



MEMORANDUM

To: Mayor Armacost and Members of the Village Board of Trustees
From: Patrick Cleary, AICP, CEP, PP, LEED AP
Date: January 6, 2023
Re: Electric Owl Studios - Graham-Windham School Site - Zoning Amendment

Electric Owl Studios has filed a petition to modify the Village's zoning to allow for the development of a "Multi-Media Production Studio" on a 17.47-acre portion of the 23.97-acre Graham-Windham School campus property.

During discussions with the applicant, various approaches to modifying the zoning were considered. While there is no "right" or "wrong" answer to the question of how best to modify the existing zoning, we recommended the use of an "overlay zone" as the best technique. Our rationale for this recommendation follows:

1. Existing Zoning:

The Graham-Windham school is located in the R-20 - One Family Residence zoning district. This is the lowest density zoning district in the Village, and the uses permitted in this district are limited to single-family residences, and other uses typically found in residential zoning districts (such as parks, houses of worship, schools, etc.). This district does not permit any commercial uses.

Preserving the integrity of this residential zoning district was thought to be a priority.

2. Zoning Amendment Options:

Three options were considered to accommodate the Electric Owl proposal:

- Rezone the property to an existing or new commercial zone.
- Establish a Multi-Media Production Studio as a Special Permit use in the R-20 zoning district.
- Create an Overlay Zone that permits a Multi-Media Production Studio, subject to an array of criteria limiting its geographic applicability.

The pros and cons of each approach are addressed below:

a. Rezone the property to an existing or new commercial zone

This option was never considered here for many reasons. The first limitation to this approach is that none of the existing commercial zoning districts (such as the LI - Limited Industrial or the GI - General Industrial zoning district) currently allow for a Multi-Media Production Studio use. This use would have to be added to the existing zoning district.

However, the more significant issue for a straight-out rezoning is that all of the other uses allowable in that zoning district would then be permissible on this property. Such a move would open up an array of unintended consequences, and moreover, would require an assessment and analysis of all the other uses allowable in that zoning district.

While it would be conceivable to create a brand-new zoning district and permit only a Multi-Media Production Studio, a school and perhaps the other uses allowable in the R-20 zoning district, such an approach would undermine the integrity of the Village's zoning hierarchy with a new zone that would accommodate inconsistent and potentially incompatible uses.

b. Establish a Multi-Media Production Studio as a Special Permit use in the R-20 zoning district.

A Special Permit use is a use deemed permitted in the zoning district provided the stated conditions and criteria are met. The Village's code currently provides for a few Special Permits all within the jurisdiction of the Zoning Board of Appeals, although a new Special Permit use could be created with the Board of Trustees as the approving authority.

This approach, which initially appeared to be the most appropriate and expeditious, raises two concerns:

First - While it may seem counter-intuitive, obtaining the approval of a Special Permit use is often easier in many instances than obtaining the approval of a principal use. By setting forth a series of Special Permit criteria, if an applicant can meet those criteria - the approval agency must grant the Special Permit. Therefore, a Special Permit use limits the discretion of the approval authority. For such a novel use such as that proposed by Electric Owl, maintaining as much discretion and flexibility as possible seems prudent. This is especially true given the potential that some other property could potentially meet the criteria on a future application, and the fact that an applicant can obtain variances from special permit criteria. The Village's discretion on a future application would be severely limited if the use is permitted as a Special Permit use.

Second - The Village's zoning code is a traditional use-based Euclidian zoning code, which means the Village has been segregated into various zoning districts - based on use. Diluting or corrupting the existing districts with inconsistent or incompatible

uses should be avoided (except in instances where the districts explicitly accommodate mixed-uses). Preserving the integrity of the Village zoning hierarchy should be a priority. As noted above, the R-20 zoning district is the lowest density residential zoning district in the Village, and does not accommodate commercial uses.

Adding a commercial use to the R-20 zoning district - even as a strictly regulated Special Permit use, is simply inconsistent with the intent and “order of restrictiveness” of the R-20 zoning district.

c. Create an Overlay Zone that permits a Multi-Media Production Studio, subject to an array of criteria limiting its geographic applicability.

This approach utilizing an overlay zone¹ has been recommended for the following reasons:

- It preserves the integrity of the Village’s residential zoning hierarchy. The existing R-20 zoning district would not be eliminated, nor would its strictly residential (and residentially compatible) uses be compromised by commercial uses. The R-20 district would remain in place underneath the overlay zone.
- The overlay zone can be crafted to include *all* of the controls, limitations and protections that would be established for a Special Permit use.
- The overlay zone can be constructed so that it only applies to the Graham-Windham School campus property.
- Perhaps most importantly, **the Village Board can simply reject an overlay zone petition**, without any public deliberation or cause. This approach gives the Board the greatest discretion to “just say no” on any future application, or even this application if things change. This is an important aspect to consider because the Electric Owl application is very unique, and we are continually learning more and more about the operation of the facility. While all signals currently point to the use being a very beneficial business in the Village - we simply do not have much, if any experience with large scale movie studios, and within the region we have only the Lionsgate facility in Yonkers as a model. Should Electric Owl (or a subsequent similar facility on the site) turn into an undesirable operation, then having the ability to reject the application promptly, may be in the Village’s best interests.

3. Electric Owl’s Application vs. Zoning:

¹ An overlay zone is a geographically defined special zoning district that is layered on top of another existing zoning district, that implements additional regulations.

I am of the opinion that Electric Owl is sincere in its desire, and eager to develop the site as they have proposed. But as the Village has experienced in the past, applicants do in fact, come and go.

The movie production business has only recently emerged as a major business sector in the Hudson Valley. According to the Hudson Valley Film Commission, in 2022 dozens of productions were filmed in the region, and more importantly, a number of permanent studio facilities have been or are in the process of approvals, construction or operation. The list of these facilities includes:

- Lionsgate Entertainment – Yonkers
- Great Point Studios - Yonkers
- Basclia Hudson – Hudson
- Saugerties Performing Arts Facility – Saugerties
- Woodstock Film Studio – Kingston
- Up River Studios – Saugerties
- Umbra Stages – Newberg
- iPark – East Fishkill
- North Broadway Studios - Yonkers

How will these facilities influence the Electric Owl project (particularly the 3 studios just across the border in Yonkers)?

For all of these reasons, the overlay zone approach has been recommended, with the intention of accommodating the Electric Owl application, while also maintaining the integrity of the Village zoning hierarchy, and ensuring that the Village Board does not get boxed into an undesirable and unforeseen situation should the Electric Owl fly the coop or another potentially eligible property be available in the future.

4. Approval Conditions:

The Planning Board, through the site plan review process, and the Lead Agency, through the SEQR review process, have the authority, and indeed the obligation, to impose appropriate and reasonable conditions on any application. This would certainly apply in the case of the Electric Owl application. In fact, conditions can be imposed on the application in various way - through specific conditions in the site plan approval resolution, as notes on the filed site plan, as deed restrictions and covenants, etc.

The overlay zone approach in no way limits the Village's ability or opportunity to impose appropriate and reasonable conditions on the Electric Owl application specifically, or any other project that might be advanced in the future.