

## **34 Denison Rd/Ridgewood Project Public Comments from SAVE Colonie: A Partnership for Planning December 19, 2023**

SAVE Colonie: A Partnership for Planning presents the following comments on the 34 Denison Road/ Ridgewood Development project. During the more than three years this project and prior iterations have been before this body, we have developed, with legal and environmental consultants, these major legal procedural and substantive issues; some have been raised at previous meetings and some are posited here for the first time. We strongly urge you to consider them. You should take no action tonight, since doing so would preclude your review and deliberation on them.

### **1. Ridgewood Project is Inconsistent with the Town's Comprehensive Plan in Major Ways**

A. New York State Town Law Section 272-a requires that, after a town adopts a Comprehensive Land Use Plan, as Colonie did in 2005 and again in 2019, any action taken subsequently that is not consistent with or contradicts the plan is vulnerable to legal challenge and invalidation.

The Town's 2019 Comprehensive Plan Update requires outreach by the Town and a developer to affected neighborhoods. Despite this project being before the Planning Department since March of 2020, neither the town nor the developer has reached out to the neighborhoods impacted. In fact, the Town has rebuffed efforts by the neighborhood organizations after a brief meeting with staff early on. There is an active neighborhood association whose extensive comments have been presented on this project. Still, there has been NO OUTREACH to all residents in the vicinity of the project since the 2021 Concept Approval. Neighborhood residents' concerns include: the subdivision layout and the impact of steep slopes, lack of the long-promised neighborhood park, public access to walking trails, improper tree protections, impacts to local schools and more. Town residents concerns must be fully accounted for and addressed. There has been no assurance that this has been done.

In addition to being contrary to the Comprehensive plan and good government practices, this is totally unacceptable.

B. Despite directives in the Comp Plan to create them, as far as can be ascertained the town has no open space inventory and plan or a parks and recreation master plan. How much development has taken place in the intervening more than 4 years, that should have been guided by these plans?

C. The Town Comprehensive Plan update was completed in 2019 and directed that the Town update the Airport Area GEIS. The Town has still not updated the Airport Area GEIS. The 34 Denison Road is located within the Albany County Airport GEIS study area. The Town's environmental review is utilizing the 1990 Airport Area GEIS. In 2017, the Town began the GEIS update but it was stalled to wait for the Town

Comprehensive Plan update to be completed. What is the status of the GEIS update?

D. The Comp Plan envisions that in 2030, our town will "... have generous amenities such as parks, trails, and open lands." This vision will not ever come to pass unless large and diverse open spaces such as this 34 Denison Road site are mapped, inventoried, and conserved. As one of the last large wooded open spaces remaining undeveloped, 34 Denison is prime conservation land. If the 2019 Comp Plan directed the Town to develop an Open Space Inventory and Conservation Plan, why are there no such documents available to guide PB & staff?

As one of the only remaining large open spaces containing mature forest in the Town of Colonie, the Town should be preserving this parcel of land for the public's benefit. The Planning Board should not be persuaded by Charlew's claims that it will be preserving 52 acres in addition to a prior donation of 8 acres to the Latham Water District. The 8 acres donation allowed the Forest Hills development to proceed and the water system was financed by over \$2.78 million in GEIS non-transportation mitigation fees. Charlew benefitted from a 18% open space requirement for the Forest Hills development.

E. The 2005 and 2019 Comprehensive Plans recommended amendments to the Town Land Use Code and the addition of zoning and review provisions for projects in Conservation Overlay Districts. The Land Use Law requires the Planning Board to also focus on a conservation analysis that examines the impacts from the Ridgewood development on the remaining 50 acres of the site that is not slated for preservation.. See former Town Board Member Kevin Bronner's written comments on this project submitted at the July 2021 Concept Review. Conservation Overlay Districts were created to protect the town's natural areas and preserve important natural resources such as the 102 mature forested acres, several streams, and steep slopes here. As Mr. Bronner points out, Chapter VII of the Conservation Overlay Development District Law requires much more than just a set aside of constrained lands and preserving the remaining 40% of lands as open space. Site plan layout is an important factor for development plans in a Conservation Overlay District. The Hudsonia report confirms the conservation value of the entire Ridgewood site. In September 2001, then Planning Board Chair Phil Pearson also confirmed the conservation value of 34 Denison Road when he described the site as "a heavily wooded parcel with substantial growth of oak and other mature deciduous forest. American chestnut is known to be present on the site. In addition to the forest growth there is substantial grade change (topography across the site. Slopes in excess of 15% to 20% exist on the site. Finally in the ravines or draws there is evidence of federal wetlands. The steep slopes, forested areas and wetlands create natural and scenic qualities that should be preserved as open space." Charlew and the Town cannot refute these claims absent a separate conservation analysis for the project site. No other conservation analyses have been uploaded to the Planning Board webpage.

## **2. Procedural Errors prohibit a final approval:**

A. The July 2021 Concept approval expired in January 2023 and no extension has

been approved by the Planning Board.

B. The December 19, 2023 hearing notice is defective. The mailed notice did not comply with the Colonie Land Use Law and all NYS requirements. This procedural defect cannot be cured by subsequently taping a revised notice to a mailbox, mailing a new notice less than the statutory time periods before the hearing date, posting a meeting notice on the Town of Colonie Community update page, posting the meeting agenda on the Colonie Portal, emailing members of the public or requesting members of the public to conduct their own outreach to affected landowners to clarify erroneous meeting information.

C. The Planning Board's concept approval conditions have not been satisfied or a suitable explanation provided for why these concept approval conditions should now be disregarded. At concept, the PB members required Charlew to address the following before a final subdivision application was submitted:

- refined tree inventory and survey related to individual building lots
- building elevations
- LWD authorization to utilize LWD land for an access road to Ridgewood from Londonderry Ridge subdivision
- updated wetlands delineation certified by the USACOE

D. The Town's referral to the Albany County Planning Board pursuant to the NYS General Municipal Law was premature and not in accordance with the requirements of the NYS General Municipal law. The referral occurred well before affected town residents could participate in the PB process. Major project components in the referral application have changed-such as the location of a town park, walking trails, a tree inventory and survey and preservation plan are no longer part of this Final subdivision application. After the Birchwood Neighborhood Association notified the ACPB about its concerns, the ACPB requested that Town officials further update the ACPB on the ongoing Town review. The Town has not provided any further updates to the ACPB. In addition, the Town did not consult with the Town of Niskayuna prior to the ACPB referral.

E. The NYS Open Meetings Law requires that all records that will be discussed at the public meeting must be available to the public at least 24 hours prior to the scheduled meeting. The PB project and files does not contain the complete final subdivision application; the Town Designated Engineering Comments and Charlew's responses to those comments; or studies and analysis conducted by the Town Designated Engineering Firm. This is a serious violation of the law.

### **3. The Final subdivision application is incomplete:**

A. A final approval from the Office of Parks and Recreation and Historic Preservation is not in the project files.

There is no final signoff in the final application files from the Office of Parks and

Recreation and Historic Preservation. The Office of Parks and Recreation and Historic Preservation required that a covenant and deed restriction be filed and submitted for staff approval. Has this been done? Furthermore, the Archeo Report submitted to OPRHP does not indicate that the protected historic site was included in the park plans at Concept approval and or is planned to be included in the lands designated for the park area. The updated subdivision layout has also not been submitted to OPRHP since 2018.

- B. There is no analysis of this project's impacts to the local school districts;
- C. They have not provided the required traffic study;
- D. Completed GEIS Mitigation worksheets are not provided;
- E. Draft SEQRA findings and completed EA form are not provided;
- F. Draft Conservation Analysis to be issued by the Town Planning Board is not provided;
- G. Draft GEIS consistency analysis and findings is not provided.
- I. No Steep Slope Stability Analysis has been provided.

The site is composed of many steep slopes which border adjacent single-family residences. The subdivision layout indicates that building lots will be constructed on areas where steep slopes are located on the building lot or immediately adjacent to the proposed building lot. Has there been a geotechnical analysis performed to determine the stability of the foundations of the building lots and the remaining steep slopes after construction especially where these steep slopes are located along the backyards of the existing subdivisions along Vly, Denison, Amanda Way, Tokay and Concord Lanes? Section 39 of Charlew's Stormwater NOI underscores concerns for a steep slope analysis because it states that Reduction of 100% of the WQv is not possible for this site due to poor infiltration over the majority of the site and high groundwater. Poor infiltration and high groundwater limit the green infrastructure practices available. " If no geotechnical study has been performed, what is the rationale for not doing so? What appropriate conditions should be incorporated to ensure that individual building lot owners do not create situations in the future where the steep slopes along backyards are compromised.

- J. The SWPPP/Stormwater Analysis is incomplete

Extensive grading and earth removal and contouring will be taking place on 50.2 acres of the site. This will require the removal of all mature trees and vegetation. A thorough review of the SWPPP and applicant representations is required. Furthermore, the Nol that was filed on November 16, 2023 contains an

incorrect site description.

The NOI characterizes the site as “pasture/open land” which is not accurate. It is true portions of the site were clearcut to construct the new water tank infrastructure. However, questions were raised at the Concept meeting that the clearing that took place exceeded the prior SWPPP that was issued for the expansion of the Latham Water District water distribution system. Has the Town Stormwater office investigated these claims? The site clearing lines are visible on aerial photographs in a pattern that is consistent with the site plan layout for the subdivision.

How will the wetlands onsite and off-site be utilized for the Ridgewood project runoff? Section 9A of the NOI specifies that a nearby wetlands will be used for construction site runoff. A wetlands complex located along Vly Road just past Londonderry Way, is presently utilized for stormwater runoff from the nearby Londonderry Ridge Subdivision, Vly and Denison Roads and Melody Lane and Dahlem Boulevard. Was the capacity of these wetlands evaluated to confirm whether stormwater runoff from the Ridgewood Subdivision

will not negatively impact the capacity of these wetlands to handle stormwater runoff from this Area of Vly Road? How will stormwater runoff currently draining from the Ridgewood site to the Amanda Way, Tokay Lane and Concord Drive neighborhoods be handled?

K. As previously cited, the Comp Plan requires developer outreach to the neighborhood as part of the project application process. This has never happened.

#### **4. Planning Board Review Process issues:**

A. During review of previous developments by this Board, final approval has been given WITH CONDITIONS. However, no mechanism has been established for assuring that the Planning Board’s conditions are met. Final approvals must not depend upon the good will of the developer or town planners, with no assurance of PB oversight for compliance. (examples: East Hills tree protections, Forest Hills neighborhood park, Donna Drive)

Consequently, we respectfully request that this Board require this developer to include in the final plans the promised neighborhood park and public walking trails, together with a parking area that visitors can use and provision for safe community access to the neighborhood park. This promised amenity must not be left to the good graces of the builders but must be enforceable by those it is designed to benefit.

B. In the several years our good government group has been following the Town’s development review process, we are concerned that the Planning Board generally votes to approve a project at the close of the public hearing that evening. This

means that the Board has not been able to read or discuss or consider or investigate any new information or evidence and arguments presented by the public or interested parties at the hearing. This makes these hearings something of a sham.

This evening, there have been many facts brought to your attention. An expert report has been submitted. The concerns that neighbors have expressed really deserve your attention and consideration. SAVE members have raised important legal issues. We hope you will do the right thing by our community and not act upon this seriously flawed application until further study is given and more information elicited.

Thank you for your attention and your consideration of these procedural and substantive issues that we believe require your rejection of this application in its entirety.

SAVE Colonie: A Partnership for Planning