

**CLEAR SUBDIVISION
OPEN SPACE REPORT**

**Subdivision Regulations
Article VI, Sections 60.1, 60.2, 61.2(a)**

Submitted on behalf of Timothy and Johna Clear
July 23, 2024

By:
Jennifer Van Tuyl
Cuddy & Feder, LLP
300 Westage Business Center
Fishkill, NY 12524
914-582-5234
jvantuyl@cuddyfeder.com

INTRODUCTION

When land proposed for subdivision meets one or more of the Criteria for Cluster Preference listed in section 61.2 of the Subdivision Regulations, the applicants for the subdivision approval are required to submit to the Planning Board a Report explaining how their proposed non-cluster subdivision achieves the Town's goals relating to open space preservation [Zoning Section 340 (2) and Subdivision Regulations, section 60.2]. The Report is also required to discuss the comparative effectiveness of their proposed subdivision layout and a cluster layout in accomplishing the Town's open space objectives, and to specifically address the question of why a cluster plan would not better achieve the Town's open space objectives [Subdivision Regulations, section 61.2 (a)]

As part of the review process, the Planning Board will refer the application, including the Land Inventory, to the Conservation Advisory Commission (CAC) for its comments on the adequacy of the proposed non-cluster plat to fulfill the objectives of Subdivision Regulations, section 60.2, and to protect the natural resources on and adjoining the property. "The decision to require or to permit a cluster subdivision is at the sole discretion of the Planning Board." [Zoning Law Section 341 (1) (a)]

This Report is submitted in response to these requirements.

PART I

THE PROPOSED SUBDIVISION PLAN

The details of the proposed subdivision are set forth in the application materials, including, without limitation, the Application, the Project Narrative, the full EAF and attachments, the Land Inventory Report, the NRI Report, and the project drawings, particularly the Preliminary Plat and the Constraints Map.

PART II

THE CHANGES THAT A CLUSTER SUBDIVISION WOULD IMPOSE ON THIS PROPERTY

In evaluation the appropriate subdivision layout for this property, it is important to consider the requirements for cluster subdivisions under the Town code, and the changes it would make to the proposed layout.

A cluster subdivision has three essential elements:

1. Creation of lots that are smaller than the zoning minimum lot size [“reducing the lot size and bulk requirements contained in the Zoning law...” Zoning Law 340 (3)]
2. Grouping of these smaller-than-zoning-compliant lots within a particular area/areas of the site – [“...clustering homes in those areas where development will have the last impact on identified environmental resources.” Zoning Law 340 (3)]
3. Taking the land that would otherwise have been part of individual lots if they had been zoning compliant, and maintaining that area as open space. Since this open space is effectively “owed” to the reduced size lots to be zoning compliant, Towns usually require that the open space be protected by conservation easement, or deed restriction.

An important characteristic of cluster development is that it creates higher net densities within the areas of the property where the small lots are “grouped” or “clustered.” This can create lots that are very unlike other lots in their neighborhood. If the Clear subdivision were required to become a Cluster development, it is subject to stringent minimum lot sizes because it is in the APO overlay district.

- The lots would have to be “grouped,” and forced to be close together. In contrast, the proposed building envelopes are separated from each other and from neighboring homes.
- The individual lots could not be larger than 1 acre in size. [Zoning Law 341 (2) (a) (6); 341 (3) (k) (last sentence); Subdivision Regulations 62.4 (b). In contrast, the proposed lots are similar to neighboring lots.
- Any lots located on a road would have frontage of not less than 150 feet. [Subdivision Regulations 62.4 (d)]. The proposed lots have much more frontage.
- Distances between dwelling units shall be not less than 60 feet. [Subdivision Regulations 62.4 (c)] The proposed lots are widely separated.
- In cluster subdivisions, water supply and septic facilities may be located within the set-aside open space areas. [Subdivision Regulations 62.4 (c)], in the same manner as a conventional subdivision.

- Because the Clear property is in the APO District, the open space area would have to be devoted to active agricultural uses only. [Zoning Law 341.3 (d)] This may not be appropriate to the site, because less than 20% of the land constitutes Agricultural Soils, and much of that is wetlands.

The applicants believe that their proposed subdivision layout accomplishes the purposes of a cluster subdivision without the disadvantages of cluster development, as will be discussed in the next section.

PART III

HOW THE PROPOSED PLAN PRESERVES OPEN SPACE, AND IS MORE COMPATIBLE WITH THE NEIGHBORHOOD THAN A CLUSTER PLAN WOULD BE

The Town zoning law requires the Planning Board to carefully consider whether to require these land owners, against their objection, to develop their property as a cluster subdivision. To assist the Planning Board in this decision, the zoning law requires the submission of this Open Space Report, which evaluates the applicant's plan and how it preserves open space, and then evaluates whether a cluster subdivision could do a better job in performing the open space functions set forth in zoning law section 340 (2) and subdivision regulations 60.2.

The applicants believe that their proposed plan more effectively performs these functions. Briefly put the applicants' plan is congruent with the existing neighborhood in Stanford Road and Woodstock Road, and a cluster subdivision is not.

- The proposed lots are of similar size as adjoining parcels, ranging from 5.349 acres to 28.425 acres, with an average lot size of 18.17 acres.
- Location of the three new homes will be controlled by limiting new building construction to small areas (ranging in size from 1.05 acres to 2 acres) within the land, with compliant setbacks from neighboring homes and from each other. The building envelopes do not encroach on sensitive natural resources.
- Lot sizes are not cookie-cutter one-acre lots, but have been designed to appeal to existing or new Town residents interested in maintaining country life:
 - The smallest lot (Lot 3--5.349 acres), the site of the existing farm house, has been designed to appeal to an owner interested in proper rehabilitation and restoration of the home and outbuildings without the burden of managing a large property.
 - The largest lot (Lot 5, 28.425 acres), south of Woodstock and bordering Stanford Road, has been designed to nestle a new home into the northeast corner of the lot, largely hidden from view by substantial topography and existing trees. The views from Woodstock Road to the south over the open field will be preserved from disturbance, as it is outside the building envelope, and these areas are largely wetlands and adjacent areas.
 - The next largest lot (Lot 4, 23.516 acres) houses the existing ranch house south of Woodstock Road. This lot is abutted on the west by a farm operation within an agricultural district. The house is quite a distance from the western boundary. No change in this property is proposed.
 - North of Woodstock Road, most of the land has been placed in the western lot (23.490 acres), as the subdivision lines followed the lines of old stone walls on the property. Lot 1 therefore occupies the entire north-to-south depth of the current parcel, from the northern boundary with Andrea Van Beuren to the northern side of Woodstock Road. The

potential site for a home on this land has been designated as a 2-acre building envelope toward the southern boundary of the lot, which provides substantial landscaped setback from Woodstock Road. It also provides privacy between the lot and the adjoining Cox home, because the intervening area is covered with trees, both deciduous and evergreen. The forested areas and wetlands in the northern portion of the lot will not be disturbed by any development.

- The final lot with a new home (Lot 2, 10.92 acres) is in the northeast corner of the property, and will derive access from Stanford Road. The proposed house location is 445 feet from the existing house on Lot 3, and additionally screened by knobs and knolls in the topography and areas of varied vegetation between the locations. The building envelope on Lot 2 is also screened from the Van Beuren property to the north by areas of varied topography, and existing vegetation.

An important difference between the proposed subdivision layout and a cluster layout is that, although the lot owners will be restricted to a small area upon which to locate their homes, those areas are private and surrounded by substantial land. Additionally, each lot owner will be able to have pride of ownership in their entire acreage, just as their neighbors do. Purchasers sometimes don't take interest in maintaining "open space" that is owned collectively, or by a third party.

The applicants believe that their proposed subdivision offers a conservation minded subdivision that is also a compatible addition to the neighborhood.

CONSIDERATION OF THE SPECIFIC FACTORS IN THE ZONING AND SUBDIVISION LAW:

Does the proposed subdivision provide long-term protection of natural resources or any specific resources identified in the master plan, subdivision regulations, and zoning law? [Zoning Law 340(2) (a); Subdivision regulations 60.2 (a)]

The proposed subdivision provides an advantageous method of long-term maintenance of open space within a long-existing rural neighborhood in the Town, with similar lot sizes, and similar ownership interests. The methods of preserving the open space include limited building envelopes and control on locations of new buildings and structures.

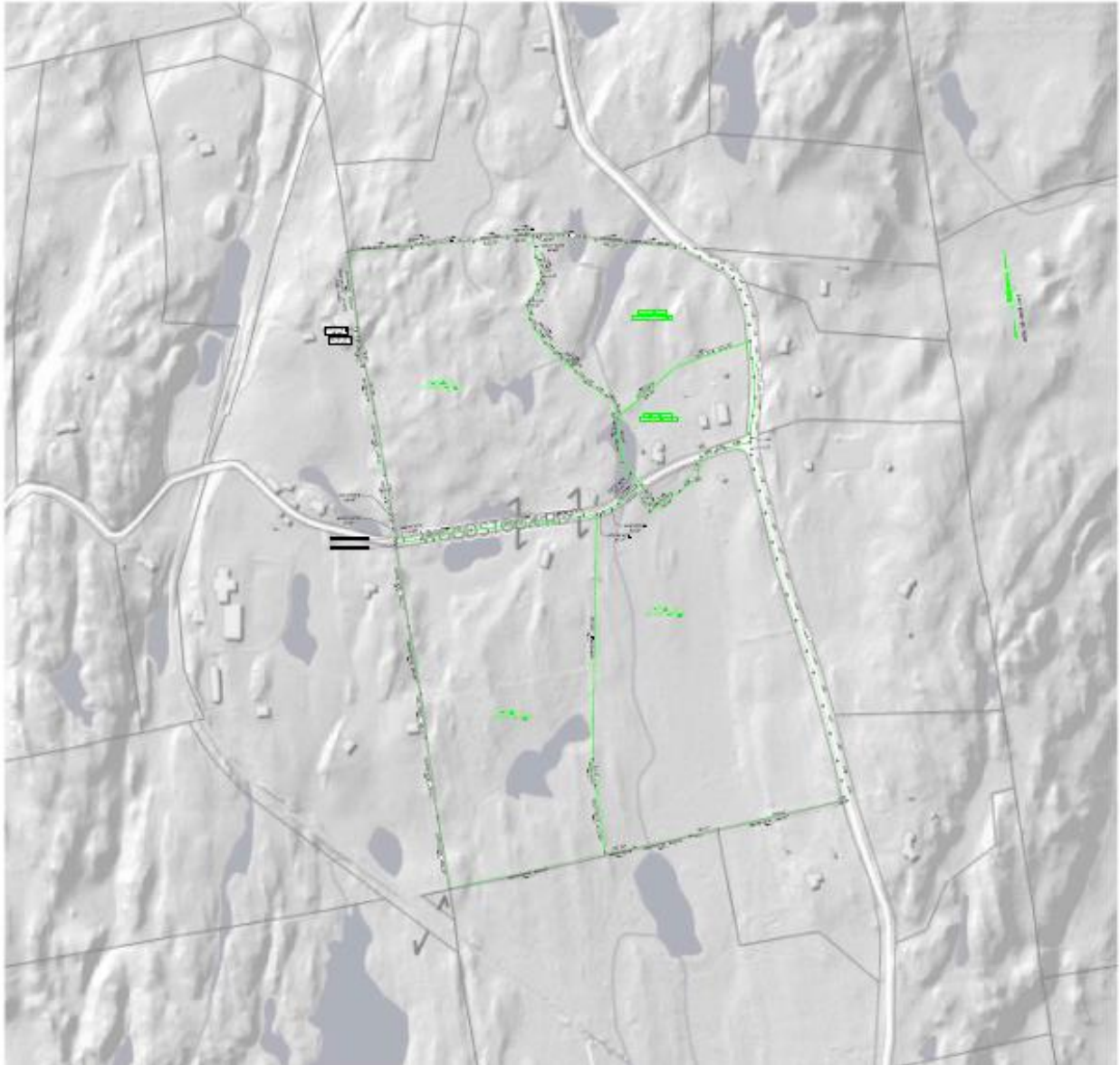
The cluster alternative would force the lot size to shrink to one-acre and also force the lots to be grouped. These lots would be starkly different from those in the neighborhood, and the grouped houses would be more likely to be visible. Because of the starkly different lot size, the lots would not have the same value as neighboring parcels. The very small number of lots would create a very inefficient home-owners association, and the relatively small size of the overall property would not provide great incentive to a conservation easement holder to take an active interest in the property.

Which type of subdivision would provide more compatibility with surrounding land uses and the overall character of the area?

As described in the previous response, the proposed plan would be much more compatible with the surrounding land uses and overall character of the area. In addition, the proposed conventional subdivision lot sizes are congruent with the lot sizes of existing lots in the immediate neighborhood, whereas cluster lots would be much smaller.

- Proposed Lot 1 is 23.49 acres in size. The abutting neighboring properties are 16.6 acres (to the north) and 15.03 acres (to the west).
- Proposed Lots 2 and 3 are respectively 10.09 acres and 5.349 acres in size, both with orientation toward Stanford Road. The closest neighboring properties across Stanford Road are (from north to south) respectively 12.1 acres, 5.0 acres, and 7.5 acres in size.
- Proposed Lot 4 is 23.516 acres in size. The neighboring parcel to the west is 29.75 acres in size. The neighboring parcel to the south is 61.37 acres, which is part of the much larger Orvis holdings.
- Proposed Lot 5, abutting Stanford Road, is 28.425 acres in size. The neighboring parcels on the opposite side of Stanford Road, are (from north to south) 21.4 acres, and 10 acres in size. The neighboring parcels to the south of Lot 5 are, from east to west, a 7.0 acre single-family residential parcel and a portion of the Orvis parcel listed above.

There are no cluster subdivisions in the neighborhood. All of the neighboring parcels that surround the Clear Parcel have been laid out as conventional subdivisions. A map showing the view of the proposed Clear lot sizes in the context of surrounding lands is shown on the following page.



Does the proposed subdivision provide adequate setbacks and visual buffers from adjoining properties? [Zoning Law 340 (2) (c); Subdivision Regulation 60.2 (c)] Does the proposed subdivision work as effectively as a cluster subdivision?

The proposed plat and Constraints map show how effective the proposed conventional subdivision is in providing setbacks and visual buffers from adjoining property. It is doubtful that a cluster subdivision would be able to function as effectively, since any attempt to do so would likely involve creating a new internal road, which could have undesirable impacts. The requirement that cluster lots be no larger than one acre, and that they be grouped, and have a minimum separation between houses of only 60 feet, makes it more likely that these houses would form a mass that would be visible from adjoining properties.

Could a cluster subdivision on this parcel contribute to Town-wide open space planning by creating a system of permanently preserved open spaces providing linkages between existing open space areas? [Zoning Law 340 (2) (d); Subdivision Regulations 60.2 (d)]

The answer to the question is no. The parcel is relatively small (less than 100 acres, and already divided in half by Woodstock Road (40 acres to the north and 50 acres to the south). This contrasts with the Town Zoning Law provision that a goal of cluster development is to preserve “large tracts of contiguous open space within subdivisions of 100 acres or larger.” [Zoning Law section 340 (2) (j)]

Moreover, the Clear property is not surrounded by large existing open space preserves, so it cannot become a linkage between such spaces. Most lands in the vicinity of the Clear subdivision are similar to the proposed lot sizes.

Does the subdivision border active agricultural lands or land suitable for agriculture, and does it preserve land suitable for agriculture? Could a cluster subdivision more effectively preserve land suitable for agriculture on the property?

The Clear site contains only a modest percentage of Agricultural soils--approximately 20%. More than half of the agricultural soils are also categorized as wetlands. Some of the agricultural soil was already developed as part of the farmhouse complex (Lot 5), although the non-covered land remains available for farming. The proposed subdivision preserves the ‘Prime soil if drained’ soils south of Woodstock Road, as they are outside the building envelopes, and are also designated as wetlands. These have been designated as an important scenic view from a scenic road. See constraints map, which shows the proportion of this area that is designated as wetlands.

The Clear site does not adjoin substantial tracts of Agricultural Soils. See NRI Maps. Accordingly, a cluster subdivision would not more effectively preserve land suitable for agriculture on the property. It is noted that the proposed conventional subdivision, in spite of its lack of agricultural soils, complies with the standards for residential development within the APO overlay district. [Zoning, section 315 (a)]

CONCLUSION

Cluster subdivisions can be a useful tool, but they are not the answer for every situation.

The Town's zoning law recognizes that "sensitive design" is also a valid technique to preserve open spaces and community character. The proposed conventional subdivision has used building envelopes as a creative way to conserve natural features, open space, and community character. It is the better choice for this property.