noted that there are currently 3 existing dwelling units on the 72,000 sf property that includes the existing two-family residence and cottage which would conform to the nature of the code in terms of the 20,000 sf minimum. He suggested that the Board consider a single additional lot which would then meet the 80,000 sf requirement for 4 dwelling units. Mr. Bock noted again that there was another letter from the former Town Assessor, Bob Killeen that mentions structures on the remaining lot at that time and thinks this may be the reason they didn't want to further subdivide. Mr. Greenberg responded that to his knowledge, there was a pool, barn and storage building that were removed. Discussion followed with respect to the lot size and use. Mr. Tegeder stated that the septic design needs to be addressed and questioned if there has been any testing or inquiries with the Health Department. Mr. Greenberg responded that he researched the septic systems and noted that there is a file in the Westchester Health Department for the two-family house and cottage. Minimal testing at the site was performed as there are no wells. They did not perform the deep hole testing since they are not sure what the ZBA decision will be. He feels that the two lots will support adequate septic systems. Mr. Ciarcia

noted that they will be cutting off the expansion area for the existing house and cottage. The Health Department will need to review the application to ensure that the existing configuration could be supported. The question is how many dwelling units and bedrooms are on this property. The stormwater will also need to be addressed with respect to the setbacks and he feels that these items should all be addressed before commenting back to the ZBA. From a planning perspective, Mr. Kincart felt that if the two lots will only support a one or two bedroom dwellings they would be substandard for the neighborhood. Mr. Greenberg stated that he will provide more information with respect to the septic and stormwater. The Planning Department will request additional time for review of the application.

**Motion to Close Work Session and Open Regular Session**

Upon a motion by Bill LaScala, and seconded by John Kincart, and with all those present voting “aye”, the Board closed the Work Session and opened the Regular Session.

**REGULAR SESSION**

**Hemlock Hills Solar Farm**

Discussion: Decision Statement

Location: 46.08-1-1 (Yorktown) & 45.12-1-4 (Cortlandt); 500 Croton Avenue, Cortlandt Manor

Contact: Badey and Watson Surveying and Engineering, P.C.

Description: Proposed 1.69 MW solar farm on 4 acres of the 50 acre Hemlock Hill Farm property that is located in the Town of Yorktown.

Comments:

Margaret McManus was present. Ms. McManus stated that since the last meeting she had discussions with Mr. Ciarcia, Acting Town Engineer, regarding changes to the stormwater mitigation trenches. The plans have since been revised and submitted for review. A trench was added in the center of the array and another at the end of the array. The trenches follow the contours. She now feels that the trenches are sized adequately and will help with slowing down the concentrated flow of the stormwater. It is also proposed to remove one tree that provides shading near the solar array. If the Board requests that they plant a new tree, they will do so.

Chairman Fon asked Mr. Ciarcia if there were any issues. Mr. Ciarcia responded that the revised plan is an improvement from the previous proposal as it addresses the run-off. He was concerned with the flow of the run-off from the panels due to their orientation. The trenches will function as a level spreader and force the run-off to be absorbed into the ground between the arrays. He feels that this is a good solution in keeping with the solar panel policy and addressing the stormwater concerns due to the panel orientation. Chairman Fon asked the Board and Counsel if there were any comments and there were none.

**Upon a motion by John Kincart, and seconded by Bill LaScala, and with all those present voting “aye”, the Board declared Lead Agency.**

**Upon a motion by Aaron Bock, and seconded by Rob Garrigan, and with all those present voting “aye”, the Board adopted the Negative Declaration.**

**Upon a motion by Bill LaScala, and seconded by John Kincart, and with all those present voting “aye”, the Board approved the resolution approving site plan, special use permit, wetland permit, and stormwater pollution prevention plan for Hemlock Hills Solar Farm.**

**Hansmann Major Subdivision**

Discussion: Public Informational Hearing

Location: 6.13-1-10, 6.17-2-63; 280 East Main Street, Jefferson Valley

Contact: Ralph Mastromonaco, PE, PC

Description: Proposed 3-lot subdivision on 11.43 acres in the R1-80 zone.

Comments:

**Upon a motion by John Kincart and seconded by Aaron Bock, and with all those present voting “aye”, the Board opened the Public Informational Hearing.**

Ralph Mastromonaco, P.E. was present. Mr. Mastromonaco stated that all the hearing notices have been mailed out. A response letter dated 4/12/2021 was submitted to the Board with respect to the numerous comments received for the

application. In addition, the applicant's attorney submitted a letter dated 4/9/2021 with respect to the reserve strip. The proposal is for a 3-lot subdivision on 11.43 acres in the R1-80 zone. The preliminary testing for the Health Department is complete. The lots will be served by individual septic systems and Town water. The stormwater basins are shown on the plans. It is proposed to improve a portion of Osceola Road and construct a cul-de-sac at the end of the road that will serve as frontage for the 3 lots. The tree survey is complete. An estimate of 348 trees are proposed to be removed but within that calculation they accounted for the clearing of trees in the septic expansion areas. If the Health Department permits them to only clear the trees that are in the primary septic area, then the tree removal would be reduced to a little over 200 trees for the 3 lots. A mitigation plan has not been prepared as yet. He stated that there were a number of comments with respect to the easement from East Main Street into the property and noted that this was never a way to access the property as there is a steep cliff. The applicant's attorney submitted two documents with respect to the ownership of the road and the reserve strip. The reserve strip is a 10 ft. area that is noted on the filed map from the 1920s.

Chairman Fon asked the Board and Counsel if there were any comments. Mr. Glatthaar, Esq. stated that he reviewed all the documents submitted. His conclusion is that the applicant does not have access rights onto Osceola Road. He noted that there are three ways to create a public street. The first way is by condemnation which they clearly don't have. The second way is by offer of dedication and acceptance which is a highly technical process and requires a formal offer of dedication by the owner of the land in the bed of the street and must be accepted formally by the municipality. There is no record that either an offer was made or dedication accepted by the municipality. The third way is that a public road could be created by what they call user, which is public use of the road with maintenance by the municipality over a period of time. Osceola Road stops 10 ft. short of the Hansmann property and, as a result, even if there was a public road by user, it is only the portion that has been used by the public that could be deemed to be a public road under the user doctrine so that would not cover the 10 ft. strip of land separating this property from the formally platted out version of Osceola Road. In addition, not all of the road has been built or maintained by the Town so he doesn't believe that this applicant has any access to Osceola Road as a public road. He noted the 1/22/2021 letter submitted by the applicant's attorney citing case laws. The cases cited are significantly different from this situation. The case relied on mostly was the Warren v Protano, Inc, case and noted that we don't have that situation here. To his knowledge, the Town of Yorktown has never taxed this 10 ft. strip and has never acquired it in an in rem proceeding. They are relying on the case law that indicated that the only part of a street that can be a public road under the user doctrine is the road that is actually travelled by the public and maintained by the municipality as a public street. He noted that in the submission today, the applicant's engineer states the right-of-way off Osceola Road permits public access since it is filed on a subdivision plat. Technically, this is not a correct legal statement. Platting a road on a subdivision map is an offer of dedication to the municipality which can be accepted at any time and there is no evidence that it has been accepted at this time. The applicant's attorney states that there is no proof of ownership for the reserve strip. He agrees that they raise significant questions about the claim of ownership by one individual, however they state that there is no deed of ownership which is required for the land to be owned. He doesn't agree with this as a correct statement of law. Title to the property passes by operation of law. A deed is not a necessary requirement and he cited the property law. Based on all the information submitted, he does not believe that there is legal access to Osceola Road from the Hansmann property. Mr. Mastromonaco asked Mr. Glatthaar to provide his opinion in writing for review by the applicant's attorney.

Mr. Bock stated that the initial finding is that there is no access for this property and noted that this is a fundamental requirement for proceeding with a subdivision application. Mr. Mastromonaco responded that they have two different opinions and thinks it is worth the effort to see if their attorney can show that there actually is access.

The Board and Counsel agreed to proceed with the hearing as the intent is to inform the public of the proposed project.

Chairman Fon stated that the Board recently conducted a site visit. He feels that the access to the site is extremely steep and maneuverability is an issue. Fire truck access is another issue and noted the Fire Commission's comment memo dated 3/1/2021. He also noted that it seems that a wall was removed at the end of the road that may have been part of another property. Mr. Bock stated the wall was removed by the applicant for access. Mr. Mastromonaco responded that they were given a permit from the Highway Department to improve that strip of land and then a stop work order was issued.

Mr. Bock stated that he read all the public comments and shared their concerns about the reserve strip and access to the site. He is also concerned with the construction phase and parking of vehicles in this area. If the project should stop midway what would happen. With respect to improving the road, there are houses in the roadway or right next to it, so there isn't much room to work with. In addition, there are other intersections in the area which are uncontrolled and prone to accidents.

Chairman Fon asked the public if there were any comments:

**Chris Wallace, 312 Osceola Road** - Mr. Wallace asked about the difference in grade change from the original proposal to the revised 3-lot submission shown in the profiles. The revised plans seems less steep than the original subdivision.

Mr. Mastromonaco responded that they may have used an expanded vertical scale in the original submission. The revised plan is a natural scale. Graphically you would see a difference but numerically it would be the same grade. Mr. Tegeder responded that the Planning Department will review the plan for accuracy.

**Lindsay Feller, 3914 Pike Place** – Ms. Feller questioned the location of the septic tanks. She also asked how far her property was from the disturbed area.

Mr. Mastromonaco responded that after testing at the site, it was determined that those areas were best for the septic systems. He noted that the Feller property line is 20 ft. from the disturbed area. Ms. Feller stated that there wouldn't be any trees left and noted that there are about 15 trees in that area that are down from a storm.

There were no further comments from the public or the Board.

**Upon a motion by John Kincart and seconded by Bill LaScala, and with all those present voting “aye”, the Board closed the Public Informational Hearing.**

Ms. Steinberg added that Christine Gogola sent a message asking when the applicant will clean up the end of the street since its been left the same since the stop work order was issued. Mr. Mastromoanaco responded that he spoke to Ms. Gogola and cleanup is under way.

Mr. Mastromoanaco asked the Board if they could proceed to a Public Hearing. Chairman Fon responded that the issue of the access and reserve strip needs to be resolved before proceeding with the Public Hearing.

### **Foothill Street Solar Farm**

Discussion: Public Informational Hearing Site Plan & Special Permit

Location: 15.07-1-5; 3849 Foothill Street

Contact: Con Edison Clean Energy Businesses, Inc.

Description: Proposed installation of a 1.875 MW ground mounted solar panel system with associated access road, electric utility upgrades, and perimeter fencing.

Comments:

**Upon a motion by John Kincart and seconded by Rob Garrigan, and with all those present voting “aye”, the Board opened the Public Informational Hearing.**

Joe Shanahan of Con Edison Clean Energy Businesses, Inc.; Websley Darbouze, Design Engineer; and Eric Redding of Bergmann Associates, were present. The property is located at 3849 Foothill Street. The proposal is for the installation of a 1.875 MW ground-mounted solar farm to be located on 34 acres of land of which 15 acres will be utilized. Mr. Shanahan reviewed the history of the site with the Board. He noted that the Lockwood family had previously explored residential development for this site in 2008 which included a 20-lot cluster subdivision and a 20-lot conventional subdivision with the Town. A comparative analysis for the site as a conventional subdivision, a cluster subdivision, and the current proposal was submitted to the Board and discussed at the previous Work Session. There seemed to be a consensus at that meeting that there have been no significant changes in the regulations with respect to subdivisions. The Lockwoods chose to pursue the solar alternative as it is less impactful to the neighborhood with some benefits to the community. One of the benefits being that when the lease is done, the property will be restored to its prior condition as much as possible and the Lockwoods will still own the property. With a subdivision, the lots would be sold and gone from the Lockwood family entirely.

Mr. Darbouze showed the plans to all. The property is located in Yorktown on the west side of Foothill Street. The 15 acre solar farm will be enclosed within a chain link fence. The project will be accessed by a 20 ft wide gravel road. The stream and wetland will have a 100 ft buffer as per the code and will not be disturbed. 212 trees are proposed to be planted along Foothill Street as mitigation for the visual impacts. The stormwater management system will consist of two ponds. He noted that the reduction from pre to post development will be 39% for the 1-year storm, 18% for the 10-year storm, and 4% for the 100-year storm. Environmentally, this project will not have any negative impacts on the surrounding area.

Mr. Shanahan stated that the land to the south and southwest side of the stream and heading over toward the Town of Cortlandt will be undisturbed. The natural screening will prevent any visual impacts from that direction. The viewshed from the Putnam Valley school campus currently has no visibility into the project site. Photo simulations were shown to the Board with leaf off and leaf on conditions. With respect to the visual impact from Foothill Street, the original proposal showed a stockade fence to enhance the buffer which has since been removed. A landscape plan was submitted to the Board that proposed 212 trees averaging 6 ft to be planted along the roadway that will supplement the natural buffer. Photo simulations were provided to the Board that shows where these plantings will be on day 1 and five years from now. A full inventory of the plants and cost estimate was submitted to the Board.

Chairman Fon asked the Board and Counsel if there were any comments. Mr. LaScala thanked the applicant for addressing the Board's visual concerns with respect to the plantings. Mr. Garrigan stated that during the site visit it seemed clear that the property was a farm at some point as much of the tree growth was relatively young. He asked if the buffer between the school parking lot and the facility will remain. Mr. Shanahan responded that the natural buffer from their property line to the fence will remain. Mr. Bock questioned why the alternative plan for the residential development that was before the Town didn't proceed and if it was approved. Mr. Shanahan responded that there were two subdivisions considered, conventional and cluster that were reviewed by the Planning Board and Town Board. The conventional subdivision proposed to have 3 access roads and the cluster subdivision proposed to have 2 access roads and both were for a 20-lot subdivision. He is not sure if a formal application was submitted. Mr. Lockwood was considering moving forward with the residential subdivision when they met five years ago but was impressed with the idea of not having to sell his property. He also supports the renewable energy concept. This is Mr. Lockwood's preferred use for the property. Mr. Bock asked if the subdivision proposals span the waterway in the middle and covered both sides of the site or was it just limited to the side being developed for the solar facility. Mr. Tegeger stated that the subdivision was a formal application to the extent that the Planning Board determined that 20 lots was an appropriate density under the subdivision regulations. It was then formally submitted to the Town Board for clustering authorization, followed by a public hearing and approval from the Town Board. He thinks it may not have gone forward due to the 2008 economic downturn but is not sure. Mr. Tegeger responded that the waterway was crossed by the utility lines but not the road. Mr. Bock asked about the decommissioning plan and a future subdivision. Mr. Shanahan responded that once the lease expires, the site will be cleared of all the equipment, and the grass and meadow area will be upgraded. With respect to a future subdivision, Mr. Lockwood would only be limited to what the current regulations and rules are at that time. Mr. Kincart stated that he is in favor of the proposal and noted that he had some reservations at first which have been laid to rest after reviewing the project. He likes the idea of the non-permanent use for this property and complimented the applicant with respecting the sensitivity of the site with regard to the buffers.

Chairman Fon asked the public if there were comments. Public comments as follows:

**Walt Daniels, Open Space Committee (ACOS)** - Mr. Daniels stated that the Conservation Board reviewed the original subdivision proposals and there may be some comment memos as part of the history. He noted that Open Space is always concerned with the potential for properties to be part of the Yorktown parks system. The stream from the corner area of Lockwood Road and Foothill Street is a spectacular view and would be suitable for a trail system. This could be an option for some recreational development during the timeframe of the solar use if possible.

Mr. Shanahan responded that they are leasing the entire parcel of land from the applicant and can't comment on this until he speaks with the Lockwoods. If it doesn't interfere with the solar plan, Mr. Lockwood may be interested.

**Councilman Vishnu Patel** - Councilman Patel asked about the noise generation and magnetic fields.

Mr. Shanahan responded that this was addressed in his response letter dated 4/8/2021 to the Putnam Valley School District's resolution. He noted that both the inverters and the battery storage generate slight noise. The noise from the inverters is minimal and the only noise from the battery storage will be from the air conditioning units for the storage system. He noted that you would have to be in the vicinity of the inverters and battery storage to pick it up. With respect to the magnetic fields, there is no current study that raised any concerns with regard to adverse impacts from magnetic fields for these type of projects.

Councilman Patel asked about the high speed communication. Mr. Shanahan responded that this does not tie into wireless communication. Mr. Garrigan asked Councilman Patel if he was aware of any concerns with respect to the IBM Solar parking facility that was recently approved. Councilman Patel responded that the IBM facility is far away and high up so it may already be shielded. Chairman Fon thanked Councilman Patel for his questions and noted that the applicant will address his comments in writing.

**Susan Siegel, resident** - Ms. Siegel stated that she supports solar energy but has a comment about the comparison between the subdivisions and the solar farm with the understanding that the environmental impact from the solar farm is less than the subdivisions. The statement was made that the Lockwoods would go ahead with the subdivision if this proposal was not approved. Given the site's history, she is not sure if the environmental comparison or a decision predicated on the comparison is valid and thinks more investigation into the 2008 cluster subdivision needs to be done. Her understanding is that it did not go forward because the Health Department did not approve the sewer line crossing the stream. She noted that the Town Code states that a cluster subdivision has to be sewered. It was also said that since 2008 there have been no significant changes in the regulations other than the Tree Law. She noted that nobody spoke about the Westchester County Department of Health's septic requirements. They don't know if 20 houses could be built on septic and there is no indication as to what the soils are like and how many houses they could get. With respect to the visual impacts, the renderings look lovely but she feels that computer generated simulations and mother nature are quite different and that the five year growth is not guaranteed. She questioned if an environmental expert looked at the plan with respect to the impact on the wetland as it is going from a forest to a grass meadow and how this will affect the wildlife in the area. She understands that Mr. Lockwood prefers leasing the property as it will remain with the family but feels that this is a relevant issue for the Planning Board to decide on as this area will forever be changed after 25 years.

**Jay Kopstein, resident** – Mr. Kopstein stated that this project has been reviewed for quite a while. He feels that whether the applicant continues to own or lease the property is not relevant to this discussion. The discussion about what could have been done years ago is also not relevant. Times have changed and we are pushing solar. He noted that solar is not particularly noisy. He feels that a decision should be made on this project.

**Mr. Foley, Lockwood Road, Cortlandt resident** – Mr. Foley stated that he appreciated the presentation this evening and noted that he thinks the proposal is less impactful than a subdivision. He stated that the Town of Cortlandt submitted a letter to the Planning Department dated 3/13/2021 with their comments. One of the comments had to do with the visual impact on Lockwood Road which he now understands from this presentation that there will be hardly any impact. It appears from the plans, that all the construction traffic will come from the Peekskill Hollow Road side. The access road and staging areas also appear to be on Peekskill Hollow Road. He appreciates the proposed plantings of 212 trees. With respect to noise, he has visited solar farms and noted that there is hardly any noise generated. He stated that he has lived in the area for 50 years and knows the property well. He noted that further down to the west of this site is the Mohegan outlet and the protected hollow brook below and asked if they anticipated any migration of pollutants into that water course. He noted that in their town, they do biodiversity studies and being that this is in a wild life corridor, he hopes that this will be protected. From his observation, he thinks this is a better alternative than a subdivision as it won't generate traffic as opposed to a subdivision with houses and cars. He informed the Planning Board that the Town of Cortlandt is currently entertaining another solar farm within a mile of this proposal and is not sure if the cumulative impact should be looked at.

There were no further comments from the public or the Board.

**Upon a motion by Bill LaScala and seconded by John Kincart, and with all those present voting "aye", the Board closed the Public Informational Hearing**

### **Taco Bell – Mohegan Lake**

Discussion: Public Hearing Amended Site Plan & Special Use Permit for Outdoor Seating

Location: 15.16-1-21; 3571 Mohegan Avenue

Contact: JMC Site Development Consultants

Description: Proposed Taco Bell restaurant and drive-thru on 0.83 acres in the C-2 zone, at the corner of East Main Street and Mohegan Avenue.

Comments:

**Upon a motion by John Kincart and seconded by Bill LaScala, and with all those present voting “aye”, the Board opened the Public Hearing.**

Paul Dumont, P.E. and Raghav Patel, applicant were present. Mr. Dumont reviewed the history of the project. The site is located at 3571 Mohegan Avenue and zoned C-2. The subdivision was approved in 2008 as a 4-lot subdivision. Lot #1 which is the lot in question, was approved for a 4,000 sf bank with two drive-thru lanes; Lot #2 was approved for the Credit Union building; Lot #3 was approved for The Learning Experience building; and Lot #4 was conservation space that was given to the Town. In 2009, construction was completed for the Credit Union and Learning Experience. The stormwater management facility and utility stubs for Lot #1 were installed, but the building pad was never constructed as the owner was having difficulty finding a bank tenant for the property. In 2018, the owner successfully re-zoned the property to the C-2 district, which permits a variety of retail and restaurant uses in order to market the property to more tenants. The current proposal is to construct a 2,100 sf Taco Bell fast food restaurant with associated site improvements that include a drive-thru lane, by-pass lane, parking, site lighting and site landscaping. The applicant is proposing to reuse the stormwater management facilities that were installed as part of the previously approved site plan. During the application process, they met with various agencies and have addressed all comments to refine the proposal.

Mr. Dumont stated that the original subdivision and site plan approval in 2008 involved a traffic engineering study in order to obtain approval for the project. At that time, their firm evaluated the traffic impact to the area and found that the existing roadway was strained. The applicant worked with the Town and the NYSDOT to design improvements to mitigate the impacts of the project and significant offsite improvements were constructed as part of the project. Mohegan Avenue was widened along the site’s entire frontage. The intersection of Mohegan Avenue and Lakeland Street was aligned. A dedicated right-hand turn lane was added on Mohegan Avenue with a channelized island and the traffic signal was rebuilt and retimed. In addition, a sidewalk was constructed along Mohegan Avenue. In 2018, as part of the re-zoning, their firm conducted another traffic study with new counts and data analyzing the effects of the uses that would be permitted under the commercial district. The study analyzed the trip generations and peak hours for the different uses (*fast food and bank*) and applied them to the roadway. The study determined that the intersection would operate at similar levels of service for both uses.

Chairman Fon asked the Board and Counsel if there were any comments and there were none. Chairman Fon asked the public if there were any comments. Public comments as follows:

**Amanda Puff, resident** – Ms. Puff is concerned with the traffic in the parking lot. Her children attend the Learning Experience that will share a parking lot with the proposed Taco Bell and she is concerned for the safety of all the children. She is concerned that the Taco Bell will attract young teenagers that don’t necessarily drive as well as seasoned adults. She noted that her children are picked up at dinner time which would be a busy time for the restaurant and may cause delays for parents as a result of the traffic in the parking lot. She doesn’t feel that Taco Bell should be next to a daycare due to the safety issues. She asked how will Taco Bell and the Town ensure her child’s safety if the project were to move forward.

**Jaclyn Guerra, resident.** – Ms. Guerra stated that Mohegan Avenue deals with a lot of cut-through traffic that backs up on Route 6 all the way from the St. George Winery to the Cortland Town Center. She is concerned that the addition of a Taco Bell will increase the traffic. She noted that there is only one entrance that is being shared with the school. She asked if the traffic study took the Fire Department into account. She also thinks that Taco Bell caters to a certain clientele that they don’t want in the area. She informed the Board that she googled “Taco Bell” and “drunk meets” and “drunk menu items” showed up. She questioned if the hours of operation could be limited so it is not allowed to be open after 9:00 pm. She thinks there are better locations such as empty store fronts that would make better sense for this proposal.

**Stacy Williams-Kerr, resident** – Ms. Kerr stated that she was in a car accident at this intersection shortly after she moved into her home before she was able to understand how this intersection operates. Thankfully no one was hurt but noted that she avoids this intersection. She is also concerned about the teenage drivers navigating this intersection to get into Taco Bell. She feels that this is a dangerous intersection and asked the developer to consider further improving the safety of the intersection. She noted that if more than five cars are backed up on Mohegan Avenue waiting to turn left onto Route 6 they then block the driveway for the daycare, credit union and proposed Taco Bell. This is a regular occurrence pre-covid and assumes it will continue post-covid. Has the developer looked at a separate entrance from Route 6 for the Taco Bell? She added that drivers are already using the CVS parking lot as a cut-through to avoid traffic. Drivers are using the center turn lane on Route 6 as a passing lane when both directions are gridlocked. What can the developer or the Town do to prevent this from happening in the future with the increased traffic. She asked if the developer could provide numbers from comparable Taco Bell locations with respect to the traffic flow per hour on weekdays between noon and 8:00 pm and weekends between noon and 6:00 pm. In addition, she would like to know the amount of customers per hour for both walk-ins and drive-thrus. She noted that she represents 373 resident who signed a petition against the proposed Taco Bell for this location and will send the petition to the Town Board for their consideration.

**Evan Bray, resident** – Mr. Bray asked about the special use permit for the outdoor dining area and drive-thru and if this was correct. He also questioned if the parking requirements for the outdoor seating are accounted for in the parking.

Mr. Tegeder responded that there is a special use permit for the outdoor seating. With respect to the drive-thru, there is no singular application for a drive-thru in the way that it is handled in the zoning code. Mr. Dumont responded that the outdoor dining area consists of three tables with four seats at each table (100 sf). He will work with the Planning Department to ensure that the calculations are correct with respect to the parking requirements. He noted that the site is over parked with 9 or 10 additional spaces than what is required so it should not be an issue. With respect to the special use permit, it is his understanding that a special use permit is required for the outdoor dining only.

Mr. Bray noted that the special use permit applications states drive-thru. Mr. Bray noted the zoning requirements for the loading and asked the applicant where the loading area for deliveries is to be located. Mr. Dumont responded that most of the deliveries will be done with smaller box trucks. There is a loading area on the plans but it is not marked clearly and will be adjusted accordingly.

**Jay Kopstein, resident** – Mr. Kopstein stated that the traffic study from 2018 was done before the current pandemic. He noted that the drive-thru lanes for both the Popeye’s and Starbucks that recently opened on Route 202 are problematic. He thinks that the center turning lane on Route 6 is treacherous as drivers are using it as passing lanes for both directions. He feels that a new traffic study needs to be prepared that takes into account the current pandemic.

There were no further comments from the public or the Board.

**Upon a motion by Bill LaScala and seconded by Aaron Bock, and with all those present voting “aye”, the Board adjourned the Public Hearing.**

**Motion to Close Regular Session and re-open Work Session**

Upon a motion by John Kincart, and seconded by Bill LaScala, and with all those present voting “aye”, the Board closed the Regular Session and re-opened the Work Session.

**WORK SESSION**

**Par 3 Golf Course**

Discussion: Site Plan  
Location: 16.07-1-38; 795 Route 6  
Contact: James Martorano Jr.  
Description: Proposed Par 3 golf course on Town owned Parkland.  
Comments:

James Martorano, Parks & Recreation Superintendent; Patrick Talbert, Parks & Recreation Commissioner; Paul Revans; and Sean Murphy, were present. Mr. Martorano stated that the mitigation and parking plans were submitted to the Planning Board for review. He noted that parking plan “B” proposes a total of 49 spaces which is one space less than

what was originally proposed. This is their preferred plan as the removal of the parking space creates better circulation for the site. He added that there is additional parking to the north of the site. Mr. Murphy stated that the mitigation plan details the description and location of the trees to be planted at the site as well as the existing trees.

Chairman Fon asked about the approvals for the site. Mr. Martorano responded that the application is on the Town Board agenda for the stormwater permit approval. Mr. Tegeder thought that this should be part of the Planning Board's approval and will discuss this with the applicant. Mr. Tegeder stated that since they now have a tree mitigation plan that can be reviewed and a parking plan that is close enough to the requirements, he recommends that the application move forward to a Public Hearing in order to work on the finer details.

Mr. Bock asked if the mitigation plan had been referred to the Tree Commission. Mr. Tegeder responded that it had not but will do so prior to the hearing. Mr. Bock noted that the previous Tree Commission memo commented on the stream bed and remediation for the initial work and asked if there had been any progress. Mr. Martorano responded that they applied for a permit with the DEC but there was a question as to whether a wetland permit was to be done with the Town. He noted that the stream is intricate to the health of the site. He requested that the Planning Department send a copy of the memo to him and noted that he will set up a meeting with the Tree Commission prior to the Public Hearing.

The Board agreed to schedule a Public Hearing for the May 10<sup>th</sup> meeting.

### **Town Board Referral - Proposed Planned Design District Overlay Zones**

Comments:

The proposal is to amend Chapter 300 of the Code of the Town of Yorktown entitled "Zoning" to create a new Article XXXI entitled "Planned District Overlay Zones". Mr. Tegeder gave an overview of the proposal. Discussion followed amongst the Board members.

Mr. Bock noted that there was correspondence submitted to the Board that he read and has some similar comments. He supports the concept of the Overlay District in general. He thinks that the Planning Board should consider the gatekeeping function that is established in this law as it sets up a dual track for an application. If a builder uses the flex use in the Overlay Zone they must first go to Town Board who will then make a determination and questioned how this will fit in with the Planning Board's role. There is no restriction on the amount of detail that the Town Board can get into when reviewing these applications. Will there be a double SEQRA process? Will the Planning Board be limited by the Town Board findings? He thinks that the law is not clear as to how the interplay between the two Boards will work. He doesn't understand the development incentives. He feels that the priority of an application needs to be clarified. The law also allows the Planning Board to reduce procedural requirements in certain cases and questioned what this means. Another concern is the section that encourages community based uses for senior citizens and questioned why they need that limitation. He thinks community based activities should be encouraged and not just limited to senior citizens as there are other segments in the population, such as the teens, that could use centers to gather as well. He also questioned whether they should include the Soundview property in this District and noted that the comprehensive plan did not do so.

Mr. Kincart stated that the Town Board should draw out the Districts considered as part of the Overlay Zone for each hamlet and then refer it to the Planning Board and other Boards, so that they can contribute their feedback to the Town Board when making their decision. He also feels that the Planning Board should be in charge of all applications as this is business performed by the Board on a regular basis and they are familiar with the process. As they approach the adoption of legislation, this should be clarified to avoid a parallel track and possible SEQRA issues. He added that from a historical perspective, the Town should not be locked into something that was thought of or deliberated over a decade ago as we are in a different place now in terms of what is going on currently in the country and its impacts. We should be respectful of what has gone on in the past, but it's a different situation now than when the comprehensive plan was developed. We should preserve what needs to be preserved and develop what is best for the Town moving forward.

Mr. LaScala stated that many towns are starting to adopt Overlay Districts and this is not unique to our Town. He feels that this would be a benefit to the Town as the comprehensive plan is old. He thinks that we need to think in the present and look toward the future with reservations.

Mr. Garrigan feels that the plan is progressive and needs to be transparent. He noted that times have changed and we need to provide flexibility to take the Town into the next decade. He is in favor of the plan but does not want to create confusion or duplicate efforts with respect to applications.

Chairman Fon stated that things have changed over time with zoning and there needs to be flexibility. He agrees that the Town Board should lay out the Districts to be considered but feels that the Planning Board should be in charge of the applications.

Mr. Tegeder informed the Board that in the comprehensive plan, there are overlay districts suggested but Yorktown Heights was not one of them at that time. The concept was put forth and particular areas were put forth as part of the plan, but there is a policy that states that over time the Town should consider other areas that are ripe and prime for overlay districts depending on the trends in land use and real estate given what is happening in the world. The Planning Department will prepare a draft comment memo for review.

**Motion to Close Meeting**

Upon a motion by Aaron Bock, and seconded by John Kincart, and with all those present voting “aye”, the Board closed the meeting at 10:50 p.m.