

December 6, 2012

To: Lead Agency in SEQRA Review of Brynwood Development Application

From: Kerri A. Kazak, Chair
North Castle Open Space Committee

Re: Comments on Draft Scope

The project site for Brynwood is a very important parcel of open space for our town. The proposed development of the site is the biggest project in our town since Whippoorwill Hills. Given the magnitude of this development, it is imperative that every potential impact of the proposed development be studied in detail. This memo outlines the topics that the Open Space Committee believes should be included in the final scoping document.

Biodiversity

The applicant's SEQRA Full Environmental Assessment Form, Paragraph 11, states that the project site does not contain any species of plant or animal life that is identified as threatened or endangered according to the 2007 North Castle Biodiversity Plan. This statement is completely incorrect because the 2007 North Castle Biodiversity Plan never studied the project site. Rather, the 2007 Study examined 1,000 acres on the west side of Interstate 684, the opposite side of I-684 from Brynwood. As the study notes, I-684 divides the Town of North Castle into two separate ecological zones as "a major highway with multiple lanes, rapidly moving traffic, and median blockades is an insurmountable obstacle for the vast majority of wildlife species."

- **Conduct Biodiversity Study of Project Site**

The scoping document must require that a biodiversity study of the project site is conducted as part of the SEQRA process given the size and importance of this parcel of open space. This recommendation follows that of the United States Golf Association ("USGA") which has done extensive research on designing golf courses that improve and protect biodiversity as outlined in the attached article "Wildlife Links: Improving Golf's Environmental Game." Wildlife Links is a joint venture formed in 1995 between USGA and the National Fish and Wildlife Foundation. The first recommendation of the Wildlife Links Program is that the golf course conduct an inventory of the site's resident wildlife and habitats, recording species throughout the year to note seasonal variation. The Open Space Committee recommends that Dr. Michael Klemens conduct the biodiversity study of the

Brynwood site. Dr. Klemens is the conservation biologist that conducted the 2007 North Castle Biodiversity Study. In addition to being a leader in this field, Dr. Klemens is familiar with North Castle and the species that live here.

- **Develop a Plan for Wildlife Survival**

Following the findings of the project site biodiversity study, the scoping document must require a plan to be defined for wildlife survival on the project site. The object of this plan is to provide space, food, cover and water for wildlife. The wildlife plan should include the following goals:

- **Protect existing native habitat.** Don't disturb native grasses, long leaf pine stands or wetlands. The USGA has funded research that shows that golf course wetlands can play an important role in helping to conserve turtles and other amphibians. See attached USGA article: "Turtles: Ancient Wildlife on Your Golf Course" and "Wildlife Links" p.14.
- **Take cues from the property.** Expand or enhance existing natural amenities (such as grassy meadows for ground nesting birds and pollinators). See "Wildlife Links" pages 6 -11.
- **Protect Endangered Species:** Include a wildlife biologist on the planning team to identify and protect these species.
- **Establish Corridors:** Connect patches of wildlife habitat enabling animals to travel safely and forage for food.
- **Naturalize Out of Play Areas:** Areas between fairways, below elevated trees, in roughs and bordering woodlands may be especially suitable for naturalization. See attached article "Considering Wildlife in Golf Course Management" by The Ohio State University Extension.
- **Start an Integrated Pest Management Program:** Such a program uses a variety of controls to banish turfgrass pests without poisoning the environment. Such a program would include regular monitoring, selected thresholds for insects, use of beneficial insects, encouraging birds and bats that eat the insects, and use of organic products.

Assessment of Hydrogeologic Conditions

The scoping document must require a hydrogeologic study be conducted of both the project site and Water District #2's water source. The daily water usage by the projected development must be calculated and the impact of such usage on both Water District #2 and in the alternative an on-site well must be studied. Careful review is required of the March 1990 "Assessment of Hydrogeologic Conditions,

Town of North Castle” conducted by Blasland & Bouck Engineers, P.C. for the Town of North Castle Conservation Board. Specifically, this report discusses the importance of recharge rates to aquifers and the need to protect shallow ground water supplies. It further discusses the need to monitor the volume of water withdrawn through pumping versus the rate of recharge for an aquifer.

Water Conservation

The scoping document must require the applicant to study water conservation methods for the entire development. There should be a thorough analysis of best management practices and state of the art water conservation techniques.

Water Protection

The scoping document must require the applicant to study and define practices that will be implemented throughout the site to protect the water quality. This includes but is not limited to pesticide use, nitrate contamination, filtration of equipment wash areas, capture of petroleum products, capture of fertilizer residues and chemicals, spill containment from pesticide storage and petroleum products, and limiting of impervious surfaces.

Public Access

The project site is a large parcel of private open space. The vast majority of the town’s residents do not get to enjoy the property. The scoping document should require the applicant to study ways for the public to access the property and enjoy the open space. Two examples of possible public access could be establishing a walking trail and/or providing access for birdwatchers to bird habitats on the property.

Protection of Viewscapes

One reason that the project site is important open space is because of the viewscapes it provides. Viewscapes are features that provide a range of sight that can be identified as providing a community asset. These include pleasing vistas, scenes and views that provide a sense of place and character. Brynwood has several such viewscapes. First, there is the part of the property right by Route 22 that the public sees as they drive by. This viewshed contributes tremendously to the semi-rural feel of our town. Other viewscapes on the property are the view from across the way on Byram Ridge Road and from I-684. Brynwood’s proposal makes no mention of preserving any of these viewsheds. In fact, the land that the public sees from Route 22 is precisely where the majority of the 88 residences will be built, thereby destroying the viewshed. The scoping document should require the applicant to study an alternative layout that protects, not destroys, the viewscapes that currently exist on the property.

Conservation Easement Held by Third Party

At the Town Board Meeting on September 27, 2012, the applicant committed to placing a conservation easement on the property. The scoping document should require the applicant to specify exactly what portion of the property will be subject to the conservation easement. They should also specify what the language of the easement will be, as well as identifying a neutral, non-political third party that will hold (or co-hold with the Town) the easement and monitor it.

Analysis of Less Dense Cluster Housing Alternative

- **Conservation Subdivision as Provided by Town Code**

The Town Code provides for the creation of Conservation Subdivisions in § 213-25. Specifically, § 213-25.D(1) provides that the

“number of building lots permitted in a conservation subdivision shall in no case exceed the number which could be permitted, in the Planning Board's judgment, if the land were subdivided into lots conforming to all normally applicable requirements of this Town Zoning Ordinance, the Land Subdivision Regulations, the Westchester County Health Department Regulations and all other applicable requirements. The basis for this determination by the Planning Board shall be a conventional preliminary subdivision plat for the subject property, plus such other information as may be required by said Board.”

- **Determine As-of-Right Number of Homes**

The scoping document must require the applicant to first conduct a conventional preliminary subdivision plat for the project site in order to establish the number of building lots that would be permitted on the property under the current zoning (i.e. the “as of right” number).

- **Prepare Conservation Subdivision Plan With As-of-Right Number**

Once the as-of-right number is established, the scoping document must require the applicant to prepare a plan showing the as-of-right number of homes clustered in a Conservation Subdivision as defined in the Town Code. The plan must comply with the requirements outlined in § 213-25, including but not limited to the

requirement in § 213-25(4)(c) which provides that where the “dwelling units in a conservation subdivision abut or are directly across the street from a privately owned residential property, the minimum front, side or rear yard adjoining or facing such property shall be equal to at least twice the normally applicable setback requirement for detached one-family dwellings in the zoning district in which it is located, but not less than 100 feet, or as otherwise determined appropriate by the Planning Board for parcels specifically authorized by the Town Board but not less than twice the normally applicable setback, measured from the boundary of the conservation subdivision.”

- **Applicant Seeks to Exclude “Golf Course Communities” from Code Buffer and Setback Requirements**

The Applicant’s proposed zoning change seeks to specifically exclude golf course communities from the buffer and setback requirements in the existing Town Code. Specifically, Exhibit A, Section II, Paragraphs (3) and (4) of the Applicant’s Petition state:

- (3) Buffer area. A landscaped buffer area of at least 25 feet in width shall be required along all lot lines adjoining or across the street from properties in residence districts, except a lot line adjoining a golf course community.
- (4) Special setback requirements. All active recreational facilities, such as tennis courts and swimming pools, shall be located out of doors. However, where the scale of buildings and setbacks are such that placing such uses indoors would relate harmoniously to the existing residential character of the district in which the membership club is located, they may be placed within permanent or temporary structures. Except with respect to an adjoining golf course community, Such facilities shall be set back from adjacent residential property boundaries at least twice the minimum distance required for residential buildings in said district, except that the Town Board may permit a reduction of this additional setback requirement where, because of topography or the installation of additional buffer landscaping and/or fencing, the Town Board determines that any potential adverse external effect of such facility can be effectively reduced.

The scoping document must require the Applicant to first explain why a golf course community should not be subject to the Code’s buffer and setback requirements. Second, the scoping document should require the Applicant to show the design of a golf course community that complies with the Town Code as it exists, so that the Lead Agency may compare the two models.

- **Density Bonuses**

The Applicant's preferred development plan clusters the homes on a few acres in order to preserve the golf course. Therefore, on its own initiative, the Applicant is essentially proposing to build a conservation subdivision. The difference being that in a conservation subdivision, a developer gives up its request to build the as-of-right number of homes on residential lots sized according to the Zoning Code in order to preserve open space. In such a case, because the developer is giving up its preferred development plan, a town may reward the developer with a density bonus which allows them to build more homes in a conservation subdivision than as-of-right. However, in the Applicant's case, the developer is not giving up anything by clustering the homes. Rather, preservation of the golf course is essential to the success of the Applicant's economic model. Therefore, they are not giving up anything that would justify a density bonus of any kind. Furthermore, the Town Code does not provide for a density bonus. Nevertheless, the Applicant is asking for a 100% density bonus. Therefore, the scoping document must require the Applicant to provide detailed documentation including but not limited to the following:

- A land value study showing the cost per square foot of developable real estate within the area of the site;
- Analysis multiplying the cost per square foot determined in the land value study by the size of the density bonus the Applicant is requesting to determine the amount of money the Applicant would have to pay to buy the land needed to build the additional dwelling units under the existing zoning regulations;
- Calculations showing the return on the developer's investment i.e. a dollar value on the additional density the Applicant is requesting.
- Analysis of how such a density increase is consistent with the Town's Comprehensive Plan; and
- Analysis of the cost difference to town services such as fire, police, schools, etc. of a conservation subdivision with the as-of-right number of houses versus the Applicant's proposed plan with the 100% density bonus.

Compliance with Town Comprehensive Plan

The scoping document should require Applicant to detail how its proposed plan complies with Section V, of the Town Comprehensive Plan which states that "The Town should permit only residential development which is compatible in scale,

density, and character with its neighborhood and natural environment” and that “the northern and eastern portions of Armonk which is Whipoorwill and Windmill Farms, should continue to retain their low-density residential, open and scenic character. “

- **Spot Zoning**

The New York Department of State’s primer entitled “Zoning and the Comprehensive Plan” (attached hereto) defines spot zoning as the rezoning of a parcel of land “to benefit a single owner or a single development interest.” “Illegal spot zoning occurs whenever the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community.”

The Applicant’s proposed zoning change only applies to the Brynwood site. This is evident from their proposed language in Exhibit C of the Applicant’s Petition which states that a golf course community must be affiliated with an 18 hole golf course membership club and “must have at least 1,000 feet of frontage on, and be directly accessed from a State highway.” Since Brynwood is the only golf club in town whose land has frontage on a state highway and can be directly accessed from that highway, the proposed zoning change clearly applies only to the Brynwood parcel. Therefore, the scoping document should require the Applicant to detail specifically how the proposed rezoning of the Brynwood site: a) is not spot zoning; b) is part of a well considered and comprehensive plan; and (c) will serve the general welfare of the community.