

## ROLE OF THE BOARD OF TRUSTEES IN THE SITE PLAN REVIEW PROCESS

### Executive Summary:

Our goal is to have a **Site Plan Review** process that is straightforward, understandable to residents and applicants, and therefore predictable. While no process can guarantee good planning or land use, a *predictable* process helps insure that the right inputs occur where needed and expected to achieve productive outcomes, or to discourage inappropriate actions sooner, rather than later.

The current process, having the Board of Trustees (BOT) approval step at the end, with discretionary public involvement, is as unpredictable as it gets.

This proposal improves upon the current process in that it:

- Has BOT and accompanying citizen input earlier in the process (Step 2)
- Focuses this early BOT determination on the big picture: is this proposal consistent with the Vision plan – is the project as a whole something the village needs or wants?
- Uses a Technical Advisory Committee (TAC) to coordinate actions of various boards including BOT in the approval process, providing a straightforward path from application to approval. BOT is represented on the TAC, so is part of controlling routing for an application and its part in reviewing and approving.
- Conforms better with practices of other villages in our region and State of NY generally.
- Conforms better with SEQRA legal process requirements.
- Provides for an additional BOT review toward the end of the process (Step 5) to verify that any conditions set initially have been met.
- Engages the BOT in projects of the scale, type and location anticipated to have a large effect on the community, but avoids overwhelming the BOT with an increased number of projects subject to Site Plan Review, including single-family homes.

In short, with this amendment, the BOT would “bookend” the process by evaluating any key projects early on, then providing a review later to see that the application has proceeded according to conditions and expectations set earlier.

In the event that the BOT has waived an application early on, but determines that issues of concern have developed during the Pre-Submission Conference or Site Plan Review by the Planning Board, there is nothing that precludes the BOT from deciding to step into the process at these later stages and impose conditions that the Planning Board needs to require the project to achieve.

**Discussion:**

The current Code in the Village of Dobbs Ferry requires the Planning Board to conduct the Site Plan Review for proposed land use changes and development, including the Public Hearing, and to then make a recommendation to the Board of Trustees. The Board of Trustees is then responsible for approving or denying the proposed Site Plan. Dobbs Ferry is unusual in New York State by being one of the few municipalities to require site plans to be reviewed and/or approved by an elected Village Board. Most municipalities, including all of the villages in Westchester, require the Planning Board to be the approving agency.

The basis for having Planning Boards taking on this responsibility is to provide increased predictability in the process and to be able to have those persons trained in land use, who are appointed to a term of five years, be able to make those decisions that will have a long term affect on the entire community. Members of Planning Boards are required to take a yearly course dealing with land use decision making.

The reason to have a Planning Board, instead of an elected Board, conduct Site Plan Review is to remove potentially controversial issues, as land use decisions tend to be, from the political fray. It is important to note that these other municipalities have not sidestepped a responsibility for political advantage, but have made an effort to remove politics from the decision making process, which can otherwise be adversely affected by neighbors afraid of change and/or disagreements within the community.

The Land Use Committee's original recommendation was to follow the pattern of most other village municipalities, including all of our neighbors, and have the Planning Board take on the responsibility of Site Plan approval. It was understood that certain decisions would still be need to be made by the Mayor and Trustees, such as change of zone, amendment to the zoning ordinance, density bonuses, some special permits, any use of publically owned property and the dedication of new roads and private property to public use. Site Plan Review, however, would have not involved the Village Board.

One of the primary reasons for shifting the final approval of Site Plans to the Planning Board was to align better with the requirements of the State Environmental Quality Review Act (SEQRA). SEQRA requires that the "lead agency" be the approving board. Under Dobbs Ferry's current Code, the Board of Trustees, as the approving Board, is required to conduct the SEQRA review. This has resulted in a process that has the Planning Board reviewing the application without the benefit of the information in the Draft Environmental Impact Statement, only to have the Board of Trustees required to then conduct the SEQRA process. At best, the Board of Trustees and Planning Board acts as a quasi co-agency so that the SEQRA process can include the Planning Board in its review, but there is still confusion and often a duplication of process. The tandeming of the Planning Board and the Board of Trustees creates coordination issues and a risk of confusion for the applicant, the Boards, and the public. The Land Use Committee's intent in restructuring Site Plan Review was to enable the Planning Board to accept the responsibility of conducting the SEQRA process.

The Land Use Committee understands that the Board of Trustees is concerned with abdicating a responsibility for land use decisions in the Village, and has reevaluated the its previous recommendation.

The September 2009 Circulation Draft of the proposed Land Use Regulations includes a change from the Site Plan Review process recommended by the Land Use Committee and the Planning Board. The process in the September 2009 Circulation Draft retains the current process with the Board of Trustees responsible for Site Plan approval, and subsequently for the SEQRA process. The Land Use Committee remains concerned that this structure for Site Plan Review fails to accomplish the goals of the Vision Plan and the purpose of the new Code in the following ways:

- A. With the Board of Trustees responsible for SEQRA, the process remains flawed with the Planning Board not having the benefit of the DEIS during its review and Public Hearing, and the Board of Trustees having to repeat the environmental review, after the Planning Board has already made its recommendation.
- B. The Board of Trustees is required to act beyond its field of expertise by conducting SEQRA for a land use decision, while the Board most capable of conducting the SEQRA review has already concluded its involvement in the process.
- C. Solutions that conjoin the Board of Trustees and the Planning Board are cumbersome, time consuming, and difficult to administrate.
- D. The Board of Trustees should be focused on how proposed projects will relate to the Village as a whole. The Planning Board should be focused on the specificity of the site design issues for the particular project. The sequence of having the Planning Board act first, with its recommendation to the Board of Trustees, and then the Board of Trustees to act second, to determine whether or not a project is consistent with the long term interests of the Village, is backwards. It lacks predictability and requires the applicant to proceed with costly engineering work before it has been determined whether the project will be right for the Village. It also lacks clarity for both applicants and concerned neighbors.
- E. While the current and recent Mayors have engaged the Board of Trustees in the Site Plan Review process for larger projects, the practice of previous Mayors was to not permit a Site Plan application to get before the Village Board until it was ready to be approved. This often resulted in a somewhat automatic final step, which implicated the Board of Trustees without its necessarily understanding all of the relevant issues and concerns.
- F. The proposed Code will require that all building projects be subject to Site Plan Review, adding one- and two-family homes, as well as decks, fences, and additions, to the process. Requiring the Board of Trustees to decide on every Site Plan Review risks unnecessarily overburdening that Board, while also extending the time period for projects that would not otherwise require more than a single meeting of the Planning Board.

In consideration of the above, recognizing that the Board of Trustees has indicated a preference to have a stronger role in the Site Plan Review process, but seeking still to achieve a more direct and streamlined procedure, the Land Use Committee recommends the following alternative process.

**Alternative Site Plan Review:**

**Step One - Submission and processing by Land Use Officer** - Applicant submits all applications involving land use, regardless of scale, to the Land Use Officer. The Land Use Officer then separates and processes those applications that do not require review by any Board. All applications requiring consideration by a Board are then be presented by the Land Use Officer to the Technical Advisory Committee (TAC). The TAC has a representative from the Planning Board, Architectural and Historical Review Board (ARHB), Conservation Advisory Board (CAB), and Zoning Board of Appeals (ZBA), plus Mayor, the Trustee liaison to the Planning Board, and the Village Administrator. The Land Use Officer chairs the TAC and must act on all applications in a timely manner.

**Scheduling** - Since each of the Boards meets once a month, except for the Board of Trustees and the Architectural and Historical Review Board, which meet twice a month, the TAC will usually need to meet only once and at most twice a month to avoid any delay in the current process.

**Expedited routing:** The TAC reviews the application to determine which Boards need be involved in the review process. Small projects, such as the reuse of existing storefronts and many of the applications involving one- and two-family homes, can be sent directly to the Architectural and Historical Review Board.

**Small but sensitive:** One- and two-family homes and similar small projects that involve parcels with environmentally sensitive features or which are likely to have a greater impact on the neighborhood within which the parcel is located are sent to the Planning Board. If a house or small project is likely to have major impacts on a neighborhood, the TAC can choose to send it to the Board of Trustees.

**Larger projects:** Projects that are larger in scale, located in one of the Special Zoning Districts or a Downtown zoning district, or of a type of use likely to have a potentially larger impact on the community are automatically sent to the Board of Trustees. The Mayor and/or Trustee serving on the TAC can require any application to be sent to the Board of Trustees by simply making this request to that Land Use Officer.

**ZBA:** Any application requiring a variance shall be sent to the ZBA before being sent to any other Board, but the ZBA has the right to request the input of the other Boards before it renders a decision. Similarly, since the other Boards will be familiar with these applications sent to the ZBA, the other Boards can have representation at the ZBA meeting to either testify or to request the opportunity to make a recommendation before the ZBA renders its decision.

The meetings of the TAC are for processing purposes only and, as such, are not public meetings. The TAC can, however, have the applicant or the applicant's representatives in attendance to answer questions. All decisions by the TAC shall be recorded in written minutes and the applicant shall receive a copy of the minutes pertinent to their application.

### **Step Two - BOT Review -**

**Initial conditions and Inputs:** All projects not specifically sent directly to the Planning Board or AHRB are subject to Board of Trustees' review.

1) Land Use Officer, based on determination of the TAC, sends application to the BOT. 2) The Board of Trustees places item on its agenda for a specific public meeting. 3) Applicant may make a presentation at this meeting. Since all Board of Trustees meetings are public meetings, members of other Boards and concerned parties may comment during this step at the discretion of the Mayor. The primary purpose of the review by the Board of Trustees is to determine whether or not the project as proposed is consistent with the intent of the Vision Plan.

**Outputs - BOT determinations:** The Board of Trustees decides one of the following: a) the project can be waived for further review by the Board of Trustees and forwarded to the Planning Board; b) the project can be referred to the Planning Board with specific requirements imposed by the Board of Trustees, which shall be accepted as conditions of the application; or c) the project can be rejected by the Board of Trustees as inconsistent with the intent of the Vision Plan. All actions by the Board of Trustees include a Findings Statement confirming the decision made and setting forth the justification for same. Projects rejected can be modified and resubmitted as a new application.

### **Step Three - Planning Board Pre-Submission Conference -**

**Initial conditions and Inputs:** Applications forwarded to the Planning Board shall have a Pre-Submission Conference at a regularly scheduled meeting of the Planning Board. The Board of Trustees Findings Statement shall be included with the forwarded application. A sign shall be placed on the subject property indicating that the property is being considered by the Planning Board. All applications must include an Environmental Assessment Form (EAF).

**Actions:** At the Pre-Submission Conference, the Planning Board reviews the scope and character of the application. Planning board determines the issues or concerns to be addressed by the applicant. Projects referred to the Planning Board without conditions by the Board of Trustees can be waived for further Site Plan Review. Planning Board can waive if: a) the application is determined to not include environmentally sensitive features and not be likely to have adverse impacts on the neighborhood or community that could otherwise be mitigated by Site Plan Review, or b) if the mitigating measures have already been integrated into the design obviating the need for further review by the Planning Board.

The Planning Board initiates the SEQRA process. In this step, the Planning Board a) confirms the classification of the action, b) completes the EAF, c) declares lead agency status, and d) determines significance. The Planning Board can only decide to waive further Site Plan Review for projects that have received a negative declaration and been determined to not require further SEQRA review.

At the Pre-Submission Conference, the Planning Board hears the presentation by the applicant and conducts a discussion about the character of the project, identifying the benefits of the project for the community, the needs of the applicant, and the potentially adverse impacts that could result from the project's implementation. Since all meetings of the Planning Board are public meetings, members of other Boards and concerned parties may comment during this step at the discretion of the Chair of the Planning Board.

**Outputs:** The Planning Board records any findings and comments in its minutes and declares the application complete.

#### **Step Four - Planning Board Site Plan Review Including SEQRA -**

**Initial conditions and Inputs:** The Pre-Submission Conference has been completed and the application has been declared complete. Project was not waived for further Site Plan Review by the Planning Board in Step 3.

**Actions:** The Planning Board sets Site Plan Review on its agenda for a specific meeting. The Planning Board causes notice to be mailed to neighbors, informing them of the time, date, and place for the meeting.

If the project has received a negative declaration or conditional negative declaration, the Planning Board, as lead agency, declares the SEQRA review complete.

If the project has received a positive declaration, the Planning Board proceeds with the SEQRA review including scoping, the preparation of the DEIS, conducting a Public Hearing for the DEIS, the preparation of the FEIS, and the issuing of Findings. The SEQRA Public Hearing requires publication noticing the meeting for concerned agencies and neighbors.

The SEQRA review is integrated with the Site Plan Review and runs concurrently. Once the Planning Board is ready to make a final decision on the application, it announces that it is prepared to call for a Public Hearing on the Site Plan.

During this step, all of the Planning Board meetings are open to the public. Members of other Boards and concerned parties may comment at the discretion of the Chair of the Planning Board, with the exception that all testimony is permitted at the Public Hearing during SEQRA.

**Outputs:** Planning Board issues its findings.

## **Step Five - BOT Verification of Conditions -**

**Initial conditions and Inputs:** Unless the application was previously waived by the Board of Trustees or otherwise forwarded to the Planning Board without conditions, the application must return to the Board of Trustees, along with a Findings statement prepared by the Planning Board.

If the Planning Board determines that the application is unacceptable in its current form and is likely to be denied at the Public Hearing, its Findings shall so indicate, enabling the Board of Trustees to determine whether modifications of the conditions would be appropriate.

**Actions:** Board of Trustees puts the project on its agenda for a public meeting. At this meeting, the Board of Trustees reviews the Findings of the Planning Board and determines whether or not the conditions determined by the Board of Trustees in Step Two have been met.

Since all Board of Trustees meetings are public meetings, members of other Boards and concerned parties may comment during this step at the discretion of the Mayor.

If it is determined that the conditions have been met to the satisfaction of the Board of Trustees, the application is forwarded to the Planning Board for the Public Hearing.

If it is determined that they have not been met, the application is returned to the Planning Board for further consideration. When the Board of Trustees decides that the conditions have not been met, the specific concerns and deficiencies shall be set in writing to provide direction for the Planning Board.

Bonus densities granted by the Board of Trustees, special permits administrated by the Board of Trustees, and/or the use of Village owned property can be addressed by the Board of Trustees at this same step in the process. This has the advantage of integrating these land use decisions into the Site Plan Review process.

## **Step Six - Planning Board Public Hearing -**

**Initial conditions and Inputs:** Once the Board of Trustees has determined that it is satisfied with its conditions having been met, the Hearing is noticed in the papers and all concerned parties are permitted to be heard with all comments kept in the record.

**Actions:** Planning Board proceeds with the Public Hearing and, after listening to anyone who chooses to speak, closes the Public Hearing. Once the Hearing has been closed, the Planning Board votes to either approve the project, approve the project with modifications and/or specific conditions, or deny the project.

**Outputs:** Planning board minutes, including the specifics of the votes and conditions, become the public record.

While this process has been designed to be transparent so that the applicant is aware of concerns of the Boards at each step, and while it should be expected that most applications reaching this sixth step should be in a form that can be approved, it should be noted that there is always the possibility of the applicant not being willing to comply with the conditions set by the Board of Trustees or achieve a design that can be deemed by the Planning Board to be acceptable.

### **Step Seven - Architectural and Historic Review -**

**Initial conditions and Inputs:** Once the Site Plan has been approved, the application is forwarded to the AHRB. AHRB sets this project on its agenda and has signs place on property indicating project is before it. Since the AHRB has been able to participate at each step in the Site Plan Review process, it is anticipated that many of the massing and building placement issues will have already been integrated into the approved Site Plan.

**Actions:** The AHRB either approves the application, approves it with modifications, or denies the application. Applications denied by the AHRB may be appealed to the ZBA.

**Outputs:** AHRB minutes including findings, determinations and conditions become public record.

**Step Eight - Building Permit -** Once the AHRB has approved a project, the application can then be forwarded to the Land Use Officer for the issuance of the required building permits. Any conditions that have been attached to the application during the Site Plan Review process, such as engineering requirements, must be resolved to the satisfaction of the Land Use Officer.

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### **Summary of Alternative Site Plan Review:**

The intent of the process described above is to accommodate the Board of Trustees intent to retain a primary role in Site Plan Review, while also aligning the SEQRA process with the Planning Board, streamlining the steps and making the process and its outcome more predictable.

The FGEIS includes comments pertaining to public participation in Site Plan Review that should be addressed. The current process has one Public Hearing conducted by the Planning Board during Site Plan Review. If the project receives a positive declaration under SEQRA, the Board of Trustees also conducts a Public Hearing, but this is after the Planning Board has made its recommendation. The sequence described above increases the participation of both the public and the other Boards throughout the entire process.

There was comment made that the Board of Trustees functions as a kind of appeals board for the Planning Board's decisions. While this is effectively what has happened when the Planning Board has recommended approval, but the Board of Trustees has denied the project, this is not the intent of the current structure. When this happens, a lot of time and effort has been wasted and the opportunities for appropriate development put at risk. The intent of the process described above is to get the input from the Board of Trustees pertaining to the appropriateness of the application at the threshold of the process. The Planning Board will then be able to evaluate the application understanding in advance the intent of the Board of Trustees.

The Land Use Committee has proposed the Site Plan process described above as an alternative to the Site Plan Review procedure included in the September 2009 Circulation Draft, which is also the procedure included in the June 2010 Draft.