

**Excerpted from the Clifton Park Planning Board Minutes,
February 14, 2006**

[2004-047] **Kain Development Group, LLC** – Proposed (18) lot subdivision, Longkill Road – Preliminary public hearing and possible determination.

Mr. Bulger, Chairman, called the public hearing to order at 7:50p.m. The Secretary read the public notice as published in the Daily Gazette on February 6, 2006.

Mr. Frank Fazio, consultant for the applicant, presented this project proposal that calls for the subdivision of 18.7 acres of land on the westerly side of Longkill Road. The parcel adjoins the Town of Ballston line. Though the plan remains generally as presented for revised conceptual review on September 15, 2005, the plans have been revised in response to comments issued by Clough, Harbour, and Associates and concerns identified by Board members. Mr. Fazio reported that although the applicant considered a “cluster” lay-out pursuant to Planning Board recommendations, this option was rejected by the applicant because the proposed roadway required for such a design would result in greater impacts to the delineated wetlands. The current plan minimizes impacts to delineated wetlands, illustrates the installation of a 16” water line from Woodstead Road to the project site, provides for a connection to the sewer system on Parkside Trail, and shows that the stormwater management area has been relocated to allow for larger lot sizes. The proposed roadway has been moved eastward to provide a wider buffer for those currently residing on Hearthiside Drive.

Mr. Fazio addressed several specific issues of concern. The wetlands have been delineated, flagged, and reviewed by the ACOE. The applicant is awaiting a sign-off letter from this agency. The NYSDEC reported that there are neither regulated wetland areas on this parcel nor any accompanying 100’ buffer areas. The NYSDEC regulated R-16 wetland area to the north has no connection to this parcel. Although the endangered Frosted Elfin butterfly has been identified on the site, the NYSDEC has determined that there will be no negative impacts to the butterfly or its habitat. The applicant has requested a “re-confirmation” of this from the state agency. The applicant has contacted the State Office of Parks, Recreation, and Historic Preservation to receive a determination regarding areas of archaeological significance. If site analysis is required, the

applicant is committed to such review. Soils investigations have been conducted and findings indicate that water is typically located approximately 6 feet below the surface. The speaker provided a plan that showed the ground water levels and the direction of drainage. A sump pump will be installed in each residence. Water will be directed to infiltration basins from (2) other areas and swales will be used to redirect existing drainage in an attempt to improve existing conditions. In response to comments issued by Clough, Harbour, and Associates, additional grading will be considered and additional storm sewers will be added where needed. The buffer areas will be protected by conservation easements.

Mr. Kemper reported that this project last appeared before the Board on December 13, 2005. He stated that although there has been a considerable amount of discussion on the issue of the applicant providing a cluster subdivision layout, pursuant to Section 179-35 (B)(a), the total land area for a cluster subdivision must be greater than 20 acres. This project is approximately 18.5 acres in size. He also noted that a cluster subdivision is an option for the applicant under the Town Code: it is not a requirement. Letters that have been received by the Planning Department were copied for Board members' review. Mr. Kemper recommended that the entrance from Longkill Road be widened per the variance that was granted by the Fire Code of Appeals Board. The applicant received a variance from the Fire Code of Appeals Board on November 10, 2005: a note stating this must be added to the plans. The chain link fence described in the August 19, 2005 correspondence from NYSDEC must be shown on the plans. A Saratoga County Department of Public Works' work permit must be provided. The applicant was asked to evaluate whether or not a multi-use path can be extended to Parkside Trail as part of this project. A jurisdictional determination must be provided from both NYSDEC and ACOE. A catch basin must be provided in the center of the cul-de-sac. A buffer must be provided in the rear of Lots #3, 4, and 5. The status of the small piece of land to the north of the Wassenaar parcel must be clarified. Clearing limit lines should be marked on the plan. Landscaping should be provided in and around the stormwater management area. Easements must be provided over the storm sewer lines and basins that will not be dedicated to the Town. A sign-off must be provided for crossing under the power line. A split rail fence or plantings should be placed to delineate the boundary of the ACOE jurisdictional wetland. Sign-offs must be provided by the Saratoga County Sewer District and the Clifton Park Water Authority. The stormwater management area and parking area on Parkside Trail should be shown on the

utility plan. The applicant must provide a plan for connecting existing homes to the utilities. Mr. Fazio agreed to provide stubs for existing residences. The Saratoga County Planning Board approved the project on October 21, 2004.

Mr. Grasso reported that Clough, Harbour, and Associates reviewed this application and offered the following comments. SEQRA – Part 1 of the Full Environmental Assessment Form has been submitted however there are some items that have not been completed. The following information is required so that Part 2 may be completed by the Board.

- Question A8 – The depth to groundwater has not been provided. It is recommended that test pits be completed along the centerline of the proposed road and in the area of the proposed storm water management area and submitted for review.
- Question A11 – It is recommended that the USFWS be contacted and that written responses be received from both USFWS and NYS DEC Endangered Species Unit.
- Question B3 – It is recommended that topsoil be stockpiled on site and used to establish lawn areas.
- Question B25 – Additional approvals required should include Saratoga County DPW for a curb cut permit, NYSDEC for Wastewater Disposal System Approval and Storm Water Management Plan (SWPPP) and NYSDOH for Water Supply System Approval.
- Question C11 – The project will create a demand for community services so this box should be checked “yes”.

Mr. Grasso also reported that a portion of the project area appears to be within an Archeologically Sensitive Area pursuant to the NYS Office of Parks Recreation and Historic Preservation GIS site. As such, it is recommended that a Phase 1A archeological study be completed for this site and submitted for review. Jurisdictional determination letters should be provided from both NYSDEC and the US Army Corps of Engineers regarding wetlands and streams within the project site and within 100 feet of any proposed work. The applicant has received a waiver of the maximum eighteen lots on one means of access from the Emergency Services Advisory Board: this should be so noted on the plan and correspondence submitted for Clough, Harbour, and Associates' files. Any easements associated with the existing overhead transmission line that crosses the entrance road should be identified on the drawing. It does not appear as though dedication of park lands to the Town is proposed as part of the project, and as such, the corresponding park fee would be required. The Board may wish to make a recommendation as to whether dedicated open space or payment of a recreation fee per lot is appropriate.

Mr. Grasso offered several additional comments. It is recommended that the proposed fifty foot no-cut buffer be established by a land preservation easement conveyed to the Town for enforceability reasons. In addition, the land preservation area/easement provides greater protection than a no-cut buffer such as restricting fences, sheds, etc. The Town's standard notes for land preservation areas/easements should be added to the plans. The proposed setback lines should not extend into the land preservation areas/easements (no-cut buffers). Due to the increased vegetative clearing that would be required to construct a berm and the potential for blocked drainage on either side of a berm, construction of a berm along the land preservation easement (no-cut buffer) as suggested by the adjoining residences is not recommended. Although Clough, Harbour, and Associates concurs with the applicant's consultant that the proposed drainage plan is not expected to measurably increase storm water discharge to residences along Hearthside Drive, additional drainage improvements extending into the rear of Lots #7 through #13 are recommended. The firm is concerned with the potential for future incremental impacts and degradation of Wetland A/B following construction. The applicant should propose a method of protection of the wetland that includes restricting the use of fertilizers and pesticides in its vicinity. A street light should be proposed at the proposed curb cut onto Longkill Road and should be oriented over the new road. Catch basins should be located at a low point at the center of the proposed cul-de-sacs. The pavement slope of Dhvani Court should be increased to maintain a minimum 1.0% slope along the outside pavement edge. Due to constructability issues, it is not recommended that storm sewer piping be designed for slopes less than 0.5%. The buffer line and limits of clearing and grading should be clearly labeled on the grading plan. The proposed locations of the water and sanitary sewer service laterals should be shown on the plan. The grading of the swale behind Lot #6 should be verified. It appears the spot elevation of 355.4' is incorrect. Detailed plans of the offsite utility improvements should be provided that include the limits of clearing and grading, the proposed method of crossing Longkill Road, and the location of existing utilities. A culvert should be provided under the proposed curb cut to Longkill Road to maintain the existing ditch line. The following comments on the Storm Water Pollution Prevention Plan dated January 23, 2006 were provided:

- The existing and post development drainage area maps should depict the time of concentration travel paths. The post development map appears to be incorrectly labeled "Existing."

- A detailed planting plan based upon the site soil and hydrologic conditions should be provided for the open channel storm water management practice.
- Per the NYSDEC design manual, in cold weather climates the minimum recommend culvert pipe size is 18”.
- A valved backup underdrain and emergency spillway should be provided within the infiltration basin.
- The temporary sediment basin should not be located within the limits of the proposed permanent infiltration basin.
- It appears that greater than 5 acres of disturbance will occur at one time. A waiver is required from NYSDEC.
- A gravel access drive should be provided to the storm water management areas for future maintenance by the Town.
- A post construction operation and maintenance manual for the storm water management facilities should be provided to the Town.

Mr. Grasso stated that Clough, Harbour, and Associates will provide additional comments as the plans are progressed.

Mr. Marino reported that most of the ECC’s recommendations had been addressed. He did state that the ECC noted that the applicant’s EAF calls for the removal of vegetation from 17.75 acres of the 18.7 acre parcel or 95% of the land area since this is not in keeping with the construction practices employed in the neighboring subdivisions where native vegetation has been retained and protected. The ECC requests that a mature tree inventory be submitted and that the builder retain mature trees on the property. After reviewing the project, the ECC offers the following comments. The ECC reiterated their concerns regarding the presence of environmentally sensitive habitat. The Commission requested that the following standard statements be added to the plot plan.

- Federal jurisdictional wetlands have been identified on this site. The Town of Clifton Park Building Department shall be notified before undertaking any land disturbance activities in Federal wetlands.
- No salts, fertilizers, pesticides, or other materials may be used on this property where they will contaminate any wetland areas or surface water through runoff, leaching, or in any other manner which violates the New York State Environmental Conservation Law (ECL).
- The borders of all land that is to remain undisturbed shall be clearly marked on the site before site preparation begins.

These on-site boundary markers shall remain until construction is completed and soils are stabilized.

- All erosion and water quality controls shall be put into place at the initial phase of site preparation and shall be maintained until all construction ends and soils are stabilized.
- The applicant will control fugitive dust and debris during the construction/demolition phase of the project.

Mr. Bulger explained that the Board would to listen to the concerns of those who are interested in this project. He stated that the Board would likely not close the public hearing: comments would be received at future meetings. It is his intention to respond in writing to the comments presented.

Mr. Jeffrey Baker, legal representative from the firm of Young, Sommer, Ward, Ritzenberg, Baker, and Moore, LLC, spoke on behalf of a group of citizens known as the Friends of Longkill (FOLK). Mr. Baker stated that he was pleased to hear that the public hearing would be adjourned rather than closed since such action would allow additional public comment. Describing the Kain parcel as “problematic,” he stated that this property was very wet and that this characteristic is of concern to those residents who live on its borders. He advised the Board that the proper procedure for the Board to follow would be “strict and literal compliance” with SEQRA guidelines that would require the issuance of a positive declaration pursuant to SEQRA and the completion of an Environmental Impact Statement (EIS). This would create a document that would force the Board to consider alternatives for development of the project, to identify significant environmental concerns, and provide protection for natural resources.

Mr. Baker called the Board’s attention to a number of issues. He noted that the site contains evidence of the Frosted Elfin, an endangered species. The installation of the stormwater management area as well as the roadway appears to impact the species and its habitat: such an impact would be considered in an EIS review. He explained that the variance granted by the Fire Code Board of Appeals was illegal since no municipal agency is permitted to act until the proper SEQRA procedures have been completed. He asked that the variance be revoked until proper SEQRA review has been conducted. The speaker recommended that all those involved “work toward proper development” of the Kain parcel. He labeled drainage on the property as a significant concern. These included the amount of fill that

would be required to construct the development as proposed, the amount of clearing proposed for the site, and the loss of wetlands. He pointed out that the applicant's project plan called for raising the site by as much as 4 feet. He believes that this will change drainage patterns and the ecology of the site. Such action would not only result in problems associated with the truck traffic necessary to bring the fill to the site but also with drainage problems caused by its increased elevation. Stating that the amount of clearing proposed "boggled the mind," he foresaw that such clearing would forever change the natural environment. The speaker pointed out that isolated wetlands slated for "obliteration" should remain as part of the wetland network. Mr. Baker commented that the calculations related to stormwater management may not be accurate and, therefore, the proposed stormwater retention basin inadequate. He concluded his remarks by stating that his comments were not "exhaustive" and that other issues may be raised at future hearings. Mr. Baker expressed his dissatisfaction with the ability of residents to obtain information from the project file, noting that documents were not available for copying upon request. He asked that in the future all documents submitted with that application are made readily available for review and copying. He implored the Board to issue a positive declaration and request the completion of an EIS.

Mr. Scott Dochat, 22 Hearthsides Drive, discussed the non-delineated wetlands that border his property. He is concerned that the fill proposed to be added to the site by developer will channel the water from the development site to his property. Since he already has drainage problems, he asked that the Board ensure that the problem is not increased.

Mr. Bill Lorensen, 14 Hearthsides Drive, thanked Mr. Bulger and the Planning Board for allowing him the opportunity to present a Powerpoint presentation that, in his opinion, illustrated the "wetland paradox" that exists on the Kain property. A copy of the presentation is attached to these minutes. The presentation generally compared "theory" with "reality". The photographs presented illustrated areas of ponding and stream-like areas on the Kain property, the rear yards of the homes along Hearthsides Drive, wildlife that inhabit this property, and the forest area. Mr. Lorensen reported that he operates two sump pumps throughout the year in an effort to maintain a dry basement. He is very concerned that additional water flow from the Kain property to his will result in flooding of his basement. Mr. Lorensen asked the Board to reduce the number and improve the lay-out of the homes and to authorize the preparation of an EIS. Though he

appreciated the applicant's willingness to provide a conservation easement for the buffer areas, he asked that a berm be created between the proposed homes and existing residences to prevent water flow between the sites. The speaker also asked that the developer provide a long-term bond that would provide for payment of damages should existing residents be impacted by the new development.

Mr. Larry Brown, 20 Hearthsides Drive, described watching the recent re-construction of a manhole on Hearthsides Drive. As the workers were unearthing the catch basin, one laborer was standing in water of considerable depth – a condition that indicated the presence of a high water table to the speaker. Mr. Brown also commented that the removal of existing vegetation and clear-cutting on the Kain property would likely cause increased water problems for the existing residents of Hearthsides Drive. Though he acknowledged that water problems had lessened during the 30 years he has resided at this location, he was fearful that tree removal and development of the 18 acre parcel that adjoined his would cause problems for those residing on Hearthsides Drive.

Ms. Margaret Catellier, 26 Royal Oak Drive, questioned whether or not one entrance for this subdivision was acceptable per Town law. She also stated that personal experience has taught her that building in an area of high water levels is unwise. Her family relies on two or three sump pumps to keep their basement dry. New developments in her area have apparently caused the water table to rise causing additional problems for her family. She recommended that the Board consider the problems that may be experienced by those who will purchase homes that will be built on the Kain property. She also encouraged the Board to protect existing residents from the negative impacts of development.

Mr. Robert Vawter, 10 Hearthsides Drive, described himself as a 22-year resident of the Town. He supported the recommendations offered by Mr. Baker and his neighbor, Mr. Lorensen. He reported that he regularly walks through the property and has observed “one or two dozen” standing pools of water – an indication of a serious water problem in the area. Though he is concerned with drainage from the site and its impact on his property, he currently does not experience water problems. He also expressed concern that the potential homeowners who construct homes on the Kain property will suffer from wet basements and other water-related problems. The speaker also noted that the parcel offered a substantial

wildlife habitat to many varieties of animals. He supported the request for the preparation of an EIS and asked the Board to give serious consideration to the issues raised by area residents.

Mr. Tony Wassenaar, 85 Longkill Road, presented a petition to the Board that contained 357 signatures. The petition was signed by the “Friends of Longkill (FOLK), other town residents, and those who work or utilize services in the Town of Clifton Park.” The petition is available for review at the Town Clerk’s office. The petition asks that Kain be prevented from proceeding with its current conceptual design which would negatively alter the entire 18 acres off Longkill Road with residences, access roads, driveways, cul-de-sacs, drainage swales, sewage and water lines, that an EIS be completed, that an alternative conservation design be presented, and that the owner/developer work with conservation groups to conserve at least fifty percent of the forest, excluding wetlands, perennially wet pools, and other natural features of the site.

Mr. Peter Looker, Co-Chairman of Saratoga Greens, 22 Midline Road, Ballston Lake, stated that Saratoga Greens has four basic principles: non-violence, economic and social justice, grassroots democracy, and ecological wisdom. He asked the Board to consider if it was “creating climate chaos” by approving subdivisions such as the one being considered. He also questioned whether “we are walking a sustainable path” and suggested that we should consider doing so. Calling the members’ attention to a stuffed frog, he asked if they were concerned that our children may not be able to observe frogs, ferns, birds, and butterflies. He then questioned whether members believed that frogs, ferns, birds, and butterflies deserved to survive. The planning process should be utilized to help nature rejuvenate – not destroy it.

Mr. William Mackesey, 12 South Hollow Drive, identified himself as the Longkill Park District Chairperson. He encouraged the developer to consider the construction of a multi-use pathway along Longkill Road from the development entrance south to Parkside Trail, explaining that such a trail would not only benefit Clifton Park residents by linking neighborhoods but also by providing a connection to proposed trail links within the Town of Malta. He stated that he is concerned with wetland protection and he encouraged the Board to carefully consider the issues raised by those who spoke at this hearing.

Ms. Gayle Wassenaar, 85 Longkill Road, placed the location of her home as directly south and east of the proposed 18-lot subdivision. She described the “strange water situation” that requires the almost constant operation of a sump pump to remove water from her family’s basement, yet provided no potable water from a driven well. From here perspective, the proposed drainage plan would direct water from the site to her property, making a difficult situation even worse. She was also concerned about impacts of drainage to her family’s existing septic system since water would likely be directed to their lot.

Although Ms. Wassenaar understands that the a future right-of-way was provided for in her deed, she was concerned with disruption of the utilities – gas, electric, and telephone lines - that serve her home, noting that she requires such connections in order to work from home. The speaker was very concerned that the developer has not planned for protection of the utility infrastructure. Ms. Wassenaar reported that her attempt to locate filed easements in County Clerk’s office was unsuccessful. She asked that the applicant provide a 50’ buffer throughout the site. The speaker was very concerned about the proposed clearing, since a significant amount of the site was slated for clearing. She compared the proposed clearing with the goals and strategies outlined in the Comprehensive Plan, noting that the proposal was not in accordance with the Master Plan recommendations.

The speaker asked the Board to consider several issues. She was concerned that the developer would discharge water into the delineated wetland that adjoins property owned by the Carlsons. She is fearful that water flow to the Carlson property will be increased. She asked the Board to identify who would be responsible for the maintenance of the proposed stormwater management area that she believes will become unsightly. Explaining the proposed new roadway is now her driveway, she asked the Board to determine who will provide on-going maintenance. Though she and her husband were aware when they purchased their home that the driveway would eventually become a Town road, there has been little communication by the current owners regarding the transfer of ownership, payment of taxes, or responsibility for maintenance. She believes that she could identify many more issues of concern. Pointing to the many residents in attendance to discuss this project, she asked that the Board consider the significant environmental impacts of the project and requested that an EIS be completed.

Mr. Bill Wockenfuss, 4 Harvest Place, described a seasonal stream that traverses the area near his home. He was concerned that pesticides and fertilizers utilized on the new properties will negatively impact this stream and, therefore, his property.

Ms. Lynn Larson, 88 Longkill Road, was concerned with traffic safety. By her calculations, the proposed development would produce over 100 vehicle trips per day in addition to visitors, school bus traffic, waste pick-ups, delivery services, and other incidental traffic. Explaining that she now has difficulty safely accessing Longkill Road from her driveway, she was concerned that the proposed development would create additional traffic problems. She also asked that the speed limit along Longkill be enforced.

Ms. Deirdre Schuth, 5 Woodridge Court, described herself as “new” to Clifton Park. She stated that, although she liked the area she and her family had chosen, she was concerned that the Board was not clearly differentiating between “progress” and “development”. In her opinion the Town has approved “too much development.”

Mr. Gerry Meehan, 8 Hearthside Drive, discussed the purpose and design of the proposed retention area. Noting that, in theory, the basin provides discharge through percolation, he asked what would happen should a significant storm cause flooding and the inability of emergency service vehicles to access the site.

Mr. Dave Gibson, 107 Longkill Road, stated that he believes that the development “poorly fits the landscape it wishes to inhabit,” noting that there are many environmental impacts including disturbance of ground water and drainage patterns and diminished wildlife habitat. Referencing the Town of Clifton Park Open Space Plan, he noted that the water resources map indicated much water located on this parcel. Citing the need for better planning, he called upon Board members to support a positive declaration of significance pursuant to SEQRA and the preparation of an EIS in an effort to determine what development alternatives would be feasible for the site. The speaker produced photographs of the woodlands, animals, and wetlands for the Board’s review. He asked that the members visit the site to personally assess the land’s value.

Mr. Bill Engleman, 6 Partridge Plateau, read a prepared statement. The speaker first commented that the engineer’s description of the filtering

of nutrients from stormwater water run-off does not mention the filtering out of pesticides and fertilizers. A copy of that statement is attached to these minutes.

Mr. Dan Schuth, 5 Woodridge Court, commented on the overwhelming amount of care and commitment that has been shown by Town residents who oppose this project. Though there have been a number of meetings during which this plan has been discussed, the plan meets the “minimum threshold” of acceptability. As a community we should “expect better” than a minimum threshold. He called for a comprehensive and objective review of the application that, in his view, can only be accomplished through the preparation of an EIS.

Mr. Ronald VanArnum, 67 Longkill Road, stated that he was concerned about wetland disturbance and the effect that the water line installation could have on drainage to his property and his water supply. He reported that when a new residence was constructed at 60 Longkill Road, he experienced negative impacts to his water quality.

Ms. Susan Gibson, 107 Longkill Road, read a prepared statement. A copy of her comments is attached to these minutes.

Mr. David Gibson, 107 Longkill Road, commented that he resides directly north of the proposed development. He appreciated Mr. Engleman’s comments regarding the wood frog since he enjoys their sounds each year. In 2000 a significant amount of his property was determined to contain the R-16 NYSDEC wetland. The Kain property not only has perennially wet features but also appears to direct water to wetlands to the north. He believes that this wetland offers evidence that wetland characteristics on the Kain parcel provide evidence of a more-expansive connection.

Mr. Bulger thanked all those who participated in the public hearing and assured them that the Board would review all of the comments offered. His goal is to provide written responses to all issues raised by those who spoke.

Mr. Bulger moved, seconded by Ms. Pace, to adjourn the public hearing. The motion was unanimously carried.