

PUBLIC COMMENTS SUBMITTED AT HIGHLANDS
COUNCIL MEETING ON JANUARY 16, 2020

Public Comments at the Highlands Council Meeting
January 16, 2020 4:00 pm

Good afternoon, my name is Shaun Peterson, I am an Associate in the law firm Wisniewski & Associates, LLC. We represent a property owner in Chester Borough and I am here today to offer comments on the Borough of Chester's petition for Amended Plan Conformance which would include Highlands Center Designation.

The Highlands act and its regulations state that a Highlands Center is "an area where development and redevelopment is planned and encouraged ... by providing for sustainable economic growth while **protecting critical natural and cultural resources**." It therefore follows that the Highlands Council, in considering the Borough of Chester's petition for Amended Plan Conformance including Highlands Center Designation would make **protecting critical natural and cultural resources** a priority. Unfortunately, the Draft Consistency Review and Recommendations Report that you have before you does not. My request is that you pause in your deliberations and table consideration of this petition until all of the facts are taken into account.

For example, the Recommendations Report starts off by stating "the proposed Highlands Center is located in an area with **sufficient** water availability, water supply, and **wastewater**, and is appropriate for increased land use intensity." While some of that statement may be true, one part is not. Five pages after this statement the same Recommendations

Report notes¹ that the Borough's current sewerage system is "exceeding capacity" and "numerous failing cesspools and subsurface disposal systems are creating a public health and safety issue."

Additionally, the Recommendations Report notes on page 6 that the petition has been filed for Highlands Center Designation to facilitate the development of the Turkey Farm and Mill Ridge Lane properties as a component of the Borough's affordable housing settlement. What it fails to note, however, is that part of that Settlement Agreement as well as the Chester Borough Land Use Board Minutes for August 8, 2019 call for the creation of a new septic system for part of that development.² There does not appear to be any mention of this new septic system in the Recommendations Report, nor is there any information available about the design, review or approval of this new septic system.

How is it possible for the Borough of Chester to simultaneously have sufficient wastewater capacity, have failing cesspools and subsurface disposal systems, and propose to create another subsurface disposal system? Actually, it isn't possible. The terms and conditions of the Settlement Agreement between Chester Borough and the developer are not fully factored into the Recommendations Report. As a consequence, I again request that the Highlands Council pause in your deliberations and table consideration of this Petition until all of the facts are taken into account.

¹ See, "Consistency Review and Recommendations Report" page 6

² See, pages 8-9 of the Settlement Agreement between the Borough of Chester and Turkey Farm Acquisitions, LLC.

Notwithstanding the Recommendations Report urging approval with conditions, the stated goals of the Borough are not consistent with the goals set forth in the Highlands Regional Master Plan. For example, the Borough's Petition³ does not include any language that specifically supports the goal set forth in the Highlands Act⁴ to protect, restore, or enhance the quality and quantity of surface and ground waters. In fact, the language describing the proposed developments including a new septic system would suggest the opposite. Adding an additional septic system when there are "numerous failing cesspools and subsurface disposal systems ... creating a public health and safety issue" does not protect, restore or enhance the quality and quantity of surface and ground waters. Because of this inadequacy, I believe the Highlands Council would be well within its authority to reject the Petition as being not only inconsistent with the goals of the Highlands Act, but perhaps making things worse.

The 25-acre Turkey Farm Property, the location of part of the new development⁵ pursuant to the Borough's previously mentioned Settlement Agreement, is very lightly developed with a majority of the surface open and pervious. The new development that will be facilitated by the requested Highlands Center Designation will change that into a majority impervious surface. This too goes against the Highlands Regional Master Plan goal to protect, restore, and enhance the quality and quantity of surface and ground waters therein. There is an unaddressed yet legitimate concern about the

³ See, Petition for Designation, pages 7-12

⁴ N.J.S.A. 13:20-10(c)(1)

⁵ The new development for this parcel includes 36 apartments, an office development, a CVS and a restaurant.

impact on the surface and ground waters that the proposed development that will be facilitated by the Highlands Center designation and the Settlement Agreement, especially because the Turkey Farm property either includes or is adjacent to a conservation environmentally constrained subzone. These types of zones consist of significant environmental features “that should be preserved and protected from non-agricultural development,” as stated in the Highlands Regional Master Plan⁶. This is not mentioned in either the Petition or the Recommendations Report and no studies, tests, or information been produced to confirm that the potential development will not affect this area. As a consequence, I again request that the Highlands Council pause in your deliberations and table consideration of this Petition until all of the facts are taken into account.

Finally, another goal of the Highlands Act is to preserve historic sites.⁷ However, not addressed in either the Petition or the Recommendations Report are the future plans for the Sunnyside House or the Corwin House. According to the November 9, 2017 Chester Borough Land Use Minutes, Sunnyside House is designated as a historic site in the Chester Borough Master Plan, the County Register and is recognized by the Highlands Commission. Both the Petition and the Recommendation Report state that a goal in establishing a Highlands Center Designation is to facilitate the implementation of the Settlement Agreement.

⁶ See, Highlands Regional Master Plan, page 111

⁷ N.J.S.A. 13:20-3, protecting historic properties is included in the definition of conservation purposes.

What is not addressed in either of those documents, however, is the fact that paragraph 4.7 of the Settlement Agreement⁸ calls for the demolition of the Sunnyside House. Tearing down this historic building goes against the Highlands Regional Master Plan goal of preserving historic resources. Further, the demolition of historic structures may not stop there. In a September 19th story in the Record, the Mayor of Chester Borough is quoted as saying that a "majority of the council said they were fine if the Larison-Corwin House was demolished in order to build a new restaurant."⁹ It is this type of "out with the old and in with new" actions that the Highlands Act was designed to protect. It is clear that neither the Petition nor the Recommendations Report took these facts into account.

Notwithstanding the language in the Petition claiming that the Borough has the goal of avoiding inappropriate and inconsistent development while preserving the community's traditional design, the actions planned are clearly contrary to these goals for the reasons previously stated.¹⁰ As a consequence, the actions contemplated by the Borough which would be facilitated by granting a Highlands Center Designation are inconsistent with the Highlands Act's goals of preserving historic sites. Further, the Borough's Petition and the Recommendations Report fail to demonstrate how the proposed actions will preserve the Borough's existing and potential historic sites.

⁸ See, Settlement Agreement page 12

⁹ See, The Record, September 19, 2019 by William Westhoven

¹⁰ See, Petition for Designation, page 10

For the foregoing reasons I respectfully submit that the Highlands Council should reject this Petition by Chester Borough as inconsistent with the Highlands Act. In the alternative, the Petition should be tabled so that the facts I have outlined in my remarks can be further considered and taken into account in the Recommendations Report.

Comments to the Highlands Council, January 16,2020. - Deborah Post, harmed Highlands landowner, Chester Twnship, holding 80 +proxies of Highlandlandowners to speak and dvocate on their behalf.[

In grammar school w would often arrive to class to find that the teacher had a pop quiz on the days aagenda. A surise for whidh we wehad not prepared.

Today I have brought a pop quiz for this Council. I ask that you complete the assignment before you leave today and that each of your individual quiz results including derivations be made part of the record of this meeting.

If you find this quiz beyond your grade level then I ask that you leave your letter of resignation on the front desk. Anyone who finds this elementary arithmetic quiz too flummoxing should not be wielding the power of the chair you are occupying. Incompetency is bringing our government and society down every place we look. Just turn on your tv. So, please, be honest and take the quiz to the best of your ability. Your approach and thought patterns will be a roadmap to provide to your HDC Bank with whom you and the statues charge with defining the municipal average approach to loan equity

Average. Committee's progress.

Quiz — time estimate: 8 minutes.

On January 31, 2004, Farmer John owned x acres of productive farmland in xx and Farmer Sally owned xx acres of farmland in xx. Both were actively farming their property. Both considered the land equity value in their property to be their nestegg and savings account, noting that farmers do not have government guaranteed pensions as do the mean spirited Trenton bureaucrats and politicians who seek to take property values without paying the Just Compensation promised in the Fifth Amendment.

Indeed, Farmer John had a young grandson in serious need of an expensive medical treatment and was unable to carve off the building lot he had intended to sell to keep his grandson alive. Farmer Sally had recently refinanced her farm market and began receiving foreclosure notices as her property no longer qualified as adequate collateral. She lost her market and her long family owned agricultural business declined.

Data Available:

1. Total acreage by lot and block for every property in Highlands with total land constrained acreage was calculated by Council consultants. This work product is known as the TDR credit allocation data base. You can and should be able to get a copy from staff. If not, feel free to contact me with an email as I procured a copy of the entire data base under ORA. You need this data base to determine exactly how many buildable lots were lost for each Highlands landowner. How many buildrights vaporized for every landowner? This data point is a column calculated by the Highlands Council staff on the data base data sheet.

Buildable lot value, referred to statutorily as the Municipal Average, is that is the value of buildable lot by zoning and size for every municipality in the Highlands. The Municipal Average are found in a latter appendix of the TDR Technical Report and were prepared and determined by a Highlands Council consultants. It is important to note that the date of preparation of the Municipal Averages was 2006. Any argument that this data needs updating is fallacious because the Statutory requirements of the TDR Banks to determine the municipal average are clear that the date should be the timing of the taking that is

being compensated. A 2006 valuation date for the 2004 Highlands taking and the 2008 HRMP adoption is preferred and appropriate.

Data assumptions for Quiz completion:

Farmer John: Owned 100 acres zoned 2 acres. Of which 50 were constrained and therefore unbuildable. The Council's allocation data base concludes that Farmer John lost 25 2 acre buildable lots in a municipality where a 2 acre lot had a value of \$88,000.

Farmer Sally Owned 100 acres zoned 3 acres. Of which 50 were constrained and unbuildable. The Council's allocation data base concludes that Farmer Sally lost 25 3 acre buildable lots in a municipality where a 3 acre lot had a value of \$115,000.

Using the Municipal Average approach allowed at the discretion of the local board under N.J.S.A. 4:1C-31c... how much compensation is due to Farmer Sally and Farmer John due to the loss of buildability (i.e. development potential) taken by the Highlands Act? Please include all your arithmetical calculations and any useful comment on the logic you employed. Any thoughts on prioritization of payment due to circumstances?

Completed and submitted by: _____

Highlands Council Member: _____