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November 19, 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 comment memo 10/31/24

Dear Chairperson Meaney and Members of the Planning Board:

This memorandum is submitted by the Applicants' consultant team in response to the still outstanding or new comments in the AKRF memo dated October 31, 2024.

RESPONSE TO AKRF COMMENT MEMO DATED OCTOBER 31, 2024

7. **Comment:** Determination as to whether or not to require a Cluster subdivision:.....

AKRF 10/31/24 Comment: Pursuant to Section 137-27 B (3) of the Town Code (eCode online version), which contains the Town's subdivision regulations (formerly Section 60.2), the Planning Board held a public hearing on October 1, 2024 related to the cluster vs. conventional subdivision preference. The hearing was closed and the Planning Board reserved decision on the cluster vs. conventional subdivision preference to the November 5, 2024 meeting (137-27 B (4)). Code Section 137-27 B (4) requires that, in making its determination, the Planning Board shall consider, in addition to the materials provided by the Applicant, the CAC's comments and any public comments received during the public hearing.

As noted in the Applicant's cover letter, the CAC comments do not recommend that the Planning Board compel and cluster subdivision; rather, they encourage the Planning Board to seek maximum permanent protection of open space on the property. No commentors at the public hearing expressed support for a cluster subdivision or asserted any benefit of a cluster subdivision in attaining the purposes of section 137-26 B, as compared to the proposed conventional plan. Two commenters at the public hearing asserted objections to cluster subdivision, one as to impacts on Stanford Road, and the other as to general community character.



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Comments were raised at the October 1st hearing regarding flooding and drainage concerns along Stanford Road, specifically that water from the west side of Stanford Road was flowing across the road and impacting one or more properties on the east side of the road. The Applicant's October 22, 2024 submission includes a response letter from the Applicant's engineer (LRC) documenting the topography and drainage infrastructure that exists in the area (with photographs). Based on the information provided, LRC concludes that the Clear property does not cause any water to flow in an easterly direction across Stanford Road.

The cover letter provided with the Applicant's October 22, 2024 submission offers six findings as to why the proposed conventional subdivision is preferable to a cluster subdivision, when considering the purpose of open space subdivisions found at Section 137-26 B as they relate to the site's location, size, compatibility with surrounding character, and environmental characteristics.

***Applicant Response:** After considering the record before the Planning Board, which included applicants' materials, CAC comments, and public comments at the hearing, and after board discussion and a summary of the relevant standards for open space protection set forth in Town Code section 137-26B by the Chairman at the November 5, 2024 meeting, the Planning Board unanimously adopted a resolution finding that the conventional subdivision accomplishes the purposes of Section 137-26B; that a cluster subdivision would not be preferable in order to accomplish those purposes; and that the applicant was authorized to continue processing its application for a 5-lot conventional subdivision.*

OTHER COMMENTS

11. **Comment:** Potential Bog Turtle Habitat:....

AKRF 10/31/24 Comment: The Applicant has submitted a Phase 1 Bog Turtle Habitat Assessment for identified Wetlands E, H, and J, prepared by Edgewood Environmental Consulting, LLC, dated October 18, 2024. The assessment was prepared pursuant to federal guidelines, specifically the methods outlined in *Guidelines for Bog Turtle Surveys for the Northern Population Range, Phase 1 and 2 Surveys* (USFWS, 2020). The report concluded that all neither of these three wetlands provides suitable potential habitat for bog turtles, for the following reasons:

- All three wetlands had closed tree canopies, casting all of the wetlands into shade, except during late fall, winter and early spring, when turtles would ordinarily be in torpor.
- None of these wetlands had substantive connections to other wetlands onsite or offsite that would provide a connective wetland corridor allowing turtles to move on or off the site in dispersal across the landscape.



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- Soils in Wetlands H and J were also not suitable for bog turtles, being too shallow for burrowing in Wetland H, and having no mucky texture in Wetland J.
- None of the wetlands has open, sedge meadow or fen habitats associated with or near them to provide necessary basking and nesting sites for bog turtles.
- Given that the nearest known bog turtle occurrence is about 4 km (± 2.5 mi) away, it is unlikely that bog turtles from that population could reach any of the wetlands on the Clear property without having other significant habitats and wetland connective corridors in between.

Based on the findings of the report, the Town-regulated wetland buffers identified on the constraints map for proposed parcels 1, 2, and 4 (50 to 100 feet depending on the size of the wetland) would not need to be expanded and the proposed building envelopes on these parcels would not require any modification.

AKRF has provided the report to Tim Miller Associates (Steve Marino), the Town's wetland consultant, for review and comment.

***Applicant Response:** Comment noted. Mr. Marino's memo, dated November 4, 2024, was delivered to the Board after the issuance of the AKRF memo and prior to the November 5th meeting. Mr. Marino reviewed the Phase 1 study, and thereafter inspected the site to confirm the conditions as described in the report. Based on this review, Mr. Marino rendered an opinion that the conclusions in the report are appropriate, and that no further work is necessary related to bog turtle habitat.*

13. Comment: Location of Water Supply and Sewage Disposal Systems.....

AKRF 10/31/24 Comment: As part of the Applicant's October 22, 2024 submission, the Applicant's engineer (LRC) provided a letter summarizing preliminary soil percolation testing completed in October 2024 on parcels 1, 2 and 5 (parcels where new homes could be built). According to LRC, all tests followed Dutchess County Health Department guidelines, and the location of the soils tests was determined utilizing existing site conditions and restrictions included in the design guidelines including but not limited to avoidance of steep slopes and beyond 100 feet of any wetland area. On each parcel, the soil was observed to be silty, sand and gravel with some cobbles. LRC concludes that there are several viable locations for the eventual design review, and eventual approval by the Health Department of either below ground or above ground (with fill pad) septic system designs.

The review and approval for wells and septic systems will fall under County Health Department



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purview, and the October 2024 soil testing (and any additional information required by the County) will be part of that permitting process. However, the Planning Board has previously expressed interest in understanding whether the building envelopes depicted on the constraints map contain soils that can support the designs referenced above. The Applicant should elaborate on the locations of the soil testing in relation to the building envelopes depicted on the constraints map.

***Applicant's Response:** The October 2024 soil testing was done within the building envelopes, and in the immediate vicinity of the building envelopes (in no case farther than 50 FT from the building envelope perimeter). This testing was done in order to establish the ready ability of each of the three new building lots to support the proposed residential development. The testing was not done as an exhaustive search for all possible locations for septic systems. The tested locations are by no means the only suitable septic locations. A final location for the septic system for each particular lot is appropriately selected only after the future homeowner has determined the house location on the lot. At that point, the future homeowner would work with the DCDOH to obtain a location for the septic system that is efficient and meets design and permitting requirements. The optimum location may be either within or outside the building envelope, and it serves everyone's interests to allow the flexibility to choose the optimum location. Any such systems will be located as close to the building envelope as reasonably possible considering the design of the system and the applicable Health Department guidelines. The flexibility is provided to allow for the optimum siting location for the utilities.*

REFERRALS & APPROVALS

18. **Comment:** Referrals to Steve Marino, Town Wetland Consultant:.....

AKRF 10/31/24 Comment: See New Comment #11 above. AKRF has provided the submitted Phase 1 Bog Turtle Habitat Assessment report to Tim Miller Associates (Steve Marino), the Town's wetland consultant, for review and comment. Based on the findings of the report, the Town-regulated wetland buffers identified on the constraints map for proposed parcels 1, 2, and 4 (50 to 100 feet depending on the size of the wetland) would not need to be expanded, and the proposed building envelopes on these parcels would not require any modification.

Response: Comment noted. See response to comment 11, above.

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19. **Comment:** CAC comments:

AKRF 9/27/24 Response: *The CAC has provided a final Comment Letter dated 9/4/24 with a draft update dated 9/18/24. The 9/4/24 letter, consistent with the previous draft, recommends that the building envelopes encompass all possible disturbances and that land outside of the envelopes are permanently protected. The 9/18/24 draft letter notes a large portion of the property north of Woodstock Rd is in a tertiary aquifer recharge area, highlighting the need to avoid development in ways that would disrupt or contaminate drinking water.*

The Applicant's July submission included a "Natural Resources Inventory (NRI) Analysis Report" which included the Drinking Water Resources Map with the subject property identified (see NRI Analysis Report, page 12). A screenshot of the subject property's location in relation to the tertiary aquifer recharge area (light purple shading) is provided below. As shown, a small portion of the northwest corner of the property is mapped with this layer.



AKRF 10/31/24 Comment: *As noted in the previous comment, a portion of the northwest corner of the property is within the outer edge of the mapped tertiary aquifer recharge area (aka Zone 3), which is generally defined as areas around streams that will subsequently seep into the sand and gravel aquifer through infiltration. Future well and septic system permitting for parcel 1 (which is 23 acres in size) would be subject to Dutchess County Health Department requirements. The construction of one single-family home for residential use on a limited portion of proposed parcel 1 would not be expected to result in any impacts related to groundwater recharge, as this condition (i.e. single-family homes on large lots) is not uncommon within tertiary recharge areas throughout the Town.*

Applicant Response: *Comment noted. The scale of the map cited by the CAC (from Chapter 4 of the Town NRI Report and Map 8 Drinking Water Resources), leaves it unclear whether*



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any part of the building envelope is actually within the tertiary recharge area. Map 4 does document that proposed Parcel 1 is located at the very outer edge, and possibly outside the edge, of a tertiary recharge area. Chapter 4 of the Town NRI notes that the recharge areas are “labeled 1-3 in order of sensitivity.” (page 36). The Clear property is completely outside any primary or secondary recharge area. It is also completely outside the Village of Millbrook Drinking Water source watershed. It is also not in the vicinity of any of the identified “most productive and most vulnerable” aquifers identified on page 37 of Chapter 4 of the Town NRI Report, to wit: the aquifers along the Shaw Brook, Mill Brook, East Branch Wappinger Creek, and Wappinger Creek. As noted in the AKRF comment, it is not anticipated that water supply demand of residential development on proposed Lot 1, a 23 acre lot, will exceed an unsafe or unsustainable withdrawal of the local supply or aquifer. In addition, the future well and septic systems for each of the three new building lots will have to meet the design standards of the DCDOH, and be individually permitted, prior to the issuance of a building permit.

SEQRA CLASSIFICATION

21. **Comment:** SEQR: ...

AKRF 10/31/24 Response: At the 10/1/24 meeting, the Planning Board declared itself lead agency for the application’s review under SEQRA. The Planning Board also opened and closed the public hearing specific to the cluster/conventional subdivision determination, reserving its decision for the 11/5/24 meeting. Should the Planning Board formally determine that the application can proceed as a conventional subdivision, the Board may proceed in the SEQRA process towards a Determination of Significance on the application. The Planning Board is required to make a Determination of Significance prior to holding the public hearing on the preliminary plat (§ 137-11.C). The Planning Board may also utilize a public hearing for the purpose of soliciting input regarding the project’s potential environmental impacts under SEQRA.

Applicant Response: At the November 5, 2024 meeting, the Planning Board scheduled a public hearing for December 3, 2024 to accept public comment on environmental issues of concern relating to the subdivision.

We thank the Board for its consideration and look forward to the upcoming public hearing on December 3, 2024.

Very truly yours,



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A handwritten signature in blue ink, appearing to read 'JL Van Tuyl'. The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jennifer L. Van Tuyl

cc: Timothy and Johna Clear