

Town of New Paltz Historic Preservation Commission Meeting
Wednesday April 15th 2015 7:30PM - 9:30PM at the Community Center

Commissioners attending: John Orfitelli (Chair), Caryn Sobel and Dave Gilmour.

Also attending:

Mohonk CoA Representatives:

Peter Karis, Director of Land Protection and Stewardship, Mohonk Preserve
Glenn Hoagland, Executive Director, Mohonk Preserve
Ron Knapp, Member Board of Directors, Mohonk Preserve
Eric Roth, Manager of Grants and Organizational Funding, Mohonk Preserve
Mike Moriello, Attorney, Land Use Specialist
Carl Sterns, Preservation Architect from Syracuse New York

Roughly 20 Members of the Community including the following who provided comments:

Harry Ellis
William Rhodes
Stacy Delarede, Building Inspector, Town of New Paltz
Susan Stegan
Jack Zand
Don Casalone

Agenda

1. Public Comment
2. CoA from Mohonk Preserve
3. HPC Landmark Incentives
4. Recruitment for Commission Seat
5. Review and approve minutes from August and January

Minutes

Public Hearing was called to order at 7:35pm by John Orfitelli followed by the Pledge of Allegiance.

1. **Public Comment:** The meeting was opened for public comments following the CoA presentation by Mohonk Preserve. Those comments have been summarized below.
2. **CoA from Mohonk Preserve:** Peter Karis, Director of Land Protection and Stewardship, Mohonk Preserve, presented the Certificate of Appropriateness application for changes to the Gate House structure located within the Mohonk Testimonial Gateway, a locally designated historic landmark. Supporting materials included:
 - Local Historic Landmark Designation Documentation
 - Mohonk Testimonial Gateway Condition Study
 - Stabilization & Restoration Plans for the Mohonk Preserve Testimonial Gateway
 - Property Survey
 - Window and Door Type Drawings

Peter Karis provided detailed descriptions of the work being proposed for the Gate House structure as outlined in the CoA, namely,

- Repair and maintenance of the clay tile roof, copper flashing, and trim.
- Repair and maintenance of masonry mortar pointing
- Repair and/or replacement of windows and exterior doors

Carl Stearns, Preservation Architect from Syracuse New York who helped prepare the Conditions Study for Mohonk Preserve, addressed technical details of the roof materials, windows, and masonry including samples of the new tile and example window. Here are notes from the recorded meeting transcript:

A postcard from 1919, which shows the original window pane pattern, will be used as the model for the new windows. One original window was found that also matches the pattern from the postcard.

Masonry around the windows and jams was Rosendale cement, a naturally hydraulic cement, which, if still available, will be used in replacement and pointing work.

William Rhodes, Professor Emeritus of History at SUNY New Paltz: stated that the proposals provided by Mohonk are excellent and he strongly supports their efforts.

Harry Ellis, resident on Butternut Road, is very much in favor of restoration.

Sue Stegan, resident on High Pasture, strongly supports renovation.. asked about impact of work on the area.. Mohonk will create a construction zone and pedestrian bypass to allow for safe travel around the site. Work is expected to take roughly two months to complete.. with a start in mid-summer work should be completed in the Fall.

The stone used to construct the Mohonk Mountain House may be similar to that used for the Tower, however, since dates for the structures range from 1919 (Tower) to 1921 (Mountain House), it is likely that the materials and technology developed over that period resulted in significant difference.

Dave Gilmour asked if Rosendale cement will be specified for the mortar. Mohonk will specify and attempt to secure, however, in the event that Rosendale cement is simply not available, a chemically equivalent material which has been defined by a qualified professional will be used. Mike Moriello stated that he has a client who specializes in historic restorations and who is interested in purchasing a local mine that could produce Rosendale cement.

Dave Gilmour asked if lightning rods will be included as part of the restoration. Mohonk will be including the lightning arresting equipment as identified in the Conditions Study. The CoA will be updated to include corresponding references.

Don Casalone asked if the Lenape Lane Bridge over Butternut will be part of this project. Mohonk explained the relationship between the Tower and the 1923 bridge which will not be part of this CoA. The Site Plan review for the Mohonk Preserve Foothills Project by the Planning Board (Lead Agency) will address modifications to the bridge decking. The Town HPC will need to create a separate CoA and corresponding Decision for the Town Planning Board regarding changes proposed by the Foothills Project.

Ron Knapp, Member Board of Directors, Mohonk Preserve, asked for insight into the project cost. Glenn Hoagland stated that the cost for stabilization of the Tower as outlined in the CoA was initially estimated to be \$250K. Based on findings from tests for toxicity which included radon, asbestos, PCBs, and mold, along with tile replacement costs, and more authentic window detailing, the estimated cost is now closer to \$300K. There is no State or Federal funding being

provided for this project. Funding is being provided through a Foundation Grant and private individuals.

Dave Gilmour, requested clarification on stabilization role of windows. Mohonk explained windows primarily serve to keep structure weather tight and mitigate water damage. Roof is most critical area, however, and prioritized accordingly.

Dave Gilmour asked about the condition of the monument plaque. Mohonk stated that the plaque is stable and secure.

Mohonk explained that the window frame will be aluminum clad wood. Color specified is medium bronze.

Jack Zand, resident on High Pasture Road, asked if the interior would be renovated as part of this project. Mohonk explained that the project is limited to exterior restorations. The interior will be gutted as part of the stabilization. The interior would eventually be restored for use by Mohonk staff in its original form as a three bedroom residence. The additional cost of restoring the interior would push the total estimated to over \$1M.

Dave Gilmour asked if changes to window and door designs were consistent with the standards set forth by the Secretary of the Interior. Mohonk stated that yes, design changes are in accordance to the standards set forth by the Secretary of the Interior.

Mohonk clarified that the interior historic elements including, for example, four original doors and three original casings will be set aside for use in the future restoration of the interior. Also, as the structure becomes weather tight, it will become necessary to monitor moisture and possibly add equipment or methods to mitigate moisture build up on the interior.

William Rhodes described the Gatehouse structure as an excellent example of the Richardsonian Romanesque Revival architectural style popular at the time, as one of a variety of Victorian-era revival styles in architecture. The building is of large blocks of stone, irregularly and roughly cut, with buttressing and narrow, recessed windows giving the impression of heavy massing that characterizes this style. The top floor of the tower is an open observation area, with medieval-inspired stone balconies on each side. Romanesque-revival style incorporated medieval and Mediterranean influences, and these are visible here in the strong proportions of the cornice stone work, rounded arches, and supporting elements of the balconies and roofs. Doorways, stairwells, and windows are deeply recessed.

As stated in our meeting minutes from March, it was believed that a SEQR Environmental Impact Assessment was not required since the changes outlined in the CoA did not result in any ground disturbance. Attorney Mike Moriello representing Mohonk Preserve provided his assessment of the SEQR criteria which supported our prior understanding (attached).

However, since the letter from Mike Moriello dated April 14th was distributed the morning of our meeting, the Commission was not prepared to fully sanction a SEQR position and instead chose to request a judgement from Town Attorney George Lithco. John Orfitelli agreed to contact George Lithco to discuss the CoA and request a determination on SEQR for this project.

As requested by John Orfitelli, the CoA was updated to include references to specific sections of the Mohonk Testimonial Gateway Condition Study that correspond to each of the changes. The Condition Study and window/door specifications will be made part of the CoA.

Mohonk Preserve and the Commission completed the CoA prerequisites outlined below.

1. Public Hearing Notice, New Paltz Times, April 2nd edition: Resp: John Orfitelli

2. Signage for Posting of CoA Pending Action, April 3rd : Resp: Mohonk Preserve
3. Abutter Notification of Public Hearing and CoA Action, April 2nd: Resp Mohonk Preserve
4. CoA Materials available at the Town Clerks Office, April 2nd: Resp: John Orfitelli

The Public Hearing Notice as published in the New Paltz Times is attached along with the Affidavit of Mailings and Notices.

The following article by Frances Marion and published in the New Paltz Times on April 23rd provides an excellent summary of the meeting.

Asbestos Abatement Jacks Up Costs of Mohonk Testimonial Gatehouse Renovation

As anyone can attest who has attended a meeting of any of New Paltz's municipal boards and commissions recently, such gatherings typically offer an excuse for disgruntled residents to vent their unhappiness over one issue or another. It's rare to find one where the audience seems almost unanimous in its approval of the proceedings. But that happened on the New Paltz Community Center on Wednesday evening, April 15, when the town's Historic Preservation Commission (HPC) concluded a calm and orderly public hearing on the Mohonk Preserve's application for a Certificate of Appropriateness (CoA) for proposed exterior renovations to the Mohonk Testimonial Gateway at 1 Gatehouse Road. Neighbors conferred their blessings on the project and urged that the landmark 1907 stone building on the Flats be renovated as soon as possible.

Perhaps the lack of rancor expressed at the meeting can be attributed to the fact that the controversial components of the Gatehouse restoration project — the parts subject to State Environmental Quality Review (SEQR) and currently under scrutiny by the New Paltz Planning Board, with impacts on traffic flow, creation of new parking lots and so on — do not come under the HPC's purview. Under SEQRA, explained town attorney Mike Moriello, only development that involves "physical changes to land" requires an Environmental Impact Statement. The HPC's discretionary role applies only to the proposed changes to the building itself, since it is a designated historic landmark structure.

The good news is that the Mohonk Preserve is committed to exterior restoration of the Gatehouse as a "historical artifact" and "part of the experience of arriving at Mohonk," as Glen Hoagland put it. The Preserve's executive director said that a \$100,000 grant had already been secured for the project from the Fidelity Foundation of Boston, and that \$17,000 in local support had been raised toward the required one-to-one match. The bad news, Hoagland said, is that the original \$250,000 pricetag of the restoration project would likely fall far short of the funding actually needed.

The problem that has arisen is what architect and planning consultant Carl D. Stearns of Crawford & Stearns called a "hazardous materials mitigation issue." While the conditions study done in 2013 to support the application for Local Historic Landmark Designation for the Testimonial Gateway posited that many original building materials could be reused, a more recent toxics report revealed that the structure's red clay roof tiles will have to be replaced with identical tiles completely, not just the broken ones. According to Hoagland, an "asbestos-based subbase material" in the roofing must be entirely removed, and the tiles themselves are contaminated. The company that manufactured the original tiles no longer exists, according to the Local Historic Landmark Designation Nomination document.

In addition, said Hoagland, the toxics report identified lead, radon and mold as potential problems in the building, which has sustained heavy water damage due to broken tiles, rotted copper flashing, broken window glazing and leading and a wood-and-metal roof hatch that has completely rotted through. Groundwater also infiltrates the basement level. Architectural historian Bill Rhoads, who termed himself a "longtime admirer of the Testimonial Gateway," delicately described the condition of the building's interior as "disheveled, to say the least."

But the Preserve's director of land preservation and stewardship, Peter Karis, was blunter: "It's a train wreck inside. It's bad, bad, bad."

Hoagland agreed that, although it had been occupied as recently as 2010, the interior space is now uninhabitable. "Our goal is to gut the building," he said, adding that this is a "low priority, as a land preservation organization." He estimated the cost of a full interior restoration as "probably over a million dollars."

For the near term, the Preserve proposes only to "arrest deterioration," stabilize the building and make it "weathertight," according to Hoagland. That more achievable goal consists primarily of replacing the leaky roof and windows and repointing the mortar, which is cracked and seamed in many places. A couple of interestingly shaped and reasonably intact original windows will be restored with historically accurate materials, but most of the others will be replaced with energy-efficient thermopane casement windows manufactured by Marvin. They will have frames and muntins made of wood like the originals, but with a weather-resistant aluminum cladding in a bronze color that "we think is a very good match for the surviving window," and the leading will be decorative only, according to Stearns.

Efforts to utilize historical materials where possible will require further analysis — particularly of the mortars used on the building's massive "raw masonry" façade, which Rhoads said was typical of the Richardsonian Romanesque style. The 2013 conditions study took note of the fact that two shades of mortar occur, perhaps suggesting that different mixtures were used for the original construction and later patching and pointing. Taking note of hints that the original mortar may have been made from Rosendale cement, HPC member Dave Gilmour urged that every effort be made to utilize the authentic material. "This is our Washington Monument, in a sense," he said.

Because the HPC's authority over the project is "ministerial" rather than discretionary, said Moriello, "I don't think you have that authority at all" to specify materials. "They may not be able to secure Rosendale cement in a timely manner. If they can't, they'll try to secure something equivalent." "They're making it again," noted Stearns, and Moriello promised to give Hoagland contact information for someone who is currently mining small quantities of Rosendale cement for a niche market.

After determining next steps that included amendments to the CoA application to reflect the results of the toxics study and the submission of more detailed specifications on proposed materials before the certification can be awarded, the HPC voted to close the public hearing. "I'm pleasantly surprised that there is not a lot of controversy," Moriello marveled. "There is no hue and cry from the public. People want to see the stabilization and restoration done." While Gatehouse neighbor Sue Stegen said that she was "concerned" about potential traffic impacts of the larger Mohonk Foothills project, she expressed strong support for the iconic building's exterior renovation, at least. "After 100 years, it deserves a new roof," she declared.

Motion to close the public hearing and review final materials along with the SEQR judgement from George Lithco and Draft Decision document at our meeting in May was made by Caryn Sobel, seconded by John Orfitelli. All voted to close. Motion carried. Public Hearing was closed at 8:50pm.

Remaining Agenda Items 3-5 were not addressed since the meeting ended after the Public Hearing was closed. A special HPC work session meeting will be scheduled in April. No actions will be taken at that meeting but rather deferred to our next regularly scheduled meeting on May 20th.

RISELEY & MORIELLO

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April 14, 2015

Town of New Paltz Historic Preservation Commission
Mr. John Orfitelli, Chairman
Town Hall
1 Clearwater Road
New Paltz, New York 12561

RE: Application of Mohonk Preserve, Inc.:
Certificate of Appropriateness Under the
Town of New Paltz Historic Preservation Law

Dear Chairman Orfitelli and Commission Members:

This memorandum is submitted as an Addendum to the March 13, 2015 Gatehouse Application by Mohonk Preserve, Inc. and in address of anticipated postulations by project opponents that the above referenced matter is subject to SEQRA review.

As we discussed at the Historic Preservation Commission's March 18, 2015 meeting, this Application for Gatehouse repairs and maintenance is classified as a Type II Action under SEQRA. It is further submitted that the planned repairs and maintenance of the Gatehouse premises do not affect a physical alteration within the purview of SEQRA.

I base the foregoing legal positions upon the plain meaning of the SEQRA Regulations, NYSDEC Commentary Responses relating to the 1996 SEQRA Amendments [Final GEIS] and associated controlling case law. In examination of the relevant issues, I offer the following address:

1.) No physical alteration:

6 NYCRR Part 617.3(a) reads in relevant part as follows:

"No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR. A project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been complied with. The only exception to this is provided under paragraphs 617.5(c)(18), (21) and (28) of this Part..."

In determining what activities result in a physical alteration within the meaning of 6 NYCRR part 617.3(a), the SEQRA Regulations define "physical alteration" within 6 NYCRR Part 617.2(ab) in the following manner:

"Physical alteration includes, but is not limited to, the following activities: vegetation removal, demolition, stockpiling materials, grading and other forms of earthwork, dumping, filling or depositing, discharges to air or water, excavation or trenching, application of pesticides, herbicides, or other chemicals, application of sewage sludge, dredging, flooding, draining or dewatering, paving, construction of buildings, structures or facilities, and extraction, injection or recharge of resources below ground."

Accordingly, repairs and maintenance to the Gatehouse building proper clearly do not fall within the plain language of 6 NYCRR Parts 617.3(a) and 617.2(ab). This position is buttressed by the relevant NYSDEC Commentary Responses to the 1996 SEQRA Amendments; to wit:

"Comment: The language in subdivision 617.3(a) pertaining to prohibiting a project sponsor from commencing physical alteration of property until SEQR has been complied with is without statutory foundation. It could have the effect of imposing a moratorium on ordinary landowner activities that may take place on a piece of property and may be beyond the authority of reasonable rulemaking activity. A project sponsor may have reasons unrelated to the action (e.g. safety concerns) for needing to commence existing building demolition on a site slated for development. This provision should be eliminated."

"Response: Although this entire passage is underlined as new, it is a rewrite of the existing 617.3(a), therefore, it is not a new provision. This provision is intended to prevent vegetation removal and site grading where such activities are related to an action subject to SEQR but when the review has not been completed. Additionally, the basis for this provision is the concept that environmental review must encompass the "whole action". Part 617.2(b), the definition of an action includes activities that may affect the environment which

logically encompasses "any physical alteration related to an action". Since SEQRA must be complied with before undertaking an action, it only makes sense that any physical alteration related to an action, for which an application has been made, would be prohibited prior to SEQRA compliance. Allowing a project sponsor to proceed with physical alteration of a site during the conduct of an environmental review under SEQRA would severely limit the lead agency's opportunity to consider the full range of alternatives and mitigation measures. A landowner is free to use his or her property so long as that use does not constitute part of the action under agency review. This provision is supported by Federal court decisions construing NEPA to require that no part of an action subject to NEPA be undertaken before the Federal EIS process is complete. (Maryland Conservation Council, Inc. v. Gilchrist, 808 F. 2d 1039; 4th Cir. 1986)."

"Comment: How does an agency enforce the no physical alteration language found in paragraph 617.3(a) and what remediation is expected in cases where work is done prior to the receipt of an application."

"Response: This provision will be enforced and remediation imposed based on the underlying jurisdiction of the agency."

"Comment: Since all Type II actions are not subject to SEQRA, subdivision 617.3(a) must contain an additional exception for all Type II actions."

"Response: The activities which are noted are those which relate to the collection of information and the conduct of studies in relating to the proposed action. These activities do not commit the agency to approve the action under review nor do they allow for widespread disturbance of the site."

With respect to case law and the above referenced statutory language, as zoning and land use laws [SEQRA] are in derogation of common law property rights, they are to be given their plain meaning under the long standing rule of strict construction. FGL and L Property Corp. v. City of Rye, 66 NY2d, 111 (1985), Thompson Industries v. Incorporated Village of Port Washington, 27 NY2d 537 (1970), Nicklin-McKay v. Town of Marlborough Planning Board, 13 AD3d 858 (3rd Dept, 2005).

Based upon the foregoing, the planned repairs and maintenance for the Gatehouse premises do not affect a physical alteration within the meaning of the SEQRA Regulations.

2.) Type II Action:

6 NYCRR Part 617.5(a) reads as follows:

"Actions or classes of actions identified in subdivision (c) of this section are not subject to review under this Part. These actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation law, article 8. The actions identified in subdivision (c) of this section apply to all agencies."

6 NYCRR Part 617.5(c)(1) reads as follows:

"The following actions are not subject to review under this Part:

(1) maintenance or repair involving no substantial changes in an existing structure or facility."

6 NYCRR Part 617.5(c)(19) reads as follows:

"official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s)." [Emphasis supplied.]

The work which is planned for the Gatehouse premises is dispositively classified as repairs and maintenance under SEQRA. In this regard, it bears emphasis that the repairs and maintenance are being undertaken to preserve the historically designated Gatehouse in harmony with its existing architectural enhancements.

In this regard, Type II Actions are precluded from environmental review and it is noted that, as the listing of Type II Actions forms part of a General Law of statewide application, a local administrative body cannot withdraw from the list Type II Actions set forth within 6 NYCRR Part 617.5(c).

West Village Committee, Inc. v. Zagata, 242 AD2d 91 (3rd Dept, 1998), lv. to app. den. 92 NY2d 802 (1998).

Therefore, as SEQRA requires literal procedural compliance, a Type II Action cannot be lawfully converted to an Unlisted Action by an administrative agency. Jackson v. New York State Urban Development Corp., 67 NY2d 400 (1986), Friends of Harbor Island Park v. Village of Mamaroneck, N.Y.L.J., Aug. 2, 1990, p. 21, Sup. Ct., Westchester Co.

A review of the 1996 SEQRA Amendments commentary responses [Final GEIS] finds that the NYSDEC has considered the Type II Actions listing within the SEQRA Regulations and that repair and maintenance to an existing facility is not subject to agency review under SEQRA.

"Issue: Existing regulations establish and separately list three classes of actions which require no agency review under SEQR. These are "Excluded", "Exempt" and "Type II". Also, existing as Part 617.3 (General Rules) separately lists other activities which do not require environmental review under SEQR. For ease of reference, all of these items should be located in one section. In addition, the current Type II list is too narrowly drawn and requires expansion.

"Revision: One section is established for all of the actions which do not require any determination or procedure under SEQR. Although it is still called the Type II list, it is now defined to include actions which do not have a significant effect on the environment, excluded actions, exempt actions and those activities currently referred to in the General Rules. The terms "excluded" and "exempt" are dropped from the regulations. Similar actions are grouped together."

"Discussion: Since an important first step in the environmental review process is to ascertain whether SEQR applies to an action, the public is well-served by having to refer to only one section to determine if SEQR applies. In addition, Section 8-0113(2)(c)(ii) of the ECL requires the Department to identify actions which do not have a significant effect on the environment and which do not require EISs. The Department can meet these goals by consolidating and expanding the list of actions not requiring any determination or procedure under SEQR. As a result, an agency's time, efforts and resources will be focused

on reviewing those actions which may have potentially significant adverse impacts on the environment. Sixteen years of experience, a review of materials in the SEQR data base, a review of judicial interpretations of items on the Type II list and a review of other states' regulations all support this revision and expansion. The Department finds that the new and revised items which have been added to the Type II list (Numbers(#) 2, 7, 8, 9, 10, 11, 13, 14, 17, 30, 31 and 32) do not have a significant effect on the environment. This finding is based on the discussion that accompanies each new or revised Type II item."

"Comment: Article 8 of the ECL defines what an "action" is and also lists activities that are not included in the definition of "action". Thus, the statute requires identifying separate lists of items not subject to SEQR."

Response: The Department recognizes that the statutory definition of "action" refers to separate exempt and excluded items and that under a strict statutory interpretation exempt and excluded items are not actions. However, in practice exempt, excluded and Type II all result in the decision that SEQR review is not required. As was evidenced by the numbers of comments received regarding the proposal to rename the Type II list, the public is familiar and comfortable with the term "Type II". [Emphasis supplied.]

This revision will make it easier for people to determine if a particular activity is subject to SEQR. The Department is not changing the statutory definition of an action. Rather, the intent of the statutory definition is being carried out in the regulation in plain language. Activities which have been excluded or exempt from SEQR under Article 8 continue to retain that status."

It is further submitted that the Town of New Paltz Historic Preservation Commission consideration of the Application for a Certificate of Appropriateness in the instant case, without SEQRA being applicable, is entirely consistent with the NYSDEC position on the lawful determination to classify an Action as Type II within the context of pending discretionary review Applications, which require SEQRA compliance [i.e.; the Mohonk Preserve, Inc. Site Plan, Subdivision and Lot Line Revision Application before the Town of New Paltz Planning Board, as Lead

Agency]. This is illustrated by the following NYSDEC colloquy within the FGEIS for the 1996 SEQRA Amendments:

"Comment: If the state agency which most likely would have been the lead agency has classified an action as Type II, all other involved agencies should be bound by that classification.

Response: If an agency classifies an action as Type II it is no longer an involved agency under SEQR. Agencies are allowed and encouraged to enter into cooperative agreements with other agencies to coordinate review of actions. However, SEQR was never intended to change the jurisdiction between or among agencies. The statute does not authorize one agency to preclude a second agency from applying SEQR to an action over which the second agency has approval."

Addressing 6 NYCRR Part 617.5(c)(19) and the issuance of ministerial permits by the Town of New Paltz Building Inspector, there is a long line of case law which holds that the municipality may not travel beyond the predetermined statutory criteria set forth within the Town of New Paltz Zoning Law and apply SEQRA to "historic preservation permits" which are specifically excluded by the SEQRA Type II Action Regulations. Incorporated Village of Atlantic Beach v. Gavalas, 81 NY2d 322 (1993).

Accordingly, following administrative review by the Town of New Paltz Historic Preservation Commission, the Town of New Paltz Building Inspector must apply the Town of New Paltz Historic Preservation Law and associated Town of New Paltz Zoning Law provisions governing the issuance of Building Permits without the exercise of discretion. 220 CPS Save Our Homes Association v. New York State Division of Housing and Community Renewal, 60 AD3d 593 (2009), Filmways Communications v. Douglas, 106 AD2d 185 (1985), aff'd, 65 NY2d 878 (1985), Island Park, LLC v. New York State Department of Transportation, 61 AD3d 1023 (3rd Dept, 2009).

As a municipality must follow the New York State Fire Code and the New York State Building Code, it may not unilaterally impose more restrictive conditions to building repairs and maintenance than are set forth within said Codes. Nor may the municipality withdraw from the same in piece-meal fashion. Therefore, the provisions of the Town of New Paltz Historic Preservation Board may not expand the Building Inspector powers and may not confer discretionary review power over the repairs and maintenance of the Gatehouse premises under New York State

Law. Con Edison v. Town of Red Hook, 60 NY2d 99 (1983),
Idelevitz v. City of Glen Cove, 230 NYS2d 591 (1962), Plumbing
Contractors v. Harold, 84 Misc2d 990 (1975), Albini v. Stanco,
61 Misc2d 813 (1968).

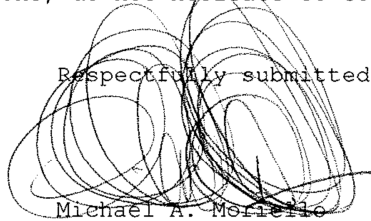
Based upon the foregoing legal analysis, the planned repairs and maintenance to the Gatehouse premises is a Type II Action under the SEQRA Regulations.

This memorandum is being entered into the Town of New Paltz Historic Preservation Commission Administrative Record in consideration of the pending Application for a Certificate of Appropriateness and in order to lawfully differentiate this separate Application from the pending SEQRA review of the Mohonk Preserve, Inc. Application for Site Plan, Subdivision and Lot Line Revision before the Town of New Paltz Planning Board.

Mohonk Preserve, Inc. reiterates that they will continue to pursue the pending Site Plan, Subdivision and Lot Line Revision Application before the Town of New Paltz Planning Board in a coordinated review fashion and as a Type I Action under SEQRA for all necessary discretionary permits and approvals at law. To this end, my client has provided a courtesy copy of its Town of New Paltz Historic Preservation Law Application documents to the Town of New Paltz Planning Board.

Should you have any questions, do not hesitate to contact me.

Respectfully submitted,

A large, stylized handwritten signature in dark ink, appearing to read "Michael A. Moricello". The signature is written over the typed name and the phrase "Respectfully submitted,".

Michael A. Moricello

MAM:def

cc: Mohonk Preserve, Inc.
Town of New Paltz Building Inspector
Town of New Paltz Planning Board

Public Hearing Notice published 4/2/2015 in New Paltz Times

28 • April 2, 2015

Legals

LEGAL NOTICE

NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD BY THE TOWN OF NEW PALTZ HISTORIC PRESERVATION COMMISSION, TOWN OF NEW PALTZ, COUNTY OF ULSTER AT THE TOWN COMMUNITY CENTER, ROUTE 32 NORTH ON:

DATE: 4/15/2015

TIME: 7:30 PM or as soon thereafter as the matter can be heard.

FOR THE PURPOSE OF reviewing the Certificate of Appropriateness Application submitted by Mohonk Preserve Inc. for repair and maintenance of the clay tile roof, copper flashing, trim, and repair and/or replacement of windows, and exterior doors to the Gate House structure which resides on the Mohonk Testimonial Gateway Property, a Locally Designated Historic Landmark, located on Gate House Road in New Paltz pursuant to Zoning Article XIV 140-122 of the New Paltz Code.

A copy of the completed CoA application and associated materials will be available for inspection at the Town Clerks office beginning 4/2/2015. At 7:30 p.m., or as soon thereafter as the matter can be heard, the public hearing will be opened and the Historic Preservation Commission will accept comments from all interested members of the public.

The public hearing may be closed or continued at the Historic Preservation Commission discretion.

The Town of New Paltz will make every effort to assure that the hearing is accessible to persons with disabilities. Anyone requiring special assistance and/or reasonable accommodations should contact the Town Clerk. All interested parties are invited to attend.

ALL PARTIES FOR OR AGAINST SAID SUBJECT WILL BE GIVEN AN OPPORTUNITY TO BE HEARD IN RESPECT TO THIS DESIGNATION NOMINATION.

John Orfitelli

Chair, Town of New

Paltz Historic Preservation Commission

STATE OF NEW YORK)
COUNTY OF ULSTER)ss.:

MOHONK PRESERVE, INC.
CERTIFICATE OF APPROPRIATENESS
HISTORIC PRESERVATION COMMISSION

AFFIDAVIT OF MAILING AND NOTICES

PETER KARIS, RLA, being duly sworn, deposes and says:

1.) I am the Director of Land/Stewardship for Mohonk Preserve, Inc. with a mailing address of PO Box 715, New Paltz, New York, 12561 and I am one of the consultants representing Mohonk Preserve, Inc. in the pending Application for a Certificate of Appropriateness for certain repairs and maintenance to the Mohonk Preserve, Inc. Gatehouse Premises, as now pending before the Town of New Paltz Historic Preservation Commission.

2.) On March 30, 2015, in accordance with authorization by the Town of New Paltz Historic Preservation Commission and pursuant to the Town of New Paltz Code provision Section 140-150, your affiant served a true copy of the Public Hearing Notice for the April 15, 2015 Town of New Paltz Historic Preservation Commission Public Hearing upon said Application, by mailing the same in a sealed envelope with postage prepaid thereon in an official depository of the U.S. Postal Service within the State of New York addressed to the persons/agencies as set forth below:

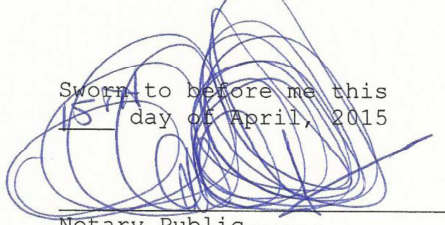
A.) To all noticees as required pursuant to the "Neighbor Notification Provision" of Section 140-150 of the Town of New Paltz Code [Exhibit "A"].

3.) I also posted the "Pink Signs" as required by the Neighbor Notification Provision aforesaid at all requisite roadway locations on April 1, 2015.

4.) I am further attesting to the mailings aforesaid by way of duly executed Town of New Paltz Affidavit of Mailing [Exhibit "B"].

5.) A copy of the Notice of Public Hearing, as aforesaid, is provided herewith [Exhibit "C"].

Sworn to before me this
15th day of April, 2015


Notary Public
MICHAEL MORIELLO
Notary Public, State of New York
Resident In And For Ulster County
Commission Expires Dec. 28, 2018


PETER KARIS, RLA

Code of the Town of New Paltz
"Neighbor Notification Provision"
Chapter 140 Zoning
Section 140-150 – Public Notice and Hearing (excerpt)

Section 4. Local Law

Chapter 140, "Zoning," of the Code of the Town of New Paltz is hereby amended to add a new Article XVI, entitled "Public Hearings" to read as follows:

Section 140-150. Public notice and hearing.

A. Whenever this chapter requires that the Town Board, Planning Board, Zoning Board of Appeals or the Historic Preservation Commission conduct a public hearing on a matter before it, notice of such public hearing shall be given in accordance with all applicable laws and regulations, including the following requirements:

(1) Notice of public hearing and publication. The board shall set the date and time of the public hearing by resolution and direct the secretary of the board to prepare a notice of hearing, including, at minimum, the date, time and place of the hearing; the substance of the action or approval sought from such board, including any change in the nature of permitted uses or density that would result from adoption of a proposed zoning amendment; and the place where copies of the application and supporting documents may be examined by the public, and cause such notice to be:

(a) published in an official newspaper of the Town of New Paltz not less than five (5) calendar days prior to the date of such hearing, unless SEQRA requires the notice to be published fourteen (14) date prior to the date of hearing;

(b) provided to the applicant, Planning Board, Zoning Board of Appeals, Historic Preservation Commission, Building Department and Town Board on or before the date of publication; and

(c) provided to any other municipality, county, regional, state or federal agency in the manner prescribed by applicable law.

(2) Mailing to adjoining owners. In addition to such published notice, the applicant shall mail notice of the hearing, at least ten (10) calendar days prior to the date of the hearing, unless fourteen (14) days notice is required by SEQRA, to the owners of all real property that is contiguous with the boundaries of the plot, piece or parcel of land to which the appeal or application applies and to all other owners of real property within five hundred feet (500') of such boundaries. The board conducting the hearing may also require that notice be mailed to owners, occupants or others within such additional distance as it deems reasonable and necessary under the circumstances. In the case of land subject to a declaration of condominium or homeowners association, notice may be mailed to the office of the association.

Neighbor Notification of Public Hearings for Planning Board Applicants
Page 2 of 3

(3) Addresses of adjoining owners. The board holding the hearing shall request that the Office of the Assessor of the Town promptly provide the applicant with a list of the names and addresses of the owners, as shown on the last completed assessment roll of the Town, to whom notice shall be mailed.

(4) Mailing by applicant. Such notice shall be mailed by the applicant, at its sole cost and expense, by depositing a true copy of such notice in a post-paid properly addressed envelope, in a post office or other official depository under the exclusive care and custody of the United States Postal Service within the State of New York. The applicant shall, at or prior to the date of the public hearing, file with the secretary of the board an affidavit of mailing, as proof of compliance with the foregoing notification procedure.

(5) Continued hearings. When a hearing has been continued, the board holding the hearing may require that notice of a continued hearing date be remailed where circumstances warrant, such as a hearing date that has been repeatedly adjourned or adjourned to a future date such that those interested in the application would benefit from the additional notice, or the board receives plans with significant changes or new information bearing on the application.

(6) Property signage for zoning amendments. In the case where an amendment of the zoning map or zoning law of the Town of New Paltz has been initiated by a property owner or applicant, at least fifteen (15) days prior to the initial hearing on such amendment the owner or applicant shall post a sign giving notice of the public hearing within twenty-five (25) feet of each property line having frontage on a road or highway, including the road or highway providing access to the property, so that it is clearly visible to the public from such road or highway. The size of the sign and text shall be approved by the Town Board or such Town official as the Board may designate, and the notice shall include a statement that an application to change the zoning classification or regulations affecting the property has been made and such other information as the Town Board may require. The applicant shall submit a photograph and affidavit, or other satisfactory evidence, at the public hearing that the required signage was duly erected and maintained in good condition until the hearing, and shall ensure that the sign is maintained until after the hearing is closed or the application is withdrawn, whichever occurs first. It shall be a violation of this chapter for any person, except the applicant or duly authorized Town official, to remove, deface or tamper with duly erected signage during the period it is required to maintain by this section.

(7) Property Signage for Planning Board and ZBA Hearings. The Planning Board and Zoning Board of Appeals shall require that signage be erected in accordance with the provisions above whenever a public hearing on a site plan, subdivision plan, special use permit or variance application is required, except that the board with jurisdiction over such hearing may waive the requirement that signage be erected when it finds that the benefit of notice would be disproportionate to the cost imposed on the applicant. In such case, a waiver shall be granted by a favorable vote of a majority of its members plus one, and the board shall set forth the basis on which it determined the waiver appropriate.

(8) Substantial compliance. Provided that notice shall have been published as above set forth and that there shall have otherwise been substantial compliance by the applicant with the provisions above, the failure to give notice in exact conformance herewith shall not be deemed to invalidate action taken by the board holding a public hearing in connection with any appeal or application.

(9) Any proposed zoning amendment introduced by the Town Board and of Town-wide or district-wide effect shall not be subject to this section except for the publication of notice. However, nothing in this law shall prohibit the Town Board from determining on a case-by-case basis to provide additional notice of any such zoning amendment.

AFFIDAVIT OF MAILING

I, PETER KARIS, do hereby affirm that I mailed letters containing a true copy of the attached Notice of Public Hearing as per Section 140-150 of the local law of the Town of New Paltz to those addresses attached herein as identified and provided by the Assessor of the Town of New Paltz as shown on the attached. I affirm that all letters were properly addressed, postage paid and deposited for delivery with the United States Postal Service.

PETER KARIS
NAME

Date: April 15, 2015

Sworn before me this 15th
day of April, 2015

Notary Public

MICHAEL MORIELLO
Notary Public, State of New York
Resident In And For Ulster County
Commission Expires Dec. 28, 2018

**TOWN OF NEW PALTZ
HISTORIC PRESERVATION COMMISSION
NOTICE OF PUBLIC HEARING
MOHONK PRESERVE, INC.**

PLEASE TAKE NOTICE, that the Town of New Paltz Historic Preservation Commission will convene a public hearing on Wednesday, April 15, 2015, at 7:30 p.m. The public hearing will be held at the Town of New Paltz Community Center, 3 Veteran's Drive, Route 32 North, New Paltz, New York, 12561 and will be in consideration of the March 13, 2015 Application of Mohonk Preserve, Inc. for maintenance and repairs to the Mohonk Preserve, Inc. Gatehouse premises located at 1 Gatehouse Road, New Paltz, New York, 12561 [S/B/L #86.1-1-40.1];

PLEASE TAKE FURTHER NOTICE, that the Application aforesaid is for the repair and maintenance of the existing Gatehouse structure, including the roof, flashing/trim, masonry mortar, windows and doors. There are no proposed ground disturbances or changes to the existing building footprint or surrounding area as part of the work and as a result, there is to be no physical alteration of the premises within the purview the State Environmental Quality Review Act (SEQRA) [6 NYCRR Parts 617.3 and 617.2(ab)].

PLEASE TAKE FURTHER NOTICE that the planned repair and maintenance work does not form a part of the currently pending Application before the Town of New Paltz Planning Board for Site Plan, Subdivision and Lot Line Revision, as the Gatehouse work under review by the Town of New Paltz Historic Preservation Commission is classified as a Type II Action under SEQRA [6 NYCRR Parts 617.5(c)(1) and 617.5(c)(19)].

PLEASE TAKE FURTHER NOTICE, that pursuant to Article XIV of the Town of New Paltz Zoning Law, the repair and maintenance work planned for the Gatehouse premises requires review by the

Town of New Paltz Historic Preservation Commission and the Town of New Paltz Building Inspector, as well as the holding of a public hearing by the Historic Preservation Commission, prior to the issuance of a Certificate of Appropriateness by said Commission;

PLEASE TAKE FURTHER NOTICE, that copies of the pending Application and supporting documents may be examined by the public within the Office of the Town of New Paltz Building Inspector, located at 1 Clearwater Road, New Paltz, New York, 12561 during regular Town of New Paltz Office hours;

PLEASE TAKE FURTHER NOTICE, that all persons wishing to be heard on the subject matter of this pending Application shall be heard at the time of the public hearing.

For further information, Contact:

Mr. John Orfitelli
Chairman, Town of New Paltz
Historic Preservation Commission
Town Hall
1 Clearwater Road
New Paltz, New York 12561
(845)255-0102

BY ORDER OF JOHN ORFITELLI, Chairman