

Excerpted from the Clifton Park Planning Board Minutes, April 11, 2006

[2004-047] Kain Development Group, LLC – Proposed (18) lot subdivision, Longkill Road – Reconvening of preliminary public hearing held on February 14, 2006 and possible determination.

Mr. Bulger, Chairman, reconvened the public hearing. The Secretary read the public notice as published in the Daily Gazette on April 4, 2006.

Mr. Frank Fazio, consultant for the applicant, described the project location, basic lay-out design, variances granted by the Zoning Board of Appeals, and details of the proposed municipal utility connections. He also presented a brief description of the stormwater management plans which have been designed in accordance with NYSDEC standards. These plans call for the water to be directed to treatment basins that have been designed to handle preliminary sediment and will remove other contaminants. The speaker briefly described revisions that have been made to the project plan in response to comments issued by Town officials, Clough, Harbour, and Associates, and Planning Board members.

Since many of the issues identified by residents at the last Planning Board meeting concerned possible drainage impacts to adjoining properties, Mr. Fazio presented a plan that illustrated the direction of drainage flow on the site and plans for its treatment and containment. He explained that project plans have been modified to provide more defined swales to direct the runoff away from the properties that front on Hearthside Drive: a catch basin will collect the flows and convey them to the storm sewer system for the project. Some of the runoff will be directed toward the isolated wetland that will contain the runoff and provide the necessary hydraulic conditions to keep the isolated wetland viable. Should the wetland reach capacity, the drainage will overflow to an existing swale, be directed toward the back of the houses to the east of the wetland, and drain to the jurisdictional wetland along the eastern property line - not to the adjoining properties to the west. The consultant anticipates that the amount of runoff from the site to the rear of the properties along Hearthside Drive will actually be less than that resulting from the pre-developed conditions.

Mr. Fazio addressed several other issues of concern. He stated that final plans were sent to NYSDEC Endangered Species Unit for confirmation of the previous determination that the project would not impact the Frosted Elfin Butterfly. A letter from that agency confirms that there will not be an impact to the butterfly as a result of this project's development. The speaker explained that he visited the site with ACOE representatives during the past week and, with the exception of a small area to the north of the site, previous delineations appear to be accurate. ACOE representatives anticipate a final determination within the next few weeks. The consultant explained that the possible identification of a portion of the property as recognized wetland resulted in the applicant's authorization for his engineering firm to provide three alternative designs for consideration. In general, the shifting of property lines, reduction in the number of lots, and revision of the cul-de-sac would reduce impacts to the wetland areas. Mr. Fazio addressed remarks made by speakers at the public hearing, noting that the site may require fill, but that the fill depth will be limited to two to three feet. The applicant is committed to minimizing clearing of the site and negative impacts to existing neighborhoods.

Mr. Kemper explained that this project last appeared before the Board on February 14, 2006 at which time a public hearing was held. The hearing was adjourned at that time. He reported

that additional letters from the residents living near the project were copied for Board members to review. Letters were received from Mark Howson and Lynn Larson, Bill and Terry Lorensen, Maureen Sheridan, and Scott Dochat and Lisa Kenneally Dochat. Mr. Kemper stated that a revised long Environmental Assessment Form has been submitted to the Planning Department. He read the letter from NYSDEC Endangered Species Unit dated March 3, 2006 which stated: "This letter will serve to repeat my earlier correspondence regarding the potential for impact to the state threatened frosted elfin butterfly. The existing habitat for the Frosted Elfin is south of the electric tower that is just south of the existing gravel road entrance to the parcel. With the paved entrance road to the existing subdivision going in over a gravel road, I do not anticipate impact to the Frosted Elfin." Mr. Kemper stated that jurisdictional determination letters must be provided from the ACOE and NYSDEC. A catch basin should be installed in the center of the cul-de-sac and the cul-de-sac should be graded toward the basin. A Saratoga County Department of Public Works work permit must be provided. The Town of Clifton Park Planning Board initiated coordinated review on March 1, 2006: all involved agencies concur with the Town of Clifton Park acting as Lead Agency for this application. Mr. Kemper recommended that plantings be installed in and around the stormwater management areas. A fence or planted buffer must be placed along the wetland boundary. A sign-off must be provided from National Grid for crossing of the power line.

Mr. Kemper noted that 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 explained that cluster subdivision designs are options for the applicant to utilize under the Town Code: the Board cannot mandate that such designs be used. In addition, he explained that a cluster subdivision is usually proposed to provide a contiguous corridor of public open space. Due to the T configuration of the development design, the Board has agreed that a cluster subdivision does not appear feasible for this site. Sign-offs must be provided from the Saratoga County Sewer District and the Clifton Park Water Authority. The applicant must devise a plan to ensure that there be no interruption of utility services to the Wassenaar residence.

Mr. Romano explained that review by Clough, Harbour, and Associates resulted in the following comments. 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, Clough, Harbour, and Associates recommended that a Phase 1A archeological study be completed for this site and submitted for review. The applicant's consultant has indicated that a Phase 1A archeological study is being performed and will be submitted at a later date. Mr. Romano advised that the Board may wish to withhold making a determination until the studies are completed and reviewed by the Town and NYSOPRHP. 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's consultant has stated they are awaiting jurisdictional determination letters from NYSDEC and US Army Corps of Engineers, and that they will be forwarded to the Town upon receipt. Due to the questions regarding the jurisdiction of the on-site wetlands, the Board may wish to withhold making a determination until written or verbal correspondence is received from both agencies. The proposed street light at the proposed curb cut onto Longkill Road should be oriented over the new road, more clearly identified, be shown on the utility plans, and include a cobra-head style fixture with a 16' mast arm oriented over the new road. Catch basins should be located at a low point at the center of the

proposed cul-de-sacs. Due to constructability issues, it is not recommended that storm sewer piping be designed to slopes less than 0.5%. The plan continues to depict storm sewer pipe slopes less than 0.5%. The applicant's consultant has indicated that the minimum pipe slope is 0.2%, and that use of a 0.5% slope would require additional fill. Clough, Harbour, and Associates continues to recommend 0.5% pipe slope. It is also recommended that plans be prepared so that the viability of all alternatives can be considered. Other previously proposed projects have had to substantially modify plans to comply with this recommendation which has been supported by the Highway Superintendent.

Mr. Romano offered the following additional comments. The plans must address existing utility services to the Wassenaar property and how construction impacts to this property will be addressed. The off-site improvement plans fail to adequately document existing conditions and impacts due to construction.

Mr. O'Brien, Environmental Specialist, reported that after reviewing the project, the ECC reiterated the recommendations made at its February 7, 2006 meeting. 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 also reported that the ECC recommended that a cluster subdivision site design alternative plan be prepared and submitted upon review of the number of lots that would otherwise be permitted under the conventional subdivision regulations for that parcel.

The ECC also made the following recommendations. The Completion of Part II of the Environmental Assessment Form (EAF) should include the impact of proposed fill or cuts on the survival of existing mature vegetation. The ECC requests a copy of the Department of Environmental Conservation's (DEC's) evaluation of the possible impacts of the project, including the revised Stormwater Management Plan, to the Frosted Elfin habitat as noted in the Planning Board Minutes of February 14, 2006. Mr. O'Brien believed that the documentation regarding the butterfly would satisfy the ECC's concerns.

Mr. Bill Balfourt, 173 Hubbs Road, explained that he was not part of the FOLK (Friends of Longkill) group. He told the Board that his home is centered between two residences that were constructed by representatives of the Kain Development Company. A few months after purchasing property at 173 Hubbs Road and significantly renovating the residence, his home and property were severely damaged by the construction of homes that took place on properties that adjoin his. He stated that a construction expert has stated that damage to his home and property is directly related to the construction of the properties at 171 Hubbs Road

and 1028 Hatlee Road. To date, there has been no response from Kain Development regarding the problems and no attempt has been made to repair his lawn or his home. He asked that Board to ensure that his negative experiences will not be repeated when Kain Development begins construction at the Longkill property.

Mr. Jeff Baker, legal representative for FOLK from the firm of Young, Sommer, LLC, advised the Board that it is the Board's responsibility to "set the parameters" and the conditions for development. He noted that it was very important that the Board require the completion of a Full Environmental Impact Statement to address all of the serious concerns raised by residents as well as Board members. This, in his opinion, would provide information necessary for reasonable analysis of the project and alternative plans. He focused upon the potential negative impacts to wetland areas. He believes that the stormwater management plans are incomplete, that an inventory of mature trees on the property would be necessary to plan for preservation of existing vegetation, to retain existing land characteristics. In his opinion the lack of a visual impact assessment prevents consideration of a deterioration of existing scenery from existing properties. Mr. Baker discussed the proposed grading plan, noting that no quantification of grading and fill has been provided. In order for the process to move forward in an orderly process, Mr. Baker recommended that a Full EIS be prepared.

Mr. Bill Lorensen, 14 Hearthside Drive, read a letter that was forwarded to the Board that listed previous correspondence to the Board, that identified current issues of concern, and that called upon the Board to reject this subdivision application. The letter submitted is attached to these minutes. In addition to his letter, Mr. Lorensen discussed several additional issues of concern. He requested that the buffer zone be converted to a conservation easement zone and that a 3'-4' berm be installed on the easement to reduce drainage to existing properties and increase privacy for existing residents. The speaker encouraged all Board members to walk the site when the wetlands are most evident. Conservation easements are requested to protect identified wetland areas. Speaking of the proposed clear-cutting of the site, Mr. Lorensen asked that every mature tree be inventoried and that the effect of the proposed 3'-4' of fill on the trees be determined. He also asked that the developer reduce the number of lots proposed for the subdivision. He noted that the CR zone would permit the construction of only 6 homes on an 18 acre property. Both he and the owners of adjoining properties are requesting that the developer post a long-term bond that would be used to correct any water damage to existing properties and homes. Mr. Lorensen asked that the applicant be required to prepare a Full Environmental Impact Statement.

Mr. Lorensen offered a few "subjective" comments, noting that for several months his family and his neighbors have monitored the planning process because of the potential impacts to their properties by the development proposed by Kain Development. Existing residents have joined together to create the FOLK organization and have hired Mr. Baker as a legal representative. He recommended that in the future the Board encourage early discussions between residents and developers in an effort to produce plans that are more acceptable to both.

Mr. Bob Zimmer, 14 Woodstead Road, stated that he has resided on Woodstead Road for 36 years and has recently become a member of the FOLK group. During the past weekend he walked the proposed development site photographed many of its natural features. He presented several photos for the Board's consideration. He encouraged Board members to walk the site because he believes that the groundwater issue should be of major concern. Mr.

Zimmer predicted that if residences were constructed on this parcel, potential homeowners and existing residents will be “plagued” by drainage problems and wet basements. He recommended that the number of proposed homes be reduced by 7 or 8. Calling the proposal the “ruination of a beautiful piece of property,” the speaker called upon the Board to protect the wetland areas and the existing trees.

Ms. Sue Wareing, 15 Hearthside Drive, addressed the issue of the owner’s right to develop property. She requested information regarding the residency of the owner, implying that someone from out of the area would not be as concerned with its protection and preservation as those currently living there. Ms. Wareing stated her disbelief that the developer would preserve the forested areas of the site as promised during project reviews.

Mr. Dave Gibson, 107 Longkill Road, discussed the charges against Christopher Malandrino for violations of the freshwater wetlands act that occurred when he was building new homes in the Town of Milton, noting that Malandrino was originally a significant player in the application being considered. Based upon this information, Mr. Gibson believes that the Board should reconsider the entire application. He asked that the Board consider creating a preserve that connects to Longkill Park. He believes that the Kain parcel should not be developed since the vernal pools on the parcel are interconnected and create a “gene pool” for amphibians that move between them. He believes that passive recreational uses, such as multi-use pathways and natural preserve areas would be more beneficial for the creatures who reside on the parcel and humans who surround it. He cited information from a booklet regarding natural habitats that discussed the values of vernal pools as breeding areas for amphibians. He asked that the isolated wetlands be protected in order to preserve the area’s distinctive vernal pools and irreplaceable animal habitats.

Ms. Susan Gibson, 107 Longkill Road, noted that Earth Day, which will be celebrated on April 21, 2006, was created in 1970. She believes that the world is “trembling and crumbling around us” and she wishes the Board to consider the issues of natural preservation. She read from an e-mail exchange that she had with a Siena College professor regarding the preservation of natural resources on the Kain parcel. The e-mail from Susan to the professor included information regarding the reconvening of the public hearing and the “impending destruction and development of this special place within the Town.” She expressed her concerns for the loss of the woods for its inherent beauty and the bounty of nature that lives there, focusing on impacts to the Frosted Elfin butterfly. She described the beauty of the wood ducks and the cacophony of the wood frogs that reside on the property, explaining that she has a “strong physical connection to this place.” She asked that the Board require the completion of a Full EIS. Ms. Gibson then read the response that came from the professor. He commented that he was “close to despair” over the lack of concern for natural resources and nature’s creatures.

Ms. Gayle Wassenaar, 85 Longkill Road, provided a brief list of the concerns she had identified at previous Board meetings. She stated that at the February 14, 2006 Planning Board meeting she discussed the disturbance to the wetlands and the negative impacts to her property that the Kain development would produce. She requested that the Planning Board minutes be corrected to reflect the fact that she does have information regarding the location of utility easements that serve her residence. Among her concerns were the 40’ no-cut buffer area, land clearing, stormwater management, and the retention basin location. She does not believe that the issues of concern raised at the previous meeting have been adequately

addressed by the applicant. She spoke specifically of the stormwater management plan, noting that drainage from the site appears to be directed to her home and property. Ms. Wassenaar noted that consultant was unable to document where the overhead utility lines were located, though she is aware that easements were available in filings at the County Clerk's office. She requested that the proposed 50' no-cut buffer be provided along all boundary lines. The speaker noted that the project plan now calls for clearing of 72% of the property and she asked that the Board consider if such clearing reflects the goals listed in the Town's Comprehensive Plan.

Ms. Wassenaar observed that the stormwater management plan calls for drainage from the Kain site to be directed to the land to the east now reputedly owned by Carlson. She asked that any financial investment that the owner has in the Carlson property be duly disclosed to the Town. She asked that the stormwater basin along Longkill Road be relocated because such basins generally become collectors for paper and debris. Ms. Wassenaar explained that her family owns the parcel that will be developed as the entrance road for the subdivision. She asked that the developer and/or the Town assume responsibility for its maintenance and tax liability when construction begins. She expressed frustration that the Board has not responded to the concerns of those speaking at the public hearings and she concluded her comments by asking that the Board require the applicant to complete a Full EIS.

Ms. Sharon Hiltbrunner, 84 Longkill Road, stated that she was opposed to the subdivision. Her main concern, however, was the location for the installation of the sewer line along Parkside Trail. She was concerned that the proposed installation would encroach on her property and asked that the developer ensure that there be no disturbance of her property.

Mr. Dan Shuth, 5 Woodridge Court, stated that he was a former resident of New Jersey where there are some very desirable residential neighborhoods. He explained that the desirable neighborhoods were designed to preserve much of the existing vegetation and to locate homes at various angles to add visual interest. He compared such developments to another subdivision that he resided in which he described as a "campground". These subdivisions compromise privacy due to the density of homes and the absence of vegetation. He believes that the plans for the Kain subdivision are more reflective of the less-desirable type of development. Since his current residence is located along the southern border of the subdivision, he requested that the applicant extend the 50' no-cut buffer to the southern property boundary. He called for the Board to request the completion of a Full EIS.

Mr. William Engleman, 6 Partridge Plateau, thanked the Board for the conducting a second session of public hearing for this application. He focused on the issues of full study and disclosure, the impacts of the project that may extend beyond the Town boundary, uncreative sprawl, and design flaws that would result in significant impacts to natural resources and animal habitat. Mr. Engleman referenced an article entitled Dealing with Change in the Connecticut River Valley that, in his opinion, describes the process for responsible residential growth. He addressed the issue of the no-cut buffer easements, stating that although he is in favor of a no-cut buffer, he believes that the area should be controlled by a single entity as a common trust. He sees monitoring and enforcement as problems to be addressed. He encouraged the Board to protect all wetlands as well as buffer areas by including them in conservation easements. The speaker presented photographs of wood ducks and wood frogs. He explained that these species have no defense against filled-in breeding pools and contaminants: the proposed development threatens vulnerable animal populations. He stated

that “the biodiversity of our Town is being traded away for the highest profit for developers.”

Mr. Engleman discussed the SEQRA form, noting that Parts II and III of the document have not been completed by the Lead Agency. He believes that the Board has not studied impacts to water and wildlife in depth. He also believes that the Planning Board should issue a positive declaration for this application. He noted that the proposed water line will eventually connect with the line along East Line Road. Such a connection does not appear as part of this plan. The speaker noted that flagging has occurred on an adjoining property – an indication of the fact that development of this property will induce additional growth within the Longkill corridor. He asked the Board to consider the impacts of such cumulative growth. Mr. Engleman observed that the Ethics Form contained within the project file has not been adequately completed by the applicant. Mr. Engleman also expressed concern that Mr. Malandrino, an original participant in this application, has been cited for wetland violations in an adjoining town. Since his name continues to be included on documents prepared by the project consultants, Mr. Engleman encourages that Board to carefully scrutinize this application. Mr. Engleman encouraged the Board to carefully consider all the harmful impacts that the proposed development will produce. He asked for the completion of a Full EIS.

Mr. Bulger explained that it is the intention of the Board to respond in writing to all of the comments and concerns expressed at the public hearings. Such a document will be prepared following the close of these hearings. The Board will review all of the information provided and prepare a “full response” to residents’ concerns. The response will include input from Town officials, the Town’s consulting engineer, and Board members. Upon completion the response document, it will be provided to all those interested. Mr. Bulger asked that a single contact person be designated to receive information from the Board. (Ms. Wassenaar later phoned the Planning Department to report that she will act as a contact person for all those interested in the project.)

There being no further public comment, Mr. Karam moved, seconded by Ms. Pace, to close the public hearing at 8:50p.m. The motion was unanimously carried.

Mr. Jeff Baker asked to register an objection to the Board’s proposed action, stating that the proper Board action should be to create a Full EIS. Mr. Bulger commented that the Board does not have sufficient information at this time to properly issue a SEQRA determination. Mr. Baker, Mr. Pelagalli, and Mr. Bulger discussed the time frame for the issuance of a determination for this pending application.

In response to Mr. Karam’s question regarding the proposed clear-cutting of the parcel, Mr. Fazio explained that the plan now calls for clearing of approximately 70% of the site. He did suggest that the clearing limit lines may be “tightened up” in an effort to reduce the amount of disturbance. Mr. Fazio explained, in response to a question posed by Mr. Hughes, that most of the vegetation will remain in the no-cut buffer and along the northern portion of the site. Mr. Russell asked about the possibility of installing berms along the existing properties on Hearthside Drive. Mr. Fazio explained that berms would inhibit drainage from the Hearthside Drive properties and would require more disturbance of land on the Kain parcel. He explained that the additional swales proposed for the property would help to direct water to stormwater management areas on the Kain property and away from adjoining properties. Board members and the applicant discussed several issues, including drainage, stormwater controls, and treatment of run-off.

Mr. Larkin asked for clarification of a number of issues. Mr. Fazio identified the proposed locations of catch basins and described the slopes that will be created by grading in response to Mr. Larkin's concerns about impacts of "artificial precipitation" that would occur through lawn sprinklers, etc. Mr. Larkin expressed concerns about the "asymmetry" of the buffer along the Hearthside Drive properties. Mr. Larkin also asked that the consultant calculate the amount of fill needed to grade the site as proposed. Mr. Fazio explained that, although such calculations are time-consuming, they can be completed. He noted that such calculations are also important to the developer because of the costs involved in purchasing fill material and transporting it to the site. Mr. Larkin was concerned with Clough, Harbour, and Associates' recommendations regarding the piping system. Mr. Fazio explained that the Town's engineers were likely concerned with the "constructability" of the system. Mr. Kemper explained that the piping system will be designed in accordance with the Town's design and construction standards and will be approved by the Town engineers.

Mr. Karam commented on several items. He recalled that the Board had previously recommended that mature trees be identified and attempts be made to preserve such trees. Mr. Fazio explained that site grading would determine the number of trees that could be preserved throughout the site. In response to Mr. Karam's inquiry regarding ownership of the property directly east of the development parcel, Mr. Fazio explained that the applicant does not own that property. Mr. Fazio explained that an archeologist is reviewing the site and all NYSOPRHP requirements will be satisfied. With respect to the ACOE determination as referenced by Mr. Karam, Mr. Fazio explained that the isolated wetland will be treated as much as possible as a designated wetland. Mr. Karam does not support the development of a berm between the development site and existing homes, though he stated his support for a no-cut buffer that extends along the entire site boundary and a 50' buffer around the southern boundary. Mr. Karam supported the applicant's alternative plan that reduces the number of residences.

Mr. Russell was concerned with the potential for additional drainage to existing properties and the effects of groundwater on the proposed properties. Mr. Pelagalli explained that there was no means to bond or insure create a fund to ensure that any damage to existing homes resulting from construction of this parcel will be paid for a by the developer.

Mr. Bulger favored the proposed design alternative that illustrated a reduction in the number of residences by two. He recommended that the applicant seek setback variances from the Zoning Board of Appeals in order to provide greater flexibility for grading and to increase the buffer areas. Board members indicated that they would support approvals of such variances. Mr. Bulger suggested that the Board consider conditioning approval on review of all house locations by Planning Department officials. Mr. Pelagalli explained that although cluster legislation provides the Planning Board the authority to establish setbacks, the Planning Board is not generally granted such authority. Mr. Russell asked that the applicant submit a cluster design. Mr. Bulger does not believe that a cluster design would be significantly beneficial based upon the parcel's configuration, although members discussed the possibility of relocating all lots to the south of the delineated wetland areas. A majority of Board members rejected that recommendation that lots all be moved to the southern portion of the site, though they did agree that additional lot width would be desirable and the preservation of mature trees would improve the design significantly.

Mr. Bulger concluded the discussion by reiterating that the Board will provide a written response to all public comments provided to date. He assured those in attendance that the Board would accept comment regarding this application at future meetings.