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August 20, 2024

Chairperson Susan Meaney
and Members of the Planning Board
Town of Washington
10 Reservoir Dr.
Millbrook, NY 12545

Re: Clear Property – Response to AKRF comments

Dear Chairperson Meaney and Members of the Planning Board:

This memorandum is submitted by the Applicants' consultant team in response to the AKRF Planning Comment memo dated August 5, 2024, and is intended to be a supplement to the discussion at the Planning Board meeting on August 6, 2024.

RESPONSE TO AKRF COMMENT MEMO DATED AUGUST 5, 2024

BACKGROUND

1. **Comment:** An application for a 5-lot conventional subdivision of this property was previously presented to the Planning Board in December 2023 and subsequently withdrawn in March of 2024. The instant application is a new application. The new application provides a standard preliminary subdivision plat, a Constraints Map proposed as an attachment to the preliminary subdivision plat that identifies sensitive environmental areas/buffers and proposed development/disturbance envelopes on three of the lots (where new homes can be built), and a land inventory / environmental analysis of the entire property to be subdivided in compliance with the Subdivision Code requirements. Whereas the previously submitted plat, due to the placement of the proposed lot lines relative to existing structures, would have required three variances for reduced setbacks, the new (instant) application would not create new nonconformities and would not require any variances.

Response: Comment noted.

6155101.v3



August 20, 2024
Page 2

APPLICATION COMPLETENESS / CODE COMPLIANCE

2. **Comment:** As the average proposed parcel size (18.17 acres) is less than five times the 5-acre minimum lot size in the zoning district ($5 \times 5 = 25$), the application cannot be defined as a “minor” subdivision per the Town Code (definition provided below). The Applicant is seeking approval of the subdivision as a “conventional” subdivision under the Code (definition provided below).

SUBDIVISION, MINOR:

A subdivision which requires no new road construction, and which creates three (3) or fewer new parcels, or six (6) or fewer new parcels if the average parcel size is at least five (5) times the minimum lot size in the zoning district. The number of new parcels shall be calculated based upon lots that were in existence on January 1, 1989, and all subdivisions since that date shall be treated as cumulative for purposes of determining the number of new parcels created.

SUBDIVISION, CONVENTIONAL:

A subdivision that is not a cluster subdivision or an open space subdivision as defined in Section 60.

Response: Comment noted.

3. **Comment:** As the proposed conventional subdivision warrants the Planning Board’s consideration of the “cluster preference” criteria found under Subdivision Code Section 61.2, the application must include the land inventory information listed in Subdivision Code Section 42(p), as well as the report described in Subdivision Code Section 61.2(a). The Applicant’s submitted land inventory information, relating to the natural features on and within 500 feet of the property, is summarized as follows:

- (1) Wetlands. Per the Wetland Delineation Report, the property does not contain any state- or federally regulated wetlands; however, there are multiple Town-regulated wetlands onsite. The Applicant has illustrated proposed “development/disturbance envelopes” outside of wetland buffers (and other sensitive areas) that would restrict future placement of homes thereby avoiding impacts to the wetlands. The development/disturbance envelopes, once finalized, can be incorporated into the set of drawings constituting the final subdivision plat.

6155101.v3



August 20, 2024
Page 3

- (2) Streams and other watercourses. Per the Wetland Delineation, no streams, drainage channels or other waterways exist onsite.
- (3) 100-year floodplain. Per the FEMA map, the property is not within the floodplain.
- (4) Slopes in excess of 20%. According to the Applicant's land inventory report, approximately 3.6% of the property contains steep slopes 20%-25%, and 3.9% of the property contains steep slopes greater than 25%. While the development/disturbance envelopes shown on the Constraints Map contain small areas of steep slopes, the Applicant has indicated that these areas can be avoided or properly managed with conventional construction practices related to erosion/sediment control and slope stabilization.
- (5) Agricultural soils. According to the Applicant's land inventory report, the majority of the onsite agricultural soils are located within areas that have been identified as wetlands and not in constructable areas. As shown on the Constraints Map, the development/disturbance envelope proposed on the south side of Woodstock Road is close to Stanford Road where accessory structures are found, and avoids the property's existing agricultural fields and associated wet areas.
- (6) Soils with 3 feet or less depth to bedrock. The Applicant intends to complete soil testing as required for well and septic system permitting. These results can be shared with the Planning Board.
- (7) Forested areas. According to the Applicant's land inventory report, the forest condition on the subject site is in the 80-90 percentile, similar to the surrounding properties. According to the Habitat and Biodiversity Report, the property consists of hardwood mixed with evergreen forested areas.
- (8) Tree lines and hedge rows. Tree lines and hedge rows exist in some of the proposed development/disturbance envelopes as shown on the Constraints Map.
- (9) Open fields and meadows. According to the Applicant's land inventory report, meadows, grasslands or brushlands account for approximately 15.01 acres of the subject property.

6155101.v3



August 20, 2024
Page 4

- (10) Trees greater than 8 inches DBH. Several species of trees greater than 8 inches in DBH exist on the property. Tree species greater than 8 inches in DBH have been surveyed and identified within the proposed development/disturbance envelopes shown on the Constraints Map. (See Comment 12 regarding tree clearing restrictions that can be required by the Town).
- (11) Scenic vistas from public roads and any designated scenic roads. Woodstock Road is a Town-designated scenic road. Specific information on “scenic vistas” on Woodstock Road was not provided, though the Applicant maintains that by restricting development/disturbance to the zoning-compliant envelopes depicted on the Constraints Map, the two potential new homes on Lots 1 and 5, respectively, can be screened by undisturbed vegetation along the road frontage. As noted above, the open fields on the south side of Woodstock Road are outside of these envelopes. The Planning Board can request additional information if desired.
- (12) Designated Critical Environmental Areas. The property is not listed as a CEA.
- (13) Aquifers. No aquifers are present on the property.
- (14) Environmental Preservation Districts. The property is not within a designated Environmental Preservation District.

Response: As to subsection (11) re: scenic vistas from public roads and any designated scenic roads, the Town of Washington 2023 Comprehensive Plan update contained a map entitled “Viewsheds and Buildable Land” which included mapping of “Buildable Land within viewsheds of Scenic Roads.” A copy of this map is attached at the end of this response memo, and we ask that it be considered as part of the Open Space Report. A copy of this map was provided to the CAC at their August 7, 2024, meeting. The map confirms AKRF’s statement that the viewshed on Woodstock Road is of the main field to the south of Woodstock Road, and that this main field is outside the building envelopes for Lots 1 and 5. As to the remainder of the subsections, comment noted.

- 4. **Comment:** In addition to the land inventory information, the Applicant has submitted a report of the property’s characteristics/conditions as depicted on the Town’s Natural Resource Inventory (NRI) maps.

Response: Comment noted.

6155101.v3



August 20, 2024
Page 5

5. **Comment:** Per Subdivision Code Section 61.2(a), the Applicant must include a brief report that describes how the proposed subdivision achieves the purposes listed in Subsection 60.2, and why a cluster plan would not better achieve these purposes. Per Subdivision Code Section 60.2, the purposes of an open space (cluster) subdivision are:
- a. Better protection of natural and scenic resources identified in the Master Plan and Zoning Law than would be provided by a conventional subdivision plan;
 - b. Compatibility with surrounding land uses and the overall character of the area;
 - c. Provision of adequate buffers for adjoining properties;
 - d. Contribution to Town-wide open space planning by creating a system of permanently preserved open spaces, both within large parcels of land and among such parcels throughout the town, providing linkages between existing open space areas; and
 - e. Preservation of land suitable for agriculture, particularly where the open space subdivision borders active agricultural land or land suitable for agriculture.

Response: Comment noted. See Open Space Report included in the previous submission.

6. **Comment:** The Applicant has submitted a report titled “Open Space Report” that responds to the above requirement. The report is divided into three parts. Part I lists the key components of the submission.

The written assertions provided by the Applicant in Parts II and III are summarized as follows for the board’s consideration:

- a. Part II – Changes that a Cluster Subdivision would Impose.

The key elements of a cluster subdivision are: lots that are smaller than the minimum under the Code; lots are grouped together in a specific area to minimize environmental impacts; land that would otherwise be part of the individual lots (had the lots been zoning compliant) is merged and maintained as open space, often by a conservation easement or deed restriction.

Applied to the subject property, a cluster subdivision would result in a higher-

6155101.v3



August 20, 2024
Page 6

density area with lots dissimilar to other lots in the neighborhood. Whereas cluster lots would be disproportionately smaller with homes close together, the proposed lots are similarly sized to the neighboring lots, and the proposed building envelopes are separated from each other and neighboring homes. Further, because the property is in the APO overlay, the open space area would have to be devoted to agricultural uses – which may be inappropriate to the site, as less than 20% of the land is agricultural soils and much of that is wetlands.

- b. Part III – The Proposed Plan Preserves Open Space and is More Compatible with the Neighborhood than a Cluster Plan.

The proposed plan is congruent with the existing neighborhood in Stanford and Woodstock Roads, and a cluster plan is not. There are no cluster subdivisions in the neighborhood; all have been laid out as conventional subdivisions.

In addition to providing more compatible lot sizes, the proposed plan includes building envelopes for development that would be zoning compliant, outside of sensitive areas, separated from each other, and protective of scenic vistas. The lot sizes are not cookie-cutter one-acre lots, but instead, have been designed to appeal to residents interested in maintaining country life. The smallest lot (Lot 3 – 5.349 acres), the site of the existing farmhouse, has been designed to appeal to an owner interested in rehabilitating the home and buildings without managing a large property. Each of the proposed building envelopes consider the property's existing natural features and would be screened from each other and the road.

With a cluster plan, the homes would be more likely to be visible from Woodstock Road, a Town-designated scenic road. The smaller lots would have a lower property value than neighboring larger lots.

Although future lot owners would be restricted to a small area upon which to locate their homes, those areas are private and surrounded by substantial land. Each owner would 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 proposed plat and Constraints Map show how effective the proposed subdivision is in providing setbacks and visual buffers. 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. (The Planning Board may

6155101.v3



August 20, 2024
Page 7

request clarification on how a cluster subdivision would necessitate a new internal road.)

As the subject property is not surrounded by existing open space preserves, it could not become a linkage between preserved spaces.

The property contains only 20% of Agricultural Soils, about half of which is wetlands. In addition, the property does not adjoin substantial tracts of Agricultural Soils. Accordingly, a cluster subdivision would not more effectively preserve land suitable for agriculture.

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.

Response: Comment noted. Applicant agrees that the above is a fair summary of the Open Space Report.

- Comment:** Based on the Applicant's assertions, as summarized above, the Planning Board should determine whether to require a cluster subdivision or to proceed with the review of the application as a conventional subdivision with conditions/restrictions on developable area, as the Applicant has presented. As noted above, for the three new vacant lots, the Applicant has illustrated proposed development/disturbance envelopes that the Planning Board can review, modify, and enforce through resolution as well as restrictions documented on the preliminary and final plat should the Planning Board determine that a conventional subdivision of the property achieves the land and resource conservation goals of the Town while also meeting all applicable requirements of the Subdivision Code.

Response: Comment noted. The discussion at the Planning Board meeting clarified that the designated rectangles are "building envelopes for building construction" (See EAF Part 1, page 1, brief description).

OTHER COMMENTS

- Comment:** Each of the proposed new parcels would conform with the RL-5 lot requirements of minimum lot size (5 acres) and minimum frontage (300 feet). While several of the existing structures near Woodstock Road are preexisting nonconforming due to reduced front setbacks, the proposed subdivision would not increase the extent of the preexisting

6155101.v3



August 20, 2024
Page 8

nonconformities and no new nonconformities would be created.

Response: Comment noted.

9. **Comment:** The Constraints Map shows the property’s environmentally sensitive features including wetlands and adjacent buffer areas, farmland soils, and steep slopes, as well as proposed development/disturbance envelopes for potential future construction of new homes and related infrastructure on Lots 1, 2, and 5. Once revised/finalized to address AKRF and Planning Board comments, the Constraints Map can be appended to the final plat for approval/filing.

Response: As discussed at the August 6, 2024, Planning Board meeting, the Constraints Map will not be accepted by the Dutchess County Clerk’s office for filing with the Subdivision Plat. However, relevant lines, such as the outline of the building envelopes, and conceptual driveway locations, could be shown on the Final Subdivision Map to be filed. Additionally, a note or notes could be placed on the Plat stating that a Constraints Map is on file with the Planning Board.

10. **Comment:** The Constraints Map should be updated to show the entire permissible development/disturbance areas outside the environmentally sensitive areas and applicable wetland buffers, including the recommended additional 300-foot Bog Turtle conservation zone to selected wetlands (see Comment 11 below). The envelopes should be updated to show the entire buildable area, incorporating zoning restrictions and considering visual buffers described in the Open Space Report. The preliminary plat should include a note/restriction that no disturbance shall occur outside of the development/disturbance envelopes shown on the Constraints Map, and the Constraints Map should be included as an attachment to be recorded with the final plat. The Planning Board may also include this restriction as a condition of approval.

Response: As to the comment on the suggested 300-foot Bog Turtle Conservation Zone, please see response to Comment 11, below. See Responses to Comment 7 above and 13 below regarding building envelopes. See comment 9 above as to the filing of the Constraints Map as part of the Subdivision Plat. See Comment 13 below regarding the filing of a conceptual layout of the building envelope. Reference is also made to the extensive discussion at the Planning Board relating to the building envelopes.

11. **Comment:** Per the Wetland Delineation and Habitat and Biodiversity Survey Report, potential Bog Turtle habitat was identified on Wetlands E, H, and J (see Table 1 and Figure

6155101.v3



August 20, 2024
Page 9

13 of the Wetland Delineation), although no turtles were observed during fieldwork. Per guidance issued by the US Fish & Wildlife Service (USFWS), wetlands/watercourses displaying habitat characteristics for Bog Turtles should have a 300-foot conservation zone from the edge of the wetland. AKRF recommends that this additional 300-foot conservation zone be added to the Constraints Map, around Wetlands E, H, and J, which will affect the development/disturbance envelopes proposed on Lots 1 and 2. This restriction can be included as a condition of approval and recorded as a note on the final subdivision plat and attached final Constraints Map.

Response: Michael Fishman CWB, FTWS provides the following response: There is no legal requirement for a 300-foot buffer for bog turtle habitat, nor is there a requirement that all bog turtle habitat be treated in the same manner. The USFWS position on a 300 foot buffer, cited by the Town Planner, is not a requirement, but is actually a suggestion intended to apply only in limited situations and for limited purposes, from the 2001 USFWS Bog Turtle Recovery Plan, and is identified as the "Zone 2" conservation zone. These zones are recommended, "with the intent of protecting and recovering known bog turtle populations within the northern range of this species. The conservation suggestions for each zone are meant to guide the evaluation of activities that may affect high-potential bog turtle habitat, potential travel corridors, and adjacent upland habitat that may serve to buffer bog turtles from indirect effects. *Nevertheless, it is important to recognize that consultations and project reviews will continue to be conducted on a case-by-case basis, taking into account site- and project-specific characteristics.*" (italics in original).

Please note the words, "recommended" and "suggestions," neither of which are requirements, as they are not in statute or law.

At the State level, NYSDEC does not place a 300-foot buffer on potential bog turtle habitat state-wide, unless it is demonstrated to be occupied. It is important to note that not all potential habitat for any species is occupied. Our assessment of bog turtle habitat was a general observation based on observations of conditions on site that appeared to be potentially suitable for bog turtle (hydrology, soils, and vegetation), but we found no indications that any of these suitable areas were occupied.

Other relevant factors fail to support any inference that this is "high potential bog turtle habitat" or "potential travel corridors" for bog turtles, which the USFWS suggestion seeks to protect. The nearest known occurrence of bog turtle, according to the NHP records, is more than 2 miles east of the site. Bog turtles are known to

6155101.v3



August 20, 2024
Page 10

range about 1.6 miles, so this site is out of range of that "known population." Significant barriers to the movement of turtles exist between the known population site and the three areas of potential suitable habitat we found on the Clear site. Those barriers include roads and extensive upland habitat (bog turtles prefer to move through connected wetlands).

Based on the above, the cited USFWS policy does not support imposition of a 300-foot buffer relating to wetlands E, J, or the west side of H.

12. **Comment:** The submitted reports also identified potential habitats for the Northern Long-eared Bat and Indiana Bat. Therefore, any tree-clearing for residential construction within the proposed development/disturbance envelopes should be limited to the winter hibernation season for these bats, which occurs between October 1 and March 31. This restriction can be included as a condition of approval and recorded as a note on the final subdivision plat and attached final Constraints Map.

Response: Applicant agrees to adding the above condition of approval and placing a note on the final subdivision plat and the final Constraints Map to be filed in the Planning Board office.

13. **Comment:** A layout plan / exhibit should be provided to the Planning Board to illustrate conceptual layout of a primary residence, septic/well, and driveway within the development/disturbance envelopes depicted on the Constraints Map for Lots 1, 2, and 5. The Planning Board can specify through resolution that substantial deviation from those conceptual locations would require review and approval from the Planning Board. This restriction can be included as a condition of approval.

Response: As to the first sentence: At the August 6, 2024 Planning Board meeting, Ken Casamento of LRC demonstrated, by reference to the presentation maps, that each of the proposed building envelopes are of sufficient size to comfortably contain a single family house and driveway approach. The entire building envelopes are inside applicable setback requirements for the lots. The discussion at the Planning Board meeting led to a consensus that it was not necessary to submit a proposed layout within the building envelopes.

As to the second and third sentences, comment noted.

14. **Comment:** Any future new construction or alteration (on all five new lots proposed) would be subject to the RL- 5 district requirements and building permits issued by the Building

6155101.v3



August 20, 2024
Page 11

Department. The Planning Board and/or Zoning Board of Appeals may be required to review individual development proposals (and complete a review under SEQRA) in the future if certain conditions are identified by the Town's Zoning Administrator based on the nature of the residential use (need for variances, special permits, etc.).

Response: Comment noted.

15. **Comment:** Should the Planning Board approve a conventional subdivision of the property as proposed by the Applicant (with restrictions/conditions), it would not be subject to the ten-year prohibition on future subdivision of the new lots, since such prohibition is only specified in the Code for minor subdivisions.

Response: Comment noted.

REFERRALS & APPROVALS

16. **Comment:** The subject parcel is within a farm operation in an agricultural district (AD 21). This subdivision application is therefore subject to General Municipal Law (GML) 239-n, which requires referral to Dutchess County. Typically, the Dutchess County Department of Planning and Development has exercised the option to review subdivision applications that involve an application for a variance. The Applicant has identified that an application for a variance is not needed for the proposed subdivision. It should be noted that the previous subdivision application for the property, which identified variances (since withdrawn) was referred to the County under GML 239-n, and a “No Authority” response was returned to the Planning Board.

Although no variances are proposed with this subdivision application, referral to the County under GML 239-m (rather than 239-n) can still occur at the Planning Board’s discretion as it can be considered “other authorizations which a referring body may issues under the provisions of any zoning ordinance or local law” (GML 239-m(3)(vi)). The County is required to respond within 30 days of receipt.

Response: Comment noted. The Planning Board authorized the referral at the August 6, 2024 meeting.

17. **Comment:** Permission to file from the Dutchess County Health Department must be obtained prior to the Planning Board Chair’s signing of the final plat.

Response: Comment noted.

6155101.v3



August 20, 2024
Page 12

18. **Comment:** The Wetland Delineation, Constraints Map, and this initial memorandum from AKRF should be referred to the Town Wetland Consultant for review and comment.

Response: Comment noted. The Planning Board authorized the referral at the August 6, 2024 meeting.

19. **Comment:** The application, including the land inventory, should be referred to the Town's Conservation Advisory Commission (CAC) for comments. The CAC shall submit its comments to the Planning Board within 25 days of receipt.

Response: Comment noted. The Planning Board made the referral at the August 6, 2024 meeting. The Planning Board Chair provided the CAC Chair with a copy of the application materials the following morning. The applicant's representatives Aime Patane and Jennifer Van Tuyl attended the CAC meeting on August 7, 2024, where they made a presentation of the application, and responded to questions from the CAC members.

SEQRA CLASSIFICATION

20. **Comment:** This application is considered an Unlisted Action under the State Environmental Quality Review Act (SEQRA). Although not required for Unlisted Actions, the Applicant has submitted the Full Environmental Assessment Statement (FEAF), prepared in consultation with the EAF Mapper. The supplemental land inventory, habitat and wetland delineation reports provided by the Applicant should be considered as part of the Planning Board's SEQRA record and eventual determination of significance on the proposed subdivision.

The FEAF considers the potential historic value of the Applicant's existing farmhouse. Per the NYS Office of Parks, Recreation, and Historic Preservation (OPRHP) database, Cultural Resource Information System (CRIS), an open consultation project is on file for the boundary of the existing property and referred to as "Clear subdivision." The farmhouse is listed in CRIS as "not eligible" for listing on the historic register. The Applicant should provide a status update on OPRHP's review of the subdivision.

LRC Response: A submission was made to OPRHP on July 29, 2024. A response is expected by August 28, 2024, and will be shared with the Planning Board once received.

21. **Comment:** AKRF believes that the Planning Board has enough information to declare its intent to serve as Lead Agency for the subdivision's review under SEQRA. The Applicant has identified

6155101.v3



August 20, 2024
Page 13

several agencies that may have interest in the application, although no approval and permitting authority is required from them at this stage (i.e. they would be considered SEQRA “interested agencies”), as follows:

- a. Town of Washington Town Board (jurisdiction over scenic roads)
- b. Town of Washington Highway Superintendent (jurisdiction: future driveway permits, authority re: scenic roads)
- c. Dutchess County Health Department (jurisdiction: permission to file for non-realty subdivision, approval of future individual well and septic)
- d. NYSDEC Region 3 (jurisdiction: potential review of wetland delineation under new state wetland regulations – no disturbance proposed)

If the notice of intent to serve as Lead Agency is circulated to the above interested parties, the SEQRA regulations require the Planning Board to allow 30 days for a response, at which point the Planning Board can formally declare itself Lead Agency provided none of the above object.

Response: Comment noted.

RECOMMENDATION

Comment: At the August 6, 2024 Planning Board meeting, AKRF recommends that the Planning Board 1) discuss the application and consultant comments / request for additional information and materials, 2) classify the application as an Unlisted Action under SEQRA, 3) circulate a notice of intent to be Lead Agency with application materials to the interested agencies identified, 4) refer the application to the Town’s wetland consultant and CAC for review and comment, and 5) discuss referral to County Planning pursuant to GML 239-m(3)(vi).

Response: Comment noted. All referrals were authorized at the August 6th meeting.

UPCOMING SEPTEMBER 3RD MEETING

The Planning Board determined at the close of the August 6th meeting to continue its Workshop discussion at the September 3rd meeting, where additional Planning Board members may be

6155101.v3



August 20, 2024
Page 14

present. The Applicants and their representatives look forward to continued discussion of the application.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'JL Van Tuyl', is written in a cursive style.

Jennifer L. Van Tuyl

