

## **Excerpted from the Planning Board Minutes June 12, 2007**

[2004-047] **Kain Development** – Proposed (16) lot subdivision, Longkill Road – Final review and possible determination.

Mr. Ed Vopelak, consultant for the applicant, presented this subdivision plan for the Board's review, noting that this sixteen (16) lot subdivision proposal had been reviewed by the Board at several previous meetings. He explained that he has attempted to address many of the issues raised by Clough, Harbour, and Associates. Catch basins will be added to the plans. The applicant is committed to retaining as much vegetation as possible on site and he presented a plan that illustrated the areas to remain largely undisturbed and areas to be graded. Addressing the issue of inventorying trees larger than 8" in diameter at breast height, he stated that the applicant would conduct such a survey, although the timetable for its completion must be established. Mr. Vopelak explained that the fill provided behind Lot #4 was located to protect disturbance of the existing buffer that separates Parcel #1 from the development site. The applicant has agreed to install the multi-use pathway along Longkill Road in accordance with Town standards. A note will be added to the plan stating that individual homeowners will be responsible for maintenance of the stormtech units located on each lot. The applicant will provide a post construction maintenance manual for the storm water management facilities to the Town.

Ms. Maynard presented the comments prepared by the Planning Department. This application was last considered by the Planning Board on June 13, 2006 at which time the Board waived the final hearing for the application, established itself as Lead Agency and issued a negative declaration pursuant to SEQRA, and granted preliminary subdivision approval. No further submissions were made due to the filing of an Article 78 by the members of the FOLK organization and subsequent litigation. A tree survey must be completed to determine which trees will be preserved and which ones will be removed. Trees of 8" or greater in diameter are to be identified on site. Clearing limit lines must be flagged prior to clearing and grading and approved by Planning Director and Town Engineer. The new driveway location for Parcel #1 – the Lands of Wassenaar - must be shown on plans. The applicant is required to prepare a plan that provides a schedule for the transfer and re-connection of utilities: the plan must ensure that there will be no disruption of service. The applicant will provide water and sewer stubs for future extensions at Longkill Road. Approval for the sewer district extension must be provided by the Town of Clifton Park Sewer District.

Mr. Steve Myers, Director of Building and Development offered several comments regarding the application. He requested that the applicant and/or his consultant schedule a meeting with Building Department representatives as soon as possible to discuss the SWPPP. He recommended that the grading plan be modified to ensure that runoff is contained within the subdivision, noting that it appears that the current plan will permit runoff from several lots is directed to neighboring properties. The Land Preservation Easement line should be shown on all the parcels. Access to the stormwater management areas along Kain Terrace shall be via two access roads: both roads shall be a minimum of 18' wide and able to support a 50,000 lb. vehicle. Filter fabric placed over an inlet during construction per detail 5/ESC2 will not be allowed. Sheet ESC2 - note 3 under mulching does not reference the correct material. Sheet ESC2 should be revised to indicate the placement of fencing along the contours rather than the downslope. The erosion and sediment control plans and details do not appear to meet

New York State standards. Mr. Myers believes that a full review by DEC (60 days) will be required prior to the start of work. He observed that the SWPPP preparer certification has not been signed. The document must be updated to reflect current timetable.

Mr. Grasso reported that Clough, Harbour, and Associates reviewed the subdivision plan prepared by C.T. Male Associates, dated May 2, 2007 for the above referenced project. The following comments prepared for the April 7, 2006 review letter remain to be addressed. Catch basins should be located at a low point at the center of the proposed cul-de-sacs. The proposed grading will result in the complete loss of all vegetation within the lots, except for those areas protected by land preservation areas. Measures should be taken and appropriately detailed on the plans to retain as much existing vegetation as practicable. An existing low area is being filled behind Lot #4 and the proposed drainage is directed to Parcel 1. An additional catch basin behind Lot #4 should be provided to divert drainage from Parcel 1. Mr. Grasso offered the following additional comments. Additional details of the proposed multi-use pathway should be provided that include a section and signage and striping of the crossing of Longkill Road. Clough, Harbour, and Associates is concerned with the long term maintenance of the proposed use of stormtech units to be located on the individual lots. It is unclear how access to the units is provided for maintenance. The plans should clearly indicate that maintenance of these units will be the responsibility of the individual lot owners. The following comment was issued regarding the Storm Water Pollution Prevention Plan last revised June 1, 2006: a post construction operation and maintenance manual for the storm water management facilities should be provided to the Town. Mr. Grasso expanded on the recommendations regarding completion of a tree survey on the property, noting that such a survey was not necessary in areas where the roadway would be located or in the designated land preservation areas. The timing for the inventory and area to be included in the investigation would be determined by the Board. Though Mr. Vopelak argued that potential homeowners would "determine how parcels were developed," Mr. Grasso recommended that significant trees be identified for protection earlier in the site development process.

Mr. O'Brien, Environmental Specialist, reported that, after review of data presented the ECC reiterated their previous recommendations. The following standard statements should 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. O'Brien reported that the ECC strongly requests that the applicant perform a mature tree inventory. Based on those results, the Planning Board may consider increasing the number of trees required to be replaced to offset losses due to cutting and extensive backfilling that is

proposed. Additionally, the ECC notes that "land conservation" and "land preservation" are used synonymously and interchangeably by the applicant, especially noted on Sheet SP. Project documentation should be modified so that correct terminology is used consistently throughout.

Mr. Larkin asked to view the land preservation and grading plan that was presented by the consultant at this evening's meeting. Mr. Bulger asked that the 25' land preservation area shown on the southeastern portion of the site be increased to 50' and that the 40' buffer between the Wassenaar's property and the subdivision be shown on the plan. In response to Mr. Bulger's comment regarding the fencing of designated wetland areas, Mr. Vopelak explained that such fencing has been provided around jurisdictional wetland areas. Mr. Karam asked for assurance that a 50' setback between the proposed residence on Lot #10 and the wetland be maintained. Mr. Larkin requested clarification of the proposed protection for nonjurisdictional wetlands, expressing his support for fencing around such areas. He also asked that the wetlands in close proximity to proposed homes be clearly delineated on the plan. Mr. Karam encouraged the applicant to show the "whole 50'" buffer around the wetlands. Mr. Bulger supported the clear delineation of both jurisdictional and nonjurisdictional wetlands to discourage encroachment by residents. Ms. Pace recommended that preservation areas be staked. Mr. Kramer recommended that Planning Department staff and representatives of the Building Department be charged with enforcement, based upon limits established by the Planning Board. Mr. Grasso pointed out that although the developer will provide measures to protect disturbance of wetland areas, it will be difficult to control the activities of individual property owners. Mr. Bulger recommended, and Board members agreed, that the protected areas should be clearly staked prior to any development activity. Mr. Larkin commented that due to the number of trees that were removed in the process of obtaining test pit information, it was his recommendation that the tree inventory be conducted "sooner rather than later." Mr. Bulger recommended that no clearing and grading be initiated until the survey is finished: he supported Mr. Grasso's suggestion that no tree identification was necessary within the bounds of the established right-of-way area, storm water management area, or the land preservation areas. He stated that it was his preference for Planning Department professional staff and consultants to determine which trees should be preserved. Mr. Vopelak estimated the cost of such an inventory to be between \$5,000 and \$6,000. Mr. Larkin expressed his concern for the fill to be placed on the southern portion of the site. He asked that a grading and tree removal plan be provided for each individual lot. Board members agreed that a note on the plan to this effect would be required. Mr. Larkin also asked that if staff members were not in agreement about grading and clearing that the plan be resubmitted for Board consideration. Mr. Bulger expressed concerns regarding preservation of delineated wetland areas. Mr. Karam recommended that Lot #10 "wrap around" the land preservation area. Mr. Bulger identified significant issues of concern as delineation of non-jurisdictional wetlands, the completion of a tree survey, and increased buffers along the southern and eastern property boundaries.

Mr. Vopelak stated that the applicant's attorney was attempting to resolve issues of concern with the adjoining property owners. Issues resolved included driveway relocation and maintenance, increased buffer area, protection of utility service, wetland buffering, and an inventory of existing trees on the site. Mr. Vopelak reported that a revised storm water management had been prepared: Mr. Grasso will review this document.

Mr. Jeff Baker, attorney for FOLK (Friends of Longkill) addressed several of the issues raised

by the Board. He explained that although the courts rejected the Article 78 filed against the Town, a Notice of Appeal has been filed. He asked the Board to require that the 50' buffer as approved be illustrated along the southern property boundary and that such restrictions be required around all wetlands. He recommended that the Board require the preparation of a grading plan, protective fencing if necessary, and deed restrictions to ensure protection of wetland areas. He encouraged the completion of a tree survey prior to approval of the final plat, explaining that such a survey may result in changes to driveway locations, stormwater management plans, and site grading. He admonished the Board to "follow the strict conditions of your approval."

Mr. Bill Lorenson, 14 Hearthside Drive, stated that he was concerned with enforcement of the "no cut" restriction. In response, to his question regarding the timeframe for informing potential homeowners of the restrictions, it was explained that this information would be not only be included on the filed subdivision map but also within individual property deeds. The speaker asked if a jurisdictional letter had been provided by the ACOE. Mr. Bulger stated that though no letter has been provided by that agency, he has received verbal approval from local ACOE representatives. Mr. Lorenson asked if a Phase I archaeological study had been completed. Such a study has been prepared.

Mr. Steve Dochat, 22 Hearthside Drive, asked the Board to clarify the land preservation restrictions. Mr. Bulger explained that deed restrictions will protect designated "no-cut" buffers or land preservation areas along the property boundaries. For areas adjoining existing properties containing existing residences this area would be 50' wide. A 50' setback from non-jurisdictional wetlands proposed homes will be required. Such a setback provides a reasonably-sized back yard area.

At this point a discussion between Board members and several members of the audience focused upon the Board's Comment #9 of a document prepared by the Planning Board entitled *Comments from Kain Development Public Hearing: February 14, 2006* that was included as part of the negative declaration issued pursuant to SEQRA review. Mr. Bulger emphatically re-stated the Board's policy that requires a 50' setback – not a 50' non-disturbance area – from wetland boundaries to residences, acknowledging that there may be an "error in the text". All pertinent documentation will be reviewed.

Mr. Dochat asked that all areas be surveyed and staked prior to any clearing and grading of the site. He also asked that all subdivision, grading, and stormwater management plans be made available to the public.

Mr. Dave Gibson, 107 Longkill Road, stated his appreciation for the Board's attempt to provide protection for the wetlands. He stated condition #9 of the *Comments from Kain Development Public Hearing: February 14, 2006* provided by the Board prior to its SEQRA determination and the granting of preliminary approval required a 50' nocut buffer around all wetlands as well as along property boundaries. Mr. Gibson stated that it was his understanding that as of June 6, 2006, the applicant was still required to submit additional information to the ACOE. Mr. Bulger explained that he has spoken with John Connell, ACOE district representative, and that the ACOE finds the delineation completed on this parcel acceptable. Mr. Vopelak assured the Board and those present that the wetlands were accurately depicted on the plan presented for review.

The Board made no decision regarding this subdivision application. Mr. Vopelak agreed to address the issues of concern and prepare an accurate plan.