



ENVIRONMENTAL, LAND USE AND REAL ESTATE LAW

25 June 2021

Gary Ciferri, Town Supervisor
Stephen Turlletes, Deputy Supervisor
Robert Audia, Town Board Member
Michael Murphy, Town Board Member
Joseph Rochfort, Town Board Member

Town of Washington Town Board
Via email only to Mary Alex, Town Clerk at: malex@washingtontny.org

Re: Town of Washington Comprehensive Plan Committee

Subj: Comp Plan Committee Charge

Dear Supervisor Ciferri and Members of the Town Board:

Summary

The Friends of the Town of Washington ("Friends") have serious reservations about the draft of the Town Board's charge to the Comprehensive Plan Review Committee ("Committee"). The Town Board's draft charge strongly implies that the Town Board continues to support the eventual approval of the Second Mountain development project proposed by Janet's Farm without considering all the potential options that may be available to the Town of Washington and its residents. The tone of the current draft charge conveys that the Town Board will be changing the 2015 Comprehensive Plan to allow commercial hospitality uses in the Town of Washington instead of first asking whether the Comprehensive Plan should be amended at all. In establishing the Comprehensive Plan Review Committee, *Friends* had hoped for a more open and transparent opportunity to evaluate the 2015 Comprehensive Plan. It is disappointing that the current draft charge seems to suggest the end result of the Committee's work before that work has even begun.

Attached for the Board's consideration please find a proposed alternative Committee Charge. We respectfully request that this proposed charge be substituted for the Town Board's draft charge. In *Friends'* view, this proposed charge provides a more neutral and accurate statement of the Committee's mission based on the discussions had during Town Board meetings over the last several months.

Discussion

The Town Board's draft charge stops just short of specifically asking the Committee to find ways to amend the Comprehensive Plan and Zoning Law to allow the Second Mountain development project to eventually come to fruition. Instead of asking the Committee to evaluate whether large-scale commercial hospitality uses like that project will benefit the Town of Washington, the tone of the draft Charge implies a directive to the Committee to find a rationale to support Second Mountain and similar projects. While the Committee may find that hospitality uses are appropriate, the charge given the Committee should be to determine if those uses are

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advisable, not forcing the Committee to reach that conclusion. This was not how the Committee's mission had been discussed at prior Town Board meetings.

The Town Board's charge to the Committee presumes that the Committee will conclude that there is a need to change the Town's Comprehensive Plan to allow for commercial hospitality uses. This presumption negates the goal of a neutral and balanced Committee assuming in advance the end result of the Committee's work before the Committee has even met.

The Committee should be charged with listening to the members of the Town community about how they envision the Town's future. A community survey should be conducted, just as it was conducted for the 2015 Comprehensive Plan review. Interactive meetings between the Committee and members of the community should also be held to ensure that a broad cross-section of the community is heard.

The Committee should be charged with engaging in an objective and honest review of the 2015 Town Comprehensive Plan. The Town's Comprehensive Plan is the official statement of the Town's vision for its future. It should be reviewed and amended only for the benefit of the Town as a whole, not for the benefit of one particular developer. That should be the first charge given to the Committee, but that directive is absent from the Town Board's current draft charge. If the residents of Washington feel a change is necessary, then the Committee should evaluate how to effectively facilitate that change for the betterment of the community. If the community's vision for itself has not changed, and there is no majority community desire to amend the 2015 Comprehensive Plan, then the Committee must respect that view and not be compelled by its Charge to act in contravention of the community's wishes.

Conclusion

The content and tone of the Town Board's draft charge indicates to *Friends* that the Town Board views this process as a means to facilitating the eventual reality of the Second Mountain development project, and that the Committee is being used simply as a tool to help facilitate that end. However, it is the members of the Town community in Washington, those who live, work and own land in the Town, who should be the decision-makers about the future of the Town they love, not out-of-town developers or investors who have no stake in this community.

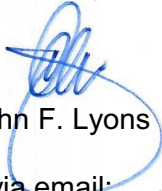
The committee should be charged with evaluating the situation, understanding the positive benefits and adverse impacts that commercial hospitality uses may have on the tax base and surrounding businesses, and also upon the environment and the rural community character of the Town. The Committee must be asked to listen to Town residents about how they want Washington to grow. As drafted, the Town Board's draft Charge to the Committee will not foster a transparent, unbiased, open and honest review of the 2015 Comprehensive Plan.

We respectfully ask that the proposed alternate Charge that is submitted with this letter be the Charge that is given to the Committee by the Town Board. That alternate charge properly delineates what the mission of this Committee should be so that the Committee's work, its findings and its report will be an objective, transparent work of integrity in which the community can be confident.

Thank you for your attention and consideration.

Very truly yours,

Grant & Lyons, LLP



John F. Lyons



Kimberly A. Garrison

c via email: Jeffrey Battistoni, Esq., Town Attorney for the Town of Washington
Friends of the Town of Washington
Charles Gottlieb and Amy O'Brien, Whiteman Osterman & Hanna LLP

**Town of Washington
Comprehensive Plan Review Committee
Background and Charge**

The Town Board of the Town Washington has created a Comprehensive Plan Review Committee [the “Committee”] to perform a limited review of the 2015 Town of Washington Comprehensive Plan. The Town Board provides the following background and charge to this Committee.

I. Background

Washington adopted its first Town Comprehensive Plan in 1987. After some minor amendments of the plan over the years, in 2007 the Washington Town Board initiated a review of the Comprehensive Plan. As described in the 2015 Comprehensive Plan:

the focus of that review was to be an examination of primary land use concerns; specifically the protection of agriculture, preservation surface and ground water quality and quantity, along with the need for additional environmental protections. ... The final product would reflect the priorities, hopes, and aspirations of the public; the commonly shared community values and goals for the future. Simply put, it would plan for what people want the Town of Washington to be like now and in the future.¹

Eight years after 2007 on December 10, 2015, the Town of Washington adopted the current 2015 Town of Washington Comprehensive Plan. A section entitled “Acknowledgments” at the bottom of the cover of the Plan says:

For eight years, dozens of individuals worked cooperatively to prepare the 2015 Town of Washington Comprehensive Plan. The Comprehensive Plan Committee members, together with Town residents, farmers and business owners, made this plan possible.

The Plan says also says of the process:

A written survey was distributed to residents and lively public workshops were well-attended. Several vision statement meetings were held and consensus was ultimately reached on a vision for our Town.²

Historically, Washington’s Comprehensive Plans and Zoning Laws have served the community well. The present initiative to review the 2015 Comprehensive Plan did not arise from within our community, but has been prompted by a hospitality development project proposed in the Town by a developer. The proposed development is not consistent with our 2015 Comprehensive Plan, and is not allowed by our Zoning Law.

¹ *Id.*

² *Id.*, at P 6.

The Town Board is interested in reviewing whether a hospitality use would be appropriate and beneficial to the Town of Washington. The Town Board has always been sensitive to the real property tax base in the Town. The 2015 Comprehensive Plan states that the “[f]iscal consequences of this Plan and potential zoning changes will affect the future of Town budgets.”³

As stated in the 2015 Comprehensive Plan:

Open, inclusive governing and responsible management of financial resources is vital for our community’s success. Elected officials are charged with the safeguarding and proper use of taxpayer funds. Financial resources of the Town of Washington are not committed to policies, practices and projects that are inconsistent with the Town’s vision for the future.⁴

The Comprehensive Plan also notes that:

Businesses located in the Town provide generous employment opportunities. These businesses also increase economic development, tourism and sales tax revenue. Agribusiness and recreational activities attract visitors from the tri-state area and beyond.⁵

The Town Board is also concerned about the viability of businesses in the Village of Millbrook and in the hamlets of Mabbetsville and Washington Hollow. And the Board is also concerned about recent, broad socioeconomic changes such as online shopping and working from home, that could impact life and land use in the Town.

Associated land uses and the Town’s economy were part of the review that resulted in the 2015 Comprehensive Plan as well. Key findings from this part of the review which were cited in the 2015 Comprehensive Plan were:

- Slightly more than half the survey respondents strongly agree that the Town should improve the environment for small business, however expanding the amount of land in the Town for commercial use was only supported by 7% of the respondents.⁶
- The Economy Subcommittee [of the Comprehensive Plan Review Committee] concluded that the Town should plan to remain largely a rural, open area that retains its agricultural economic base and serves as an aesthetic and recreational amenity to the Village of Millbrook and Dutchess County as a

³ *Id.*, at Chap. I “Introduction,” at p. 6.

⁴ *Id.*

⁵ *Id.*, at Chap. III “Community Profile,” Section J “Parks, Recreation, Services and Government,” at p. 34.

⁶ *Id.*

whole.⁷

- Avoid creating land new Hamlet-Mixed Use Zoning, or new commercial areas in the Town.⁸

That said, the eight years of work that culminated in the 2015 Comprehensive Plan also culminated in a set of four overall goals⁹ as follows:

- Goal I: Keep the Town scenic and rural and the Village the one developed center.
- Goal II: Protect land, water, and the natural environment.
- Goal III. Strengthen the Village center.
- Goal IV. Maintain a high quality of life.

To keep the Town rural and scenic, the Plan set the following policies: (a) preserve traditional land use patterns; (b) enhance and preserve the duality between the Town and Village; (c) avoid new or denser zoning that would create village-like areas in the Town; (d) maintain the scenic beauty and natural diversity of the Town by avoiding the disruption of scenic vistas, viewsheds, corridors, ridgelines, natural areas, and historic resources; and (e) cooperate with organizations that conserve rural character to preserve open space, and protect scenery and natural resources.¹⁰

The 2015 Comprehensive Plan also focuses on the protection of the Town's precious water resources. The Plan recognizes that "almost all of the water used in the Town is ground water and its protection is critical to all Town residents."¹¹ The Plan also says that the areas south of Mabbetsville along Mill Brook are especially important because this recharge zone feeds the aquifer that is the sole source of the municipal water supply for the Village. Indeed, the survey performed for the 2015 Comprehensive Plan showed that Town residents strongly support protecting water supplies and aquifers.¹² Consequently, the Land Use Plan in the Comprehensive Plan:

... the Land Use Map also recognizes the desire to avoid construction or extension of water and sewer facilities outside of the bounds of the Village of Millbrook, as well as preventing development of stand-alone water and sewer

⁷ *Id.*, at Chap. V "Goals," Goal I at p. 39.

⁸ *Id.*, at p. 40.

⁹ *Id.* at Chap. V "Goals," at p. 38.

¹⁰ *Id.*, at p. 40.

¹¹ *Id.*, at Chap. V "Goals," Goal II at p. 43.

¹² *Id.*, at Chap. III "Community Survey", at p. 35.

facilities as part of development proposals, in order to avoid sprawl that would likely harm the essential rural character of the Town. (Comp Plan, Ch. II “Land Use Plan,” at p. 8)

As recognized in our 2015 Town Comprehensive Plan, a comprehensive plan identifies the needs of a community and recommends goals, objectives, and actions to improve the health, safety, and general welfare of its citizens.¹³

The Comprehensive Plan is a document of critical importance. The Plan also says that a comprehensive plan is the policy foundation for the future development and preservation of a community.¹⁴ The content of our Comprehensive Plan represents our community’s vision for itself. It describes what we want to preserve and how we want to grow.

Now in 2021, the Town Board wishes to explore whether the Comprehensive Plan should be amended to allow commercial hospitality uses. The Town Board also wishes to determine if the community supports such an amendment, and whether such an amendment would be in the best interests of the Town.

Large-scale hospitality businesses present possible positive impacts in drawing visitors, creating employment opportunities, and increasing the tax base. But they also present possible negative impacts from being too self-contained and generating off-site impacts such as traffic, noise and light pollution. Such businesses may also contradict the 2015 Comprehensive Plan’s goal of “maintaining and improving those appropriate land uses ... that work toward supporting contrasts between a rural town and a more urbanized Village.”¹⁵ Hence, we have created a Committee of Town citizens to examine this issue and to make recommendations to the Town Board.

In furtherance of the foregoing, the Town Board charges the Committee as follows:

II. Committee Charge and Governance

1. The Committee is charged to undertake a review the 2015 Comprehensive Plan. The Committee shall engage with the community, work with a professional planner of its own recommendation, and shall determine, based on community desire and the interests of our community, whether any change should be made to our 2015 Comprehensive Plan with regard to allowing new commercial hospitality land uses in the Town.
2. If the Committee determines that the people of the Town are satisfied with the 2015 Comprehensive Plan, and there is no desire in the community to allow new commercial hospitality land uses, and that changing the 2015 Comprehensive Plan will not be in the interests of the people of the Town, then the Committee will have fulfilled its charge and its work will be complete.

¹³ 2015 Town of Washington Comprehensive Plan, Section I “Introduction,” at P. 5.

¹⁴ *Id.*

¹⁵ *Id.*, at Chap. V “Goals,” Goal III “Strengthen the Village Center,” at p.49.

3. If the Committee determines that there is a community desire to allow new commercial hospitality land uses in the Town, and that such would be in the best interests of the people of the Town, then the Committee is charged to take the next steps and determine and make reasoned recommendations to the Town Board as to: (1) what type and scale of new commercial hospitality uses should be allowed in the community; (2) where in the Town those new uses should be permitted; (3) how the 2015 Comprehensive Plan should be amended; (4) how the Town Zoning Law should be amended; and (5) what regulatory controls and land use approval criteria should be placed on the new uses and incorporated into the Zoning Law.
4. In fulfilling its charge, the Committee shall avail itself of professional planning assistance to be chosen by the Committee by a majority vote of its membership. The Committee shall engage a professional planner certified by the American Institute of Certified Planners [AICP] and experienced in assisting communities like ours that are predominantly rural residential and agricultural in character.
5. Community input is essential to the Committee's review process. In fulfilling its charge, the Committee shall engage with the public. The Committee is directed in conjunction with its planner to prepare a survey and circulate that survey town-wide. In addition to a survey, with the assistance of its planner, the Committee shall also hold at least three meetings in which the Committee can meet with members of the public and hold an interactive dialogue about the possibility of new hospitality uses.
6. In the event that the Committee shall encounter legal questions, the Town Board shall arrange for the Committee to engage independent legal counsel to be chosen by a majority vote of the Committee membership.
7. The Committee will be given a page on the Town web site as a means of communicating with the public and to post documents germane to the Committee's work..
8. Notice of the date and time of Committee meetings shall be posted on the Town web site reasonably in advance of each Committee meeting, and Committee meetings shall be open to the public.
9. The Committee shall keep minutes of its meetings, and it shall designate one member of the Committee at each meeting to be responsible for drafting the minutes of the meeting. Minutes of each meeting shall be filed thereafter in the office of the Town Clerk. After the meeting minutes are filed, a copy of the meeting minutes shall be posted on the Committee's page on the Town web site.
10. Regardless of the conclusions the Committee reaches in performing its work, when the Committee concludes its work, it shall issue a report to the Town Board in writing which explains in reasonable detail the Committee's findings. The report shall also set forth the Committee's recommendation(s) based on its findings and provide a reasoned elaboration of the basis for each of its recommendations. After the report is handed up to the Town Board, a copy of the report shall be posted on the Committee's page on the Town web site.

Dated: June 28, 2021

Town of Washington Town Board