

John Currie, *Chairman*
Vicky Gannon
Nancy Gerbino
Jack Mattes
Bruce Prince
Christopher Zaberto

PLANNING BOARD
Town of Somers
WESTCHESTER COUNTY, N.Y.

TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589
TEL (914) 277-5366
FAX (914) 277-4093
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SOMERS PLANNING BOARD AGENDA

February 8, 2023, 7:30PM

RECOGNITION OF SERVICE TO THE PLANNING BOARD

MINUTES

Draft Minutes for consideration of approval: January 11, 2023.

PUBLIC HEARING

**1. PANNY PROPOSED 2 LOT SUBDIVISION AT 19 OLIVE DRIVE –
TM: 5.15-1-90.**

Application for Preliminary Subdivision, Tree Removal, Stormwater Management and Erosion and Sediment Control Permit and Steep Slope Permit for creation of two lots from one existing lot with a single family house and where proposed access to new lot is only available from an unimproved but mapped Town road in an R-10 District located at 19 Olive Drive.

PROJECT REVIEW

**2. MICHAEL BARILE AND NICOLE STERN PROPOSED
SUBDIVISION OF PARCEL ADJACENT TO GREEN TREE ROAD –
TM: 15.12-2-1 and 15.12-2-5.**

Proposed Preliminary Subdivision and Open Development Area Application for subdivision of two parcels into three residential lots accessed off of

Green Tree Road through Town Right of Way and NYS DOT Easement areas. The property is in the R80 zoning district.

MEETING ADJOURNMENT

**The next Planning Board Meeting is scheduled for
Wednesday, March 8, 2023 at 7:30pm.**

Agenda Subject to Change

PLANNING BOARD

John Currie, *Chairman*
Vicky Gannon
Nancy Gerbino
Dennis McNamara
Bruce A. Prince
Christopher Zaberto
Jack Mattes

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SOMERS PLANNING BOARD MINUTES **January 11, 2023** **7:30PM**

ROLL

PLANNING BOARD Vicky Gannon, Nancy Gerbino,
MEMBERS PRESENT: Jack Mattes, Christopher Zaberto

PLANNING BOARD Chairman John Currie
BY ZOOM:

ABSENT: Bruce Prince, Dennis McNamara

ALSO PRESENT: David Smith, Consulting Town Planner, Planning & Development
Advisors; Planning Board Attorney Gerry Reilly; Steve Robbins,
Consulting Town Engineer, Woodard & Curran

PRESENT BY ZOOM:

MEETING COMMENCEMENT

The meeting commenced at 7:30pm.

Chairman Currie requests participants say the Pledge of Allegiance.

Consulting Town Engineer Steve Robbins calls the Roll and notes the required quorum of at least four members is present to conduct the business of the Board.

MINUTES

Regarding the meeting minutes for the December 14, 2022 Planning Board Meeting, there are no requests for modifications to the meeting minutes.

Chairman John Currie moves to accept the meeting minutes as presented. Mrs. Vicky Gannon seconds. All in favor.

EXTENSION REQUEST

1. GRANITE POINTE FINAL SUBDIVISION APPROVAL, STEEP SLOPES, TREE PRESERVATION, STORMWATER MANAGERMENTS, AND EROSION AND SEDIMENT CONTROL PERMITS RE-GRANT ROUTE 118/202 TM: 27.05-1-2&5

Request for the 22nd – 90-day time extension for the Granite Pointe Subdivision Re-Grant of Final Subdivision Approval, Wetland, Steep Slopes, Tree Preservation and Stormwater Management and Erosion and Sediment Control Permits for 23 lots in a Cluster Subdivision, as per Resolution 2017-10 from January 23, 2023 up to and including April 23, 2023 as per Town Law Section 276 (7) (c) and Town Code Section 150-13M.

Mrs. Nicky Gerbino states that the board is in receipt of a comment letter from the public. She and Mr. Currie agree that the letter should be forwarded to the Planning Board's attorney.

Mrs. Gerbino comments that the letter leaves out the fact that the city of New York refused to purchase the property in question.

Mr. Currie confirms that Mrs. Gerbino's comment is correct.

Mr. Steve Robbins notes the correct dates for the 90-day time extension should be from January 23, 2023 up to and including April 23, 2023.

Chairman John Currie moves to accept the request for the 22nd-90 day time extension with the correct dates. Mrs. Gannon seconds. All in favor.

PROJECT REVIEW

2. PANNY PROPOSED 2 LOT SUBDIVISION AT 19 OLIVE DRIVE – TM: 5.15-1-90

Application for Preliminary Subdivision, Tree Removal, Stormwater Management and Erosion and Sediment Control Permit and Steep Slope Permit for creation of two lots from one existing lot with a single family house and where proposed access to new lot is only available from an unimproved but mapped Town road in an R-10 District located at 19 Olive Drive.

Mr. Currie asks if there is an Applicant present.

Mr. Robbins states there is no Applicant present.

Mr. Currie asks if there are any comments from Mr. Dave Smith or Mr. Robbins.

Mr. Smith states he has no comments.

Mrs. Gerbino asks if the adjacent property owners are notified of the subdivision.

Mr. Robbins responds that they would be notified of a public hearing.

Mrs. Gerbino asks if the Lincolndale Homeowner's Association can be notified as well. She states the subdivision is an area where the Town conducted many studies and decided the area needed a sewer. She continues that the sewer was needed because there was no public water, and the number of wells and septic fields far exceeded the EPA recommendation per acre. She states that the proposal for the sewer was voted down by the community, but many people stated desire to protect their community. Mrs. Gerbino states the community should be notified that another well and septic field would be added if the subdivision were to be approved.

Mr. Smith asks if the Lincolndale Homeowner's Association is a single entity.

Mrs. Gerbino confirms that the Lincolndale Homeowner's Association is a single entity.

Mr. Smith states he has no objection to Mrs. Gerbino's proposal.

Mr. Christopher Zaberto asks if the property in question is located near Lake Lincolndale.

Mrs. Gerbino confirms that the property in question is in the R-10 district in Lincolndale.

Mr. Gerry Reilly states that the people part of the Lincolndale Homeowner's Association will only be notified when there is a public hearing.

Mr. Smith states that the entity Lincolndale Homeowner's Association owns property.

Mr. Reilly states that since the entity Lincolndale Homeowner's Association is a property owner, the entity would be notified of the public hearing anyway if the entity had property within the required distance from the subdivision.

Mr. Gerbino clarifies that she was concerned that when the proposal for the sewer in the community was voted down, the community claimed they knew how to keep their community healthy and safe.

1 Mr. Reilly states that it wouldn't be unlawful to notify the Lincolndale Homeowner's
2 Association and therefore there would be no issue if the Planning Board decided to follow
3 through with the notice.

4
5 Mr. Zaberto states he is concerned that the Planning Board would be setting a precedent that
6 is not legally required. He elaborates that if the Lincolndale Homeowner's Association owns
7 property bordering the property in question, then they will be notified, but the Planning
8 Board should not give notice if the Lincolndale Homeowner's Association property does not
9 boarder the property in question.

10
11 Mrs. Gerbino agrees with Mr. Zaberto. She proceeds to withdraw her initial request.

12
13 Mr. Currie asks Mr. Robbins if he has any comments.

14
15 Mr. Robbins states that this a two-lot subdivision. One half of the lot has a home that has
16 been rebuilt. The second half of the lot meets the zoning code to be subdivided and the
17 Applicant is pursuing that subdivision. He states Woodard and Curran has reviewed the
18 application for conformance with engineering criteria. He states the Applicant has
19 conducted septic percolation tests and stormwater tests. He states that Woodard and Curran
20 has comments on the stormwater pollution prevention plan. Mr. Robbins requests that the
21 representative for the Applicant discuss with Woodard and Curran these comments. Mr.
22 Robbins elaborates that Woodard and Curran has questions on sizing of the units. He states
23 that the project did go through a review with the Fire Prevention Board and the Highway
24 Department to look at what needed to be done to modify the existing terminus of Olive
25 Drive to allow for emergency service access to the subdivided lot. Mr. Robbins states that he
26 understands the Fire Prevention Board and Highway Department approve of the current
27 proposal. Mr. Robbins states there is new stormwater infrastructure that will address the
28 existing roadway and the new impervious surface that is being proposed for the subdivided
29 lot. He explains Woodard and Curran has questions if the new stormwater infrastructure is
30 adequately sized to handle the additional volume of stormwater and water quality treatment
31 as required. He states the Applicant has provided a compliant plan with respect to septic
32 systems setbacks and wells, which will need subsequent approval from the Department of
33 Health.

34
35 Mr. Currie asks if Mr. Robbins is comfortable holding a public hearing.

36
37 Mr. Robbins responds that he believes the Applicant has disclosed the environmental
38 impacts of the project and any question can be resolved within the proposed limits of
39 disturbance.

40
41 Mr. Currie asks for comments from the Planning Board.

42
43 There are no additional comments from the Planning Board.

1
2 Mr. Curries moves to schedule a public hearing for the next Planning Board meeting on
3 February 8, 2023. Mrs. Gannon seconds. All in favor.
4

5 **3. MICHAEL BARILE AND NICOLE STERN PROPOSED SUBDIVISION OF**
6 **PARCEL ADJACENT TO GREEN TREE ROAD – TM: 15.12-2-1 AND 15.12-2-5**
7

8 Proposed Preliminary Subdivision and Open Development Area Application for subdivision
9 of two parcels into three residential lots accessed off of Green Tree Road through Town
10 Right of Way and NYSDOT Easement areas. The property is in the R80 zoning district.
11

12 Mr. Currie states that the Planning Board has received multiple texts, emails, and letters
13 from several residents in the Town of Somers and several adjoining properties on Green
14 Tree Road.
15

16 Mr. Currie asks Mr. Smith and Mr. Reilly to explain the town approvals that the Town
17 Board is required to do.
18

19 Mr. Smith reiterates that there were multiple correspondences submitted to the planning
20 office. He states all residents were notified that their correspondence had been received and
21 been forwarded to the Planning Board and Town Board.
22

23 Mr. Smith explains that the Application involves New York State Town Law Article 280a
24 which applies when a property does not front on a town road or right of way. The Applicant
25 needs to submit their materials to the Planning Board. The Planning Board conducts an
26 environmental review under the State Environmental Quality Review Act. The Planning
27 Board must make a determination of significance. A negative declaration would mean that
28 all impacts have been identified and mitigated to the maximum extent practicable. A
29 declaration of significant adverse impacts would require a draft environmental impact
30 statement would need to be prepared and additional studies would need to be conducted.
31

32 Mr. Smith states that the Planning Board is in the process of gathering the information
33 needed to make the correct environmental determination. He states Woodard and Curran and
34 the planning office have submitted review memos to the Applicant requesting additional
35 information. He states that the NYSDOT, NYCDEP, and Westchester County have all
36 submitted comments which need to be responded to.
37

38 Mr. Smith explains that after the Planning Board makes their environmental determination,
39 the process moves to the Town Board. The Town Board needs to evaluate open
40 development areas. The Town Board must decide if the application is acceptable to allow
41 the process to move forward, at which point the application would come back to the
42 Planning Board. The Planning Board would then schedule a public hearing for a subdivision
43 if the Town Board agrees that the lots could be subdivided.
44

45 Mr. Smith states that he does not believe the Planning Board is at a point to make an
46 environmental determination.

1
2 Mr. Reilly agrees with Mr. Smith's summary.

3
4 Mr. Zaberto asks if Article 280a subsection 4 is a town code or state code.
5 Mr. Reilly responds that it is a New York State code that only applies to towns.

6
7 Mr. Zaberto asks if this code is specific to subdivisions.

8
9 Mr. Reilly states that you cannot get a building permit for a lot without going through this
10 code if you do not have the frontage.

11
12 Mr. Currie asks Mr. Robbins if he has any comments.

13
14 Mr. Robbins states that Woodard and Curran have provided the Applicant with comments
15 and is awaiting responses.

16
17 Mr. Currie asks if there are any Applicant representatives present.

18
19 There are no Applicant representatives present.

20
21 Mrs. Gerbino comments about the garbage situation for the three proposed homes that
22 would use the end of the driveway for garbage. She states she is waiting from the fire
23 department for a response regarding the common driveway and turnarounds.

24
25 Mr. Smith responds that the application has been forwarded to the Bureau of Fire
26 Prevention, DPW, and the Police Department. He states comments have been received from
27 some of the departments but not from all. He states that the departments may share Mrs.
28 Gerbino's concern.

29
30 Mr. Zaberto asks for clarification on the reason why the Applicant offered the suggestion of
31 putting the garbage at the end of the cul-de-sac.

32
33 Mr. Zaberto and Mrs. Gerbino state that the suggestion was to put garbage at the end of the
34 driveway to reduce traffic across the trailway.

35
36 Mrs. Gerbino states that there are plenty of instances of truck crossings across the Trailway.
37 She states that the Applicant did not show the Planning Board said instances previously. She
38 claims these truck crossings are effective.

39
40 Mr. Robbins explains that the subdivision in question has its proposed waste generation
41 evaluated as part of the environmental impacts and is therefore part of the environmental
42 assessment form. The location of the waste collection is part of a site plan. He states that he
43 believes that the location of the waste collection is a detail that would be resolved at a later
44 date.

45
46 Mr. Smith reiterates that his recommendation to the Planning Board is that the

1 environmental review needs to be concluded and sent to the Town Board.
2

3 **MEETING ADJOURNMENT**
4

5 Chairman Currie reminds the members that the next Planning Board Meeting is Wednesday,
6 February 8, 2023.
7

8 Chairman Currie makes a motion to adjourn the meeting. Mr. Zaberto seconds. All in favor.
9 Motion passes.
10

11
12
13
14 Respectfully submitted,
15
16

17
18 _____
19 Kyle Nordquist, Transcriber
20 Woodard & Curran
21 800 Westchester Avenue, Suite N507
Rye Brook, New York 10573

John Currie, *Chairman*
Vicky Gannon
Nancy Gerbino
Eugene Goldenberg
Dennis McNamara
Bruce Prince
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February 3, 2023

Jack Karell, Jr P.E.
121 Cushman Road
Patterson, NY 12563

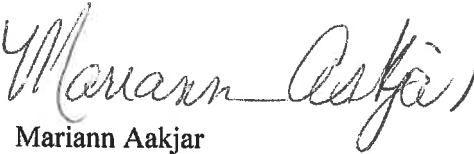
Re: Panny 2 Lot Subdivision
TM: 5.15-1-90

Dear Mr. Karell:

As per the attached agenda, the Town of Somers Planning Board will be reviewing your project at a Planning Board Meeting scheduled for Wednesday, February 8, 2023. It will begin at 7:30pm and will be held in the meeting room of Somers Town House (the Elephant Hotel) located at the intersection of Route 100 and Route 202. Your representation at this meeting is requested either in person or by your professional consultants.

If appropriate, consultants to the Planning Board will submit reports to the Board with comments and recommendation on your application. You will receive copies of these reports when they are available. The material to be considered by the Planning Board and its consultants will be the material that you have previously submitted. **DO NOT SUBMIT ANY NEW MATERIAL PRIOR TO THE MEETING, AS IT CANNOT BE CONSIDERED.**

Thank you for your cooperation. If you have any questions, please call the Somers Engineering and Planning Departments at 914-277-5366.


Mariann Aakjar
Office Assistant

Attachment

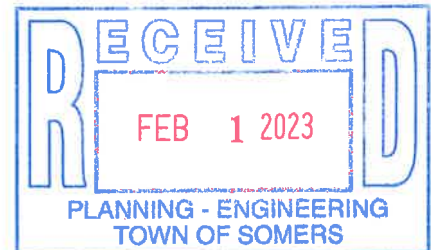
BUREAU OF FIRE PREVENTION

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Town of Somers
WESTCHESTER COUNTY, N.Y.

**SOMERS TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589**

**THOMAS J. TOOMA, JR.
CHIEF**



MEMO TO: Planning Board

FROM: Bureau of Fire Prevention

RE: Olive Drive Subdivision

DATE: February 1, 2023

On January 18, 2023, the Bureau of Fire Prevention reviewed an updated submission for the Olive Drive Subdivision. The revised submission meets the dimensions reflected in the March 7, 2022 memo. The Bureau has no objections to the modifications. In addition, the Bureau is under the impression that the proposed dwelling will be equipped with a fire sprinkler system.

attachment

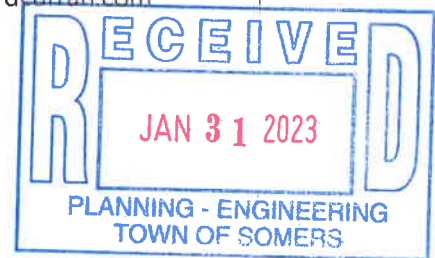
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MEMORANDUM

TO: David Smith, Director of Planning
FROM: Steven Robbins, P.E., LEED AP
DATE: January 23, 2023
RE: Panny Two Lot Realty Subdivision (Olive Drive)
Preliminary Subdivision Plat Approval, Stormwater Management and Erosion & Sediment Control Permit, Steep Slopes Protection Permit, and Tree Removal Permit.
TM: 5.15-1-90, R-10 District



GENERAL

The purpose of this memorandum is to provide the Planning Board with a summary of our comments related to our review of the Subdivision Plat Approval Application that was submitted for the Panny Two Lot Realty Subdivision located at 19 Olive Drive in Somers, New York.

The application is proposing a two-lot subdivision. Lot 1 has already been modified with the demolition of an existing single-family residence and construction of a new residence. This application is for the development of Lot 2. The project will also involve an extension of Olive Drive for access to Lot 2.

The project site is located within the East of Hudson watershed.

This review focused on the engineering design and the associated Town Code requirements in accordance with the following:

- Town of Somers Code, Chapter 93: *Stormwater Management and Erosion and Sediment Control*, and other sections, as applicable.
- Town of Somers Code, Chapter 148: *Steep Slopes Protection*
- Town of Somers Code, Chapter 156: *Tree Preservation*
- *New York State Standards and Specifications for Erosion and Sediment Control*, dated November 2016.
- *New York State Department of Environmental Conservation's (NYSDEC's) Stormwater Management Design Manual (SMDM)*, dated January 2015.
- *Rules and Regulations for the Protection from Contamination, Degradation, and Pollution of the New York City Water Supply and its Sources*, Chapter 18.

DOCUMENTS REVIEWED

- Full Environmental Assessment Form, dated February 26, 2020.
- *Somers Planning Board, Application for Preliminary Approval of Subdivision*, prepared by John Karell, Jr. P.E., n.d.



- *Stormwater Pollution Prevention Plan & Infiltration Study*, dated April 7, 2020, Revised November 9, 2022, prepared by John Karell, Jr., P.E.
- Comment Response Memo dated October 2, 2022, prepared by John Karell, Jr., P.E.
- Drawings prepared by John Karell, Jr., P.E., including:

Sheet Number	Sheet Name	Dated	Revised
S-1	Site Plan	01/20/2020	1/16/2023
S-2	Integrated Plot Plan	01/20/2022	10/1/2022
S-3	Steep Slope Plan	07/17/2018	10/1/2022
S-4	Existing Conditions Plan	07/17/2018	10/1/2022
P-1	Profiles	01/20/2020	10/1/2022
D-1	Details	01/20/2020	10/1/2022
T-1	Tree Location, Removal & Protection Plan	01/20/2022	10/1/2022
W-1	Well Locations	07/17/2018	10/1/2022

PERMITS AND APPROVALS REQUIRED

- Town of Somers Planning Board: Preliminary Subdivision Plat Approval
- Town of Somers Planning Board: Final Subdivision Plat Approval
- Town of Somers Planning Board: Stormwater Management and Erosion and Sediment Control Permit
- Town of Somers Planning Board: Tree Removal Permit
- Town of Somers Planning Board: Steep Slopes Protection Permit
- NYCDEP: Approval of Proposed Septic System
- NYSDEC: State Environmental Quality Review
- NYSDEC: SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001)
- Westchester County Department of Health (WCDOH): Approval of Sanitary Sewer Systems
- Westchester County Department of Health (WCDOH): Realty Subdivision Approval

DISCUSSION

The following is a summary of our comments. New comments are based on our review of the latest submittal. Previously issued comments are noted in *italics* and the corresponding status and response is shown below in **bold**. It should be noted that further comments may be provided upon review of additional information.



1. *The Applicant indicated on the plans that the proposed limits of disturbance are approximately 39,740 square feet. However, the limits of disturbance shall be revised to only include the proposed work to Olive Drive to provide access to the western lot (i.e., full depth pavement for "existing travelway") and the proposed development to Lot #2 since a Lot #1 was approved by the Town. The limits of disturbance shall also include disturbance associated with erosion and sediment control installation. **Addressed. Limits of disturbance have been revised.***
2. *The Applicant shall prepare an acceptable Stormwater Pollution Prevention Plan (SWPPP) that includes erosion and sediment controls consistent with the requirements of Section 93-6(A)(1) of the Town Code. The project will also be required to obtain construction coverage under the NYSDEC SPDES General Permit since the project is in the East of Hudson watershed and will disturb more than 5,000 SF. The SWPPP must address supplementary criteria specified by the SPDES General Permit. **Addressed.***
 - a. *The Applicant shall provide an application for a Stormwater Management and Erosion and Sediment Control Permit from the Town and shall provide the appropriate fees. **Addressed.***
3. *The Applicant shall provide a draft Notice of Intent and MS4 SWPPP Acceptance Form to obtain coverage under NYSDEC General SPDES Permit based upon the SWPPP for review and acceptance by the Consulting Town Engineer. **Partially Addressed. The Applicant shall provide a draft Notice of Intent form.***
4. *The Applicant provided a Site Plan which shows the erosion and sediment controls (E&SC) proposed for the site. The following comments are related to the E&SC plan:*
 - a. *The Applicant shall provide a typical construction detail for orange construction fencing to be used on-site. **Addressed.***
 - b. *The Applicant shall provide the proposed locations for drain inlets on the plans, if any. The Applicant shall also provide a standard detail for proposed inlet protection on the plans. **Partially Addressed. The Applicant shall provide a standard detail for proposed inlet protection.***
 - c. *The Applicant is proposing disturbance to steep slope areas. The Applicant shall indicate how these areas will be stabilized during construction (i.e. erosion control matting). The Applicant shall submit a steep slopes permit application to the Town with the appropriate fee to obtain Town approval for disturbance to steep slopes. **Addressed.***
 - d. *The Applicant shall revise the Site Plan to depict the stabilized construction entrance proposed at the driveway. **Partially Addressed. Based on the NYS Blue Book, the SCE shall be a minimum of 50 ft. The Applicant shall revise the provided detail on the plans.***
 - e. *The Applicant provided a Tree Location, Removal & Protection Plan indicating the trees to be removed or protected during construction. The Applicant shall submit a Tree Removal Permit application and the associated fee to the Town. **Partially Addressed. Tree Removal Permit application and fee are required.***



- f. *As previously stated, the Applicant shall provide inspection and maintenance requirements for all proposed erosion and sediment controls. **Addressed.***
 - g. *The Applicant shall revise the Soil Erosion and Sediment Control Notes on the detail sheet to be consistent with the requirements in the SPDES General Permit. **Addressed.***
 - h. *The Applicant is proposing rock outlet protection (ROP) at the outfall of the proposed roof drains. The Applicant shall provide a detail of this ROP and shall provide the appropriate sizing per the NYS Standards and Specifications for Erosion and Sediment Controls, latest version. **Partially Addressed. Applicant shall provide information on rip rap stone sizing.***
- 5. *Since this site naturally drains towards the southern boundary line (and therefore towards adjacent property owners), the Applicant shall demonstrate how stormwater will be managed at the site to maintain or improve from pre-development conditions. **Addressed.***
- 6. *The Applicant shall obtain a determination from the NYCDEP on whether SWPPP approval is required for this project. **Addressed.***
- 7. *It appears that the Applicant is providing a riprap swale and infiltrators to treatment the proposed Olive Drive road extension.*
 - a. *The Applicant shall provide design calculations for the proposed riprap swale. **Not Addressed.***
 - b. *The Applicant shall revise the infiltration practice to show an infiltration basin rather than subsurface infiltration chambers. The Applicant shall provide design calculations for the proposed infiltration system and shall provide a construction detail on the plans. The Applicant shall refer to the NYSDEC SMDM for design considerations for an infiltration basin. **Addressed – infiltration chambers were preferred by the Highway Department.***
 - c. *The Applicant shall indicate the proposed pretreatment to the infiltration system. **Not addressed. The Applicant shall provide pretreatment to the proposed infiltration system.***
 - d. *The Applicant shall provide signed and sealed deep tests to ensure that at least 3 feet of separations exists between the bottom of the infiltration system and seasonally high groundwater or bedrock. The deep tests shall be completed per Appendix D in the NYSDEC SMDM. **Not addressed. The Applicant shall provide deep tests that are signed and sealed.***
 - e. *The Applicant shall provide signed and sealed infiltration tests to ensure that an infiltration practice is feasible at the location. The infiltration tests shall be completed per Appendix D in the NYSDEC SMDM. **Not addressed. The infiltration tests shall be signed and sealed.***
 - f. *The Applicant shall provide orange construction fencing around the extents of the infiltration practice to limit over-compaction by equipment tracking during construction. **Addressed.***



8. *The following comments correspond to the drawing sheets:*
- a. *The Applicant shall revise the plans to show all proposed work on Lot #1 per the approved plans for the Lot #1 Site Plan received by the Town June 8, 2020 and last revised December 24, 2019. The Applicant shall include the approved house, driveway, septic field layout, and proposed stormtech infiltration chambers. **Addressed.***
 - b. *The Applicant shall revise the construction sequence notes to describe the work proposed for Lot #2 since Lot #1 was already previously approved by the Town of Somers. **Addressed.***
 - c. *The Applicant indicated that the plans were developed using topographic survey data prepared by Link Land Surveyors, P.C. dated June 29, 2019. The Applicant shall provide that survey as an existing conditions map. **Addressed.***
 - d. *The Applicant shall include a note on the plans for Dig Safely NY 811 which states the following: "Prior to Construction, Contractor shall locate all buried utilities to ensure that no interference exists during construction activities". **Addressed.***
 - e. *The Applicant shall update the expected project start and end dates accordingly. **Partially Addressed. The sequence of construction states that the project is expected to start in 2022. This should be revised.***
 - f. *The Applicant provided a maintenance schedule on the Site Plan. The Applicant shall indicate where rain gardens are proposed to be installed. **Addressed.***
9. *The Applicant shall provide a contractor certification statement. **Addressed.***
10. *The Applicant shall furnish a copy of the Westchester County Department of Health (WCDOH) approval of the new septic systems and dedicated wells for the lots. **Not Addressed. Applicant shall provide prior to final approvals.***
11. *The provided drawings do not illustrate the installation of exterior site lighting. The Applicant shall update the plans to include detail of proposed exterior lighting fixtures, if proposed to be installed. The Applicant shall provide lighting plans and specifications for consideration of the Planning Board. **Addressed.***
12. *Based on the Integrated Plot Plan, it appears that proposed expansion SSDS areas are shown on both lots. If the proposed expansion areas are proposed to be disturbed/prepared during construction, the Applicant shall revise the limits of disturbance to include the expansion areas. If the expansion areas are proposed to be disturbed/prepared only if the expansion is needed, the Applicant shall include a note on the plans to clarify this condition. **Addressed.***

Please find enclosed the following additional comments from the latest submittal:

13. The Applicant shall provide a construction detail for the proposed Olive Drive road extension.



14. The Applicant shall revise the plans to show protective markers or construction fence surrounding the proposed septic absorption field limits to prevent over-compaction by equipment tracking during construction.
15. The Applicant proposes two rain gardens in the Site Plan.
 - a. The Applicant shall provide signed and sealed deep tests and infiltration tests to ensure that at least 3 feet of separation exists between the bottom of the rain garden and seasonally high groundwater or bedrock, as well as to confirm an infiltration practice is feasible at the location. The deep tests and infiltration tests shall be completed per Appendix D in the NYSDEC SMDM.
 - b. The Applicant shall revise the rain gardens to be in a parallel configuration, and provide a distribution box or flow splitter to equally distribute the drainage conveyed from the driveway runoff to the two rain gardens.
 - c. The Applicant shall provide a construction detail of the proposed rain garden with a vertical cross-section including elevations.
 - d. The Applicant shall demonstrate that flows entering the rain gardens will be at non-erosive velocities.
16. The Applicant shall revise the footprint of the proposed Stormtech infiltrator systems to reflect overall dimensions based on the configuration and quantity of chambers.
17. The Applicant shall provide the finished grade, system invert, and bottom of stone elevations for the proposed infiltrator system located on Olive Drive.
18. The Applicant shall reference the contaminant source (per WCDOH Section 5-B.7 Table 1) identified for the required minimum separation distance from water wells for the proposed infiltrator system located west of the driveway area.
19. The Applicant shall revise the following items on the SWPPP:
 - a. The Applicant shall provide the design calculations for the proposed rain gardens in the SWPPP.
 - b. The Applicant shall revise Section I.C. (Proposed future (Developed) Conditions) to include the proposed rain gardens.
 - c. The Applicant shall revise Section II. (Stormwater Management, Treatment and Conveyance) to include the proposed rain gardens, and confirm the pipe material for stormwater conveyance. The site plan currently indicates PVC piping.
 - d. The Applicant shall revise Section V.C. (Infiltration Practices) to include the inspection and maintenance procedures for the proposed rain gardens.

Please feel free to contact our office with any questions or concerns. Please provide a response memo identifying where responses to these comments can be located on revised submittals.

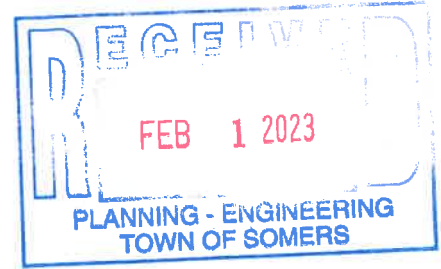
BUREAU OF FIRE PREVENTION

Telephone
(914) 277-8228
Fax
(914) 277-3790

Town of Somers
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589

THOMAS J. TOOMA, JR.
CHIEF



MEMO TO: Planning Board

FROM: Bureau of Fire Prevention

RE: 19 Olive Drive

DATE: March 7, 2022

On February 24, 2022, the Bureau of Fire Prevention reviewed the submission for 19 Olive Drive. All were in full agreement that the constructed terminus proposed will consist of a hammerhead 50' width of the existing road right of way, 40' long. In addition, it is proposed to install a residential fire sprinkler system for the single-family home.

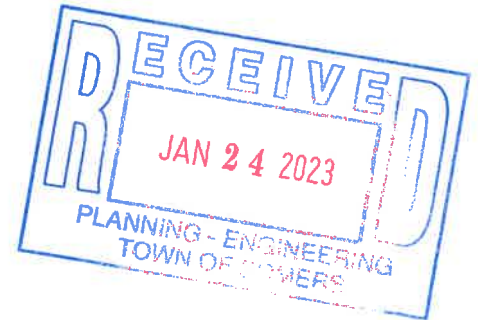
OPEN SPACE COMMITTEE

Telephone
(914) 277-5582
Fax
(914) 277-8790

Town of Somers
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

MICHAEL BARNHART
CHAIRMAN



MEMO TO: Planning and Engineering Department

FROM: Open Space Committee

RE: Olive Drive Subdivision

DATE: January 24, 2023

At our monthly meeting on January 19, 2023, the Committee reviewed and discussed a submission for the Olive Drive Subdivision provided by the Planning Board.

The Committee offers the following comments:

A tree plan was included in the submission, however there is no list of those species to be removed or saved. We cannot make recommendations without such information.

We recommend the use of rain gardens and "soft infrastructure" in place of infiltrators and associated SMPs for stormwater management as much as possible.

**PLANNING BOARD
TOWN OF SOMERS
WESTCHESTER COUNTY, NEW YORK**

PUBLIC HEARING NOTICE:

NOTICE IS HEREBY GIVEN, that the Planning Board of the Town of Somers, Westchester County, New York has scheduled a Public Hearing on Wednesday, February 8, 2023 at 7:30 p.m. at the Town House, 335 Route 202, Somers, New York, to consider the application of a two lot subdivision located at 19 Olive Drive, TM 5.15-1-90. The proposal is more specifically shown on a plan titled "Integrated Plot Plan", prepared by John Karell, Jr. PE dated November 22, 2022.

The application is for Preliminary Subdivision, Tree Removal, Stormwater Management and Erosion and Sediment Control and Steep Slope permits for the creation of two lots from one existing lot with a single family house and where proposed access to a new lot is only available from an unimproved, but mapped, Town road in an R-10 Residential Zoning District located at 19 Olive Drive.

All persons having an interest in the proposed application are invited to attend the Public Hearing and will be heard on the aforesaid matter.

BY ORDER OF THE PLANNING BOARD

John Currie, Chairman

Mariann Aakjar/Office Assistant



Woodard & Curran Engineering
and Geological Services P.A. P.C.
800 Westchester Avenue
Suite N507
Rye Brook, New York 10573
www.woodardcurran.com

T 800.426.4262
T 914.448.2266
F 914.448.0147

MEMORANDUM

RECEIVED

FEB - 2 2023

**PLANNING-ENGINEERING
TOWN OF SOMERS**

TO: Town of Somers Planning Board
CC: Wendy Getting, Town of Somers
David Smith, Consulting Town Planner
FROM: Steven C. Robbins, P.E., LEED AP
DATE: February 1, 2023
RE: Green Tree Road Subdivision
Green Tree Road, Somers, New York 10589
TM: 15.12-2-1

GENERAL

The purpose of this memorandum is to provide the Planning Board with a summary of our comments related to our review of the information submitted for to the subdivision and development of three residential homes off Green Tree Road in Somers, New York. The property is in an R-80 District.

The applicant proposes to subdivide a 9.75 acre parcel into three residential lots, including the construction of a common driveway through the Town's Right of Way for Green Tree Road. This project requires Town Board action as a 280-a project.

The total acreage to be physically disturbed is approximately 3.85 acres on the project site and additional lands in the Green Tree Right of Way. There will be disturbance to a wetland buffer for the common driveway construction.

The subject property is in the East of Hudson New York City watershed and within a listed Critical Environmental Area (Baldwin Place Area), designated due to difficulties with potable water sources.

This review focused on the engineering elements of the submitted plan and Environmental Assessment Form for completeness related to the assessment of environmental impacts. It does not include comments that are more appropriate for detailed subdivision plan. These comments also reflect personal observations during the Planning Board site walk on October 22, 2022 and review of wetland markings during a site walk on December 5, 2022.

DOCUMENTS RECEIVED

- Cover Letter, "Green Tree Rd Subdivision, TM#: 15.12-2-1" prepared by P.W. Scott Engineering & Architecture, P.C., dated September 13, 2022.
- Somers Planning Board Application for Preliminary Approval of Subdivision dated September 6, 2022.



- Full Environmental Assessment Form, dated September 9, 2022.
- Response to Woodard & Curran Review, dated December 7, 2022.
- Construction and 3-Lot Traffic Generation, undated.
- Stormwater Pollution Prevention Plan, dated December 21, 2022.
- NYS Rail Trail Crosswalk Guidelines, Reference: Empire State Trail Design Guide – 2017 (3 pages).

Sheet Number	Sheet Name	Dated	Last Revised
0	Cover Sheet	12/10/22	12/10/22
ID	Index Plan	12/10/22	12/10/22
SY1	Subdivision Preliminary Plat	12/10/22	12/10/22
SY2	Construction Plan	12/10/22	12/10/22
SY2A	Driveway Profile Plan	12/10/22	12/10/22
SY3	Erosion Control Plan	12/10/22	12/10/22
SY3A	Erosion Control Notes	12/10/22	12/10/22
SY4	Erosion Control Details	12/10/22	12/10/22
SY5	Construction Details	12/10/22	12/10/22
SY6	Detention Basin Details	12/10/22	12/10/22
SY6A	Bio-Retention Details	12/10/22	12/10/22
SY6B	Bio-Retention Details	12/10/22	12/10/22
SY7	Tree Preservation Plan	12/10/22	12/10/22
SY8A	Constraint Maps – Soils	12/10/22	12/10/22
SY8B	Constraint Maps – Slopes	12/10/22	12/10/22
D1	Pre-Development Overlay	12/10/22	12/10/22
D2	Post-Development Overlay	11/24/09	11/24/09
SY9	Rail Trail Crossing Plan	12/10/22	12/10/22
SY10	Fire Truck Access Plan	12/10/22	12/10/22

PERMITS AND APPROVALS REQUIRED

- SEQR Determination
- Referral to Town Board for 280A open space development approval
- Wetlands and Watercourse Permit
- Tree Removal Permit
- Erosion and Sediment Control Permit



- NYSDEC Stormwater Protection General Permit coverage
- NYCDEP Stormwater Permit

DISCUSSION

The following is a summary of our initial review comments requesting additional information from the Applicant to assess the environmental impacts from the project and for completeness with Sketch Plan completeness.

Prior comments

1. *Provide testing data and preliminary design calculations for the proposed septic systems sufficient to confirm the size of site features shown on the sketch plan. **Addressed.*** Plan will be reviewed in detail as part of subsequent reviews.
2. *Provide a Stormwater Pollution Prevention Plan for the project, including the common driveway. **Addressed.*** Plan will be reviewed in detail as part of subsequent reviews.
3. *Identify intended overflow/discharge locations and directions from the stormwater features. **Addressed.*** Plan will be reviewed in detail as part of site plan review.
4. *Provide a construction phasing plan that includes any proposed limitations on activities during ecologically sensitive periods, a limit of disturbance, proposed material and equipment staging areas, proposed soil stockpile locations, and proposed concrete washout areas. **Partially Addressed.*** Provide a construction phasing plan in drawing format to clearly indicate the intended phasing, and include all construction phasing notes. Include a prohibition on disturbance in the wetland buffer during the month of June for protection of turtles.
5. *Quantify impacts to the wetland buffer on the plans and EAF from construction of the common driveway and provide additional detail on the proposed work in the wetland buffer, including materials and methods of construction. **Partially Addressed.*** Clarify the Summary of Environmentally Sensitive Lands table for disturbance to the wetland buffer, as there is disturbance to the wetland buffer for the common driveway.
6. *Present mitigation measures for disturbance of the wetland buffer consistent with Town Code Section 167-9. **Partially Addressed.*** Provide a mitigation plan as a stand-alone drawing and/or report that includes the information required in Town Code Section 167-9(B) and (C). This additional information is required to evaluate the adequacy of the proposed mitigation measures.
7. *Describe the intended post-construction landscaping plan for the site and for the common driveway off Green Tree Road. **Partially Addressed.*** The evergreen tree buffer to the north of the Common Driveway is not on property owned by the Applicant. Has permission been granted for this planting? A narrative description of intended landscaping for the residential parcels is requested.
8. *Quantify tree impacts from the proposed project. **Addressed.*** Note that additional application materials will be required for a Tree Removal Permit.



9. *Develop traffic counts for the project, for both construction and post-construction periods.* **Addressed.** Traffic impacts were not reviewed by Woodard & Curran.
10. *Clarify the intended locations for mail/package delivery and refuse collection from the proposed development.* **Addressed.**
11. *Provide correspondence from NYSDOT and/or Westchester County on required safety measures and signage to be placed along the railway.* **Partially Addressed.** Additional detail and references have been provided with the latest submittal. Has Westchester County and/or NYSDOT approved the proposed trail crossing signage and protection measures (including plywood crossing for machine crossing) for both temporary and construction phases?
12. *Provide input from the Fire Protection Board on the suitability of the proposed common driveway for emergency access.* **Partially Addressed.** The most recent plan set submittal does not reflect comments from the Board of Fire Protection.
13. *Clarify whether the proposed common driveway between Green Tree Road and the railway would be available for public and/or emergency vehicle access to the railway.* **Addressed.**

The following new comments are provided on the recently submitted materials.

14. Environmental Assessment Form – Section C.4.d, add the North County Trailway to the list of parks.
15. Environmental Assessment Form – Section D.1.b, review answer to confirm disturbance area is correct for the updated site plans and for consistency with the SWPPP.
16. Environmental Assessment Form – Section D.2.l, confirm that the project intends to limit its contractors to 8:00 am to 4:30 pm, given that the Town's noise ordinance allows building construction noise between 7 am and 6 pm.
17. Environmental Assessment Form – Section D.2.m, review answer "no" since noise during construction would reasonably be expected to exceed existing ambient noise levels.
18. Environmental Assessment Form – Section E.3.h, there are several locally designated scenic resources in the Town which are within 5 miles of the project site.
19. Environmental Assessment Form – Section E., review answer "no" since noise during construction would reasonably be expected to exceed existing ambient noise levels.
20. Drawing Cover Sheet – Clarify the Summary of Environmentally Sensitive Lands table for disturbance to the wetland buffer, as there is disturbance to the wetland buffer for the common driveway.
21. Drawing Cover Sheet – Correct the Westchester County Department of Health name in their sign-off block.
22. Sheet SY3 – Add Construction Entrances at the entrance to Green Tree Road and on both sides of the trail crossing. Include regular maintenance sweeping dirt and debris tracked onto both Green Tree Road and the trail to the maintenance schedule.



23. Clarify the proposed trail access cover material. The layout plans show a grass trail, while detail 4/SY5 shows mulch, and the SWPPP states "mulch over grass base". The detail also does not include the pressure treated boards that are stated to be provided in the SWPPP (page 12).
24. Sheet SY8A - How will construction traffic loads be managed in the Ce soils within the common driveway near the entrance to Green Tree Road? Is any additional stabilization needed to prevent rutting and excessive soil disturbance during construction? Is the road section adequate to prevent sinking and shifting of the grasscrete pavers?
25. Sheet D2 – Correct the titleblock for this project.
26. Stormwater Pollution Prevention Plan – The submitted SWPPP appears generally complete and comprehensive. Detailed comments on the narrative and calculations will be provided with subsequent reviews.

To facilitate our review, please provide responses to these comments in an itemized letter. Please feel free to contact our office with any questions or concerns.

John Currie, *Chairman*
Vicky Gannon
Nancy Gerbino
Jack Mattes
Dennis McNamara
Bruce Prince
Christopher Zaberto

PLANNING BOARD
Town of Somers
WESTCHESTER COUNTY, N.Y.

TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589
TEL (914) 277-5366
FAX (914) 277-4093
EMAIL:
PLANNINGBOARD@SOMERSNY.COM



February 3, 2023

P. W. Scott
Engineering & Architecture, P.C.
3871 Route 6
Brewster, NY 10509

Re: Green Tree Road Subdivision
TM: 15.12-2-1

Dear P. W. Scott:

As per the attached agenda, the Town of Somers Planning Board will be reviewing your project at a Planning Board Meeting scheduled for Wednesday, February 8, 2023. It will begin at 7:30pm and will be held in the meeting room of Somers Town House (the Elephant Hotel) located at the intersection of Route 100 and Route 202. Your representation at this meeting is requested either in person or by your professional consultants.

If appropriate, consultants to the Planning Board will submit reports to the Board with comments and recommendation on your application. You will receive copies of these reports when they are available. The material to be considered by the Planning Board and its consultants will be the material that you have previously submitted. **DO NOT SUBMIT ANY NEW MATERIAL PRIOR TO THE MEETING, AS IT CANNOT BE CONSIDERED.**

Thank you for your cooperation. If you have any questions, please call the Somers Engineering and Planning Departments at 914-277-5366.

Mariann Aakjar
Office Assistant

Attachment



**New York State
Parks, Recreation and
Historic Preservation**

KATHY HOCHUL
Governor

ERIK KULLESEID
Commissioner

RECEIVED

FEB - 2 2023

**PLANNING-ENGINEERING
TOWN OF SOMERS**

February 02, 2023

Peder Scott
Engineer
PW Scott Engineering & Architecture, PC
3871 Danbury Rd
Brewster, NY 10509

Re: SEQRA
Green Tree Rd Subdivision
Green Tree Rd, Somers, NY 10598
23PR00779

Dear Peder Scott:

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the project in accordance with the New York State Historic Preservation Act of 1980 (Section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the OPRHP and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8) and its implementing regulations (6 NYCRR Part 617).

Based upon this review, it is the opinion of OPRHP that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project.

If further correspondence is required regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

R. Daniel Mackay

Deputy Commissioner for Historic Preservation
Division for Historic Preservation

rev: B. Russell

Wendy Getting

From: PWScott <pwscott@pwscott.com>
Sent: Thursday, February 2, 2023 10:15 AM
To: Wendy Getting
Cc: Tommy
Subject: FW: Status of Submission for Review

Wendy,
Please see email below from the NYSDOT regarding the status of our submission.
Please add this to the Green Tree Subdivision file and forward the information to the PB members.
Thank you
Peder (pc)

From: Darelius, Anne D (DOT) <Anne.Darelius@dot.ny.gov>
Sent: Thursday, February 2, 2023 9:31 AM
To: PWScott <pwscott@pwscott.com>
Subject: RE: Status of Submission for Review

Good morning,
We are in process with this review. I cannot at this time give you a firm date as to when the review will be complete, but we will complete it as soon as possible..
Thank you,
Anne

Anne D Darelius, P.E.
Permit Engineer, Residency 8-8, 8-9

New York State Department of Transportation, Hudson Valley Region
85 NYS Route 100, Katonah, NY 10536
(914) 274-7028 | anne.darelius@dot.ny.gov
www.dot.ny.gov



PLANNING AND ENGINEERING DEPARTMENTS

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(914) 277-5366
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(914) 277-4093

Town of Somers
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589
www.somersny.com

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com



David B. Smith
Town Planner
directorofplanning@somersny.com

February 1, 2023

To: Hon. John Currie, Chairman and Planning Board Members

From: David B. Smith

Re: Green Tree Subdivision

Cc: Gerry Reilly, Town Attorney
Steve Robbins, Town Engineering Consultant
Peder Scott, on behalf of the Applicant

The following is provided as an update to the process currently being considered for the proposed Green Tree Subdivision. As you will recall, the Applicant is looking to apply Town Law 280-a for property that does not have frontage on a Town road or right of way. The purpose for using the 280-a process is to ensure that there is suitable access to the property in question before a building permit is issued. 280-a requires that the Planning Board conduct an environmental review of the proposed action and provide their determination to the Town Board for their consideration. At that point the Town Board would need to consider the Open Development Area request for the three proposed lots. If the Town Board decides to grant the Open Development Area request the matter would come back to the Planning Board for a formal subdivision application. A copy of the article describing the 280-a process has been provided for your convenience.

With respect to the State Environmental Quality Review (SEQR) process noted above, attached please find a copy of Parts 1, 2 and 3 of the Full Environmental Assessment Form (EAF). Please note that Part 1 is prepared by the Applicant and it is the responsibility of the Planning Board as Lead Agency to fill out parts 2 and 3. To assist in the preparation of EAF Parts 2 and 3 a page from the SEQR Handbook has been provided which discusses the concept of "Reasonableness" as it applies to SEQR and the review of the EAF.

In summary, answering the questions in Part 2 of the EAF should be done in a reasonable manner while considering the scale and context of the project. Ultimately, the Planning Board will need to make a Determination of Significance (EAF Part 3) as to whether the proposed action will result in: (1) no significant adverse impacts to the environment; (2) where there may be significant adverse impacts on the environment, the specific impact can be avoided or substantially mitigated; or, the proposed action may result in one or more significant adverse impacts on the environment and an environmental impact statement must be prepared.

To date, the applicant has provided responses to some, but not all, of the requests for information from the various interested and involved agencies, Town staff and members of the public. At the upcoming meeting the Planning Board should consider the responses prepared to date and discuss whether there is adequate information and in enough detail to make an informed decision.

In the meantime, should you have any questions or comments on the above or attached please do not hesitate to reach out.

E. Where Can I Find the “SEQR Flow Chart and Time Frames” Publication?

The SEQR Flow Chart can be found on DEC’s SEQR publications page at <https://www.dec.ny.gov/permits/36860.html>.

F. What Is the Concept of “Reasonableness” as It Applies to SEQR?

The range of decision making by agencies and the comprehensive nature of SEQR continually present new circumstances that require judgment to apply SEQR. For instance, SEQR asks the lead agency to decide how many alternatives should be reviewed, how much information is enough, and if the proposed action is really “significant.” All lead agencies routinely face these and similar questions. While there cannot be black-and-white answers to such matters, there is one basic principle or rule that can be used: the rule of reason.

The regulations provide abundant support and tools for basing judgments on how to manage the SEQR process by choosing a reasonable approach. The principle of reasonableness, as put into practice in SEQR decision making, has been upheld by the courts. In addressing the review of impacts, the courts have limited the consideration of impacts to reasonably related potential impacts. The court decisions have also stated that not every conceivable impact needs to be considered—speculative impacts may be ignored.

The EAF and the Concept of Reasonableness:

The EAFs and associated workbooks assist the agency with applying the reasonableness principle. The tips and instructions provided by these documents recognize that frequently, there are aspects of a project that are subjective and

unmeasurable, and that the people who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. Given these practical limitations, SEQR asks that these decision-makers identify and consider, in an orderly manner, the relevant potential impacts of an action. The EAF Part 1 (Project Information) instructions to the project sponsor recognize that Part 1 is based upon currently available information. However, if an impact is judged relevant and significant, a subsequent EIS may require new studies, research, or investigation.

The initial instruction to the lead agency in Part 2 (Analysis) of the full EAF reminds the lead agency that it should answer the questions in a reasonable manner while considering the scale and context of the project, and recognizes that the reviewer is not expected to be an expert in environmental analysis. In Part 3 (Evaluation) of the EAF, the agency decides if it is reasonable to conclude that this impact is important. Following that instruction, a series of questions tests the reasonableness of the decision.

Continuing with the determination of significance in Part 3 of the EAF, the regulations ask that the lead agency identify and address relevant areas of environmental concern. If a potential impact is too speculative, it should not be addressed. The agency’s responsibility is to deal with impacts that are reasonably foreseeable.

Full Environmental Assessment Form
Part 1 - Project and Setting

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1 is accurate and complete.

A. Project and Applicant/Sponsor Information.

Name of Action or Project: Green Tree Subdivision		
Project Location (describe, and attach a general location map): TM#: 15.12-2-1 West end of Green Tree Rd, East of Mahopac Ave, West of Tomahawk Rd		
Brief Description of Proposed Action (include purpose or need): 3-Lot Subdivision on 9.75 acre parcel within R-80 Zone. Submission is a 280A Application		
Name of Applicant/Sponsor: Tommy Racek / Dynamite Properties		Telephone: 914-962-2689
		E-Mail: Tommyr1030@gmail.com
Address: 56 Papania Dr		
City/PO: Mahopac	State: NY	Zip Code: 10541
Project Contact (if not same as sponsor; give name and title/role): (Same)		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor): Michael Barile & Nicole Stern		Telephone: 914-804-1771
		E-Mail: nicole@lynlll.com
Address: 888 Route 6		
City/PO: Mahopac	State: NY	Zip Code: 10541

B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Council, Town Board, <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No or Village Board of Trustees	Approval 280A	
b. City, Town or Village <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Planning Board or Commission	Subdivision / Wetland / Trees	
c. City, Town or <input type="checkbox"/> Yes <input type="checkbox"/> No Village Zoning Board of Appeals		
d. Other local agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	County Planning	
e. County agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	WCDOH - Septics / Wells	
f. Regional agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	NYCDEP - Septic / SWPPP	
g. State agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	NYSDEC NOI	
h. Federal agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
i. Coastal Resources.		
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
iii. Is the project site within a Coastal Erosion Hazard Area?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

C. Planning and Zoning

C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? ☐ Yes ☒ No

- If Yes, complete sections C, F and G.
- If No, proceed to question C.2 and complete all remaining sections and questions in Part 1

C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? ☒ Yes ☐ No

If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? ☒ Yes ☐ No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) ☒ Yes ☐ No

If Yes, identify the plan(s):

NYC Watershed Boundary

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? ☐ Yes ☒ No

If Yes, identify the plan(s):

C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. ☒ Yes ☐ No
If Yes, what is the zoning classification(s) including any applicable overlay district?

b. Is the use permitted or allowed by a special or conditional use permit? ☒ Yes ☐ No

c. Is a zoning change requested as part of the proposed action? ☐ Yes ☒ No

If Yes,

i. What is the proposed new zoning for the site? _____

C.4. Existing community services.

a. In what school district is the project site located? Somers

b. What police or other public protection forces serve the project site?
Somers

c. Which fire protection and emergency medical services serve the project site?
Somers Volunteer Fire Dept. Somers EMS

d. What parks serve the project site?
Koegel Park

D. Project Details**D.1. Proposed and Potential Development**

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Residential

b. a. Total acreage of the site of the proposed action? 9.75 acres

b. Total acreage to be physically disturbed? 3.85 acres

c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 9.75 acres

c. Is the proposed action an expansion of an existing project or use? ☐ Yes ☒ No

i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____

d. Is the proposed action a subdivision, or does it include a subdivision? ☒ Yes ☐ No

If Yes,

i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)
Residential

ii. Is a cluster/conservation layout proposed? ☐ Yes ☒ No

iii. Number of lots proposed? 3

iv. Minimum and maximum proposed lot sizes? Minimum 2.2 Maximum 2.6

e. Will the proposed action be constructed in multiple phases? ☒ Yes ☐ No

i. If No, anticipated period of construction: _____ months

ii. If Yes:

- Total number of phases anticipated 4

- Anticipated commencement date of phase 1 (including demolition) 5 month 2023 year

- Anticipated completion date of final phase 5 month 2025 year

- Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: _____

Phase I: Install common driveway & stormwater practices

Phases II - IV: Development of (3) individual lots

f. Does the project include new residential uses? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
If Yes, show numbers of units proposed.				
	<u>One Family</u>	<u>Two Family</u>	<u>Three Family</u>	<u>Multiple Family (four or more)</u>
Initial Phase	0			
At completion				
of all phases	3			

g. Does the proposed action include new non-residential construction (including expansions)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes,	
i. Total number of structures _____	
ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length	
iii. Approximate extent of building space to be heated or cooled: _____ square feet	

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes,	
i. Purpose of the impoundment: _____	
ii. If a water impoundment, the principal source of the water: <input type="checkbox"/> Ground water <input type="checkbox"/> Surface water streams <input type="checkbox"/> Other specify: _____	
iii. If other than water, identify the type of impounded/contained liquids and their source. _____	
iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres	
v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length	
vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): _____	

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
(Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)	
If Yes:	
i. What is the purpose of the excavation or dredging? <u>Cut driveway, construct foundations</u>	
ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?	
• Volume (specify tons or cubic yards): <u>0</u>	
• Over what duration of time? _____	
iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them.	
<u>Overburden soil and rock - disturbed on house site</u>	
iv. Will there be onsite dewatering or processing of excavated materials? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If yes, describe. _____	
v. What is the total area to be dredged or excavated? <u>0.28</u> acres	
vi. What is the maximum area to be worked at any one time? <u>0.10</u> acres	
vii. What would be the maximum depth of excavation or dredging? <u>9.0</u> feet	
viii. Will the excavation require blasting? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
ix. Summarize site reclamation goals and plan: _____	
<u>Material used as fill for driveway site is net cut/fill site</u>	

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes:	
i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____	

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:
No impacts. All stormwater discharge mitigated to pre-development levels.

iii. Will the proposed action cause or result in disturbance to bottom sediments?

☐ Yes ☒ No

If Yes, describe:

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation?

☐ Yes ☒ No

If Yes:

- acres of aquatic vegetation proposed to be removed: _____
- expected acreage of aquatic vegetation remaining after project completion: _____
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): _____
- proposed method of plant removal: _____
- if chemical/herbicide treatment will be used, specify product(s): _____

v. Describe any proposed reclamation/mitigation following disturbance: _____

c. Will the proposed action use, or create a new demand for water?

☒ Yes ☐ No

If Yes:

i. Total anticipated water usage/demand per day: _____ 1600 gallons/day

ii. Will the proposed action obtain water from an existing public water supply?

☐ Yes ☒ No

If Yes:

- Name of district or service area: _____
- Does the existing public water supply have capacity to serve the proposal? ☐ Yes ☐ No
- Is the project site in the existing district? ☐ Yes ☐ No
- Is expansion of the district needed? ☐ Yes ☐ No
- Do existing lines serve the project site? ☐ Yes ☐ No

iii. Will line extension within an existing district be necessary to supply the project?

☐ Yes ☒ No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____
- Source(s) of supply for the district: _____

iv. Is a new water supply district or service area proposed to be formed to serve the project site?

☐ Yes ☒ No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- Proposed source(s) of supply for new district: _____

v. If a public water supply will not be used, describe plans to provide water supply for the project: _____

Individual Wells

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: _____ 5+ gallons/minute.

d. Will the proposed action generate liquid wastes?

☐ Yes ☒ No

If Yes:

i. Total anticipated liquid waste generation per day: _____ 1,600 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): _____

4-bedroom sanitary wastewater - Individual lots

iii. Will the proposed action use any existing public wastewater treatment facilities?

☐ Yes ☒ No

If Yes:

- Name of wastewater treatment plant to be used: _____
- Name of district: _____
- Does the existing wastewater treatment plant have capacity to serve the project? ☐ Yes ☐ No
- Is the project site in the existing district? ☐ Yes ☐ No
- Is expansion of the district needed? ☐ Yes ☐ No

- Do existing sewer lines serve the project site?
- Will a line extension within an existing district be necessary to serve the project?

☐ Yes ☒ No

☐ Yes ☒ No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site?

☐ Yes ☒ No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):

Individual SSDS

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____

Groundwater reclamation

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction?

☒ Yes ☐ No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

_____ Square feet or .714 acres (impervious surface)

_____ Square feet or 9.75 acres (parcel size)

ii. Describe types of new point sources. Infiltration basin discharge piping

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

Driveway swales to stormwater management structures

- If to surface waters, identify receiving water bodies or wetlands: _____

- Will stormwater runoff flow to adjacent properties?

☐ Yes ☒ No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater?

☒ Yes ☐ No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations?

☐ Yes ☒ No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit?

☐ Yes ☒ No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year)

☐ Yes ☐ No

ii. In addition to emissions as calculated in the application, the project will generate:

- _____ Tons/year (short tons) of Carbon Dioxide (CO₂)
- _____ Tons/year (short tons) of Nitrous Oxide (N₂O)
- _____ Tons/year (short tons) of Perfluorocarbons (PFCs)
- _____ Tons/year (short tons) of Sulfur Hexafluoride (SF₆)
- _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)
- _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? ☐ Yes ☒ No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐ Yes ☒ No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): _____

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☐ Yes ☒ No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐ Morning ☐ Evening ☐ Weekend
☐ Randomly between hours of _____ to _____

ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): _____

iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____

iv. Does the proposed action include any shared use parking? ☐ Yes ☐ No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: _____

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? ☐ Yes ☐ No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐ Yes ☐ No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐ Yes ☐ No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? ☒ Yes ☐ No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: _____
3 individual houses

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): _____
Grid / Local Utility

iii. Will the proposed action require a new, or an upgrade, to an existing substation? ☐ Yes ☒ No

l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: _____ 8:00 am to 4:30 pm
- Saturday: _____ 8:00 am to 4:30 pm
- Sunday: _____ None
- Holidays: _____ None

ii. During Operations:

- Monday - Friday: _____
- Saturday: _____
- Sunday: _____
- Holidays: _____

<p>m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes:</p> <p>i. Provide details including sources, time of day and duration:</p> <p>_____</p>	
<p>ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Describe: _____</p>	
<p>n. Will the proposed action have outdoor lighting? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes:</p> <p>i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:</p> <p>House security lights @ 12' AG on perimeter</p>	
<p>ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Describe: _____</p>	
<p>o. Does the proposed action have the potential to produce odors for more than one hour per day? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:</p> <p>_____</p>	
<p>p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Product(s) to be stored _____</p> <p>ii. Volume(s) _____ per unit time _____ (e.g., month, year)</p> <p>iii. Generally, describe the proposed storage facilities: _____</p>	
<p>q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Describe proposed treatment(s):</p> <p>_____</p> <p>_____</p>	
<p>ii. Will the proposed action use Integrated Pest Management Practices? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Describe any solid waste(s) to be generated during construction or operation of the facility:</p> <ul style="list-style-type: none"> • Construction: _____ tons per _____ (unit of time) • Operation : _____ tons per _____ (unit of time) <p>ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:</p> <ul style="list-style-type: none"> • Construction: _____ • Operation: _____ <p>iii. Proposed disposal methods/facilities for solid waste generated on-site:</p> <ul style="list-style-type: none"> • Construction: _____ • Operation: _____ 	

s. Does the proposed action include construction or modification of a solid waste management facility? ☐ Yes ☒ No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii. Anticipated rate of disposal/processing: _____

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: _____ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☒ No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☐ No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: _____

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

☐ Urban ☐ Industrial ☐ Commercial ☐ Residential (suburban) ☐ Rural (non-farm)

☒ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): _____

ii. If mix of uses, generally describe: _____

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces		.714	+ .714
• Forested	9.33	6.10	-3.23
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)		0.57	+0.57
• Agricultural (includes active orchards, field, greenhouse etc.)			
• Surface water features (lakes, ponds, streams, rivers, etc.)			
• Wetlands (freshwater or tidal)	0.22	0.22	0
• Non-vegetated (bare rock, earth or fill)	0.20	0.20	0
• Other Describe: <u>Residential Lawn</u>		1.946	+1.946

c. Is the project site presently used by members of the community for public recreation? ☐ Yes ☒ No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☐ Yes ☒ No
If Yes,
i. Identify Facilities: _____

e. Does the project site contain an existing dam? ☐ Yes ☒ No
If Yes:
i. Dimensions of the dam and impoundment:
• Dam height: _____ feet
• Dam length: _____ feet
• Surface area: _____ acres
• Volume impounded: _____ gallons OR acre-feet
ii. Dam's existing hazard classification: _____
iii. Provide date and summarize results of last inspection: _____

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☐ Yes ☒ No
If Yes:
i. Has the facility been formally closed? ☐ Yes ☐ No
• If yes, cite sources/documentation: _____
ii. Describe the location of the project site relative to the boundaries of the solid waste management facility: _____
iii. Describe any development constraints due to the prior solid waste activities: _____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐ Yes ☒ No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred: _____

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☐ Yes ☒ No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☐ Yes ☐ No
☐ Yes – Spills Incidents database Provide DEC ID number(s): _____
☐ Yes – Environmental Site Remediation database Provide DEC ID number(s): _____
☐ Neither database
ii. If site has been subject of RCRA corrective activities, describe control measures: _____
iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☐ Yes ☒ No
If yes, provide DEC ID number(s): _____
iv. If yes to (i), (ii) or (iii) above, describe current status of site(s): _____

v. Is the project site subject to an institutional control limiting property uses?

☐ Yes ☒ No

• If yes, DEC site ID number: _____

• Describe the type of institutional control (e.g., deed restriction or easement): _____

• Describe any use limitations: _____

• Describe any engineering controls: _____

• Will the project affect the institutional or engineering controls in place?

☐ Yes ☐ No

• Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site?

8.0 feet

b. Are there bedrock outcroppings on the project site?

☒ Yes ☐ No

If Yes, what proportion of the site is comprised of bedrock outcroppings?

1.0 %

c. Predominant soil type(s) present on project site:

Charlton

74 %

Leicester Loam

7.8 %

Sutton Loam

7.5 %

d. What is the average depth to the water table on the project site? Average:

4 feet

e. Drainage status of project site soils: ☒ Well Drained:

80 % of site

☒ Moderately Well Drained:

20 % of site

☐ Poorly Drained

_____ % of site

f. Approximate proportion of proposed action site with slopes:

☐ 0-10%:

27 % of site

☐ 10-15%:

46 % of site

☐ 15% or greater:

27 % of site

g. Are there any unique geologic features on the project site?

☐ Yes ☒ No

If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)?

☒ Yes ☐ No

ii. Do any wetlands or other waterbodies adjoin the project site?

☒ Yes ☐ No

If Yes to either i or ii, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency?

☒ Yes ☐ No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

• Streams: Name _____

Classification _____

• Lakes or Ponds: Name _____

Classification _____

• Wetlands: Name _____

Approximate Size _____

• Wetland No. (if regulated by DEC) _____

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies?

☐ Yes ☒ No

If yes, name of impaired water body/bodies and basis for listing as impaired: _____

i. Is the project site in a designated Floodway?

☐ Yes ☒ No

j. Is the project site in the 100-year Floodplain?

☐ Yes ☒ No

k. Is the project site in the 500-year Floodplain?

☐ Yes ☒ No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer?

☐ Yes ☒ No

If Yes:

i. Name of aquifer: _____

<p>m. Identify the predominant wildlife species that occupy or use the project site: <u>Deer / Squirrel / Birds in wooded site</u></p>	
<p>n. Does the project site contain a designated significant natural community? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Describe the habitat/community (composition, function, and basis for designation): _____</p> <p style="margin-left: 20px;">ii. Source(s) of description or evaluation: _____</p> <p style="margin-left: 20px;">iii. Extent of community/habitat:</p> <ul style="list-style-type: none"> • Currently: _____ acres • Following completion of project as proposed: _____ acres • Gain or loss (indicate + or -): _____ acres 	
<p>o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Species and listing (endangered or threatened): _____</p> <p>_____</p>	
<p>p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Species and listing: _____</p> <p>_____</p>	
<p>q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes, give a brief description of how the proposed action may affect that use: _____</p> <p>_____</p>	
<p>E.3. Designated Public Resources On or Near Project Site</p>	
<p>a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, provide county plus district name/number: _____</p>	
<p>b. Are agricultural lands consisting of highly productive soils present? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p style="margin-left: 20px;">i. If Yes: acreage(s) on project site? _____</p> <p style="margin-left: 20px;">ii. Source(s) of soil rating(s): _____</p>	
<p>c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Nature of the natural landmark: <input type="checkbox"/> Biological Community <input type="checkbox"/> Geological Feature</p> <p style="margin-left: 20px;">ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____</p> <p>_____</p>	
<p>d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p style="margin-left: 20px;">i. CEA name: <u>Baldwin Place Area</u></p> <p style="margin-left: 20px;">ii. Basis for designation: <u>Difficulties w/ portable water source</u></p> <p style="margin-left: 20px;">iii. Designating agency and date: <u>Agency: Somers, Town of, Date: 9-26-90</u></p>	

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes: <ul style="list-style-type: none"> i. Nature of historic/archaeological resource: <input type="checkbox"/> Archaeological Site <input type="checkbox"/> Historic Building or District ii. Name: _____ iii. Brief description of attributes on which listing is based: _____ 	
f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
g. Have additional archaeological or historic site(s) or resources been identified on the project site? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes: <ul style="list-style-type: none"> i. Describe possible resource(s): _____ ii. Basis for identification: _____ 	
h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes: <ul style="list-style-type: none"> i. Identify resource: _____ ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): _____ iii. Distance between project and resource: _____ miles. 	
i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes: <ul style="list-style-type: none"> i. Identify the name of the river and its designation: _____ ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? <input type="checkbox"/> Yes <input type="checkbox"/> No 	

F. Additional Information

Attach any additional information which may be needed to clarify your project.

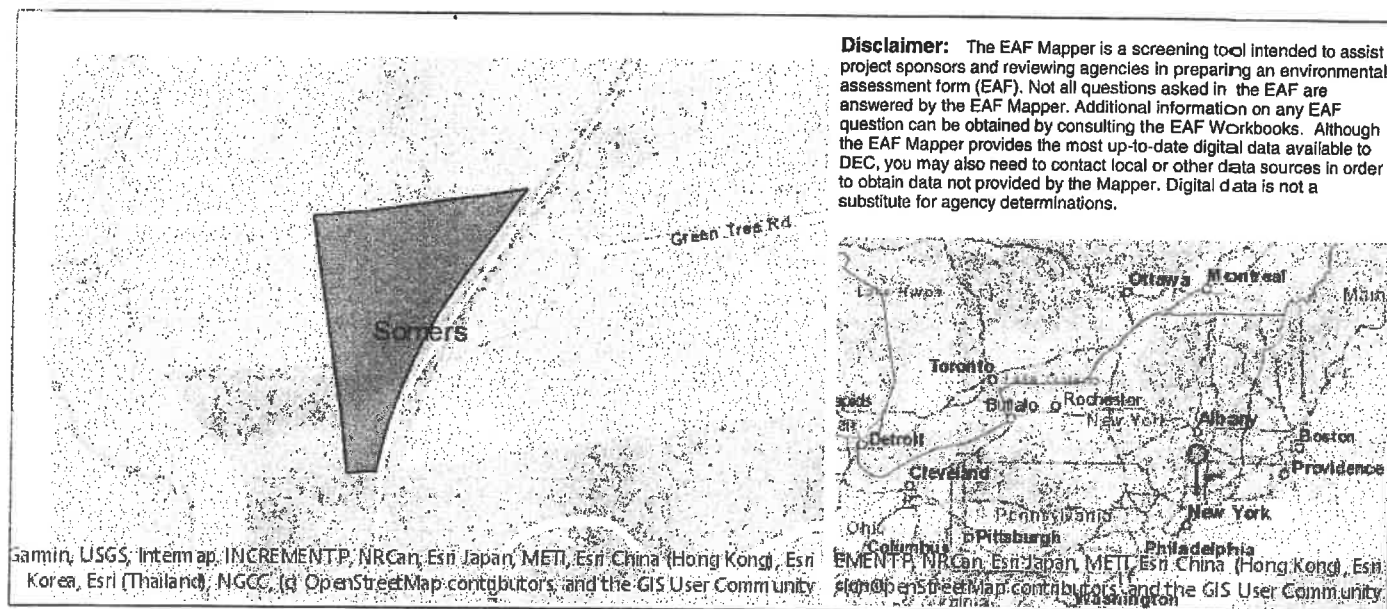
If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Peder W Scott, P.E., R.A. Date September 9, 2022

Signature  Title Professional Engineer



B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	NYC Watershed Boundary
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	No
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	No
E.2.k. [500 Year Floodplain]	No
E.2.l. [Aquifers]	Yes
E.2.l. [Aquifer Names]	Principal Aquifer
E.2.n. [Natural Communities]	No

E.2.o. [Endangered or Threatened Species]	No
E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	Yes
E.3.d [Critical Environmental Area - Name]	Baldwin Place Area
E.3.d.ii [Critical Environmental Area - Reason]	Difficulties w/ portable water source
E.3.d.iii [Critical Environmental Area – Date and Agency]	Agency:Somers, Town of, Date:9-26-90
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No

Full Environmental Assessment Form
Part 2 - Identification of Potential Project Impacts

Agency Use Only [If applicable]
 Project :
 Date :

Part 2 is to be completed by the lead agency. Part 2 is designed to help the lead agency inventory all potential resources that could be affected by a proposed project or action. We recognize that the lead agency's reviewer(s) will not necessarily be environmental professionals. So, the questions are designed to walk a reviewer through the assessment process by providing a series of questions that can be answered using the information found in Part 1. To further assist the lead agency in completing Part 2, the form identifies the most relevant questions in Part 1 that will provide the information needed to answer the Part 2 question. When Part 2 is completed, the lead agency will have identified the relevant environmental areas that may be impacted by the proposed activity.

If the lead agency is a state agency **and** the action is in any Coastal Area, complete the Coastal Assessment Form before proceeding with this assessment.

Tips for completing Part 2:

- Review all of the information provided in Part 1.
- Review any application, maps, supporting materials and the Full EAF Workbook.
- Answer each of the 18 questions in Part 2.
- If you answer “Yes” to a numbered question, please complete all the questions that follow in that section.
- If you answer “No” to a numbered question, move on to the next numbered question.
- Check appropriate column to indicate the anticipated size of the impact.
- Proposed projects that would exceed a numeric threshold contained in a question should result in the reviewing agency checking the box “Moderate to large impact may occur.”
- The reviewer is not expected to be an expert in environmental analysis.
- If you are not sure or undecided about the size of an impact, it may help to review the sub-questions for the general question and consult the workbook.
- When answering a question consider all components of the proposed activity, that is, the “whole action”.
- Consider the possibility for long-term and cumulative impacts as well as direct impacts.
- Answer the question in a reasonable manner considering the scale and context of the project.

1. Impact on Land Proposed action may involve construction on, or physical alteration of, <input type="checkbox"/> NO <input type="checkbox"/> YES the land surface of the proposed site. (See Part 1. D.1) <i>If “Yes”, answer questions a - j. If “No”, move on to Section 2.</i>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may involve construction on land where depth to water table is less than 3 feet.	E2d	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may involve construction on slopes of 15% or greater.	E2f	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may involve construction on land where bedrock is exposed, or generally within 5 feet of existing ground surface.	E2a	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve the excavation and removal of more than 1,000 tons of natural material.	D2a	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may involve construction that continues for more than one year or in multiple phases.	D1e	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).	D2e, D2q	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action is, or may be, located within a Coastal Erosion hazard area.	B1i	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

2. Impact on Geological Features

The proposed action may result in the modification or destruction of, or inhibit access to, any unique or unusual land forms on the site (e.g., cliffs, dunes, minerals, fossils, caves). (See Part 1. E.2.g)

☐ NO☐ YES

If "Yes", answer questions a - c. If "No", move on to Section 3.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Identify the specific land form(s) attached: _____	E2g	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may affect or is adjacent to a geological feature listed as a registered National Natural Landmark. Specific feature: _____	E3c	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

3. Impacts on Surface Water

The proposed action may affect one or more wetlands or other surface water bodies (e.g., streams, rivers, ponds or lakes). (See Part 1. D.2, E.2.h)

☐ NO☐ YES

If "Yes", answer questions a - l. If "No", move on to Section 4.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may create a new water body.	D2b, D1h	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in an increase or decrease of over 10% or more than a 10 acre increase or decrease in the surface area of any body of water.	D2b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may involve dredging more than 100 cubic yards of material from a wetland or water body.	D2a	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body.	E2h	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may create turbidity in a waterbody, either from upland erosion, runoff or by disturbing bottom sediments.	D2a, D2h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may include construction of one or more intake(s) for withdrawal of water from surface water.	D2c	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may include construction of one or more outfall(s) for discharge of wastewater to surface water(s).	D2d	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may cause soil erosion, or otherwise create a source of stormwater discharge that may lead to siltation or other degradation of receiving water bodies.	D2e	<input type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action.	E2h	<input type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may involve the application of pesticides or herbicides in or around any water body.	D2q, E2h	<input type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may require the construction of new, or expansion of existing, wastewater treatment facilities.	D1a, D2d	<input type="checkbox"/>	<input type="checkbox"/>

I. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>
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4. Impact on groundwater

The proposed action may result in new or additional use of ground water, or may have the potential to introduce contaminants to ground water or an aquifer.

☐ NO

☐ YES

(See Part 1. D.2.a, D.2.c, D.2.d, D.2.p, D.2.q, D.2.t)

If "Yes", answer questions a - h. If "No", move on to Section 5.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may require new water supply wells, or create additional demand on supplies from existing water supply wells.	D2c	<input type="checkbox"/>	<input type="checkbox"/>
b. Water supply demand from the proposed action may exceed safe and sustainable withdrawal capacity rate of the local supply or aquifer. Cite Source: _____	D2c	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may allow or result in residential uses in areas without water and sewer services.	D1a, D2c	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may include or require wastewater discharged to groundwater.	D2d, E2l	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in the construction of water supply wells in locations where groundwater is, or is suspected to be, contaminated.	D2c, E1f, E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may require the bulk storage of petroleum or chemical products over ground water or an aquifer.	D2p, E2l	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may involve the commercial application of pesticides within 100 feet of potable drinking water or irrigation sources.	E2h, D2q, E2l, D2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

5. Impact on Flooding

The proposed action may result in development on lands subject to flooding.

☐ NO

☐ YES

(See Part 1. E.2)

If "Yes", answer questions a - g. If "No", move on to Section 6.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in development in a designated floodway.	E2i	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in development within a 100 year floodplain.	E2j	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in development within a 500 year floodplain.	E2k	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in, or require, modification of existing drainage patterns.	D2b, D2e	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may change flood water flows that contribute to flooding.	D2b, E2i, E2j, E2k	<input type="checkbox"/>	<input type="checkbox"/>
f. If there is a dam located on the site of the proposed action, is the dam in need of repair, or upgrade?	E1e	<input type="checkbox"/>	<input type="checkbox"/>

g. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>
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6. Impacts on Air The proposed action may include a state regulated air emission source. <input type="checkbox"/> NO <input type="checkbox"/> YES (See Part 1. D.2.f., D.2.h, D.2.g) <i>If "Yes", answer questions a - f. If "No", move on to Section 7.</i>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. If the proposed action requires federal or state air emission permits, the action may also emit one or more greenhouse gases at or above the following levels:			
i. More than 1000 tons/year of carbon dioxide (CO ₂)	D2g	<input type="checkbox"/>	<input type="checkbox"/>
ii. More than 3.5 tons/year of nitrous oxide (N ₂ O)	D2g	<input type="checkbox"/>	<input type="checkbox"/>
iii. More than 1000 tons/year of carbon equivalent of perfluorocarbons (PFCs)	D2g	<input type="checkbox"/>	<input type="checkbox"/>
iv. More than .045 tons/year of sulfur hexafluoride (SF ₆)	D2g	<input type="checkbox"/>	<input type="checkbox"/>
v. More than 1000 tons/year of carbon dioxide equivalent of hydrochloroflourocarbons (HFCs) emissions	D2g	<input type="checkbox"/>	<input type="checkbox"/>
vi. 43 tons/year or more of methane	D2h	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may generate 10 tons/year or more of any one designated hazardous air pollutant, or 25 tons/year or more of any combination of such hazardous air pollutants.	D2g	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may require a state air registration, or may produce an emissions rate of total contaminants that may exceed 5 lbs. per hour, or may include a heat source capable of producing more than 10 million BTU's per hour.	D2f, D2g	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may reach 50% of any of the thresholds in "a" through "c", above.	D2g	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in the combustion or thermal treatment of more than 1 ton of refuse per hour.	D2s	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

7. Impact on Plants and Animals The proposed action may result in a loss of flora or fauna. (See Part 1. E.2. m.-q.) <input type="checkbox"/> NO <input type="checkbox"/> YES <i>If "Yes", answer questions a - j. If "No", move on to Section 8.</i>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may cause reduction in population or loss of individuals of any threatened or endangered species, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2o	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction or degradation of any habitat used by any rare, threatened or endangered species, as listed by New York State or the federal government.	E2o	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may cause reduction in population, or loss of individuals, of any species of special concern or conservation need, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2p	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in a reduction or degradation of any habitat used by any species of special concern and conservation need, as listed by New York State or the Federal government.	E2p	<input type="checkbox"/>	<input type="checkbox"/>

e. The proposed action may diminish the capacity of a registered National Natural Landmark to support the biological community it was established to protect.	E3c	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result in the removal of, or ground disturbance in, any portion of a designated significant natural community. Source: _____	E2n	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may substantially interfere with nesting/breeding, foraging, or over-wintering habitat for the predominant species that occupy or use the project site.	E2m	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action requires the conversion of more than 10 acres of forest, grassland or any other regionally or locally important habitat. Habitat type & information source: _____	E1b	<input type="checkbox"/>	<input type="checkbox"/>
i. Proposed action (commercial, industrial or recreational projects, only) involves use of herbicides or pesticides.	D2q	<input type="checkbox"/>	<input type="checkbox"/>
j. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

8. Impact on Agricultural Resources The proposed action may impact agricultural resources. (See Part 1. E.3.a. and b.) <input type="checkbox"/> NO <input type="checkbox"/> YES <i>If "Yes", answer questions a - h. If "No", move on to Section 9.</i>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may impact soil classified within soil group 1 through 4 of the NYS Land Classification System.	E2c, E3b	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may sever, cross or otherwise limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc).	E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in the excavation or compaction of the soil profile of active agricultural land.	E3b	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may irreversibly convert agricultural land to non-agricultural uses, either more than 2.5 acres if located in an Agricultural District, or more than 10 acres if not within an Agricultural District.	E1b, E3a	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may disrupt or prevent installation of an agricultural land management system.	E1 a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result, directly or indirectly, in increased development potential or pressure on farmland.	C2c, C3, D2c, D2d	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed project is not consistent with the adopted municipal Farmland Protection Plan.	C2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

9. Impact on Aesthetic Resources The land use of the proposed action are obviously different from, or are in sharp contrast to, current land use patterns between the proposed project and a scenic or aesthetic resource. (Part 1. E.1.a, E.1.b, E.3.h.) <i>If "Yes", answer questions a - g. If "No", go to Section 10.</i>			
		<input type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Proposed action may be visible from any officially designated federal, state, or local scenic or aesthetic resource.	E3h	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the obstruction, elimination or significant screening of one or more officially designated scenic views.	E3h, C2b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may be visible from publicly accessible vantage points: i. Seasonally (e.g., screened by summer foliage, but visible during other seasons) ii. Year round	E3h	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
d. The situation or activity in which viewers are engaged while viewing the proposed action is: i. Routine travel by residents, including travel to and from work ii. Recreational or tourism based activities	E3h E2q, E1c	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
e. The proposed action may cause a diminishment of the public enjoyment and appreciation of the designated aesthetic resource.	E3h	<input type="checkbox"/>	<input type="checkbox"/>
f. There are similar projects visible within the following distance of the proposed project: 0-1/2 mile 1/2 -3 mile 3-5 mile 5+ mile	D1a, E1a, D1f, D1g	<input type="checkbox"/>	<input type="checkbox"/>
g. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

10. Impact on Historic and Archeological Resources The proposed action may occur in or adjacent to a historic or archaeological resource. (Part 1. E.3.e, f. and g.) <i>If "Yes", answer questions a - e. If "No", go to Section 11.</i>			
		<input type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may occur wholly or partially within, or substantially contiguous to, any buildings, archaeological site or district which is listed on the National or State Register of Historical Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places.	E3e	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may occur wholly or partially within, or substantially contiguous to, an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory.	E3f	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may occur wholly or partially within, or substantially contiguous to, an archaeological site not included on the NY SHPO inventory. Source: _____	E3g	<input type="checkbox"/>	<input type="checkbox"/>

d. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>
If any of the above (a-d) are answered "Moderate to large impact may occur", continue with the following questions to help support conclusions in Part 3:			
i. The proposed action may result in the destruction or alteration of all or part of the site or property.	E3e, E3g, E3f	<input type="checkbox"/>	<input type="checkbox"/>
ii. The proposed action may result in the alteration of the property's setting or integrity.	E3e, E3f, E3g, E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
iii. The proposed action may result in the introduction of visual elements which are out of character with the site or property, or may alter its setting.	E3e, E3f, E3g, E3h, C2, C3	<input type="checkbox"/>	<input type="checkbox"/>

11. Impact on Open Space and Recreation The proposed action may result in a loss of recreational opportunities or a reduction of an open space resource as designated in any adopted municipal open space plan. (See Part 1. C.2.c, E.1.c., E.2.q.) <i>If "Yes", answer questions a - e. If "No", go to Section 12.</i>			
		<input type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in an impairment of natural functions, or "ecosystem services", provided by an undeveloped area, including but not limited to stormwater storage, nutrient cycling, wildlife habitat.	D2e, E1b E2h, E2m, E2o, E2n, E2p	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the loss of a current or future recreational resource.	C2a, E1c, C2c, E2q	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may eliminate open space or recreational resource in an area with few such resources.	C2a, C2c E1c, E2q	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in loss of an area now used informally by the community as an open space resource.	C2c, E1c	<input type="checkbox"/>	<input type="checkbox"/>
e. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

12. Impact on Critical Environmental Areas The proposed action may be located within or adjacent to a critical environmental area (CEA). (See Part 1. E.3.d) <i>If "Yes", answer questions a - c. If "No", go to Section 13.</i>			
		<input type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in a reduction in the quantity of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction in the quality of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

13. Impact on Transportation

The proposed action may result in a change to existing transportation systems.

☐ NO

☐ YES

(See Part 1. D.2.j)

If "Yes", answer questions a - f. If "No", go to Section 14.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Projected traffic increase may exceed capacity of existing road network.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the construction of paved parking area for 500 or more vehicles.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action will degrade existing transit access.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action will degrade existing pedestrian or bicycle accommodations.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may alter the present pattern of movement of people or goods.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

14. Impact on Energy

The proposed action may cause an increase in the use of any form of energy.

☐ NO

☐ YES

(See Part 1. D.2.k)

If "Yes", answer questions a - e. If "No", go to Section 15.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action will require a new, or an upgrade to an existing, substation.	D2k	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two-family residences or to serve a commercial or industrial use.	D1f, D1q, D2k	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may utilize more than 2,500 MWhrs per year of electricity.	D2k	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve heating and/or cooling of more than 100,000 square feet of building area when completed.	D1g	<input type="checkbox"/>	<input type="checkbox"/>
e. Other Impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

15. Impact on Noise, Odor, and Light

The proposed action may result in an increase in noise, odors, or outdoor lighting.

☐ NO

☐ YES

(See Part 1. D.2.m., n., and o.)

If "Yes", answer questions a - f. If "No", go to Section 16.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may produce sound above noise levels established by local regulation.	D2m	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in blasting within 1,500 feet of any residence, hospital, school, licensed day care center, or nursing home.	D2m, E1d	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in routine odors for more than one hour per day.	D2o	<input type="checkbox"/>	<input type="checkbox"/>

d. The proposed action may result in light shining onto adjoining properties.	D2n	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in lighting creating sky-glow brighter than existing area conditions.	D2n, E1a	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

16. Impact on Human Health

The proposed action may have an impact on human health from exposure to new or existing sources of contaminants. (See Part 1.D.2.q., E.1. d. f. g. and h.)

☐ NO

☐ YES

If "Yes", answer questions a - m. If "No", go to Section 17.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action is located within 1500 feet of a school, hospital, licensed day care center, group home, nursing home or retirement community.	E1d	<input type="checkbox"/>	<input type="checkbox"/>
b. The site of the proposed action is currently undergoing remediation.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
c. There is a completed emergency spill remediation, or a completed environmental site remediation on, or adjacent to, the site of the proposed action.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
d. The site of the action is subject to an institutional control limiting the use of the property (e.g., easement or deed restriction).	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may affect institutional control measures that were put in place to ensure that the site remains protective of the environment and human health.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action has adequate control measures in place to ensure that future generation, treatment and/or disposal of hazardous wastes will be protective of the environment and human health.	D2t	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action involves construction or modification of a solid waste management facility.	D2q, E1f	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may result in the unearthing of solid or hazardous waste.	D2q, E1f	<input type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may result in an increase in the rate of disposal, or processing, of solid waste.	D2r, D2s	<input type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may result in excavation or other disturbance within 2000 feet of a site used for the disposal of solid or hazardous waste.	E1f, E1g E1h	<input type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may result in the migration of explosive gases from a landfill site to adjacent off site structures.	E1f, E1g	<input type="checkbox"/>	<input type="checkbox"/>
l. The proposed action may result in the release of contaminated leachate from the project site.	D2s, E1f, D2r	<input type="checkbox"/>	<input type="checkbox"/>
m. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

17. Consistency with Community Plans The proposed action is not consistent with adopted land use plans. (See Part 1. C.1, C.2. and C.3.) <i>If "Yes", answer questions a - h. If "No", go to Section 18.</i>				<input type="checkbox"/> NO		<input type="checkbox"/> YES	
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur				
a. The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s).	C2, C3, D1a E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>				
b. The proposed action will cause the permanent population of the city, town or village in which the project is located to grow by more than 5%.	C2	<input type="checkbox"/>	<input type="checkbox"/>				
c. The proposed action is inconsistent with local land use plans or zoning regulations.	C2, C2, C3	<input type="checkbox"/>	<input type="checkbox"/>				
d. The proposed action is inconsistent with any County plans, or other regional land use plans.	C2, C2	<input type="checkbox"/>	<input type="checkbox"/>				
e. The proposed action may cause a change in the density of development that is not supported by existing infrastructure or is distant from existing infrastructure.	C3, D1c, D1d, D1f, D1d, E1b	<input type="checkbox"/>	<input type="checkbox"/>				
f. The proposed action is located in an area characterized by low density development that will require new or expanded public infrastructure.	C4, D2c, D2d D2j	<input type="checkbox"/>	<input type="checkbox"/>				
g. The proposed action may induce secondary development impacts (e.g., residential or commercial development not included in the proposed action)	C2a	<input type="checkbox"/>	<input type="checkbox"/>				
h. Other: _____		<input type="checkbox"/>	<input type="checkbox"/>				

18. Consistency with Community Character The proposed project is inconsistent with the existing community character. (See Part 1. C.2, C.3, D.2, E.3) <i>If "Yes", answer questions a - g. If "No", proceed to Part 3.</i>				<input type="checkbox"/> NO		<input type="checkbox"/> YES	
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur				
a. The proposed action may replace or eliminate existing facilities, structures, or areas of historic importance to the community.	E3e, E3f, E3g	<input type="checkbox"/>	<input type="checkbox"/>				
b. The proposed action may create a demand for additional community services (e.g. schools, police and fire)	C4	<input type="checkbox"/>	<input type="checkbox"/>				
c. The proposed action may displace affordable or low-income housing in an area where there is a shortage of such housing.	C2, C3, D1f D1g, E1a	<input type="checkbox"/>	<input type="checkbox"/>				
d. The proposed action may interfere with the use or enjoyment of officially recognized or designated public resources.	C2, E3	<input type="checkbox"/>	<input type="checkbox"/>				
e. The proposed action is inconsistent with the predominant architectural scale and character.	C2, C3	<input type="checkbox"/>	<input type="checkbox"/>				
f. Proposed action is inconsistent with the character of the existing natural landscape.	C2, C3 E1a, E1b E2g, E2h	<input type="checkbox"/>	<input type="checkbox"/>				
g. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>				

Project : Date :

Full Environmental Assessment Form
Part 3 - Evaluation of the Magnitude and Importance of Project Impacts
and
Determination of Significance

Part 3 provides the reasons in support of the determination of significance. The lead agency must complete Part 3 for every question in Part 2 where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.

Based on the analysis in Part 3, the lead agency must decide whether to require an environmental impact statement to further assess the proposed action or whether available information is sufficient for the lead agency to conclude that the proposed action will not have a significant adverse environmental impact. By completing the certification on the next page, the lead agency can complete its determination of significance.

Reasons Supporting This Determination:

To complete this section:

- Identify the impact based on the Part 2 responses and describe its magnitude. Magnitude considers factors such as severity, size or extent of an impact.
- Assess the importance of the impact. Importance relates to the geographic scope, duration, probability of the impact occurring, number of people affected by the impact and any additional environmental consequences if the impact were to occur.
- The assessment should take into consideration any design element or project changes.
- Repeat this process for each Part 2 question where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.
- Provide the reason(s) why the impact may, or will not, result in a significant adverse environmental impact
- For Conditional Negative Declarations identify the specific condition(s) imposed that will modify the proposed action so that no significant adverse environmental impacts will result.
- Attach additional sheets, as needed.

Determination of Significance - Type 1 and Unlisted Actions

SEQR Status: ☐ Type 1 ☐ Unlisted

Identify portions of EAF completed for this Project: ☐ Part 1 ☐ Part 2 ☐ Part 3

Upon review of the information recorded on this EAF, as noted, plus this additional support information

and considering both the magnitude and importance of each identified potential impact, it is the conclusion of the _____ as lead agency that:

☐ A. This project will result in no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, this negative declaration is issued.

☐ B. Although this project could have a significant adverse impact on the environment, that impact will be avoided or substantially mitigated because of the following conditions which will be required by the lead agency:

There will, therefore, be no significant adverse impacts from the project as conditioned, and, therefore, this conditioned negative declaration is issued. A conditioned negative declaration may be used only for UNLISTED actions (see 6 NYCRR 617.7(d)).

☐ C. This Project may result in one or more significant adverse impacts on the environment, and an environmental impact statement must be prepared to further assess the impact(s) and possible mitigation and to explore alternatives to avoid or reduce those impacts. Accordingly, this positive declaration is issued.

Name of Action:

Name of Lead Agency:

Name of Responsible Officer in Lead Agency:

Title of Responsible Officer:

Signature of Responsible Officer in Lead Agency:

Date:

Signature of Preparer (if different from Responsible Officer)

Date:

For Further Information:

Contact Person:

Address:

Telephone Number:

E-mail:

For Type 1 Actions and Conditioned Negative Declarations, a copy of this Notice is sent to:

Chief Executive Officer of the political subdivision in which the action will be principally located (e.g., Town / City / Village of)

Other involved agencies (if any)

Applicant (if any)

Environmental Notice Bulletin: <http://www.dec.ny.gov/enb/enb.html>

PRINT FULL FORM

NEW YORK ZONING LAW AND PRACTICE REPORT

MARCH/APRIL | VOL. 11 | NO. 5

TOWN LAW SECTION 280-A: REQUIREMENTS AND REMEDIES

Michael H. Donnelly¹

Section 280-a of the Town Law of the State of New York is an important—yet frequently misunderstood—section within Article 16 of the Town Law [Zoning and Planning]. The section is titled “Permits for buildings not on improved mapped streets,” and attempts to tie together, insofar as roadways are concerned, the jurisdiction of the building inspector (no building permits may be issued unless the requirements of the section are satisfied), the town board (possessed of the authority to establish town road and private road specifications) and the planning board (charged² with ensuring that roads within subdivisions are adequate to accommodate prospective traffic).

Unfortunately, §280-a is a cumbersome and difficult section of law. Its restrictive terms address only the issuance of building permits, yet the section has great importance in the context of subdivision and site plan review as well. Section 280-a announces that its requirements must be met before a building permit may be issued. However, it also provides two potential forms of relief—a *variance* under §280-a(3), and creation of an *open development area* under §280-a(4)—when those requirements are not met, or cannot be met. The variance relief provision pulls in the zoning board, and the open development area provision pulls in both the planning board and town board.

Some planning boards routinely send every applicant proposing a private road in his or her subdivision to the zoning board of appeals, in order to obtain a “280-a variance” due to the private road nature of the application. Is this what §280-a requires? If not, when is such a variance required? To answer this question—indeed, to understand §280-a at all—it makes sense to begin with the spectrum-like concepts of public roads, private roads, easements and rights-of-way.

PUBLIC V. PRIVATE ROADWAY

There is no requirement in the Town Law of the State of New York that roadways in subdivisions be town highways. The phrase *town highway* means a roadway offered for dedication to the town and,

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after acceptance, controlled and maintained by the town as a town road. Section 277(2)(a) of the Town Law does, however, direct that a planning board require that "the streets and highways [in a subdivision] be of sufficient width and suitable grade and shall be suitably located to accommodate the prospective traffic, to afford adequate light and air, to facilitate fire protection, and to provide access of fire fighting equipment to buildings."

Most local zoning codes or ordinances echo the approach taken by §277, providing that roads *may* be offered for dedication as town roads, but not requiring such dedication. A zoning law *requiring* dedication of roadways is not authorized by §277 and likely accomplishes a taking of property under the Fifth Amendment to the United States Constitution.³ Consistent with this approach, many towns promulgate a hierarchy of road specifications, often providing a less onerous specification for (presumptively less used) private roads. As an example, the zoning chapter in the Town of Monroe (Orange County) code provides that "[i]n the event that any roads are not offered for dedication or are not accepted by the town, suitable legal agreements satisfactory to the Town Board shall be required," and further provides two tiers for right-of-way widths: 30 feet "for any street not dedicated to the Town of Monroe," and 50 feet for "[a]ny street dedicated to the Town of Monroe."

What then is a private road? The term is not defined (or even mentioned) in §280-a. A private road is, however, generally understood to be a roadway shown as a road or street on a filed map, providing access to lots within a subdivision, which road or street will not be owned or controlled by a municipality. Typically, the owners of properties abutting a private road own to the centerline of that road. A defined strip of that privately

owned land, at a width sufficient to provide a travelled-way, then straddles that line. Within this strip, the road-way itself is constructed. As more fully explained below, utilization of a private road as just described does not itself require relief under §280-a of the Town Law, either under the variance provisions of §280-a(3) or under the open development area provisions of §280-a(4).

EASEMENTS AND RIGHTS-OF-WAY

Easements, in the most generic sense, are rights granted to someone to use land that they do not own. A common easement is an access easement, often called a right-of-way.⁴ The important concept here is that one having rights under an easement is permitted to use someone else's land for his own purpose. This is, of course, also true of a private road. However, there is an important distinction between a private road and a generic access easement, of which a private road is a subclass. While easement rights are recorded, private easements are not generally shown as streets or roads on subdivision maps filed with the county clerk. Private roads are. Thus, a right-of-way is quite different from a private or public road, one of the essential characteristics of which is depiction as a roadway on a filed map.

Enough background. Now to the issues. What is a 280-a variance? What is an open development area? When is a 280-a variance required? When can one be granted? When is 280-a variance relief unavailable? Under what circumstances must an open development area be created before a lot may receive a building permit?

TOWN LAW §280-A ACCESS

Town Law §280-a is, as noted already, a cumbersome and difficult section of law. The section prohibits issuance of a permit for the erection of a building on any lot in a town unless two requirements are met. First, the street or highway giving access to such proposed building [§280-a(1)]:

- must be a street duly placed on the official map or plan of the town, *or if the town has no official plan or map:*
 - unless such street or highway is an existing state, county or town highway, or
- must be a street shown upon a plat approved by the planning board as provided in sections two hundred seventy-six and two hundred seventy-seven of [the Town Law], as in effect at the time such plat was approved, or
- must be a street shown on a plat duly filed and recorded in the office of the county clerk or register prior to the appointment of such planning board and the grant to such board of the power to approve plats.

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Section 280-a further requires, before a building permit may be issued, that the road providing access shall either be improved to a road specification established by the town board, or (should the applicant appeal from the requirement that he satisfy this standard) to an extent—in the judgment of the zoning board of appeals—sufficient “to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles.”⁵ Such a request for relief to a zoning board of appeals is in the nature of an application for an area variance. While it is difficult to fit the review of an application for a §280-a(3) variance into the five-factor area variance analysis of Town Law Section 267-b(3), it is clear that a §280-a(3) variance is an area variance subject to that section⁶ and, presumably, that the zoning board must articulate an appropriate five-factor balancing analysis supporting its decision.

STATUS OF ROADWAY

What does all that mean? As noted, before a building permit may be issued, two requirements must be satisfied: (1) it must be demonstrated that the road providing access to the lot upon which construction is proposed is possessed of a certain formal status, and (2) the roadway must be *suitably* improved.⁷ Both requirements must be satisfied before a building permit may be issued. It is irrelevant whether the street providing access has been dedicated, or whether any such offer has been accepted by the town.⁸ Nor is it necessary that the applicant own⁹ the roadbed in question. Indeed, this will rarely be the case, for the intent of §280-a is to grant the town the authority to command improvements on property not owned¹⁰ by the applicant.

This is not to say that demonstration of a right of access across the roadbed is not an issue. Clearly it is. However, where a property owner takes title to property by reference to a lot shown on a filed map and that that lot abuts a street shown on that map, the law gives to that lot owner (indeed, to each such lot owner) the right to utilize that street for the purpose of ingress and egress to his property.¹¹

SUITABLY IMPROVED

The second requirement is that the street in question be *suitably* improved. This requirement is satisfied, as noted above, in one of two ways: either by improving the road to a specification set by the town board [§280-a(2)] or, at the permit-seeker's election, by appealing to the zoning board of appeals [§280-a(3)] for an area variance allowing construction at a lesser standard, governed solely by a test of adequacy of emergency vehicle access [§280-a(5)].

ROADWAY PROVIDING ACCESS

It is important to note that the “roadway providing access” in both requirements outlined above must be the roadway that will actually provide access; §280-a focuses on the status and adequacy of the access proposed to actually be used, not merely on the roadway onto which the property fronts. Therefore, a property that has frontage on a fully improved, well-maintained town road must still satisfy the requirements of §280-a (or obtain a variance modifying the suitability of improvement requirement) if the access which the owner of that property intends to use is through another roadway of qualifying status but unsuitable condition.¹²

It should now be obvious that whenever a roadway is shown on a filed map, or is an existing state, county or town highway, the first requirement of §280-a is automatically satisfied. If that roadway is also improved to the appropriate road specification (i.e., the town road specification for a town road and the private road specification for a private road), then both requirements of §280-a are satisfied, and a building permit may be issued. If the roadway, although satisfying the status requirement, does not meet the appropriate road specification requirement, a §280-a variance will then be required. As noted, the suitability-of-improvement determination to be made by the zoning board is governed solely by a test of adequacy of emergency vehicle access under §280-a(5).

FAILURE TO SATISFY THE STATUS REQUIREMENT

If, however, the roadway in question is not shown on any filed map (or is not an existing state, county or town highway), the first requirement of §280-a is not satisfied. And, while the zoning board may give relief from the second requirement (by fixing the suitable level of improvement of the roadway), it has no power to vary the first requirement of roadway status.¹³ Thus, when the accessway to property is not shown on any filed map as a road or street (or is not an existing state, county or town highway), no building permit may be issued for any building on that property. Is any relief available to the property owner in such circumstances?

OPEN DEVELOPMENT AREAS

The creation of an open development area¹⁴ under §280-a(4) allows issuance of building permits for homes on lots that obtain their access by an easement or right-of-way not shown on a filed map, rather than by means of a road of the status required by §280-a(1). Absent creation of an open development area, the owner of a lot obtaining access by means of a non-qualifying accessway could not (as noted already) obtain a building permit, because the first requirement of §280-a is not satisfied.

It is important to understand this essential difference between §280-a(3) (issuance of a variance on condition that a roadway be suitability improved) and §280-a(4) (open development area authorization). The issue is not public versus private¹⁵ roadways. Instead, the issue is roadways of the requisite status versus easements or rights-of-way that fail to satisfy that roadway status requirement.

What then are the procedural requirements for creation of an open development area? Section 280-a(4), which allows the creation of open development areas, requires that the town board seek the *advice* of the planning board before establishing an open development area. The section sets no time period for the planning board to give such advice, other than “a reasonable time to report.” Here is the full subparagraph:

4. The town board may, by resolution, establish an open development area or areas within the town, wherein permits may be issued for the erection of structures to which access is given by right of way or easement, upon such conditions and subject to such limitations as may be prescribed by general or special rule of the planning board, if one exists, or of the town board if a planning board does not exist. If a planning board exists in such town, the town board, before establishing any such open development area or areas, shall refer the matter to such planning board for its advice and shall allow such planning board a reasonable time to report.

What should be the content of the planning board's advisory report? The statute provides no particulars. However, because the purpose of §280-a is to insure that provision is made for suitable access to land before a building permit is issued, suitability of access will often be the primary focus of the planning board's report. How many lots will be served? Is the easement access proposed of sufficient width and suitable grade? Can it accommodate the traffic anticipated to use it? Can emergency services personnel obtain access to the building or buildings to be constructed? How many lots can the roadway serve? The planning board may also look to the town's comprehensive development plan to see if it offers any guidance.

The planning board is additionally given the authority, under authority of §280-a(4), to promulgate “general or special rule[s]” setting “conditions” and “limitations” on the creation and design of open development areas within the town. These rules may presumably be promulgated in advance in the generic sense (“general” rules), or upon the specific application referred to the planning board (“special” rules) for that particular open development area.

The planning board is bound by §280-a(4) to provide the town board with its advice upon referral; deliver of its “advice” is not optional. Because some of these issues

touch upon an examination of the land in question and the nature of the easement itself, the planning board may wish to have the assistance of an engineer or planner in formulating its report. The town board may follow the recommendation of its planning board, or decline to follow that recommendation; the town board alone has the authority to create an open development area.

SEQRA CONCERNS

How does the New York State Environmental Quality Review Act (SEQRA) apply to the advisory report of the planning board? SEQRA was enacted to formalize the method by which the environmental impacts of a project are evaluated. Importantly, it requires that environmental impacts be evaluated first and through to completion before any action is taken by an agency having approval authority. SEQRA is a statute, but it is within the regulations promulgated under its authority that the real *meat* of the law will be found.

SEQRA IN GENERAL

The “fundamental policy” of SEQRA “is to inject environmental considerations directly into governmental decision making” at the earliest opportunity [ECL 8-0109(4)] and to the fullest extent possible [ECL 8-0103(6)], through strict compliance with SEQRA's mandates [ECL 8-0103(7); 6 NYCRR 617.1(d)].¹⁶ Where a single project is comprised of several components, each requiring review and approval from a different agency, the review of the potential environmental impacts of that project must be “coordinated,” and no agency may undertake, fund or approve any portion of the project until there has been compliance with the requirements of SEQRA.¹⁷ This is so even where other agency approvals have not been applied for at the time of the original application, but will rather be applied for in the future.¹⁸

SEQRA requires strict compliance, and a failure to honor either its spirit or letter mandates an annulment of any agency action taken in violation of its directives.¹⁹ While not every project requires preparation of an environmental impact statement, all projects require, at least, the preparation of an environmental assessment form [6 NYCRR §617.6(a)(2), (3)], the designation of a “lead agency” [6 NYCRR §617.6(b)], the “typing” of the action (Type I, Type II or Unlisted) [6 NYCRR §617.6(a)(1)(iv)], and—except for Type II actions—issuance of a “declaration of significance” (positive or negative declaration) by the lead agency [6 NYCRR §617.7]. A negative declaration ends environmental review [6 NYCRR §617.3(c)(1)]. A positive declaration requires preparation of an environmental impact statement [6 NYCRR §617.7(a)(1)].

COORDINATED REVIEW UNDER SEQRA

One of SEQRA's most crucial mandates is that no discrete action in regard to a project may be taken by any agency having approval authority over an aspect of a project until the lead agency has completed environmental review, either through issuance of a negative declaration or the completion of an environmental impact statement. A decision by an agency to act prior to appropriate environmental review is called impermissible *segmentation* and constitutes a violation of SEQRA.²⁰ The rule prohibiting impermissible segmentation is designed to prevent (among other things) a premature agency action which, "although not legally conclusive [as to other agencies]... might well [be] practically determinative."²¹

In most cases, we can assume that the town board will serve as lead agency for SEQRA purposes in the review of an application for creation of an open development area under §280-a(4). The question presented, when the town board refers the application to the planning board for a report, is whether the planning board may act before the town board, as the lead agency, concludes SEQRA review. This depends, in part, upon whether the report of the planning board is classified a Type II action under SEQRA regulations; Type II actions are exempt from complying with SEQRA.

The SEQRA regulations set forth a listing of Type II Actions. Among those listed in that category is the following [emphasis added]:

617.5 Type II Actions.

* * *

(c) The following actions are not subject to review under this Part:

* * *

(21) conducting concurrent environmental, engineering, economic, feasibility and other studies and *preliminary planning and budgetary processes necessary to the formulation of a proposal for action*, provided those activities *do not commit the agency to commence, engage in or approve* such action;

Thus, if the planning board's report is viewed as a preliminary process that does not commit it to approve the *project* (in this context, the subdivision application ultimately submitted for approval), then issuance of the planning board's report is likely a Type II action and it need not comply with SEQRA. If, on the other hand, its report is viewed as more than preliminary and does, in effect, commit it to later grant subdivision approval, then the planning board may not issue its report until there has been full compliance with SEQRA.

The level of approval that is *held at bay* until there has been SEQRA compliance is not always easy to discern. The Appellate Division, Second Department, recently

upheld the grant of "sketch" approval by a lead-agency planning board prior to completing SEQRA review, on the grounds that the local code provision authorizing sketch review and approval specifically recited that sketch approval "shall in no way imply immediate or eventual approval status," but was rather "merely intended to convey to the applicant the relative assurance that the development ... is basically conforming to the Master Plan ... and its implementing land use regulations."²² Similarly, the same court has ruled that a town board's cluster subdivision authorization under Town Law §288 constitutes a preliminary step in the approval process.²³ There is a strong argument, however, that a favorable planning board report on creation of an open development area would, practically speaking, commit it to approving the subdivision application ultimately submitted to it. Moreover, the planning board may benefit greatly (in the case where a positive declaration is issued) in the data and analysis that flows from the environmental review process under SEQRA.

When it appears that no development can take place on an applicant's property unless an open development area is created, denial of the application seeking creation of an open development area may constitute a taking of property entitling the owner to just compensation.

"TAKINGS" BACKDROP

One final matter. When it appears that *no* development can take place on an applicant's property unless an open development area is created—and this may often be the context in which an application for open development area relief is made—the planning board should be mindful (and the town board even more so) of the possibility that denial of the application seeking creation of an open development area *may* constitute a taking of property entitling the owner to just compensation under the Fifth Amendment to the United States Constitution. This is so because the United States Supreme Court has ruled that a regulation or administrative action that denies *all* economically viable use of property constitutes a taking of property that entitles that property's owner to just compensation.²⁴ The ins-and-outs of when a taking occurs are rather complicated and go beyond the scope of this article. However, while it used to be a complete defense to a regulatory taking claim that the challenger acquired the property after the regulatory scheme was enacted (here, §280-a itself), that is no longer the law.

The Supreme Court ruled, in 2001, that entry into title subsequent to enactment of a governmental regulation is no longer an absolute bar to a claim that application of the regulation to that titleholder constitutes a taking.²⁵ Instead, the courts must determine if application of the regulation constitutes a taking by examining its economic impact on the landowner, and the extent to which application of the regulation interferes with the distinct and reasonable investment-backed expectations of that landowner in the context of the character of the governmental action.²⁶

Despite cumbersome draftsmanship and nearly-hidden intent, §280-a is an important, necessary and fair statute that attempts to balance the community's need for safety and order in development with a property owner's desire to tailor a town's zoning rules to his unique circumstances and, in some cases, to provide a safety valve (akin to the use variance) necessary to insure that application of the section does not completely deny a property owner viable use of his land. If only the legislature had packaged this section with a neater bow!

NOTES

1. Michael Donnelly is a partner with the Goshen, NY law firm of Dickover, Donnelly, Donovan & Biagi. His areas of practice include litigation, land use law and general municipal law.
2. Town Law §277(2)(a).
3. The Court of Appeals, in finding the grant of authority to compel the dedication of parkland under Town Law §281 unconstitutional, noted in passing that §277 similarly does not authorize a "town to compel uncompensated grants from the developer." *Kamhi v. Planning Bd. of Town of Yorktown*, 59 N.Y.2d 385, 391, 465 N.Y.S.2d 865, 452 N.E.2d 1193 (1983).
4. Causing great confusion is the fact that the portion of land over which a (public or private) road may be built is also called the right-of-way.
5. Town Law §280-a(5).
6. *Lund v. Town Bd. of Town of Philipstown*, 162 A.D.2d 798, 557 N.Y.S.2d 712 (3d Dep't 1990).
7. Section 280-a, of course, also makes provision for bonding to insure future completion of the roadway improvements in order to allow more convenient and efficient construction sequencing.
8. *Green Acres Bldg. Corp. v. Board of Zoning Appeals of Town of Irondequoit*, 22 Misc. 2d 877, 197 N.Y.S.2d 565 (Sup 1959).
9. Ownership issues, particularly in cases involving ancient subdivisions, are often troublesome. The "paper streets" shown on the plat are often owned either by the original subdivider (who often cannot be found) or—it is sometimes argued—by each individual lot owner abutting the road to the center line thereof, under authority of *Sullivan v. Markowitz*, 239 A.D.2d 404, 658 N.Y.S.2d 634 (2d Dep't 1997) ("It is well settled that when an owner of property sells lots with reference to a map, and those lots abut upon a street as shown on the map, the grantor has presumptively conveyed the fee to the center of the street on which the lots abut, subject to the rights of other lot owners and their invitees to use the entire area of the street for highway purposes."). Such ownership issues, while often fascinating, are usually irrelevant to a §280-a variance application.
10. Indeed, "the only statutory authorization for requiring the petitioners to improve streets outside their proposed subdivision is that contained in section 280-a of the Town Law, which authorizes the town to require improvements of such streets as are located outside a subdivision map before a building permit may be issued." *Pearson Kent Corp. v. Bear*, 35 A.D.2d 211, 212, 315 N.Y.S.2d 226 (2d Dep't 1970), order rev'd on other grounds, 28 N.Y.2d 396, 322 N.Y.S.2d 235, 271 N.E.2d 218 (1971).
11. *Fischer v. Liebman*, 137 A.D.2d 485, 524 N.Y.S.2d 720 (2d Dep't 1988); *M. Parisi & Son Const. Co., Inc. v. Adipietro*, 21 A.D.3d 454, 800 N.Y.S.2d 723 (2d Dep't 2005).
12. See *Novak v. Planning Bd. of Town of LaGrange*, 136 A.D.2d 610, 523 N.Y.S.2d 590 (2d Dep't 1988), where §280-a relief was required for a property that fronted on the Taconic State Parkway but did not have actual access to that public road.
13. *Indelicato v. Town of Lloyd*, 34 A.D.3d 1056, 826 N.Y.S.2d 445 (3d Dep't 2006).
14. Open development areas are, apart from use as a relief mechanism under §280-a(4), a useful planning tool that can encourage landowners to create rural-style developments with country-style roads—something that would be financially difficult (or impossible) to achieve if typical town road or private road specifications needed to be met.
15. While creation of an open development area is not required for building permits to issue in private road subdivisions, an open development area is required before building permits can be issued for properties that obtain their access by way of easement not shown on a filed map. See *Wiederspiel v. Leifeld*, 197 A.D.2d 781, 602 N.Y.S.2d 712 (3d Dep't 1993).
16. *King v. Saratoga County Bd. of Sup'rs*, 89 N.Y.2d 341, 347-48, 653 N.Y.S.2d 233, 675 N.E.2d 1185 (1996); *Coca-Cola Bottling Co. of New York, Inc. v. Board of Estimate of City of New York*, 72 N.Y.2d 674, 679-80, 536 N.Y.S.2d 33, 532 N.E.2d 1261 (1988).
17. See 6 NYCRR §§617.3(a), (g); *Village of Westbury v. Department of Transp.*, 75 N.Y.2d 62, 68-70, 550 N.Y.S.2d 604, 549 N.E.2d 1175 (1989); *Teich v. Buchheit*, 221 A.D.2d 452, 633 N.Y.S.2d 805 (2d Dep't 1995); *Town of Coeymans v. City of Albany*, 284 A.D.2d 830, 728 N.Y.S.2d 797 (3d Dep't 2001).
18. 6 NYCRR §617.7(c)(2)(ii); *Village of Westbury*, supra n. 17 at 75 N.Y.2d 68-69; *Scenic Hudson, Inc. v. Town of Fishkill Town Bd.*, 258 A.D.2d 654, 685 N.Y.S.2d 777 (2d Dep't 1999).
19. *Rye Town/King Civic Ass'n v. Town of Rye*, 82 A.D.2d 474, 480-81, 442 N.Y.S.2d 67 (2d Dep't 1981) ("We read these provisions to mandate literal compliance with SE-QRA; substantial compliance with the spirit of the act does not constitute adherence to its policies to the fullest extent possible.") (internal quotations omitted); *Schenectady Chemicals, Inc. v. Flacke*, 83 A.D.2d 460, 463, 446 N.Y.S.2d 418 (3d Dep't 1981).
20. *Village of Westbury v. Department of Transp.*, 75 N.Y.2d 62, 550 N.Y.S.2d 604, 549 N.E.2d 1175 (1989).
21. *Tri-County Taxpayers Ass'n, Inc. v. Town Bd. of Town of Queensbury*, 55 N.Y.2d 41, 46, 447 N.Y.S.2d 699, 432 N.E.2d 592 (1982).

22. *Muir v. Town of Newburgh*, 49 A.D.3d 744, 854 N.Y.S.2d 727 (2d Dep't 2008) (*Muir I*). See also *Muir II*: *Muir v. Town of Newburgh Planning Bd.*, 49 A.D.3d 742, 854 N.Y.S.2d 896 (2d Dep't 2008).
23. *Maor v. Town of Ramapo Planning Bd.*, 44 A.D.3d 665, 843 N.Y.S.2d 163 (2d Dep't 2007).
24. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992).
25. *Palazzolo v. Rhode Island*, 533 U.S. 606, 121 S. Ct. 2448, 150 L. Ed. 2d 592 (2001).
26. *Palazzolo*, *supra* n. 25; *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S. Ct. 158, 67 L. Ed. 322, 28 A.L.R. 1321 (1922).

OF RELATED INTEREST

Discussion of matters related to the subject of the above article can be found in:

Salkin, *New York Zoning Law and Practice* §§31:37, 31:49, 31:51

RECENT CASES

SECOND CIRCUIT HOLDS THAT UNDER RLUIPA, NEW YORK CITY COULD NOT BAR CHURCH FROM USING ITS FACILITIES FOR PRIVATE CATERED EVENTS WHEN SECULAR INSTITUTIONS IN THE SAME NEIGHBORHOOD WERE ALLOWED TO DO SO.

In order to raise money for building renovations, the Third Church of Christ, Scientist, contracted with a catering company to give the company the right to hold private functions in the church building. Although the Manhattan Department of Buildings (DOB) initially granted an accessory-use permit for this activity in June 2006, in October 2007, after some of the Church's neighbors complained, the DOB issued a notice of intent to revoke the permit. The notice stated that the catering establishment was not an accessory use because it appeared to be a principal commercial establishment at the premises. The notice gave the Church ten days to submit evidence to the contrary, and stated that "in no event" would DOB allow catered events at the Church after April 29, 2008. In November 2007, DOB issued a final revocation of the June 2006 permit.

The Church sued the City of New York in federal court under the "equal terms" provision of the Religious Land Use and Institutionalized Persons Act (RLUIPA), which reads "no government shall impose or implement a land use regulation in a manner that treats a religious assem-

bly or institution on less than equal terms with a nonreligious assembly or institution" (42 U.S.C.A. § 2000cc(b) (1)). To show unequal treatment, the Church pointed out that two secular institutions in the same residentially-zoned area—the Beekman co-operative apartment building and the Regency hotel—were offering similar catering and event services. The district court issued a temporary restraining order preventing the City from enforcing DOB's revocation of the permit.

To rebut the Church's charge of unequal treatment, the City subsequently issued Notices of Violation (NOVs) to Beekman and Regency for operating outside their Certificates of Occupancy. The district court, however, concluded that an NOV—which merely starts an administrative process whose outcome is uncertain—was a different type of sanction from revocation of an accessory-use permit, and imposed a permanent injunction barring the City from revoking the Church's permit.

On appeal, the United States Court of Appeals for the Second Circuit affirmed. Although the City argued that Beekman and Regency were not valid secular comparators to the Church, the Court agreed with the district court that they were. All three entities were located in the same residentially-zoned neighborhood on the Upper East Side of Manhattan. All three were engaged in large-scale catering activities. Although the City asserted that Beekman's and Regency's activities were accessory uses, while the Church's similar activities were not, the court noted that all three entities' activities were deemed illegal by the City—the Church's because its activities were not an accessory use, and Beekman's and Regency's because theirs exceeded their Certificates of Occupancy. That, said the court, was enough to make all three similarly situated. The court rejected the City's contention that the fact that the Church had sought permission for its catering activities, while Beekman and Regency never had, made Beekman and Regency invalid comparators.

The next question, said the court, was whether it was unreasonable for the district court to conclude that the City had treated the Church differently from Beekman and Regency. The court held that the district court's finding on this point was well within the range of reasonableness. The notice issued to the Church by DOB stated that "in no event" would the Church be allowed to hold catered events after April 29, 2008—an absolute prohibition that apparently denied permission even to hold a small catered reception in connection with the wedding or baptism of a Church member, a type of event that no one suggested would fail to qualify as an accessory use for a church. By contrast, there was no evidence that the City had threatened to shutter the catering facilities at either Beekman or Regency, and neither institution had ceased its catering operations, even though the City had a wide variety of enforcement mechanisms it could have

pursued against them. *Third Church of Christ, Scientist, of New York City v. City of New York*, 626 F.3d 667 (2d Cir. 2010).

NORTHERN DISTRICT OF NEW YORK HOLDS THAT ACTION BY LANDOWNER AND WINERY, BASED ON FAILURE TO APPROVE PROPOSED LAND USE, WAS NOT RIPE BECAUSE NO VARIANCE HAD BEEN SOUGHT.

Rivendell Winery, LLC, operated a vineyard and winery until forced to cease operations due to storm damage. Intending to resume the winery's activities, Rivendell's principal owner, Susan L. Wine, acquired two contiguous parcels of land in the Town of New Paltz and leased them to Rivendell. The land was located in a zoning district in which agriculture was one of a number of permitted uses. Wine and Rivendell applied to the Town Planning Board for approval of the proposed use.

Although Wine and Rivendell had been told by the Board chairman that the proposed use was agricultural and therefore permissible, the Town Building Inspector, Thomas Wiacek, said in a letter to the Board that the proposed retail sale of wine in a house on the premises would be contrary to the Town Code, which provided for retail sale of agricultural produce only from a road stand. Wiacek indicated that a variance from the Zoning Board of Appeal would be necessary. Later he concluded in another letter that the proposed use of the building on the property was business and not agricultural and therefore not permitted, although the land could be used for agricultural purposes.

Wine and Rivendell appealed Wiacek's determination to the Zoning Board of Appeals (ZBA). In support of their appeal, they submitted a letter from the state Commissioner of Agriculture and Markets, Patrick Hooker, in which he stated that the proposed use of the property, including the marketing of the wine on the premises, was a "farm operation" under the state Agricultural and Markets Law. In addition, the County Planning Board, in response to a request from the ZBA, opined that the proposed winery was an agricultural use within the Town's zoning statute. However, the ZBA denied the appeal of Wine and Rivendell without addressing the findings made by Commissioner Hooker or the Planning Board.

Wine and Rivendell filed an Article 78 proceeding in state court but were unsuccessful. They then sued the

Town, the ZBA, and others in federal court, alleging, inter alia, that the adverse decisions against them were the result of undue pressure applied to the decision makers by persons who had personal interests in keeping the winery from opening.

The defendants moved for dismissal on the grounds of, inter alia, lack of subject matter jurisdiction, and the court granted the motion. The defendants argued that the plaintiffs' claims were unripe because they had not sought a variance from the Town's zoning laws. The court noted that generally a final decision as to how property may be used has not been made unless the owner seeks a variance. However, the court continued, a variance need not be sought if it can be shown that an application therefore would be futile, i.e., if the zoning agency lacks discretion to grant it, or has "dug in its heels" and made clear that all such applications will be denied. The plaintiffs conceded that they had not sought a variance, but contended that they had demonstrated that any application would have been futile.

The court disagreed. While admitting that the success of an application would have been doubtful, the court said that mere doubt is insufficient to establish futility. Even taking the allegations of the complaint as true, the facts did not show that the ZBA would necessarily have denied an application for a variance. To the contrary, said the court, several facts suggested that such an application might have been granted; the Town Assessor had determined that nine acres of the property qualified as agricultural use, and Wiacek himself had suggested that the plaintiffs apply for a variance. Most importantly, continued the court, different standards would govern the consideration of the plaintiffs' site-plan application and any application they might make for a variance. Although the plaintiffs had made several assertions that, if true, tended to show that the defendants did not feel that the proposed winery qualified as an agricultural use, the allegations in the complaint were far from sufficient to establish that the ZBA had dug in its heels and made clear that an application for a variance would be denied. The court ruled that if the plaintiffs' claims later became ripe upon denial of an application for a variance, they could refile their claims without payment of the usual filing fee. *Rivendell Winery, LLC v. Town of New Paltz*, 725 F. Supp. 2d 311 (N.D. N.Y. 2010).

BUREAU OF FIRE PREVENTION

Telephone
(914) 277-5582
Fax
(914) 277-3790

Town of Somers
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589

THOMAS J. TOOMA, JR.
CHIEF



RECEIVED

JAN 31 2023

**PLANNING-ENGINEERING
TOWN OF SOMERS**

MEMO TO: Planning Board

FROM: Bureau of Fire Prevention

RE: Green Tree Road Subdivision

DATE: January 30, 2023

At our monthly meeting on January 18, 2023, we met with Peder Scott, P.E., R.A. of P.W. Scott Engineering and Architect, P.C. to review preliminary plans for the Green Tree Road Subdivision. Please find attached the meeting notes and Fire Access Plan that were discussed and ultimately agreed upon.

attachments

	P.W. Scott	pwscott@pwscott.com
	Engineering & Architecture, P.C.	www.pwscott.com
	3871 Danbury Rd (Route 6)	(845) 278-2110
	Brewster, NY 10509	

January 27, 2023

Denise Schirmer, Secretary
Bureau of Fire Prevention
337 Route 202, Somers, NY
dschirmer@somersny.com

Re: Town of Somers Bureau of Fire Prevention
Green Tree Subdivision - Meeting Minutes 1/18/23

Attendees: Peder Scott, P.E., R.A.
Thomas Tooma Jr., Chief, ttooma@somersny.com
Bureau of Fire Prevention Members
Denise Schirmer, Secretary, dschirmer@somersny.com (telephonically)

The following items were discussed at our meeting on January 18, 2023:

1. Road name shall be:
Green Tree Commons
Requires Green & White letter street sign at entrance
2. Signage at entrance to cul-de-sac
15, 16, 17 – Private Drive
Size 18 x 24
3. E911 Numbers on each lot
18 x 24 sign mounted @ 36" AFG
Just numerical: 15, 16, 17 located at driveway entrances
4. Snow Plowing: Issues, requires:
 - a. Dedicated snow areas
 - b. 42" tall – 1/4" fiberglass poles along sides of 16' common driveway to denote clear plowing of complete 16' width
5. Lot #2 – An exposed paved area to extend from back-up area along existing stone wall to allow turn around for fire vehicle. Must be shown on Dwg SY10 – Fire truck access
6. Driveway Maintenance Agreement to include
 - a. No parking on common driveway
 - b. Clearing of snow from common driveway and individual driveways which serve as fire truck turn out as noted on plan.

All amendments shall be added to plans, specifically to Dwg SY10 which shall serve as the Bureau of Fire Prevention compliance and approval plan.

Any questions, please call.

With Regards,

Peder Scott

Peder W. Scott, P.E., R.A.
President

cc: Tom Racek, homesbyracek@gmail.com

	P.W. Scott	pwscott@pwscott.com
	Engineering & Architecture, P.C.	www.pwscott.com
	3871 Danbury Rd (Route 6)	(845) 278-2110
	Brewster, NY 10509	

January 25, 2023

RECEIVED

JAN 25 2023

David B. Smith, Director
Town of Somers Planning Board
335 Route 202
Somers, NY 10589
directorofplanning@somersny.com

**PLANNING-ENGINEERING
TOWN OF SOMERS**

Re: Green Tree Rd Subdivision Historical Significance
TM#: 15.12-2-1

Dear David,

Our office has received your memo of January 24, 2023 regarding the historical significance of the property. We have submitted for a review from SHPO. For the record, we are keeping all of the walls in place on the property. Also, the property shall be purchased from the current owners Michael Barile & Nicole Stern by the developer who has an excellent reputation as a local builder, so compliance with the regulations and the subdivision documents produced by this office shall not be an issue.

We will provide you with the SHPO Report upon receipt.

With regards,

Peder Scott

Peder Scott, P.E., R.A.
President

cc: Tommy Racek, tomdynamitecontracting@gmail.com

A R C H I T E C T U R E * E N G I N E E R I N G * S I T E P L A N N I N G

Z:\PE\Subdivision files\Green Tree Road Subdivision 2022\Preliminary Subdivision Application\ltr re
Historical Significance.doc

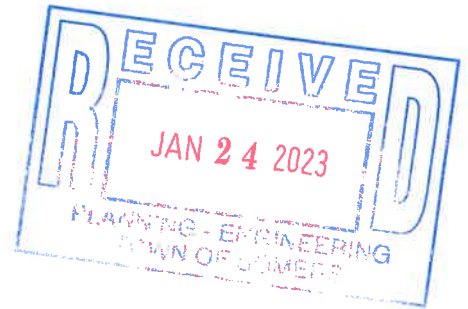
OPEN SPACE COMMITTEE

Telephone
(914) 277-5582
Fax
(914) 277-3790

Town of Somers
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

MICHAEL BARNHART
CHAIRMAN



MEMO TO: Planning and Engineering Department

FROM: Open Space Committee

RE: Green Tree Road Subdivision

DATE: January 24, 2023

At our monthly meeting on January 19, 2023, the Committee reviewed and discussed a submission for the Green Tree Road Subdivision forwarded by the Planning Board.

The Committee offers the following comments:

The EAF is checked 'no' regarding the presence of species of conservation concern. The Committee saw no documentation supporting such a determination. Given the forested nature of the property as well as the its location and proximity to wetland areas, the Committee believes this is an open question.

There appear to be storm water detention ponds located on Leicester (LCB) soils. These soils are fairly wet and are not ideal for the purpose of absorbing water. No alternative locations are identified.

There are no maps or plans showing the existing conditions of the property. The plan indicates that wetlands will have to be crossed to locate a driveway. Our preference is that wetlands are left entirely intact. We are also concerned that the plan as submitted will result in amphibian mortality. To mitigate this hazard, we suggest the use of oversize box culverts, spaced at twenty-foot intervals and with appropriate (Cape Cod style) curbing along the roadway (as recommended by the Cary Institute's "Best Development Practices: Conserving Pool-Breeding Amphibians in Residential and Commercial Developments in the Northeastern United States," Technical Paper No. 5)

Wendy Getting

From: David B. Smith
Sent: Tuesday, January 24, 2023 2:18 PM
To: maureen freal
Cc: Wendy Getting; Kim DeLucia; Robert Scorrano; PWScott
Subject: RE: Green Tree Rd. project

Dear Ms. Freal,

Thank you for your correspondence and interest in the Green Tree application. Please know that your comments will be forwarded to the Town Board, the Planning Board and the applicant. The nature of the request requires the involvement of both the Planning Board and the Town Board. The Planning Board must first conduct an environmental review of the proposed project then forward their determination to the Town Board. The Town Board would then make a decision to approve or deny the creation of an Open Development Area. The Town does have a service, see link below, that allows residents to sign up to get notices for Planning Board and town Board agendas. In the meantime, given your comments on the historical nature of the area, the applicant should consult with the NYS Historic Preservation office to understand if there are any resources that might be impacted by the proposed subdivision.

<https://www.somersny.com/resources/subscribe-to-news-agendas>

Thank you for your attention to this matter.

Dave Smith
Town of Somers Planning Department

From: maureen freal <maduke1217@gmail.com>
Sent: Monday, January 23, 2023 12:45 PM
To: David B. Smith <directorofplanning@somersny.com>
Subject: Green Tree Rd. project

Dear Mr Smith,

My house @ 2 Green Tree Rd was built in 1798. I have lived there for 36 years. When Green Tree Estates was developed my house was saved from demolition because of its historical importance. Somers has so many historical homes and landmarks which is why I chose to raise my family here and plan to stay after retirement. In the 1990's there was a historical dig on Rte 118 outside my house and some interesting artifacts were found.

I bring this point up in addition to the enviromental and safety issues regarding the proposed project at the bottom of Green Tree Rd & across the bike trail.

There are many stone walls throughout the property in question which means people used the land a long time ago. It would be a shame if those walls were torn down thus erasing a part of Somers history.

Another point I would like to bring up is the applicant Mr Barile has a history of not complying with local laws and ordinances. Even as a Carmel Town Coucilman he defied the law and connected his restaurant in Mahopac to the town's sewer system. He pleaded guilty to a

misdemeanor and paid \$ 100000.00 fine.

If these proposed houses are allowed to be built I am afraid that the developer will not comply and the project will stall after bulldozing a historical site.

I look forward to when the residents of Green Tree Rd. can be heard @ a town meeting.

Thank you.

Sincerely,

Maureen Freal

Derek & Jo Marie Mounsey
6 Green Tree Road
Yorktown Heights, N.Y. 10598

RECEIVED

JAN 23 2023

RE: Green Tree Road Proposal

**PLANNING-ENGINEERING
TOWN OF SOMERS**

Somers Town Board
January 23, 2023

To the Members of Somers Town Board,

My husband and I have lived on 6 Green Tree Road for twenty-five years and are very concern with the proposed extension of the cul de sac for the construction of three homes via a driveway over the North County Trailway.

Our opposition is primarily the environmental consequences and disruption of our road. Although new homes provide substantial economic benefits, they can be a real detriment to the environment for people, children, water and, of course, the precious wildlife that is ever present in that area (as many of our neighbors have written about).

The other concern we are thinking about is the safety of bikers, joggers, walkers, and parents with their children using the bike path. Our neighbors on Green Tree Road have written in their letters to the Somers Board, how this construction will severely impact the safety of ALL that use the trail. There is a considerable large stretch of uninterrupted trail between route 118 and Granite Springs Road. We have witnessed many times children running freely ahead of their parents without a care in the world. I don't want to think how this scene will play out if a vehicle is crossing thru the "driveway" that crosses the trail. In our opinion there are not enough signs or blaring warning lights to keep optimal safety at all times (perhaps a crossing guard might be the exception). Who will be responsible for liability when accident(s) happen?

Lastly, I would like to personally speak to the person or persons that suggested placing a dumpster at the end of the cul de sac on Green Tree Road. How will they feel having a dumpster near their home all year round? I think we know what the answer would be. There are three homes in close proximity of the proposed placement of the dumpster. Who will be responsible to pick up the overflow of garbage and recyclables that spill over onto the road? The neighbors near the dumpster will most likely end up cleaning the garbage. This would not be fair!

Total lack of consideration! A dumpster should not be on the table. Garbage and recyclables belong to each home with their own garbage pickup.

Having a driveway across the bike path would increase cars parking in cul de sac and in front of neighbors' homes for easy access to bike path.

Please note that a similar proposal was brought up before the town board approximately twenty years ago. The town denied the proposal to cross the bike path and build homes with the decision they would have access once the land was developed on Route 6.

Please accept our thanks for your time and consideration with this regard.

Sincerely,

Derek and Jo Marie Mounsey
6 Green Tree Road

Wendy Getting

From: jjmongelli@aol.com
Sent: Monday, January 16, 2023 7:21 PM
To: Robert Scorrano; Wendy Getting; David B. Smith
Subject: Fwd: Project on Green Tree Road

•

-----Original Message-----

From: jjmongelli@aol.com
To: Rscarrano@somersny.com <Rscarrano@somersny.com>; Wgetting@somersny.com <Wgetting@somersny.com>; directorofplanning@somersny.com <directorofplanning@somersny.com>
Sent: Mon, Jan 16, 2023 6:43 pm
Subject: Project on Green Tree Road

Somers Planning Board,

We have lived at 1 Green Tree Road for almost 30 years. We raised our children here and they attended Somers Schools.
We love living in Somers.

Years ago there was an article in The New York Times. It told about Somers NY being the protectors of the New York City Drinking Water !
The building of the 3 new homes could Adversely effect the Wet lands. These Wet lands lead to a small stream which leads to a larger stream.
They then lead to a raging rapid that leads to the Amawalk Reservoir System about a mile south. This Amawalk Reservoir feeds the Croton Reservoir
which supplies NYC Drinking Water.

The Bike trail will be affected by the Construction vehicles, concrete Trucks, material Deliveries, water trucks and excavation vehicles etc..

During the construction there will be many hazards to the bike trail traffic and possibly dangerous conditions.

If this project is approved after completed there will be Oil Trucks , Garbage Trucks, EMS vehicles, snow removal, FedEx etc.. and regular traffic.

To propose a Garbage Bin on the Green Tree Road Cul da sac is an insult and a lack of respect to our neighborhood that we love !

There will be many hazards during construction and afterwards on the bike trail yet one not spoken about is our area seems to be a turn around point and a meeting place . Many times there are dozens of people, baby carriages, joggers and Dogs near the Green Tree Road Entrance. It is about a mile from Baldwin Place entrance and a mile or so from Mahopac Ave.

Before a project like this can move forward careful consideration needs to be given to all the negative aspects on our existing neighborhood including the bike trail and wet lands.

Thank You,

John and Linda Mongelli