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Confusion over Granite Pointe plagues Somers Board Zoning Nightmare

By Abby Luby



Granite Pointe, the peninsula on the Amawalk Reservoir.

Given their allegiance to save the mammoth Angle Fly Preserve for open space two years ago, it seems ironic that Somers officials have given a consistent nod to develop Granite Pointe, the peninsula on the Amawalk Reservoir.

The proposal to put 23 houses on the 29 forested acres has spawned fears among those who believe a housing development could threaten the water quality of the Amawalk. The water source connects with the Muscoot reservoir and feeds into the Croton reservoir system, some of which funnels into New York City's drinking water.

Unresolved zoning

The current subdivision proposal is nearing final approval by the Somers Planning Board. Many residents opposing the development are anxious the plan will be approved and have once again attempted to expose Somers' past zoning decisions, claiming they have favored development.

The crux of the issue is whether the land is one-acre or two-acre zoning. The 1994 Master Plan update recommended two-acre zoning but now there is doubt.

Making sure that Granite Pointe was legally designated one-acre zoning is important to Councilwoman Lynette Burns.

"This property should never have been grandfathered in," she said, referring to the 1991 re-zoning of town properties.

"That's why this is a real key legal issue, especially if it hasn't been legally grandfathered as the developers have come so far."

Digging up the rezoning issue is plausible for the town.

"If you go to court and show actions taken were in compliance with the Master Plan, the courts look favorably on that," said Burns. "If you can show that actions were not in compliance the court looks on

those actions unfavorably.”

Leila Goldmark, Watershed Attorney for Riverkeeper, said the town shouldn't ignore their underlying zoning law.

“It seems surprising that it [the Granite Pointe zoning issue] got this far and nobody ever brought this up in the original review,” she said. Goldmark added that if Granite Pointe was zoned incorrectly, it needs to be considered. “This is a significant issue, whether it could be resolved by issuing a variance, which might not change anything anyway, it still should be fully resolved.”

The real fear is that the town might be sued.

“If somebody feels that something was done improperly by the town then the Article 78 proceeding is certainly the way to seek that being remedied,” said Councilman Paul Meyer. “There are certain members of the public that seem to feel very strongly about Granite Pointe zoning and they are free to pursue what they feel is right.”

Meyer pointed out that if the 23-house subdivision application were upzoned to two acres, the property value would drop almost 50 percent and the town might be sued by Suelain Realty.

“The reason we didn't do it was that we were cautious to avoid any lawsuits,” said Meyer.

Origin of the dispute

The 1994 Master Plan recommends a “low density” two-acre zoning for Granite Pointe, where, if developed, one house is allotted to every two acres. In June, 1990, while the Master Plan was still being drafted, the Planning Board granted preliminary approval for a subdivision of cluster housing to be built on two-acre zoning at Granite Pointe as suggested by the document, according to town planning board records.

The developer at that time, according to the Department of State's records, was Granite Pointe Associates.

In 1991, however, the Department of Environmental Protection (DEP), the agency overseeing New York City's drinking water, and an adjacent landowner to the reservoir parcel “revoked the findings statement and preliminary approval,” according to town records. The DEP objected to the possible adverse impact to drinking water from the development. The application process for the subdivision was stopped.

A few months later the town re-zoned Granite Pointe to one-acre zoning. Residents have long been suspicious of that move, saying it shows the town favored development. But Somers Supervisor Mary Beth Murphy said it was part of the larger re-zoning picture.

“The property was actually rezoned in 1991 from what was “neighborhood shopping” to R-40 (one-acre residential),” said Murphy. “The board took the commercial aspect of it away and made it all residential.” Murphy also said that land north and west of Route 202 was zoned R-40 during the 2000 rezoning.

Carmel resident Ivanka Roberts, long opposed to developing Granite Pointe, said re-zoning the land to one-acre at that time wasn't a coincidence.

“The town ignored the Master Plan, which to this day still adheres to one home on two acres,” said Roberts. In her March 5, 2007 letter to the Town Board, Roberts claimed, “The reason for the present one-acre zoning seems to be a mixture of oversight and disinformation and is due to its long history.”

But Meyer said the 1994 Master Plan was never formally adopted by the town.

“I can't speak for that Town Board at that time, but certainly it gave them the ability to pick and choose what things out of the Master Plan they wanted to implement,” he explained. “A Master Plan that is approved but not formally adopted does not carry the same weight as an adopted Master Plan.”

Murphy sees the Master Plan for towns as more of a “guidance document.”

“The Master Plan is not a law itself that could change the zoning code,” she said. “If you change

the zoning code there has to be legislation adopted that would effect the code that's part of the town laws."

Meanwhile, the Granite Pointe property foreclosed and was purchased in 1994 at auction by Suelain Realty for \$614,802, according to Westchester County's official land records, listing the company's address at Blondell Avenue in the Bronx. The partners of Suelain Realty, now listed at a Katonah address, are John Harkins and Gerald Messuri.

Messuri currently has an application before the Yorktown Planning Board for a variance at a fitness club on Front Street in Yorktown. A year later in 1995, Suelain Realty applied to the Somers Planning Board to develop homes on Granite Pointe zoned for one acre.

Public hearings and waivers

For the next 10 years, the application went through various phases of environmental impact statements, with the required public hearings and special comment periods. But there were several unexplained glitches along the way.

Acting under the assumption that the Master Plan was not formally adopted, the Planning Board, in a January 22, 1997 memo, dismissed the requirement for the Draft Environmental Impact Statement that would address the density of the proposed development at Granite Pointe.

Since the hot issue of zoning at Granite Pointe has recently surfaced, Burns requested an explanation from Town Attorney Roland Baroni about the property's exclusion from rezoning.

"I've asked the Town Attorney to give us the minutes from the 1997 meeting," said Burns. "I would like to hear his interpretation as to what happened exactly and why it [Granite Pointe] wasn't included in the rezoning."

As of press time, Baroni didn't return calls to North County News.

Town records show the Planning Board waived a public hearing on the eve of approving Suelain Realty's final application to build on Granite Pointe in June 2002. The board's decision for the waiver was concurrent with granting both wetlands and steep slopes permits necessary for the developer to break ground.

Toxic Contamination

In 2003, lead contamination was discovered from a former skeet- and trap-shooting range that had been on the property for nearly 35 years. Soil testing found extremely high levels of lead, arsenic, nickel, zinc and other toxic metals that leached into the soil in several lots on the property.

In June, 2004, the final subdivision approval was rescinded, calling for another environmental impact statement to check the extent of the contamination.

At about the same time, Suelain Realty borrowed \$850,000 from Putnam County Savings Bank for a "construction loan mortgage," a building loan acquisition filing with the Westchester County clerk's office showed. The Town Board is aware of the developer's escalating expense to keep the subdivision application active.

"He's done everything," said Burns about developer John Harkins. "His project was in the final stages of approval. Then when the lead issue came up he had to start all over again hiring scientists. It's cost a fortune and a lot of time."

Since then, Suelain Realty has revised their environmental impact statement addressing the contamination remediation. In a recent interview, Harkins said Suelain Realty has already budgeted for most of the remedial work and they will be working with the Brownfields Cleanup Program, a program overseen by the New York State Department of Environmental Conservation that helps property owners rid contaminants from planned building sites.

The New York State Attorney General's office also recommended that the Somers' Planning Board make it a requirement for the subdivision approval.

Eyes on the prize

Shaking off the zoning quagmire is a new effort to fund a possible purchase of Granite Pointe from Suelain Realty for preservation.

Having the parcel upzoned to two acres reduces the property value making it more attainable financially. Murphy stated that she has contacted all relevant players that might be funding partners in the possible purchase of Granite Pointe, including the Town of Yorktown and the Northern Westchester Joint Water Works, both of which use the Amawalk Reservoir as drinking water.

“I’m very happy with the initiative to acquire the property,” said Murphy. “Several years ago (County Legislator) Mike Kaplowitz was with me at a meeting with the DEP to see if they would get on board. But the DEP wouldn’t even do an appraisal of the property and they had no interest in it.”

A call placed to DEP by North County News was not returned.

Kaplowitz (D-Somers) said the stakes are high because of prospective health issues connected to polluted drinking water.

“The lead and the classic storm water and septic issues tell us that if Granite Pointe was developed it would seriously impair the Amawalk,” he said. “We want to make sure that doesn’t happen. The county can play a direct roll in saving the property from development by putting the focus in the right area.”

“This is the time for the DEP to get involved,” said Kaplowitz. “It’s their reservoir. They collect user fees from some 40,000 people who use the water and they have a direct responsibility to protect the water. They are obligated to make a fair and reasonable investment