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MEMORANDUM

To: Highlands Water Protection and Planning Council

From: Eileen Swan, Executive Director
Dan Van Abs, Senior Director of Planning and Science
Jim Hutzelmann, Water Resource Engineer

Date: December 2, 2007 (revised from September 14, 2007 review)

Re: Application Type: *Proposed Amendment to Upper Raritan and Northeast WQMP*
Name: *Heritage Village 55*
Municipality: *Randolph Twp.*
County: *Morris*
Highlands Act Area: *Planning Area*
LUCM Location: *2007 LANDS- Existing Community/Protection Zone*
Property: *Block 49, former Lots 4&6*
Proposed Use: *Age-restricted residential housing*
Nearest Waterway (Name): *India Brook*
Wastewater: *Proposed new discharge to ground water*
Water: *Municipal Water Utility: Randolph Twp. Municipal Utility Authority*
Water Supply: MCMUA

1.0 APPLICABLE STANDARD OF REVIEW

This project was granted final site plan and subdivision approval by the Randolph Township Planning Board on April 7, 2003. Correspondence on behalf of the applicant, dated November 6, 2007, documented that this project received NJDEP approval of a water extension permit issued December 5, 2003. Finally, as discussed in the findings below, extensive site work, beyond site preparation, did occur prior to August 10, 2007. Therefore, while this project is in the Planning Area and thus does not qualify under Exemption #3, it does meet the other standards of the Exemption #3. As such, Executive Order 109 review is appropriate, which NJDEP performed in its review prior to its public notice of the proposed WQMP amendment. Council staff did review the proposed project against the policies, objectives and Land Use Capability Zone Map to provide the Highlands Council with more detailed information on the site. However, the Highlands Council

staff recommendation is that this WQMP be as if it were an exempt project from the perspective of the Highlands Act and RMP.

2.0 PROJECT DESCRIPTION

This is a proposed amendment to the Upper Raritan and Northeast Water Quality Management Plan (WQMP) through the Rockaway Valley Regional Sewerage Authority Wastewater Management Plan (WMP) to allow for construction of the proposed Heritage Village 55, an age-restricted residential development on Block 49, former Lots 4 & 6 (subdivided into numerous lots) within Randolph Township, Morris County.

Council staff previously prepared a project recommendation, dated September 14, 2007, at the September 20, 2007 Natural Resources Committee meeting. The previous review noted several inconsistencies with the November 2006 Highlands Draft Regional Master Plan (2006 RMP). The inconsistencies consisted of disturbance of Highland Open Water Protection Areas and Riparian Areas, extension of utilities into the proposed Protection Zone, and deficits of net water availability. Based on these findings, the staff recommended that NJDEP be requested to deny the WQMP amendment.

The September 14, 2007 recommendation had been developed based on the plan amendment file and available digital data. At the September 20, 2007 Committee meeting and in correspondence dated October 17, 2007, representatives of the applicant provided updated information on the project including the description of extensive site preparation activities and installation of improvements, including poured dwelling foundations and construction of water and wastewater infrastructure at the site. On November 1, 2007, Council staff met representatives of the applicant at the project site and during the site visit was able to document the extent of prior construction activities at the site.

The findings discussed below are based on the 2007 Final Draft RMP's Goals, Policies and Objectives, and Land Use Capability Map Series.

The project was granted final site plan and subdivision approval by the Randolph Township Planning Board on April 7, 2003. The development is proposing a dedicated onsite wastewater treatment system that will discharge to ground water via sub-surface disposal fields. The projected wastewater flow for this facility is 5,270 gallons per day. The proposed project site encompasses 19.2 acres and is situated at the intersection of Calais Road and Edgewood Road, bounded to the north by Calais Road and to the east by India Brook. The proposed development consists of 31 two-bedroom units, local roads and associated infrastructure. As proposed by NJDEP, the WQMP amendment would designate 8.35 acres of the project property to accommodate wastewater generating facilities for Heritage Village 55 sewer service area. This layout yields an average lot density of approximately 1/4-acre/lot for the developed footprint.

The project site is bisected by the Existing Community Zone (ECZ) and Protection Zone (PZ) of the Final Draft RMP Land Use Capability Zone Map. The development footprint is divided almost equally between the two zones (16 units in ECZ vs. 15 units in PZ). Bifurcating the zone-specific policies to different sections of the site becomes difficult in a compact development pattern. Although the lots do not fully utilize the project site, this layout does not yield an 80 percent

preservation ratio and therefore does not qualify as cluster development based on the RMP. However, because the PZ portion of the site is adjacent to the ECZ, an update of the EAS data to reflect the current wastewater infrastructure (due to the existing on-site community treatment plant), could realistically result in the PZ portion of the proposed sewer service area being within the Existing Community Zone – Environmentally Constrained Sub-zone. Therefore, for the purposes of determining consistency, the ECZ goals policies and objectives were used in this review.

The Heritage Village 55 WQMP amendment review is the result of an analysis of infrastructure capacity and the extent of environmentally sensitive resources. It was also supplemented by findings from a visit to the project site conducted by staff on November 1, 2007. The findings and recommendations below are based upon the goal, policies, and objective and policies set forth in the Final Draft RMP.

3.0 FINDINGS AND RECOMMENDATIONS

Findings

Based on observations from the site visit, significant portions of the proposed project were constructed prior to both NJDEP's public notice and Highlands Council review of the proposed amendment. The entire development footprint has been disturbed and graded, including grading of roadways but not pavement. Foundations for 5 of the 31 units are in place. No structures have been completed to date.

With regard to infrastructure improvements, public water service has already been extended to the full site. The water supply pipes and hydrants are in the ground and, based on statements from construction personnel, have connected to the municipal utility (i.e., "wet"). Wastewater infrastructure has been largely completed. The gravity collection system, lateral connections, pump tanks, septic tanks and disposal field have been installed. The system is currently designed to accept wastewater flow from 9 of the 31 units. Upon NJDEP approval of the WQMP amendment, a package treatment plant will be constructed to replace the existing communal septic tank; the disposal field may also be expanded. The remaining dwelling units will then be connected into the community wastewater system.

The Highlands Council staff has identified instances where the Heritage Village 55 proposed development and sewer service area are inconsistent with the Goals, Requirements, and Policies of the Final Draft RMP. These conflicts are discussed below:

Environmentally Sensitive Lands within the Proposed Sewer Service Area

During the review of the proposed service area and development footprint, the Highlands Council staff identified Highlands Open Water Protection Areas and Riparian Areas within the development footprint. The Open Water Protection Areas are associated with the 300 foot buffer surrounding the India Brook and associated wetlands. Riparian Areas are associated with a stream-side wildlife corridor and hydric soils. Most of these environmentally sensitive areas (particularly hydric soils) have been disturbed, graded and filled by previous construction. In addition, existing development located off-site has already disturbed portions of environmentally sensitive lands. However, further impairment of environmentally sensitive lands is inconsistent with the objectives of the Final Draft RMP (Objective 1D4c). Therefore, no additional improvements should be permitted in these areas.

Highlands Council staff encourages the opportunity to restore the ecological integrity of these areas. The staff notes that the Council's GIS coverage of wetlands may not reflect the NJDEP-jurisdictional wetlands delineated during site design. The applicant may submit electronic data for that resource for a more precise determination of Open Water Protection Areas encroachment.

Capacity Limitations for the Proposed Development

The WQMP amendment includes extension of an adjacent public water utility owned by the Randolph Township Municipal Utilities Authority (MUA), which has been completed. However, no connections have made to create any demand from that utility because no homes have been completed. The Randolph Township MUA is solely supplied by water from the Morris County Municipal Utilities Authority (MCMUA). The MCMUA's wells are located in two HUC14s with deficits of net water availability. Any proposed exacerbation of that deficit is inconsistent with the RMP unless 125% mitigation is provided in the deficit subwatershed (Objective 2B5a, Policy 2B7).

The wastewater treatment system as constructed has been designed to accept flow from 9 units but with piping to connect all 31 units. Expansion of the system would be required to accept from the remaining 22 units. Objective 6B1e prevents the extension or creation of water and wastewater utility services in environmentally constrained sub-zones, unless they are shown to be necessary for and are approved by the Highlands Council to address documented threat to public health and safety where no alternative is feasible, to serve a Highlands Redevelopment Area or cluster development, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of sensitive environmental resources. However, given that the Existing Community Zone would be the dominant zone given consideration of the recent extension of utilities, and that all utility lines have already been constructed, no objective in the Final Draft RMP would prohibit the connection of the new homes to the existing lines. The effective lot density of the site (<1/4-acre) would meet the intent of the RMP (Policy 2K6a). However, connection of dwelling units within the Open Water Protection Areas and riparian areas would appear to be inconsistent with the RMP (Objective 2K5c). Therefore, these units should not be connected in unless they are relocated outside of those areas.

Recommendations

As noted above, Council staff recommends that this WQMP be addressed as if it were an exempt project from the perspective of the Highlands Act and RMP. The following recommendations are for the information of the Highlands Council. The review of the proposed WQMP amendment reveals inconsistencies with the Final Draft RMP, primarily the additional alteration of Highlands Open Water protection areas and riparian areas and expansion of wastewater into those areas. To ensure consistency with the RMP, the applicant would need to relocate the units from within the Highlands Open Water protection areas and riparian areas and avoid further impairment. Staff would not recommend application of the 125% mitigation requirement to this project due to prior development of the water supply connection.

In the public notice published in the New Jersey Register, NJDEP made the following findings:

[D]ue to the presence of the on-site India Brook, a Category 1 (C1) State open water and a delineated on-site tributary to India Brook the Department reviewed the proposal for the establishment of Special Water Resource Protection Areas (SWRPA) pursuant to N.J.A.C. 7:8-5.5(h). As a result of this review, the Department determined that

Preliminary/Final Site Plan and Major Subdivision approval was issued to the applicant on April 7, 2003, and no permits applicable under N.J.A.C. 7:8-1.6 are required. Therefore, the project as proposed is exempt from the statute.

The impact of this determination is that the 300 foot buffer requirement to protect the Category 1 designated tributary to India Brook does not apply to this project due to the prior issuance of the Planning Board approval on April 7, 2003. Recognizing that NJDEP may be precluded from requiring the relocation of the units within the Highlands Open Water protection areas and riparian areas, Council staff recommends that the Council provide a recommendation to NJDEP seeking strong encouragement that the current development layout, where 16 units of the sewer service are inconsistent with the RMP, be modified to protect the Highlands Open Water protection areas and riparian areas.

Prior to final adoption of the RMP, the Highlands Council's purview is to provide recommendations to NJDEP on WQMP amendments. It would be prudent to include suggestions that could mitigate the project's impact if NJDEP would include them as conditions in their approval. Specifically, the disturbance of the open water buffers and riparian areas should be reduced by reducing lawn area, and the areas restored to the maximum extent possible. A conservation easement should be instituted around the remaining environmentally sensitive lands.