

May 5, 2016

Village of Nyack Board of Trustees
c/o Walter Sevastian, Village Attorney
Village of Nyack
9 North Broadway
Nyack, NY 10960

Re: WF District Text Amendment

Dear Mayor and Trustees:

As you know, BFJ Planning (BFJ) has been working with the Nyack Village Board of Trustees (Village Board) to provide guidance on the proposed WF District Text Amendment since November 2015. We are also leading the process to update the Village's Comprehensive Plan, a project which began in September 2015.

By means of providing additional background on our experience, BFJ is a consulting firm providing professional expertise in planning and related fields since our establishment in 1980. BFJ provides services for public, private, and non-profit clients throughout New York State, the country, and internationally in planning, urban design, environmental review and analysis, real estate consulting, and transportation planning. We have successfully completed more than 1,000 projects in the United States, East Asia, Europe, and South America. Our core areas of expertise include zoning, comprehensive planning and the New York State Environmental Quality Review Act (SEQRA).

In addition to our current work with the Village, BFJ completed a parking study for Nyack in 2007. We also completed the most recent Comprehensive Plan for Rockland County in 2007, so we are familiar with local issues, related to land use, infrastructure, traffic, open space, and the importance of the Hudson River. We have also worked extensively for the past 36 years on land use planning, zoning, comprehensive planning, and SEQRA throughout the Hudson Valley. The following provides an overview of our relevant experience with regards to the proposed WF District Text Amendment.

- BFJ provides ongoing planning assistance and advisory services to the planning staff of many communities throughout the region. Such services include updating and revising master plans, reviewing site and subdivision plans and environmental assessments, and advising communities on the implementation of planning recommendations. We are currently providing on-call Planning Advisory services to Briarcliff Manor, Tuckahoe, New Rochelle, and Mamaroneck and have performed this role for numerous additional municipalities over the years, including Tarrytown and Garden City.
- BFJ has extensive experience preparing and updating zoning ordinances, subdivision regulations, historic preservation ordinances, and other land use regulations. The firm also designs land use policies that complement an area's physical and historic features while ensuring its economic vitality. In addition to traditional zoning services, BFJ also prepares ordinances that utilize such innovative mechanisms as the transfer of development rights, neighborhood preservation zones, land conservation ordinances, special districts, incentive zoning, and performance zoning. The firm reviews proposed zoning amendments and assesses the implications of zoning changes. BFJ has provided expertise in

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updating zoning codes in New York City, Mamaroneck, Tarrytown, Peekskill, New Rochelle, Beacon, Newburgh, and many other municipalities in the region.

- BFJ prepares municipal comprehensive plans and strategic plans for communities ranging from major cities to small hamlets, helping policymakers and community members make the best decisions to ensure the optimal use of land, affordable housing, efficient transportation, and high environmental standards. We have completed Comprehensive Plans in the New York Metropolitan area for over 25 communities and recently submitted a complete draft of a Comprehensive Plan update for the City of New Rochelle.
- BFJ's environmental planning includes a variety of projects undertaken for municipal, private sector, and non-profit clients, with expertise in the National Environmental Policy Review Act (NEPA), New York State Environmental Quality Review Act (SEQR), and New York City Environmental Quality Review Process (CEQR). BFJ reviews and makes recommendations on SEQR documents, including Environmental Impact Statements, for numerous municipalities and local and state agencies. BFJ also prepares SEQR scoping documents and negotiates mitigation and design on behalf of Planning Boards and Town or Village Boards. We have provided Environmental Analysis, including SEQR review, for large-scale, multi-family developments in Mount Vernon, Tarrytown, Yonkers, Somers, Wawarsing, Roslyn, Scarsdale, Nanuet, New Rochelle, Chappaqua, Tuckahoe, and many other communities throughout the NY Metro area.

BFJ's work on the proposed WF District Text Amendment has been developed under direction by Frank S. Fish, FAICP, a founding principal of BFJ Planning. Mr. Fish has a long career in the planning field, having worked with over 25 communities in the metropolitan area on comprehensive plans and zoning code updates. Mr. Fish has served locally as a past president of the New York Metropolitan Chapter of the American Planning Association and is currently a board member of the New York Planning Federation (NYPF). Mr. Fish's national experience includes a four year period as a Commissioner of the American Institute of Certified Planners (AICP) and six years as a president of the American Society of Consulting Planners. Because of his service to the profession and to AICP, Mr. Fish was made a fellow of AICP in 2000. Mr. Fish has also taught over the last 30 years as an adjunct professor at the Graduate Schools of Planning at Pratt Institute and New York University and as a guest lecturer at the Woodrow Wilson School at Princeton. In 2009 he received the Andrew Haswell Green award from the New York Metro chapter of the American Planning Association for distinguished service to the New York planning profession.

We understand that the Village Board has received comments suggesting that the proposed WF District Text Amendment may result in "significant adverse environmental impact" and therefore should be subject to an Environmental Impact Statement (EIS). The Village Board has received three letters of comment since our previous memo (dated April 20, 2016) to this effect. This memo to the Village Board responds to the three written comments that the Village Board has received with regards to the proposed WF District Text Amendment, further clarifying our position that the proposed action will not result in significant adverse environmental impacts. We take this position in light of the expanded Part 3 Environmental Assessment Form that we produced with the Village Planner, Robert Galvin, and our extensive body of experience in this field throughout the NY Metro Region, the Hudson Valley, and New York State.

Riverkeeper (dated April 22, 2016)

Riverkeeper is a non-profit advocate for water quality issues throughout the New York City Watershed and the Hudson Valley. At the Village Board meeting on April 13, 2016, John Lipscomb provided comments with regard to the proposed WF District Text Amendment and identified himself as a representative of Riverkeeper. We understand that Mr. Lipscomb is indeed a Patrol Boat Captain for Riverkeeper, as well as a resident of the neighborhood adjacent to the WF District in the Village of Nyack. On April 22, 2016, Riverkeeper submitted a letter to the Village Board in supplement of Mr. Lipscomb’s public comments. The Riverkeeper letter is signed by James Bacon, who we understand to be outside counsel for Riverkeeper

Introduction

The first paragraph of the introduction by Mr. Bacon states that the proposed action “should have been identified as a Type I action, and thus received a positive declaration under the State Environmental Quality Review Act (SEQRA) and an Environmental Impact Statement (EIS).” We agree with the Village Planner’s categorization of the proposed action as an Unlisted action. We do not believe that the proposed action meets the threshold to be categorized as a Type I action (addressed below). However, even if it were, it is erroneous to assume that a Type I action automatically demands a positive declaration. State law 6 N.Y.C.R.R. § 617.7 (a) directs the lead agency to “determine the significance of any Type I or Unlisted action” and 6 N.Y.C.R.R. § 617.7 (a) (1) further clarifies that “to require an EIS for a proposed action, the lead agency must determine that the action may include the potential for at least one significant adverse environmental impact.” There is no stipulation in state regulation that a Type I action automatically requires an EIS.

Summary of Project and Testimony of John Lipscomb, Riverkeeper

In his summary of Mr. Lipscomb’s public comment, Mr. Bacon claims that the Expanded Part 3 EAF “indicates moderate to large impacts may result from impacts on recreation resources, water, infrastructure, land, traffic, parking and hazardous waste impacts along with creating a conflict with the comprehensive plan.” In fact, this statement contradicts the Part 3 EAF which found that the proposed action will not result in significant adverse impacts. The proposed action will result in an incremental increase of two residential units per acre for a total of nine units on the two sites where potential development may occur in the near term. This incremental increase is *de minimus*.

Mr. Bacon refers to Mr. Lipscomb’s comments with regards to sewage overflows at the Spear Street Pumping Station. As addressed in BFJ’s letter dated April 20, 2016, we agree that sewage overflows are an issue that needs to be addressed on the Nyack waterfront. However, our understanding from speaking with Sherwood Engineers (our subconsultant on the Comprehensive Plan update) and the Orangetown Sewer District is that the cause of sewage overflows at the Spear Street Pumping Station is caused by inflow and infiltration (I&I) from groundwater, not system capacity. In fact, the Orangetown Sewer District has been ordered by the New York State Department of Environmental Conservation (NYSDEC) to reduce or eliminate sewage overflows resulting from I&I. The Orangetown Sewer Department has determined that the solution to I&I and resultant sewage overflows is to line sewage infrastructure to limit I&I. This project is currently underway and has been designed specifically to address sewage overflows at the Spear Street Pumping Station. There is no indication from NYSDEC or the Orangetown Sewer Department that pipe capacity is inadequate or that additional residential development would strain capacity of the sewer system or Orangetown Wastewater Treatment Plant.

Mr. Bacon also cites Mr. Lipscomb’s public comment regarding disturbance of the brownfield site at the corner of Gedney and Main Streets. We agree that the Village has an interest in remediation of this brownfield site because this site is in the New York State brownfield program (see attached memo from NYSDEC). It is up to NYSDEC to determine the best approach to encourage brownfield remediation. We believe that it is logical for the Village Board to support a strategy that leverages private funds and federal tax credits to remediate contaminated sites. Although the proposed action—amending text of an existing zoning district—will not directly result in construction on the site in question, the extent to which it encourages future development of the site could have a positive impact on the environment since any prospective development on the site would be required to remediate the brownfield.

According to Mr. Bacon, Mr. Lipscomb also cited concerns about parking in the waterfront area. Risk of adverse impacts on parking has been reduced by the proposed WF District Text Amendment itself—the proposed text required parking ratios that are in line with the Village’s other multi-family residential zoning districts and Institute of Transportation Engineers (ITE) guidelines (Parking Generation, 4th Edition, Institute of Transportation Engineers). Further, the text limits reserved spaces on-site to one space per unit. This strategy prevents individual units from holding multiple reserved spaces and allows for guest parking or a shared parking strategy on-site. The text also requires that “in addition to the resident parking spaces required by Section 360-2.5B(2)(c)[4][a], a minimum of 10% additional public parking spaces shall be provided on site or within 200 feet of the site” (Section 360-2.5B(2)(c)[4][c]). This 10% additional parking is required specifically to address the need to alleviate parking issues in the neighborhood. Further, any non-residential uses on site are required to provide parking per the Village’s existing parking regulations (Section 360 Attachment 3, Table 4-2: Minimum Parking Requirements).

The Proposed Zoning Amendments for the Waterfront are a Type I Action

In this section of his memo, Mr. Bacon argues that the Text Amendment should qualify as a Type I action per 6 N.Y.C.R.R. § 617.4 (b) (2) and 6 N.Y.C.R.R. § 617.4 (b) (10). As Mr. Bacon notes, section 6 N.Y.C.R.R. § 617.4 (b) (2) includes as a Type I action “the adoption of changes in the *allowable uses* within any zoning district, affecting 25 or more acres of the district” (emphasis added). Acknowledging that the area of the WF District is less than 25 acres, he goes on to cite section 6 N.Y.C.R.R. § 617.4 (b) (10), which reduces to 25% any threshold used in determining a Type I action in any case where an Unlisted Action is “occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space.” However, we believe that Mr. Bacon has mischaracterized the Text Amendment—there is no change “in the allowable uses” in the proposed action. See text from section 6 N.Y.C.R.R. § 617.4 (b) (2) quoted above. Therefore section 6 N.Y.C.R.R. § 617.4 (b) (2) does not apply and the reduced threshold in section 6 N.Y.C.R.R. § 617.4 (b) (10) is irrelevant. Because there is no change in allowable uses, the classification of this action as an Unlisted Action by the Village Planner is correct. Further, while we do not believe that the proposed action meets any threshold to be characterized as a Type I action, as already stated above, even if the proposed action were a Type I action, it does not necessarily require a positive declaration as previously mentioned. In addition, a question has been raised as to whether the reduced threshold in section 6 N.Y.C.R.R. § 617.4 (b) (10) applies. It is not clear to us that the WF District is substantially contiguous to an area that qualifies as a “publicly owned or operated parkland.” There is some case law which refers to this provision (Matter of Sierra Club v Village of Painted Post, 134 A.D.3d 1475; 23 N.Y.S.3d 506; 2015) but we leave a determination on this matter to legal counsel.

Segmentation—Consideration of Development Plan and Zoning Amendments

In arguing that the Village Board is engaging in Segmentation by reviewing the area-wide environmental impacts of the proposed WF District Text Amendment without also reviewing the site specific impacts of potential development on the so-called TZ Vista site, Mr. Bacon has inaccurately represented the status of potential development on the site in question. Mr. Bacon refers to TZ Vista, LLC as “Applicant” when TZ Vista, LLC has not submitted any application to the Village for development on the site. TZ Vista, LLC has indeed presented plans publicly and also submitted a petition for zoning changes on the site. However, as explained in our letter from April 20, 2016, the Village Board declined to act upon the petition from TZ Vista, LLC and has since been in the process of conducting a separate review of the WF District Zoning Text. TZ Vista, LLC cannot be accurately described as an “Applicant” for development on the site in question. The Village Board is considering its own zoning text amendment that is not contingent upon any private development application nor does it mandate any development application. In fact, TZ Vista, LLC is only a partial owner of the site in question. The site is made up of multiple parcels and TZ Vista, LLC is a contract-vendee on a portion of the site. It is unclear whether TZ Vista, LLC’s purchase option on the remaining parcels will be executed. It is not known whether TZ Vista, LLC will submit a development application for the site in question. It is certainly possible that an application may come forward in the future, however the Village Board does not yet know the outcome of site-specific brownfield cleanup on the TZ Vista site. Given that TZ Vista, LLC does not fully control the site in question and has not submitted an application to the Village, it would be inappropriate for the Village Board to include speculative action within an area-wide environmental assessment. Mr. Bacon claims that TZ Vista, LLC has removed their development plans from public view—this is true as far as we understand and reinforces our belief that the Village Board cannot speculate on the specifics of a hypothetical development proposal that may have been removed permanently from public view, as far as the Village Board knows. Courts do not require speculation of this nature.

Segmentation is covered in State law 6 N.Y.C.R.R. § 617.3 (g) states that “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 only action under consideration is the proposed WF District Text Amendment. Speculative future site-specific action conducted by TZ Vista, LLC or any other potential developer is not a part of the proposed text amendment.

In addition to his mischaracterization of the nature of an application with regard to the TZ Vista site, we also note that there is no contingent action required as a result of the proposed action. The Village Board may indeed hope that in the future, a developer comes forward with an application for the Special Permit included in the proposed WF District Text Amendment, which would include construction of a public waterfront walkway that would be deeded to the Village and designated as parkland. We believe that this would be an incredibly valuable asset for the Village. In promoting such development, the Village Board is trying to be a good conservator of the Nyack waterfront. We hope that Riverkeeper will take a careful look for itself on the value of the potential improvements to the Nyack waterfront that the proposed WF District Text Amendment would bring. We further think that if Riverkeeper does look more closely at the proposed text, they will echo the position of Scenic Hudson, who found that the proposed text is in accordance with *Revitalizing Hudson Riverfronts: Illustrated Conservation & Development Strategies for Creating Healthy, Prosperous Communities* (Scenic Hudson, 2010).

Additionally, the text amendment has not been produced for TZ Vista, LLC. The petition submitted by TZ Vista, LLC was rejected by the Village Board. The Village Board subsequently developed their own text amendment, which provides significantly greater protections for the Nyack waterfront. Notably, the maximum heights requested by TZ Vista, LLC were reduced from 65 feet to 52 feet, the maximum FAR was reduced from 1.75 to 1.50, and the width of the waterfront access area was increased from 12 feet to 30 feet.

In his concluding text, Mr. Bacon suggests that the Village should review the proposed WF District Text Amendment for consistency with the New York State Coastal Management Program (NYS CMP). The Village Planner, Robert Galvin, has done so in completing the Coastal Assessment Form and Addendum (dated February 10, 2016).

Based upon the issues described above, we disagree with Mr. Bacon's conclusion that compliance with New York State law in this case requires issuance of a positive declaration. As indicated in the EAF, we do not believe that the proposed action will result in significant adverse impacts.

Ferrandino & Associates (dated April 22, 2016)

On April 22, 2016, Daniel Richmond of Zarin & Steinmetz forwarded a memo from Ferrandino & Associates with comment on the proposed WF District Text Amendment and their belief that the proposed action may result in significant adverse impacts triggering the need for an EIS. In his introduction, Vince Ferrandino, Principal of Ferrandino & Associates, describes himself as a "licensed environmental and land use planner." We note that there is no New York State or national "license" in environmental or land use planning.

Mr. Ferrandino has organized his memo by numbered topics, which are addressed here in the same organization. As a preface to answering each specific comment, it is important to note the confusion between an area-wide text change and a site specific development. Mr. Ferrandino does not appear to understand the difference between an area-wide action and a site-specific action. The proposed WF District Text Amendment is an area-wide action undertaken by the Village Board. There is no site-specific application before the Village Board and therefore they cannot speculate on the details of such a site-specific action. The instructions for the Environmental Assessment Form direct the person filling out the EAF to not fill in information on site-specific impacts if the action is an area-wide action. The EAF Part 1 Section C. Planning and Zoning asks "Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed?" The answer to this question was marked 'Yes' by the Village Planner. The EAF form then directs that sections D and E be skipped, which the Village Planner has done since the proposed action is a local law. Section D and E relate to site-specific actions, which the Village Board cannot speculatively review.

1. "The FEAF, in our opinion, is incomplete and this not valid for purposes of SEQR. There are at least twelve (12) potential significant adverse impacts from the proposed WF District amendments which trigger the need to prepare an EIS."

Mr. Ferrandino notes that the EAF Part 2, Section 10 is marked "Yes" with regard to "Impact on Historic and Archeological Resources." However, Mr. Ferrandino incorrectly states that the FEAF fails to identify which potential impacts may occur. In fact, Section 10.d identifies the John Green House, which is located outside of the WF District across Main Street, as a "local historic house connected to notable Nyack

personage – not listed on National Register.” There are no anticipated adverse impacts to this locally significant resource from the proposed action—on the contrary, the John Green House is currently undergoing restoration with plans to include programming that is open to the public. Increased activity near the waterfront that results from additional residents, waterfront non-residential uses, and waterfront open space may benefit the long-term viability of operations at the John Green House.

Mr. Ferrandino notes that the EAF Part 2, Section 18 is marked “Yes” with regard to “Consistency with Community Character.” The proposed action may create a small impact with regard to Item 18.b. However, since the incremental increase is limited to two residential units per acre or a total of approximately nine units on the two sites that could potentially be developed in the near term, this impact is *de minimus*. There is no impact with regard to the remaining items in section 18.

Mr. Ferrandino also lists the following sections of the EAF Part 2 as items that may cause significant adverse impacts:

1.a: The proposed action may involve construction on land where depth to water table is less than 3 feet.

The proposed action is a zoning change and does not involve construction. Building construction could occur as of right under the existing WF District zoning and under the existing permit to the Village Board. Further, it is unclear why Mr. Ferrandino believes that any speculative construction on the site in question would occur on land where depth to water table is less than three feet. Due to the 50 foot required minimum setback from the Hudson River included in the proposed WF District Text Amendment, the FEMA 100-year Floodplain does not encroach upon any potential building site on either the TZ Vista or Nyack Boat Club sites. There is also substantial topography rising from the Hudson River.

1.b: The proposed action may involve construction on slopes of 15% or greater.

The proposed action is a zoning change and does not involve construction. Building construction could occur as of right under the existing WF District zoning and under the existing permit to the Village Board.

1.d: The proposed action may involve the excavation and removal of more than 1,000 tons of natural material.

The proposed action is a zoning change and does not involve excavation. Excavation associated with building construction could occur as of right under the existing WF District zoning and under the existing permit to the Village Board.

3.d: The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body.

The proposed action is a zoning change and does not involve construction. Building construction adjoining the Hudson River could occur as of right under the existing WF District zoning and under the existing permit to the Village Board.

11.b: The proposed action may result in the loss of a current or future recreational resource.

It is unclear which current or future recreational resource could be lost as result of the proposed WF District Text Amendment. The Text Amendment has been crafted specifically with the importance of preserving and adding water-dependent resources in mind. In fact, the Text Amendment includes a requirement for inclusion of a “water dependent amenity (consisting of a kayak launch, pier, boat launch or overlook).” This requirement was strengthened in part in response to written comments by John Gromada (dated March 8, 2016), a local resident. In

addition, the provision for waterfront access was developed in order to prevent conflicts between water dependent uses and a passive walkway. Per section 360-2.5(B)(2)(c)[5][d] of the proposed WF District Text Amendment, “some variation in the location and precise width of the walkway may be allowed at the discretion of the Village Board if the flexibility enhances the operation of a water dependent use, such as a boat club, pier or boat launch.” This provision is meant to protect and enhance existing water dependent uses.

13.a: Projected traffic increase may exceed capacity of existing road network.
 The projected traffic increase was evaluated in the EAF Expanded Part 3 based upon the incremental increase in traffic produced by a density increase of two units per acre. There is no indication that a density increase of two units per acre will have a significant adverse impact on traffic. For example, the Expanded Part 3 cites New York State Department of Transportation traffic counts on Broadway. As noted in the BFJ letter from April 20, 2016, the incremental addition of 3-4 cars in peak hour represents 0.002% of daily traffic on Broadway.

16.c: There is a completed emergency spill remediation, or a completed environmental site remediation on, or adjacent to, the site of the proposed action.
 The proposed action is an area-wide action and does not require site-specific review. Site-specific remediation would be addressed by a site-specific EAF.

16.h: The proposed action may result in the unearthing of solid or hazardous waste.
 The proposed action is a zoning change and does not involve unearthing of solid or hazardous waste. Building construction could occur as of right under the existing WF District zoning and under the existing permit to the Village Board.

16.i: The proposed action may result in the release of contaminated leachate from the project site.
 The proposed action is a zoning change and does not involve disturbing of the ground or any other action that could result in the release of contaminated leachate from the project site. Building construction could occur as of right under the existing WF District zoning and under the existing permit to the Village Board.

17.c: The proposed action is inconsistent with local land use plans or zoning regulations.
 As addressed in the BFJ memo dated April 20, 2016, we believe that the proposed WF District Text Amendment is consistent with the existing Nyack Comprehensive Master Plan (CMP). This view, again, is also held by the Village Planner, Scenic Hudson, and the Rockland County Planning Department.

17.e: The proposed action may cause a change in the density of development that is not supported by existing infrastructure or is distant from existing infrastructure.
 The proposed action does indeed cause a minor change in allowable density by special permit in the WF District. However, not only is this change in density minor (two units per acre), there is also no indication that it is unsupported by existing infrastructure. As addressed in the BFJ memo dated April 20, 2016, according to the Orangetown Sewer Department, the WWTP is sized for 12.75 million gallons per day (MGD) and current daily flow is 7.9 MGD—well below capacity.

Several commenters have raised the issue of sewage overflows from the Spear Street Pump Station. According to the New York State Department of Environmental Conservation (NYSDEC) and the Orangetown Sewer Department, sewage overflows at this location result from Inflow and Infiltration (I&I) which

occurs during heavy rainstorms as a result of leaks in existing sewer pipes—not as a result of inadequate capacity. The Orangetown Sewer Department is under an order from NYSDEC to line sewer pipes in order to reduce or eliminate I&I throughout the Orangetown Sewer District. This process is ongoing and is anticipated to resolve sewage overflows at the Spear Street Pump Station.

18.e: The proposed action is inconsistent with the predominant architectural scale and character.

We disagree that the proposed WF District Text Amendment will produce development that is inconsistent with the predominant architectural scale and character. Building types within the WF District and surrounding area are eclectic and are not representative of a single architectural scale or character. There are several existing mid-rise, multifamily residential buildings within the WF District which have greater heights and number of stories than the proposed WF District Text Amendment would allow. These include the Clermont Condominium (12 stories, approximately 117 feet), West Shore Towers (six stories, up to 67 feet in three buildings), and Rivercrest Cooperative Residences (seven stories, 68 feet). The buildings along Gedney Street west of the WF District are a mix of two to four story single-family residential buildings (primarily of clapboard siding), industrial-style masonry buildings, and concrete block buildings faced with stucco at the Nyack Seaport.

In response to a letter from the Village of Nyack Planning Board (dated July 9, 2015), maximum building heights that could be achieved under the proposed special permit have been limited such that the roof line of any new potential new building in the WF District is no taller than any of the existing multifamily buildings along Gedney Street. The Design Guidelines included in the proposed WF District Text Amendment require that “building façade materials should be comprised of stone, stone veneer, brick, fiber cement panels, or wood” to ensure consistency with existing architectural character.

With respect to each of these items from the EAF Part 2, we do not agree with Mr. Ferrandino that the proposed action may result in significant adverse impacts and therefore we do not believe that preparation of an EIS is a necessary or appropriate course of action.

2. “Development under the proposed WF District would occur on two (2) sites. The SEQR review of the Local Law should take into account the specifics of these sites.”

Mr. Ferrandino claims that the “Village Board acknowledges that development under the proposed WF District amendments would immediately affect only two (2) sites.” This is a mischaracterization of the proposed WF District Text Amendment. Of course the proposed action would affect all sites within the 14 acres of the WF District. What the Village Board and BFJ have acknowledged is that there are two sites on which development and land use changes may be anticipated in the near term. However, even on these two sites—the TZ Vista and Nyack Boat Club sites—future development is speculative, as no applications for development have been submitted to the Village. Mr. Ferrandino states that the Village Board “should take into account the specifics of potential development” on the TZ Vista and Nyack Boat Club sites. It is unclear how the Village Board should proceed in evaluating “specifics” of “potential” development. The Village Board is not in a position to evaluate the environmental impact of a specific development proposal when none has been submitted. The Village Board, however, is in a position to evaluate the area-wide impact of a zoning text amendment which they have initiated. To this end, the EAF reviewed the incremental increase between the current zoning and the text

amendment, which amounts to two residential units per acre. The impact of such a small increase in density was found to be *de minimus*.

3. *“The development potential of the TZ Vista and NBC sites should be analyzed, taking into account the constraints of the sites related to their physical characteristics and contamination history.”*

Mr. Ferrandino argues that because of certain site-specific characteristics (“location on the Hudson River, the actual buildable lot area, potential for encroachment by the Hudson River and history of site contamination”) certain provisions of the proposed WF District Text Amendment conflict with other provisions. First, he cites the requirement in the proposed WF Text Amendment for underground parking as a provision to obtain a special permit. Mr. Ferrandino claims that construction of underground parking “would require the disturbance of the existing concrete cap that contains the toxins.” As noted in the BFJ memo from April 20, 2016, the Special Permit in the text amendment can be issued at the discretion of the Village Board. If a future applicant is unable to demonstrate that compliance with the Special Permit requirements can be achieved without mitigating the impacts of construction on a brownfield site, the Special Permit can and should be denied.

Additionally, since the Village Board has not seen an application for development on the site in question, it is not clear how the determination has been made by Mr. Ferrandino that some hypothetical development would disturb the portion of the former brownfield site that has already been remediated. Again, as noted in the BFJ memo from April 20, 2016, a future application for development on any site within the WF District is not required to apply for the Special Permit. If it is determined by a site-specific EAF that underground parking is incompatible on a remediated brownfield site, a potential developer would be welcome to submit an application under the constraints of the underlying WF District zoning text.

Since there has been no application submitted to the Village for development on the TZ Vista site, a site-specific environmental review would be speculative. As many in the Village area aware, there is indeed a prospective developer who has entered the NYSDEC Brownfield Cleanup program. If the brownfield remediation is completed successfully, it can be assumed that this developer may submit an application for the Special Permit in the WF District. However, the Special Permit is discretionary to the Village Board. Mr. Ferrandino appears to have missed the entire point of environmental analysis—for an area-wide action, it is appropriate to conduct an evaluation of the reasonable worst case scenario of the incremental increase between an existing condition and proposed change. In this case, the existing condition is the allowable area and bulk requirements and other text in the permit to the Village Board in the WF District. This incremental increase is exactly what has been reviewed in the EAF Part 3. The proposed Special Permit text further requires that a site-specific EAF be completed in the event that a proposal to develop under the Special Permit is submitted.

Mr. Ferrandino calls into question Section 360-2.5(B)(2)(c)[6][c][iii] which reads: “in providing resilience to sea level rise, storm surge, and flooding, soft or vegetated shorelines and rip rap should be used instead of vertical sheet pile bulkheads *where possible*” (emphasis added). Mr. Ferrandino claims that site conditions may make soft or vegetated shorelines and rip rap impossible. The proposed WF District Text Amendment already addresses this concern with the words “where possible.” This language was recommended by Scenic Hudson in order to address resilience to climate change and sea level rise. Further, the Village Board has indeed considered the potential for sea level rise to cause encroachment of the Hudson River on the

waterfront walkway. Due to the topography of the site at the water's edge including existing rip rap, and per GIS topographic data received from Rockland County, the potential for encroachment by rising sea levels within the WF District is minimal. A study by the Piermont Waterfront Resilience Task Force (September 2014) uses a worst-case estimate of 56" - 72" of sea level rise by 2100 (a more optimistic estimate includes a range of 15" - 30"). According to Rockland County topographic data, the six foot topo line (which represents the worst case scenario by 2100) is set back approximately 10 feet from the water's edge on the TZ Vista Site. In fact, the proposed WF District Text Amendment accomplishes the very goal of both providing *and* protecting publicly accessible waterfront open space by requiring a minimum setback of 50 feet from the Hudson River and requiring that 30 feet of that setback be open to the public.

4. "Parking impacts are not addressed in the FEAF. The traffic analysis in the FEAF does not include waterfront and non-residential uses. It does not examine traffic impacts to Gedney or Main Street."

As noted above in our response to the Riverkeeper letter, the proposed WF District Text Amendment requires parking ratios that are in line with the Village's other multi-family residential zoning districts and ITE guidelines. By limiting reserved spaces to one space per unit prevents individual units from holding multiple reserved spaces and allows for guest parking or shared parking on-site. The text also requires that an additional 10% of the parking required based on unit count be provided in addition. This 10% additional parking is required to be provided either on-site or within 200 feet of the site specifically to address the need to alleviate parking issues in the neighborhood. Further, any non-residential uses on site are required to provide parking per the Village's existing parking regulations.

In addition, the Village Board is under no obligation to evaluate traffic impacts unless the incremental analysis indicates that there may be a significant adverse impact. The traffic study that was conducted by BFJ found an incremental increase of four cars during peak hours. Most reasonable people would find this increase to be insignificant.

5. "The Village's stormwater and sewer infrastructure is already overburdened and any increase, even incrementally, will place a further strain on capacity."

Mr. Ferrandino states that "there are issues pertaining to sewer and stormwater infrastructure in the vicinity of the WF District that should be addressed comprehensively prior to consideration of any site specific development proposal." As repeatedly noted in this memo, the Village has not received an application and is not currently reviewing any site-specific development proposal within the WF District. The Village is considering an area-wide action. In addition, as explained above in response to the Riverkeeper letter, a comprehensive solution to I&I issues is underway by the Orangetown Sewer Department as required by NYSDEC.

6. "The Development Incentives, as drafted, allow development up to the maximum FAR and density without requiring amenities. The FEAF provides no rationale for the substantial FAR increase, which itself could cause significant adverse environmental impacts."

The notion that Development Incentives—including building height, density, and FAR—in the proposed WF District Text Amendment can be achieved without providing amenities is completely false with respect to both the intent of the text amendment and the actual text itself.

There are three types of amenities included within the proposed WF District Text Amendment: 1) Sustainability Amenities; 2) Waterfront Access; and 3) Design Guidelines. All three of these amenities must be provided to the satisfaction of the Village Board in order for an applicant to qualify for the Special Permit.

Section 360-2.5(B)(2)(c) of the proposed WF District Text Amendment includes the full body of provisions for both Development Incentives that can be achieved *and* amenities that must be provided in order to achieve the incentives. The notion that Development Incentives can be achieved without providing amenities is an incorrect reading of the proposed WF District Text Amendment. In addition, Mr. Ferrandino is incorrect in stating that “Design Guidelines for the Waterfront” are required by the existing permit to the Village Board in the WF District. The existing Section 360-2.5(B)(2)(c) *includes no reference to Design Guidelines for the Waterfront* as claimed by Mr. Ferrandino. The claim that “the Village is giving away the additional building square footage for nothing” is false and not based on an accurate reading of either the existing zoning text or the proposed WF District Text Amendment.

Mr. Ferrandino appears to be confusing the existing zoning text with the proposed WF District Text Amendment in claiming that “the proposed Local Law does not include the ‘Sustainability Amenities’ required under the existing WF District.” In reality, it is the existing WF District that does not explicitly include Sustainability Amenities. Under the existing code, Sustainability Amenities are addressed in a separate section (360-4.14) and apply to multiple commercial and multifamily zoning districts (including the DMU, RMU, OMU, MFR-1, MFR-2, WF, and CC). By enshrining the Sustainability Incentives in the Special Permit of the proposed WF District Text Amendment, the Village Board is explicitly tying Sustainability Amenities to the increase in density permitted under the Special Permit, which is the exact opposite of what Mr. Ferrandino claims. Again, Mr. Ferrandino appears to have confused the existing zoning text with the proposed WF District Text Amendment.

7. “The Development Incentives, as drafted, allow development up to the maximum height without reducing building width.”

The concern expressed by Mr. Ferrandino with regard to the relationship between building width and building height appears to be the impact on view corridors. Preservation of views is addressed in the EAF Part 3, which clarifies that the proposed WF District Text Amendment does not amend the Village’s View Protection Overlay District (Section 360-4.4(B)) or the methodology for measuring the area of a site that cannot be built in order to protect view corridors. From the standpoint of SEQR, our position is that the view corridors established by local legislation are the appropriate metric for evaluating the potential for adverse impacts. Since those existing view corridors still apply without revision in the proposed WF District Text Amendment, there is no potential for significant adverse impacts with respect to views.

Since the view corridors will be preserved in any case, the question of building width rests as a policy decision for the Village Board. We believe that the intent of the provision in the existing code that links building width reductions to building height increases is to expand the availability of view corridors beyond what is required by the View Protection Overlay District. This is a policy decision of the Village Board.

8. “The Design Guidelines, as drafted, are contradictory and the FEAF analysis does not adequately link requirements with neighborhood character.”

The Design Guidelines included in the proposed WF District Text Amendment were developed by Eric Fang, a renowned urban designer from Perkins Eastman Architects specializing in large scale urban design. The Design Guidelines were constructed with careful review of the surrounding context and a public workshop, which we understand Mr. Ferrandino did not have the opportunity to attend. The workshop included a slide presentation to demonstrate the concepts that the Design Guidelines could support. Public input on the details of the Design Guidelines was received during the meeting and the Design Guidelines were revised in response to public comment before the proposed WF District Text Amendment was finalized.

The link between building façade and glazing requirements was discussed at this public workshop in order to hear from the public what characteristics they hoped to see in the architectural character of future development in the WF District. Concerns expressed included opposition to glass curtain walls or expansive panes of glass and preference for clapboard or masonry siding. These concerns were addressed in the Design Guidelines. As noted above, the Nyack waterfront is home to an eclectic mix of architectural styles, which is not represented by the selective photographs that Mr. Ferrandino has included in his letter.

It is unclear how the proposed WF District Text Amendment would impact “upland” parts of the Village, including the Edward Hopper House, which Mr. Ferrandino cites and erroneously locates “one block north of Gedney Street.” The Edward Hopper House is in fact one block west of Gedney Street. The east-west blocks that span from Gedney Street to North Broadway are long blocks, approximately 600 feet, and we do not anticipate any visual impact from potential future development in the WF District on the Edward Hopper House. In any case, the objective of the Design Guidelines has been to borrow components of valued architectural character of the waterfront area, including clapboard and masonry siding and limited glazing area.

9. “The Design Guidelines, as drafted, are contradictory.”

We disagree that the sections with regard to parking structures are contradictory. The proposed text reads as follows:

“Parking structures facing a public street or other publicly accessible area should be architecturally integrated into the principal building using techniques such as an exterior clad in brick, architectural metal panels, solar panels, a window-like facade treatment, or “liner” buildings, i.e. buildings located in front of the parking garage that screen the garage from public view” (Section 360-2.5(B)(2)(c)[6][iii]).

Due to topography on sites within the WF District, it is likely that portions of a below-grade parking structure would be visible from a side street or waterfront walkway. This provision ensures that such a structure is architecturally consistent with the public realm and is not inconsistent with other parts of the proposed text.

Mr. Ferrandino has also misunderstood the proposed text with regard to building step-backs. He cites Section 360-2.5(B)(2)(c)[1][b], which refers to front yard step backs. The step back requirements in this section are indeed different from those described in Section 360-2.5(B)(2)(c)[6] in the Design Guidelines, which refer to step backs along Main Street. There is no parcel within the WF District that could be understood to have a front yard on Main Street, therefore the first provision does not apply along Main Street. The additional provision for step backs along Main Street further enhances the ability of the proposed WF District Text Amendment to ensure building scales consistent with the surrounding neighborhood along the streetscape.

10. *“While our clients support the creation of waterfront access and public space, revisions to the proposed Local Law have shifted responsibility for maintaining the required public access and open space to the Village. Impacts of new Village parkland are not included in the fiscal analysis of the FEAF.”*

We believe that Mr. Ferrandino is misconstruing the intent and outcome of the text provision which requires that public waterfront space “shall be dedicated to the Village of Nyack and maintained by the Village as parkland in perpetuity” (Section 360-2.5(B)(2)(c)[5][d]). This provision was specifically requested by the Village Board to ensure that the Village controls waterfront open space and that access to such waterfront open space cannot be limited by a private owner. From the standpoint of fiscal impact, parkland adjacent to any potential future development may increase the assessed value of the property and improve fiscal impact to the Village.

Mr. Ferrandino claims that Section 360-2.5(B)(2)(c)[5][d] conflicts with Section 360-2.5(B)(2)(e). However, Section 360-2.5(B)(2)(e) applies to the underlying zone, not the Special Permit. This section is not revised by the proposed WF District Text Amendment and is not contradictory as claimed by Mr. Ferrandino.

11. *“The proposed Zoning Text Amendments are inconsistent with the Village’s adopted Comprehensive Master Plan.”*

As noted in the EAF Expanded Part 3 and the BFJ memo from April 20, 2016, the Village Board, Village Planner, Rockland County, and Scenic Hudson are all in disagreement with Mr. Ferrandino’s claim that the proposed WF District Text Amendment is inconsistent with the Village’s existing CMP.

Mr. Ferrandino further comments on review of the proposed WF District Text Amendment by BFJ while Turner Miller Group conducts a review of the entire Village Zoning Code in association with the current, ongoing Comprehensive Plan update process. As noted in the BFJ letter from April 20, 2016, we know of no impediment to moving forward with a zoning text change to an existing zone while a Comprehensive Plan process is underway. For example, the City of New Rochelle has recently adopted a Downtown Overlay Zoning (DOZ) district in the midst of BFJ undertaking a Comprehensive Plan update for the City. John Nolon, head of the Pace Land Use Law Center, wrote a supporting e-mail to the City of New Rochelle on this exact issue saying that he saw no reason that the DOZ could not be adopted while the Comprehensive Plan was being developed.

As a practical matter, if there were any legitimacy to this concept, there are instances where good planning and appropriate zoning changes might be delayed for years—if not indefinitely. One case in point is the City of Mount Vernon. Six years ago, BFJ Planning prepared the Mount Vernon Comprehensive Plan under a previous mayor. Within months after the plan was completed but before adoption, a new mayor was elected. The new mayor chose not to act on adoption of the Comprehensive Plan and never completed the GEIS. Therefore, if Mount Vernon had not been able to make zoning changes during that period before the plan was adopted, the City would not have seen the significant development proposals that have been approved these past few years.

12. *“The text of the Local Law has been amended since the close of the public comment period and should be subject to a new Public Hearing.”*

The ongoing public review of the proposed WF District Text Amendment was in part asked for by Mr. Ferrandino’s client, Zarin & Steinmetz. Amendments were made to the Local Law per comments received from the public at a hearing. While changes

were made to the proposed text amendment in response to public comment, none of these changes are substantial in that they do not change the basic intent or impact of the legislation. Therefore, no new hearing is needed.

13. "As drafted in the proposed Local Law, the WF District Site Plan and Special Permit applications only require an Environmental Assessment Form and not compliance with SEQR."

The way that SEQR works, as noted by Mr. Ferrandino, is that the first step in the SEQR process is completion of an EAF, followed by a declaration of significance. Of course a positive declaration of significance with regard to a specific project would mandate completion of an EIS. There is nothing in the proposed WF District Text Amendment that states or implies otherwise. The mandate that a Special Permit application be accompanied by an EAF (not a full EIS) is reflective of the fact that the Village Board cannot know the outcome of an EAF for an application that has not yet been submitted.

"Coastal Assessment Form (February 10, 2016)"

Comments in response to the Coastal Assessment Form are being addressed separately by Robert Galvin, Village Planner.

Ira M. Emanuel, P.C. (dated April 21, 2016)

Ira M. Emanuel, P.C. submitted a letter to Walter Sevastian, the Village Attorney, on April 21, 2016 with additional questions about the EAF for the proposed WF District Text Amendment. Mr. Emanuel represents TZ Vista, LLC, who owns one of the parcels located within the WF District. Mr. Emanuel's letter includes a list of items that he suggests have not been addressed by the EAF Part 2 and/or Part 3. In a subsequent email to Mr. Sevastian, Mr. Emanuel noted that many of his concerns had been addressed by the BFJ letter from April 20, 2016. Response to the items that Mr. Emanuel believes to remain outstanding follow:

EAF Part 2 10: Impact on Historical and Archeological Resources

This item was addressed above in response to Mr. Ferrandino's letter.

EAF Part 2 11: Impact on Open Space and Recreation

Mr. Emanuel suggests that Items 11.b, 11.c, and 11.d should all be marked as having potential impacts. We disagree with this characterization as follows:

- *11.b: The proposed action may result in the loss of a current or future recreational resource*—There is no current recreational resource on the TZ Vista site and the proposed action poses no risk of resulting in the loss of a future recreational resource. In fact, the proposed action strengthens any future recreational resource on the site. The proposed action was further drafted with the Nyack Boat Club in mind, allowing for discretion with regard to the location of a waterfront walkway to allow existing water-dependent uses to continue to operate.
- *11.c: The proposed action may eliminate open space or recreational resource in an area with few such resources*—Again, the proposed action was created to protect existing recreational resources within the WF District and to strengthen provisions for providing new such resources.
- *11.d: The proposed action may result in loss of an area now used informally by the community as an open space resource*—We are unaware of any informal open space resources within the WF District. As

far as we know, the only vacant site within the WF District is the TZ Vista site, much of which is a contaminated brownfield site.

EAF Part 2 17: Consistency with Community Plans

Mr. Emanuel suggests that Items 17.a, 17.b, 17.c, 17.d, 17.e, 17.f, and 17.g should all be marked as having potential impacts. We disagree with this characterization as follows:

- *17.a: The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s)*—Allowable land use under the proposed action is consistent with multi-family residential buildings east of Gedney
- *17.b: The proposed action will cause the permanent population of the city, town or village in which the project is located to grow by more than 5%*—The incremental increase from the proposed action is two units per acre or a total of approximately nine units on the two sites that could potentially be developed in the near term. This incremental impact is *de minimus* and would not result in a population increase of more than 5%.
- *17.c: The proposed action is inconsistent with local land use plans or zoning regulations*—This item was addressed above in response to Mr. Ferrandino's letter.
- *17.d: The proposed action is inconsistent with any County plans, or other regional land use plans*—There are no recommendations within the Rockland County Comprehensive Plan that conflict with the proposed WF District Text Amendment. In fact, the text amendment is supportive of several recommendations, including issues related to redeveloping underutilized land, brownfield cleanup, and access to the waterfront.
- *17.e: The proposed action may cause a change in the density of development that is not supported by existing infrastructure or is distant from existing infrastructure.*—This item was addressed above in response to Mr. Ferrandino's letter.
- *17.f: The proposed action is located in an area characterized by low density development that will require new or expanded public infrastructure*—As noted above in response to the Riverkeeper letter, the Orangetown Sewer Department has indicated that the capacity of infrastructure in the area is adequate. The Town is currently in the process of resolving issues related to Inflow and Infiltration as required by NYSDEC.
- *17.g: The proposed action may induce secondary development impacts (e.g., residential or commercial development not included in the proposed action)*—The incremental impacts of the proposed action were evaluated in the EAF Part 3, which determined those impacts to have no significant adverse impacts, therefore we believe that it is correct for item 17 to have been marked 'No.'

EAF Part 2 18: Consistency with Community Plans

This comment was addressed in part in the response to the Ferrandino letter above. By means of further explanation, the proposed action may create a small impact with regard to Item 18.b. However, since the incremental increase is limited to two residential units per acre or a total of approximately nine units on the two sites are could potentially be developed in the near term, this impact is *de minimus*. There is no impact with regard to the remaining items in section 18.

EAF Part 3 Section 2. Shadows

Mr. Emanuel asks for clarification on the definition of “sunlight sensitive resources.” This term was used as an example in context of the reference to the New York City Environmental Quality Review (CEQR) Technical Manual. CEQR defines sunlight sensitive resources as “resources that depend on sunlight or for which direct sunlight is necessary to maintain the resource’s usability or architectural integrity.” Examples include public open space, architectural resources, and natural resources. As noted in the EAF Part 3, given the incremental increase in building height of seven feet and the increase in required setbacks from the Hudson River, the impact of shadows are *de minimus*.

Conclusion

We appreciate the hard look that the Village Board is taking in reviewing the proposed WF District Text Amendment. As has been noted by many stakeholders throughout this long process, Nyack’s waterfront as a whole is a valuable resource and sites within the WF District represent an incredible opportunity to improve access and activity in a way that benefits the Village. Our understanding is that the Village Board has closely reviewed the proposed WF District Text Amendment from the standpoint of their responsibility as Lead Agency in the SEQR process and their role as of stewards of the Village. We believe that the Village Planner is correct in his determination that the proposed action will have no significant adverse environmental impact. Of course, the final determination of significance will be up to the Village Board upon its review of all of the materials submitted to it. We further believe that the text amendment is likely to produce benefits to the Village in the event that a development application is submitted that complies with the proposed Special Permit.

Sincerely yours,

Frank Fish, FAICP



Simon Kates, AICP, LEED AP



cc: File
Distribution