

CLUP Chapter 5 Technical Staff Worksession

Items held in the “Parking Lot”

Tuesday, September 27, 2011, 9:00 a.m., Southaven Lodge

Commission member representatives present: Ms. Brenda Prusinowski and Mr. John Turner (for Brookhaven), Mr. Daniel McCormick (for Riverhead), Mr. Jefferson Murphree (for Southampton), Ms. Sarah Lansdale, Mr. Andrew Freleng, and Mr. Daniel Gulizio (for Suffolk County Planning).

Others present: Mr. William Spitz (for New York State Department of Environmental Conservation), Ms. Meg Shutka and Ms. Diane Mazarakis (all from Brookhaven Town), Ms. Julie Hargrave, Mr. John Pavacic, Ms. Judy Jakobsen, Ms. Carol Sholl and Mr. John Milazzo (Commission staff).

Introduction

The Commission and member agency staff assembled to continue the review of CLUP Amendments, specifically the latter half of Chapter 5, Standards and Guidelines for Land Use. The group achieved consensus on some items and other items held in the “Parking Lot” are summarized below.

Parking Lot Items

5.3.3.6.2 Open space standard

- Provide the definition of open space from multiple sources and develop consensus on a single definition. (*Definitions have been provided.*)
- Clarify open space versus habitat.
- In the first sentence in the second paragraph of this section, consider substituting the phrase “project design” for the phrase “site planning.”
- In the third sentence of the second paragraph, consider replacing the word “contours” with “existing natural contours” or the word “topography.”
- Remove flexibility and provide a firmer mechanism to set aside open space – the clearer the standard, the easier it will be to determine whether or not a project complies.
- Clarify when a hardship waiver would be required.
- Provide the Towns and the Commission’s interpretation of the open space standard.

- Provide sample diagrams to illustrate the intent of the open space standard.

5.3.3.6.3 Unfragmented open space and habitat

- In the first paragraph, which begins “Subdivision and site design...”
 - Rework the first paragraph in this standard. Refer to other standards, for example state, “...in accordance with other CLUP standards.”
 - Add “when adjacent parcels are undisturbed” to the first sentence.
 - Consider adding the phrase “or entirely or partially preserved” to the end of the first sentence.
 - Consider eliminating the phrase comprising the first portion of the second sentence – that portion which states: “Subdivision and site designs ~~should~~ shall also be configured in such a way so as to prioritize the preservation of designated open spaces and/or native pine barrens vegetation...” as it seems to be unnecessary.
 - Explain why the phrase, “...to the maximum extent necessary,” is being eliminated from the end of the first paragraph?
- Second paragraph. Explain why the paragraph in this part of the standard, which begins “For the purpose of this paragraph, native pine barrens vegetation...,” was eliminated.

This paragraph constitutes the second paragraph of the existing CLUP section 5.3.3.6.2 (“Unfragmented open space”). The use of the term “native vegetation” was found to be inconsistent with the first paragraph of this existing section, which references “natural vegetation,” not native vegetation, and its companion section 5.3.3.6.1 regarding clearing as that section refers to clearing of natural vegetation, not native vegetation. The use of the term natural vegetation is more inclusive and ensures that natural vegetation, which may include vegetation not native to Long Island but which is native to the northeast or other parts of the United States or non-invasive vegetation introduced from outside the United States but which provides important habitat and ecological functions and which may be intermingled with native vegetation in certain situations, is more adequately protected and accounted for when setting aside open space.

- Fourth paragraph
 - Provide examples demonstrating why natural area should not remain in lots. Address concern that natural area remaining in lots is often lost over time with changes in property ownership. Compliance and enforcement time and efforts needed to monitor compliance may not be available. The term “privately-owned” should be considered for elimination.

5.3.3.6.6 Receiving entity and protection of open space areas

- Provide information on ECL Article 49 - Protection of Natural and Man-Made Beauty, particularly in regard to third-party enforcement. The complete text of Title 3 of Article 49, which pertains to Conservation Easements, is attached. Section § 49-0303. **Definitions.** states that *“‘Third party enforcement right’ means a right which may be granted in a conservation easement which empowers a public body or a not-for-profit conservation organization which is not a holder of the easement to enforce any of the terms of the easement.”*
- **Section 49-0305** entitled “Conservation easements; certain common law rules not applicable” states in part 5 that:

“A conservation easement may be enforced in law or equity by its grantor, holder or by a public body or any not-for-profit conservation organization designated in the easement as having a third party enforcement right, and is enforceable against the owner of the burdened property..”
- The objective is to require protection, however, a specific entity cannot be specifically identified as required to receive the open space.
- Provide sample wording to address this standard and receiving entities. If a non-profit receives the open space then ceases to exist, who is the default owner? What enforcement powers exist to protect property?

5.3.3.6.8 Invasive plant species mitigation

- Re-write this standard.
- Indicate that the developer is required to do the assessment.
- Change wording to “removal and/or management.”
- Elaborate on the requirements included in the “removal and/or management” of invasives.
- Describe how this standard works with other standards. For example, if someone is making a good-faith effort to comply with the invasives standard this might cause that person to violate the clearing standard as invasives may comprise a portion of the natural vegetation on a parcel which is intended to be set aside.
- Consider adding the phrase “maximum extent practicable.”
- What is the basis for the reference to “10 acres”?
- Consider adding the phrase *“to the maximum extent practicable”* as there may be some situations in which it is difficult to remove invasives or in which the removal of invasives may cause an undesirable situation (e.g. the removal of Phragmites on a steep slope may destabilize the slope and cause erosion.)

5.3.3.7.2 Bird Conservation

- Provide information on how this standard would affect a project's cost.
- Indicate that this standard only applies to "new" activities that constitute "development," not "all development," as it currently references or may be interpreted. Retrofitting existing facilities will not be required as a result of this standard.
- The standard still contains the phrase "to the greatest extent feasible." Need to be more specific, eliminate ambiguity.
- The Commission may be exceeding their authority to regulate building construction.
- Additional review time to determine consistency with this standard may burden Town planning staff.

5.3.3.8.1 Slopes, clearing and stabilization

- May want to change 1st paragraph, 4th sentence. Clearing shall be located on slopes 10% or less since driveways may be placed in areas of slopes > 10%, otherwise this would require Commission review and possible waiver.
- Redraft this section so it is clear as to what is allowed
- Will send out copies of excerpts from SC Planning & 3 Town slope requirements (see attached).
- Eliminate 3rd category, anything > 15% prohibited.

5.3.3.8.5 Placement of Roadways

- Should remove the rest of the text remaining in this section that appears to have been completed deleted otherwise.

5.3.3.11.2 Scenic, cultural and historic resource protection, #6: sites containing either marked, known, or unmarked human remains of any age.

- Provide research on existing State and Federal regulations that apply to protect cemeteries. Existing provisions may already cover the protection of such resources.
- In subparagraph 6 pertaining to sites containing human remains, may wish to revise the language to state that such human remains will be treated in accordance with State and Federal guidelines, that in situations in which human remains are discovered on property in the Central Pine Barrens the Commission needs to be notified and if the site design is altered as a result, the project needs to be resubmitted to the Commission for review.

- Re-examine this subsection, as it may be two-thoughts that need to be separate and distinct.
- Provide a re-write of this subsection for review.
- In subparagraph 3, provide citations for State and Federal designations of scenic roads, corridors, viewpoints or viewsheds.

5.3.3.12.1 Traffic management and mitigation

- Re-examine this standard, as it is already required for projects with the potential to result in significant adverse impacts pursuant to SEQRA.
- What entity will be reviewing this as review from agencies with expertise in this area may be required.
- An overall regional transportation plan and strategy is suggested to avoid case-by-case review and ensure compact, efficient and orderly development.

Next Steps

Mr. Pavacic stated that an additional meeting would be scheduled and would be devoted to review of parking lot items.