

TOWN OF WARWICK PLANNING BOARD

August 18, 2021

Members present: Chairman, Benjamin Astorino  
Roger Showalter, Vice-Chairman  
Dennis McConnell, Bo Kennedy,  
Laura Barca, HDR Engineering  
J. Theodore Fink, Greenplan (WebEx)  
John Bollenbach, Planning Board Attorney  
Connie Sardo, Planning Board Secretary

The regular meeting of the Town of Warwick Planning Board was held Wednesday, August 18, 2021 at the Town Hall, 132 Kings Highway, Warwick, New York. Chairman, Benjamin Astorino called the meeting to order at 7:30 p.m. with the Pledge of Allegiance.

Mr. Astorino: We have our Town Planner, Ted Fink here tonight via WebEx. We also have Ted's comments tonight in which Mr. McConnell will read tonight to make the minutes clearer.

**Review of Submitted Maps:**

***Sibilla Subdivision***

Application for Sketch Plat Review of a proposed 4-Lot (Minor) subdivision, situated on tax parcel S 27 B 1 L 116; parcel located on the right side of Skysail Lane 1000 feet south of Amity Road, in the RU zone, of the Town of Warwick. Previously discussed at the 3/17/21 Planning Board Meeting.

Representing the Applicant: Dave Getz from Engineering Properties & Surveying. Tom Sibilla, Applicant.

The following review comments submitted by HDR:

1. Planning Board to discuss SEQRA.
2. Applicant to discuss project.
3. Conservation Board – no comments received
4. Architectural Review Board – no comments received
5. OC Planning Department – 03/10/21 no advisory comments
6. TW Building Department – 01/28/21 permit 16303 for shed/fence has expired; permit 17584 for pool has expired; permit required for hot tub. Permit 16303 has been closed.
7. ZBA: Proposed Lot 1 (the existing home) has a front yard setback of 50-ft when 75-ft is required and all lots required a 280(a) for access from a non-public road. Front yard setback was withdrawn; variance granted for all four 280(a) on May 24, 2021.
8. Planning Board to determine if a site inspection is necessary.
9. Provide a soil restoration plan in accordance with the GP-0-20-001 and the NYSDEC Standards & Specifications for Erosion and Sediment Control, latest edition. Please include Erosion and Sediment Inspection requirements in notes on drawing set.

10. Per the NYSDEC Standards for Erosion and Sediment Control, Concrete Washout Basins must be located a minimum of 100 feet from drainage swales, storm drain inlets, wetlands, streams, and other surface waters.
11. Stormwater management note on PB-6 indicates 3.9±acres will be disturbed, but SWPP states 2.01±acres will be disturbed. Confirm and reconcile area of disturbance.
12. Identify in SWPPP and on drawing set where the SWPPP will be located on-site.
13. There is a “Swale” linetype on PB-3 and PB-4 which is not shown in the legend. Please add swale detail if intending to use as a part of the SWPPP.
14. Skysail Lane must be improved to be a 24-ft wide private road, to private road specifications; more than 6 homes will access it.
15. A shared driveway agreement for all existing lot and the proposed new lots must be prepared and submitted.
16. Provide a map note stating that “No construction or proposed use shall begin until the maps are signed by the Planning Board Chairman and Building Department permits are obtained.” Sheet 1, General Note 13
17. Surveyor to certify that iron rods have been set at all property corners.
18. The liber and page for the Agricultural and Biodiversity notes, as well as the Shared Driveway Agreement must be added to the plan.
19. Payment in lieu of parkland for three lot per Town of Warwick Town Code §75-3.A.(2)(a)[3].
20. Payment of all fees.

The following comment submitted by the Conservation Board:

Sibilla Subdivision – None submitted.

The following comment submitted by the ARB:

Sibilla Subdivision – None submitted.

Comment #1: Planning Board to discuss SEQRA.

Mr. McConnell: This SEQRA comment has been prepared by, Mr. Ted Fink: *“I only have one additional comment on the SEQR process for this subdivision. This site is within the BC-O District. Even though this is a minor subdivision, it is a conventional subdivision and Section 164-47.9.C requires there to be a biodiversity assessment completed. The applicant has stated that a wetland on the site is 600 feet from the nearest disturbance. However, the DEC has also stated that there is Indiana bat habitat nearby and so this is another reason why a biodiversity assessment is required. The Zoning requirement is: “Applicants proposing site development that will potentially impact existing biodiversity areas as identified in the Southern Walkkill Biodiversity Plan will provide to the Planning Board a map depicting any potential intrusions into identified conservation zones, along with a brief narrative detailing the nature of those potential impacts and the method(s) that will be employed to mitigate those impact(s).” This narrative involves a walkover by a biologist and a narrative discussion of what is found, unless there is something significant on the site that warrants an additional site-specific habitat assessment. We won’t know that until the first step has been taken”.*

Comment #2: Applicant to discuss project.

Dave Getz: The Sibilla's own approximately 36 acres. It includes the private shared driveway Skysail Lane which connects to Amity Road. There is one existing dwelling on the property. That dwelling would be Lot 1, which is situated on approximately 16 acres. We are proposing 3 additional lots. Two of the lots would be approximately 4 acres each which would be located downhill. The third lot would be approximately 12 acres which would be located uphill. We had done a site visit today with the Planning Board. The driveways and houses would be situated fairly close to Skysail Lane. We are trying to minimize impacts.

Mr. Astorino: Laura, are these the same comments from before?

Laura Barca: Yes.

Mr. Astorino: Dave, do you have any questions regarding the comments?

Dave Getz: I have a question on Comment #14 regarding the widening of the road. In the Comment #14, it states 24 feet.

Mr. Astorino: That is wrong.

Laura Barca: It should state 16 feet wide.

Mr. Astorino: I am going to get into that now. First, we will list Comment #3 through Comment #20 for the record. We had done a site visit this evening. We had discussed the width of the road. It is only that section going up basically from that turn where it is 17 feet wide already and making it to 16 feet wide. We ask that you take a look at both sides of the road. We understand you could do it going up the left side towards the horse fence. Get estimates or quotes or the feasibility of both sides. I know there are 2 poles that would have to come down and put the electric in the ground.

Dave Getz: Or, we could have those poles shifted. Is that correct?

Mr. Astorino: Yes. Or, you could get those poles shifted. Whatever works for you. We understand there is a cost involved. If you could bring us those quotes or estimates to see which is feasible or not. The Planning Board would make a decision from that. It does need to be widened.

Mr. McConnell: My thinking was the way we were talking about it originally, it put all of the shoulder onto one side of the road. It meant that the other side of the road does not have a shoulder. That side would be only so far from the utility poles. I started thinking that it would be better to have it on both sides of the road. That was the germination the idea if we could do something different than what we originally discussed.

Mr. Astorino: It may not be able to be done. Let us know.

Dave Getz: Yes. We will contact Orange & Rockland the options about the utilities. Do you need an Environmental Report as per Ted's comment?

Mr. Astorino: Yes. That would sound like a Dave Griggs issue. Maybe, you could get a letter from him regarding that. Let's ask Ted on the WebEx.

Dave Getz: Ted, could we get a copy of your comment.

Connie Sardo: I have a copy of Ted's comment for you.

Dave Getz: Thank you. I will contact Dave Griggs from ERS Consultants.

Mr. Astorino: Ted, is that correct that Dave Griggs would go out to the site and he would give us a report?

Mr. Fink: Yes. Dave has done these many times. He gives us 1 to 2 pages of a synopsis on what he finds out at the site. That would be the only trigger if there was a need for further work. This is mainly regarding the Indiana Bats. That is what he needs to check out.

Dave Getz: Yes. Tom, what I have seen before that if there was an issue with the Indiana Bats, it wouldn't prohibit you from clearing trees. The bats need the trees for their habitat. It would limit the time of year that you could clear trees. It would have to be done during the winter.

Tom Sibilla: Ok.

Mr. Astorino: Does the Applicant request to be set for a public hearing at the next available agenda?

Dave Getz: Yes. We request to be set for a public hearing at the next available agenda.

**Mr. McConnell makes a motion to Set the Sibilla Subdivision for a Final Public Hearing at the next available agenda.**

Seconded by Mr. Kennedy. Motion carried; 4-Ayes and 0-Nays.

Dave Getz: Thank you.

Tom Sibilla: Thank you.

Comment #3: Conservation Board – no comments received

Comment #4: Architectural Review Board – no comments received

Comment #5: OC Planning Department – 03/10/21 no advisory comments

Comment #6: TW Building Department – 01/28/21 permit 16303 for shed/fence has expired; permit 17584 for pool has expired; permit required for hot tub. Permit 16303 has been closed.

Comment #7: ZBA: Proposed Lot 1 (the existing home) has a front yard setback of 50-ft when 75-ft is required and all lots required a 280(a) for access from a non-public road.

Front yard setback was withdrawn; variance granted for all four 280(a) on May 24, 2021.

Comment #8: Planning Board to determine if a site inspection is necessary.

Comment #9: Provide a soil restoration plan in accordance with the GP-0-20-001 and the NYSDEC Standards & Specifications for Erosion and Sediment Control, latest edition.

Please include Erosion and Sediment Inspection requirements in notes on drawing set.

Comment #10: Per the NYSDEC Standards for Erosion and Sediment Control, Concrete Washout Basins must be located a minimum of 100 feet from drainage swales, storm drain inlets, wetlands, streams, and other surface waters.

Comment #11: Stormwater management note on PB-6 indicates 3.9±acres will be disturbed, but SWPP states 2.01±acres will be disturbed. Confirm and reconcile area of disturbance.

Comment #12: Identify in SWPPP and on drawing set where the SWPPP will be located on-site.

Comment #13: There is a "Swale" linetype on PB-3 and PB-4 which is not shown in the legend. Please add swale detail if intending to use as a part of the SWPPP.

Comment #14: Skysail Lane must be improved to be a 24-ft wide private road, to private road specifications; more than 6 homes will access it.

Comment #15: A shared driveway agreement for all existing lot and the proposed new lots must be prepared and submitted.

Comment #16: Provide a map note stating that "No construction or proposed use shall begin until the maps are signed by the Planning Board Chairman and Building Department permits are obtained." Sheet 1, General Note 13

Comment #17: Surveyor to certify that iron rods have been set at all property corners.

Comment #18: The liber and page for the Agricultural and Biodiversity notes, as well as the Shared Driveway Agreement must be added to the plan.

Comment #19: Payment in lieu of parkland for three lot per Town of Warwick Town Code §75-3.A.(2)(a)[3].

Comment #20: Payment of all fees.

**Other Considerations:**

1. Town Board Memo dated 8/2/21 in regards to Amendment Zoning Law #4 to Chapter 164. Planning Board to discuss recommendation letter to the Town Board.

Mr. Astorino: Do any Board members or Professionals have any comments or concerns on the Town Board's memo. I think it makes sense.

Mr. McConnell: There is something that I would like to raise that has been bothering me with the way the States are dealing with cannabis on whether it would be medical or recreational. Most people don't realize that it is still a federal offense. It is a schedule one drug. The most part is that doesn't make a big difference except for instance. If you had a medical marijuana card because you had something that was called for it. It would call into question whether you could have a pistol. The 4473 which is the BATF Form that one fills out, it asks about whether you use. That lead me then to question the wisdom of the States that have approved this knowing it is a violation of federal law. What are we doing in terms of teaching the society that there are laws you could ignore, it was like when they dropped the speed limit to 55 MPH on the highway but they did not enforce it? Everyone learned that there are some laws that you don't have to obey. It bothers me from a philosophical point of view. I wonder if our Town Board has discussed that at all when they are considering these things? What they are doing is they are going to say they passed this. They are going to say in this part of the Town you can go and buy something that the federal government says is illegal to buy.

Mr. Astorino: That is above the Town. It is a state thing.

Mr. McConnell: The Town does not have to approve it.

Mr. Astorino: I agree with that.

Mr. Showalter: You brought up a great point. I think we should bring this up to the Town Board. If it bothers you so much philosophically and I see your passion about it and we might not agree on many things, but I do agree with what you are saying. They are saying that Marijuana is a good business, etc... I see the point. I also see your point on why don't the states lobby. Ben is right whereas the Town Board does not have a lot to do with it. They have to listen to how the citizens feel. They are the first ones. I agree with you 100%. Why hasn't the feds said anything about repeal the law to get rid of it and have the states handle it?

Mr. McConnell: I agree. In Ted's fine drafting that he has, he talks about it like it is regulating liquor. Liquor is not federally prohibited. It is not a Class 1 drug.

Mr. Showalter: Right. Liquor is regulated by the states.

Mr. McConnell: The feds have gotten lazy here. Why haven't they petitioned the federal government to eliminate this? The states have not followed through. The feds have not done their job. It upsets me.

Mr. Astorino: I will ask Ted about that. Ted, did you hear that?

Mr. Fink: Whoever the Town wants to proceed with this as a policy matter is one thing. I was very careful in my selection of words comparing cannabis to alcohol. I said it was analogous. The reason I used that word is that it means that it is similar in some respects but not in all respects. I wanted to choose my words very carefully just for that reason. It is obviously that alcohol is legal almost everywhere. There are still dry towns in lots of states. This is a situation where there are some similarities. The big difference is that it is illegal federally. I think that any of these dispensaries would have to deal with that. I think they are cash only business. I don't think they could do any banking. I don't know about insurance. I think there are a lot of questions that come up.

Mr. McConnell: I think the feds have produced a banking act that would permit these dispensaries to taking advantage of banking situations. That is just an example of where the twists are.

Mr. Showalter: I think on a Town or local municipality or State level what I have seen through all of this is that the Towns and States are creating their own local laws so that the feds would see that and change the federal law perhaps?

Mr. McConnell: Maybe not.

Mr. Showalter: Maybe they will. Dennis, I see your point as a lawyer whereas a law is a law. Maybe they know something that we don't know.

Mr. McConnell: Most people don't realize that if you are going to partake. You put at risk one of your Constitutional Rights the 2<sup>nd</sup> Amendment the Right to Bear Arms. It can be adversely impacted by saying it is legal for me to go and buy. This is something that the 2<sup>nd</sup> Amendment supporting press has been advertising and talking about for a number of years. Most people ignore it.

Mr. Astorino: My personal belief on this that this would be a Town of Warwick policy of local law. With that being said, going onto Dennis point not only being the 2<sup>nd</sup> Amendment, in my business and Roger's business we have driver's licenses. Where is the testing? If you are impaired with alcohol there is a test. If you want to be that foolish, then drink and drive any pay the consequences. If you go and buy a joint and smoke it, you can't come in and drive a commercial vehicle. You should not be operating any motor vehicle. That is not our say. That is my pet peeve on it. As far as Ted's comments, I feel they are fine.

Mr. McConnell: I think Ted's comments are fine.

Mr. Astorino: I don't have a problem with it. Let the Town Board have their public hearing and they will make a policy. That is my opinion. Could we have a motion to send this letter of recommendation to the Town Board?

Mr. Kennedy makes a motion on the recommendation letter to the Town Board.

Seconded by Mr. Showalter. Motion carried; 3-Ayes and 1-Nay (Mr. McConnell).

2. **Schutzman & Klein Lot Line Change** – Letter from Dave Getz, Engineering & Surveying Properties, dated 7/23/21 addressed to the Planning Board in regards to the Schutzman-Klein Lot Line Change – requesting 6-Month Extension on conditional Final Approval of a proposed lot line change, situated on tax parcels S 47 B 1 L 81 and L 82.22; parcels located on the eastern side of Bellvale Lakes Road 11,500 feet north of Iron Forge Road (282 Bellvale Lakes Rd.), in the MT zone, of the Town of Warwick, County of Orange, State of New York. Conditional Final Approval was granted in 1/20/21. *The Applicant has stated that the extension is needed because delays were encountered in filing documents at the O.C. Clerk's office which has been a major factor in the need for the extension.* The 6-Month Extension becomes effective on 7/20/21.

Representing the Applicant: Dave Getz from Engineering Properties and Surveying.

Mr. Astorino: What is stated here is true. Everything in the County is completely back logged for months.

Connie Sardo: I have been talking to Mr. Schutzman quite a bit. He has been trying to get this done.

Dave Getz: Yes. He has been on them.

Mr. McConnell makes a motion on the Schutzman & Klein Lot Line Change application, granting 6-Month Extension on conditional Final Approval of a proposed lot line change, situated on tax parcels 47-1-81 & 82.22 located at 282 Bellvale Lakes Rd). Conditional Final Approval was granted on 1/20/21.

The 6-Month Extension becomes effective on 7/20/21.

Seconded by Mr. Kennedy. Motion carried; 4-Ayes and 0-Nays.

3. Planning Board Minutes of 6/16/21 & Special PB Minutes of 6/24/21.

Mr. McConnell makes a motion to Approve the PB Minutes of 6/16/21 & Special PB Minutes of 6/24/21.

Seconded by Mr. Kennedy. Motion carried; 4-Ayes and 0-Nays.

4. Planning Board to discuss canceling the 8/23/21-Work Session & 9/1/21-PB Meeting.

Mr. Kennedy makes a motion to cancel the 8/23/21-Work Session & 9/1/21-PB Meeting.

Seconded by Mr. McConnell. Motion carried; 4-Ayes and 0-Nays.

**Correspondences:**

1. Letter from William J. Schneider, PE, addressed to the Planning Board, dated 8/18/21 – in regards to Green Thumb Industries John Hicks Drive (WVLDC Property - SBL #46-1-41 & 48).

Mr. Astorino: We received a letter from William Schneider of Green Thumb Industries which is located at the Prison site. This is an applicant that have purchased the remaining lots from WVLDC.

Laura Barca: Minus Citiva.

Mr. Astorino: Minus Citiva, which is also a Marijuana manufacturer. This was from the WVLDC Subdivision. The Applicant has purchased the remaining lots of that subdivision for their process. I will have Laura Barca explain what this letter is about.

Laura Barca: This is for Green Thumb Industries who is taken over the balance of the subdivision. HDR has reviewed the SWPPP for this project. I will read the letter that we received from William J. Schneider, PE for Green Thumb Industries, addressed to the Planning Board, dated 8/18/21. The letter is stated as follows:

*Dear Mr. Astorino,*

*On behalf of the Applicant, Green Thumb Industries, Paulus, Sokolowski and Sartor (PS&S) is requesting a waiver from the Town Code §164-47.2.E(2) for the use restriction for using infiltration basins in the Aquifer Protection Zone. The proposed project includes the use of existing stormwater infiltration basins to achieve water quality and quantity requirements set forth by the New York State Department of Environmental Conservation (NYSDEC).*

*The infiltration basins on-site were constructed as part of the John Hicks Drive roadway improvements approved in August of 2014. The infiltration basin on Lot 41 will not be modified as the proposed development will not have any negative impact on the basin or the contributing area of the basin. The infiltration basin on Lot 47 will be modified to raise the spillway and provide an outlet control structure, as existing areas draining to the basin will be improved with impervious cover. To prevent untreated stormwater from infiltrating, both the infiltration basins have pretreatment ponds with a liner consisting of 6 to 12 inches of clay soil and 30mm poly liner. We trust the above information demonstrates that stormwater infiltration will not affect the groundwater and satisfies the request for waiver. Should you have any questions, please feel free to contact me at (914)-364-1124 or [WSchneider@psands.com](mailto:WSchneider@psands.com).*

*Sincerely,*

*William Schneider, PE*

*Senior Director*

*Paulus, Sokolowski and Sartor Engineering, PC*

Laura Barca: What that means is in order to satisfy the NYSDEC requirement for stormwater, they have to put infiltration basins in. However, the property is in the AP-O District. One of the notes in the Aquifer Protection zone does not allow any infiltration of anything. It does not exempt stormwater. In order to have this crystal clear to everyone, HDR recommended that the Applicant

request a waiver from the Planning Board to allow this stormwater infiltration in this Aquifer Protection zone because there is pretreatment in the pretreatment ponds.

Mr. Astorino: Essentially what you are saying is that it is clean water that is going back into the ground. That is what it is supposed to do. Is that correct?

Laura Barca: Yes. It is just stormwater.

Mr. Astorino: I think the Planning Board should recommend to the Town Board this Section of the Code §164-47.2.E(2) at least for stormwater in the AP-O District. If the stormwater is done correctly, that should be exempt from whatever restrictions that is in there. It doesn't make sense.

Mr. Bollenbach: It is not an infiltration basin if you have the clay and the poly liner.

Mr. McConnell: That goes into the pretreatment ponds.

Laura Barca: There is the small pretreatment pond that filters out some of the solids that are in the stormwater. Then, it flows over into a larger basin that is 100% infiltration.

Mr. Bollenbach: Then it is clean water.

Laura Barca: It depends on how fast the water comes in.

Mr. Astorino: It is pretreated water.

Laura Barca: Yes. It is pretreated water. The amount is pretreated depends on how fast the stormwater is coming in.

Mr. Bollenbach: How do you regulate on how fast the stormwater is coming in so that you have clean water so that you are not screwing up the aquifer?

Mr. Astorino: That is what HDR reviewed.

Mr. Bollenbach: The thing is to have enough capacity so you don't have dirty water going into the aquifer.

Laura Barca: It depends on the size of the design storm.

Mr. Astorino: You are building it to NYSDEC standards.

Laura Barca: Correct.

Mr. Astorino: The water that is going in is pretreated water. That is the best you are going to do. Why have something in the Code that doesn't make sense?

Laura Barca: For tonight, they are requesting a waiver.

Mr. Astorino: I get that. That is why we are here. That is why they had sent us a letter. We could grant them a waiver. Then, the Planning Board could discuss it to the Town Board to make changes to the Code.

Mr. Bollenbach: Yes.

Mr. Showalter: That makes sense.

Mr. McConnell: I am not inclined to this.

Mr. Astorino: To what?

Mr. McConnell: I am not sure that this is an adequate explanation of what it is supposed to do, why it can't do what it is supposed to do and how this modification will allow it what it is to do what it is supposed to do. I apologize, but I might be just confused by Laura's explanation.

Mr. Showalter: Dennis, let's go back. I heard it from Laura. The first pond catches the water. The junk might settle to the bottom. In an average storm in most situations, it gets to that first pond and settles out. The second pond the water goes into where it filters down back into the earth. It goes through the clay and the other barrier. Laura, is that correct?

Laura Barca: Yes.

Mr. Showalter: It makes sense to me I think that is the way it works. I think what Laura was saying is if you have 100-year storm or many of those storms in a row which could happen, then it wouldn't work properly because there would be too much water.

Mr. McConnell: Mr. Showalter, I think you have to go back further into Laura's explanation to get to the heart of my confusion. Regarding infiltration basins, which by definition water goes through them.

Laura Barca: Correct.

Mr. McConnell: This letter states that they are requesting a waiver from the Town Code for the use restriction for using infiltration basins in the Aquifer Protection Zone. Could you use infiltration basins in the AP-O District or not?

Laura Barca: You cannot according to the Town Code.

Mr. McConnell: What was that basin going to do as originally contemplated and designed?

Mr. Astorino: Infiltrate. They are there already.

Mr. Bollenbach: How did they get there?

Mr. Astorino: We approved it.

Mr. Bollenbach: How did it get approved? Why didn't this come up before? If they are prohibited, why are they there?

Mr. Astorino: The stormwater was designed to the NYSDEC specifications. Laura, is that correct?

Laura Barca: Correct. You could design it to the DEC or the Town of Warwick. Those two Codes conflict.

Mr. Astorino: Here is the point. My point being the Town Code does not make sense. You are using infiltration. HDR reviewed the stormwater plans. Is that correct?

Laura Barca: Correct.

Mr. Astorino: Are they acceptable stormwater plans?

Laura Barca: Yes.

Mr. Astorino: Thank you. My initial thing is that the Town Code doesn't make sense. There needs to be an exemption on this stormwater problem.

Mr. McConnell: I get that. Let me go a little more forward. These new things the pretreatment ponds. They are going to have a liner consisting of 6 to 12 inches of clay soil and 30mm poly liner. My understanding of that language is that stuff could be in there and it is not going nowhere.

Laura Barca: That is correct.

Mr. McConnell: Does that have to be cleaned out occasionally? How often does that have to be cleaned out. We don't have enough information here. That is all I am saying. I am not in favor of it.

Mr. Astorino: I think you are mistaken. Laura could tell us right now that they would need to be cleaned out. If we get 100-year storm 2 years from now, they would need to be cleaned out then. The Homeowners Association (HOA) recently just did that at Ridge Homes. That subdivision was built approximately 20 years ago. Every stormwater basin was not touched for 20 years. It was a disaster. There were trees growing into them. The neighbors called, Laura and I went down there. We got a hold of the HOA. They had to clean out 7 basins. They probably should have been done after Hurricane Irene. They were not cleaned out.

Laura Barca: The DEC has time limits on when basins need to be cleaned.

Mr. McConnell: I am saying on the basis of this piece of paper, I don't have enough information to approve or recommend approval of this. That is all.

Mr. Astorino: Ok.

Laura Barca: Typically, an infiltration basin or any kind of detentions basins what they do is take a wood pole and you would put it so far into the ground, it goes to a certain depth and it has different markings on it. When the siltation gets above a certain level, it has to be cleaned. Those are requirements. It is recommended that it is cleaned twice a year. Once before winter and then after the spring melt.

Mr. Astorino: All of the subdivisions that we approved and built over the years; I could almost guarantee that not one of them have been touched.

Mr. Bollenbach: All of those infiltration basins are within a declaration. It has the criteria in there. There is no enforcement.

Mr. McConnell: We should recommend to the Town Board to do enforcement on these things. If they do that, then I would sign on it.

Mr. Astorino: I would have no problem on that. But, in this case here I think the Code doesn't make sense.

Mr. McConnell: Two paragraphs of a third party don't convince me.

Mr. Astorino: Our Engineer convinces me. They reviewed it. HDR reviewed it.

Mr. McConnell: I would like to have an expert from HDR come and explain how it is supposed to work. There is no explanation in this letter about how the owner is going to do something that it is going to make it so that it won't work. They would like us to waive a requirement that it can't be done. I am at a loss.

Mr. Astorino: I disagree with that. The Town has a company, which is HDR, that reviews the SWPPP. In the past 11 years working with HDR, I have trust in them on their guidelines as to will this work. Laura, what they designed is this going to work?

Laura Barca: Yes.

Mr. Astorino: Thank you. Our Code is not in tuned as to what needs to be designed here. That is my point.

Mr. McConnell: The Town Code as it is written could not work. Is that right in this application?

Laura Barca: In this application. That is correct.

Mr. McConnell: How do I know a mistake has not been made? It was designed to meet the Code.

Mr. Astorino: No. It was designed to meet the NYSDEC standards. It was not the Town Code. They caught it. They caught it and said your Town Code is wrong.

Mr. McConnell: Why didn't they catch it when the Planning Board approved it.

Mr. Astorino: I don't know that.

Mr. McConnell: Neither do I.

Mr. Astorino: I don't agree now that we hold someone up for going ahead. That is my opinion. What does the Board want to do on this waiver?

Mr. Fink: Laura was it only something in the Town's stormwater regulations? Was there something in the Negative Declaration? We had a whole bunch of thresholds in the SEQRA Negative Declaration for that subdivision. I wonder for what it said about stormwater.

Laura Barca: From my recollection, I would have to look up the exact language. It said you would have to comply with the NYSDEC requirements. In order to comply with the NYSDEC, you can't comply with the Aquifer Protection Overlay notes. It could go either way. We could stick with the Town Code as to you could not infiltrate even with stormwater in the Aquifer Protection Overlay. But then you could not comply with the NYSDEC requirement for runoff reduction. The runoff reduction is what the NYSDEC stormwater guidelines are all about.

Mr. Showalter: This goes back to around the year 2013.

Connie Sardo: That was the WVLDC subdivision.

Mr. Showalter: Yes. Could we review what we had done back then with the WVLDC subdivision? This way we could all get a little bit of confidence in saying yes or no. I don't want to hold anybody up either. I think Ross was the engineer on this.

Mr. Bollenbach: No. Ross was the Applicant's Engineer. He was not the Town's reviewer.

Mr. Showalter: When WVLDC was done, it seemed like that project went through pretty quickly.

Mr. Astorino: Roger, it went through our Board. All of these lots were pre-approved. Every lot there was pre-approved for stormwater, water, sewer, and access. It was all done. Quite frankly, there were discussions earlier today if this was needed or not because these lots have already been pre-approved. The Applicant is the one that had brought it up. My point being is let's clean it up. If our Professionals are saying this is what you have to do to put stormwater in place. The Town Code doesn't make sense. You just said that. It doesn't make sense to this if you can't infiltrate it that is what the NYSDEC requirement is.

Laura Barca: In the Town of Warwick, the Town Code allows you to have a septic system and as many septic systems you need in the Aquifer Protection Overlay. You cannot infiltrate stormwater back into the ground. That is how the Town Code is written as of right now.

Mr. Showalter: Maybe we should bring this up to the Town Board's attention on reevaluating this.

Mr. Astorino: That is my point. If our Professionals, HDR is saying that this stormwater will not have a negative impact on the Aquifer, it is designed appropriately as we do for a subdivision and as for anything else we do, I don't see why this is any different than that? It was reviewed by HDR.

Mr. Showalter: I see Ben's point about not holding up the project. This was all pre-approved.

Mr. Astorino: This letter we have here tonight probably didn't need to come before us. If they weren't honest or their professionals didn't dig as deep, they could have ignored this. They have NYSDEC approval. HDR is saying that it is fine. There is an ambiguity with the Code. They are bringing it to our attention. They asked if they need a waiver.

Mr. Showalter: They brought it up. In order to fix this, we should bring it to the Town Board's attention.

Mr. Astorino: Exactly.

Mr. Showalter: It will make things clearer.

Mr. Astorino: I think this is a formality. I think a letter from the Planning Board to the Town Board stressing the fact that it doesn't make sense in these applications. They should revisit the Code.

Mr. McConnell: What are the ramifications for the projects that were approved under the interpretation of the Town Code?

Mr. Astorino: There hasn't been any. Every project that we have done with stormwater has been infiltration. Every one of them.

Mr. McConnell: We haven't had any projects within the Aquifer Overlay?

Mr. Astorino: I believe we've had. They all followed the NYSDEC standards.

Mr. McConnell: The Town Code has only been applied in this case. Is that correct?

Mr. Astorino: No. The Applicant brought it up.

Laura Barca: You are not understanding Dennis's question. His question is if this is the first time an infiltration basin has ever been discussed about being in the Aquifer Protection Overlay?

Mr. McConnell: Is there anyone else similarly situated that we have to take notice of?

Laura Barca: The answer to that is I don't believe so because most projects are smaller subdivisions. This is a huge building that needs a much larger infiltration basin. If you did other stormwater practices such as a rain garden that are smaller than what is considered an infiltration basin then it would have to comply with different requirements.

Mr. Astorino: These basins are there. They have been already constructed.

Laura Barca: Correct.

Mr. Astorino: In my opinion in the Code this should not be there for stormwater.

Mr. McConnell: They would continue to function if we make these changes to it.

Laura Barca: Yes.

Mr. McConnell: We approved all of these things. Didn't we anticipate that if it was going to be of this size and use this much water and sewage, it is fine and we approved it. If it is going to be different than that, then it would have to come back to us for approval. John, is that the basis on how we approved those 10 lots?

Mr. Bollenbach: Yes. There were certain thresholds. If it exceeds those thresholds, then it would have to come back before the Planning Board. Whether it exceeds those thresholds, I don't know. That was what Ted just had said. We would have to take a look at the Negative Declaration to see what those thresholds were so we could evaluate it.

Mr. McConnell: I am not ready to suggest that we change this.

Mr. Astorino: We will have our engineer answer that.

Laura Barca: What this is different is that this particular large building is going in over multiple lots that are located over there.

Mr. Bollenbach: It is 450,000 square-foot building.

Mr. McConnell: We had that in mind at the time if it was something larger than 50,000 square feet and it exceeds the threshold, then it would have to come back before the Planning Board for Re-Approval. John, is that correct?

Mr. Bollenbach: Correct.

Laura Barca: If you are using 6 lots, you get the water, sewage, traffic and stormwater for 6 lots.

Mr. McConnell: They won't be exceeding the threshold. Is that correct?

Laura Barca: They won't exceed the threshold for the number of lots that they have. What is different is instead of them having multiple 50,000 square-foot buildings. It is one big building. What that does for stormwater is that it makes you to make the basin a little bigger. It's in one area.

Mr. Showalter: Laura, that was a good explanation. Thank you.

Mr. Astorino: What does the Board want to do? My opinion is that I would do a waiver. I would send a memo to the Town Board with our concerns. They should change it and get it out of there. It would be a conflict at any time in the future. Does the Board want to make a motion on the waiver?

Mr. Showalter makes a motion to waive §164-47.2.E(2) for the use restriction for using infiltration basins in the Aquifer Protection Overlay.

Seconded by Mr. Kennedy. Motion carried; 4-Ayes and 0-Nays.

Mr. Astorino: John, Laura and Ted, please send a letter to the Town Board regarding the Planning Board's concerns.

Mr. Bollenbach: Ok.

Laura Barca: Ok.

Ted Fink: Ok.

**Privilege Of The Floor For Agenda Items!!**

Mr. Astorino: Is there anyone in the audience wishing to address any of the agenda items? Let the record show no public comment.

**Mr. McConnell makes a motion to adjourn the August 18, 2021 Planning Board Meeting.**

Seconded by Mr. Kennedy. Motion carried; 4-Ayes and 0-Nays.