



Supervisor: (845) 688-7165
Police: (845) 688-9902
Town Clerk: (845) 688-5004
Justice Court: (845) 688-5005
Assessor: (845) 688-5003
Assessor Fax: (845) 688-5708
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"The Heart of the Park...Where the Eagle Soars"

www.shandaken.us

P.O. Box 134, 7209 Rte. 28, Shandaken, NY 12480

**Town of Shandaken Planning Board
Public Hearing – William McGuinn – Subdivision
Minutes August 14, 2024 6:45pm**

The Public Hearing was called to order with the pledge of allegiance at 6:45pm.

Roll called, and attendance was recorded as follows:

Cliff Rabuffo, Chair	Present
Art Christie	Absent
Joanne Kalb	Absent
John Horn	Present
Allen Shiner	Present
Sam Spata	Present
Vivian Welton	Present

Roll Call Summary: 5 Present; 2 Absent

Others Present: Don Brewer (applicant representative), William McGuinn

Legal Notice regarding the Public Hearing was read. Don Brewer is present representing the applicant and gives a brief run down of the subdivision.

With no questions or comments from the Board or the audience, and having received no correspondence regarding the Public Hearing, Board Member Spata makes a motion to close the Public Hearing, seconded by Board Member Welton; all in favor.



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**Town of Shandaken Planning Board
Public Hearing – Max & Carole Huber – Special Use Permit
Minutes August 14, 2024 7:00pm**

The Public Hearing was called to order at 7:00pm.

Attendance was recorded as follows:

Cliff Rabuffo, Chair	Present
Art Christie	Absent
Joanne Kalb	Absent
John Horn	Present
Allen Shiner	Present
Sam Spata	Present
Vivian Welton	Present

Roll Call Summary: 5 Present; 2 Absent

Others Present: Carole Huber

Legal Notice regarding the Public Hearing was read. Carol Huber is present and gives a brief run down of the request for Special Use Permit in order to construct a new home, and convert the existing home on the property to an Accessory Dwelling Unit.

With no questions or comments from the Board or the audience, and having received no correspondence regarding the Public Hearing, Board Member Spata makes a motion to close the Public Hearing, seconded by Board Member Welton; all in favor.



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**Town of Shandaken Planning Board
Minutes for the Regular Monthly Meeting
August 14, 2024**

The regular monthly meeting was called to order at 7:05pm.

Roll called, and attendance was recorded as follows:

Cliff Rabuffo, Chair	Present
Art Christie	Absent
Joanne Kalb	Absent
John Horn	Present
Allen Shiner	Present
Sam Spata	Present
Vivian Welton	Present

Roll Call Summary: 5 Present; 2 Absent

Minutes:

Motion made by Board Member Spata to approve the previous months minutes, seconded by Board Member Welton; all in favor.

Old Business:

William McGuinn – Subdivision

With no questions or comments from the Board, Board Member Spata makes a motion to approve the subdivision, seconded by Board Member Welton, roll call vote as follows:

Cliff Rabuffo, Chair	Yes
Art Christie	Absent
Joanne Kalb	Absent
John Horn	Yes
Allen Shiner	Yes
Sam Spata	Yes
Vivian Welton	Yes

5 Yes, 2 Absent

Max and Carole Huber – Special Use Permit

With no questions or comments from the Board, Board Member Spata makes a motion to approve the Special Use Permit, seconded by Board Member Welton, roll call vote as follows:

Cliff Rabuffo, Chair	Yes
Art Christie	Absent
Joanne Kalb	Absent
John Horn	Yes
Allen Shiner	Yes
Sam Spata	Yes
Vivian Welton	Yes

5 Yes, 2 Absent

APFU LLC – Site Plan Review/Special Use Permit – 13.-2-1.112

Since the workshop held on July 31, 2024 the applicant has submitted a Lighting Plan, correspondence regarding the wetland, and information regarding the requested landscaping, all of which have been made a part of these minutes.

The Board asks for information about the lighting that was submitted. Applicant informs the Board that there will be 6 – 8 lights on the building near the doors. If the lights that he submitted information on are not available when he's ready to install them, they will use other dark sky compliant lighting. There will not be any lighting in the parking areas since all the parking will be along the building.

Regarding the landscaping, the Board asks that none of the existing trees at the front of the lot be removed, and asks that the applicant adds a note to the Site Plan that there will be continuous plantings along the front of the property. Applicant states they will either add that to the Site Plan or as a note that is attached to the application.

The Board reviewed the submitted information regarding the wetlands.

The Board discusses the SEQR status, and concludes that this will be listed as an unlisted action for SEQR review. The Board determines that an uncoordinated review will be done.

The application will be referred to Ulster County Planning Board for their comments.

New Business:

Jon Ritter & Becky Hubbert – Special Use Permit – 24.15-1-20

Applicant is seeking a Special Use Permit to construct a Guest Cottage on their property located at 1161 Woodland Valley Road. The proposed Guest Cottage would be constructed in the same footprint as a garage that burned down last year. Mr. Ritter attended the workshop on July 31, 2024 to discuss the project with the Board.

The Guest Cottage will have a ½ bath on the second floor. The first floor will be studio/work space. They may install a sink on the first floor. There will be no kitchen in the structure.

Following conversations with DEP the applicant received an email from them stating they have no concerns with the proposed Guest Cottage being connected to the existing septic. (Letter attached to these minutes.)

The Board reviews the SEAF and following discussion determines that this will be a Type II action, and will not require any further environmental review.

A motion is made by Board Member Spata to hold a Public Hearing regarding this application on September 11, 2024 at 6:45pm, seconded by Board Member Welton; all in favor.

Daniel Marlatt & Christopher Colasanti – Lot Line Revision – 35.-1-11 & 35.-1-12

Mr. Colasanti and Colin Houston (representing Mr. Marlatt) are present. Mr. Colasanti purchased his property in 2012, and is seeking this lot line revision to purchase roughly 10 acres of land from Mr. Marlatt. This lot line would transfer the part of Mr. Colasanti's property on the west side of Traver Hollow to Mr. Marlatt, and would transfer about 10 acres on the east side of Traver Hollow owned by Mr. Marlatt to Mr. Colasanti. Creating lots as follows:

35.-1-11 – 208.16 acres

35.-1-12 – 13.54 acres

With no further questions from the Board, Board Member Spata makes a motion to approve the lot line revision, seconded by Board Member Welton; roll call vote:

Cliff Rabuffo, Chair	Yes
Art Christie	Absent
Joanne Kalb	Absent
John Horn	Yes
Allen Shiner	Yes
Sam Spata	Yes
Vivian Welton	Yes

5 Yes, 2 Absent

Nick Torres & Pine Hill Fire Co – Lot Line Revision – 4.46-4-29 & 4.46-4-31.200

Don Brewer is present representing the applicants. The lot line revision would transfer .48 acres from the Pine Hill Fire Co to Mr. Torres to correct some issues with the current property line cutting through some of Mr. Torres's accessory structures, creating lots as follows:

4.46-4-29 – 7.210 acres

4.46-4-31.200 – 1.366 acres

With no further questions from the Board, Board Member Spata makes a motion to approve the lot line revision, seconded by Board Member Welton; roll call vote:

Cliff Rabuffo, Chair	Yes
Art Christie	Absent
Joanne Kalb	Absent
John Horn	Yes
Allen Shiner	Yes
Sam Spata	Yes
Vivian Welton	Yes

5 Yes, 2 Absent

Beyond Hotels LLC – Special Use Permit – 5.1-2-13

Paul Scudder has been operating a small farm stand on the property this summer. Following notice from the Zoning Enforcement Officer that a Special Use Permit was required to continue the use an application for a Special Use Permit was submitted to the Planning Board.

The farm stand is open 7 days a week, but sees the most traffic Friday – Sunday.

They attended the workshop in July, during which the Planning Board decided that they could approve the application with a Sketch Plan Conference so a Public Hearing is not required.

With no further questions from the Board, Board Member Spata makes a motion to approve the Special Use Permit without any conditions, seconded by Board Member Welton; roll call vote:

Cliff Rabuffo, Chair	Yes
Art Christie	Absent
Joanne Kalb	Absent
John Horn	Yes
Allen Shiner	Yes
Sam Spata	Yes
Vivian Welton	Yes

5 Yes, 2 Absent

Communications

Planning Board is in receipt of a letter from the Law Office of Michael Moriello regarding the invoices submitted by SLR for their consultation for the Aurum application. (Letter has been made a part of these minutes.) Letter expresses concerns that the applicant feels that the review by SLR is too extensive and the corresponding billing is excessive.

Board agrees that a meeting between Aurum, SLR, and Planning Board Chair is appropriate to discuss the extent of the review going forward.

Adjournment:

With no further business before the Board a motion to close the meeting was made by Board Member Spata, seconded by Board Member Welton; all in favor. Meeting was closed at 8:18.

Proposed Greenery for SBL: 13.-2-1.112

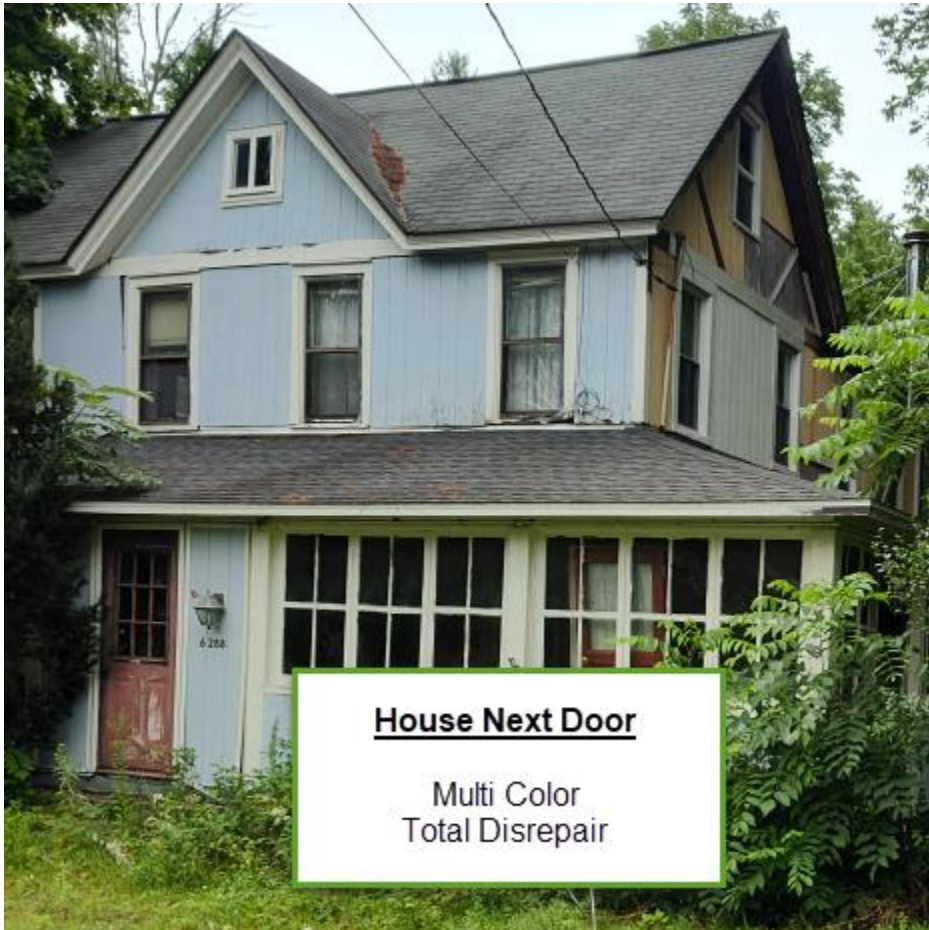
First and foremost the trees along NY-28 are in coordination with house on SBL: 13.-2-1.111 and no others should be needed.

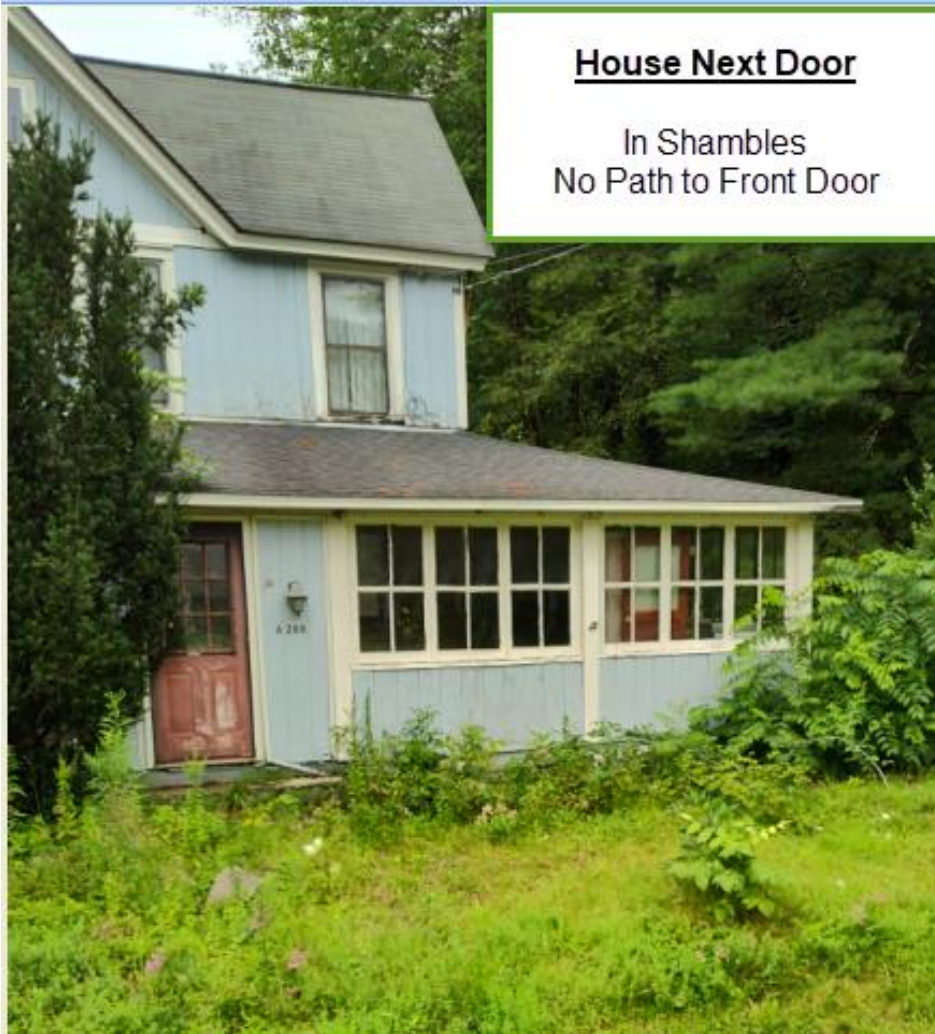
The front of the building will have landscaping similar to 6280 NY-28 (See page 5). Including but not limited to rhododendrons, azaleas, hydrangeas and the like.



One planning board member complained that they don't want to see our new building when driving home. Do they see this beautiful building next door to current house?

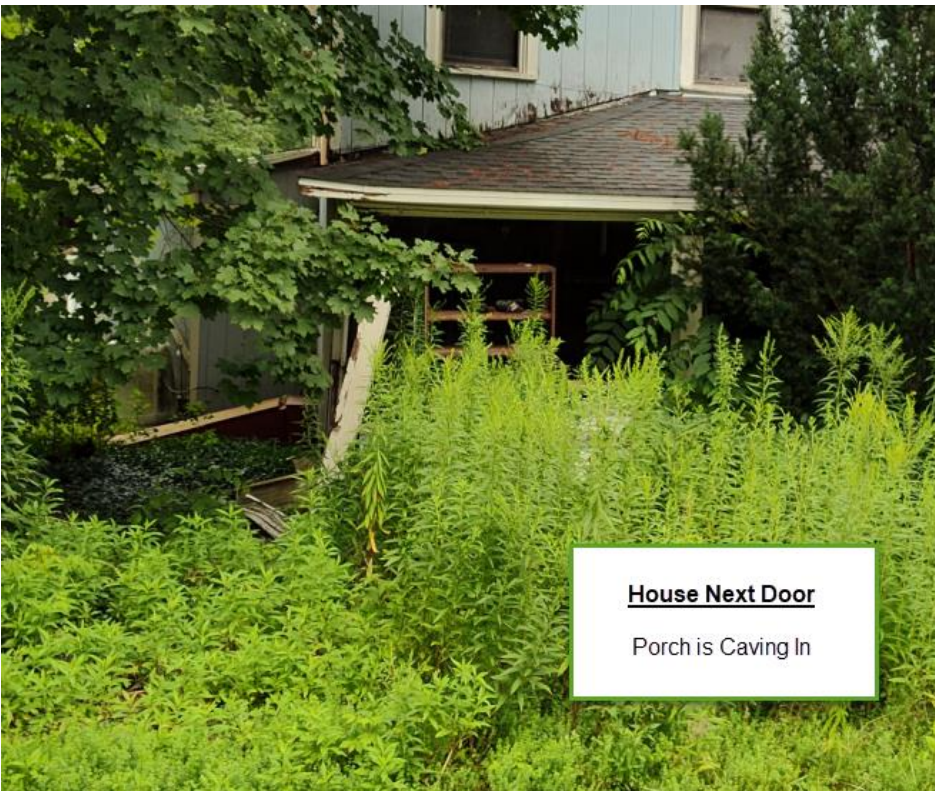
Another planning board member commented about the color we painted 6280 NY-28. The house next door is multi-colored, we weren't sure which color to choose.





House Next Door

In Shambles
No Path to Front Door

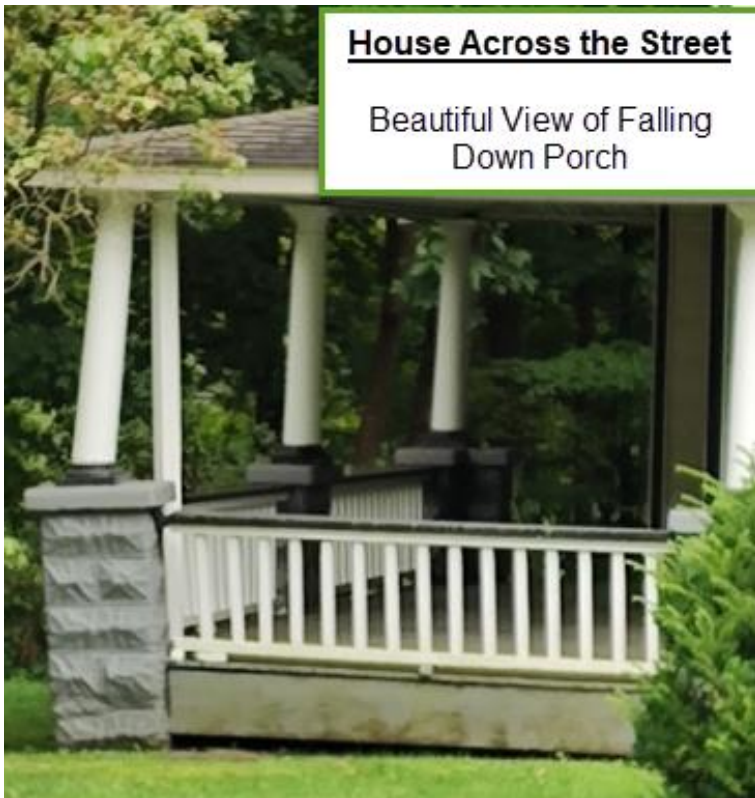


House Next Door

Porch is Caving In

It will be hard to build to match house across the street.

We try to build with 90-degree angles, so places don't fall apart.



House Across the Street

Beautiful View of Falling
Down Porch



House Across the Street

Roof is real Scenic
Maintained Wonderfully

I guess we are ruining the neighborhood.

We fix all broken stuff. We fixed or added trim to all openings and painted it nicely.

However, we can't figure out how to get mold and moss to grow on the roof.

APFU House

Sorry: We fixed all the broken stuff. It no longer fits into the neighborhood.



APFU House

Roof is in good shape.
Perhaps we should grow
mold and moss to fit in.



Proposed Lighting for SBL: 13.-2-1.112

Tenant Doors: 1 per door

Sides of Building: 4 per side

[Hampton Bay 6.1 in. Black Integrated LED Hardwired Outdoor Wall Light Lantern Sconce with Frosted Glass ILW1691L-3 - The Home Depot](#)



1001 804 446

**SMALL EXTERIOR
LED
WALL LANTERN**

BLACK FINISH

Frosted Glass Lens
Suitable for Uncovered Porches and Patios
4.8 in W x 6.1 in H x 4.1 in D
(assembled dimensions)

5 YEAR WARRANTY

4.1 in D
10.4 cm PR

6.1 in H
15.4 cm AL

4.8 in W
12.1 cm AN

4.8 in W x 6.1 in H x 4.1 in D
(assembled dimensions)

12.1 cm AN x 15.4 cm AL x 10.4 cm PR
(dimensiones ensamblado)

Minimum Starting Temperature: -20 °C (-4 °F)
Temperatura inicial mínima: -20 °C (-4 °F)

LED LIGHTING PERFORMANCE

LIGHT OUTPUT (Lumens)	333
WATTS	5.5
LUMENS PER WATT (Efficacy)	60.55
COLOR ACCURACY (CRI)	80

LIGHT APPEARANCE (CCT)

3000K

2700K 3000K 3500K 4000K 5000K

All results according to ENEC - LM79-2008
Light Output reported as total integrated lumens
(light source & fixture)
Todos los resultados son conforme a la norma ENEC - LM79-2008
para intensidad de luz reportada como total de lumen integrados
(fuente de luz y fijación)

ida
DARK SKY APPROVED
by the International Dark-Sky Association
darksky.org
Reduce Light Pollution

Recycle Recicla

MADE IN CHINA
HECHO EN CHINA

DISTRIBUTED BY:
HOME DEPOT
2455 PACES FERRY ROAD
ATLANTA, GA 30339

FOR ASSISTANCE, CALL:
SI NECESITA AYUDA, LLAME AL:
1-855-HD-HAMPTON
HAMPTONBAY.COM

SCAN ME
with The Home Depot App
for more product information.

6 940500 317366

*Compared to [1] 40W incandescent bulb with a typical rated life of 1,000 hours versus integrated LED rated life of 50,000 hours.
**Based on \$0.11 per kilowatt hour and 3 hour average daily use.
*Al comparar (1) bombilla incandescente de 40 W y 1,000 horas de vida útil típica con una LED integrada de 50,000 horas de vida útil.
**Basado en \$0.11 por kWh y 3 horas promedio de uso diario.

If this fixture is no longer available or does not fulfill our needs we reserve the right to use approved products on the DarkSky.org website

[DarkSky Approved products | DarkSky International](#)

[Home Depot \(darksky.org\)](#)

Wetlands Rebuttal for SBL: 13.-2-1.112

The Shandaken code states “delineated” [116.21] or “mapped” [116.28] by the New York State Department of Environmental Conservation

There are no indications of Wetlands by the New York State Department of Environmental Conservation, thus this is a moot point.

☐ **§ 116-21 Lands designated as freshwater wetlands, under water or subject to periodic flooding.**

[Amended 12-28-1992 by L.L. No. 3-1992]

No more than 25% of the required minimum lot area for any lot in any district may be fulfilled by land which is included within a designated wetland, as delineated by the **New York State Department of Environmental Conservation**, which lies under water or which is subject to periodic flooding under conditions of a one-hundred-year flood, as delineated by the FF-O District. All minimum front, side and rear yard requirements must be satisfied by measurement wholly on dry land, except that, for purposes of this section, land which is covered by a stream less than five feet in average width at mean water level, or land covered by a pond not exceeding 150 square feet in surface area at normal high water level, shall not be considered as being under water.

☐ **§ 116-28 Development near streams and other waters.**

In order to preserve the open character along major streams for environmental and ecological reasons, all development proposed within 100 feet of the normal stream bank of any classified stream within the Town of Shandaken or within 100 feet of the boundary of a freshwater wetland as mapped by the **New York State Department of Environmental Conservation** shall be subject to special permit review as provided by Article VII. Special permit review shall also apply to any development proposed within 100 feet of any pond, reservoir or other water body in excess of 1/4 acre of water surface area.

**LAW OFFICE OF
MICHAEL A. MORIELLO, P.C.**

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July 17, 2024

Town of Shandaken Planning Board
Mr. Cliff Rabuffo, Chairman
PO Box 134
Shandaken, New York 12480

RE: Memorandum in Response to The Aurum Project Consultant
Application Review Submittals

[VIA E-MAIL]

Dear Chairman Rabuffo and Planning Board Members:

This submittal is made in response to the two (2) April 10, 2024 Application Reviews by SLR Engineering and Landscape Architecture and Land Surveying, PC ["SLR"] same in connection with the above referenced project.

In connection therewith, I am providing the Planning Board with a copy of the July 1, 2024 Responses to Review Comments by Allan Dumas, PE. Allans responses address the majority of the review comments from a technical perspective, as well as with reference to jurisdictional predicates.

At the outset, I would like to state that I have great respect for the work of Chris Robbins, and I am sure that Messrs Ritchie and Dietzko are knowledgeable professionals. However, this is a small adaptive reuse project with far less environmental effects than the previous incantation of the Aurum Project.

Accordingly, this is to further note my clients objection to the review methodology and associated charges, in excess of \$15,000.00 together with an additional \$10,000 of escrow for review in the instant matter [See also, Allan Dumas PE May 10, 2024 submittal, copy annexed].

This project has been reviewed for a long period of time and Allan Dumas PE was brought into the process by your writer in order to inject a realistic examination of what can lawfully be accommodated with respect to onsite infrastructure.

In this regard, Allan has spent many hours conferring with the NYCDEP NYSDEC and the UCDOH. In addition, Allan has endeavored to keep the Planning Board advised as to the reduced scope of the project [see May 13, 2024 e-mail copy annexed.]

Moreover, many of the April 10, 2024 Review Comments have been previously addressed to date and/or may be easily discussed with the Planning Board in light of the detailed project plans. My client should not be placed in a position of having to pay for redundancies [see Allan Dumas, PE attached e-mail correspondence]. From a legal perspective, I offer the following in consideration of the subject matter of this correspondence:

1) SEQRA Documents:

- i. EAF: This project is classified as an unlisted action under SEQRA and a Short EAF, Part 1 is appropriate. While the Review Comments 1-6 contain relevant documentation, the Short EAF is not the place for this. The NYSDEC codified new SEQRA Regulations in 2020 and the Short EAF is to provide for only that which is requested.
- ii. Addendum: In addition, your writer has provided a detailed Addendum which lists all involved/interested agencies and the respective permitting (statutory authority applicable thereto). It is noted that the NYSOPRHP is not an involved agency under SEQRA.
- iii. Conditional Negative Declaration: As to the previously issued 2021 Conditional Negative Declaration and the UCDPW, to my knowledge, no written comments from said agency were ever issued. The UCDPW visited the site and noted, verbally, no objections to the access. Any future UCDPW correspondence will be provided to the Planning Board.

In the event that the access is widened and a trench drain is installed, as requested by Allan Dumas, PE my client will need a permit from the UCDPW pursuant to Section 136 of the Highway Law of New York State.

- iv. Federal Wetlands: My client does not intend to revisit the Federal Wetlands issue. This matter was determined by way of Ecological Solutions LLC Wetland Delineation in November 2020. In light of the US Supreme Court 2024 Sacket decision, the onsite Federal Wetlands (to the extent any now exist) have been satisfactorily avoided in the current project plans.
- v. Rattlesnakes: The 2022 Rattlesnake Mitigation Plan was previously deemed acceptable by the NYSDEC. To the extent that mitigation is proposed the Planning Board is certainly within its jurisdiction to consider this issue in light of the previous review. Accordingly, no changes in mitigation/avoidance are proposed and the applicant will keep the Planning Board apprised as to any comments provided by the NYSDEC as part of the coordinated SEQRA review.

If further mitigation measures are warranted, my client will incorporate the same into the mitigation plan (ie; snake fence, additional guest information and similar measures).

- vi. Traffic: As part of SEQRA coordinated review the applicant will consult with the NYSDOT and determine to what extent the previously submitted documentation is to be updated. As the project has been dramatically scaled back, it appears to be highly unlikely that additional data will be necessary.

To my knowledge, all of the existing vegetation to be removed is situate on the project site. Therefore, site distance should not be an issue, unless Allan Dumas PE provides site plan documentation which is inconsistent therewith.

Parenthetically, I note that the traffic impacts which were previously evaluated under SEQRA and found to be acceptable, are far less with the current iteration of the project.

I further note that SEQRA Findings and the underlying data utilized in order to arrive at Findings do not go stale by the mere passage of time. Stewart Park Action and Reserve Coalition v. New York State Department of Transportation, 77 NY2D 970(1991).

- vii. Cumulative Impacts: Cumulative impacts are not involved in their action in any manner.

The SEQRA regulations generally disfavor what is called "segmentation", which is defined as, "the division of the environmental review of an action such that various activities or stages are addressed under SEQRA as though they were independent, unrelated activities, needing individual determinations of significance." [6 NYCRR Part 617.2 (ag)].

6 NYCRR Part 617.3(g) provides that actions commonly consist of a set of activities or steps and that the entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it.

In making a determination of environmental significance for any unlisted action, the Lead Agency must consider the action as the entire set of activities or steps involved [6 NYCRR Part 617.7(b) (1)] and, for the purpose of determining whether such action may cause a significant effect on the environment, the reviewing agency must only consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are:

- (1) included in any long-range plan of which the action under consideration is a part, or
- (2) likely to be undertaken as a result thereof, or
- (3) dependent thereon.

Cumulative impacts are not defined by SEQRA or its implementing regulations. However, the New York State Department of Environmental Conservation addresses cumulative impact analysis within the SEQRA Handbook, in pertinent part, as follows:

"What are the cumulative impacts?

These are impacts on the environment that result from the incremental or increased impact of an action(s) when the impacts of the action are added to other past, present and reasonably foreseeable future actions. Cumulative impacts can result from a single action or a number of individually minor but

collectively significant actions taking place over a period of time. Either the impacts or the actions themselves must be related.

When must cumulative impacts be assessed?

Cumulative impacts must be assessed when actions are proposed to or will foreseeably take place simultaneously or sequentially in a way that their combined impacts may be significant. Assessment of cumulative impacts is limited to consideration of probable impacts not speculative ones." [SEQRA Handbook (1996), at page 41].

Basically, the consideration of cumulative effects of related actions insures against strategies to avoid the full environmental review by breaking up a proposed project into component parts which, individually, do not have environmental significance. Stewart Park and Reserve Coalition v. New York State Department of Environmental Conservation, 157 AD2d 1 (3rd Dept., 1990).

When examining cumulative effects, the courts have ruled that "related" projects are to be examined in light of their combined effect upon a particular geographic area. Save the Pine Bush, Inc. v. City of Albany, 70 NY2d 193 (1987) and that a nexus between the actions is required to be present. Incorporated Village of Poquott v. Cahill, 11 Ad3d 536 (2004).

In the instant matter none of the predicates for cumulative impact analysis exist, as the project [Firelight III] planned for across the street is in no way related to nor dependent on the Aurum Project.

In addition, there is no certainty at present, that the Firelight III Project will be built, as it has been a long time from the issuance of approvals to date. Accordingly, a specific limitation upon the breadth of cumulative impact analysis is the rule that only combined impacts which may be reasonably anticipated need be addressed and speculative environmental consequences may be wholly discounted by a lead agency WEOK Broadcasting Corp. v. Planning Board of the Town of Lloyd, 79 NY2d 373 (1992),

Ernalex Construction v. Bellissimo, 256 AD2d 338 (1998); see also, 6 NYCRR Part 617.9 (b) (2).

- viii. Zoning: I am not sure why the Review Comments delve into Code Enforcement Officer Interpretation issues and associated definitional language under SEQRA.

The classification of the project was determined years ago under the Town of Shandaken Zoning Law and my client has no intention of applying for a use variance, as said law has not changed with respect to this project. As such, the Planning Board does not possess the power to interpret zoning statutes. This authority resides with the Code Enforcement Officer and the Zoning Board of Appeals Moriarity v. Planning Board of the Village of East Sloatsburg, 119 AD2d 188 (1986).

In addition, it is well settled law that SEQRA does not authorize agencies to adjudicate or attempt to resolve legal issues concerning compliance with local zoning. Save our Forest Action Coalition v. City of Kingston, 246 AD2d 217 (3rd Dept, 1998). Therefore, the use analysis is to be considered by the Code Enforcement Officer with respect to compliance under the Zoning Law and this issue is now moot. City of Atlantic Beach v. Gavalas, 81 NY2d 322 (1993).

- ix. NYCDEP NYSDEC and NYSDOH: Under time honored case law, as well as regulatory directives, SEQRA does not alter the jurisdiction among agencies Morse v. Town of Gardiner Town Board, 164 AD2d 336 (3rd Dept, 1990), 6 NYCRR Part 617,3 (b). Therefore, once SEQRA is completed the various involved agencies are charged with completing their own review of the permit regulatory criteria pursuant to the statutory requirements for permit issuances.

Accordingly, although it is within the reasonable discretion of the Planning Board to determine whether there are significant environmental impacts associated with respect to NYCDEP, NYSDEC and NYSDOH issues, coordinated SEQRA review does not supplant the requisite permit analysis undertaken by involved agencies. Ames v. Johnston, 169 AD2d 84 (3rd Dept., 1991).

This is especially the case in as much as these agencies have already worked together for months with Allan Dumas, PE and they possess the environmental expertise to assure that agency review is, "no less protective of the environment" in association with a coordinated SEQRA review. Ecumenical Task Force v. Love Canal, 179 AD2d 261(1992), lv to app. den. 80 NY2d 7581 (1992) Flax v. Ash, 142 Misc2d 828 (1988).

As Allan Dumas, PE has explained, the project area is bounded by several ephemeral watercourses within 100 feet of structures. This affects and limits potential development of buildings, as well as roads, parking areas and retaining walls.

In addition, the NYCDEP 25% Rule limits my client to adding no more than 25% impervious surfaces beyond that which the site possesses at the present time. Therefore, we are only permitted to increase the square footage of impervious improvements by 5989 square feet. As currently shown, the increase in square footage for the Aurum Project is 5988 [See copy of the relevant portion of a July 15, 2024 e-mail by Allan Dumas, PE annexed].

Accordingly, widening roads, changing roads varying geometry and adding parking will result in even greater reductions to the planned spa building. Significant reductions or eliminations of the spa building will leave my client without a project.

With respect to the preparation of a Stormwater Pollution Prevention Plan (SWPPP), I reference the Statements of Allan Dumas PE, which have stressed that the project will not exceed one acre in site disturbance. Owing to site topography, setbacks, soils, watercourses and other site features, there is no space left to implement a SWPPP. This realistic appraisal of site limitations is a primary reason the project was significantly scaled back by Allan Dumas, PE.

Based upon the foregoing it is wholly proper for the Planning Board to rely upon agency permit expertise. Chapin v. Town of Hurley Planning Board, Index # EF

2021-232 Sup. Ct. Ulster Co. (2021), Mott, J. [Copy annexed].

- x. Site Plan Review: I will keep my address of site plan documents brief, as we are only at the commencement of review.

This is a first submittal and the site plan reflects the same. Accordingly, we are a long way from "construction sequencing", "certified survey information", "survey elevations", "architectural design and other matters." The site plan documents will become more refined as review by involved and interested agencies progresses.

Between the 17 pages of combined comments and in excess of 75 issues raised, my client's blood pressure is going to the stratosphere. In this regard, while site plan elements are important, many of the elements requested form part of a review process for which various details requested are customarily provided for following the conclusion of SEQRA.

At this time, my client does not even know if he has a project to forward. If the consultant review is meant to cover all future project aspects, then perhaps I am overstating the problem in the instant application. However, we are now \$25,000.00 in and we have not even circulated a Lead Agency Notice of Intent. This is simply not acceptable to my client.

- xi. Forwarding the Project: The Aurum is a significantly reduced project in terms of scope, scale and attendant potential environmental impacts. My client is looking at the consulting invoices and the incorporation of Review Comments which elevate this small adaptive re-use project to a very burdensome effect; so much so that due consideration is being given to forgoing the project altogether.

This would be a substantial loss to the Shandaken community and would continue to forward a growing narrative as to project review costs which is, at best, unfortunate. That is to state that some reasonable consideration should be given to equating the reduced project proposed with the previously completed SEQRA analysis corresponding level of

current practical review under SEQRA and application of the Town of Shandaken Zoning Law.

In light of the forgoing, it is my suggestion that Allan, Chris, and/or other SLR Consultants confer and seek to narrow the Application Review responses to those which are commensurate with a project which almost qualifies as a Type II Action under SEQRA [6 NYCRR Part 617.5(c)(9) and 617.5(c)(18)].

Thanking the Planning Board for its continuing consideration of the Aurum Project, this Memorandum is,

Respectfully Submitted,



Michael A. Moriello

MAM:tg

Enclosures

cc: Samuel Amoia
Allan Dumas, PE
Chris Robbins

[all via e-mail]

info

From: Michael Moriello
Subject: FW: General Comments on The Aurum reviews via SLR

From: Allan Dumas <adumas@Blengineers.com>
Sent: Monday, July 1, 2024 8:22 PM
To: Michael Moriello <mike@moriellolaw.com>; Sam | Samuel Amoia <sam@samuelamoia.com>; Allan Dumas <adumas@Blengineers.com>
Subject: RE: General Comments on The Aurum reviews via SLR

Mike, As a follow up to our conversations, attached are some of my thoughts.

- We have reviewed two (2) comment letters dated April 10, 2024 SLR Engineering, Landscape Architecture and Land Surveying, P.C. We are quite concerned about quantity and depth of comments raised in these two letters as there are approximately 79 comments total which includes 28 comments in the first letter (covering the Application Addendum, Special Permit and/or Site Plan Review Application and Site Plan Checklist, Short Environmental Assessment Form, Site Plan Set and Small Stormwater Pollution Prevention Plan, Conditional Negative Declaration, Wetland Delineation Report, Timber Rattlesnake Habitat Suitability Impact Assessment and Proposed Avoidance/Mitigation Plan, Traffic Assessment, Site Lighting Specifications, Review of Zoning Compliance, Additional Comments), as well as 51 comments in the second letter (covering General Comments, Site Pan Checklist, Site Plan Sheets 1 – 5, Entrance Plan, Impervious Area Plan, Building Renderings Sheet 1 – 10, Small SWPPP Plan Sheets 1 – 2).

As you know the project is an adaptive reuse of the site via repurposing the existing residential compound with 3 residential structures (houses) and 2 non-residential structures (ice house and former pool building), as well as constructing a new spa building on the site of a former building behind the main house and the ice house. In addition, the project has been scaled back approximately 90% from its prior iteration as spelled out in our documents, presentations, etc. In essence the main improvements to the site, other than rehabilitating the existing site and building infrastructure, involves constructing the spa building on the site of a former building, adding parking and improving access/egress, a “small SWPPP” in accordance with NYCDEP regulations, a slight increase in water/wastewater use, etc.).

With this said, a review of the technical comments, outside of SEQRA and zoning questions which I will leave to Michael Moriello Esq., indicate the following:

- Minor administrative Comments including but not limited to:
 - Completing a Site Plan Checklist
 - Providing additional Short Environmental Assessment Form information where appropriateThese comments are more or less administrative in nature and can be addressed via a resubmission.
- Other agency comments – It has been our practice to deal directly with other agencies during the pendency of project design (e.g. UCDOH, NYCDEP, NYSDEC, NYSDOT, UCDPW, Etc.) and supplying approval information upon completion to the respective Town Planning Board as issues correlating to these agencies is within the purview of these agencies and not the respective Town Planning Board or their consultants. Sharing submissions, reviews, comments, resubmissions, correspondence, etc. during the pendency of review and approval does nothing to benefit the respective Town Planning Board other than to run up consultant costs for both the Town and the applicant. We have informally notified the Town and their consultants that these items are being

worked on with the applicable agencies. Upon completion of approvals or upon completion of significant permitting milestones, it is appropriate to share formally with the Town and their consultants.

- Traffic Assessment – As noted previously, the project has been scaled back 90 percent including commensurate potential traffic volumes. Overall, the level of detail requested in the onerous traffic review does not correlate to the project scope for a project that is more or less trying to get a green light from the Town prior to full architectural design, event planning, maintenance plans, etc.
- Other requested submissions such as site lighting design will be supplied to the Town of Shandaken Planning board during the Pendency of review as the project progresses with its design and review.
- As alluded to in response to traffic comments, tabulation of job generation while the project is pending is a somewhat wasteful exercise as the project has been scaled back significantly. Similarly, tabulations of disturbance, species impacts, etc. and development of project offsets are not warranted as the project is being designed in accordance with applicable agency codes and if compliant does not require said tabulation or proposed offsets. It has never been our experience on a project where “offsets” have been requested to be proposed or designed for items where either code compliance has been achieved or where the items are not regulated by a code per se.
- The project does not reach the threshold of requiring a SWPPP in accordance with NYSDEC Regulations and therefore only a NYCDEP Small SWPPP is applicable. The project sponsor via its consulting engineer has been working with the NYCDEP on developing said SWPPP and has been adjusting the SWPPP accordingly. The planning board’s consultant is requesting significant information regarding stormwater beyond what is required by the NYCDEP which does not affect the design of the proposed Small SWPPP. Please note that the Small SWPPP information supplied to the planning board was for informational purposes only. Treating the Small SWPPP as a full NYSDEC SWPPP is inappropriate.
- Detailed field survey information is being requested which is not appropriate for the level of review required by the planning board. This information will obviously be integrated into the project’s final design. Similarly, survey certifications, on-site elevation benchmarks are all items that are appropriate prior to construction but are unnecessary at this time. These are items that are typically incorporated into project construction documents developed and submitted to address building permit requirements, and not preliminary planning board submissions.
- Similarly, the request for detailed architectural design information at this point in the project is premature. In addition, it is beyond the purview of the planning board and their consultant. Once again, these are items that are typically incorporated into project construction documents developed and submitted to address building permit requirements, and not preliminary planning board submissions.
- The request for detailed wastewater treatment and disposal information is beyond the scope of the planning board and their consultant as the wastewater design has been vetted with and reviewed preliminarily with the UCDOH and the NYCDEP. Information requested by these agencies has been provided to these agencies during the pendency of the wastewater design and information beyond what has been requested and included in the design is beyond the purview of the town planning board and their consultant. It should also be noted that the project’s sanitary facility design is being developed via two steps as is typical. First, the wastewater design is developed and presented to the applicable agencies (UCDOH and NYCDEP). Subsequent to conditional approval by the planning board, said agencies will be requested to approve the design providing that it is satisfactory and in compliance with their applicable regulations. As a part of the wastewater approval, the UCDOH will make their wastewater approval contingent upon a satisfactory subsequent water supply submission and approval in compliance with 10 NYCRR Subpart 5-1 Public Water Systems. A request by the planning board’s consultant to provide detailed water supply information is outside of their purview as it is regulated by the UCDOH via 10 NYCRR Subpart 5-1. As the town and their consultant know, the project will require various operating permits by the UCDOH including 10 NYCRR Subpart 7-1 Temporary Residences, 10 NYCRR Subpart 14-1 Food Service establishments, 10 NYCRR Subpart 6-1 Swimming Pools and 10 NYCRR subpart 5-1 Public Water Systems. Therefore, the project cannot proceed or operate with applicable submissions and approvals required for permitting.

We are happy to respond to a reasonable number of appropriate comments that would be applicable at this point in the design process. I would suggest that a meeting be requested with select planning board members and their consultant in order to develop a reasonable path forward in order for the applicant to make an educated financial decision at this point in design on whether it is appropriate to continue to invest in proceeding with the project in the event that the planning board's consultant's review presents sufficient issues that cannot be resolved and will negate project approval moving forward. At this point our client has invested significant time and funds into the submission and design process thus far including other agency submissions and consultations. Further investment into a project that the planning board's consultant requires superfluous, unnecessary or non-jurisdictional information and submissions for may not be a prudent business decision.

Upon completion of said discussion, we are also happy to proceed with applicable submissions requested by the Town that are within their jurisdiction such as grading plans, lighting plans, driveway design requirements and limitations, signage plans, usage square footage breakdowns, additional refuse design information, fire department submissions and consultations, county highway department submissions and consultations, accessible parking information and details, walkway information, reasonably detailed building elevations, additional site construction details, etc.

It should also be noted that the project is trying to take a distinctive site and infrastructure and return it to its former glory as a small commercial venture. As an adaptive reuse project, there are certain site limitations (e.g. site slopes, watercourse locations, existing roadway and wastewater infrastructure, etc.) that may restrict certain design requirements and may instead require the use of best engineering and architectural design judgement as well as a reasonable sense of working with the site to meet general code compliance as applicable. We are by no means working with a clean slate on a vacant property with this project. We are trying to develop a reasonable project that fits within the existing limitations of the site.

Regards,

Allan

Allan M. Dumas III, P.E., M.B.A
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From: Allan Dumas <adumas@Blengineers.com>
Sent: Friday, May 10, 2024 6:37 PM
To: Chris Robbins; Michael Moriello
Cc: Sam | Samuel Amoia; Dennis Larios
Subject: RE: Meeting

Chris,

I believe it makes sense to meet on site first so you can generate a list and then take it back to Todd and others on your team. Please feel free to call to discuss.

As you know the project is an adaptive reuse of an existing compound that has been on the site for decades, with the incorporation of applicable minor commercial improvements to provide the applicant with a small, but viable facility comprising lodging and a spa. The project, as currently proposed in the iteration that has been presented to the Town and applicable agencies, has been cut back in scope approximately 90% from the earlier project reviewed by the Town which our client has decided not to pursue for various reasons.

A few thoughts I have are as follows:

- Per our discussions, multiple elements of the project have been eliminated or substantially reduced in scope. The following summarizes elements that have been removed from the project or reduced in scope compared to the earlier iteration of the project as previously reviewed by the Town. I am concerned that members of your team may not be aware that the project has been drastically cut back from the original proposal that had made substantial progress via Town reviews:
 - Proposed Buildings – Sponsor was previously building 3 large buildings, now building one medium sized building.
 - Existing Buildings – Sponsor was previously maintaining 2 Houses and replacing one house with another building, now maintaining 3 Houses.
 - Lodging – Sponsor was previously building a 2 Story 24 Guest Room Hotel with a Yoga Studio, now repurposing 11 existing bedrooms with the same allowed occupancy and adding a Proposed Spa Building which includes a Cafe.
 - Food Service – Sponsor was previously building a 98 seat Restaurant complex and a 40 seat Snack Bar at the pool complex, is now a 14 seat Café in the Proposed Spa Building to be used mostly by patrons.
 - Sponsor was previously building a Pool Complex that had 2 Pools and a Snack Bar, now there are 2 Spa Pools (Hot tubs) at the Spa Building on deck.
 - Sponsor has limited operation to Inn / Guest Rooms as open 7 Days/Week, proposed Spa is open 4 Days / Week. Spa is limited to a maximum of 35 Guests Per Day. Café is limited to 14 seats. In the event a larger group has a retreat, a dinner may be served but Café would not be open. Note different café flow from catered flow. The catered flow would be less.
 - Parking - Sponsor was previously building 86 Parking Spots and Road Network, now repurposing and / or adding 22 Parking Spots including 1 Accessible and reutilizing existing road network. Facility caters primarily to overnight guests. However, if there is space (e.g. inn or spa not fully booked), day guests may be able to reserve up to the facility capacity.

- Flow - Wastewater and water flow was 7,878 GPD plus existing buildings to be maintained, now is 1,994 GPD which includes 1,210 GPD from existing buildings which equates to the current building flow. The only new project low over the existing use is a net gain of 784 GPD. However, the daily discharge is even less at 450 GPD due to 4 day per week spa operation and flow equalization. Please note that the sewage flow basis and sewage design has already been reviewed by the agencies having jurisdiction (NYCDEP and UCDOH).
 - Disturbance - Was disturbing 4.8 Acres, now disturbing 0.84 Acres, thus reducing by 4 Acres +/- . Please note that the Limits of Disturbance (LOD) are shown on our site plan.
 - Watercourses - Was relocating multiple watercourses, now maintaining them and working within NYCDEP 25% Rule.
 - Impervious - Was creating extensive impervious for new buildings, parking, road network, now limiting new impervious 5,988 Sq. Ft. which is all that is allowed by the NYCDEP Watershed Rules and Regulations 25% rule.
 - Stormwater – Project does not require a SWPPP as it is less than 1 acre in disturbance and therefore full hydrologic analysis is not pertinent. It does however require a NYCDEP Small SWPPP whose review and approval is under the purview of the NYCDEP. The small SWPPP is under development and nearly complete and has been iteratively discussed with and also reviewed by the NYCDEP which is the agency having jurisdiction for its review and approval.
 - Traffic – Per the multiple above elements that have been reduced/removed, the trip generation has been reduced dramatically thus not necessitating the need for a revised traffic assessment, etc.
- Please note that the plans submitted most recently reflect comments raised by the Town during their workshop meeting session as well as extensive comments provided by the UCDOH and the NYCDEP during ongoing project reviews. As you know, the inn/spa project will be regulated via 10 NYCRR Subpart 7-1 “Temporary Residences”, 10 NYCRR Subpart 14-1 “Food Service Establishments”, 10 NYCRR Subpart 6-1 “Swimming Pools” and 10 NYCRR Subpart 5-1 “Public Water Systems”. Therefore, discussions with the UCDOH have involved more than just wastewater to date as they will be the regulatory permitting agency for annual operation of the facility. In addition, the Small SWPPP that is under development and nearly complete has been required by the NYCDEP as it is within their purview. Typically the Town would require both DOH/DEP wastewater approval and DEP stormwater approval prior to PB approval as those are the agencies having jurisdiction via applicable codes.
 - As noted above, the wastewater and stormwater aspects are under the joint purview of the UCDOH and NYCDEP for the wastewater and NYCDEP for the stormwater. Extensive consultations, field visits, plan submissions/resubmissions have occurred to date as they are the responsible entities for review and approval. In addition, water supply is under the purview of the UCDOH who will be responsible for review and approval via 10 NYCRR Subpart 5-1. Moving forward after PB approval, ongoing oversight for the regulatory operation of the facility is regulated via the applicable agencies (e.g. DOH annual operating permits that cover Parts 7-1, 14-1, 6-1 and 5-1; DEP/DOH wastewater oversight; DEP stormwater oversight). Duplicate/superfluous reviews via the Town’s consultant are not warranted and are an unnecessary cost for the applicant as the agencies noted are responsible for their applicable review and approval.

We can separately discuss the EAF, neg.dec., wetland delineation, habitat, etc., as well as plan/application/other questions that SLR had noted in their correspondence.

Please note that the above summary is intended to be helpful to provide SLR with a better framework in understanding of the regulatory design and review aspects of the project that either have occurred, are underway or will be required in the future, as well as the various partners involved in the project's regulatory review and permitting team. Many of the more granular aspects of the project's review comments presented in your correspondence have already been explored or addressed based upon actions to date, and some are likely immaterial at this phase of the review. It would not be prudent for both Brinnier and Larios as the applicant's engineer, and Michael Moriello, Esq. as the applicant's counsel, to proceed with written responses, etc. to the dozens of comments presented at this time as the majority of them can be both discussed in the field and expeditiously via verbal consultations as applicable.

We look forward to discussing the project with you in the field and moving forward on a collaborative basis.

Regards,

Allan

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From: Chris Robbins <crobbins@slrconsulting.com>

Sent: Thursday, May 9, 2024 7:57 AM

To: Michael Moriello <mike@moriellolaw.com>

Cc: Allan Dumas <adumas@Blengineers.com>

Subject: Re: Meeting

Hi Allan,

Following up on an Aurum site visit. Thoughts on when/approach? See below.

Thanks,

Chris

Chris Robbins

Principal Scientist - Ecology & Biodiversity

M 845-546-5105

E crobbins@slrconsulting.com

SLR International Corporation

New York, United States

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

-----X
In the Matter of the Application of

GEORGANNE CHAPIN, MEGAN REYNOLDS and SUSAN
ROBINSON,

Petitioners,

DECISION/ORDER

For a judgment pursuant to CPLR Article 78

Index No. EF2021-332
Richard Mott, J.S.C

-against-

PLANNING BOARD OF THE TOWN OF HURLEY,
CEDAR DEVELOPMENT EAST, LLC, and ONTEORA
CENTRAL SCHOOL DISTRICT,

Respondents.

-----X
Petition Return Date: March 15, 2021

APPEARANCES:

Petitioners:

Emily Beth Svenson, Esq.
Gordon & Svenson, LLP
42 Catharine Street, Suite C106
Poughkeepsie, NY 12601

Respondents:

Richard J. Olsen, Esq.
McCabe & Mack, LLP
63 Washington Street
Poughkeepsie, NY 12602
For Planning Board of the Town of Hurley (PB)

✓ Michael A. Moriello, Esq.
Riseley & Moriello, PLLC
PO Box 4465
Kingston, NY 12402
For Cedar Development East, LLC (CDE)

David H. Strong, Esq.
Thomas, Drohan, Waxman, Petigrow & Mayle, LLP
2517 Route 52
Hopewell Junction, NY 12533
For Onteora Central School District (OCSD)

Mott, J.

Petitioners in this Article 78 proceeding seek to annul, as arbitrary and capricious, the PB's negative State Environmental Quality Review (SEQR) declaration for CDE's proposed development of 46 apartments on OCSD land and orders directing a positive declaration and an environmental impact statement (EIS). Respondents oppose.

Background

CDE proposes converting 2 vacant school buildings to apartments in this residential zoning district on a 34-acre lot, (Project). CDE submitted a concept plan and Part 1 of the full Environmental Assessment Form (EAF) in support of its application for site plan and special permit review in February 2018. Although the Project is an unlisted action, SEQR Type 1 process was adopted with CDE's consent and the PB was named SEQR lead agency.

In July 2019 the Town of Hurley (Town) adopted a moratorium on the development of Multifamily Dwellings and Complexes, and in October 2020 enacted Local Law 4, limiting same to 4 residential units.¹ In September 2019, CDE revised its EAF to change its original proposal for rental units to condominiums.

The public hearing began on July 6, 2020 and concluded on August 31, 2020, at which time the PB requested Project responses to its comments, those of its planner, Nelson Pope Voorhis (NPV), and the public. Thereafter, CDE submitted, *inter alia*, detailed site plans and supplemental hydrogeologic reports/comments and further traffic study. The PB issued its negative declaration on January 4, 2021, relying, *inter alia*, upon NPV

¹ The negative declaration notes that the grant of a variance is not within the scope of SEQR review.

reports from May 2020 to December 2020,² documentation cited therein and its record of proceedings.

The Petition

The sole cause of action³ alleges the PB failed to take a hard look at Project impacts to community character; well-water, surface wastewater and traffic or provide a reasoned elaboration for its conclusions, when, *inter alia*, it ignored its consultants' reports.

Parties' Contentions⁴

Petitioners claim that the negative declaration fails to consider, much less offer a reasoned elaboration of potentially significant impacts on community character of this single-family home neighborhood by omitting mention that the projected 34 units in a single building conflicts with community plans per Local Law 4. Further, they claim the PB failed to take a hard look at potentially significant impacts on well-water supply, surface water discharge or increased traffic, despite a record establishing such potential, thereby meriting further study via an EIS.

Petitioners cite the PB's answer denying knowledge or information to form a belief as to the allegation that the Project would dramatically change the character of the neighborhood by the increase in housing density and resulting traffic, noise, light and congestion. Further, they aver that by the PB's failure to address the fundamental conflict

² The negative declaration mistakenly refers to 2019 as the year of the reports, but the month and year of the cited reports issued in 2020, as evidenced by the administrative record.

³ Petitioners withdraw their 2nd cause of action conceding it is unfounded upon CDE's proof in opposition.

⁴ The PB relies upon its certified administrative SEQR record and proffers no affidavits or legal argument in support. It generally denies the allegations or sufficient knowledge or information to form a belief as to their truth. OCSD presents no argument and generally denies the allegations, except as follows: OCSD provides its 1990 application for a State Pollutant Discharge Elimination System (SPDES) for *surface water* discharge and NYS Department of Environmental Conservation (DEC) confirmation of said submission, asserting that DEC records erroneously identify the Project site wastewater plant as having *groundwater discharge*. Further, it generally asserts Petitioners' lack of standing and failure to state a cause of action.

between the Project and Local Law 4, it has abdicated its SEQR responsibility to consider the conflict with community plans/character, where it acknowledged a moderate to large impact on community character in EAF Part 2.

In addition, they claim, upon the affidavit of hydrogeologist Paul Rubin (Rubin), that:

“the lack of off-site residential wells with water level monitoring before, during, and after aquifer testing resulted in failure to recognize that some were *likely* to be proven to be 1) hydraulically connected to pumping well OBRW-1 (the Project’s stated primary production well), 2) shallow, and 3) readily dewatered after only limited test duration.”

They proffer affidavits of Petitioner-neighbor, Susan Robinson, that contemporaneously with CDE-consultant Miller Hydrogeologic Inc.’s (Miller) October 2019 well pump-test of the Project’s 2 wells, her well pump burned out and of neighbor Christine Flanagan, that she found sediment in her water. They maintain that no neighboring wells were monitored in connection with the pump-test, requiring additional testing as to impacts on same. In addition, Petitioners cite PB environmental consultant-hydrogeologist Russell Urban-Mead’s January 2020 report (1st Chazen Report)⁵ that additional study of well-water adequacy is required, such that the PB falsely states in its negative declaration that Chazen agrees with Miller as to the lack of significant impact on neighboring well-water supply. Moreover, they aver surface wastewater has not been adequately addressed since the existing NYS Pollutant Discharge Elimination System (SPDES) permit states it concerns ground, not surface water.

⁵ The consulting firm is The Chazen Companies (Chazen). Urban-Mead is the Senior VP for Environmental Services and Chazen staff includes a physical engineer.

Finally, they cite the 2nd Chazen Report (August 2020), which recommends, upon public comment, additional study of impacts on neighborhood traffic and an accident analysis at the intersections of Routes 28 and 375, which are major thoroughfares.

CDE contends that Petitioners lack standing,⁶ that their petition is not ripe for review given pending litigation⁷ challenging Local Law 4 or, alternatively, that the PB negative declaration is legal and rational.

Regarding well-water impact, it cites Miller's 3 reports,⁸ the last of which adopts Urban-Mead's initial recommendation that the NBRW-1 well be used as the Project's primary water source, and his final assessment that such adoption is an acceptable alternative to additional pump-tests and studies of water-bearing fractures in the OBRW-1 well. Further, CDE cites Miller's 1st Report, that aquifer testing found available water volume at more than double the design flow for the 46 units, thereby surpassing the required showing and that follow-up well pump-tests were consistent therewith.

Concerning wastewater, CDE cites NYS Department of Environmental Conservation's (DEC) December 4, 2019 letter that renewal of the existing SPDES permit

⁶ Petitioners establish standing by their proximity to the Project and potential effects on the shared water supply, as acknowledged by the EAF and expert reports. *Matter of Save the Pine Bush, Inc. v Common Council of City of Albany*, 13 NY3d 297, 305 [2009].

⁷ CDE's reliance upon *Matter of Eadie v Town Bd. of Town of N. Greenbush*, 7 NY3d 306, 313 [2006] (*Stop-The-Barge* does not control because it did not involve SEQR review regarding enactment of legislation) as to ripeness is misplaced. In *Eadie*, unlike here, a rezoning application was submitted by the developers as part of their project, thereby invoking SEQR review of the proposed re-zoning. Here, the zoning amendment was passed by the Town independently of CDE's application for site plan and special permit review. Thus, the negative declaration here is a final administrative determination affecting the rights of the parties herein, notwithstanding the potential for the Project's demise under Local Law 4. Indeed, unless specifically invoked as to a proposed zoning amendment, a SEQR lead agency is limited to an assessment of a proposed project's environmental impacts and may not interpret zoning law. *Town of Poughkeepsie v. Flacke*, 84 A.D.2d 1, 5, [2d Dept. 1981] lv. denied 57 N.Y.2d 602.

⁸ They are dated May 2, 2019 (Final Aquifer Testing Report), November 6, 2019 and September 20, 2020. The September 21, 2018 Miller Hydrogeology Well Yields Report to which CDE's counsel refers does not appear in the administrative record's table of contents and does not appear to have been included in said record.

for surface water discharge will require a complete application, including an engineering report and public comment period.

In addition, CDE cites the 3 Creighton Manning Engineering, LLP (Creighton) traffic studies, the latest in November 2020, concluding that the Project would generate less than 50% of the daily vehicular trips than school use, that weekend use is only slightly higher in Saturday PM hours and less than weekday PM peaks. Further, CDE refers to Creighton's conclusion that Project use will have minimal impact, as it entails shorter trajectories to Routes 28 and 375 and because apartment use is typically less than for the neighboring single family homes. In addition, it notes that Creighton concluded minimal impacts as to intersection safety and existing recreational use of neighborhood roads as compared to no-build traffic conditions, citing the limited Project-build increases in intra-neighborhood traffic and adequate neighborhood roads given their low speed limits. Moreover, CDE notes that Creighton's initial study was found to be complete and appropriate by engineering consultant, Brinnier & Larios, PC and acceptable by Chazen, yet further study was conducted to address public concerns.

Finally, CDE insists that the record establishes the Project's consistency with community character, citing the changeover to condominium units to address concerns of owner-occupancy. Indeed, it notes that until the passage of Local Law 4, the Project's multi-family housing proposal was explicitly authorized by zoning law by special permit, thereby establishing a presumption of permitted use consistent with community character.

Consequently, CDE maintains that the PB's negative declaration is supported rationally by the record which includes corroborated expert reports, and that the PB is

entitled to rely upon same to the exclusion of Rubin's speculative assertion the Project will likely dewater neighboring wells.

Discussion/SEQR Review


"Judicial review of SEQRA findings is limited to whether the determination was made in accordance with lawful procedure and whether, substantively, [it] was affected by an error of law or ... arbitrary and capricious or an abuse of discretion." *Friends of P.S. 163, Inc. v Jewish Home Lifecare*, 30 NY3d 416, 430 [2017], rearg denied sub nom. *Friends of P.S. 163, Inc. v Jewish Home Lifecare, Manhattan*, 31 NY3d 929 [2018].

When conducting such review, it is not the court's role "to weigh the desirability of any action or choose among alternatives." *Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 416 [1986]; *Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d 219 [2007].


Substantively, SEQR requires a lead agency to, "act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects." ECL § 8-0109 [2]; *Town of Amsterdam v Amsterdam Indus. Dev. Agency*, 95 AD3d 1539, 1542-43 [3d Dept 2012]. Thus, where an agency "fails to take the requisite hard look [at adverse environmental impacts] its determination may be annulled. *Chinese Staff & Workers Assn. v. City of New York*, 68 N.Y.2d 359 [1986]; CPLR § 7803. Indeed, "a lead agency improperly defers its duties when it abdicates its SEQR responsibilities to another agency or insulates itself from environmental decision-making." *Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d at 234. Notwithstanding, it need not wait for agency permitting decisions before reaching its determination. *Id.* Moreover, since SEQR "neither preempts nor interferes with local zoning ordinances," *WEOK Broadcasting Corp. v Planning Bd. of Town of Lloyd*, 165 AD2d 578, 580-81 [3d Dept 1991] *affd*, 79 NY2d 373 [1992] it is an improper vehicle to

determine zoning compliance. *WEOK Broadcasting Corp. v Planning Bd. of Town of Lloyd*, 79 NY2d at 382.

To determine the significance of an environmental impact, a lead agency considers the proposed action's setting (e.g., urban or rural); probability of occurrence; irreversibility; geographic scope; magnitude; and number of people affected. 6 NYCRR § 617.7(c)(3). Even where significant impacts are identified, "proposed mitigating measures, incorporated as part of an open and deliberative process, [may negate] the project's potential adverse effects," *Matter of Merson v McNally*, 90 NY2d 742, 753 [1997] rendering them insignificant. Thus, the requisite hard look reflects "a balancing of the environmental impacts against other social and economic considerations," ECL § 8-0109; *Jackson v New York State Urban Dev. Corp.*, 67 NY2d at 416, "governed by a rule of reason." *Akpan v Koch*, 75 NY2d 561, 570 [1990]. Further, "the extent to which particular environmental factors are to be considered varies in accordance with the circumstances and nature of particular proposals." *Id.*; *Nicklin-McKay v. Town of Marlborough Planning Board*, 14 AD3d 858 (3rd Dept. 2005). Thus, not every conceivable environmental impact, mitigating measure or alternative must be identified or addressed. *Id.*; *Scott v City of Buffalo*, 16 Misc 3d 259 [Sup Ct 2006], affd., 38 AD3d 1287 [4th Dept 2007].



Here, the PB properly considered the Project's adaptive reuse proposal to create residential units in a residential district involving no new construction, in reliance upon previously functioning water system's projected use and wastewater system based upon the same or less than prior use. Further, the PB properly relies upon DEC permitting in mitigation of wastewater surface discharges, *Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d at 234, and the Chazen Reports which, in assessing Miller's Reports and



public comment, reiterates its initial recommendation that the NBRW-1 well be the primary water source. Indeed, Urban-Mead explains that this option will avoid impacts on neighboring well-water given greater residential density near OBRW-1, thereby obviating the need for further pump-tests. Although he suggests drilling a 3rd well near NBRW-1 to avoid even temporary emergency use of OBRW-1, Miller's final report adopts Chazen's recommendation and details a plan to minimize emergency use of OBRW-1.

Moreover, Creighton's un rebutted traffic studies which address public comment via data analyses, suffice to establish the PB conclusion of minimal traffic impacts. Finally, the PB incorporates NPV's reports that consider detailed site plans in addition to the expert submissions, considering them sufficient to address the concerns raised, while also noting that final site plan adjustments are a matter of the separate site plan review.

Here, the record provides rational support for the PB's negative declaration. Indeed, Petitioners' objections, all of which relate to environmental concerns affecting community character based upon increased density of residential use, were found to be minimal. Thus, the record sufficiently substantiates the PB's negative declaration, despite its summary statement of findings. *Matter of Ames v Johnston*, 169 AD2d 84 [3d Dept 1991] (judicial review of the PB determination is limited to assuring that, based on the information before it, [the...] decision was not arbitrary, capricious or affected by an error of law); *Jackson v New York State Urban Dev. Corp.*, 67 NY2d at 416.

Accordingly, the petition is dismissed.

This constitutes the Decision and Order of this Court. The Court is E-filing this Decision and Order but that does not relieve Respondent CDE of compliance with the

provisions of CPLR §2220 with regard to notice of entry.

Dated: Hudson, New York

April 27, 2021



RICHARD MOTT, J.S.C.

Papers Considered:

1. Notice of Petition and Verified Petition of Emily Svenson, Esq., dated February 3, 2021 with Exhibits A-I; Affidavits of Paul Rubin, dated with Exhibits A-C, of Susan Robinson with Exhibit A and of Christine Flanagan, with Exhibit A, dated February 2, 2021;
2. Answer and Affirmation of David H. Strong, Esq., dated March 8, 2021 with Exhibit A;
3. Answer dated March 8, 2021 with Exhibits A-I, Affirmation and Memorandum of Law of Michael A. Moriello, Esq., and Verification of Kenan Gunduz, dated March 9, 2021;
4. Answer of Richard. J. Olsen, Esq., dated March 10, 2021, with Exhibits A1-A5;
5. Reply Affirmation and Memorandum of Law of Emily Svenson, Esq., dated March 14, 2021.

info

From: Allan Dumas <adumas@Blengineers.com>
Sent: Monday, July 15, 2024 7:20 PM
To: Michael Moriello
Cc: Samuel Amoia; Kevin Harjes
Subject: RE: Aurum
Attachments: THE AURUM 3-15-24-SH1 OF 1 IMPERVIOUS PLAN.pdf; Aurum-Renderings-032724.pdf

Mike,

There is only one new structure. There are no additions proposed to existing buildings. I believe the only additions would be possible replacements of existing decks. Also, please note there is an existing concrete deck next to the proposed spa:

- Per the attached impervious plan per earlier emails:

PROPOSED ADDITIONAL IMPERVIOUS SURFACE AREA CALCULATION

PROPOSED ADDITIONAL PAVEMENT • 6 BDRM	501 SQ.FT.
PROPOSED ADDITIONAL PAVEMENT • 3 BDRM	1,936 SQ.FT.
PROPOSED ADDITIONAL PAVEMENT • ENTRANCE	177 SQ.FT.
PROPOSED RETAINING WALLS	600 SQ.FT.
PROPOSED SPA DECK EXPANSION	298 SQ.FT.
PROPOSED WALKWAY/ACCESSIBLE RAMP	231 SQ.FT.
PROPOSED SPA BUILDING	2,245 SQ.FT.
TOTAL	5,988 SQ.FT.

NOTE: 25% OF TOTAL EXISTING IMPERVIOUS AREA, 5,989 SQ.FT., EXCEEDS THE PROPOSED ADDITIONAL IMPERVIOUS SURFACE AREA, 5,988 SQ.FT.

- The proposed spa has a footprint of 2,245 SF. We will be adding to the existing concrete deck in front of the proposed spa by 298 SF noted above. Please note that per Andrea B.'s and Scott D.'s attached renderings, Sam is going vertical. Therefore, the spa is really going to have a floor area of 4,490 SF.