UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

UMH PROPERTIES, INC. and UMH OF COXSACKIE, LLC, Plaintiffs, v. VILLAGE OF COXSACKIE; and VILLAGE OF COXSACKIE MAYOR MARK EVANS, in his official capacity. Defendants.	Case No. 18-cv-01182-GLS-ATB

CONSENT DECREE

I. Introduction

1. Plaintiffs UMH Properties, Inc. and UMH of Coxsackie, LLC (collectively, "UMH" or "Plaintiffs") initiated this Action against Defendants Village of Coxsackie and Village of Coxsackie Mayor Mark Evans in his official capacity (collectively "Village" or "Defendants") alleging that Defendants delayed, prevented, and otherwise interfered with Plaintiffs' attempts to construct an affordable manufactured housing development in violation of the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3604(a); 3604(b); 3604(c); and 3617.

2. All Plaintiffs and Defendants ("Parties") to this Action have agreed that in order to avoid protracted and costly litigation, this controversy should be resolved. Therefore, Plaintiffs and Defendants consent to the entry of this Consent Decree.

3. This Consent Decree constitutes full resolution of all civil claims in this matter. It is hereby DECREEED, ADJUDGED, AND AGREED that:

II. Scope and Terms of Consent Decree

4. The provisions of the Consent Decree shall apply to all Parties, their employees, agents, successors, and assigns. This Consent Decree is not transferable or assignable by UMH. Any approvals granted by Defendants to UMH related to the Mountainview Estates project or substantially similar project (the "Project") as set forth and described below, or variances issued by Defendants from the specified provisions of Chapter 87 of the Village Code with regard to the Mountainview Estates project, or substantially similar project, shall not be assigned by UMH to any third party at any time.

5. This Consent Decree is effective immediately upon its entry by the Court.

6. Unless otherwise specified, the provisions of this Consent Decree shall be in effect from its entry by the Court until all final, non-appealable required municipal approvals are obtained by UMH ("municipal approvals" are defined to be Village Planning Board and Zoning Board of Appeals approvals, but not building permits) to construct all phases of the Project" ("Project Approval").

III. General Injunction

7. Defendants, its officers, employees, successors, and assigns are enjoined from discriminating on the basis of race, national origin, and familial status as prohibited by the FHA.

IV. Monetary Settlement

8. Defendants shall pay the total sum of $275,000, which is inclusive of all Plaintiffs' claims for damages, attorneys' fees, and costs sought in this Action ("Settlement Payment"), in consideration of and for the releases herein given.

9. The Settlement Payment shall be paid within 30 days of the execution and delivery of this Consent Decree. A full refund of the Settlement Payment is a condition precedent to the filing of a Notice of Reinstatement of the matter.

10. Any monetary settlement is independent of and has no effect on Plaintiffs' obligation, which shall be similar to the obligation any applicant for a similar project would have to pay for the legal and engineering fees incurred by the Defendants in connection with the review of Plaintiff's application.

V. Required Actions Related to Mountainview Estates Application

11. Promptly upon execution of this Consent Decree, UMH will submit a site plan application, along with any required applications for area variance relief associated with the site plan application, including all required fees and escrow amounts for the approval of the Project that Plaintiffs plan to build on 180 acres of land owned by UMH in the Village and Town of Coxsackie, consisting of 360 mobile home sites. The Project application will be based on the concept drawings attached as Exhibit A hereto.

12. Defendants will expediently and in good faith accept and process Plaintiffs' applications for the Project. The Parties acknowledge that in submitting and processing the application(s) for the Project, the Parties are bound by all laws, including, without limitation, the Village Code, the New York State Village Law, the New York State General Municipal Law, and the New York State Environmental Quality Review Act ("SEQRA") (collectively, "Laws"). UMH will expediently and in good faith cooperate with the Village in the processing of its applications pursuant to this Consent Order, including, without limitation, by providing any information and materials the Village, including the Village Planning Board and Zoning Board of Appeals may request in connection with the processing of such applications.

13. The Village will undertake a SEQRA review, as discussed further in paragraph 18 below.

14. Concurrent with the submission of the Project application, UMH will submit an application or applications to the Village Zoning Board of Appeals seeking the following variances from the specified provisions of Chapter 87 of the Village Code:

a. As to the requirement contained in Village Code §87-5(A) regarding a 10,000 square foot minimum mobile home site size requirement, UMH will seek a reduction consistent with its application for 246 sites between 7,000 and 10,000 square feet in size and 114 sites 10,000 or more square feet in size.

b. As to the requirement contained in Village Code §87-5(E) that the area occupied by the mobile home and accessory buildings and structures shall not exceed 25% of the designated mobile home site, UMH will seek a reduction consistent with its application to have 246 lots with home coverage exceeding 25%, but no greater than 40%, of the lot area and 114 lots with home coverage less than 25% of the lot area.

c. As to the Law's requirement that structures be offset from streets and sidewalks by twenty feet or more, UMH will seek a reduction consistent with its application to have 64 homes having offsets less than 20 feet, but no less than 10 feet from streets or sidewalks and 296 homes that will have offsets of 20 feet or greater from all streets and sidewalks.

d. As to the Law's requirement of a minimum of 160 square foot of patios of stone, concrete, or equivalent material for each lot or home, UMH will seek modification to permit the homes to have no patios, but instead will have attached decks of 100 square feet or greater.

15. As to the Village Code's 50-foot, steep slope setback requirement, UMH will seek modification to permit three or fewer homes to be located within 50 feet of steep slopes, provided that an engineer licensed to practice engineering in the State of New York with experience in

structural or geotechnical engineering certifies that there are no slope stability issues related to the placement of those homes.

16. As to the standards for wetlands protection contained in Village Code §155-45(C), Plaintiffs anticipate that five or fewer homes will be located within 50 feet, but not more than 25 feet, of wetlands not regulated by NYSDEC. Plaintiff's application to the Village Planning Board must demonstrate compliance with the Standards for Wetlands Protection, contained in Village Code §155-45(C) in order for such encroachments to be permitted. To the extent there are wetlands regulated by New York State or the United States Army Corps of Engineers, all applicable State and Federal requirements must be complied with.

17. The Village and UMH acknowledge that the specifications of the Project set forth in the preceding sections are approximations and the request for a modification of Chapter 87 of the Village Code may vary by a de minimis amount. Any request for a modification of the Village Code is subject to the requirements of all applicable laws.

18. Village Board and/or Village Planning Board, as appropriate, will request lead agency role for SEQRA-approval purposes for the Project. As part of SEQRA, UMH will prepare a supplemental Draft Environmental Impact Statement ("Supplemental EIS") focusing on the changes in the Project and conditions, as well as any proposed deviations from the requirements of the previously issued SEQRA Findings Statement since the last time SEQRA Findings were issued in 2009. The Village's SEQRA review will be limited to those potential significant adverse impacts identified in its review of the Supplemental EIS.

19. While the Village expects that the Moratorium on Sewer Connections which requires all users to implement mitigation in order to introduce new flow into the Village collection system to be lifted by the NYSDEC, until such time as this occurs, the Village and all users are bound by the terms of the Order on Consent. The Village shall continue to maintain the public

water and sewer systems in conformance with applicable operating permits and laws/regulation and shall not withhold approval of the Project based on its water or sewer demands, provided the Project is in conformance with all applicable standards, laws and regulations, and generally accepted engineering practice with respect to design standards.

20. UMH will obtain all necessary permits and approvals for impacts to Endangered and Threatened Species including habitat impacts under 6 NYCRR Part 182. The Village shall coordinate its review with NYSDEC and identify any potential impacts in the Supplemental DEIS.

21. Promptly upon the execution of this Consent Decree, UMH will file an authenticated petition for annexation with the Town of Coxsackie, in accordance with N.Y. Gen. Mun. Law Article 17, § 703. Such annexation request shall seek annexation of the area identified as tax parcel 56.00-2-4.1, consisting of approximately 79.1 acres located in the town of Coxsackie, and owned entirely by UMH (the "Annexed Territory"). UMH will concurrently file a certified copy of the Petition with the Village Board of Trustees.

22. The Village will follow all legally required procedures contained in N.Y. Gen. Mun. Law Article 17, including but not limited to N.Y. Gen. Mun. Law §§ 704 and 705.

23. If the Village and the Town approve the application for annexation, the Village will follow all legally required procedures contained in N.Y. Gen. Mun. Law Article 17, including but not limited to N.Y. Gen. Mun. Law §§ 711 and 714.

24. The Village will engage in a process to establish zoning for the area to be annexed.

VI. Required Actions Related to Infrastructure Improvements

25. As part of its review of the Project application and the conduct of SEQRA, the Village will identify reasonable and appropriate off-site infrastructure improvements required to serve the UMH Project or to mitigate direct impacts of the Project which shall be embodied in the SEQR Findings Statement. The Village reserves its right to design and construct such

improvements itself at UMH's expense. Such improvements are anticipated to include the following:

a. The construction of sewer main(s) to connect on-site sewer collection system to the Village sewer system together with improvements to Village sewers and pump station(s) as needed solely to serve the Project;

b. The construction of water mains and pressure reducing valves with vault and by-pass as needed for water service to the Project, recognizing that the existing water main on VanDyke and Lafayette streets is 6" line and is inadequately sized to accommodate the Project;

c. The construction of approximately 2,000 feet of mill and fill for full width of existing pavement along Van Dyck Street from the intersection with Mansion Street and Lafayette Avenue; and,

d. The construction of approximately 2,000 feet of new concrete sidewalks along either side of Van Dyck Street with the least disturbance to private properties and utilities from the Mansion Street intersection to Lafayette Street and along the west side of Lafayette Street approximately 500 feet to the existing sidewalk.

VII. Compliance Requirements

26. If either party anticipates, at any time, the inability to meet one of the deadlines or dates established to complete some action as set for the above, the Parties may file a Joint Motion to Extend the deadline, which request will be granted by the Court absent extraordinary circumstances.

27. Prior to filing and serving a Notice of Reinstatement, UMH will refund the Settlement Payment.

28. If any Village entity with jurisdiction over the Project, including, without limitation, the Planning Board or the Zoning Board of Appeals, denies any of the applications to be filed by UMH as set forth above, for reasons other than UMH's inability to comply with a requirement contained in any Law, UMH may file a Notice of Reinstatement of the matter, provided it has first refunded the Settlement Payment, and this matter will be placed back on the Court's active docket. Nothing herein shall restrict the ability of any Village entity with jurisdiction over the Project, including, without limitation, the Planning Board or the Zoning Board of Appeals, to reasonably and appropriately condition any approval issued in accordance with the Village Code, the New York State Village Law, and SEQRA, provided the Village complies with all such laws in so doing.

29. UMH may file a Notice of Reinstatement of the matter if a Village or Town of Coxsackie entity denies a required approval for the Project (including UMH's anticipated petition to annex its property located within the Town of Coxsackie) or exercises their statutory authority to unreasonably or inappropriately condition a required approval for the Project, or if the Village unreasonably and without legal basis withholds building permits. UMH may not file a Notice of Reinstatement of the matter unless it has refunded the Settlement Payment.

30. UMH may not file a Notice of Reinstatement of the matter if a third party other than the Town of Coxsackie denies a required approval for the Project or exercises its statutory authority to reasonably and appropriately condition a required approval for the Project. UMH may not file a Notice of Reinstatement if a third party successfully sues the Village to have any approval it issues overturned.

31. If either party violates any term of this Consent Order, acts in bad faith, or engages in willful misconduct with regard to any of the required actions in this Consent Decree, the other party may file a Notice of Reinstatement of the matter, provided that UMH must first

refund the Settlement Payment prior to filing any Notice of Reinstatement, and this matter will be placed back on the Court's active docket.

32. With the exception of building permits, which are subject to the durational limitations contained in Section 64-4(I) of the Village Code, all approvals related to the Project that are made by the Village under this Consent Decree shall be effective for a minimum of 12 years, provided UMH is in compliance with the terms and conditions of such approvals.

33. Under no circumstances shall UMH have the ability to file a Notice of Reinstatement following Project Approval.

VIII. Mutual Releases

34. Plaintiffs and Defendants mutually release, acquit, and forever discharge each other and their respective heirs, executors, administrators, receivers, past, present and future officers, directors, stockholders, attorneys, insurers, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, assigns, and all other persons, firms or corporations with whom any of the former have been, with prejudice, and subject to this Consent Decree, from any and all claims, demands, action or causes of action, liabilities, rights, damages, losses, obligations, judgments, suits, matters, or issues of any kind or nature whatsoever, at law or in equity, arising out of the allegations asserted in this Action, or that could have been asserted in this Action, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, as of the Effective Date.

35. Nothing in this Section shall preclude Plaintiffs from seeking to enforce the terms of this Consent Decree.

36. The Parties acknowledge that the underlying action involves arguable and disputed questions of fact and law, that the liability of the Defendants in this matter is disputed, and that payment provided for herein is not to be construed as an admission of liability, which is expressly

denied by Defendants and that this release arises solely from compromise.

37. This is a full and final release applying to all unknown and unanticipated injuries or damages, including any and all claims now existing or which may arise in the future, arising out of said matter or events, as well as those not known or disclosed. Plaintiffs expressly waive any right or claim of right to assert hereafter that any claim, demand, obligation and/or cause of action has been omitted, through ignorance, oversight, or error from the terms of this release, and further expressly waive any right or claim of right that they may have under the law of any jurisdiction under which releases—such as those herein given—do not apply to unknown or unstated claims. It is the express intent of Plaintiffs to waive any and all claims and prospective claims they have against defendants, including any which are presently unknown, unsuspected, unanticipated, or undisclosed.

IX. Dismissal

38. This matter is hereby administratively closed, subject to a party reinstating the matter to the Court's active docket in accord with this Consent Decree.

39. The Court shall retain jurisdiction for a period of twelve years from the Date of this Consent Decree, or until all final, non-appealable required municipal approvals are obtained by UMH, whichever occurs first, at which time the case shall be dismissed with prejudice—with the Parties to bear their own costs and attorney's fees—and UMH will not be permitted to reinstate this action.

40. Either party may move the Court to extend the term of the Consent Decree in the interests of justice.

41. Upon the execution of this Consent Decree, the Parties will simultaneously sign and file a stipulation of dismissal.

42. This Consent Decree will survive the signing and filing of a stipulation of dismissal.

X. Choice of Law

43. This Consent Decree shall be construed in accordance with the laws of the State of New York, without giving effect to conflict of law principles.

XI. Miscellaneous Terms

44. Failure of a party to insist upon strict performance of any provision of this Consent Decree shall not be deemed a waiver of the party's rights or remedies or a waiver by the party of any default by another party in performance or compliance with any term of this Consent Decree.

45. From the date of entry of this Consent Decree to the date of reinstatement of this matter, if applicable, attorney's fees, interest, and damages—including but not limited to fees available under 42 U.S.C. 3613(c)(2) and 24 CFR 104.940—will not accrue.

44. This Consent Decree may be signed by the Parties in several counterparts, each of which shall serve as an original as against any Party who signed it, and all of which taken together shall constitute one and the same document.

45. Each signatory hereto warrants that they are competent and possesses the full and complete authority to covenant to this Consent Decree on behalf of themselves or the party that they represent.

46. This Consent Decree shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, successors, and assigns.

47. Each provision and term of this Consent Decree shall be interpreted in such a manner as to be valid and enforceable. In the event any provision or term of this Consent Decree

is determined to be, or is rendered, invalid or unenforceable, all other provisions or terms of this Consent Decree shall remain unaffected to the extent permitted by law.

48. All notices required or permitted hereunder shall be in writing and shall be served on Plaintiffs at this address:

Reed Colfax, rcolfax@relmanlaw.com, Relman Colfax PLLC, 1225 19th Street NW, Suite 600, Washington, DC 20036.

If sent by overnight delivery, notice shall be deemed delivered one business day after deposit with a nationally recognized overnight courier. Personal delivery shall be deemed delivered upon the date the same was actually delivered. E-mail notices shall be deemed delivered the day the same was sent, provided that the sender has retained a copy and the same was properly sent.

49. All notices required or permitted hereunder shall be in writing and shall be served on Defendants at the following addresses:

Bailey, Johnson & Peck, P.C., 5 Pine West Plaza, Suite 507, Washington Avenue Extension, Albany, New York 12205; and,

Whiteman Osterman & Hanna LLP, One Commerce Plaza, Albany, New York 12250

If sent by overnight delivery, notice shall be deemed delivered one business day after deposit with the nationally recognized overnight courier. Personal delivery shall be deemed delivered upon the date the same was actually delivered. E-mail notices shall be deemed delivered the day the same was sent, provided that the sender has retained a copy and the same was properly sent.

50. This Consent Decree constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, expectations, and discussions of or between the Parties, whether oral or written, and there are no representations or other agreements between the Parties respecting the subject matter hereof.

Dated: 1/11/22

Print: Craig Koster

Sign:

For UMH Properties, Inc. and UMH of Coxsackie LLC

Plaintiffs

Dated: 1/10/22

Print: Mark R. Evans

Sign:

Village of Coxsackie Mayor Mark Evans, in his official capacity and for the Village of Coxsackie

Defendants

IT IS SO ORDERED this 13th day of January 2021.

Gary L. Sharpe

U.S. District Court Judge for the Northern District of New York

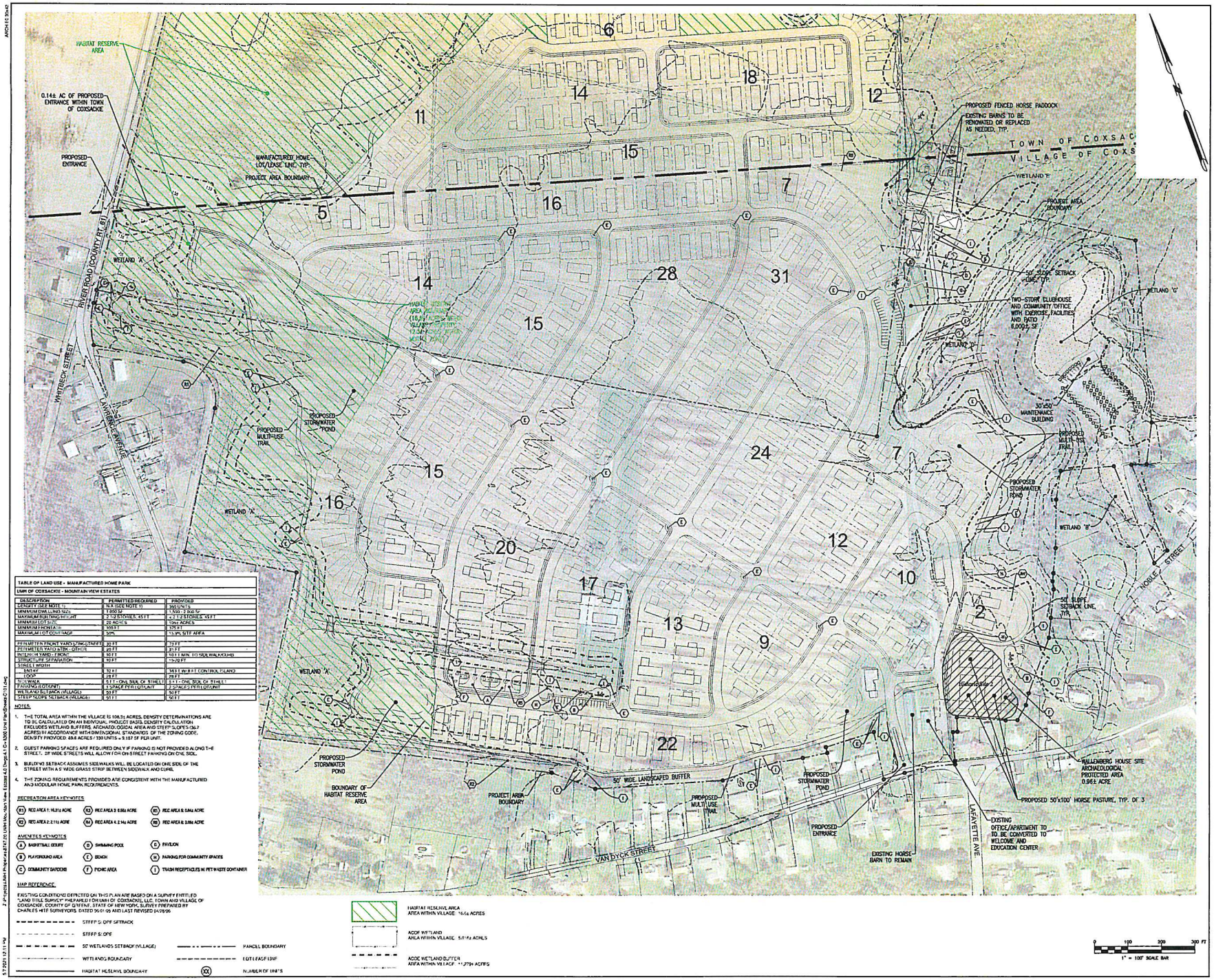

TABLE OF LAND USE - MANUFACTURED HOME PARK
UMH OF COXSACKIE - MOUNTAIN VIEW ESTATES

DESCRIPTION	PERMITTED/REQUIRED	PROVIDED
DENSITY (SEE NOTE 1)	350 UNITS	330 UNITS
MINIMUM DWELLING SIZE	1,000 SF	1,500 - 2,000 SF
MAXIMUM BUILDING HEIGHT	2 1/2 STORIES, 45 FT	< 2 1/2 STORIES, 45 FT
MINIMUM LOT SIZE	20 ACRES	19± ACRES
MINIMUM HOME WIDTH	14 FT	14 FT
MAXIMUM LOT COVERAGE	50%	13.9% SITE AREA
PERIMETER FRONT YARD (TYP.) STREET	20 FT	73 FT
PERIMETER YARD ATBK - OTHER	20 FT	21 FT
INTERIOR YARD - FRONT	10 FT	10 FT MIN. TO SIDEWALK/HSG
STRUCTURE SEPARATION	10 FT	14 FT
STREET WIDTH		
BOWAY	32 FT	34 FT W/ 8 FT CONTROL ISLAND
LOOP	28 FT	28 FT
SIDEWALK	5 FT - ONE SIDE OF STREET	5 FT - ONE SIDE OF STREET
PARKING (TOTAL/UNIT)	3 SPACE/ PER LOT/UNIT	3 SPACE/ PER LOT/UNIT
WETLAND SETBACK (VILLAGE)	50 FT	50 FT
STEEP SLOPE SETBACK (VILLAGE)	50 FT	50 FT

NOTES:

1. THE TOTAL AREA WITHIN THE VILLAGE IS 108.3± ACRES. DENSITY DETERMINATIONS ARE TO BE CALCULATED ON AN INDIVIDUAL PROJECT BASIS. DENSITY CALCULATION EXCLUDES WETLAND BUFFERS, ARCHAEOLOGICAL AREA AND STEEP SLOPES (39.7 ACRES) IN ACCORDANCE WITH DIMENSIONAL STANDARDS OF THE ZONING CODE. DENSITY PROVIDED: 49.6 ACRES / 330 UNITS = 8.157 SF PER UNIT.
2. GUEST PARKING SPACES ARE REQUIRED ONLY IF PARKING IS NOT PROVIDED ALONG THE STREET. 28' WIDE STREETS WILL ALLOW FOR ON-STREET PARKING ON ONE SIDE.
3. BUILDING SETBACK ASSUMES SIDEWALKS WILL BE LOCATED ON ONE SIDE OF THE STREET WITH A 5' WIDE GRASS STRIP BETWEEN SIDEWALK AND CURB.
4. THE ZONING REQUIREMENTS PROVIDED ARE CONSISTENT WITH THE MANUFACTURED AND MODULAR HOME PARK REQUIREMENTS.

RECREATION AREA KEYNOTES

(R1) REC AREA 1: 16.3± ACRE
(R2) REC AREA 2: 2.1± ACRE
(R3) REC AREA 3: 0.55± ACRE
(R4) REC AREA 4: 2.14± ACRE
(R5) REC AREA 5: 0.84± ACRE
(R6) REC AREA 6: 3.06± ACRE

AMENITIES KEYNOTES

(A) BASKETBALL COURT
(B) PLAYGROUND AREA
(C) COMMUNITY GAZEBOS
(D) SWIMMING POOL
(E) BENCH
(F) PICNIC AREA
(G) PAVILION
(H) PARKING FOR COMMUNITY SPACES
(I) TRASH RECEPTACLES W/ PET WASTE CONTAINER

MAP REFERENCE:

EXISTING CONDITIONS DEPICTED ON THIS PLAN ARE BASED ON A SURVEY ENTITLED "LAND TITLE SURVEY" PREPARED FOR UMH OF COXSACKIE, LLC, TOWN AND VILLAGE OF COXSACKIE, COUNTY OF GREENE, STATE OF NEW YORK, SURVEY PREPARED BY CHARLES HILF SURVEYORS, DATED 06/01/05 AND LAST REVISED 04/28/06

MOUNTAIN VIEW ESTATES
MANUFACTURED HOME PARK
RIVER ROAD (CO. RD. 61) & VAN DYCK STREET
COXSACKIE, NY 12051

UMH OF COXSACKIE, LLC
JUNIPER BUSINESS PLAZA
3499 ROUTE 9 NORTH
SUITE 3-C
FREEHOLD, NJ 07728

BERGMANN
ARCHITECTS ENGINEERS PLANNERS
Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, D.P.C.
2 Winners Circle, Suite 102
Albany, NY 12205
office 518.862.0325
www.bergmannpc.com

DATE	DESCRIPTION
07/23/2019	ADDED SITE AMENITIES
07/26/2019	UPDATED PER CLIENT 7/24/19 COMMENTS
05/01/2020	333-UNIT LAYOUT
05/15/2020	REVISED PER CLIENT 5/5/20 COMMENTS
06/15/2020	360-UNIT LAYOUT
07/21/2021	ADDED HABITAT & WETLAND BUFFER AREA LEGEND
10/08/2020	INCREASED HABITAT RESERVE AREA
1/8/2021	RELOCATED CLUBHOUSE AND COMMUNITY OFFICE

PRELIMINARY NOT FOR CONSTRUCTION

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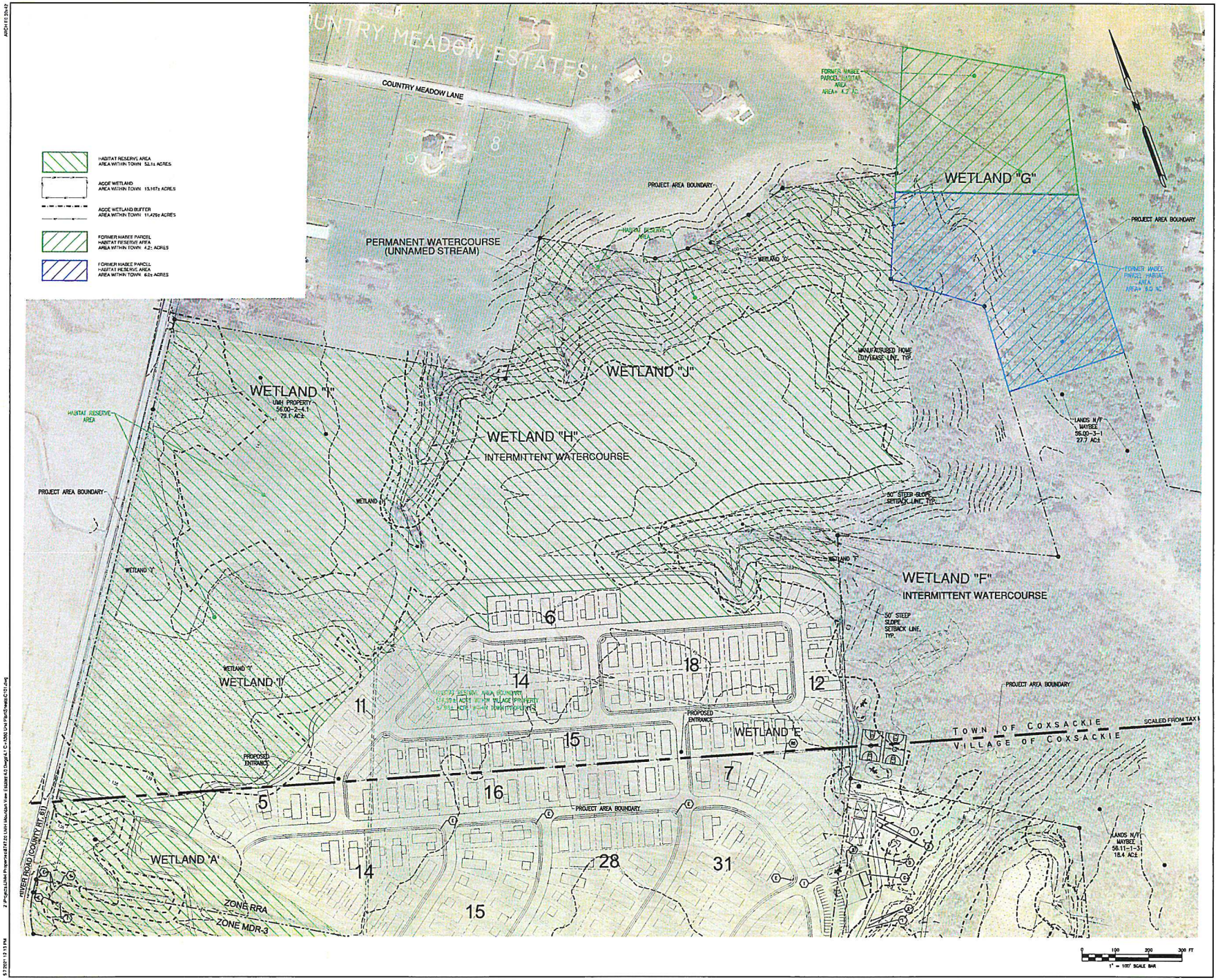
D. VANDERWERKEN, PE	D. VANDERWERKEN, PE
D. BARRIGER	D. BARRIGER
JULY 8, 2019	07/17/20

272-UNIT CONCEPT SITE PLAN VILLAGE PARCEL

CP-101
1 of 1



MOUNTAIN VIEW ESTATES

MANUFACTURED HOME PARK

RIVER ROAD (CO. RD. 61) &
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UMH OF COXSACKIE, LLC

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BERGMANN
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Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, D.P.C.
2 Winners Circle, Suite 102
Albany, NY 12205
office 518.862.0325
www.bergmannpc.com

DATE	DESCRIPTION
05/15/2020	360-UNIT LAYOUT
07/21/2020	ADDED HABITAT & WETLAND BUFFER AREA LEGEND
10/05/2020	INCREASED HABITAT RESERVE AREA
1/8/2021	RELOCATED CLUBHOUSE AND COMMUNITY OFFICE

PRELIMINARY
NOT FOR CONSTRUCTION

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G. LINDFREDRIS, PE
S. BARRIERE
JULY 16, 2019

G. LINDFREDRIS, PE
C. PRUSSELLO/S. RAMSDEN
07417.00

88-UNIT CONCEPT SITE PLAN TOWN PARCEL

CP-102