

**TOWN OF MANLIUS
PLANNING BOARD MINUTES
JUNE 25, 2012**

APPROVED

The Town of Manlius Planning Board met in the Town Hall at 7:00 PM with Chairman Fred L. Gilbert presiding and the following Members were present: Susan Moliski, Donald Crossett, Richard Rossetti, Thomas Byrnes, and Joseph Lupia Jr. Also present were Attorney Timothy Frateschi and Director of Planning & Development David W. Tessier.

Not in Attendance: Member Kelly.

Also Present: Ray Scruton, Attorney Kate Johnson, Ellen & Mike McGrew, Jane Chase, Dave Muraco and Attorney Michael Longstreet.

The Pledge of Allegiance was recited.

Minutes: The Minutes of the June 11, 2012 Meeting will be held until the next Planning Board Meeting.

Panera Bread, 540 Towne Drive, Fayetteville, NY

Amended Site Plan Tax Map #087-01-22.1

Kate Johnson, Legal Counsel for COR Development stated that this proposal is for a 666 sq. foot addition for the Panera building.

The addition will be 10 ft. in width, 66 ft. 6 in. long, with an additional 60 seats, constructed by COR Development, where the existing Patio area is. The Parking Chart shows 12 new parking spaces required for this addition and that they are 20 spaces over the required parking spaces for this building. The Patio area of about 3 or 4 tables will be in the back corner. The Addition will match the existing building materials and the existing green canopies. No new signage is being proposed, but the existing signage will be re-located. A small sidewalk will remain and there will be no railings around the Patio area, but there is curbing and they will mark the Handicap area in some fashion so it is highlighted so people are aware of it.

Director of Planning & Development David W. Tessier stated that he originally had two concerns, the Exit Door, that has been re-located and the additional Parking requirement. Both of these concerns have been satisfied.

SEQR

It was noted that SEQR was done on the original entire Panera Bread Site Plan and this is an insignificant change, thus will not cause a significant environmental impact.

Member Rossetti made a motion, seconded by Member Byrnes and carried unanimously to waive holding a Public Hearing for the Panera Bread Amended Site Plan because this is a minor change to the site, and the applicant has demonstrated that the changes are consistent with

the design principle which pre-dominates among the existing buildings and will not adversely affect the desirability of the immediate surrounding area including residential.

Member Crossett made a motion, seconded by Member Moliski and carried unanimously to approve the Panera Bread Amended Site Plan, Bakery Cafe #796, Project Number 11084-2, Sheet C080, Sheet C100, Building Expansion, Sheet C101, Site Plan, Sheet C500, Misc. Details, all dated May 10, 2012 by Bergmann Associates, and Sheet A1, Floor & Roof Plan, Sheet A2, Exterior Elevations, (noted by Attorney Johnson has the wrong Canopies which she will submit the correct Sheet dated tonight) and Sheet A3, Building Sections all dated May 10, 2012 by Zausmer Frisch Scruton & Aggarwal.

**Empire Management Company, Manlius-Cazenovia Rd., Manlius, NY
Site Review/Subdivision-Suburban Park Apartments**

Tax Map #s 113-02-17.2 & 17.3

Attorney Michael Longstreet, on behalf of David Muraco submitted a Map of Lot 1 & Lot 2 "Suburban Park" dated September 3, 2009 by David A. Vredenburg, 98-29.9-M and a Preliminary Subdivision and Layout Plan dated May 23, 2012 by Napierala Consulting Professional Engineer, P.C., Project No. 12-1101, Sheet C-1.

Attorney Longstreet stated that basically they are here to provide the Board with a change to the Site Plan in regards to Suburban Park. The scheme is that they want to make some improvements to the facility by way of a trail or running track, some changes to the enclosures, dumpsters and a few other things. He discovered in fact the capacity of the size of the facility has not been fully utilized and are asking for a review of their particular Plan. They have changed some boundaries and lots and they have made some particular calculations which Engineer Jim Emerick of Napierala Consulting will explain.

Mr. Emerick stated that when he originally investigated this he took a look at the original Subdivision Map and the Density Map. There was originally 2 Lots shown on that Map and the density was calculated based on the two larger parcels. The third parcel wasn't included in the density calculations at all. With these calculations the density was shown for 128 Units and he said this center Lot wasn't calculated at all in the calculations.

Member Rossetti ; He wasn't here when it was done originally, but he read through the record, and it was 21.143 acres. Are you saying that there is more acreage there?

Mr. Emerick; The 21.41 acres were the 3 Lots added together, but when they considered the useable area and the unusable area in determining how many buildings they could use or how many units could be provided on these Lots, only this Lot (1) and this Lot (2) were included in any of those calculations. If he adds the usable and unusable it equals this acreage (shown on his 5-23-2012 plan).

Chairman Gilbert; The total 21 point whatever it was, acres as a unit, is the basis for the calculations for the buildable lots.

Mr. Emerick; This Lot (3) was shown of the Plan but it wasn't included in any of these calculations.

Attorney Frateschi asked Jim Emerick or Mike Longstreet, where does it say it doesn't include that Lot (3)? We have information that says Lot 3 was included in the calculations for usable and unusable land.

Mr. Emerick; Just looking at the calculations it's obvious that the useable and unusable land, if you add those two together you get this many acres. Here if you add the useable area and the unusable area you get this many acres. This area does not have any inclusion in the calculations.

Attorney Longstreet; Just for the record, you're pointing to something that you have as Exhibit B on the original Map.

Mr. Emerick; Yes, this is the original approved Plan.

Attorney Frateschi asked Mr. Tessier if he had the Density Plan to set up?

Mr. Tessier; Yes.

Mr. Emerick; It's what we received from the Town, it says approved by the Planning Board Meeting of November 15, 1999.

Attorney Frateschi; This Density Plan was approved when?

Mr. Emerick; November 15, 1999.

Attorney Frateschi; And this is the same Plan?

Mr. Emerick; Correct.

Attorney Frateschi; He thinks that it is an important point. So we are all on the same page, you're saying that right here where it says total area 21.143 acres, Mr. Emerick, does not include Lot 3?

Mr. Emerick; It does include Lot 3 but the density calculations were only based on the 2 Lots. The larger lots that were included in the building of homes, and the density was not determined---

Attorney Frateschi; What leads you to that understanding?

Mr. Emerick; If we add the unusable area which is 1.034 and the unusable area which is 7.692 you get 8.726 and if you do the same with the calculations for Lot 2 it adds up to the area of Lot 2. There's no useable area or unusable area defined for Lot 3 and it's not included in any of the calculations. As well, we obtained a Map that kind of showed the development of that Final Plan. This showed what was determined as the unusable area.

Attorney Longstreet asked Mr. Emerick is that labeled to something?

Mr. Emerick; This is just a Site Plan for Suburban Park Apartment where its' got some calculations that were done by the Planning Department showing the unusable area here. If you look at these
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calculations, the unusable area was determined, using this strip along the back, which is the steep bank that goes down to Limestone Creek. This was the only area that was determined unusable in the preparation of that Plan.

Member Rossetti; how many acres is that?

Mr. Emerick; It's roughly 1 acre plus 2.2 they defined for Lot 3, but again in the Final Map that wasn't used in the calculations. In other words they said this area was unusable for Lot 3, but it wasn't Lot 3, and didn't get put in the building or the density calculations. So, based on this we already have a pre-determined useable area.

Now, currently the site has 2 Lots. At some point they were subdivided differently than what is shown on the Density Map. We have a 14.99 acre Lot and a 6.99 acre Lot and they are both zoned R-5. The R-5 zoning has a maximum lot size of 10 acres, and has to be between 5 and 10 acres. So, this current Lot is non-conforming with our proposed Plan. What they're showing is 2 Lots that are conforming between 5 and 10 acres and a third Lot would be potential for future single family residential similar to what is on the adjacent property. What this would include would be future, single residential family lots. So, based on this Subdivision layout we prepared calculations for the density of these 2 Lots. A single bedroom unit requires 3,500 sq. ft. of useable space, a 2 bedroom unit requires 5,000 sq. ft. Based on that we can determine how many units they can provide for maximum density for those 2 Lots. What we are allowed to do with that is provide additional units.

Member Rossetti; What is the total useable square footage that you're using or acreage that you're using for the 3 Lots or whatever you're proposing?

Mr. Emerick; Separately for each Lot; 335,762 for Lot 1 and Lot 2 the useable area is 384,095.

Member Rossetti; Is that under the new Subdivision?

Mr. Emerick; Yes, correct. The unusable area remains the same as it was before. We haven't changed that. Part of that unusable area is now included in this Lot 3.

Member Crossett; Have you determined the unusable area?

Mr. Emerick; The unusable area is the same unusable area that was used in that previous determination.

The following items were submitted and entered into the Suburban Park file:

An E-Mail dated June 21, 2012 from Attorney Frateschi to Attorney Longstreet, with a copy to the Planning Board Chairman Fred L. Gilbert, Planning Board Members and Director of Planning & Development David W. Tessier.

Howard Brodsky, Community Planning Consultant letter and Dimensional Standards & Calculated Elements dated November 9, 1998.

Resolution Denying Subdivision Approval dated September 13, 1999.

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Attorney Edwina C. Schleider letter dated November 8, 1999.

Attorney Edwina C. Schleider letter dated December 6, 1999 and attached a Dimensional Standards & Calculated Elements by Howard Brodsky revised November 29, 1999.

A newspaper article dated December 22 to 28, 1999.

SEQR Findings Statement dated January 24, 2000.

Attorney Edwina C. Schleider letter dated May 2, 2000 and an attached copy, Declaration of Covenants and Restrictions for Suburban Park Subdivision.

Member Rossetti; In reference to Howard Brodsky's chart dated November 29, 1999, at that point the unusable was 6.33 acres and the useable was 14.81 acres. What does your useable add up to at this point?

Mr. Emerick; Our useable area for Lot 1 is 335,762 sq. ft. and the useable area for Lot 2 is 384,095 sq. ft.

Member Rossetti; And you're not doing anything with Lot 3?

Mr. Emerick; No.

Member Rossetti; That calculates to 16.52 acres of useable.

Mr. Emerick; The reason you were seeing that there wasn't the same amount of useable area was because Lot 3 wasn't considered.

Member Rossetti; I've got Lot 3 right here. Howard Brodsky's chart dated November 29, 1999, with the useable square footage or useable acreage and the total useable on the Site, Lots 1, 2, and 3 is 14.81 and now it's 16.52.

Mr. Emerick; He couldn't comment on that, he hasn't seen that, so he really doesn't know. But, he knows based on the Final Density Map that was calculated, he's using the same unusable area as that. The same unusable area that was determined for that Map he's using for his calculations.

Member Rossetti; But this came from Mr. Muraco's Consultant or Attorney.

Mr. Emerick; He doesn't know, he cannot comment on that, he hasn't seen it.

Member Rossetti ; Felt that what needs to be determined, is what really is the useable and unusable area and why it is different.

Mr. Emerick; Based on the Final Density Map this is the unusable area. The only area that is defined as unusable is the strip here as well as the match line that goes over here, just that bank that goes down to Limestone Creek.

Member Rossetti; Somebody determined that there was something more than that.

Mr. Emerick; This is the Final Map and we've got 1.034 unusable area, 2.216 unusable and this total acreage---

Member Rossetti; Go back to that again, 1.034 of unusable and 2.216, Mr. Emerick, that's correct.

Member Rossetti; That's Lot 1 and Lot 2 and this says Lot 3 is 3.082 unusable.

Mr. Emerick; He has never seen that and he doesn't think that that is included on the Final Density Plan.

Attorney Frateschi; This was part of the information package was provided to Attorney Longstreet.

Attorney Longstreet; That it was part of the--

Attorney Frateschi; This was taken from the Density Map that was approved, including a letter from Mr. Brodsky, the developers Consultant on this project. This apparently goes along with this and the one that you looked at a year before. There was one more reiteration of this. But, this is what they ultimately decided was the proper uses and reservations of land.

Member Rossetti; So, there is a meeting of the minds from both parties that these were the numbers.

Attorney Longstreet; With the caveat that if you look at how the Town actually calculated the numbers you get a lot of different angles. Based more on geometry than what's done now is based on a program that's basically computer generated and he thinks that it is much more accurate. It could have been off a little bit.

Member Rossetti; Lot 1 & 2 unusable area is identical to the unusable area along the creek bank that's there today.

Mr. Emerick; Yes.

Member Rossetti; So, he guesses that we are in agreement that those work. It's Lot 3 from before compared to what Lot 3 unusable is today, where we have a discrepancy and he doesn't know what it would be or where it is or how they calculated it.

Mr. Emerick; Is he correct in saying that this is the Final Density Map?

Attorney Frateschi; This is the Final Density Map and he assumes the same one that you have.

Mr. Emerick; This defines the unusable area as roughly 3.2 acres.

Member Rossetti; This would be Lots 1 & 2.

Member Moliskij; It doesn't talk about Lot 3.

Mr. Emerick; That's what he is saying, it wasn't defined for Lot 3.

Member Moliski; But it was defined in here.

Mr. Emerick; He doesn't know that exists for him based on that map.

Member Rossetti; On the flip side of that, if we just take it one more step and look at the usable and we look at the unusable from Lots 1 & 2, which should be the same based on the unusable, useable use for Lot 3. So, that was part of the calculation to get to the 128. Whether the useable, unusable Lot 3 was correct or not the fact is to get to the 128 they did use Lot 3 in the calculations back then.

Mr. Emerick; They determined just for these 2 Lots and they came up with a density of 1.8 acres. He doesn't know if the final decision differed from someone provided at the time.

Member Rossetti; The discrepancy is that they should have never come up to 128 if they just used Lot 1 & 2. because they used something from Lot 3 to get to 128. So, the decision should have been 125 or 126,

Mr. Emerick; He doesn't know if maybe they hatched out what they thought was unusable area, he doesn't know.

Member Rossetti; Okay.

Mr. Emerick; Maybe after that letter was provided, they may have said, argued what was useable and what was unusable, he doesn't know.

Member Rossetti; Okay.

Mr. Tessier stated that if you go back to the Conventional Zoning Map and consider the R-5 Ordinance there are three conditions in the R-5 Ordinance that make land unusable. More than a 15% slope, area subject to periodic flooding or is not an integral part of the development plan. Lot 3 on that Conventional Map is almost 100% all of those conditions. Most of the laid out stormwater areas are on it. They might have been considered as areas subject to periodic flooding at that time and therefore unbuildable or unusable. He believes that the one chart, that Member Rossetti was looking at, shows Lot 3 as allowing zero buildings, for that reason it just appears that when you look at it to be all unbuildable as opposed to buildable.

Attorney Frateschi; To follow up on that, it was removed from the calculation of density because that's what it says in the Code. That is the proper way to do a Density Plan. You can only do a Density Plan on properties that you could actually do a development on. So, you're supposed to take all that out during the course of the density calculation. That's what 278, requires. So, to your point, if it was taken out of the calculations, it was properly taken out of the calculations.

Attorney Longstreet; So, therefore if it's taken out of the calculations that doesn't hold much weight in this Final Map. Because if you took Lot 3 out of those calculations you would not be able to do what you've shown on the map.

Attorney Frateschi; Doesn't know the answer to that because we haven't done those calculations. Mr. Longstreet are you done? Please continue.

Attorney Longstreet; We offered to sit down with Mr. Tessier last week and go over these numbers, just so that we didn't take a lot of time here and we were told that he didn't want to look at the numbers because he felt that they were included in the approval, which is why we are having this discussion. We could have hashed all of this out. He is pretty confident in their numbers to get to what they are actually planning, which is Document C-1, labeled on the bottom.

Member Rossetti; What Mr. Tessier said was correct, Lot 3 on this was roughly 4 acres of which 3, a little bit more than 3 was deemed to be unusable and .829 was useable. But, according to the calculations on the November 29, 1999 chart, there were no buildings that were approved on Lot 3. So, the 128 did in fact only take into consideration Lots 1 & 2. But, he thinks that it's primarily because there wasn't anything able to be built on Lot 3 as he looks at this. So, as he said before it was taken into consideration.

Mr. Emerick; Understandable, but, like you said there's no density calculation for that. But, now we have a different situation, we have 2 Lots and that Lot 3 is included in the development. If you look at the current situation that they have, it wasn't subdivided like it was shown on the Density Map. Now, you have 2 Lots, there is no Lot 3. So, obviously the 2 Lots take the whole thing into consideration. So, that useable area that was determined for Lot 3 is now included in the overall development. He doesn't know the entire history of the project but looking at what we have now, we have a 14.99 acre Lot and a 6.99 acre Lot and we still use the same unusable area that was previously determined.

Member Rossetti; So, what your Plan is proposing is 5 additional 6 Units Buildings.

Mr. Emerick; Correct.

Member Byrnes; He noted in the documents provided that one of main concessions made at the Public Hearing at that time was removing the 2 Buildings that back up to the Bluffs property, and your Plan brings them back in there.

Attorney Frateschi; We will clarify our position and then you can respond to what we're saying. You have to look at this Density Plan while it is in 3 separate Lots. It was looked at as one property of 21.143 acres. If you go through the information that we've gone through over the course of the last 2 weeks it was a controversial project obviously. A lot of people were opposed to it, there were issues about traffic, but ultimately the developer and the Town agreed to do a couple of things. One was to create 2 separate properties with 2 distinct looks, that's Lot 1 and Lot 2. Attorney Schleider's letter illustrates it by talking about a monolithic look and avoiding a monolithic appearance because that was one of the reasons why R-5 was developed. As we were told by Mr. Longstreet they wanted to keep these Lots between 5 and 10 acres. If you have a 20 acre Lot and you had just Apartment Buildings across it, they wanted to avoid that. So, they created Lot 3 to separate their 2 Lots, so you have a 60 foot separation. One of the other concessions that were made by the developer was, as Member Byrnes said, was to move them more to the center of the property so they wouldn't affect the Bluffview homes. Keeping a separation so that they look like separate properties and it doesn't have that monolithic appearance, and to keep this as a drainage unusable space, which cannot be used for

buildings. Enough though there was a Subdivision that took place that put the Lots back together, as you look at it today, the desire of the Planning Board was met. As he sees the development being proposed, what's happening is they are reducing Lot 3, which was 3.911 acres, almost 4 acres and using that, shrinking that down, and using 1 and 1/2 acres, using the balance of that lot to make this Lot (1) bigger and this Lot (2) bigger so they can add density. He doesn't think that under the density calculations that were ultimately approved and agreed to by the developer and the Town you can, by just changing lot lines, add density to an overall project. He thinks that what 278 contemplates is that you're going to have open spaces, you're going to move the buildings away from other residential areas and it's not going to affect it. Here you have two buildings that Member Byrnes said are closer to the Bluffs, which is precisely the harm that they were trying to prevent with the Clustering and moving them to the center. You have two buildings in the separation area, even though it's in the back, it's still in the separation area that they were trying to establish. If he didn't believe that you couldn't add density to a project once you establish it, he wouldn't see a huge harm in this, but he doesn't think that you can add density once you've established density. That's his position.

Member Rossetti; To understand this, back in 1998 or whenever it was we had roughly 4 acres in Lot 3, now it's 1 and 1/2 acres. Is that correct?

Mr. Emerick; Correct.

Member Rossetti; So, basically what you did was you took 2 and 1/2 acres, added it to this project and divided by the 18,500 sq. ft. to come up with 5 additional buildings, that's the calculation that you did, am I correct in that?

Mr. Emerick; We're still using the unusable area.

Member Rossetti; This is where it breaks down a little bit for him because however the calculations were done, whether they were right, wrong, or indifferent, he still comes back to Lot 3 only had .829 useable to begin with.

Mr. Emerick; This he thinks preceded that letter and it said .6 acres was unusable out of a 3.91 acre lot. These were actually the areas that were used for that Final Map.

Member Rossetti; It says .6 of?

Mr. Emerick; It says .6 of unusable.

Member Rossetti; For Lot 3?

Mr. Emerick; Correct. Then it defines the unusable area for Lots 1 & 2 as well. These numbers are the ones that were used for that Final Map. It's tough to piece it together.

Attorney Longstreet; Part of the problem is in the Planning Board's Minutes in all of this. We don't have a map that says this is useable, this is unusable. So, we're in the state of re-creating what had been done and if there is a question of the numbers we would be happy to sit down with a cad cam program and we can go through whatever the numbers are. But, there is a right and wrong answer in Town of Manlius Planning Board Minutes-6-25-2012-Page 10

useable and unusable in regard to the property that's out there. All that we are asking is the opportunity to have that reviewed.

Mr. Tessier; He agrees with Attorney Frateschi that calculations were made at the time, and we have the same amount of acreage, and the same amount of steep slope, that hasn't changed except for slight re-grading. An agreement was made between the applicant and the Town. The agreement was based on their work at the time and a determination was made based on the Town zoning, that 128 Units could be built on this property. He believes that that agreement stands and cannot be changed. He believes that that is the basis of Clustering in the State of New York. That agreement establishes a size of green space, usually some viewing space, and here it sets aside steep slopes, which are very important to the view of the creek. That is why he didn't see that it should have even come back to this Board because he couldn't see any basis for it to come back to this Board.

Attorney Frateschi; Pointed out for the record, just so that it clear and disclosed that Mr. Tessier actually worked on this project on behalf of the developer at the time, and he worked on the Density Plan. That's not the basis for the determination. The basis for the determination are the record that I reviewed over the last two weeks, which provided very much the kind of information that Mr. Tessier remembered.

Attorney Longstreet; It has been said that there's an agreement, Where's the agreement?

Attorney Frateschi; The agreement is right here, the Density Map that was agreed to by the Town and the applicant.

Attorney Longstreet; There are two ways that are set forth to box somebody into an agreement. Number one is by explicit Resolution where you say, for example, you must keep x number of acres forever wild or is this or is that. There's nothing in the Resolution conditioning anything on that prior plan. There's nothing on that map that says, you are held to this and this will never change and it's written in stone forever. The other way is by requiring them to put conditions in their deed. The only two restrictions in the deed had to do with a single owner for this particular project. So, when Dave says that there is an agreement, by matter of the law he is wrong. There is no agreement, you have to look at the numbers.

Attorney Frateschi; He respectfully disagrees. The fact of the matter is a 278 Clustering Plan by its very nature creates open space, that's required to remain open. By its' very nature when we do 278 Clustering, we dispose of all of the Setback requirements and we determine what the density is, and then it would be like any normal Subdivision. Once you figure out what the Conventional number is, for the yield on that property, then you cannot add more density to that Map. You just cannot, and that is his legal opinion. Mr. Longstreet has a different opinion.

Attorney Longstreet; Let's talk about that. The finding that was specifically made was not, this is the particular density, and this is an expert density. What we said was, the developers calculations have been confirmed. Basically what happened here was some back and forth. There was originally a proposal for 168 units, back and then forth, blah, blah, blah. Then Dave Muraco comes up with 128 units, says look can we justify it, and---

Attorney Frateschi; Let me just stop you for a second to make an accurate record. It was Mr. Brodsky who sent the letter on November 10, 1999, stating that the number of lots would be 128.

Attorney Longstreet; That was the target you were seeking to justify, based upon useable space and calculations were made and the Board said the developer's calculations have been confirmed. There's no findings that this is the facts and you cannot come back, and this is set forever in terms of useable space or anything else. It's just, that it was approved and what they're saying is we are coming back.

Member Byrnes; It was approved for 128 Units.

Attorney Longstreet; It was approved, that's all that it was, approved.

Member Byrnes; For 128 Units?

Attorney Longstreet; Not maximum coverage, just 128 Units.

Attorney Frateschi; Read from the Resolution that denied the original approval dated September 13, 1999. Under Number 8; "The density as proposed by the Developer is the maximum that can be developed in an R-5 zone." That's where the Town, in his opinion, says that that is the maximum number that can be---

Attorney Longstreet; Lets read further because that was subject to a law suit and actually if you read the last paragraph, it says that it was denied without prejudice. Without prejudice means this is not a final determination and it also says we would treat the alternate design--

Attorney Frateschi; What are you talking about, what are you reading, so he understands.

Attorney Longstreet; Last paragraph of that Resolution, treats the alternate Cluster design Plan as a new application. So, when we came in the second time with our alternate Plan that was a new application. There was no locking us in with that. When you read that it sounds like that's the maximum, but that's what we came in as. That was the maximum we were planning to build under the first plan. All he's saying is look at the numbers, the numbers are the numbers. We can't, and if we can sit down and go over useable space, there's a right and wrong answer. You say it's a controversial project, we say it's a very successful project. There have been a lot of compliments to this.

Attorney Frateschi; He said that it was a very controversial project back then.

Attorney Longstreet; You said you came up with a thing about the monolithic approach, the separation, and all this. There's nothing in the Code that allows you to do that. All we need are two Lots, 5 to 10 acres, meet the numbers, that locks the Planning Board into the numbers. You can get into aesthetics, buffers, and that sort of thing, but you are locked in by the Town Board with those numbers, we submit, we are entitled to them. You can't say, well that's the starting point, we're going to cut you back. No, if we fit on the useable space and all the other calculations we submit to you, there's no discretion to cut us down with it.

Mr. Emerick; The buffer doesn't exist now.

Attorney Frateschi; Which buffer?

Mr. Emerick; The buffer that you're describing that separates the two Lots, that doesn't exist in the current Subdivision Plan.

Attorney Frateschi; What do you mean it doesn't exist?

Mr. Emerick; There's no buffer here. There's no lot that separates the two parcels.

Attorney Frateschi; The buffer exists. There's no adjacent lot. It was constructed to look like this.

Member Rossetti; This leads him to his next question, getting back to the Cluster zoning. If a Plan with 128 Units with this open space is now unbuildable, unusable and it needs to go into that calculation.

Attorney Longstreet; Nice thought. There are court cases that say you're wrong because you didn't lock the developer into the open space area. In fact, if you look at the Town law, the State of New York law, it gives this Board the power to put conditions on approvals for Clusters like this, and one of the conditions that you can put on is to lock developers into open space requirements. It wasn't done here. We are not bound by that, and in fact we are changing things. What we are planning to do is put in a Trail all around this particular property. Which, we think instead of some of the other stuff that we had, substantially improves it and that's why we're coming here to have more useable recreation space.

Member Rossetti; So, he understands, is your presentation a Subdivision presentation or a Site Plan? Are we doing a Subdivision right now?

Attorney Longstreet; This is an amendment to the Site Plan. Part of it is we are going to have to move some lot lines. We met informally and he thinks the consensus was that the lot lines really were not the problem, it was the density.

Member Rossetti; Why are you changing the lot lines, what is the purpose of that?

Attorney Longstreet; The purpose of changing the lot lines is to more accurately reflect what we need to get the calculations proper. One of the changes that we made was for, he thinks Lot number one, the one on the left, to have that control all the stream, which he thought was wise, and that's basically it. He believes Lot number 3, over by the Bluffview, we did that to bring us down to the 10 acres, which are required under the Town Ordinance.

Attorney Frateschi; Speaking of Lot 3 on this Plan. If we are looking at it as a Subdivision Plan it is not a conforming Lot. It doesn't have any frontage on Manlius-Cazenovia Road, Rte. 92, so the Board couldn't approve this Plan as it exists. Lot 3 is not a conforming Lot.

Member Byrnes; Could it be if we were to consider this future Road here, as frontage on the future Road?

Attorney Longstreet; It's the end of a dead end road with a cul-de-sac.
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Mr. Emerick; If a dead end road was expanded with a cul-de-sac, would that be considered frontage?

Attorney Frateschi He doesn't think so. You have to have 200 feet of Highway frontage.

Mr. Emerick; Do any of the Bluffs have 200 feet?

Attorney Frateschi; He wasn't around when the Bluffs were subdivided, he doesn't know what the Code was, but our Code says Lot width at Highway R-O-W is 200, feet minimum. This Lot (2) has 245 ft., this Lot (1) has 711 ft., and that Lot (3) has none.

Mr. Emerick; Thinks that frontage was intended for multi-family residential, not single family, is that correct? It's not specifically said in the Code that way, but he thinks that's intended for multi-family residential.

Attorney Frateschi; It could very well be. He doesn't have the answers. All that he is doing is reading out of the Code. Now, of course this Lot (3) when it was created only had 60 ft. of frontage. He doesn't know what process they went through to get that. It was a non-conforming Lot also. But, the record shows there was a purpose for that Lot, and that was to separate these properties, and that the rest of the acreage is an unusable space and can't be built on. So, we have a legal disagreement over what 278 means and whether 278 in and of itself is a mechanism to create open land. He believes that in, and of itself, it creates open land by coming up with a Density Plan, and then coming up with a 278 Cluster Plan that creates the open space.

Chairman Gilbert; Do we have a Final Resolution that was drafted when this was approved?

Attorney Frateschi; Yes, it was provided to you.

Chairman Gilbert; Has the SEQR Resolution been addressed?

Attorney Frateschi; That's part of it.

Chairman Gilbert; Read the first sentence, number 13, page 18; "The project will irreversibly commit approximately 14 acres of vacant, open land to residential development" from the SEQR Finding Statement & Resolution of January 24, 2000 Granting Preliminary Subdivision Approval.

Attorney Frateschi; Re-read the same sentence.

Mr. Emerick; He thinks that it is stating the area that you are developing. It doesn't say that you're not allowed to develop anymore or if you're leaving a certain amount of open space, it's just saying what you're developing.

Chairman Gilbert; No, he thinks that in all of the discussions that we're talking about the decision that was made at the time. He doesn't understand how we can unring this bell.

Attorney Frateschi; In fact, he thinks that we have to consider the legal jeopardy that we would be in if we did approve the Plan as proposed by the developer. The Town agreed to something in 1999 with Town of Manlius Planning Board Minutes-6-25-2012-Page 14

the developer after having a Public Hearing. After hearing all the comments and suggestions, these two buildings (near the Bluffs) would clearly be in violation of what was agreed to and what was set forth in the Resolution. These two buildings proposed are in the 60 foot separation that was requested and that the developer agreed to. This one building is a little less bothersome to him, but he just thinks it adds more units on a property that has an established density.

Attorney Longstreet; Referred to Sec. 155-28 D, Site Plan Review of the Town Of Manlius Code, says this is entitled to changes. "An owner wishing to make changes in an approved Site Plan shall submit a revised Site Plan to the Planning Board for review and approval before making application" (for a Building Permit.") So, your own Code contemplates that a party be able to make changes to an approved Site Plan. Just because we have an approved Plan doesn't mean that we're boxed in. It means, you're contemplating that they can make changes. We're supposed to come to you with a revised Site Plan, which is what we have here, and then you're supposed to review it and decide what to do.

Attorney Frateschi; That would be true if you were coming in like you had originally proposed to put in additional trash enclosures, and a maintenance building, where density wasn't going to be impacted.

Attorney Longstreet; Actually that's Sec. 155-29, Accessory Structures of the Town of Manlius Code. He's talking about 155-28, changing the Plan

Attorney Frateschi; You're adding density. You're putting more residents in an area, and that's not only changing the Plan, you're changing the use, which is a whole different ball game. You're changing the use, and you're adding to the use, which may be an aggregation of our requirements that you can only have a certain number of people in a certain spot a one time.

Attorney Longstreet; Still, the calculations, that's my only response to that. We have no agreement, we have no restrictions or conditions. Do the calculations, if it works, that's all we plan to do.

Member Rossetti; Referred back to number 13, page 18 of the SEQR Findings; which states "commit approximately 14 acres of vacant, open land to residential development". what that tells him is that there will be 14 acres developed, and the balance will be undeveloped.

Attorney Frateschi; That's correct.

Member Rossetti; The calculations show 13.79 is what was used for the calculation of the number of buildings, back 10 or years ago. So in fact, there was open space.

Attorney Longstreet; Nice try. There are cases that say that where other Boards have tried to do this in order to lock us down with conditions or open space. The Board had the opportunity to do that and they chose not to.

Chairman Gilbert; It's his opinion that this Board, in January of 2000, reached an agreement with the developer for 32 buildings with 128 Units on 21. 143 acres. If that was the density that was calculated at the time, it was based on the maximum density allowing for open space and putting four units together, or Clustering. He doesn't know what we would have to have to undo that decision.

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Attorney Frateschi; You would have to have more land to change the calculations. You would have to add land to this project so that you can say the acreage has increased from 21.143 to 30 say and know that you have an extra say 7 acres to consider in terms of more density.

Member Lupia; Is of the opinion that the Board back then did rely on the understanding, that they had an understanding with the developer that they were irreversibly committing that acreage. They also stated in their opinion in the Final Resolution that the 2 buildings on the southernmost portion adjoining Wisteria Lane would be pulled back. They were approving it based partially on the fact that the Cluster Plan pulled those both back and now you want to put it right back where they specifically agreed that it wouldn't be. He thinks that everything would be contrary to the original agreement, which he realizes that they say doesn't exist, but it was an understanding of the Board back then.

Attorney Longstreet; If this Board is doing what Planning Boards typically do in New York which is try to exert more power than they have. You say we wouldn't go there, where is the agreement? That was one of the considerations in a number of weighing events, but there was no agreement that we were going to not do anything in the future. You are confined with the density calculations in the Code. If you want to change the calculations tell the Town Board we think that these are too liberal, shrink it. That's not the numbers that you are faced with. You're faced with numbers, you're faced with maps, municipal space. We can talk about calculations, but there has been no agreement. There were no conditions, there were no restrictions and we're back here saying this is what we are proposing. You can say there is an agreement, but unless there's a specific agreement or specific condition put somewhere in writing that a subsequent purchaser or a member of the general public can point to, it's not binding or enforceable.

Attorney Frateschi; What were the conditions?

Attorney Longstreet; Single ownership of both parcels.

Attorney Frateschi; Will submit to Mr. Longstreet, single ownership of both parcels, is that what it was?

Attorney Longstreet; Yes.

Attorney Frateschi; He doesn't know this but he's guessing, he thinks that he sent it to Mr. Longstreet.

Attorney Longstreet; Yes.

Attorney Frateschi; So, somebody under this proposal, somebody could have sold Lot 3 to somebody differently?

Attorney Longstreet; He doesn't know if Lot 3 was deeded.

Attorney Frateschi; It was deeded as part of this, that's what happened.

Attorney Longstreet; Doesn't know the history of it but he thinks that the purpose of having single ownership was that all the roads and all the facilities were supposed to remain private so there wouldn't be single maintenance and single maintenance responsibilities.

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Chairman Gilbert; Thinks that agreement might be the wrong word.. It was the decision by the Board in 2000 that this was the Final Site Plan. He assumes that it was filed and signed by the Chairman of the Planning Board at the time.

Attorney Frateschi; Mr. Longstreet is saying that we should have an agreement. Let me suggest that that is the agreement, the Final Subdivision Plan that is what was agreed to. That is our agreement, it doesn't have to be reduced to writing that this is what we agreed to. He thinks that the law itself, the very nature of 278 Clustering requires open space. That was what was provided by the applicant at the time. There were very good reasons why they put the buildings where they put them and put the open space where they put it. There was rationale for all of that and therefore that's what was agreed to at the time. To change that without changing the size of the property would probably put us in legal jeopardy on the other side.

Member Rossetti; The law that was passed two or three years ago about so many feet from a slope, how many feet was that?

Attorney Frateschi; 25 feet.

Mr. Tessier; The 25 foot setback didn't exist in law at the time. It was required by the Planning Board to be put on the Plan.

Member Byrnes; So, would that be included in any unusable area calculations?

Mr. Tessier; Not necessarily. If it's not a steep slope it wouldn't have been included.

Member Byrnes; So, the buffer zone is not included in that calculation?

Mr. Tessier; No. The three things in the Ordinance that are not usable are a 15% slope, periodic flooding or not an integral part of the Plan. He's not sure what that phrase means, not an integral part of the Plan. It could mean those steep slopes that are way up on the side of this project.

Member Byrnes; Is the parking variance in this original, and how was that granted?

Mr. Tessier; Per Clustering for the whole project.

Attorney Longstreet; You really had a problem with parking. It is a variance issue. We had one and one half per apartment. It has not been a particular problem with this place, it works.

Member Rossetti; Is there two or one and one half in this Plan?

Mr. Emerick; One and one half.

Attorney Longstreet; On the issue of setbacks, the 30 foot setback for that property, the Lot by the Bluffview, that is within the 30 feet.

Mr. Emerick; We're providing 35.7 feet on that end. This is more than the appropriate setback.
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Chairman Gilbert; With what we have before us we're probably not going to move ahead with this application because it would be going against the decision that was made by this Board in 2000.

Attorney Frateschi; Is that what this Board wants to do, does anybody see anything different? You heard both arguments.

Member Rossetti; The only thing that he's thinking that would have any impact on his thought is, what was the unusable land in Lot 3, how was it calculated and was it accurate.

Mr. Emerick; The only evidence that he has is this hand written calculation, that he believes was done by Al Hanzalik and he did calculations for Lot 3 and came up with .6 acres, as well ,hand calculations were done for this. The way that he did these, he took an average width and multiplied it by length. Those are not highly accurate but he considered this area right here.

Attorney Longstreet; It is a copy of the Towns' Map.

Member Rossetti; He's not saying that this is going to change his mind, he was just curious.

Chairman Gilbert; Generally our 2005 Law is more restrictive than what existed at the time.

Member Rossetti; Regarding the Subdivision, we have to re-examine the entire application.

Chairman Gilbert; In applying it you may end up with less useable land than they did in 2000.

Attorney Longstreet; Invites anyone to go over the numbers with them. There is a right and wrong answer.

Mr. Emerick; We're not proposing. We accepted what they said was unusable and that's what we're using in our overall calculations, we haven't changed it from that.

Chairman Gilbert; His point would be if we opened up and re-calculate unusable land, applying the Town Law that was passed in 2005 it may be worse.

Attorney Frateschi; Doesn't think that it would matter. The question is, was the density established in 2000.

Chairman Gilbert; Yes.

Attorney Frateschi; That's the question. Was it established base on what you've read, what you've been provided with or what you've heard tonight from the applicant and what you've heard from your professionals. That's the decision. If you believe that the density was established in 2000, notwithstanding what Mr. Longstreet said in terms of his legal argument, that if you were going to require open space you had to actually have some type of written document that stated that. That's a legal argument. His argument is once density has been established, its' been established.

It was established for a reason based on this entire Site Plan, 21.143 acres and all the information that
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was provided. If you believe that way and he doesn't hear anyone saying they don't believe that, and he doesn't want to guide this argument, but if that's the case he suggests that you just have your Attorney prepare a Resolution for the next Meeting for the Planning Boards' review. He can work with Mr. Longstreet to see if there is anything that he is missing. He's hearing you say once density was established, you think it was established.

Member Crossett; Thinks that that is the overriding thing that we have to do first. That legal principle has to be established. We can play with the numbers all that we want tonight. But, he defers to Attorney Frateschi's expertise and opinion in this matter and he agrees with what he's hearing everybody else is saying tonight. There's enough stuff in writing, enough stuff discussed and talked about and made into an agreement over a decision based on certain facts and findings, and he agrees with what Attorney Frateschi's conclusion is, what his own conclusion was when he read the stuff, and how density was established. We have to determine that first one way or another before we can look at any numbers.

Attorney Frateschi; Is more than happy to meet with Mr. Longstreet and look at the cases that he is talking about.

Attorney Longstreet; He's prepared for post Resolution and he will show you where he thinks that you are wrong. There are cases, not a lot in this area, but there are some. You pointed out one which doesn't say what you think it says.

Attorney Frateschi; Said he thinks that it says what he thinks it says.

Attorney Longstreet; Wants the Board to know that he is a Litigator, and there's a reason a Litigator is here, and we're planning to challenge this.

Member Byrnes made a motion, seconded by Member Rossetti and carried unanimously to have the Planning Boards' Counsel prepare a Resolution that the density Map that was prepared in 2000 is the basis for this Board not moving forward with this application.

Attorney Longstreet; Chairman, because he's a Litigator, he wants to make sure what's in the record and what isn't in the record in terms of an Article 78. You have a bunch of stuff in front of you and he doesn't believe that he has all of it, perhaps as part of the Resolution we have what the Board has considered as well, a list.

Attorney Frateschi; Everything that he sent to Mr. Longstreet on Thursday is everything that the Board has.

Attorney Longstreet; Okay.

Attorney Frateschi; He doesn't believe there's anything different that their considering tonight.

Attorney Longstreet; We have some Maps and he presented you with descriptions and he does want the Town Code to be part of it. He doesn't think that any of this was updated since 1980.
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Attorney Frateschi; You mean 1999 when it was approved?

Attorney Longstreet; Yes.

Attorney Frateschi It is the same as it was before.

With there being no further business, Member Rossetti made a motion, seconded by Member Moliski and carried unanimously to adjourn the Meeting at 8:20 PM.

Respectfully submitted,
Barbara A. Smith, Clerk