

APPROVED MINUTES

**Town of Goshen Planning Board
Town Hall
41 Webster Avenue
Goshen, NY 10924
May 31, 2007**

MEMBERS PRESENT

Reynell Andrews
Lee Bergus
Susan Clever
Ralph Huddleston
Mary Israelski
John Lupinski
Ray Myruski

ALSO PRESENT

Neal Halloran, Bldg. Insp.
Joe Henry, Engineer
Rick Golden, Attorney
Kelly Naughton, Attorney
Graham Trelstad, Planner

This is a Special Meeting called by the PB to discuss the application of:

Heritage Estates 8-1-9.22 – 249.76+/- acres, 92 dwelling units located on Old Chester Rd. & Brookside Dr. in the HR & RU zone with an AQ6, AQ3, Scenic Road and Stream & Reservoir Overlays.

Mr. Halloran told the PB that the County Planning Department has requested 30 days from May 30 to complete their review.

Mr. Golden provided the PB with a Draft Resolution of Conditional Approval and said he has come up with different calculations from the ones of Mr. Trelstad and the applicant, stating that the PB needs to be clear on the acreages involved because it determines the number of lots available. He suggested that he meet with Mr. Trelstad, Mr. Halloran and the applicant to come up with calculations that everyone agrees with. Mr. Golden said he couldn't reconcile the numbers that the applicant states in their plan sheets and the exceptions from the gross numbers as to how many acres are in each of the two parcels. He said it could affect the lot count by over 3 acres. Mr. Trelstad said he was comfortable that the numbers in the FEIS "are as accurate as we will be able to get." The PB agreed that Mr. Golden, Mr. Halloran, Mr. Trelstad and the applicant should get together to discuss the calculations.

Mr. Myruski said, "We are giving, but what are we receiving?" Mr. Golden said the PB has to decide if the reasons set forth in the law exist to grant any type of density bonuses.

The PB has "a base calculation that is up in the air, Mr. Trelstad has 70, I have 68. Under the Code, he said the PB has the ability to grant the applicant, under their request and they have requested it, additional bonus density (Section 97-20) and there are several bases under the Code to give them additional units. Under the bonus density calculations,

there are only two provisions that are applicable to this project, Section 97-20 (A)(3)(a) and (A)(3)(d). Under 97-20(A)(3)(a) you can provide up to a 50% bonus density if you find there is a significant recreation benefit that the applicant has contributed to the Town in connection with this project, such as trail connector or access to an important natural area. They provide some trail access to Land of Goshen Park and Craigville and they have provided some additional open space area and they believe they are entitled to be considered for that. The PB's choices are: does it provide "significant recreation benefits", provide it "to a limited extent" or "doesn't provide it". If the PB says "no" you wouldn't give any additional bonus. You have to have a discussion of what is the significant recreational benefit and if there isn't one, why and you have to articulate your reasons."

Mr. Huddleston said one member says the pedestrian trail does not qualify as a significant recreational benefit to the Town in its own right because it was a required mitigation. "We requested, in the beginning, that they connect to the Town Park."

Ms. Israelski said she sees the trail not only as mitigation for traffic to the park but also as mitigation for traffic for people who can get to Old Chester Rd. and get to the Village without using a motor vehicle. Mr. Huddleston said he didn't see "where the value went away because we requested it or because it serves those benefits."

Mr. Trelstad said the trail was something the applicant proposed as improvement to the plan as a portion of the public access to the public open space in hopes of it achieving density bonuses. The PB found that the trail serves to mitigate potential traffic impacts by allowing direct pedestrian connection between the development and Craigville Rd. and not requiring driving.

Ms. Cleaver said, "We are going for more density and adding more cars because we have trails which are mitigation for traffic, that are actually going to contribute to adding more cars on the road, that doesn't make sense."

Mr. Huddleston said he can see a multiple value for the trail and thinks the FEIS is right. Adding, "If you say the presence of this is creating more impact than it is mitigating, I will entertain that argument."

Mr. Myruski said he thinks in this case, that the developer benefits far more from the trail than the Town will ever benefit because it is a selling point for the developer. He said he doesn't know what the Town gets out of it.

Mr. Bergus said that in the future it will benefit the people who are living there.

Mr. Huddleston said the Town benefits because there will be another access from the park and is an extension of the park system, the open areas, woodlands, wetlands, and it connects down to the trail as well.

Ms. Israelski said she thinks that it should be counted just as a mitigation effort for traffic because she agrees that the developer is going to be benefiting because it is an extra feature for them to sell the properties.

Mr. Huddleston said, "We asked for it because we saw value attributable to it and they were willing to do it. I believe it has density bonus value."

Ms. Israelski said that the trail itself to the Land of Goshen does not provide a recreational benefit because it is strictly traffic mitigation. Ms. Cleaver said that "when we went for the funding for the trails, it was not based on recreation. It was based on traffic and air quality mitigation."

Mr. Huddleston said, "When we are talking about the pedestrian trail we are talking about connecting from the Heritage to the Park and all the way through this property, through its stream, wooded area and green areas, and that will be public access, people will be able to go all the way through there by bicycle or by foot. My understanding was we wanted contiguous access connecting the trails and recreation areas. I think we have this and we designed it, I thought this did exactly what we wanted to do on future properties in connecting the trails and recreation areas."

Mr. Andrews asked who is going to maintain the connector trail. Mr. Trelstad said that will be worked out between preliminary and final approval. Mr. Andrews said that if the Town doesn't want it, it will fall back to the homeowners association and if the homeowners association isn't interested in maintaining it, "then what do we do? I don't think the Town is interested in getting into an enforcement situation."

The PB members were polled on whether to grant density bonuses for the trail with the following results: three "yes" votes (Bergus, Huddleston, Lupinski) and four "no" votes, (Israelski, Andrews, Cleaver, Myruski).

Mr. Golden said that the plans will need to be revised, because they were based upon the PB granting the applicant approximately 20 bonus density lots.

Mr. Bergus said the applicant is coming up with a maximum that they could be entitled to and they already self-imposed lower numbers on themselves in the design, they are saying that with every possible benefit, we could take 126 units but are asking for 97 including the existing homes.

Mr. Huddleston said the intent of the Code is to provide incentive to the developers "so that they would give those things we so value, I don't think you are going to find another trail in town over the next five years that does all of those things this trail does, and we have said there is no significant recreational value here."

Open space is the PB's only other consideration for potential density bonuses, Mr. Golden said. In Section 97-20(A)(3)(d) the applicant was required by Code to set aside 50% of the unconstrained lands as open space. The Town Code says if they provide more, then they can ask for additional lots as an incentive to them for providing more open space. For every 5% over, they get, up to 10% of their base calculation. You have to look at qualitatively what is the value of the open space to make a determination if they deserve a lot or little for the open space they are providing. Clearly they are providing significantly more than the 50% open space that is required by your Code, anywhere from approximately 39.65 acres more than what is required. Mr. Golden said his calculation is a little more and would give them up to roughly 21 units, to 30%.

Ms. Israelski read a prepared statement stating that "while the proposed development provides open space, it does not entirely preserve the open space for public benefit or natural habitat. The protection of the stream corridor is the primary goal of our comprehensive plan, however, the stream corridor will have wells located in them. Another significant parcel considered open space will have the water tower and much of the remaining open space areas are located on the estate lots, she said. Although cluster development is encouraged in our zoning as methodology to put aside conservation areas, the conserved areas in this plan have dual usage. In one way they conserved and will not have homes on them, but in another way they are used for the development for placing wells, towers and making estate lots. Setting aside over 50% open space benefits the developer in this case more than the community. Open space development provided the means to achieve 70 units instead of the 47 units by right, using less area for homes, thus setting aside more space allows compact development. Compact development is less costly to build. I cannot in good conscience award bonus density for extra open space that is being utilized as stated above. Upon producing documentation from the Town's water authority, on adherence to the water protocols, the developer has already been awarded more units than allowed by conventional planning. I vote to deny density units requested."

Mr. Bergus said he feels the applicant is entitled to bonus density. He said the plan has conserved a farm that is very visible from the road, and there is continuous open space around the perimeter of the property. He said the wells themselves do not detract from the property or take up open space and the tower is a low profile tower with access all around other than the perimeter fence. He said he doesn't feel that it should no longer be considered open space and said the Code says they are entitled to something by putting together a cluster design.

Mr. Huddleston said that roughly 48 acres is being placed in agricultural easement, non-commercial recreational use of the property or open space.

Mr. Andrews said that in view of the fact that there is that amount of open space, he can see awarding some bonuses, but is unsure of the amount.

Mr. Myruski said he thinks bonuses should be considered for the open space.

Ms. Cleaver said she didn't know at this point.

Mr. Lupinski said he thinks the applicant should get the bonus density, "they've done everything we've asked."

The PB was polled in regard to giving bonus density units for the open space consideration. The results were 5 "yes" votes, 1 "no" vote, 1 unsure.

Mr. Golden said this has a less clear standard. First, there needs to be a public benefit to the open space to be eligible for the bonuses, such as the vista it saves, or retaining agricultural use. If there is a public benefit, he said, then the PB would look at the quantity of those acres of open space and the quality of those acres and that is where you get your determination of how many.

Mr. Huddleston said he believes the vote has said the PB thinks there is a value to the public in the open space associated with preserving the farm, the open space vista, etc. All five who voted "yes" said they agreed.

Golden: once you have determined they have public benefit, they clearly have more than 50% so you have to entertain what kind of bonus they are entitled to which should be based upon how many acres they are providing and the quality of the lands.

Mr. Myruski asked how much of the open space is wetlands? It was stated that of the total 164 acres of open space, 58 acres are constrained lands and 48 acres are open space on the estate lots. A discussion of the size of the open space resulted in a conclusion that there are 60 acres that the applicant could have built houses on, the rest of the open space is wetlands, flood plain, sloped areas, or estate lots.

Mr. Golden pointed out that while the quality of the open space doesn't have to be accessible to the public, the trail as proposed goes through an open space area and raises the quality of those open space lands.

Mr. Huddleston suggested using 21 units as the maximum to start and "see where we are": Mr. Lupinski said he believes the applicant should receive 100% of what is allowed; Mr. Myruski said 2/3 or 14 units; Mr. Andrews said 25% or 5 units; Ms. Israelski said 33% or 7 units; Mr. Bergus said 67% or 14 units; Ms. Cleaver said 33% or 7 units; Mr. Huddleston said 75% or 16 units. It was determined that the average of the numbers was 12 units.

Mr. Myruski said, "We refused the first option and said zero and the second option we gained some back of the first option. I think our number is right around where it should be at 12. Ms. Israelski agreed.

Mr. Golden suggested that for the purpose of moving forward, "let's use 12 under the second bonus density and then that will come back in a resolution and you will be discussing what you like and don't like in the final form of the resolution and can make final changes. The PB members voted on the number they could accept, and a majority (4) said they could accept 12.

The PB discussed access to the site, the main access from Old Chester Rd. with an alternative emergency access only to Brookside. The County has said they want full access to Brookside, based upon the DEIS, Mr. Golden said. They have received further information but it is likely that they will make the same decision. When the PB votes on the entire resolution, if the resolution doesn't take into account what the County wants, then the whole resolution will have to have a super majority, he said.

Mr. Huddleston said "the applicant has said they would be willing to do whatever we want them to do. We have talked about full access, making Brookside a through road from this subdivision over to Craigville, but the concerns were the impact on Brookside and the traffic on Craigville. The County has said they would like full access. We have talked about making it a gated emergency access only. I feel that is what we should ask for."

Mr. Golden said the PB cannot base its decision upon the fact that a lot of people are opposed to it. The public has every right to go ahead and petition the Town Board and change something, but it can't be the basis of your decision, he said. If during the environmental review, the PB determines that there would be an impact on the intersection of 207 and Craigville, already an "f" rating for hours of the day, if this would exacerbate the situation, that would be a reason for you to have an emergency access there only and not permit full access. You can make it an emergency access only and have only that amount of land for an emergency access that would prevent it from ever being a full access or you could also request enough land be dedicated for a full access so that the Town would have the capability in the future.

Mr. Myruski said that 50 feet would make it Town accessible down the road.

There was a discussion of whether to make it a full access road or an emergency access road only and whether to construct it to Town specifications now or provide an easement for the future. All agreed to provide an emergency road with a gated access only.

The question of whether to provide an easement so the Town could, if it desired, build a Town road there in the future was left as a decision to make before final approval.

Discussion of the conditions upon which approval would be given centered upon a 24-page document entitled, "Draft Resolution of Conditional Approval Preliminary Major Subdivision for Heritage Estates" drafted by Mr. Golden from PB discussions. After discussion, the conditions #1 through 57 were either approved as is, deleted, or changed.

1. Approved as written. Mr. Golden said that when you have a phrase like "crest of the hill" (Section 97-41 and 97-29) not defined in the Code, the Building Inspector defines it for you and if someone challenges the definition, they can appeal to the ZBA. Mr. Halloran has made the call that the crest line is the top of the tree line, in this case, the tree line behind it will be your restriction, he said. There can be no house placed that can be seen above that line from any road. This is the first time that the Building Inspector has defined this phrase for the PB, he said. Possible mitigation would be to create a new tree line by placing trees on top of the hill behind the unit that are taller than the unit.
2. Approved as written.
3. Approved as written. Can Delete #48 because it is the same
4. Approved as written.
5. Conform the estate lot numbers to 88 and 92.
6. Add "must be in compliance with Section 97-29(G)".
7. Conform the estate lot reference to numbers 88-92.
8. Add after appropriate signage "and fencing during construction".
9. Approved as written
10. Approved as written
11. Approved as written.
12. Approved as written.
13. Add after (DEC), "and a copy to the Town Building Department".
14. Approved as written.
15. Approved as written.
16. Approved as written.
17. Add after designed, "including sizing"
18. Approved as written
19. Approved as written
20. Add after FEIS, "with the appropriate signage acceptable to the Building Inspector.
21. Approved as written
22. Change to: "Prior to Final Approval the applicant must present a plan to the Planning Board" to incorporate.
23. Add: "the applicant shall set forth specific construction details regarding the trail materials and the location of the trail connection to the Town Park".
24. Change end time on Saturday to 5 pm.
25. Approved as written. The PB had further discussion on whether to have the developer build the road now, but restrict the access for emergency use only (Brookside Dr.) or to have a 50 foot wide right-of-way in order to build a full fledge road if that was ever desired. The PB agreed not to have it built out now.

26. Add after Prior to Final Approval, and “in partial mitigation of the traffic impacts of this project, and PB will require applicant to do what is required in Section 83-13(E)3 applicant will have to show the areas for widening and realigning of such narrow roads.
27. Approved as written
28. Delete
29. Delete
30. Add after Prior to final approval, “the Conservation Analysis shall be deemed amended as it conforms with the current plan. Add at the end of the paragraph. “to the greatest extent possible.”
31. Delete “(18)”. Leave (12”)
32. 31.Change so it corresponds to the correct lot numbers
33. Delete
34. Delete
35. Remove name of the Town’s Consultant “Hickory Creek Consulting” and use just “Town’s consultant” Add ...easement “conditions”placed.
36. Delete
37. Delete
38. Delete
39. Delete
40. Change “nonimpervious areas” to “disturbed pervious areas”
41. Delete
42. Delete
43. Delete
44. Delete
45. Delete
46. Delete
47. Change to: “Prior to final approval the applicant shall submit a revised phasing plan and proposal for testing of offsite wells for PB approval.”
48. Delete
49. Delete
50. Delete
51. Delete
52. Approved as written
53. Approved as written
54. Approved as written
55. Approved as written
56. Change to: Sidewalks shall be located on both sides of the internal roads of the project, one side of the emergency access road connection to Brookside Drive, one side connecting Lot 39 to ____, and one side of the entrance boulevard to/from Old Chester Road.
57. Delete

Mr. Golden said that, affirming for the record, the applicant is waiving, at this meeting, all of the required time constraints under the state and local law with respect to approvals of subdivisions and default approvals, up to and including July 5, but the PB will have to make its final decision on preliminary approval on July 5.

The PB decided to complete its review of the proposed conditions at its next meeting.

VOTE BY PROPER MOTION, made by Ms. Cleaver, seconded by Ms. Israelski, the Planning Board of the Town of Goshen hereby ajourns its meeting at 12:15 a.m. Passed unanimously.

Ralph Huddleston, Chair
Notes prepared by Susan Varden