

Planning Board Meeting Minutes – May 3, 2023

A special meeting of the Town of Yorktown Planning Board was held on **Monday, May 3, 2023, at 7:00 p.m.** in the Town Hall Boardroom.

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

- Aaron Bock
- Rob Garrigan
- Bill LaScala
- Bob Phelan
- Bob Waterhouse, Alternate

Also present were:

- John Tegeder, Planning Director
- Robyn Steinberg, Town Planner
- Nancy Calicchia, Secretary
- James Glatthaar, Esq.
- Councilman Sergio Esposito, Town Board Liaison

Conservation Board:

- Phyllis Bock, Co-Chair
- Diane Dreier, Co-Chair
- Peter Alduino
- Gerardo Cafagno

Parks & Recreation Commission:

- Patrick Cumiskey
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WORK SESSION

Underhill Farm

Discussion: Proposed Project

Location: 48.06-1-30; 370 Underhill Avenue

Contact: Tim Miller Associates, Site Design Consultants, Colliers Engineering

Description: Proposed mixed use development of 148 residential units, 11,000 SF commercial space, and recreational amenities proposed on a 13.78 acre parcel in the R1-40 with Planned Design District Overlay Zone authorization from the Town Board. Original main structure to remain and be reused.

Comments:

Mark Blanchard, Esq.; Steve Marino, Wetlands Scientist of Tim Miller Associates; Joseph Riina, P.E. of Site Design Consultants; Paul Guillaro and Michael Guillaro, property owners; Terrance Murphy; and Johanna Duffy, Environmental Consultant of Barton & Loguidice were present.

Environmental

Steve Marino, Wetlands Scientist of Tim Miller Associates - Mr. Marino gave an overview of the wetlands and water resources on site. As part of the initial site analysis and review, they delineated the wetlands on site in November of 2020. In February of 2023, he and Johanna Duffy of Barton & Loguidice (*town consultant*) walked the site to confirm the wetland line. At that time, there were some small wet areas identified that were subsequently added to the delineation. The wetland delineation shown on the current site plan is accurate. When the delineation process was started, they used available resources to determine if any regulated wetlands that are already mapped are shown on the site. The NYSDEC wetlands mapping showed that there are no DEC wetlands mapped on the property. They also looked at the National Wetlands Inventory (*NWI*) which is put together by the federal government and, other than the pond on the property, no wetlands are mapped on the NWI maps. They then looked at the soils mapping from the NRCS soils mapping website. The soils that are shown on the site are paxton soils and they also show open water which is the existing pond. There is no mapping of wetland soils on the property per the federal wetlands mapping.

Photos of the existing pond, pond outlet and wetlands were shown. Wetland A (*west of access road*) starts as run-off and a discharge from a culvert on Glen Rock Road that flows down through an eroded channel through some areas where there was a clogged culvert. There are some phragmites (*non-native invasive grass species*) growing in that part of the area just upstream of the clogged culvert. A photo of what once was the existing emergency access road to Beaver Ridge (*built in the late 70s to early 80s*) was shown. The creation of this road blocked some water from draining through the site. Wetland C is a small pocket of wetland that was expanded recently and is a little over 5,000SF in area. The access road is to the right which shows ponded water. Very little evidence of wetland vegetation or wetland soils were found in that area. Wetland B is a little further to the north of wetland C which is an excavated area that has since filled with water and is now a small ponded area and is 2,000SF in area.

They looked at the history of the site to determine how the two small wetlands (B & C) were formed on the site.

- A 1926 aerial photo of the site shows that the property was all agricultural land as well as the surrounding areas. There is no evidence of wetlands or ponded water on the property.
- A 1947 aerial photo of the site shows the same as the 1926 photo with no areas of wetlands or ponded water.
- A 1960 aerial shows no areas of wetlands or ponded water. However, Glen Rock Road now exists. Water run-off directly from Glen Rock Street floats down the hill without any means of blocking that water from draining through the site and there is no evidence of wetlands at this time.
- Between 1976 and 1990 is when the site started to change. With the construction of Beaver Ridge, there was an approved emergency access road created to Underhill Avenue. That part of the site which was formerly farmland was excavated and used as a borrow pit for soil material. The site still shows evidence of remaining fill piles on the downstream side of the hill. Water that previously flowed from Glen Rock over the slope down towards the developed part of the site was blocked and created a damming effect which started to hold water back. The aerial photo shows wetland B as a small ponded area and the beginnings of wetland C which is adjacent to what was once the emergency access road. Since that time, the emergency access road has become saturated and is barely passable.
- By 1990, some trees along the fringes of the property started to grow and all the trees along Glen Rock have grown in. Most of the site was used for excavation for use of fill for the development and has been disturbed.
- By 2000, there are still some open areas on the site to the west of the Beaver Ridge buildings. Small trees predominantly cottonwoods, aspens and black locusts have grown in on the western edge of the site which are fast growing opportunistic trees that will grow quickly in an area when agricultural farming ceases. The aerial shows wetland B as a small area and wetland C is shown slightly as it is under the vegetation from the site.
- The 2021 aerial shows that trees have grown in on the western edge. The two small wetlands are no longer visible as they are covered with vegetation from the canopy.

Wetland A includes the pond on the site. The majority of water that gets to the pond is currently coming from the intersection of Glen Rock and Underhill as well as run-off coming down from the hill to the west of Glen Rock. He added that Glen Rock is not a curbed road. There are catch basins on the western side which flow through culverts underneath the road and then onto the property. Wetland A gets its hydrology from this hillside as well as some road run-off at the corner of Underhill and Glen Rock which is diverted to a culvert.

The Magee Hollands “Rapid Procedure for Assessing Wetland Functional Capacity” model was used to assess the functional capacity of the wetlands. Smaller wetlands are typically not as well coordinated with this model because the smaller the wetland, the less likely it has the higher functions of some wetland systems but they did go through it function by function. He noted that there are eight functions to a typical wetland in terms of determining what a wetland is doing and what benefits it is providing which includes modification of groundwater discharge; modification of groundwater recharge; storm and flood water storage; modification of stream flow; modification of water quality; export of detritus; contribution to abundance and diversity of wetland vegetation; and contribution to abundance and diversity of wetland fauna. Discussion followed with respect to the functions and individual wetland evaluations (*A, B and C*) which is included in the draft EAF.

He pointed out that the wetland run-off from the southwestern part of Glen Rock will continue to flow to the south and will be picked up in the new stormwater system. As part of the improvements they are proposing to install a hydro-dynamic separator. He noted that all the run-off coming off of Glen Rock is currently untreated and then goes onto the site untreated. There are several spots where sediment is accumulated next to the road with some phragmites growing as they like disturbed low nutrient soils. The hydro-dynamic separator will capture that water and separate the accumulated sediment before it gets into the watercourse thereby improving the quality of the water that gets through the site from

Glen Rock as it enters the pond. A mitigation plan is proposed to offset the loss of those wetland areas. Total disturbance is about 8,000SF of wetland impact. Based on recent discussions, the site plan was revised to pull the two townhome units in the southwest corner back 25-feet towards Underhill Avenue and away from wetland A. As a result, the impact to the wetland is reduced. There is now a clear flow through that corridor. A retaining wall is proposed. To offset the loss of wetland, the applicant is proposing about 14,000SF of wetland creation and expansion of the existing wetland. Grading is proposed on both sides of the stream channel that will intercept some of the groundwater discharge. The walking path was moved so the pond is on the left and the created wetland is on the right. One of the benefits of their created wetland is that there will be a significant increase in biological and vegetative diversity on the site. The planting plan will consist of several different native trees and shrub species that will create a more diverse habitat for wetland dependent species than what is existing. The proposal is greater than a 1 to 1 replacement for the loss of the wetlands.

There was a comment made by Mr. Bock with respect to the stream corridor between the buildings. The repositioning of the two townhome units 25-ft further south will now create less grading and a wider pocket for enhancement of the stream corridor as it moves down the hill. Most of the buffer area around the pond is currently maintained as lawn. The stormwater management plan is designed to pick up the run-off from the new impervious surfaces. A pocket wetland for stormwater purposes is proposed on the south end of the property adjacent to the existing pond and is a valuable buffer area to the pond. A number of different trees, plants and shrub species are proposed to enhance that portion of the buffer. Additionally, a townhome unit on the south side was relocated to the end of the cul-de-sac which creates the opportunity for more plantings and vegetation. Landscaping is proposed throughout the site. Some trees are proposed to be preserved along the northern end.

Chairman Fon stated that from their discussions it sounds like wetlands B & C were created as a result of the emergency access road and that wetland A which is part of the pond area is more sensitive. He asked Mr. Marino if he thought that wetlands B & C were low functioning in his professional opinion. Mr. Marino responded that they were and noted that over the years he has worked on many wetlands and mitigation plans with a number of them being in Yorktown. There have been a number of times where people have said that wetlands can't be created and that they take hundreds of years to create, and conditions have to be just right. For example, he noted that if a pipe is sized incorrectly or placed in the wrong spot, water can then back up and 20 years later you have what could be defined as a wetland. In his opinion, what they have here is a situation where an emergency access road was constructed and an unforeseen consequence of that construction was the creation of these two wetlands on the western side.

Chairman Fon asked about wetland regulations with respect to the code. Mr. Marino stated that the Army Corps has a very specific definition of what a wetland is which requires three parameters - wetland soils, hydric soils, and dominance of wetland vegetation. You also need to have hydrology that drives the presence of those soils and the ability of the vegetation to be supported by the water that gets there. Wetland vegetation is very specific to certain conditions, the wetter it is certain species can adapt and other species can't. The town code defines a wetland as being soils or vegetation or hydrology. You can have areas where water pools and creates a wet spot but either the wetland soils haven't had time to develop or there hasn't been enough organic input to the system in order for the soils to develop over time and without wetland soils and the type of substrate you need for wetland vegetation to grow, you don't get wetland vegetation. But in Yorktown it is still regulated as a wetland as Yorktown's regulation requires only one of those parameters to be a wetland. In his opinion, this is what they have here, a one parameter wetland that has hydrology only with the lack of vegetation and soils. Chairman Fon stated that it seems per the aerials shown that these wetlands were created in the last 50 years. Mr. Marino responded that it was probably between 30 and 50 years. Chairman Fon stated that it seems that these are not high functioning quality wetlands with the exception of the pond area. Mr. Marino agreed and noted that pond is still in relatively good condition but is beginning to fill in. It is shallow compared to when it was first built in the 1920s. He added that the pond is shown on the 1926 aerial but is not shown on USGS mapping from the 1890s so they estimate it was created sometime between the 1890s and 1920s. Chairman Fon asked about vernal pools but noted that they do not exist at the site. Mr. Marino responded that a small wetland can be a vernal pool but isn't always a vernal pool. A vernal pool is categorized as to whether it is providing a habitat for vernal pool species primarily amphibians to breed in springtime. It is a very specific habitat and function of a wetland of which they do not have.

Chairman Fon noted that it seems they are providing more than the required mitigation. Mr. Marino responded that they are well over the 1 to 1 square foot requirement and in his opinion well over 2 to 1 in terms of vegetative diversity and habitat quality. Chairman Fon asked if the created areas will be high in function and quality. Mr. Marino responded

that this is the intent and noted that with every wetland creation there is monitoring to ensure that it is developing properly.

Johanna Duffy, Barton & Loguidice (Town Consultant)

Ms. Duffy stated that it was mentioned that the pond is included in wetland A and knows that they are not including the wetland acreage of it. With respect to the function table attributed to wetland A in the expanded EAF, she asked if the function of the pond component intertwines into that discussion. Mr. Marino responded that it is intertwined in the text which she may have recently received but is not discussed in the actual functional assessment. The functions of the pond habitat for wading birds, waterfowl, reptiles, etc. is discussed but because it does function separately from the upstream part of wetland A he kept it separated as it is not being disturbed. He focused on the functions of the areas that were closer to development. Ms. Duffy thanked the applicant for the clarification and noted for the benefit of the public that some of the rankings of low and moderate attributed to wetland A are not including the pond function. She added that the groundwater recharge function is missing from each table but noted that there was verbal discussion. Mr. Marino responded that generally if recharge isn't part of the system it's not included.

Mr. Phelan stated that it seems that they are taking the square footage of disturbance for wetlands A, B and C as compared to the area they are using for 1 to 1 mitigation. Mr. Marino responded that this was correct, it is for the square footage of disturbance for all three wetlands as they are town regulated wetlands per the code.

Conservation Board

Peter Alduino asked if the road on the townhome side will have a sidewalk for pedestrians. Mr. Riina responded that there is no sidewalk on the street itself. He added that the eastern part of the site is fully pedestrian friendly and connected. Mr. Alduino asked what it would take to add this. Mr. Riina responded that they tried to keep the amount of impervious surface down and noted that this would not be a high traffic area for pedestrians as it is only townhomes

Diane Dreier asked about the buffer for the original pond in relation to the new plan. They feel that a reduction of some of the townhome units outside of that buffer may help with the mitigation and stormwater by decreasing the impervious coverage. Mr. Riina showed the location of the pond buffer on the plan. Mr. Marino stated that they are not increasing impervious surface on that western side of the pond in the buffer. The impervious surface for those buildings are well outside of the 100-ft buffer to the pond, however, they will be in the mitigation area and the original wetland A.

Diane Dreier stated that she is confused as to how the stormwater from the townhome development will work. Mr. Riina explained the stormwater practice system and showed the plan. They are proposing a stormwater system that will transport the collected water along the new roadway as well as the rooftops for the townhouses to the pocket wetland area. Everything on the eastern side of the site is going to an infiltration system located underneath the parking area. Ms. Dreier asked if there will be any correction to the outflow of the pond in the event of a significant storm and how it will be managed. Mr. Riina responded that not all the water running down that hillside is going to the pond, it will now be captured. The only water that will continue to flow there is what is coming off of Glen Rock. They are actually reducing the amount of water in the pond watershed. Ms. Dreier recommended that the outflow of the pond during a significant storm should be analyzed. Mr. Riina added that all the impervious surfaces on the western side (townhouse section) is going to the stormwater basin with water quality treatment for the 100-year storm. Mr. Garrigan asked if this was currently existing. Mr. Riina responded that it does not; they will be creating the system to handle all the impervious surfaces on that hillside which includes the roadway and rooftops. He noted that the pond will be part of the overall analysis and is built into the equation of the west side of the site versus the east side of the site which is two watersheds.

Phyllis Bock stated that the stormwater basin in front of the pond will change the visual aspect of the site as it will be vegetated to some degree and noted that currently there is lawn. Mr. Riina responded that it will become a site feature and won't be an open lawn. However, they are enhancing the experience around the pond with a defined pathway system and seating areas that is not there currently. A landscape plan is also proposed to enhance that area. The basins are proposed to be planted and will be very attractive as well as high quality. Ms. Dreier asked if it will be maintained by the development. Mr. Riina responded that the property owner will be responsible for the maintenance in perpetuity.

Chairman Fon asked what the requirements are for the stormwater practice. Mr. Riina responded that the DEC has put standards in place on the general permit for stormwater discharges which they have to meet that includes run-off reduction requirements, green infrastructures and water quality standards and noted that they are in the NYC watershed. He noted that outside of the NYC watershed, there are lower standards as far as water quality and you only have to do

the 90% rainfall. They had to do it for the 1-year storm, which is considerably more, and is almost two and half times the amount of run-off that they have to collect and treat. They cannot increase the volume or peak rate of discharge up to the 100-year storm and noted that in most cases they always go a little above this. This is what they want to meet. The existing impervious areas on the site are not treated. With this plan, all the impervious areas will be treated so there is a net gain in the downstream system. Chairman Fon noted that there is always concern that the impervious area will speed off the site and cause flooding downstream. Mr. Riina responded that the Town Engineer and the DEP have to review and sign off on the stormwater permits and will ensure that this won't happen. Chairman Fon stated that with respect to density and the surrounding developments, the stormwater practices or lack thereof, are much different in those developments than what is proposed here. Mr. Riina responded that this was true and noted that all the run-off from those properties coming off of French Hill is hitting Glen Rock and is uncontrolled. This proposal will grab that water channel and put it through the hydro-dynamic separator which will provide some treatment of that discharge. They are not only improving the site itself but also improving some of the run-off onto the site from Glen Rock as well. Chairman Fon noted that the regulations have changed significantly over the last 10 years. Mr. Riina responded that around 2015 the run-off reduction standards were put into place, before that they only had to address water quality.

Site Plan Update

Joseph Riina, P.E. of Site Design Consultants - Mr. Riina stated that the plan was revised to relocate and reposition some of the townhome units and pull the cul-de-sac down. A unit was moved to the top of the cul-de-sac. As noted previously, the repositioning of the two townhome units to the south closer to Underhill Avenue will open up the area. After discussion with the Planning Department, some of the parking spaces were flipped to provide a continuous sidewalk connection from the corner to the eastern part of the site. Additionally, they included the changes from Maser Consulting with respect to the intersection. They also relocated four parking spaces that were originally in front of the Underhill house. The apartment building was reduced which increased the spacing between the two structures. A retaining wall was also added. The two tunnels that come out from underneath the Underhill house will be fully exposed and fully accessed. Mr. Garrigan asked if the tunnels will be used or are just for an architectural highlight. Mr. Riina responded that it was more for preservation as they are an interesting feature, however, they will be accessible for future use if necessary.

Ms. Duffy asked what the bold lines on both sides by the road crossing wetland A represents. Mr. Riina responded that they were the retaining walls for preservation. Ms. Dreier asked if the apartment building was reduced in square footage or height. Mr. Riina responded that it was reduced in square footage (*front to back direction as well as side to side*). Ms. Dreier asked if this would allow for some preservation of trees along the perimeter. Mr. Riina responded that it would give them a better chance to preserve some of the trees.

Recreational Requirements

Mark Blanchard, Esq. of Blanchard and Wilson - Mr. Blanchard reviewed the Town of Yorktown's code statute to demonstrate their compliance with respect to the recreational requirements. A recreational analysis and letter dated 5/2/23 was provided to the Board. The statute presents either a set aside component; or payment component if the development fails to meet the set aside. It is not a choice it is a trigger. If the set aside requirement of the code is met then the recreational requirement is satisfied. It is not a discretionary issue; the code requires that the applicant first comply with the set aside square footage. If that square footage is not met then the payment component will kick in. He added that in the set aside requirements, when you look to the Overlay District code that is governing this project, it states that this is a specific and explicit call out in the overlay legislation for the Yorktown Heights Overlay District. It states that the required recreation for multi-family units built within mixed use development projects shall be as required in the R-3 zone, except that the Planning Board may modify this requirement due to special circumstances. They are governed by an explicit call out where the overlay reaches back to make sure that the recreational code gets pulled in as part of this development. The applicant must show that they have met the set aside square footage or they will pay the fee. Their position has been from the very beginning that they meet the set aside square footage. He added that to demonstrate good faith and trying to be a good neighbor, they are in discussion with members of the Recreational Commission for a donation even though they do not trigger this requirement. The recreational requirements chart for the R-3 zone was reviewed with the Board. There are three requirements. The first includes 400SF of usable space per dwelling unit for play area and other outdoor living uses of which the applicant is providing over the requirement for a total of 95,555SF. The second includes providing a 1,200SF play area for the residents of which the applicant is

proposing almost 10,000SF. The third includes a 10% set aside of which they are providing over the requirement for a total of 71,555SF. They are providing in excess square footage for all three situations, therefore, according to the statute they never triggered the \$4,000 per unit payment that is the alternative to the set aside. He feels that it is a straightforward issue.

Mr. Glatthaar, Esq. (*Planning Board attorney*) informed the Board that the Town attorney looked into this and agrees with the interpretation and calculation.

Patrick Cumiskey, Recreation Commission, stated that they agree that they are talking with each other and appreciates the developer's willingness to work something out. However, he feels that there is some ambiguity to the law. If they are holding it to the R-3 district, he disagrees with the interpretation. He did the math and it works out to 1.3 acres for both the first and second part of the code and it is his understanding that it is supposed to be deeded to the town and becomes part of parkland and feels that this needs to be considered.

Mr. Blanchard stated that the deed issue was discussed early on not with specificity to the recreational issue but with the open space, pond and walking trails. The ownership will remain private so that the town does not incur any maintenance costs in perpetuity. There are other ways to ensure that this area remains open in perpetuity starting with conditions in the approving resolution. He noted that it is not a deeded requirement but just an open space requirement. Discussion followed with respect to the set aside requirements and other reasons interpretation.

Mr. Cumiskey responded that he is not a lawyer but still thinks its ambiguous. He asked if all the recreational amenities are fully open to the Town of Yorktown that the applicant is taking credit for.

Mr. Bock asked if the 1,200SF play area is to be satisfied with the pools and if so questioned what happens in the colder weather. Mr. Blanchard responded that it will be satisfied with two outside pools (10,000SF). Mr. Guillaro stated that all the indoor locations will have at least 2,200SF of indoor amenities that will include a club room, exercise area, etc. in the apartment and condo buildings.

Mr. Garrigan questioned if they would even delineate between indoor and outdoor play areas. He noted that a play area is outdoors and if you want to play in the snow you do so; and can still enjoy the outdoors by walking around the area. Mr. Blanchard noted that it is eligible under the Code as a play area. Mr. Riina showed the colored coded map but noted that the calculation does not include the clubhouse.

Councilwoman Luciana Haughwout stated that she is speaking as a constituent and is also the Recreation Commission liaison. She stated that she heard the language and noted that there is always a loophole and added that she also knows how to do business. The applicant talked about the square footage with respect to the recreation code requirements in terms of play area, open space, beautification, etc. She stated that she wouldn't be able to use the gym or the pools as it would be an amenity for the homeowners. As a constituent, she will be able to walk around the area and visit the pond and noted that the open space is a great amenity for the residents. With that being said, she would like some clarification with respect to the recreational requirement. She thought it was a way to create more open space for the public. She understands that this is a great asset and this project will put Yorktown on the map, however, she would like to understand how this play area takes away from the recreational fee regardless of how the law is read. There are areas in this open space that are only to be utilized by those who live there and would like to understand how just because the numbers add up that a fee is not required.

Mr. Blanchard stated that there is a misconception with respect to the statute. The first part of the statute for the playground and the open space as it relates to the private property interest is to make sure that the quality of life for the people who are moving into a multi-family development was protected the first part of the statute is not to invite members of the public into a workout space and pool but rather to ensure that the people who are living there have a healthy recreational amenity of which they have satisfied. It is not contemplated to have people interfering with their private property. Mr. Bock clarified that the first requirement does not have any payout associated with it for distinction purposes. Mr. Blanchard responded that this was correct and added that the fee would apply to the second requirement if there was a failure to meet open space. He noted that he is trying to address the misconception that because they are providing a walking trail and an amenity around the restored pond, that they are also required to bring people into their private amenities which is not the case. They are compliant with the code to ensure that the quality of the life for the people who live there is ensured by use of open space and recreational space. The second part of this statute is somewhat more burdensome for a private property owner as they are required without any reduction in assessment to put a 10%

set aside for access to the public. The passive play area that includes the new walking trails and seating areas, newly restored pond, newly created wetland feature, landscaping, maintenance, etc. exceeds the set aside requirement required for the public. The nature of the statute is to protect the quality of life for the residents and the private property multi-family residents. They have complied with both. If they weren't compliant, they would then have to pay the recreation fee. He added that the fee could only be used for other recreational facilities in town.

Councilwoman Haughwout stated that she now understands that the use of the gym, clubhouse and pools belong to the people who buy and live there. She added that she wasn't on the Town Board when the law was passed and is not sure if it was articulated correctly for this law of open space. She likes the paths and ponds but how does this consider to be open space. She is also a reasonable businesswoman and if it meets the law then she thinks the law needs to be looked at. She feels that the paths and pond do not fill the open space in her opinion. Mr. Blanchard stated that they can confidently and legitimately say they are presenting more than a 10% set aside of a park and passive recreational area per the statute and is comfortable in stating that they meet this requirement.

Diane Dreier (Conservation Board) asked about parking for the open space. Mr. Riina showed the internal on-site parking on the plan. Mr. Blanchard stated that the traffic improvements to the intersection will create a much more engaged safe pedestrian walkway. He noted that there is additional municipal parking in close proximity that would benefit with the newly constructed walkway and intersection. He added that this project is compliant with the recreational fee requirement and parking requirements.

Chairman Fon asked about pocket parks and if they were donated by the developer. Mr. Tegeder stated there is a slight difference in subdivision regulations as they were mostly set asides from subdivisions and were mostly deeded to the town. He stated that he believes that the set aside does not necessarily need to be publicly owned or even in some cases publicly accessible, according to the NYS town law. He cited the Sultana Park pool which was private land with a private pool for the private homeowners of that development which satisfied the recreation requirement for that subdivision. The Board conducts an evaluation of recreational needs that are created by a proposed development, and the donation, in whatever form it comes, offsets that demand. They were created under the 10% set aside, and evaluated by the Board for compliance with the requirements of the subdivision regulations and then built out with whatever amenity was most appropriate (i.e. - pocket park; baseball field; playground; basketball court) and then deeded to the town.

Councilman Sergio Esposito reiterated what was stated previously by Mr. Blanchard. There will be parking on site for the public as well as parking in the existing municipal parking across the way for overflow if needed and added that the traffic and pedestrian improvements at the intersection will help which he feels is a critical improvement. With respect to the recreational fee, he understands that the applicant has met the expectations of the law with respect to the recreational requirement and appreciates the discussion of a donation for the Recreation Commission. He feels that this all needs to be flushed out and discussed further so they can come to a middle ground for some type of donation that is acceptable. If this works out it will be a bonus for the town. He added that they will have their town attorney look at the law so they can make their own evaluation to compare notes. He doesn't feel they will get any further with the discussion this evening.

Chairman Fon stated that from what he is hearing it sounds like there are discussions and meetings going on with the Recreation Board that the Planning Board is not aware of nor involved in. He feels that they should take a pause at this point. He added that they heard this evening from Mr. Glatthaar (Planning Board attorney) and Mr. Blanchard (applicant's attorney) that they agree with respect to the recreational requirement as it relates to the town law. Mr. Tegeder stated that the Planning Board is the Lead Agency and will make the determination for the recreational requirement, no other Board or entity will.

Mr. Phelan stated that he thinks the general consensus has been that the recreational requirement is to mitigate the impact of the development that they are talking about. New homeowners are going to come in and it is their impact on our recreation facilities that has to be mitigated. That doesn't mean that this developer or any developer has to fix something that already exists or we have to make up a shortfall in somebody's budget as was suggested to this board previously. Also, he is under the impression that if there is to be a monetary contribution that those monies cannot be used to fix problems in other recreation facilities that exist now. In his opinion, it is mitigating the impact that the development is going to have on recreation and thinks this is the way the law was written. In terms of the amount of land, in some cases the land does not get improved or is donated for other purposes. Additionally, there is no requirement that you have to

have reserved parking spaces to walk through a development. Also, if it were owned by the town it would have to be maintained by the town which would further aggravate the Commission's budget problems.

Mr. Blanchard stated that the discussion of a donation to the Recreation Commission was undertaken by them outside of the site plan. He noted that Mr. Glatthaar stated earlier that the Town attorney agrees with his interpretation of the law in that they are in full compliance with the recreational statute and would like this to be recognized as they are trying to check things off of their SEQRA checklist. Chairman Fon stated that they need time to absorb the information and discuss it amongst the Board members and counsel.

Density

Mr. Blanchard distributed a density chart to the Board. He stated that the density is a two-part issue. The first part is a threshold matter. They have arrived at 148 units on a 14-acre site. He noted that there was a public comment as to whether this was a correct calculation and that they are required under the R-3 zone to deduct the gross wetland area from the square footage of their site and then from there undertake a calculation that will yield what the FAR is that will govern their development. It is their position that this is an incorrect analysis of the code. He pointed out that the code states that the Planning Board may be guided by the area and bulk requirements of the R-3 multi-family zone and may apply variations to those requirements within the limitations set forth herein. It also states that the FAR shall be allowed up to but may not exceed 0.55. The resident bulk table (appendix) to the code states explicitly in multi-family districts including R-3, R-2A, RSP-1, RSP-2 and R-3A to calculate the FAR you shall deduct the gross area wetlands. He noted that they are not a multi-family, they are in the overlay zone where multi-family is a principal permitted use. In this part of the statute in the overlay zone, this Board is explicitly told that they are guided by the R-3 and may apply variations. There is no code requirement for this development to deduct gross wetland area from their square footage and they did not do that. They used the 0.55 FAR as the controlling number and then did their calculations for the site (road, open space, recreational requirement, setback, building distances, etc.) and arrived with 0.48 FAR which is underneath what's allowed. So, the comment that they are providing incorrect information is misplaced as this not a requirement and is guided by the overlay zone and not a strict adherence to the R-3 zone.

Mr. Bock asked if there was any reason why they couldn't do that deduction. Mr. Blanchard responded that there is no explicit requirement and noted that the spirit and intent of the overlay law is what this project is trying to yield with the multi-family, pedestrian friendly development which is all the aspects that they are bringing forward. The other aspect of this that goes against the possibility of reducing the ability to yield the most out of a site is that the overlay district legislation has certain development incentives. The code states that in the event the applicant agrees to make infrastructure improvements that benefit the town to an extent greater than what is required by our adverse conditions, then they would have certain development incentives that they could ask for (i.e. - higher yield of units or reduced parking). They are actually triggering this subsection with the infrastructure with the proposed intersection improvements but noted that they are not looking for development incentives. He thinks that taking away from the site, under the auspices of the purpose of this overlay, goes against the spirit and purpose and the legislative intent of the overlay.

Mr. Bock noted that they have a range of things that they can consider under the overlay law so any project that fits within that range is a possibility and questioned where this project fits in on the density side of the range with respect to the number of units. Mr. Blanchard responded that they are below the FAR. A color-coded density map was shown to the Board. To the right of the map is the Rochambeau development (red) which is across the site on Underhill and is at 8.7 units per acre. Beaver Ridge is shaded light blue at 19.8 units. The commercial development across Route 118 is shaded orange and is 20 plus units per acre possible. Underhill Farm is shaded green and is at 10.7 units for comparison purposes. He noted that their highest density area is shaded in dark green on the map which is where the condo units are. Everything else has a lower dense residential feel to it. So, the answer to the question of where this project fits within the density of the overlay zone and the density of the surrounding neighborhood is that they are literally in the middle of existing conditions. They are higher than their neighbor to the right and lower than the neighbor to the left but not as high as the commercial project across the street.

Mr. Bock asked if they were all calculated on the same basis without any deductions. Mr. Riina stated that it was units per acre with no offsets. He noted that there are two parts to this, density and FAR. The deduction for the wetland and buffer relates to the FAR not density; density is per unit. The R-3 zone allows 9 to 12 units per acre and what is trying to be drawn out here is the deduction for the wetlands and buffer but that only deals with FAR so they could still have the same number of units but they may be smaller. Mr. Tegeder pointed out that the R-3 has that deduction and then

you calculate your FAR from what is leftover but then the unit count is related to the FAR in that the more units you have there's a range from 9 to 12 units per acre. If you elect the 12 units you get less FAR so it is related to the density but it's a yield calculation but was written at a time when the town was growing. He added that times are different and the Overlay District is responding to much different parameters than what we have in place today and a much different set of responses that exist in the 2011 Comprehensive Plan. Discussion followed with respect to the history. He noted that what the R-3 was attempting to do at that time is what the Overlay District is attempting to do. In terms of being guided, when you look at what they are yielding here, the number of units across the amount of land that they have, it is in keeping with what you would get in the R-3. He also pointed out that there are R-3 developments in this town that were developed on properties without wetlands so the comparisons could be muddy. What is demonstrated here is that the density of the units, over the amount of land that they have is comparable to what's neighboring them and is actually much lower than Beaver Ridge but is also right in the area of what the R-3 is limiting you to. He feels it is very comparable to its neighbors and comparable to any R-3 that we have in terms of what those numbers are. Chairman Fon asked if he thought this was accurate in his opinion. Mr. Tegeder responded that he thought it was accurate.

Architecture

Mr. Guillaro discussed the architectural design of the proposed buildings (uphill and downhill townhomes, condo building and apartment building) with the Board. Renderings, elevations, and physical samples of the proposed building materials were shown. It was noted that the apartment building was reduced by 30-feet. They met with the ABACA and received their comment memos. Chairman Fon asked what type of windows were to be used for the condo building. Mr. Guillaro responded that they are Marvin windows in the color of black. Mr. Garrigan asked if any rooftop mechanicals were proposed. Mr. Guillaro responded there would be some on the apartment building. Mr. Tegeder requested for the applicant to prepare another elevation with the mansion incorporated for comparison purposes as he thinks the condo windows would be complimentary to the architecture of the existing mansion.

Closing

Mr. Guillaro informed the Board that they received a letter from the DOT to start the process and is currently discussing this with the Town Board. Mr. Blanchard respectfully requested to schedule a Public Hearing prior to the June 12th regularly scheduled Board meeting, possibly June 7 or 8, as they anticipate there may be a large amount of public commentary. If the Board agrees, the hearing could then be adjourned to the regularly scheduled June 12th meeting if necessary. He added that they can continue their discussions at the next Board meeting.

Chairman Fon agreed that a special meeting would make sense. He noted that they have discussed the four major topics in detail (environmental, traffic, historic and density) and need time to absorb all the information. Mr. Bock noted that it would be incumbent upon the Board members to review the EAF to ensure they have all the information based on the issues covered prior to the hearing. Mr. Tegeder informed the Board that the draft EAF has been reviewed and developed by the Board during the review process which is the appropriate procedure. At some point, which he thinks should be soon, it will need to be referred out to all involved and interested agencies for comments and noted that they need to provide ample time for the comment period. Mr. Bock asked about the next steps in terms of closing the hearing. Mr. Tegeder noted that typically the hearing is closed with a 10-day written comment period. There is a 62-day clause but that can be modified by agreement with the applicant. Mr. Glatthaar noted that when the Board discusses the EAF amongst themselves he would suggest that they have the consultants present. The Board agreed to place this item on the May 8th Planning Board agenda for further discussion. Discussion followed with respect to starting the meeting earlier than regularly scheduled.

Board closed Work Session to enter into an Executive Session

Upon a motion by Aaron Bock, and seconded by Bob Phelan, and with all those present voting "aye", the Board closed the Work Session portion of the meeting and entered into an Executive Session.

Board closed Executive Session to return to Work Session

Upon a motion by Rob Garrigan, and seconded by Bob Phelan, and with all those present voting "aye", the Board closed the Work Session and returned to the Work Session portion of the meeting.

Meeting closed

Upon a motion by Aaron Bock, and seconded by Rob Garrigan, and with all those present voting "aye", the Board closed the meeting at 10:23PM.