

TOWN OF SKANEATELES PLANNING BOARD
SPECIAL MEETING MINUTES
October 23, 2018

Joseph Southern
Donald Kasper
Scott Winkelman
Douglas Hamlin
Scott Molnar, Legal Counsel
Karen Barkdull, Clerk

Chairman Southern opened the meeting at 6:30 p.m.

Continued Review

Applicant:	Emerald Estates Properties, LP	Property:
	3394 East Lake Rd	2894 East Lake Rd
	Skaneateles, New York	Skaneateles, New York
		Tax Map #036.-01-37.1

Present: Donald Spear, Applicant; John Langey, Attorney; Robert Eggleston, Architect; Rudy Zona, RZ Engineering;

Mr. Eggleston suggested that Mr. Zona present first as he has a scheduling conflict with another meeting beginning at 7 p.m. He continued saying that Mr. Zona will address the overall impacts concerning the cut and fill requirements for the intended roadway not exceeding 12%. The original design had the road start out in the 14% slope range, with one area at 17% slopes, and it was decided it would be better to take it to 12% slopes to conform to the requirements of a conservation road.

Mr. Zona stated that Eric Brillo ran his contractor earthworks software on the drawings that have been prepared and submitted. Starting at the bottom where the pond is, the road goes up the hill and then continues all the way up to the top. There is 10 feet of cut where it says -10, so the red is fill and the blue is cut. Where is it very light blue it is less than one foot of cut with minimal cut until you get to the first curve in the proposed road. Once you are at the top of the hill past the loop there is very little cut and fill. On the two submitted sheets, there are two sets of earthwork calculations, with net cut/fill of 5,000 cubic yards going up the hill and net cut/fill of 13,000 cubic yards in the curved loop area. That will be 18,000 cubic yards of net fill that will be placed on lot 11. Member Kasper inquired where the deepest cut would be. Mr. Zona replied that it is shown as the dark blue areas on the plan with the deepest cut at the point of the existing elevation at 14% and 17% slope areas. Member Kasper inquired what the cut would be at those points. Mr. Zona replied that as shown in the drawings, it would be 5-6 foot cuts and the areas a little darker further up would be 10-12 feet. Chairman Southern commented that it would be like driving through a valley in those sections. Mr. Zona agreed and commented that you have to cut the slopes on the side.

Member Kasper commented that those areas would be a protection from going over the embankment. Mr. Zona said that he had planned it that way as when you come down around the last curve and banking it to the southwest instead of the existing bank that goes northeast. Mr. Eggleston commented that unlike the original construction of the road, it would have protection in place. The nature of the cut is that it will be contained, making it different than the original driveway establishment. Mr. Zona stated that there are a couple of things, in that the slope is being decreased from 14% to 12% causing cuts, and we have tried to

narrow the corridor of where the work will be done by doing the 2 on 1 side slope rather than 3 on 1. There will be soil stabilization fabric used on both sides, and it will be a little steeper. Member Winkelman inquired on what the slopes will be on the areas that are being stabilized. Mr. Zona said they would be two on one with the slopes having soil stabilization fabric protection. Mr. Brodsky inquired if there are cross-section views at specific points. Mr. Zona stated that there are road cross-sections on the driveway plans submitted last month. Mr. Zona commented that they did not prepare a slice through, but had prepared a road section. He continued saying that the road profile shows how much cut and fill on the center of the road sections. Member Hamlin inquired where the 2 on 1 would begin on the road. Mr. Zona stated that it is outside of the ditch along the road. Member Kasper asked that now that the plan shows more cut being created, would that create more water running down the road. Mr. Zona replied no, there would be additional water coming from the drive as there is more road length but the basin to the north of the driveway end can handle it. Mr. Eggleston added that it is also a lower slope, and Mr. Zona said that the water would not be as aggressive coming down.

Member Winkelman commented that the proposed road is wider and longer with the valley greater, and inquired if there could be more water. Mr. Zona stated that there would be an increase in runoff that will be handled by the existing stormwater management. Member Winkelman commented that he is not convinced the system handles existing stormwater properly. Chairman Southern inquired on how long the water would be detained in the storage basin. Mr. Zona said that the water quality containment is indefinite, and that it infiltrates into the existing soil. Depending on the storm event, it could be a day and should not be any longer than 48 hours. Mr. Camp commented that he thought it was originally designed according to the old stormwater design manual, with the basin not having a low flow orifice. Mr. Zona said it does not; it has a weir at the top of the basin cut into the side. Mr. Camp said that it could be modified to address Scott's point. Mr. Zona said that they have proposed a modification as part of the plan based on Mr. Camp's recommendation. The water comes down pretty quickly then is slowed by the flattening of the road from 14% to 12% slopes. Mr. Eggleston commented that there would still be check dams to slow the velocity of the stormwater.

Member Kasper inquired if there will be a ditch installed on the lakeside of the road. Mr. Zona said that the road will be pitched opposite of the existing pitch and that there will be some runoff coming down the side that will flow into the catch basin. He continued saying that with the proposed design of the road there will be a hump along the side of the road by Goldmanns that will help contain it and provide protection from going off the embankment as well. Chairman Southern requested cross-section views of the deeper cuts to be provided to the board. Member Kasper inquired if there will be guardrails installed. Mr. Zona said that they are proposing a guardrail on the north side of the road and the existing road at the top. Going around the curve would have a berm and the radius for the curve is two to three times what is required in the code. The design speed for the proposed road is 25-30 mph. The turnouts are removed now that the proposed road is 20 feet wide. There will be a turnout at the top of the road for access to water for fire suppression. The width of the road in that area is 26 feet for the fire truck to pull up to the water source and still allow other vehicles to pass.

Mr. Brodsky inquired if there will any work in the high conservation value area for the construction of the proposed road. Mr. Eggleston stated that the original right of way was not classified as high conservation value. Mr. Zona said that they are not beyond the original value but it depends on how it is classified by EDR if it is in conservation. Mr. Eggleston said that it is not in high conservation according to EDR, or Appel & Osborne as they were asked to put anything greater than 12% into high conservation. Member Winkelman commented that it is in the comprehensive plan that steep slopes in the watershed should be high conservation. Mr. Eggleston commented that steep slopes are 30% or more where you cannot build, and there were original slopes greater than 30%. Mr. Brodsky inquired if the land adjacent to the driveway is 30% slope now. Mr. Eggleston said that it is adjacent to the road right of way that was added

after the conservation analysis was completed. Mr. Camp said that the red area above the section of the drive might need to be looked at to determine where the line of conservation is. Mr. Eggleston stated that the current road is not in the high conservation area. Member Winkelman commented that the slopes continue south of the driveway on the Weaver property. Mr. Eggleston said that by code 12-30% slope is buildable, it just needs to have erosion control in place.

Chairman Southern inquired if they are proposing any change on the downside of the curve. Mr. Eggleston commented that it would be built up in the area on the south side. Mr. Zona said that on the original road has been moved in that area to soften the curve. There is a foot increase at the driveway, as they did not want to raise it higher and affect Goldmann. Mr. Spear commented that the existing driveway pitches to the drainage and the proposed road would pitch to the other side that will alleviate any cars going off the road.

Chairman Southern inquired what is being modified from the outflow from the pond. Mr. Zona said that the pond has been modified to accept the new runoff from the expanded road and the additional length at the top. All of the runoff that gets to the road goes to the next culvert down. Mr. Spear said that the ditch along the road has been cleaned with Brillo re-digging it. Modifying the outflow of the pond will slow the stormwater. Mr. Camp said that when the pond was originally designed to mitigate a 2-year storm, and the new regulations require design to mitigate a 1-year storm. Member Winkelman asked if the pond has ever breached the capacity. Mr. Spear stated that it has not. Member Winkelman commented that when the outlet is downside, it might cause the stormwater level to rise in the pond. Mr. Camp stated that if the application were approved, he would recommend that the stormwater system would be designed to handle up to a 100-year storm.

Member Winkelman commented that the conservation analysis that is shown on the screen depicts that the existing driveway cuts through the steep slopes. Mr. Eggleston said that the slopes are 12% slopes. Member Kasper inquired in there will be fill or cut for the Weaver driveway. Mr. Zona said that there would be fill and no cut there. Chairman Southern expressed his concern that during construction it will be difficult to protect what is downstream from runoff. Mr. Zona stated that there is a lot of shale and not a lot of soil in the area so it will not have as much impact as the original road. With the original road before a SWPPP was in place, the contractor thought it was okay to bypass the pond, which caused issues. Member Kasper inquired if the pond will be modified first before the cut and fill for the road. Mr. Zona said that a liner should be placed in the basin so that silt does not clog up the bottom where the filtration trench is. The work would be best done in the winter with about three weeks to construct the road and about six months to complete the road with asphalt paving, as it would be applied weather permitting in the spring. Mr. Spear added that the guardrails would be added in the interim timeframe. Chairman Southern expressed concern that before the blacktop is completed, there is a potential for runoff to enter the lake.

Mr. Camp inquired where the intended waste site would be for the spoils. Mr. Zona stated it would be on lot 11. Member Winkelman inquired as to the length of the 12% slope. Mr. Zona stated 700 to 800 feet from station 11 to station 4.

Mr. Langey stated that the next item they would like to discuss is the conservation easement. There has been a dialog with his office and Counsel Molnar on the document. Counsel Molnar commented that there is ongoing discussion and a finalized document will be prepared by the applicant's attorney before presenting the document to the board. Mr. Brodsky inquired if there will be a redline version for the board to see. Counsel Molnar stated that he will circulate a redline version to the board. Counsel Molnar commented that the draft easement agreement has placed comments from the prior draft conservation

analysis resolution into it that will align the conservation agreement to the future conservation analysis resolution.

Mr. Langey said that the second document is the conservation density subdivision road easement and maintenance agreement. There has been dialog on this document as well. Briefly, this document was designed to step into the shoes of a HOA without it being a HOA, without the formality of getting State approval for it. There are sections in the agreement that you would normally see with a traditional HOA that is full participation, fully funded and ongoing road maintenance. Counsel Molnar commented that he has been reviewing attorney general guidance concerning general HOAs and enforcement, and his observation is whether or not a HOA is applicable, and whether Serenity that is proposed by the applicant, is a suitable alternative. It would be an entity that would own the road and drainage facilities, maintaining them according to the requirements set if board approval is granted. An HOA is required by the state when an applicant is subdividing a property and selling it together with common rights. The rights of the property purchasers are measured by the attorney general's standards and the law. An offering plan is proposed and the purchasers are well aware of what the requirements are of participation in the HOA once the sponsors have turn over control of the HOA to the members that becomes members of that not-for-profit corporation. He continued saying that the board is relying on the applicant to recommend to the board Serenity as an alternative which is fully compliant with the law concerning subdivisions and sales of lots to individual purchasers who will be required to pay charges and fees that would be assessed with respect to the road, drainage and otherwise. Once the HOA is created and ongoing, it is turned over from the sponsor to be managed by lot owners in cumulative share; it is simply an organization that collects costs based fees and assessments based on lot owners and utilize them on the maintenance of the common property. It being a non-profit corporation, it is beyond the attorney general's control, everyone's control, except for those who might be aggrieved by a breach of HOA obligations under the contract. Here we are talking about the road maintenance agreement and the drainage agreement. Whether the town would be in a better position to take action against a HOA for enforcement or a better position to take action against Serenity for enforcement is arguably equal.

Chairman Southern inquired who Serenity is. Mr. Langey stated that Serenity is an entity that was created by his office on behalf of the applicant and it is a LLC. He continued saying that according to town code, it says that an HOA is an acceptable type of arrangement or you can have a private organization like Serenity. The devil is in the details, and warrants further review and discussion with his office and Scott, and that they have equal to or better protections than a normal HOA. Counsel Molnar suggested that an additional condition be placed on Serenity if that option was approved by the board that termination of the entity or modifications to organizational documents is not allowed without approval from the town. Each and every member who owns a lot would submit in writing, an acknowledgement that he or she is subject to these requirements of Serenity. Serenity will own the conservation road and drainage facilities. Mr. Brodsky commented that a portion of the road goes over the Goldmann property. Counsel Molnar said that the applicant would need consent and subordination from the Goldmanns on that portion of the road. Mr. Brodsky inquired if the agreements include the existing property owners, Nangle and Weaver. Mr. Langey sated no, that whatever rights they have now they would continue to have. Chairman Southern inquired if they would still be responsible for maintenance. Mr. Spear said that they would invite them to join Serenity, as they would go from a third responsibility to a twelfth responsibility. Mr. Eggleston said that otherwise they would be subject to the original terms. Member Hamlin commented that there has been a lot of time spent in trying to create an entity to replace the requirement of a HOA, and inquired why it is not just an HOA. Mr. Langey said that because they have that option in town code and secondly a HOA requires that everyone must participate and not everyone wants to participate in an HOA.

Chairman Southern requested the applicant address the issue of shared lakefront recreation. Mr. Langey stated that their positon as they read the town code is that they are not asking for shared lakefront

recreation. What they have now and what they will have in the future is that they have ingress and egress rights to cross the land to get to the lake, and is not proposing any kind of recreation on land adjacent to the lake. The property we have currently enjoys ingress and egress and we are not asking for nothing more than ingress and egress. We do not have the ability to add recreation on that easement; it is not something we are allowed to do. Our position is that we are not asking for shared lakefront recreation. We have deeded rights that we would like to use, we have a right to use them and it is as simple as that. We have put together a memo for the board that has the full analysis of the town code section and how it is not applicable here. Even if you look at the public policy behind it, it is crystal clear; you get into shared lakefront recreation when you get into the idea that down by the lake you are going to be doing something. The best example I can give is on the Loveless proposal when there was going to be a cabana on the property. Chairman Southern commented that shared lakefront recreation was originally a proposal on this property before Marchuska. Mr. Langey commented that there is nothing proposed for this property in front of you now and all we are saying is that we do not think we need shared lakefront recreation approval through special permit. We have that access now, other people have that access now, and the question is do you need a special use permit to go back and forth to the lake across the easement. I believe it is no and we are not asking for anything more than that. If we were asking an area to be set aside for a beach or a cabana, or a toilet facility, which is what your section of law discusses, it seems like it is a much more comprehensive use down there with shared lakefront recreation. Something is literally happening to the land that is the way it reads. In my opinion, I am reading it the way it should be read and I understand that other people may feel differently. We do not feel that it applies to us and you may feel differently. Member Winkelman commented that it is attached to the land that you are subdividing.

Chairman Southern commented that the board is concerned, as you are increasing lake impact, you are not asking to but you are. Chairman Southern said that the existing agreement with Mr. Spear and his friends stated lakefront recreation. Counsel Molnar clarified that it says easement for recreational purposes. Mr. Spear commented that it is for recreation on the water. Chairman Southern commented that the application is providing more people with access to the lake and that has an impact. Mr. Langey inquired how many more properties added triggers this section of code. Chairman Southern said that there would be nine addition property owners using that access to the lake, mooring boats, with no additional parking available to the existing parking for the original five members. Counsel Molnar stated that the Planning Board is presented with an application to subdivide land to create nine lots out of one. Those nine lots would be entitled to deeded lake access rights over a 40-foot easement. The town, when it created the statute on point, sought to manage shared lakefront recreation by having dimensional and other requirements, when the subdivision of land is the source of application, and when the new lots are to be created have deeded access rights. That is why the section was created to manage that. Pre-existing nonconforming parcel rights is one thing; however here there is an applicant seeking the approval of the Planning Board for subdivision of a parcel that will have associated with each new lot deeded access rights. We are squarely within the provision that needs to be recognized unless we manage it in some fashion where we do not need to recognize it. The applicant is proposing that it is not recreation and I think it is a fair assessment to think it is recreation, accessing the lake is recreation. The underlying easement says it is for recreation, with this being an extension of it to the nine new lots.

There is a significant quandary to reconcile that, which could require a variance or an interpretation by the Zoning Board of Appeals. Mr. Langey stated that it is really a codes determination. We can obtain approval for the subdivision and if for some reason in the future we would like to get shared lakefront recreation, then the codes officer would indicate that it needs a special permit. If we do not agree with that then we could appeal that decision. I am not sure that it should happen with this sequence. If you look at this law, this is not what we are talking about, the law says on land. Mr. Spear stated that there are five users now and they have not put a boat out. Member Winkelman inquired if Mr. Spear is one of the existing five-easement holders because he owns the existing lot 3. Mr. Spear said that he is an easement

owner because of his lot up the road. Counsel Molnar commented that lot 3 was previously subdivided that he didn't know in the discussion that Hidden Estates had granted itself lake access to itself, its successors or assigns for all of those lots. It did not come up in the three-lot subdivision at that time. Mr. Langey said that they are down to a nine-lot subdivision maximum with a large portion of the land put into conservation with restrictions that will benefit everybody in the town. Who know how many of the nine lots are going to use the access. They may be seasonal users who do not use the lake and is that a tremendous threat to the lake, as we do not know whom if any of the nine lots will use the lake access. Chairman Southern said that it comes down to an interpretation that can be sent to the Zoning Board of Appeals for an interpretation and not a variance request. Mr. Eggleston stated that if we give lake access to the lake only, does that fall under shared lakefront recreation. Mr. Langey stated that they don't intend to ask for an interpretation of shared lakefront recreation as they don't intend to do that and do not feel that the lake access easement constitutes shared lakefront recreation. Chairman Southern commented that the board needs an interpretation. Counsel Molnar commented that there is no dispute that the nine lots will enjoy the easement that benefits the current property, which is lake access.

Mr. Langey stated that his client would like to move this toward a public hearing as soon as possible and conservation findings have to occur, SEQR has to occur before the application can moved to public hearing. Counsel Molnar commented that the additional information provided from the applicant might be sufficient for the board to consider scheduling a public information meeting. Member Kasper inquired if Mr. Camp has had a chance to review the new information of the proposed road. Mr. Camp commented that a letter was sent to the board a month ago regarding the magnitude of the earthwork. Counsel Molnar suggested that the board conduct the formal SEQR as the next step with the project if the board feels it has enough information to proceed.

A public information meeting (with the potential to begin the SEQR review) will be held on *Tuesday, November 08, 2018 at 6:30 p.m.*

WHEREFORE, a motion was made by Member Hamlin and seconded by Chairman Southern to adjourn the meeting. The Board having been polled resulted in the unanimous affirmance of said motion. The Planning Board Meeting adjourned at 7:52 p.m. as there being no further business.

Respectfully Submitted,
Karen Barkdull, Clerk