

From: Deborah Munitz deb@welcomedriver.com 
Subject: Preliminary Comments for Tonight's Scoping Session
Date: June 25, 2024 at 3:25 PM
To: Abe Sicker mayor@newhempstead.org, smintz@newhempstead.org, Slevi@newhempstead.org, mschulgasser@newhempstead.org, mschiffman@newhempstead.org
Cc: Bruce Minsky bwminsky@gmail.com, Allison Weinraub updates@newhempstead.org, Jonathan Lockman jlockman@nelsonpope.com, Ira Emanuel ira@emanuellaw.com

Dear Mayor and Board Members,

Under the circumstances of utter lack of public notice, these are my hasty comments for this evening. Throughout I ask the Village to correct the notice and procedures related to this hearing and public engagement for which you know I am a staunch advocate. Since I do not have a personal opinion on what is the right solution for the Village, my comments focus primarily on ensuring the public has appropriate notice and documents that are meaningful so that they have an opportunity to participate in the consideration of impacts to them in a meaningful way. My recommendations for scoping are based on my substantial experience in typical public concerns for large development projects and ensuring that the applicant provides meaningful analysis to the board and to the public regarding their proposal and alternatives.

Allison was excellent in providing the materials yesterday that I requested Friday after the village email announcement went out that mentioned a public hearing on the golf course rezoning. At some point between my request on Friday late afternoon and this morning many additional materials were posted on the website. While I applaud the village for making the important additional materials available at the last minute, the BOT should recognize that all core materials received should have been posted for the full minimum 14 day notice period before public comments are requested, and other posted as received. This was not done here.

IN ADDITION TO MY COMMENTS BELOW I WANT TO ASK THAT THE SCOPING HEARING NOT CLOSE IN LESS THAN 14 DAYS TO ALLOW TIME FOR REVIEW AND COMMENTS BASED ON THE MATERIALS JUST POSTED.

Please accept these comments on the rezoning project as preliminary and please adjourn the scoping meeting to a date at least 15+ days from today to provide time to correct the lack of public notice, correct the positive declaration and the definition of the action as detailed below. This is the time to make adjustments to

ensure that this important SEQR process moves forward in a procedurally correct manner in order to assure the board and the public that is impacted that the procedural foundation will support substantive consideration.

I have offered the board assistance in the past and offer it again if it would help. I do not take a specific position on the the specific of the board's considerations but I do advocate for and support residents right's to proper notice, transparency of board actions, and adherence to the minimal and substantive provisions of the SEQRA process. You are at the very beginning of this process and now is the time to address the lack of transparency, failure of notice, and problems with the definitions of the action. Call me if you would appreciate any assistance.

Public Notice

This is the first public hearing on this zoning amendment and the Village has failed to notice the affected public. Allison's response to me below suggests the Village Board thinks that only the ENB notice is necessary for a SEQR hearing. This is not true.

I point you to the clear and specific 14 day newspaper notice requirements of 6 NYCRR 617.12(c)(2). (For a state agencies the ENB publication is sufficient, not for village actions.) **This must be corrected.**

Notice to 500' Neighbors: With respect to the Village Attorney's opinion regarding notice not being required under §290-134 the explanation provided by Allison is cursory and is not explained or supported by Village code. If you had given public notice under code so that the public was aware of the action and had the opportunity to come to a Village Board meeting where the board solicited public input before deciding to move forward and make a positive declaration and scheduled a SEQR hearing, then the affected neighbors would be on notice that 1) the Village is considering the zoning amendment and 2) that the BOT was announcing a SEQR hearing. Under such circumstances a separate mailing of notice for scoping would arguably be unnecessary since prior notice was given. Here the village did not hold a public hearing on the law, and this is therefore the first public hearing on the law.

SEQR specifically calls for early public participation under its general rules 617.3(d):

The lead agency **will make every reasonable effort to involve** project sponsors, other agencies and **the public in the SEQR process**. Early consultations initiated by agencies can serve to narrow issues

of significance and to identify areas of controversy relating to environmental issues, thereby focusing on the impacts and alternatives requiring in-depth analysis in an EIS.

It costs the Village nothing to require the applicant to provide public notice as required under §290-135 to insure that the public is on notice and participates in the SEQR process. To not require public notice pursuant to your own village code is not reasonable and it leaves you open to litigation which I know the Village and the applicant wish to avoid. There is nothing to be gained by cutting the public out of the SEQR process.

The Village Code article on Amendments makes sense and provides a minimal structure for moving forward. The duly required notices to the affected not due at this time when the key purpose of engaging the public is to alert them to the action taking place and solicit their concerns regarding impacts when the Village Board is contemplating moving forward and presumably before such a decision is made. Under §290-132 the BOT gets to reject the proposal out of hand - here the BOT has chosen to move forward. Next the BOT can refer for reports under §290-133 to get their take on the proposal to give feedback to the applicant to consider revising the proposal before moving forward, or again rejecting the proposal.

The Positive Declaration resolution says the referrals were made but it also says that the Planning Board wanted additional time to produce its report and 45 days were approved. May 21, 2024 + 45 days = July 5th!

Why would the Board of Trustees move forward to a scoping hearing when its primary involved agency hasn't given its initial feedback and specifically requested additional time to provide input to the BOT?

This is irrational from a planning point of view and a SEQR point of view and it denies the public access to the report of the village's own planning board prior to a key public hearing.

Then the next step under Village code is §290-134 requiring hold a public hearing to solicit neighboring comments not he proposal before moving forward. The first public hearing gives the board the benefit of public opinion and provides a forum for public protests §290-136, and would have provided the public with knowledge of the board's actions to move forward and make the positive declaration. Here you have denied the public a public hearing before committing Village Resources to the time and expense of further processing the application.

Why would the village move forward in advance and cause the applicant and all the involved agencies the time and expense to participate in a SEQR process before the Village Board has had the benefit of its boards opinions and its residents opinions?

To date, the Village has failed to be transparent in every agenda posted to the website and every email to the public to date regarding the application. Not one posting or email, identified the site as the golf course, included the size of the site, mentioned any details of the proposal including that rezoning is being requested to a new zoning district that doesn't currently exist.

The Village Board has failed to post proposed resolutions that are mandated to be posted on the website under Open Meetings Law §103(e) and even as I write **the minutes of May 21, 2024 that set the public hearing tonight are not even posted on the the Village website.**

What is the big rush? The Village Board has a responsibility to the public and to the applicant to just follow the laws to make sure that everyone is involved and has the correct information at the right time so that the processes support future decision making. Do not rush through the process and skip over the most important aspect of the process - public notice.

**** Lack of public notice can be fixed and should be fixed at this time before moving forward. **** The Planning Board's report is due July 5, 2024. Please reschedule the scoping hearing and tonight and hold an informational session for those who come in response to the emailed notice. Please see comments below regarding the definition of the action and determining how to address segmentation and please correct the definition of the action and provide project plans in time for the new public hearing date.

Segmentation - legal or illegal?

See 6 NYCRR §617.3(g) "Actions commonly consist of a set of activities or steps. **The entire set of activities or steps must be considered the action,** whether the agency decision-making relates to the action as a whole or to only a part of it."

The SEQR Handbook explicitly makes the point that the Board of Trustees as Lead Agency should be considering the "whole action" - see p 53 of th SEQR Handbook:

Agencies are often faced with the problem of how to address a complex action involving two or more related components that may not be presented or applied for at the same time. Typically, this may involve a series of applications for the same project (**zone change, extension of sewer service, subdivision approval**) or phases (residential or mixed-use development to be constructed over several years). It also may involve separate project sites (for example, a resource recovery facility with bypass disposal at another location). Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action should be evaluated as one whole action.

Reviewing the “whole action” is an important principle in SEQR; interrelated or phased decisions should not be made without consideration of their consequences for the whole action, even if several agencies are involved in such decisions. Each agency should consider the environmental impacts of the entire action before approving, funding or undertaking any specific element of the action (see 617.3(g) regarding “Actions”).

The Board must either consider the specifics of the proposed plan, which obviously would be subject to revision through the DEIS/FEIS process, or later in an SEIS process, which will appropriately engage involved agencies in this action or it must be clear that it is segmenting review of the subdivision plans from the consideration of the zoning amendment and this should be explained and justified in the Positive Declaration.

The description of the action in the documents share do not make it clear what the whole action comprises. It is clear that a zoning amendment is being considered (Village Board actions without involved agencies). It is clear that this zoning amendment is slated for the golf course site. It is not clear whether the action includes consideration of an actual proposed project (ie. subdivision and/or site plan). The description does not specifically mention consideration of either a “subdivision plan” and/or a “site plan” (actions that have involved agencies) but the description provides number of units which suggests that there is some form of proposal before the BOT. If there is truly no specific proposed plan then why didn't the BOT contemplate ordering a Generic EIS?

It is imperative to properly describe and define the action before scoping proceeds. Is it only a consideration of a new local law and rezoning of the site to be considered generically without the benefit of a proposed plan or is it a consideration of a proposed plan? If it is the former then the lack of plans makes sense and there are only interested agencies. If the answer is the latter then this

should be clear to the involved agencies and plans must be submitted. (See Department of Health request for plans!)

Before the scoping hearing begins, the Town attorney should address this segmentation question. This is the time to solve all issues with how the SEQR process moves forward and the definition of the action is at the core of all notices, and all involved agency and public participation.

Notice to Involved And/Or Interest Agencies of Pos Dec and Draft Scoping

As per the DEC website: "Involved agencies should participate in the scoping process, alerting the lead agency of their agency's concerns, jurisdiction(s) and information they will need to make their SEQR findings. The lead agency must provide a reasonable opportunity for the public and other interested agencies to participate in the scoping process. **The DEC suggests that a minimum 20 day period for public review of the draft scope would be reasonable under most circumstances.** Public participation can be accomplished by meetings, exchanges of written material or other methods."

So public notice of scoping must be at least 14 days and should be at least 20 days. Here required public notice was not given. The Village should correct the process and provide corrected materials and 20 days notice to the public and to involved agencies.

The letter from the Department of Health of May 13, 2024 requested plans. I called over to the health department to see if they were providing comments today. Brandon Durant said they did get the Notice of Scoping on June 10th but I was told they didn't get any plans to review.

This morning I called the Rockland County Planning Department to see if they had received plans. Stephanie Serrano claims they have not received anything from the Village since their GML letter of May 13th following the Notice of Lead Agency. So therefore I expect no county planning comments on scoping.

When reviewing the list of potential involved agencies I did see missing from the either the FEAF or the GML referral form:

- the Ramapo DPW: who I understand is responsible for sewers in this area. Please clarify for the public who maintains the sewers in this area.
- the Town of Ramapo Highway Department that is responsible for roads.
- NYS DEC is on FEAF but not on referral form.

Comprehensive Plan

This proposal is not consistent with Comprehensive Plan that the Village Board approved in October of 2020 without environmental review, which was annulled and sent back to the Village for environmental review. It was the stated intention of the Village Board that it would do an EIS for this Comprehensive Plan and since early 2022 it has been my expectation, shared with many, that the Village Board intended to reapprove the Comprehensive Plan following environmental review.

This proposal is not consistent with the current Village Comprehensive Plan or the proposed/pending Comprehensive Plan which identified an interest in clustered subdivisions for the site with the potential to incentivize the developer to do clustering by providing a 1.5 to 2:00 (50-100% more) bump in density, not a 4x (300% more) bump in density. For this reason alone is surprising the Village Board is considering this proposal and that is allowed a draft scoping plan to be submitted that did not include the optimized cluster zoning as an alternative to be considered.

Other Initial Comments Re: Scoping

1. Found plans, not enough time to comment at all. Did NOT find any plans showing existing conditions including any indication of floodplains.
2. Rough comparison of plans and FEMA Zone A area seem to show that there are floodplains not shown on the site plans.
3. There is no proposed buffer/conservation easement between the new zoning and the existing zoning. This should be considered in the EIS to address change in community character and visual impacts.
4. An analysis of the effectiveness of differing buffer/conservation easement depth in addition to the proposed setbacks should be analyzed in the EIS to determine suitable conservation of perimeter trees.
5. The use of the words “to the extent practicable” should be eliminated from all documents. Plans are plans and if trees will be removed it should be clear where that will happen.
6. The plans don’t appear to show existing trees on the site to indicate which will be maintained and which will perish. This should be part of the EIS requirements to show.
7. The plans appear to have a very small amount of stormwater areas for a subdivision of this size. Who will be reviewing adequacy of stormwater design for the Village since it appears that RCDA may not have jurisdiction. Does

RCDA have jurisdiction due to subdivision signoff - if so were the plans sent to RCDA for review?

8. Why don't the pond wetlands that are connected to the NYS DEC wetlands not being treated as NYSDEC wetland with a 100' buffer surrounding them?
9. As part of scoping the DEIS should be required to survey all homes facing the site for size and height in order to provide a basis of comparison between existing land uses and the new standards.
10. The applicant should be required in the EIS for all alternatives being considered produce example of the what a home would look like in comparison to existing to existing land use based on widest home allowed and tallest home allowed to compare. I.e. compare the bulk standards being proposed in all alternative to those in place surrounding the site.
11. An alternative restricting building height to two stories should be considered for all homes within view of surrounding neighborhood.
12. Where is proposed recreation area taking for the proposed subdivision? Such taking is allowable in addition to any land preserved as open space if clustering is used.
13. The Traffic Impact Study is based on ITE standards for use 210. The details of that standard should be evaluated and compared to the needs of larger families similar in size to those already in the Town's Villages. (So for example if average household size as the basis for the traffic study is 3 and the average household size for the villages are 5+ then the traffic study assumptions should be increased to be more realistic.
14. Scoping should require consideration of complete street standards to ensure the new roads are walkable and bikable.
15. Community charging stations and placement should be considered for visitors to the new residential area.
16. Requirement that net acreage be estimated after all site constraints: wetlands, wetland buffer area, floodplains, utility easements and estimated road coverage is excluded to give the board a sense of developable land to consider target densities.
17. There should be a consideration of target school lots in the new subdivision as 300 units can result in 1,500 more students in need of school space. Providing areas for schools should be considered.
18. Standards for shabbos shuls or designed gathering place lots should be considered.
19. The Village Planner should consider all existing code that is based on existing zoning standards and consider how they will apply to 10,000 sf zoning. For example see §290-50. Is 20,000 sf big enough for a place of assembly?
20. Reasonable alternatives to consider should include:

Clustering at 1x existing zoning
Incentive clustering at 1.5-2 x existing zoning
New zoning 1R-10 with FAR, building foot print and coverage maximums
equivalent to 2R-15 district.

Conclusion

As I have had next to time provide to do any meaningful review of the scoping document or the other 20+ documents now posted on the site within the last day, I am asking the Village Board to adjourn the scoping public hearing to leave it open for another public hearing session and/or provide several more weeks for written comments.

Thank you
Deborah Munitz
5 Rose Hill Road
Montebello, NY 10901

* I am a board member of ROSA 4 Rockland which often comments on SEQR processes but due to the lack of notice in this instance, I am writing on my own but based on my experience as a ROSA 4 Rockland member.

On Jun 24, 2024, at 3:47 PM, Village Updates <updates@newhempstead.org> wrote:

Hi Deb,

Hope all is well.

The proposed zoning amendment is set forth in the First Amended Petition with the schedules annexed to it. The link on the village website opens a 14 page document consisting of the petition, schedule A for the property description, Schedule B for the proposed Zoning Map, and Schedule C for the proposed local law. The map you are requesting is part of the petition (see above).

The GML referrals have been made and they will be, together with responses, also uploaded to the Village website. Attached are copies of my letter sending them out and the responses received so far.

Finally, our attorney advises that this is not a public hearing on the zoning amendment pursuant to Village Code 290-134, but a SEQRA required scoping session for the DEIS.

Pursuant to the SEQRA regulations, the notice was published in the ENB on June 5, 2024 and all related documents posted on the Village website.

When a public hearing on the zoning amendment is scheduled, all duly required notices will be completed.

In the future, please email either aweinraub@newhempstead.org or concerns@newhempstead.org as those get checked more frequently. Thank you.

All the best,

Allison Weinraub
Village Clerk Treasurer