

1 PLANNING BOARD COUNTY OF ALBANY
 2 TOWN OF COLONIE
 3 *****
 4 HUDSON PRESERVE II
 5 PROPOSED REZONING
 6 122-134 TROY SCHENECTADY ROAD
 7 *****
 8 THE STENOGRAPHIC MINUTES of the above entitled
 9 matter by NANCY STRANG-VANDEBOGART, a Shorthand
 10 Reporter, commencing on October 8, 2013 at 9:23 p.m. at
 11 The Public Operations Center, 347 Old Niskayuna Road,
 12 Latham, New York.

13 BOARD MEMBERS:

- 14 PETER STUTO, CHAIRMAN
- 15 BRIAN AUSTIN
- 16 SUSAN MILSTEIN
- 17 KAREN GOMEZ
- 18 LOUIS MION
- 19 TIMOTHY LANE

20 ALSO PRESENT:

- 21 Elena Vaida, Esq., Counsel to the Planning Board
- 22 Michael Tengeler, Planning & Economic
Development
- 23 Daniel Hershberg, PE, Hershberg and Hershberg
- 24 Paul Rosano, Town Board
- 25 Joseph LaCivita, Director, Planning and Economic
Development

1 CHAIRMAN STUTO: This is Hudson Preserve II. This
2 is a proposed rezoning of 122 to 134 Troy Schenectady
3 Road. This is a recommendation to the Town Board on a
4 rezoning request for 27.9 acres from
5 neighborhood/office/residential to multi-family
6 residential zoning district.

7 Joe, can you do an introduction?

8 MR. LACIVITA: Actually, that's all that we needed
9 to hear. I'll turn it right over to Dan.

10 MR. HERSHBERG: We presented this previously and
11 there were some questions raised about issues of
12 constrained land and how it might affect this property.
13 I think essentially we still have this 27.9 acres which
14 immediately adjoins Hudson Preserve, which I think that
15 most of the people on the Board have seen and are
16 familiar with. We think that it's a very successful
17 apartment complex. The developer would like to build
18 168 more units on the 20 acres which is exactly the same
19 density that was previously approved with six units per
20 acre.

21 Multi-family residential is the zoning of this
22 piece here (Indicating). This was NCOR zoned and
23 consequently although we could build residential units,
24 if we added a commercial component to it, as I stated
25 before, we do not think that this particular section of

1 Route 2 would now support any kind of commercial use
2 for it. I think essentially even when it was Route 7,
3 which is the major road when Alternate Route 7 was
4 built, we still think that this was a difficult area to
5 promote additional commercial use. Immediately
6 adjoining us is a cemetery on this side and a church on
7 this side (Indicating). Below that is the Watervliet
8 High School. Then it goes into Watervliet where there
9 is a whole string of commercial all the way down to
10 Broadway. If you want to see an area that can support
11 good commercial operation, that area has significant
12 vacancies and buildings on it. We don't think that the
13 theory of using this for commercial use is a very
14 rational use for the site for this developer. The
15 homes here currently have individual driveways. We'd
16 be closing five driveways on a steep hill. I might
17 point out that even if in fact we were to try to do the
18 commercial zone, accessing the site directly from Route
19 2 I think would be frowned upon by DOT with additional
20 curb cuts, especially on a steep slope.

21 For all those reasons, we think that the rezone
22 would hold up to the residential and make good sense
23 and makes good use of the property. We think
24 essentially we would like this Board to recommend that
25 to the Town Board.

1 CHAIRMAN STUTO: Okay, I'm going to give some
2 introductory comments. Due to the late hour, I'm going
3 to try to cut to the chase as quickly as possible.

4 You had made this proposal, I think, at the last
5 meeting. We felt a little uncomfortable in the sense
6 that we didn't have any professional engineering advise
7 on our side.

8 Since that time, we brought on Chuck Voss as our
9 Town Designated Engineer from Barton and Loguidice and
10 he's done a fair amount of homework.

11 I'm going to try to get right to the point of
12 this.

13 One of the concerns was the constrained versus
14 unconstrained land and whether our Town Code addresses
15 that. You had said that you didn't think that it
16 did -- only in cases of conservation overlays. I think
17 that you were basically correct with that. There are
18 some other mentions of density calculations and
19 considering constrained lands and unconstrained lands.
20 In our investigation - and I'll let Chuck speak to this
21 - other communities do allow you to subtract out or
22 rather allow the Planning Board to subtract out steep
23 lands and wetlands before they do their density
24 calculation. Chuck has found that to be the case and
25 can point to a couple of those.

1 The other thing is that our Town is maturing in
2 terms of its development. I talked to Mike Lyons who
3 is one of the Senior Planners. He said if you take all
4 the developable property excluding the parklands and
5 the Pine Bush and so forth -- this was his estimate
6 without really doing any kind of mapping calculation --
7 that we were 80 percent developed. Naturally,
8 developers and people are going to pick easier parcels
9 to develop; the dry places, the flatter places and so
10 forth. So, what you end up being left with in the 20
11 percent are building in wet places. We asked you to do
12 a calculation. The total acreage is roughly 27-point
13 something. The steep acreage to find this 50 grade or
14 greater is 9-point something acres and there is an acre
15 or so of wetland. Which means one-third of it is
16 constrained -- if that's the definition of constrained
17 that you used.

18 My personal issue is with what the density of the
19 units will be. I'll let Chuck speak to that a little
20 bit more. I thought about this and I think that
21 apartments are probably the right use. I think that
22 it's consistent with the Comprehensive Plan and that's
23 another thing that Chuck looked at. There are
24 arguments both ways in terms of what the Comprehensive
25 Plan says, but it's not opposed to what the

1 Comprehensive Plan says. It's also adjacent to the
2 apartments that are being developed on it and so forth.
3 My personal feeling and my personal conclusion is I
4 would vote in favor of the rezoning, but I would also
5 ask the Town Board -- and they have a committee that's
6 formed.

7 Paul, what's the name of the committee that
8 considers the Land Use Law?

9 MR. ROSANO: The Land Use Review Committee.

10 CHAIRMAN STUTO: So, please look simultaneously at
11 the Land Use Law and the various zones and whether they
12 should subtract out constrained lands. That's my
13 conclusion. I'm getting right to it because of the late
14 hour. We've spent a lot of time on this going back and
15 forth.

16 MR. VOSS: Mr. Chairman, thank you. Just for
17 clarification for the rest of the Board Members, we were
18 asked to take a look at two issues associated with this,
19 and the questions that arose from this project.

20 The first was compliance with the Comprehensive
21 Plan. Does the project, as proposed in this part of
22 Town, subscribe to the Comprehensive Plan and what it's
23 calling for in the NCOR?

24 Secondly, we were asked to look at kind of how the
25 Town's current subdivision regulations address density.

1 In other words, how is base density calculated and how
2 is it determined for a particular parcel? What we did
3 was prepare a quick memo of research. Really, we
4 weren't surprised in what we found in terms of the
5 Comprehensive Plan. I can just go through item A,
6 which is compliance with the Comprehensive Plan.

7 Based upon our review of the Comp Plan, I provided
8 a couple of comments here that I think are pertinent
9 and I'll go through them quickly.

10 On page 60 of the Comprehensive Plan, it notes
11 that when development occurs in the area between Troy
12 Schenectady Road, Route 2 and Route 155 near the
13 boundary of the City of Watervliet, the use of a
14 conservation subdivision design should be required. I
15 think what's important to note is my follow-up comment.

16 The proposal describes development in this area,
17 and according to the Comprehensive Plan should require
18 utilization of the conservation subdivision design. In
19 addition to implementing the intent of the
20 Comprehensive Plan, consideration should be given to
21 covering this area of the Town with a conservation
22 overlay designation.

23 I say that for two reasons. I think that it's
24 also important to clarify what the Comprehensive Plan
25 really means. The Comprehensive Plan - certainly

1 Elena, I think, put together some information together
2 for the Board - a Comprehensive Plan is your guide for
3 how growth should occur in your community. It's not
4 prescriptive in and of itself in terms of you shall do
5 this in this area and you shall do that in that area.
6 It was meant to be kind of a general guide. The
7 planning and the zoning tools that get put in place are
8 really meant to kind of implement that vision along the
9 way.

10 The NCOR up front in this area was put in place
11 for a good reason - to try to develop that corridor for
12 commercial use supported by residential use which is
13 further and in the interior of the parcels. If you
14 kind of look at that context and you look at this
15 parcel, you'll see that the other development up front
16 along Route 2 could have had some commercial components
17 to it and they are kind of proposing that in terms of
18 their leasing office up there. That's more of a
19 commercial component. But the interior of the parcels
20 are really meant for supportive usage for the
21 residential. In general, the layout seems to fit with
22 how the Town envisioned that part of the Town to grow.

23 I think what is also important is that the
24 conservation subdivision overlay really allows you to
25 capture those constrained lands of a particular parcel.

1 In other words, your regular subdivision regulations
2 right now don't have a carve-out for steep slopes or
3 wetlands or critical environmental areas and things
4 like that that you would maybe normally think of. Look
5 at the overall parcel, and half of that parcel is
6 constrained lands. We're not going to allow those
7 constrained lands to be used to calculate density for
8 that entire parcel. I think that's a broader question
9 that Peter just mentioned in his remarks that I think
10 kind of came out of this process. This project in
11 particular kind of highlighted that issue Town wide. I
12 think that's a very valid subject for the Planning
13 Board to recommend to the Town Board that maybe it's
14 time to look at how density is calculated. Do we need
15 to kind of pull the reins in a little bit on how many
16 dwelling units are allowed on a particular parcel?
17 Maybe it's time to say that if you have slopes in
18 excess of 15 percent and wetlands, that acreage on a
19 particular parcel should not be included when you
20 calculate your base density. It's happening in other
21 communities, and I think that's why Peter asked us to
22 take a look.

23 The second issue that we talked about - if look at
24 the plan recommendation map - is the road frontage
25 along new York State Route 2, Delatour Road and Western

1 Avenue. As you know and as Peter just said, that area
2 now is really no longer a heavy commercial corridor.
3 It's kind of remnants of a commercial corridor that was
4 in existence years ago. With Alternate Route 7 going
5 in, it really created a new bypass that kind of
6 abandoned that Route 2 which is mainly between Latham
7 and Watervliet. That was the Route 7 that got you back
8 and forth out of Troy, Watervliet and those locations.
9 Alternate Route 7 does that now. So, the amount of
10 commercial traffic those parcels out there are not
11 super viable now.

12 Joe certainly knows when working with people on
13 those parcels out there that it is not super viable
14 now.

15 So, maybe it's better suited for support types of
16 land uses which in this case may be apartments or maybe
17 some sort of mixed residential on the interior parcels.
18 That's another thing that we wanted to take a look at.
19 I talk a little bit more about how you pull out base
20 densities and calculate those densities. I think that
21 the other interesting thing is that in the overlay
22 districts, the Town does allow those calculation
23 densities to be reduced based on the constrained lands
24 Maybe an additional recommendation is that certain
25 portions of the Town and maybe this portion here

1 (Indicating) included for further development moving
2 forward should have that overlay in place. I think
3 that's certainly within the purview of the Planning
4 Board to make that recommendation as you start to deal
5 with these issues.

6 We looked at one other issue. The Town of
7 Bethlehem encourages major subdivision applicants to
8 file as a conservation subdivision plan. In other
9 words, if a site has constrained lands like wetlands,
10 floodplains, steep slopes -- those constrained lands
11 come out of their buildable yield calculation. If a
12 100 acre parcel has 30 acres of constrained lands, you
13 have to take the remainder 70 acres and base that
14 density on that figure. That's typically how they like
15 to do it. They strongly encourage most of their new
16 residential development to go as conservation
17 subdivisions. I know that the Town has that provision,
18 but it's not mandatory. Some towns don't have that as
19 mandatory yet.

20 Guilderland - constrained lands do not impact
21 allowable density for subdivisions in the town right
22 now. They do impact the open space requirements in
23 residential cluster subdivisions. So, they're a little
24 less lenient, but I think that through conversations
25 certainly with Guilderland's town officials - they're

1 very concerned with the same issue. How do they get a
2 handle on residential densities? One of the mechanisms
3 that in talking to their Planning Board Chairman that
4 they use is the further out you go from certain areas,
5 the minimum acreage increases. In other words, you can
6 only have one dwelling unit for 2 acres or one dwelling
7 unit for five acres. That kind of pushes that density
8 level down as you move out.

9 In Clifton Park, constrained lands do not impact
10 allowable density for the subdivisions and the town.
11 However, they impact allowable densities for cluster
12 development subdivisions and conservation densities
13 subdivisions. Again, some towns do it a little bit
14 differently.

15 What we're seeing now especially with some of the
16 rural towns that experience growth in the county is
17 that they are starting to say those slopes in excess of
18 15 percent and wetlands have to come out of the base
19 density calculations. I think that it's an issue that
20 the Planning Board may want to add onto this
21 recommendation for this project.

22 The way that we looked at this project is that it
23 seems compatible with the Comprehensive Plan in
24 general, given the existing conditions on the site and
25 in the general area. It's certainly consistent with

1 the existing land uses that are around it. You can
2 look at it as a Phase II of what is already out there.
3 It seems to fit well. Certainly, there is the broader
4 question of density calculations.

5 CHAIRMAN STUTO: Lou?

6 MR. MION: I don't have any questions.

7 CHAIRMAN STUTO: Brian?

8 MR. AUSTIN: I don't have anything.

9 CHAIRMAN STUTO: Tim?

10 MR. LANE: Nothing.

11 CHAIRMAN STUTO: Karen?

12 MS. GOMEZ: I don't have anything.

13 CHAIRMAN STUTO: Susan?

14 MS. MILSTEIN: Do we have the power to actually do
15 this?

16 CHAIRMAN STUTO: We're just making a
17 recommendation.

18 MS. MILSTEIN: So, that lets the Town Board --

19 CHAIRMAN STUTO: Act on it. They can say yea or
20 nay.

21 MS. MILSTEIN: Okay.

22 MR. HERSHBERG: Mr. Chairman, I have one other
23 issue here. When Mr. Voss talked about the densities
24 and about taking out the constrained land, I'm very
25 familiar with the Town of Bethlehem. I've done many

1 jobs in the Town of Bethlehem. When you take out the
2 constrained land with a lower density -- and quite
3 honestly your multifamily residential density of six
4 units per acre is one of the lowest in our area. Most
5 have eight or ten. We've done a development that
6 actually allowed us to build 16 units per acre. It was
7 in a rural Rensselaer area, but the amount of 16 units
8 per unconstrained acre -- while the definition of
9 constrained can also be taken into account, what you're
10 doing is to the developable land.

11 On a subdivision, it's a different issue. When
12 you're talking about site plan, there is another issue.
13 If you take out too much of the land with a constrained
14 density - although they take out the constrained land
15 with the density calculations - it may make plans
16 undevelopable. You'll end up with plans that until
17 land values grow in that area, they will just not
18 attract any developers. I think that has to be weighed
19 carefully when you take constrained lands. What are
20 you going to take it out of and what is your allowable
21 density? That's my comment.

22 CHAIRMAN STUTO: And that will be up to the Town
23 Board.

24 I do want to mention one other thing in fairness.
25 When I spoke to Mike Lyons, his suggestion was that if

1 this does get rezoned and we get it back - because he
2 understands the slopes on the property, he would
3 suggest some type of geotechnical engineering to make
4 sure that they can support the structures. I said,
5 well that's not really our job tonight. He said that
6 it's good to tip off the developer so that they know
7 what to expect.

8 MR. HERSHBERG: We already had Fred Dente, a
9 Geotechnical Engineer out there to do the infiltration
10 tests, but he also did some borings for us. Before we
11 get into the building design, we're concerned about
12 slopes and what we can put on them and road
13 construction. They are all a concern. We'll do a very
14 thorough geotechnical report on this project.

15 CHAIRMAN STUTO: Thank you.

16 Anything else from the applicant?

17 (There was no response.)

18 CHAIRMAN STUTO: Somebody from the public want to
19 speak?

20 (There was no response.)

21 CHAIRMAN STUTO: Since nobody is making a comment,
22 does anybody have any objection with me suggesting that
23 the Town Board look at the density calculations?

24 (There was no response.)

25 CHAIRMAN STUTO: Do you want to state the motion,

1 Chuck?

2 MR. VOSS: Sure. We have a draft Resolution that
3 was prepared in the original packet from a couple of
4 days ago. It looks like it's still accurate.

5 MR. LANE: I would like to request that.

6 MR. VOSS: It says, "Recommendation of the Planning
7 Board to the Town Board: Whereas the Town Board referred
8 the proposed rezoning of 27.99 acres of land to the
9 Planning Board for review and consideration via Town
10 Board Resolution 310 for the year 2013, and

11 Whereas Hudson Preserve, LLC, the applicant seeks
12 to rezone the following 10 parcels along the south side
13 of Troy Schenectady Road from the existing zoning
14 designation of neighborhood/commercial/office
15 residential, NCOR to multi-family residential."

16 And there are 10 parcels listed here.

17 CHAIRMAN STUTO: And we'll submit that in its
18 entirety to the stenographer.

19 MR. VOSS: "Whereas the applicant has provided
20 signed notarized affidavits from the seven property
21 owners acknowledging the proposed rezoning, and

22 Whereas the Land Use Law permits the following
23 uses of the MFR district, multi-family, single family,
24 town house, two-family dwellings, farm, fire station,
25 golf course, manufactured home park, municipal uses,

1 nursery, park, place of worship, school and truck
2 garden, and

3 Whereas the Land Use Law permits under the MFR
4 district a maximum density of six units per acre or 168
5 units for 27.99 acres, a maximum building footprint of
6 15,000 square feet, 35 percent minimum greenspace and
7 no allowable commercial density.

8 Whereas the Land Use Law permits under the
9 existing NCOR district, a maximum base commercial
10 density of 18,000 square feet per acre which calculates
11 out to 503,820 square feet or a maximum mixed-use
12 density of 20 percent commercial which calculates to
13 101,820 square feet and 80 percent residential which is
14 134 units, a maximum building footprint of 15,000
15 square feet and 35 percent minimum greenspace.

16 Therefore be it resolved that the Planning Board
17 recommends that the zoning request under Resolution 310
18 for the year 2013 be approved based upon the following
19 facts of finding.

20 The rezoning of the 10 parcels from NCOR to MFR
21 would be a continuation of the existing MFR district to
22 the west which consists of the Hudson Preserve
23 apartments, Lake Shore Apartments, Cedar View
24 Apartments and the senior housing on Carondolet Drive.
25 Under the proposed rezoning request to MFR, the maximum

1 density allowed is six units per acre for a total of
2 168 units. The applicant has submitted a development
3 concept consisting of 168 multi-family housing units in
4 a total of 12 buildings. The Resolution shall take
5 effect immediately and shall be transmitted to the Town
6 Supervisor and Members of the Town Board."

7 The date would be today.

8 CHAIRMAN STUTO: I would have liked to mark that up
9 a little bit in a couple of areas and I don't know if
10 we're going to have time to do that.

11 The part that recites the calculation of the
12 density and tells how many apartments they can build in
13 the site plan, I don't know if I really want to include
14 that. I would want to mention that it has over nine
15 acres of land that is in excess of 15 percent
16 steepness - if that's the right word - and over an acre
17 of wetlands and that our recommendation is that the
18 Town consider reviewing the Land Use Law in all the
19 zones with respect to calculating the density, they
20 should consider unconstrained land and constrained
21 lands and take that into consideration when they are
22 reviewing it and whether they should subtract out
23 constrained lands when they're doing the density
24 calculation. I don't know if I'm saying that
25 correctly.

1 Another way of doing that is saying based upon all
2 the items in the record, there is a motion to recommend
3 that we rezone this as requested by the applicant and
4 also concurrent with that, the Town Board and the Land
5 Use Review Committee --

6 MR. ROSANO: Actually, Joe LaCivita and myself are
7 a part of that committee.

8 CHAIRMAN STUTO: And that the Land Use Review
9 Committee and the Town Board consider reviewing the Land
10 Use Law to consider constrained versus unconstrained
11 land when doing density calculations.

12 Can someone move on that?

13 MS. GOMEZ: I'll move on that.

14 MR. MION: I'll second.

15 CHAIRMAN STUTO: Any discussion?

16 (There was no response.)

17 CHAIRMAN STUTO: All those in favor say aye.

18 (Ayes were recited.)

19 CHAIRMAN STUTO: All those opposed say nay.

20 (There were none opposed.)

21 CHAIRMAN STUTO: The ayes have it.

22 Thank you.

23 MR. HERSHBERG: Thank you.

24 (Whereas the above proceeding was concluded at
25 9:49 p.m.)

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CERTIFICATION

I, NANCY STRANG-VANDEBOGART, Shorthand Reporter
and Notary Public in and for the State of New York,
hereby CERTIFY that the record taken by me at the time
and place noted in the heading hereof is a true and
accurate transcript of same, to the best of my ability
and belief.

NANCY STRANG-VANDEBOGART

Dated October 19, 2013

