

Town of Northumberland Planning Board  
Accepted by the Planning Board  
Monday September 26, 2022  
Town Hall

**Planning Board Members Present:** Chair Susan Martindale, Vice Chair James Heber, Melanie Eggleston, Holly Rippon-Butler, Lisa Black and Marybeth McGarrahan

**Planning Board Members Absent:** Brit Basinger and Jeff King

**Town Employees:** Dave Brennan, Town Counsel, Michael Terry, Code Enforcement Administrator, Charlie Baker, Town Engineer and Tia Kilburn, Clerk

Chair Martindale opened the monthly meeting at 7 pm, quorum established. All in attendance stood to salute the flag.

Chair Martindale stated there was no new business and announced the first item on the agenda **application #: 0006-22, GLPJ Real Estates LLC, 5 Wilton Gansevoort Rd / Mansion, site plan, special use permit review for a boarding house.** Mr. Ramesh Srini, representing GLPJ Real Estates LLC.

Chair Martindale stated they received a "site plan" she said it is not a survey because it is not stamped by an engineer, she said the board asked for a certified site plan. Mr. Terry stated the board was looking for a site plan that would include parking and the new septic system, because they need to update the septic. The new septic is on there and Paul Male, Engineer sent the plans for the new system. Chair Martindale asked if he reviewed it and it was acceptable? Mr. Terry responded yes and added he spoke with Mr. Brennan and Mr. Peck, Town Supervisor and even though the Board is working through this review they are going to grant the septic permit because now it has come to public health issue because it is failing.

Chair Martindale stated the Clerk has noted she received an updated site plan and SEQRA, State Environmental Quality Review Form.

Mr. Brennan said he was checking the code because there is the ability to adjust and waive certain provisions based upon the nature of the application. He asked who was doing the septic system? Mr. Terry replied Paul Male, Mr. Brennan said he could stamp the site plan, he then asked who drew up the site plan, Mr. Srini said Mr. Male, and they have a previous site plan provided by the Town from the previous file. He said they adjusted it to show what it is today, Mr. Male used that as the basis to show where he will put the new septic system, he shows the old septic and the new one based off the original site plan provided by the Town. Mr. Brennan asked Mr. Terry if the plans from Mr. Male were stamped? Mr. Terry stated he would have to check because they were emailed to him, but eventually yes, they will be stamped. Mr. Brennan stated he was satisfied they can get the stamp on there by the engineer designing the septic.

Chair Martindale asked about the SEQRA, Mr. Brennan asked the Clerk if she had a short EAF? The Clerk replied no, Mr. Terry stated all that was requested at the last meeting was the site plan, Vice Chair Heber stated because it is existing, he didn't think they needed one, Chair Martindale agreed and said she was thinking the same. Discussion ensued on SEQRA. Mr. Brennan stated in his notes he has they need a short form EAF (SEQRA) and design for the septic system. He said it does need a short form and Mr. Male can fill one out. Chair Martindale asked if they could schedule the public hearing without the SEQRA? Mr. Brennan said yes.

Chair Martindale asked if there were any questions before they consider scheduling a public hearing? Vice Chair Heber asked if there was a question about ownership? Chair Martindale said not ownership but the occupancy of one of the owners of the LLC., she

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asked Mr. Terry if he has documentation? Mr. Terry said he has one form and then he received another, he asked Mr. Brennan if that was sufficient? Mr. Brennan replied yes, and added that "Beth" as an occupant and they provided through one of the documents she is part owner of the LLC. Chair Martindale asked if that satisfies the owner occupied, Mr. Brennan said yes, she is part owner and she lives there, he added a lot of houses are owned by corporations.

Vice Chair Heber made a motion to schedule a public hearing,  
Ms. Eggleston 2nd the motion,  
All in attendance unanimously agreed.

Chair Martindale stated the public hearing will be scheduled for October 24th, the next meeting. Mr. Brennan stated what they need is for Mr. Male to put together a short form EAF, Environmental Assessment Form, email it and they will hold the public hearing at the next meeting. Mr. Srini reiterated the public hearing will be October 24th, Mr. Terry explained yes, they have to put out notices to the adjoining property owners, Mr. Srini asked if there was anything else they should be doing so they can start the septic? Mr. Brennan asked about the roof, Mr. Srini stated the roof is done.

Chair Martindale announced the next item on the agenda; **application #: 0015-21 & 0016-21, Subdivision, shoreline overlay and lot line adjustment for applicant Laura Fivel at 120 & 126 Austin Rd and West River Road.**

Ms. Fivel stated at the last meeting she attended there weren't any questions regarding the lot line adjustment, as far as the subdivision 2 lots becoming 3, there were questions on existing structures not on the map and now they have been added, an additional comment was that the "Right to Farm Law" was added and that is on there now as well. She stated the minimum requirements of 5 acres or greater have been met and the required road frontage. Chair Martindale stated it has been a while since they have seen this application, she said she doesn't remember a lot of the particulars, discussion ensued to refresh the Board on the location and proposal.

Vice Chair Heber asked if they have the original subdivision plot? Ms. Fivel submitted the maps from 2014 for the Board's review. The Board reviewed the map and Ms. Fivel explained the changes she is requesting to square up the lots she and her sister current have homes on and the vacant lots, one for a future residence for herself and a lot on the river across the road (West River Road) they have no plans for at this time.

Vice Chair Heber stated there does not appear to be wetlands, Ms. Fivel agreed and said eventually where she plans to build is on the top of the hill. Vice Chair Heber said what will become lot 6 is on the river, Ms. Fivel agreed and stated that is not intended to be a building lot but it does meet the requirements for acreage and road frontage.

Ms. McGarrahan asked if there is a structure on proposed lot 5a or original lot 3? Ms. Fivel said no, she indicated original lot 3 and added what is becoming lot 5a currently has no structures but eventually she would like to build her new home there. Chair Martindale asked if there was enough road frontage for driveways? Ms. Fivel replied yes and indicated where she would like the driveway to her future home.

Mr. Brennan stated he was looking at an arial photo and there are two houses on two separate lots, Ms. Fivel said yes, they are on the two original lots. Chair Martindale asked who currently owns it, Ms. Fivel replied her family, lot 1 is her

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uncle, 2 is her sister, 3 is herself, what is proposed as 5a her father owns but it will be hers and lot 6 will be her sisters. Chair Martindale asked if they have the authority documentation for her to represent her father? Ms. Fivel said yes, the Clerk added Mr. Sherman was in person at a previous meeting.

Ms. Eggleston asked about lot 4, the residence, is there enough setbacks for the septic and everything? Ms. Fivel stated there is no change to that. Vice Chair Heber stated that is basically the original house. Discussion ensued on the locations of wells and septic.

Mr. Brennan asked for clarity on the current number of lots, Ms. Fivel stated what was created in 2014 was a total of 5 lots and it is going to go to 6 lots. Mr. Brennan asked what the highlighted outlines were on the map, Ms. Fivel stated it was what had happened back in 2014, the map is color coded as to previous lots and the proposed.

Chair Martindale asked if there was a SEQRA prepared, the Clerk responded yes, Ms. Eggleston asked if it has already been determined, the Clerk replied it is in the file but has not been reviewed by the Board.

Ms. McGarrahan asked about the proposed driveway location, Ms. Fivel replied like on the corner of West River and Austin Roads, when it is time to do the proposed house.

Chair Martindale stated it is a major subdivision due to the previous subdivision, Vice Chair Heber agreed. Chair Martindale asked if the Board had any questions, none were noted.

Vice Chair Heber made a motion to schedule a public hearing,  
Ms. Eggleston 2nd the motion,  
All in attendance unanimously agreed.

Mr. Brennan stated to move to a public hearing on a subdivision you should be doing SEQRA first, a subdivision is the only one that is like that. Chair Martindale asked for the SEQRA form, the Clerk gave the Board the SEQRA form, Ms. McGarrahan stated she would review it.

Mr. Brennan asked if this application needed to go to County Planning, it was determined it did.

Ms. McGarrahan read aloud the SEQRA questions and answered with the opinion of the Board after discussions of each question.

Vice Chair Heber made a motion to declare a negative declaration on the State Environmental Assessment Form,  
Ms. Black 2nd the motion, Chair Martindale asked if there were any questions before they move on, none were noted.  
All in attendance unanimously agreed.

Chair Martindale stated a negative declaration has been determined so they can move forward and schedule a public hearing for October 24th. Vice Chair Heber asked for bigger maps for the next meeting. Ms. Fivel agreed and asked how many they would like, the Clerk stated maybe 5 or 6 because they are larger and there is limited room on the Board table so all members can review them. After approval 2 mylars and 2 papers will be required for signature for the file and to file with the County and however many the applicant would like to keep. The Clerk suggested waiting for the

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final mylars until after approval in case in the process of the public hearing something else needs to be added.

Ms. Rippon-Butler stated it would be nice in her opinion, that lot 6 on the river could have public access for public access to the river.

Chair Martindale announced the next item on the agenda, **application #: 0012-21, Major Subdivision / Shoreline Overlay, James O'Donnell, West River Road. Mr. O'Donnell** was not present, represented by Legal Counsel Mr. Phillips.

Chair Martindale asked if they would be addressing the SEQRA for this application, Mr. Brennan stated Mr. Baker, Town Engineer has been reviewing this. Chair Martindale asked Mr. Baker for his review of his findings.

Mr. Baker asked if she meant regarding SEQRA? Mr. Brennan interjected he could give an update on where they were with his review. Mr. Baker stated his firm prepared 2 review letters, copies of both are in the file, one was August 15th and the other August 24th. The August 15th letter identified 3 comments, and the 2nd letter they did confirmed that the first comment in the first letter was addressed and they were satisfied with the Army Corp, DEC and the environmental issues. There are still a couple of comments from the first letter that have not been addressed as far as he knows; related to the soil borings and the detail grading and drainage plans for each lot. They had asked to see house, septic system locations and the wells, all the grading associated with that so they can determine how much total disturbance there will be with all 5 lots. If that disturbance is over 1 acre, then it will require a completion of a storm water pollution prevention plan and a filing of a notice of intent with the State for construction activities. He stated as of this day he has not seen those pieces of information and also included would be a hydraulic study of the flood plain that identifies the plotted areas for each lot and how it is going to affect the 100 yr. flood plain. He stated their engineer said they were working on that and they were going to supply it however, he has not seen it. Mr. Baker stated if they look at their engineer's letter dated July 14th, they talk about the flood plain hydrology and the site with everything he just mentioned and he is still waiting to see the details. He stated as far as SEQRA that could impact how the Board answer some of the questions because you don't know how much fill will be placed there, how much impact it will be on the flood zone and you won't know that until you see the two reports.

Mr. Brennan stated they should ask the applicant to say where it stands from their perspective.

Mr. Phillips stated they had to overcome a couple of hurdles before getting here, one was whether or not the property they are looking to develop fell under the covenant restriction of a previous subdivision, that took a while to determine and over a period of time that was put behind them, the second question posed to them at the last meeting was; can you build in a flood plain, there is a 100 yr. flood plain and as a result of that meeting he had a chance to review the Local Law and address that issue. It is a fairly recent Local Law and he found yes, assuming that they can meet the performance guidelines of construction in flood plain, including bringing in fill, that can be done in a flood plain, although it requires extensive engineering to do it. That is the engineering you are talking about you need to see before they proceed, but they have overcome those two things. They have a better understanding of that now and gives them a chance to move ahead. Mr. Phillips then stated the other thing of concern with SEQRA is what will SHIPO play in this whole thing, there is a SHIPO letter going back to the year 2006, basically SHIPO wanted to make sure the

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historical house on the property, one of these lots, would maintain its integrity which is a 19-century construction with some enhancements to it. Then there was a follow-up SHIPO letter, both SHIPO letters were advisory, the follow-up got a little more expansive than the first letter, the follow-up letter talks about the site that said if there is construction that is going to take place the new construction should be invisible to the greatest extent possible, as he reads it, they want screening between the old house and the new. The owner of the property is talking about doing the same thing so there would be a symbolic relationship between the old and new, so that is achievable in the context of what SHIPO is talking about. He stated he drove down the river road to see the other houses along the road, there are new houses, there are old houses there is a mix of houses. He also looked at the terrain in terms of hills and low areas there is nothing about this property that would jump off the page, some good engineering could be helpful. Having those things out of the way, you have to talk about can they develop this area and can you develop in a flood plain and with two yeses' now they can proceed to do some additional work, as they were cautioned not to spend the money before doing the work because they had to overcome the threshold things, he thinks what he is hearing now is that they are not ready for a SEQRA determination.

Mr. Baker agreed and said that was his opinion, he can't speak for the Board. Vice Chair Heber agreed and said but if they can't answer the questions then they can't proceed with SEQRA. Mr. Brennan stated there are two things that are a tension, he counseled the Board and stated he caught a sense from the Board from prior meetings, information to complete SEQRA and the balance with the applicant spending funds. He said to decide on SEQRA, if there is a negative impact on the environment there is engineering detail that goes into whether the water will be increased one foot based upon the improvements, there is a whole thing in the flood plain ordinance and he agrees that construction is allowed in the area but it is subject to special planning and special construction methods, to see if you are going to impact other areas by filling in this area, he doesn't think that will happen but that is not his job to determine. Looking at this it does not look like it can't be done, it is an expensive undertaking, what is on his mind is with respect to the solar farm they took a year going through what nobody liked and had them revise and then turned it down. He stated he wanted to get to the threshold question before SEQRA, at the end of SEQRA they do the work and they say they can deal with the flooding through engineering or excavation it will even out. He stated it is not so the Hudson River is going to back up and you will see flooding upstream because of potentially these houses. It is a lot of money and work to get there and it is a dis-service to do all that, he shows up and says yes, we can build the houses but the Board says they didn't like it to begin with. He stated he doesn't have a vote but the Board has to look at the provisions and regulations in the subdivision law and look at it to say this isn't something that can be approved as a subdivision, it ties in largely to the Colonel Berry House and the impact on that. He stated they can go through this and decide they don't like the 4th or 5th lot, whatever the case maybe or one is too close to the house, if you spend another 6 months it isn't going to change. He stated he is not telling them what to do, or saying they do like it or don't like it, he is saying the Board should say now and not in 6 months when they spend \$25,000 at an engineering firm to show you it can be built. This is like a preliminary subdivision plat where you say yes you agree with the concept, it is not quite that but a sketch plan, if the Board doesn't like it now, there is no reason to go through the effort of getting to a preliminary plat. He stated he was hearing rumblings over this about the layout, he is not saying they have to approve it after all this but if the Board doesn't like the number of lots, layout or the proximity to the Colonel Berry house now is the time to have the discussion, not after they do a flood plain analysis for building a house there.

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Mr. Terry stated the way they have it laid out, 5 lots at 5 acres, it will take those lots out of agricultural, you need 10 acres in the APD to do agricultural pursuits. Five acres is fine for single family homes but once that gets approved for the Colonel Berry House and the 4 new ones, they become glorified residential lots, they can't pursue agriculture on any of those lots per the Town Zoning. Mr. Brennan said that is something else to put into the mix. Ms. Bender stated only 8 acres are buildable, she asked Mr. Phillips if that was correct. Mr. Phillips agreed and said they will basically be building on 8 acres and the rest would be open space, he added the rules say you can't do ag but in the last SEQRA hay fields can be done even on residential properties, this is a hay field. Mr. Terry agreed and said that is used as agriculture and if that goes through for 4 lots there will be no agricultural pursuits because they won't meet the minimum requirements for the APD, he is saying it is not impossible, they could go for an area variance or they could keep the Colonel Berry House and do two 10 acre lots, then if someone comes in a buy it yes, they can have agricultural pursuits, if they do 4 lots it doesn't meet the requirements for ag. Mr. Phillips asked if he was suggesting there is a prohibition against doing the subdivision. Mr. Terry replied he is not saying that he is just saying he is dealing with a previous subdivision right now that someone is trying to farm on a 5-acre lot and they can't because it doesn't have the 10 acres required by zoning. Vice Chair Heber interjected and stated he is saying these are going to be residential lots, you can't farm on them you can't have animals because there is only 5 acres and you need 10 acres to farm. Mr. Brennan stated it is not a prohibition it is just the regulations, Mr. Terry agreed and said it is something that might get triggered when the SEQRA goes through, it has to do with agricultural pursuits and it will prevent that with the 4 lots. Vice Chair Heber agreed and said it will take it out of agricultural. Mr. Brennan explained it is like someone wants to buy a horse for their kid, they say sorry you can't have a horse because you need 10 acres, then they end up in front of the zoning board asking for a variance. Ms. Eggleston stated a lot of people think they can because the "right to farm" is everywhere, she has had people tell her they thought they could because this is a "right to farm" community. Mr. Phillips said when they look at the SEQRA question for the impact on agricultural, you say yes there is an impact on agriculture, so now if you take say 20 acres of agriculture in the context of the Town of Northumberland, will that be a small impact, moderate impact or a significant impact? He added you can argue any amount taken from agriculture is an impact, in fact every question on the SEQRA you could say there is an impact, it is a judgement call in terms of what you do. Mr. Brennan said his personal opinion is; if this is where you are headed with the line of questioning, he doesn't see any way he would participate in issuing a positive dec and saying you need to have an environmental impact statement on a thing like that because it is like the last applicant, yes there is an impact but it is no or small but that, might not like it on balance, and it goes back to the original question that if you don't like something about the project don't make people spend \$25,000 on studying things and his personal opinion is they don't ask people to do environmental impact statements on small projects to say we are going through the paces, spend a lot of money, drag it out and then do an impact statement on a 4 or 5 lot subdivision, that is just not necessary. Vice Chair Heber stated the number of lots meets the zoning so he doesn't see how they could say no to that, it's what they are going to do with the lots that impacts the environment. He added it is like if they say they are going to bring in 1,000 yards of fill for the house, that means they are going to have to go into the flood plain and make 1,000 yards of fill empty it, he asked Mr. Baker if that was how he saw it? Mr. Baker replied that would be one possibility but they could also do the study and the study might show that placing the fill on those 5 lots is not going to have any dramatic effect on it. Mr. Brennan said that is where his sense is, that with the amount of water they are

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talking about in that area, putting these little mounds in four spots is not going to back this up. He added he thinks after spending a lot of money the study is going to say there is not much of a flooding issue to cause a problem, Mr. Baker said he would agree. Mr. Brennan said the issue becomes a flood plain permit because you have to comply with the standards and those standards are the Federal Government doesn't want to pay out for flood plains because houses are built improperly in the flood plain, you can build but you have to build high enough up, you can't have the furnace in a basement that gets flooded out, there are other things they do so if it does flood it doesn't push walls out. That would be a construction or maybe a marketability issue for projects, but by the end of the day from an engineering perspective it is done. Mr. Brennan said circle back to the impact on the Colonel Berry house and whether you believe the 1st house is too close to that house, if that is what the Board thinks, beyond that as you go through the environmental impacts of this like Mr. Phillips is saying it is not dis-similar, if you were to drive by, from the rest of the neighborhood with the mix of new houses and 5 acres and meeting the basic requirements of zoning, they will be able to put a septic and well in and flood proof the correct way, so what you are looking at is; is there an impact on the national registry house that needs to be mitigated? Vice Chair Heber said it also depends on the type of house, you could put in a house like the Colonel Berry house, Mr. Brennan agreed and said that might be the answer, for mitigation purposes of the impact on community character could be the house style. He said they have to do something architectural sympathetic; Vice Chair Heber agreed and said you wouldn't want to see a modern glass house right next to the Colonel Berry House. Chair Martindale stated from a consumer point of view, Mr. O'Donnell told the Board that he was going to build houses at 1,500 sq ft, by the time they add all the engineering the profit margin on a 1,500 sq ft home is minimal, by the time you add the engineering for the septic and the well, how is he going to make money, that is another concern. Vice Chair Heber stated he was concerned because it is in the overlay district too, regarding the looks of it. Chair Martindale agreed. Discussion ensued on the style of homes to be built. Mr. Baker asked Mr. Brennan if that was something the Board could put on the plan, the house that is closest to the Colonel Berry House is subject to architectural review? Mr. Brennan replied yes, that is what he is getting at, he said some Boards do it in executive session, he is choosing to do it as they get to the substance of this, at the end there has to be something that can be put down in writing in a denial as to why or if you are going to approve it put in what you are going to write for mitigation and requirements. Mr. Brennan explained certain projects come in and sometimes you have to hold your nose because everybody doesn't like, but if it complies with the requirements you have to take the idea that there is property interest in the property, you don't have to approve them, you do have to consider if you are going to turn them down you have to point to something in the regulations and say here is why. Vice Chair Heber interjected and said if it meets all the requirements, he doesn't see there is a problem. Ms. Eggleston agreed, added what they said was 1,500 sq ft for the houses but what if it comes in and they are larger? Mr. Brennan stated they can put that in the conditions if that is what the applicant is saying, he said he didn't recall specifically if it was 1,500 ft total or 1,500 sq ft first floor. Discussion ensued on the size of the proposed homes.

Mr. Brennan stated they can ask for restrictions and say no mansions right next to it (Colonel Berry House) or the next two that can't be 4,500 or 6,000 sq ft, they can't put huge houses that are contemporary and out of character, that is a SEQRA consideration and also a subdivision consideration. He added they can draft conditions to reflect you are looking for a particular design right next to the Colonel Berry House, like the size and they can even talk about screening, there are a number of different things. He stated if the Board is going to tell him after they have these discussions and these sorts of considerations that none of that will

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change your mind, it's ok because he is the Attorney and he will write it up and possibly fight about it later and maybe a Judge in Ballston Spa will tell us we are wrong, probably not because they don't second guess Boards, but you do have to point to something, you can't just say you don't like it. He added there is something here that is causing people to think. Vice Chair Heber reiterated if it meets the requirements, he doesn't see how they can deny it just because they don't like it. Ms. Rippon-Butler said in terms of the of agricultural use stands out to her as one point maybe they can set conditions around, the Board can protect that, maybe say they want to see 10 acre lots. Vice Chair Heber stated if the Town wants to do that maybe they should make the agricultural zone 40 acres only. Ms. Rippon-Butler agreed and said she has been saying that, she added that is her problem with this project that there could still be the ability for agricultural use. Vice Chair Heber stated they can't put 4 lots there and have agricultural too. Ms. Rippon-Butler stated maybe it should be limited to 2 lots. Mr. Brennan asked what if you keep it at 10 acres there is no guarantee the person that buys it says come in and keep haying it, Vice Chair Heber agreed and said 1/2 of that is actually swamp or wet lands, he added there is probably only 3 acres that can be field. Mr. Brennan stated if that is a concern then they can ask Mr. Baker to look it up and see if it is really in production for hay or is it really only 4 or 5 acres that is being hay' d, you can balance that, and it probably is not sustainable if you put 4 houses in it. Vice Chair Heber stated it is not sustainable if you put one house in it, if there are only 3 or 4 acres. Mr. Brennan said then the question becomes is it really valuable and viable or is it just a small field someone is picking up. Vice Chair Heber agreed and said half of it is not used. Ms. Bender said the owner is not the one with the hay on it, he is not making any money. Vice Chair Heber said he understood and he is saying it is not a big field, if anything it is 3 or 4 acres at the most out of the 20 acres the rest of it is wet lands. Mr. Phillips stated this owner is a very architectural sensitive person, the discussion of blending it in with what is there, he lives in the historical home and he does not want to destroy that. Mr. Phillips added he thinks the applicant will be receptive to what the Board wants to be built there. Mr. Brennan stated he has spoken more than he wanted to but it facilitated the discussion to move it in one direction or the other, there is a range of feedback but he is not hearing anyone screaming no it is not possible, it is possible with appropriate limitations and conditions and information. He then asked if the SHIPO letters were all 18 years old, Mr. Phillips replied one is 2006 and one is last year. Ms. Bender interjected SHIPO also said that the 1A and 1B were completed. [inaudible].

Chair Martindale asked if Ms. Black had any comments, Ms. Black stated she thinks they are investing a lot of money before they know they can actually build on it, to pay the engineer to come and analyze it. Vice Chair Heber stated that is the applicant, they have to make up their mind if they are going to spend the money. Mr. Brennan stated he is saying they don't have to complete SEQRA to turn somebody down, SEQRA says before you approve, fund or undertake an action on a project you have to complete SEQRA, it doesn't say you have to complete SEQRA before you deny a project. He added if 4 or 5 people are saying this is a bad project, theoretically, whether it is this one or another one, you don't have to go through SEQRA, you can go through the approval conditions, the requirements and say no they don't meet this or that requirement and they can't meet them so, you are going to deny it, what he doesn't want to do is go through months of studies, SEQRA and months of spending money and come back and say no. Vice Chair Heber said he suggests they export what requirements they can't meet, Mr. Brennan agreed. Vice Chair Heber added if someone is against it, they need to find the requirement they can't meet. Mr. Brennan said that is what he is saying, the Board can ask him to write up a decision, so if 4 of the Board say they want to deny something you need to look to the requirements and say you are

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going to deny it because of the reason, community character or impact on archeological resources, he can write pages of stuff but the Board needs to point to something and have a legitimate basis to say something that does not comply.

Chair Martindale asked the Board for their thoughts, Ms. Eggleston responded that if it meets the requirements, she is fine with the project. Ms. Black said the same, Ms. McGarrahan stated she is fine with it, the owner occupies the historical house but they could put some restrictions on what gets done, Vice Chair Heber said the architecture of the houses is what gets done because of the Colonel Berry House. Ms. Eggleston stated they could put in hedges or tree screening. Ms. Black agreed. Discussion ensued on how an architecture review would go on the new houses. Mr. Brennan stated they would put it on the map that the Board has some kind of description or character of the houses, maybe just the 1st or 1st and 2nd house next to the Colonel Berry house, and then when it is time for a building permit that will come back to the Planning Board and maybe Mr. Baker or someone looks at it and says show us the design of the facade and the windows, you don't do it necessarily today but in a condition. There are people that can help you with that, the windows, porches, the style and also colors that are sympathetic to the house, that is something SHIPO did say, they wanted to maintain the exterior of the Colonel Berry House. He stated he is comfortable with writing it up and putting it on the map and in the building department file for one or two lots, maybe not all 4.

Chair Martindale asked about Ms. Rippon-Butler's concern about keeping agricultural pursuits in tack and reducing the number of lots to two and not four, Ms. Rippon-Butler said it is also about future ownership and having ag land with ag activity on the land, she added the shoreline overlay district language talks specifically about how structures should not dominate the natural visual landscape, it talks about avoiding placing building in the middle of open fields, buildings should be located in or adjacent to existing vegetation, it talks about minimizing disturbance of surrounding properties and the river, lighting and the visual impact of structures from the water is minimized, she stated there is language in there that says placing 4 houses in an open field is out of character of the shoreline overlay district and slopes, they are going to have to build them up. Ms. Rippon - Butler said she is not opposed to development on this lot but she thinks 4 houses is out of character with the district, she stated that is her personal opinion, she respects whatever the Board wants to do with it. Mr. Brennan thanked her and said that is what he is asking the Board to do, to open the book and look at the requirements and what the requirements for the shoreline overlay district talks about and what the Town Board who adopted the Zoning is looking for, go through it and ask if it is consistent or not and a reason, Ms. Rippon-Butler was getting into why she feels it is not consistent. Mr. Brennan said they don't have to make the decision tonight, he just doesn't want them to leave and have to go spend more money and come back, the things are in the book and they are not going to change month to month, that sort of consideration will be here next month, even if they go out and spend money on a flood plain study, that is not money well spent if they do that and come back and you say no it is not consistent with the district. He hears other people saying they are not oppos to it, Vice Chair Heber has stated he feels it does comply. That's ok, they need 4 votes one way or the other, in fairness to applicants, he said they have been here a while and determined historically can it be subdivided and the answer is yes, and now he is asking them not to ask the applicant to spend money just to spend money. If the Board has deeply held positions on this you should debate it more tonight or at the next meeting and come up with something, the concept of 4 additional lots with conditions. You could say yes to preliminary plat approval with conditions of the final plat after you go and do your study to prove to the Board some things, the preliminary plat is a milestone, then you have the ability to go out

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and do the flood plain engineering work know you have approval for the number of lots on the preliminary plat. Then as a condition of signing the final maps you would provide that to Mr. Baker, that is a fair process. Discussion ensued on what was required to declare a negative declaration on SEQRA, Mr. Brennan stated they do not have to have all the studies or permits in hand to complete it. He said they have to make a reasonable determination this is not going to have a negative impact and added the Board's consultant, Mr. Baker is telling them he does not think this is going to have a significant impact on the environment to the flood plain. If you were to approve this it would be built in accordance with the flood plain regulations, so you can do a negative declaration and just because you do a negative declaration doesn't mean you have to approve it, although he doesn't like doing a negative declaration and denying it, he said they could then condition the final map on doing the studies and getting the permits. Like with the septic systems you typically don't say; design 4 septic systems completely at this stage you would do it as a condition of approval or a condition of a building permit. Because why spend the money designing the septic system now and maybe the house will be 5 bedroom and not 4 so you have a septic design for the wrong size or maybe the person wants a side garage instead of a front garage then they have to move the septic. He said Mr. Baker still had some questions he needed to know the total amount of disturbance. Mr. Baker agreed and said he would generally agree with him but in this particular situation because it is in the flood zone and they are trying to identify how much impact that is going to create he thinks they should have a good idea of the size of the septic systems will be based on what they envision what the house will be, 3, 4 or 5 bedrooms, he added he thinks the grading plan and septic designs need to be advanced enough so they know there is enough room set aside for them and it is included in the impact of the flood plain. Mr. Brennan agreed and said sequentially all is good as a group or 4 of the Board say they are ok with the 4 lots in concept then move to the next step of how much grading is there because they will have to do a raised bed system above the flood base elevation, that is design work not even necessary for preliminary approval that you don't do if at the end of the day you are going to say 4 lots is not going to work, why go through and do that if you are hung up on the number of lots because of the other concerns? Mr. Brennan stated they have been at this a while and they have to get to a point where they say yes in concept and why or no and why, if it is a no then they have to tell him why so he can write it up and the Board will have to vote on it, if it is a yes, they document that as a yes as a concept plan approval and tell them to go do the stuff for preliminary like Mr. Baker is saying with the proof that it all fits. When you do that and see it all fits; then you give them preliminary plat approval, with conditions they talked about and you tell them to go do the final design and flood plain study and if that all passes, they get the maps signed and they file it.

Mr. Phillips stated he listened to what they said but to him with the shoreline overlay district there is a lot of aesthetics involved the purpose is aesthetic reason, you don't want people using the river to look and say oh look at all those new houses tucked up in the field up there. He stated the site is shielded by a large island; it is not the main channel of the river where boats would be going down the river, it is back water of the river with a huge island in front of it, he thinks technically speaking with the shoreline overlay in the main channel of the river where the main navigation is, people from all over the world are going up and down the river, he could see how the aesthetic protection would be heightened with a situation like that. This is going to be pretty invisible from the main flow of the river because it is shielded by the island and there is a lot of vegetation in there as well. He said one thing he would like to do before they come back is take a look at some of those things, he realizes aesthetics are important but here he was under the philosophy of the rule and here they might have a difference, so there might be

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more flexibility than something that will pop off the shoreline as you are going up and down the river. Ms. Rippon-Butler agreed and said she considers West River Rd as part of it, people driving are also having the aesthetic experience of the shoreline and being next to the river, she understands with the boats and it is shielded there, but if you are driving along the river having the experience of the road, she considers it as the district.

Mr. Brennan asked if Mr. Phillips wanted to adjourn and gather additional information to support his position, the Board looks like they are at 3 - 2 or 1 for and against it, he is not hearing 4 - 2 and that is ok, right now you need a majority of 4 to act and he is not hearing that, he feels they should reconvene next month after they gather information. Mr. Phillips agreed and said they will see what information then can be provided for the next meeting.

Discussion ensued on approving minutes and members present at each meeting, Mr. Brennan explained he doesn't feel only members that attended each meeting can approve minutes because they all can read them and suggest changes. He added they do not have to be approved individually.

Vice Chair Heber asked if there were any changes to the meeting minutes? None were noted.

Vice Chair Heber made a motion to approve the May and June meeting minutes, Ms. Eggleston 2<sup>nd</sup> the motion, All in attendance unanimously agreed.

March & July minutes were tabled.

Vice Chair Heber stated he was unsure if he should recuse himself from voting on Mr. O'Donnell's application because they are friends but not really close, he added he doesn't want it to look like there is favoritism. He then said he feels there should be something added to the plans for the future owners of the homes regarding the island airport, they need to give way to the air planes on the river, collaboration between airplanes and boats. Mr. Brennan stated he does not think Vice Chair Heber has a prohibited conflict because you are friendly with someone, he asked if they went on vacation together? Vice Chair Heber replied no, Mr. Brennan did not feel it was a problem.

Vice Chair Heber made a motion to adjourn the monthly meeting at 8:48 pm., Ms. Eggleston 2<sup>nd</sup>, All in attendance unanimously agreed.

Respectfully submitted,  
Tia Kilburn, Planning Board Clerk