

Date: December 21, 2023

To: South Blooming Grove Planning Board

From: Ryne Kitzrow  
120 Round Hill Rd

RE: Public Hearing for Prospect Acres

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During the the last Planning Board meeting in November, I brought to this Board's attention that the geographic area being considered for the "Prospect Acres" development is environmentally sensitive and that the current proposal, when considered individually and in association with other approved and planned developments in the region, will cause irreparable and significant habitat fragmentation.

As a quick summary of what I presented, the property is:

- Habitat of endangered species including Indiana Bat and Northern Long-eared Bat
- Listed as a "Significant BioDiversity Area" by the DEC's Hudson Valley Natural Resource Mapper
- Listed by the DEC as having "Probable and Possible Wetland Areas
- Listed by the DEC as a forest patch that is within the top 5% land landform diversity and regional connectivity
- Listed by the DEC as a "Core Forrest"
- Listed as a "Priority Parcel" for Moodna Creek & Tributaries in the 2020 Town of Blooming Grove Preservation Plan
- Listed as a "Priority Parcel" for Agriculture in the 2020 Town of Blooming Grove Preservation Plan

Today, I will provide more evidence to the Board about why these factors are significant and why the Board should require modifications to the plan before moving forward. The reality is, case law from New York, including the Hudson Valley from the past 10-20 years strongly demonstrates the requirement to minimize habitat fragmentation and maintain biodiversity as a part of small and large scale development. If this Board proceeds, with this and future projects that do not address these concerns, it puts itself at risk of unnecessary decisive and repeated legal action that would be burdensome for the Village and its residents.

**Peterson v Planning Board of the City of Poughkeepsie, 163 AD3d 577 (2d Dept 2018)**

In this case, the court negated a decision by the Planning Board and established that a removal of a forest can be significant even without rare species being identified. In this case, a 2.75 acre forested parcel in the City of Poughkeepsie, with no wetlands or steep slopes, was deemed

environmentally significant because development on the parcel would result in the, “removal or destruction of large quantities of vegetation or fauna.”

**Avy v Town of Amenia, N.Y., 4 Misc 3d 1020(A) (Sup Ct 2004), affd sub nom. Matter of Avy v Town of Amenia, 27 AD3d 557 (2d Dept 2006)**

In this case, the court negated a decision by the Planning Board and established that development of a 1.65 acre unforested parcel could have significant adverse impacts of the habitat there and required, among other things, additional on-site habitat studies.

**Frank J. Ludovico Sculpture Trail Corp. v Town of Seneca Falls, 173 AD3d 1718 (4th Dept 2019)**

In this case, the court negated a decision by the Town Board to proceed with a critical infrastructure project because the Board did not adequately study or mitigate impacts to rare species and habitat. It reaffirmed that requirements are not reduced for important projects.

**Kittredge v Planning Bd. of Town of Liberty, 57 AD3d 1336 (3d Dept 2008)**

In this case, the court negated a decision by the Planning Board to proceed with a 27 lot subdivision because, even though the State had no records of rare species on the site location, State records did not constitute a definitive determination of that and the Planning Board should have taken greater steps to document and consider wildlife impact.

**Matter of Wellsville Citizens ex rel. Responsible Dev., Inc. v Wal-Mart Stores, Inc., 140 AD3d 1767 (4th Dept 2016)**

In this case, similar to Kittredge, the court negated a decision by the Planning Board to proceed with the development of a WalMart. Although the state had no records of rare species at the site, residents had observed these species there and that input was not thoroughly taken into consideration.

**Matter of W. Branch Conservation Ass'n, Inc. v Planning Bd. of Town of Clarkstown, 207 AD2d 837 (2d Dept 1994)**

In this case the court negated a planning board decision about a 20 lot subdivision on the slope of High Tor Mountain. The court ruled that the planning board failed to recognize significant impacts of the development to the habitat and failed to identify sufficient mitigations

**Matter of Shawangunk Mountain Env'tl. Assn. v Planning Bd. of Town of Gardiner, 157 A.D.2d 273 (3d Dept 1990)**

Court negated a decision due to failure to establish sufficient mitigation of negative environmental impacts.

**Matter of S.P.A.C.E. v Hurley, 291 AD2d 563 (2d Dept 2002)**

Court negated a decision due to failure to establish sufficient mitigation of negative environmental impacts. In this case, a mitigation was proposed, but the court deemed it was insufficient.

**Matter of Kirquel Dev., Ltd. v Planning Bd. of Town of Cortlandt, 96 AD3d 754 (2d Dept 2012)**

In this case, a court upheld a Planning Board decision requiring changes for a 27 lot subdivision. The court determined that environmental impacts to habitat can necessitate changes to projects even if regulated species are not involved.

In summary I hope that the Planning Board takes away the following:

1. The impact of development on habitat is significant in the eyes of the New York State
2. This impact can be considered significant even when no endangered or threatened species are present
3. New York State environmental maps often under represent sensitive environmental features, such as wetlands, as well as the presence of endangered and threatened species
4. Even if New York State maps and surveys do not show endangered or threatened species being present in an area, they can still be deemed present or potentially present based on eyewitness reports from the public
5. Impact of development on habitat cannot be adequately assessed without sufficient environmental and habitat studies
6. When impacts of development on habitat are likely, developers must provide sufficient mitigation
7. A mitigation, does not by itself, qualify as sufficient mitigation
8. New York State supports the principle of requiring modifications to development plans to limit impacts on habitat
9. For a property as environmentally sensitive as "Prospect Acres" it is the legal obligation of the Planning Board to ensure that the application sufficiently mitigates impacts of the development to the habitat. If the developer does not, by themselves, propose a sufficient mitigation, it is the requirement of the Planning Board to insist on changes to the plan and to ensure that sufficient mitigation is made.