

December 31, 2012

Mr. David Wylock, Chairman
Town of Dover Planning Board
136 Duncan Hill Road
Dover Plains, NY 12522

RE: Westchester Modular 4 lot subdivision/site plan with Special Permit

Dear Mr. Wylock and members of the Planning Board,

I have reviewed the above referenced submittal and have several comments/questions about the development that I think need to be addressed before any final decisions about this project are made. As a citizen of this town and a resident of the Country Mill subdivision and a person with an engineering background, I have great interest in this project. My comments and questions are as follows:

1. The Town Master Plan from 1993 clearly states on Page 111 that development of structures in the flood plain, especially structures that house humans, should be restricted. Further, on Page 111, it states that other access points linked to a continuous trail system should be developed along the Ten Mile River. Rarely do opportunities like this present themselves where the town can get access to the river for recreation for little to no cost to the town or residents. As such, it is my opinion that Lot 1 should be donated to the town as open space/parkland/recreation area which would allow it to be enjoyed by all members of the community for picnicking, fishing and kayaking. As the applicant needs a special permit from the Planning Board for approval, the Planning Board should exercise the authority given to it by the Town Code per Section 145-62.G.2 which clearly states:

*In granting a special permit, the Planning Board may impose **any** conditions which it considers necessary to fulfill the purposes of this chapter. These conditions may include increasing dimensional or area requirements, **requiring the set-aside of perpetual open space land pursuant to § 145-20**, specifying location, character and number of vehicle access points, requiring landscaping, planting and screening, requiring clustering of structures and uses in order to preserve environmental resources and minimize the burden on public services and facilities, and requiring action by the applicant, including the posting of performance bonds and furnishing of guaranties to insure the completion of the project in accordance with the conditions imposed.*

Therefore, the Planning Board is well within its purview to require the set aside of the open space on Lot 1 for recreational uses to be enjoyed by the town residents. During the December 17, 2012 meeting, I was asked by the chairman why the HOA of Country Mills wouldn't provide river access through land owned by the HOA. My response to

that is that, in retrospect, when Country Mill Estates came before the Planning Board back in the 1980's, the Planning Board should have required that the applicant provide public river access. That was an oversight by that Planning Board and I would hope that this Planning Board would not make the same mistake.

2. Several feet of fill is proposed within the flood plain for the development of Lot 1. Has the Board requested that the applicant complete an analysis of the impacts of filling in the flood plain in regards to the impact to surrounding properties? According to the NYSDEC in their Floodplain Development and Floodway Guidance (<http://www.dec.ny.gov/lands/24281.html>), all development within a flood plain must meet the "no adverse effect" criteria. This, in effect, states that the proposed development must not result in any physical damage to other properties as a result of filling in the flood plain. Additionally, per Dover Town Code Section 145-60.A, the Board must find that the project will not "adversely affect neighboring properties" before considering any approval. As such, the Planning Board should require, as part of their due diligence, that the applicant complete a study to demonstrate that the filling of the flood plain as proposed for Lot 1 will result in "no adverse effects" with the results published prior to the Board rendering a decision. In reviewing the guidance document, please note that this criteria of "no adverse effect" applies to the flood plain as well as the flood way. It does the nearby residents no good to learn after the fact that the filling of the flood plain impacts their property and property values when the potential impacts could be determined beforehand by readily available engineering methods. There is no second chance on this. The potential impacts, if any, must be known before any approvals. It may very well be determined after the study that there will only be minimal impacts but this needs to be determined before development, not after.
3. Additionally, having been involved with several studies, task forces (including the NY State Senate sponsored Sea Level Rise Task Force) and conferences on the impacts of global warming, I would like to point out to the Board that the frequency and intensity of heavy rainfall events is projected to increase as we move further into the century. One can easily conclude that if the intensity and frequency of storm events increase and the total volume of rain increases as projected, it is logical to assume that the 100 yr flood of today will not be the 100 yr flood event of tomorrow. In fact, if the global warming impacts are as projected, the 100 year flood of today may occur every 10 years in the future. It should be noted that the Ten Mile River at the Reagan's Mill Road Bridge has a very large watershed and any increase in rainfall intensity and frequency may result in flooding above and beyond the current flood levels. As we all have seen, our area has suffered through several intense storm events in the past few years that should have occurred a lot less frequently according to the storm event models. The flooding rain events will increase and I believe that the Planning Board should request that the developer take into account the projected global warming impacts in his study of the effects of filling in the flood plain. I personally have requested several developers to do

so in projects that I have been involved with and they have all willingly complied. Again, the Town Code allows the Planning Board to impose any reasonable conditions in order to determine potential impacts from this development and a study would be considered part of the due diligence of the Planning Board. If the applicant or Planning Board needs additional information in regards to this subject, I would be more than happy to provide resources.

4. Upon reviewing the proposed grading plans, it is noted that the first floor elevation of the existing house on proposed Lot 1 is at approximate El. 506+/- . The roadway elevation in front of Lot 1 is at approximate El. 510. The proposed first floor elevation of the new house on Lot 1 is El 519, which would require 13' of fill above the existing house first floor elevation and 9' above the existing roadway elevation. Additionally, factor in the building height of 31.5' and you are looking at a building that is approximately 45.5' above the existing ground elevation and 30.5' above the existing road elevation. Assuming the existing building is approximately 25' high to its peak, the peak elevation of the existing roof would be at approximate El. 531. The roof elevation on the proposed house will be at approximate El. 550.5, which makes it 19' higher than the existing roof peak. This is excessive and will create visual impacts on all surrounding properties, especially the dwelling located across the street from Lots 1 and 2. One way to determine the visual impact to neighboring properties would be by the completion of a balloon test. The balloon test in this instance would involve raising a balloon to the proposed top of roof elevation. Contrary to what some Board members mentioned after the public hearing on December 17, 2012, this test is very accurate, simple and a cost effective demonstration of what the visual impacts of this development would be and should be part of the Board's due diligence to ensure compliance of this section of the Town Code. I have seen it used by many planning boards in other towns and can see no reason why the Board should not require the applicant to demonstrate the visual impacts prior to a decision being made on this application. It costs the town nothing and will provide a very good visual of the potential sight impacts.
5. The town code states that the maximum height of the building at the point of the roof is to be no more than 35' above average grade (Sec 145-74). According to the EAF, the maximum building height for Lot 1 is proposed to be 31.5'. However, no confirmation has been provided as to whether the proposed 31.5' building height is based on the average grade as defined in the town code. This needs to be clarified as the front grade of the house slopes from a high of El 517.5 to a low of El 512.0 at the front west corner. Therefore, a calculation of average grade should be provided to demonstrate that the proposed building height is in compliance with this section of the town code. Also, it should be noted that the rear of the building will be well above the maximum 35' as the grade drops seven feet from the ground elevation at the front of the house to the pavement elevation at the garage in the rear of the house. This will result in an

excessive exposed wall elevation along the sides of the house of over 40', which will be easily visible from the street as there is inadequate landscaping proposed

6. The development of Lot 1 requires the removal of six large trees within the flood plain ranging in size from 36" to 60". Trees should be maintained within the flood plain and within the buffer of the river as they help prevent erosion and sediment runoff into the river.
7. The design of the storm water systems for Lots 1 and 2 indicate that the storm water basins are sized for 10 yr storm events and will discharge overflow storm water overland toward and into the Ten Mile River. The Army Corps of Engineers completed a draft reconnaissance study of the Ten Mile River Watershed (dated February 2008) in which they determined that increased sediment into the river was impacting the water quality. This additional discharge, though minor, will not help that issue. As such, per Town Code Section 145-63.B.6., the Board must find that the project "will not materially degrade any watercourse" before issuing an approval. Therefore, I would recommend that the sizing of the basins be revised to allow for storage of a larger storm event. At a minimum, I would suggest that a 25 year storm event would be a good basis. This would allow for less runoff into the river and will also allow for extra volume for snow melt and storm runoff.
8. I have reviewed the landscaping plans shown and find them to be inadequate. Under Section 145-63.B.7 of the Town Code, the Board must confirm the project's "ability to be buffered or screened from neighboring properties and public roads." As shown on the landscaping plans, there is inadequate landscaping for all lots. In fact, there is no screening from either the road or from the adjoining properties on Lots 1 and 2. The only landscaping proposed are small foundation plantings which provide no buffering or screening from the road or surrounding properties. In my opinion and in accordance with the town code, this section has NOT been complied with.
9. If this project is approved in some form, I strongly suggest that the applicant be required to enter into an HOA, similar to that required for Country Mill Estates. Although the applicant had originally stated that he intends to keep all four properties together and he will be responsible for upkeep and does not wish to enter in an HOA, at the meeting on December 3, 2012, his attorney indicated that there were no guarantees that the applicant would keep all properties. A HOA will safeguard the rights of the residents within these four lots and the surrounding property owners. Again, the fact that a Special Permit is required allows the Board to require this HOA as part of the approval.

Overall, I am opposed to the entire four lot development but realize that if the applicant complies with all requirements/stipulations of the Board and the Town Code, denial of the entire project is probably not possible and that the best result may be a compromise. Therefore, I believe that the requirement of giving Lot 1 to the Town for recreation may be a fair compromise. Filling in a flood plain is never a good thing and may result in adverse impacts to surrounding properties and roadways. A study of these impacts must be required by

the Board as part of their due diligence. As an aside, it should be noted that many communities require compensatory storage at a minimum 1:1 ratio when development in a flood plain is proposed and several require a 2:1 ration. I would suggest that this may be something that the Town should consider looking into when revising the code in the future.

In my opinion, the town has a unique opportunity to gain recreational land with river access which would allow the river to be enjoyed by all citizens and would not require filling in a flood plain. Until the Board has all the information needed to evaluate all of the impacts of this development, this Board cannot complete their due diligence and ensure compliance with all Town and state regulations prior to approve this project.

In closing, I call attention to Mr. Wylock's 9/4/12 email to the Board regarding the Mobil Site Plan application. In this email, Mr. Wylock states that the Board's "objective should be to require a site plan that is in the best interests of the people of the Dover for many years to come. Anything less than that would show our board in a bad light." I fully concur with this statement and believe that it should apply to all site plans in front of the board, not just Mobil. I am sure the Board and the public fully concur with this statement and I hope that the Board applies the same strict criteria and concern to this application as shown by Mr. Wylock to the Mobil application. The fact that this project requires a Special Permit allows the Board discretion and negotiation with the applicant. To date, I have seen no evidence of negotiation as it appears to be only what the applicant wants and not what is best for the town and the applicant together. It is not a violation of the rights of the property owner to request additional information to ensure that the project fully complies with the town code and other regulatory requirements, it is due diligence. It is not unfair to ask the applicant to demonstrate to the Board and to the residents that may be affected by this development that their fears are unfounded, it is due diligence and is to be expected by all applicants, including this one. As Mr. Wylock said on the Mobil application, "there are no second chances so let's get it right the first time..." This is as relevant to the Mobil application as it is to this application.

Thank you,

Douglas E. Schroeder
13 Millers Ln
Wingdale, NY 12594

cc: Town Board members
Conservation Advisory Council