

February 25, 2021

A Continuation of a Joint Public Hearing of the Village Board of the Village of Warwick and the Town Board of the Town of Warwick on the annexation petition under Article 17 of the General Municipal Law from Village View Estates, LLC, to annex into the Village of Warwick approximately 0.6 acres of real property identified on the Town Tax Map as Section 43, Block 1, Lot 4.2 was held on Thursday, February 25, 2021 at 7:00 p.m. at Town Hall, 132 Kings Highway, Warwick, NY.

ATTENDANCE: Supervisor Michael Sweeton
Councilman James Gerstner
Councilman Mickey Shuback
Councilman Floyd DeAngelo
Councilman Russell Kowal

Attorney for the Town, Jay Myrow (recused)

Village of Warwick: Mayor Michael J. Newhard
Trustee Barry Cheney
Trustee William Lindberg
George McManus
Corey Bachman
Village Clerk, Raina Abramson

Village Attorney Stephen Gaba

Discussion:

Supervisor Sweeton: So, this is a joint public hearing, a continuation. It is being streamed live on YouTube on the Town of Warwick's channel, while we are not monitoring the chats live tonight, we will enter them in the record if anyone out there is making any comments. So, I guess at this point maybe the applicants engineer, representative, wants to just discuss. We're here again just on the point of the annexation of the 0.6-acre parcel, this small strip and I believe the applicants, I've reviewed the Supplemental Environmental Impact Statement that the point of the annexation was to allow the roadway that enters onto Woodside to be all on Village property as I understand it, so I'll let the applicant have some say.

Kirk Rother: I have really nothing new to add from last month except for the folks that may be watching this on the stream. The petition is to annex 0.6 of an acre, which is this hatched area here, Woodside Drive, Locust Street, this is currently in the Town of Warwick. As you can see it is pretty irregularly shaped. If I turn the map over, this is the proposed Village View Cluster Subdivision, this is the area that we are talking about with

regard to the strip. This is a blowup of that strip and that shaded area is proposed access road crossing through here. The balance of this is proposed to be open space.

Supervisor Sweeton: Ok, so we did receive one piece of correspondence today that came from the offices of Elizabeth Cassidy, an attorney representing their clients the Maher's and it was addressing the issue that was brought up last time. It was a letter from Bluestein's office that the SEQRA that was done would prevent, or future proposal of annexation of the other parcels would be a violation of that SEQRA. She places an argument as to why that is not in fact true. One question that I had to the applicant was on that sliver, on some of your maps it is shown being part of the open space but on some it is not. Can you clarify the intent of the developer for that parcel?

Kirk Rother: Yes, the intent is that it is part of the open space. I'm not sure which maps we don't have it shown as open space but so on this particular map here again, Locust Street, Woodside Drive, this is a stream that runs parallel to Woodside Drive. This whole area is proposed as open space, there is some stormwater management features in here also. Here is the roadway and then this particular piece of land is proposed to be hooked to that open space and that will all be owned by Village View HOA.

Supervisor Sweeton: Ok, so there would be a deed restriction on that parcel. Is that correct?

Kirk Rother: That is correct. And there were some earlier, the prior iteration of this plan, which is a totally different cluster plan, there was a proposed home situated on that lot. That has been removed quite a long time ago. It was prior to this plan.

Supervisor Sweeton: Ok.

Mayor Newhard: So, does the deed restriction allow for use as a passageway for water and sewer?

Kirk Rother: So, I know that's a question that came up and I discussed that a little bit with the project attorney today. We can certainly do that. We can put whatever deed restrictions on it that the Board, the Planning Board, the Village Board, chooses, but also worth noting is this is going to become owned by the HOA so at that point in time the developer will not be in control of that anymore.

Mayor Newhard: Ok.

Kirk Rother: The HOA would be.

Supervisor Sweeton: Right, but the developer is going to form the HOA, right.

Kirk Rother: Yes.

Supervisor Sweeton: So, he'll control it until such time as it goes to all of the individual lot owners, right. I think some sort of deed restriction, it's up to the Village Board obviously, but it seems that a deed restriction would be the way to go.

Kirk Rother: We can do that. Actually, another thing, thinking about it, the Village's code with regard to open space is pretty specific in that it's to remain as open space and open space only even in this larger area of open space where we have proposed stormwater ponds, those ponds are subtracted out of the acreage for the purposes of calculating the open space.

Supervisor Sweeton: Ok. Does any Town Board Members have any other questions? Village Board, Mayor, do you have any questions before we open it up?

Mayor Newhard: Board Members, any questions or concerns?

Supervisor Sweeton: Ok, so we'll open to the public and ask you to come forward to the mic and give us your name for the record and make your comment.

WRITTEN COMMENT:

1. Letter from Elizabeth Cassidy dated February 25, 2021. (See attached)

PRIVILEGE OF THE FLOOR:

Lugene Maher: Hello, my name is Lugene Maher. I live at 52 Woodside Drive. I'd like to talk about the annexation petition in terms of two key questions. The first is, what problems are we trying to solve for? And the second is, what is the end game? In terms of the problems, we are trying to solve for, the ones that have been raised to date are to clean up the tax maps and to address the maintenance and upkeep of the access road that cuts across a very small portion of the sliver of land that is up for annexation. In terms of the tax maps, it is our understanding that the tax maps have never really been a huge issue to date. This property has been divided this way between the Town and the Village for many years, long before Mr. Silber owned property. In addition to that there are several residents along Woodside Drive whose properties are similarly divided between the Village and the Town, so this is not unique situation to Mr. Silber. In regard to the maintenance and upkeep of the access road, this has actually been brought up at several previous Board meetings and it was discussed at those meetings that a simple agreement between the Town and the Village can be put in place to address the responsibilities of the maintenance and the upkeep of the access road. So, I would state that in response to the question, what problems are we trying to solve for, the answer is none. There aren't any that exist at this time. So, moving on to the end game. I'd like to start by reminding everyone that in the early design plans for this development there was a house on that sliver of land. It was subsequently removed and never replaced. When that happened, it created a right-of-way into approximately seventy acres of Town holdings that are also owned by Mr. Silber and on which he may chose to build and extend further with his development. He can also choose to sell the property and a different developer, as well as Mr. Silber, can decide to petition the Village to annex all seventy acres of Town holdings if they choose to do so. Now, while we've raised this in the past, I'll be frank, there are several Board members who have told us that they would never allow that to happen and that measures have been put in place to protect the density of the Village. The fact of the matter is that neither one of those are absolutes. I believe everybody in this room knows that developments are all

about access to sewer and water. They are very important to developers. I'd actually like to draw your attention to a letter submitted by Attorney Jay Myrow dated January 14th in which he wrote in part, "Since the SEIS was adopted relying on the proposed use of the Town parcel, the applicant or any future owner of the Town parcel would be bound by its presentation in the SEIS and essentially be precluded from proposing annexation or a substantially different use of the Town parcel in the future owner." I would now like to draw your attention to a letter submitted by Attorney Elizabeth Cassidy, dated today, February 25, 2021, in which she wrote in part, "As with any land use application, nothing prevents this applicant or a future owner from submitting revised plans and updating SEQRA documents in connection with a future annexation." I'd like to move on to the end game and what I think is probably the most important point. Kirk Rother, the engineer for the developer has stated at multiple Board meetings that the annexation is not important to the developer, they can take it or leave it. If that is the case, I would like to ask why we are here. Why we had to have two public hearings with two Boards in the midst of a pandemic if this is not important to them? Why have they spent all this time and money on the annexation if they could take it or leave it? And why haven't they withdrawn the application if it's not that important? I would argue the answer is, it is important to them. The answer is the end game, and the end game is the future potential benefit that it may afford Mr. Silber or some other developer who may own that property in the future. In closing, I would like to ask both Boards to please consider Attorney Cassidy's urging in her letter dated today in which she wrote, "I urge both the Town Board and Village Board to require a restrictive covenant." I would ask that if you decide not to require that, that you please do not rubber stamp this approval because of the potential down-stream impact it could have on the Village. I would ask that you please vote no on the annexation petition. Thank you for your time. (See attached letter submitted to the Clerk)

Supervisor Sweeton: Thank you.

Mayor Newhard: Thank you.

Supervisor Sweeton: Anyone else like to speak on the annexation?

Raymond Maher: My name is Raymond Maher. I live at 52 Woodside Drive. On that sliver of land, that would become part of the homeowner's association, would the homeowner's association have the right to sell that in the future? It becomes a moot point saying that it is protected because it would be part of the homeowner's association but if the homeowner's association so decides to sell it for access to that seventy acres, is that possible?

Supervisor Sweeton: I'm assuming, maybe Mr. Rother can clarify, that the parcel would be merged. So, it wouldn't be an independent parcel any longer. It would be part of the open space of the subdivision. So, therefore I don't believe that any HOA we've ever done in the Town, that you can sell your open space.

Raymond Maher: Ok, thank you.

Supervisor Sweeton: I would get them on the record to say they intend to merge the parcels, ok.

Kirk Rother: We do.

Supervisor Sweeton: Ok, so there you go.

Kirk Rother: That parcel would be hooked across the street to the parcel.

Supervisor Sweeton: Right. So, they would remove the lot line and it would become part of that parcel. Anyone else who would like to speak?

Freya Carlbon: I'm Freya Carlbon and I live at 43 Woodside Drive with my husband John Gruen and I'm going to read a letter that was submitted tonight.

Dear Board Members, Town and Village of Warwick: We would like to follow up a couple of points brought up previously in our last communication to you this past January. To continue our discussion of a possible rush hour traffic bottleneck at the corner of Locust and Maple Street/Route 94 we inquired of Lieutenant John Rader of the Warwick Police Department. He said, "The traffic in the entire Town of Warwick increased during the past few years." His statement indicates to us that the volume of traffic on Maple Ave/Route 94 has increased. And may, in likely possibility, increase in the next several years. Due to the COVID pandemic, combined with severe weather conditions, available traffic data from the New York DOT has been hard to get. We request a forbearance for now while the DOT "un-burdens". In or December 19, 2019 letter to Mayor Newhard and members of the Village Planning Board we expressed our understanding that Village Trustee Elaine (Eileen) Patterson identified the Woodside-Locust intersection as the "worst" in Warwick. We hope that her views, as they have been relayed to us, remain an element in your discussions. Thank you very much.

Supervisor Sweeton: Thank you. Can you submit that letter to the Clerk? Is there anyone who would like to address the annexation petition this evening? OK, I don't know if any Town Board members have any other questions on this? Mayor Newhard, Village Board?

Mayor Newhard: I do have a question and that is the concept of a restrictive covenant. In the letter from Elizabeth Cassidy, would that be a restrictive covenant on the proposed town acreage? That is the undeveloped subdivision in the town.

Kirk Rother: No. The way I envisioned this coming together is all of the land that would be owned by the HOA which would be this area here, this central area here, the entire stream corridor and including this swath through here which is a patch of steep slopes, that's why that's open space. So, that would all be one parcel of land owned by the HOA with whatever deed restrictions or covenants the municipality feel comfortable having imposed on it and then that HOA would also have some bylaws as to what could be done with it which would obviously also have to be in harmony with whatever deed restrictions have been put on the property. And like I indicated earlier, I haven't read your code specifically in a little while, but your open space requirements are pretty specific in that the land it to basically remain in its natural state with no improvements, I'm paraphrasing.

Mayor Newhard: I think what my concern is not really so much about the subdivided parcel in the Village as is the potential of the subdivision of the Town parcel and the annexation of that next piece into the Village and then create a greater density, created because of that.

Kirk Rother: If we were going to seek annexation of the eighty-acres of land?

Mayor Newhard: Right.

Supervisor Sweeton: Can I point out that we still do have an intermunicipal agreement, I believe, with the Village of Warwick on annexations where if they were to try to annex the bigger portion it would come in at Town zoning, not Village zoning.

Kirk Rother: Right.

Supervisor Sweeton: And then it would be up to the Boards, the Village Board, to decide whether they wanted any additional density lots. The other issue I think needs clarification to me is whatever restrictions you're going to put on the sliver, right, because the concern is that the sliver provides an access for sewer and water. So, I think you need to clarify that, in my mind, at least for the Town Board, what your intent is there.

Kirk Rother: Right.

Supervisor Sweeton: I point out to residents that the larger parcel at the top where the road is going out to Sleepy Valley Road it leads to the back parcels, right, so if they are developing the Town parcels, that's where they are going, out through that road which, unless the Village allows them hook into sewer at the end of the top portion of the Village piece, I don't see how to connect to it if you remove their ability to connect to that little sliver. I would ask that the applicant clarify that for the Town Board before we make any decision.

Kirk Rother: Clarify that just in writing? Indicate that there's no (inaudible).

Supervisor Sweeton: Yes, please. Ok.

Kirk Rother: Just so the Board is aware, the reason we got to..., it's true what Mrs. Maher had said as far as the applicant and whether there was one preference or the other, we really don't have one. This originated out of discussions at the Planning Board level as to what will be the best way to address this and the consensus was, just clean it up. It's not a very complicated matter, that's why we are here. There were prior plans, there's even an approved twenty-eight lot plan that had future connections into the Town parcel, they were higher up. This is not where we would put a future road connection due to terrain and drainage impacts the neighbors, so there is no ulterior motive, it is just simply...

Supervisor Sweeton: If you just clarify that in writing to us.

Mayor Newhard: So, how far along is the Town subdivision.

Kirk Rother: Not at all. The only reason we did anything as far as conceptually is for SEQRA purposes so that it wouldn't be a perception of segmentation. And with regard to whether or not we could change our scope on the Town property at a later date, I defer to the attorneys on this, I would agree with what Ms. Cassidy said that we could change our plans at any time, like we went from our twenty-eight-lot plan to a forty-two-lot plan, but the difference is we never perfected that twenty-eight-lot plan. Once we build this, once we are vested in this, which is based on the environmental review that was done on the whole thing, I think that changes that a little bit. I think we are now more bound to the EIS that we prepared.

Supervisor Sweeton: Ok, any other, Michael do you have any other questions?

Mayor Newhard: Barry.

Trustee Cheney: Just for clarification because I'm not sure I heard this as distinctly as I'd maybe like to hear, the applicant would be willing to accept a restrictive covenant over this 0.6 acres relative to future development?

Kirk Rother: Absolutely. Whatever the Boards desire.

Supervisor Sweeton: Ok. And just for the record, I want to point out that Attorney Myrow, who is the Town Attorney, has recused himself of any discussion of this with the Town Board whatsoever. Any other comments from anyone? At this point we'd make a motion to close this hearing.

Joint Public Hearing for the Village View Annexation Petition - Closed

Town of Warwick:

A MOTION was made by Councilman Shuback, seconded by Councilman to close the joint public hearing

| | <i>Ayes</i> | <i>Nays</i> | <i>Abstain</i> |
|---|-------------|-------------|----------------|
| <i>Supervisor</i> Michael Sweeton | X | | |
| <i>Councilman</i> James Gerstner | X | | |
| <i>Councilman</i> Floyd DeAngelo | X | | |
| <i>Councilman</i> Mickey Shuback | X | | |
| <i>Councilman</i> Russell Kowal | X | | |
| TOTAL | 5 | 0 | 0 |

Motion carried (5 Ayes, 0 Nays) Supervisor Sweeton declared this resolution duly adopted.

Village of Warwick:

A MOTION was made by Mayor Newhard, seconded by Trustee Lindberg, and carried to close the public hearing.

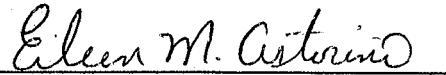
| | <i>Ayes</i> | <i>Nays</i> | <i>Abstain</i> |
|------------------------------------|-------------|-------------|----------------|
| <i>Mayor</i> Michael Newhard | X | | |
| <i>Trustee</i> Barry Cheney | X | | |
| <i>Trustee</i> William Lindberg | X | | |
| <i>Trustee</i> Corey Bachman | X | | |
| <i>Trustee</i> George McManus | | X | |
| TOTAL | 4 | 1 | 0 |

Motion carried (4 Ayes, 1 Nays) Mayor Newhard declared this resolution duly adopted.

Supervisor Sweeton: Thank you all. We are not taking any action tonight; I assume the Village isn't either. Thank you all for coming.

ADJOURN: Motion Supervisor Sweeton, seconded Councilman Gerstner that the joint public hearing with the Village of Warwick meeting be adjourned. Motion Carried (5 ayes, 0 nays) 7:32pm

02-25-21 RA



Eileen Astorino, Town Clerk

NOTICE OF CONTINUED JOINT PUBLIC HEARING

PLEASE TAKE NOTICE that the Town Board of the Town of Warwick and the Village Board of the Village of Warwick will hold a joint public hearing on February 25, 2021 at 7:00 p.m. at the Town of Warwick Town Hall, 132 Kings Highway, Warwick, New York 10990.

The subject of the joint public hearing is the annexation petition under Article 17 of the General Municipal Law from Village View Estates, LLC, to annex into the Village of Warwick approximately 0.6 acres of real property identified on the Town Tax Map as Section 43, Block 1, Lot 4.2.

The Town Board and the Village Board will at the above date, time and place hear all persons interested in the subject matter hereof. Persons may appear in person or by agent. All written communications addressed to the Boards must be received by the Boards at or prior to the public hearing.

BY ORDER OF THE VILLAGE BOARD
TOWN OF WARWICK
EILEEN ASTORINO
TOWN CLERK

Dated: February 17, 2021

LAW OFFICE OF ELIZABETH K. CASSIDY, PLLC
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WARWICK, NEW YORK 10990
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RECEIVED

FEB 25 2021

Town of Warwick
Town Clerk

February 25, 2021

Hon. Michael Sweeton, Supervisor
Town of Warwick Town Board
132 Kings Highway
Warwick, NY 10990

Hon. Michael Newhard, Mayor
Village of Warwick Board of Trustees
77 Main Street
Warwick, NY 10990

Re: Annexation Petition of Village View LLC

Dear Supervisor Sweeton, Mayor Newhard, Members of the Town Board and Members of the Village Board:

This office represents Raymond and Lugene Maher, neighboring property owners to the proposed Village View project. I have been monitoring the development as it has progressed through the approval process for the past several years.

The comments contained in this letter are focused solely on the annexation petition of Village View LLC and not the merits of the overall project. This letter is not intended to supersede my comment letters as to the legal infirmities of the project previously submitted to the respective legislative and planning boards.

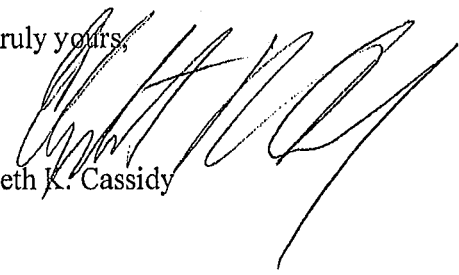
The Applicant has made a commitment to both boards that it will not seek to annex the larger town parcels (SBL 31-2-84.1, 84.2, 85.2 and 43-1-3) in the future. This commitment is imbedded in the Supplemental Environmental Impact Statement prepared in connection with the project. I must, however, respectfully disagree with Attorney Myrow's assessment in his letter of January 14, 2021 that the SEQR documents legally preclude future annexation.

The procedural history of the instant application demonstrates the exact opposite. Here, the applicant received approval for a 28-lot subdivision having undergone a lengthy SEQR process. The applicant has since submitted a revised application and prepared revised SEQR documents. If we apply Attorney Myrow's assessment, the applicant would not have been permitted to seek amended subdivision approval as they would have been bound by the prior SEQR documents. As with any land use application, nothing prevents this applicant or a future owner from submitting revised plans and updating SEQR documents in connection with a future annexation.

I urge both the Town Board and Village Board to require a restrictive covenant to run with the land be recorded on the land records to put world on notice. Absent such restrictive covenant, the applicant's commitment not to annex the larger town parcels is illusory.

Our office will continue to monitor the progress of the project. I thank both Boards for their attention to and thoughtful deliberation on this matter.

Very truly yours,


Elizabeth K. Cassidy

Cc: Raymond and Lugene Maher

February 25, 2021

Lugene Maher
52 Woodside Drive
Warwick, NY 10990

RECEIVED

FEB 25 2021

Town of Warwick
Town Clerk

Re: Village View Estates, LLC Annexation Petition

I would like to discuss the annexation in terms of two key questions:

1. What problems are we trying to solve for?
2. What is the end game?

First, the question of what problems are we trying to solve for: the problems stated by the applicant and some Board members are the following:

- The annexation will "clean up the tax maps"
- The annexation will make road maintenance of the access road that crosses over a small portion of the sliver of the land in question, easier to deal with.

Regarding the tax maps: this property has been divided this way between the Town and the Village for many decades, and long before Mr. Silber owned the property. The tax maps have never been an issue, to our knowledge. Additionally, several residents along Woodside Drive have properties that are similarly divided between the Town and the Village, so this situation is not unique to the applicant.

Regarding the maintenance of the proposed access road, this topic has been raised at several Board meetings and it was decided that a simple agreement between the Town and the Village could be put in place to address the maintenance and upkeep of the road.

The answer to the question "what problems are we trying to solve for?" is none. There aren't any.

Regarding the question of the end game: In one of the earlier design plans of the development, there was a house on this sliver of land. It was subsequently removed by the developer and never replaced. When this happened, it created a right-of-way to the applicant's Town holdings of approximately 70 acres on which he plans to build Phase II of this development. The right-of-way would potentially provide access to sewer and water if he, or any other developer who may own the property should Mr. Silber decide to sell it, were to successfully petition to annex all 70 acres into the Village. **Developments are all about access to sewer and water.**

Contrary to what Attorney Jay Myrow stated in his letter dated, January 14, 2021, "Since the SEIS was adopted relying on the proposed use of the Town Parcel, the applicant or any future owner of the Town Parcel would be bound by its presentation in the SEIS and essentially be precluded from proposing annexation or a substantially different use of the Town Parcel in the

future, I refer you to a letter submitted by Attorney Elizabeth Cassidy, dated Feb. 25, 2021, in which she writes "As with any land use application, nothing prevents this applicant or a future owner from submitting revised plans and updating SEQR documents in connection with a future annexation."

While several Board members have stated they would never allow the annexation of the Town property into the Village and that measures have been put in place to protect the density of the Village, these are not absolutes. Legally, as you read in Attorney Cassidy's letter, the current applicant or a new owner can petition for annexation of the Town property into the Village.

In addition, and most importantly, the applicant has stated on several occasions, including the Public Hearing about this matter held on January 14, 2021, that they could "take or leave the annexation", because it is not that important to them. If this is the case, why did they submit the petition for annexation? Why have we had two Public Hearings with two Boards in the middle of a pandemic if it is not that important to them? Why have they spent all this time and money on the petition if it is not important to them? Why haven't they withdrawn the application if it is not that important to them? The answer is simple: because it **IS** important to them. It is important because of the potential ability to annex additional Town property into the Village. This is the end game.

I ask both Boards to consider Attorney Cassidy's request to require a restrictive covenant. If you do not, then I ask both Boards to please do not rubber stamp this approval because of the potential down-stream impact it could have on the Village. Please vote NO on the annexation petition. Thank you.

Sincerely,
Lugene Maher