

Planning Board Meeting November 28, 2011

A regular meeting of the Planning Board, Town of Yorktown, was held on November 28, 2011, the Yorktown Community & Cultural Center, 1974 Commerce St., Yorktown Heights, NY 10598. The Chair, Rich Fon, opened the meeting at 7:30 P.M. with the following members present:

John Savoca
John Flynn
John Kincart
Darlene Rivera
Ann Kutter, Alternate

Also, present were: John Tegeder, Director of Planning, Robyn Steinberg, Planner, Karen Wagner, attorney to the Planning Board, and Lisa Hochman, Town's counsel for Costco.

Discussion	No discussion took place at this time
Correspondence	The Board had no issues with the submitted correspondence
Follow-up Correspondence	No discussion took place at this time
Liaison Reports	No reports were submitted at this time
Courtesy of the Floor	Fon opened the meeting to the public. No one from the public came forward.

WORK SESSION

Upon motion by Fon, seconded by Rivera, and with all those present voting aye, the Board approved the minutes of November 14, 2011.

Costco Wholesale

SBL: 26.18-1-19

Location: 3200 Crompond Road

Contact: Retail Store Construction Co, Inc

Description: Application to construct a 151,092 SF Costco Wholesale Club retail store and club member available filling station.

Al Capellin, project attorney, Nick Panayotou, project engineer, and Tom Holmes, project manager, were present. Kutter and Wagner recused themselves from this discussion. Lisa Hochman, special counsel to the Town for the Costco application, was present. Capellini stated the applicant has submitted the DEIS and is waiting for a response and recommendations from the Planning Board. Currently, the Planning Board has also been charged with submitting a recommendation for Costco's petition for submission into the Hunterbrook sewer system. Fon explained the problem is with SEQRA segmentation. Fon asked how this would effect the SEQRA review in the future with the Planning Board or the Town Board acting as lead agency. Hochman stated the Nov 4, 2011 Notice of Intent maintains that the sewer is an intergral portion of the project, Additionally, the SEQRA determination will be binding and the Planning Board should be Lead Agency. Capellini stated the Planning Board should amend their recommendation and allow the Town Board to proceed. Capellini asked, what negative environmental impacts would occur by removing 10 homes and the motel from septic systems. The Costco building is entirely within the existing sewer district (District #17). The applicant has Yorktown home owners, and Costco petitionng for the creation of a sewer district, and no referendum will be necessary. The Town Board will create a vehicle for the taxation of the sewer district. However, only if the Planning Board approves this project, will the sewers actually be built. Fon stated there are currently 10 homes, many failing septic systems, that are included in this petition. Fon asked Hochman the implecation should the Planning Board choose not to object. Will this

**Receive DEIS & Discussion
Proposed Sewer District**

Planning Board Meeting November 28, 2011

cause opponents to sue with article 78. Hochman explained the only action before the Planning Board is to object to the Town Board being Lead Agency or not. If the Board does not object it could be construed as allowing a segmented review. Hochman explained that there are permissible segmentation situations.

Considering only a part or segment of an action is contrary to the intent of SEQRA. *See*, ECL § 8-0101 et seq. Segmentation is defined as the division of the environmental review of an action such that various activities or stages are addressed as though they are unrelated activities, needing individual determinations of significance. *See*, 6 NYCRR 617.2(ag); 617.3(g)(1).

Hochman stated segmentation is allowable when each segment of the project can stand alone. Savoca asked who has the standing to object, and Hochman replied anyone in Yorktown or Peekskill, individually or by groups. Kincart asked if the Planning Board objects, will the applicant have a six month delay. Capellini stated the applicant is trying to go forward before both Boards simultaneously to avoid delays. Flynn asked if the applicant was requesting that the environmental review be done by one Board, and the site plan review by the other Board. Capellini stated segmentation is frowned upon because you may rob the lead agency of its role or ignore environmental consequences when a project is phased. Hochman stated the Town Board will never be faulted for creating a taxing district for the maintenance of the sewer district. Capellini stated the time factor has a great impact for the applicant. Capellini asked what were the physical impacts of the sewer line going across Old Crompond Road, and across to the Temple property. Fon stated if Costco and the 10 residents came before the Town Board with a petition, they would then have to go to the County Legislator. Were that to occur, would the Planning Board then be a referral. Tegeder stated this would likely be an unlisted action. Kincart stated the creation of sewers, would be monitored by the Town and the NYC DEP. Hochman stated the NYC DEP submitted their comments. Capellini felt the NYC DEP's response did not take into consideration that the Costco building was already in an existing sewer district. Panayotou stated the only thing we are asking for is for the project not to be delayed. The one thing that is dependent on timeliness is the current applicant's willingness to finance build sewers. Capellini stated in the Queensbury case, (regarding segmentation) a district was created and people were included that did not want to be in it. In this case, the residents are making the request. With regard to environmental safety, the Planning Board will review the construction of the sewer.

Hochman stated the physical impacts cannot segment the administrative impacts. Fon stated no one objects to the sewer district as it is an environmental benefit, and a benefit to the community, but we do not want a lawsuit. Capellini agreed no one wanted this. Fon stated that counsel is advising the Board that the project, as submitted, is not a permissible segmentation. Panayotou disagreed, stating the building is entirely within the existing sewer district 17, and can stand on its own. Hochman explained that within the SEQRA Scope the building and the parking lot are both components of the project. Capellini stated the applicant's submission to the Town Board will result in findings that are no less protective than the full review in regard to this portion of the project. Kincart reminded the Board that there are large parcels along this road that might come before us when there are sewers. This future development must be part of the review. Tegeder stated the applicant should be submitting flow analysis as sewers will increase the ability to subdivide. Kincart felt the Board must review maximum density. Tegeder stated the Town Board would have to look at the maximum flow for maximum density.

Hochman stated there are practical implications and legal implications, but no reason to change my determination. Kincart stated if I understand this, If the Planning Board objects then the Planning Board conducts the environmental review and the Town Board is lead agency for the creation of the sewer

Planning Board Meeting November 28, 2011

district. Hochman stated the Planning Board would have to conclude the environmental review before the Town Board could review the creation of the new sewer district. Kincart requested a map of the sewer districts in question, and Holmes provided this. Kincart asked what if the applicant chooses not to petition and remove the request.

Hochman explained that procedurally, the Planning Board's objection would be circulated, and if there is no resolution it would go to the NYS DEC. Fon stated the Planning Board will work hand in hand to resolve this matter. Capellini states objection without prejudices to the Planning Board's decision to object to the Town Board's lead agency status. The Planning Board will issue a resolution to object to the Town Board being lead agency. Kincart asked for some revisions to the draft resolution.

Upon motion by Fon, seconded by Savoca, and with all those present voting aye, the Board opened a Special Session for the sole purpose of discussing the Costco sewer district request.

Upon motion by Rivera, seconded by Savoca, and with all those present voting aye, the Board approved the amended resolution ,objecting to the Town Board have lead agency status in the review of the sewer district request.

Upon motion by Fon, seconded by Savoca, and with all those present voting aye, the Board closed the Special Session.

Fon stated the Planning Board will review the DEIS against the scope. This will be as complete as possible, with an eye to moving it along. Fon requested the applicant return for the January 9, 2012 meeting. Panayotou stated the plans have changed somewhat since June 2010 in response to Departmental request. In June, the building was against the side of the property, with an additional bay of parking on the west side. The west side wetlands were considered valuable by the Conservation Board. The building was moved 30feet to the north, with additional parking placed in the main lot, removing parking to the west. The Fire Marshal requested complete access around the building. The change allowed the applicant to segregates truck and vechile traffic. There wer no changes to the number of parking spaces, and the plan still callsfor 610 parking spaces. The applicant is in discussion with NYS DOT regarding signage, design of retaining walls, and drainage. There has also been discussion with NYS DOT regarding the DOT project to the west as the applicant wishes to coordinate and align both projects.

Northern Westchester Restorative Care (Treetops) fka Marrs Nursing Home

Town Board Referral

SBL: 15.15-1-23

Location: 3550 Lexington Avenue

Contact: New Mohegan Realty, LLC

Description: Application for special use permit for one-story expansion/renovation of the Treetops rehabilitation and care center.

Gabrieo Tchilingurian, project architect, was present. Tchilingurian stated the applicant is proposing a one-story addition in the rear of the existing structure. This addition will not change in the number of patients or staff. The new addition will be used as the new rehabilitation center. Currently, there are 120 patients and 80 staff. Forty (40) staff members are present at a time. Thirty (30 %) percent of the staff uses public transportation. Currently the area being proposed is lawn area. The zoning code requires a 40ft setback. Therefore, a variance will be required for 35 where 40 ft is required and 38 where 40-foot is required. The

Planning Board Meeting November 28, 2011

Board asked for the diameter of any the trees the applicant planned on removing. Tchilingurian stated there are 99 parking spaces where 90 is required. Tegeder asked if stormwater requirements would change with the proposed addition. Tchilingurian stated he was not familiar with this, but believed the applicant must add dry wells. The Board requested the applicant go to ABACA. Tegeder asked where the loading area was, and if the existing roads would change. Tegeder asked if the applicant complied with the Floor Area Ratio, and was told yes. Tchilingurian stated the site was on sewers. Tegeder stated that the requirements for the loading docks should be one for every 40 patients, therefore, 3 docks are required.

Sanctuary Golf Course

SBL: 59.09-1-10

Location: Route 118

Contact: Evans Associates

Description: Amended Site Plan for tennis court area and clubhouse.

Present were Al Capellini, project attorney, and Alan Pilch, environmental scientist and engineer. Pilch stated the entire property is 187 acres. Pilch explained that 10-years ago the front line of the golfcourse was approved, and now only the tennis course area remains to be completed. The changes from the approved plan include: 5 tennis courts instead of 3, 4 paddle balls courts instead of 2, and a 25-ft high rock retaining wall. Fon stated at the last meeting the Planning Board requested an as built, Town Engineer's inspections of the rock wall, and a signed copy of the plan. Pilch stated the submitted the tennis court plan should be considered as-built. The Board stated the wall was built on parkland. Tegeder stated a plan should be submitted clearly showing the changes since the approval, and a written statement of changes should be included. Pilch stated a detail of the wall has been submitted. The base is 8feet with heights from 0ft to 25ft. Fon stated the plan is not signed by the engineer. Pilch state the NYC DEP is requesting a new SWPPP for this portion of the project. Therefore, the applicant is amending the plan to fit with the new regulations. The plan will capture and treat the one year storm. Tegeder asked that the rock piles be quantified, and as the front 9 has there been amended, vis a vi the construction, changes should that be shown to capture a clear and precise picture of what exist. Tegeder stated the original approval included the back 9, and asked if there weres any changes to this portion of this, and Pilch stated no. Capellini asked that the Planning Board send a memo to the Town Board. Flynn stated the Town Engineer must sign off before the Planning Board asks for approval from the Town Board. Tegeder stated the original plan called for more disturbance then currently submitted, and asked where the miscalculation of rock come from. The Board requested the applicant return to the Planning Board on Dec 12, 2011 if the requested items were available.

Town Board Referral

Upon motion by Kincart, seconded by Savoca, and with all those present voting aye, the meeting was adjourned at 10:00pm.