

**Town of Dryden  
Planning Board  
July 25, 2019**

**Present:** John Kiefer, Chair, David Weinstein, Martin Hatch, Joe Wilson, James Skaley (alternate), Tony Salerno, Craig Anderson, Tom Hatfield

**Absent:** Dan Bussmann (alt)

**Town Staff:** Ray Burger, Planning Director  
Bambi Avery, Town Clerk

**Liaisons:** Alice Green (Town Board), Dan Lamb (Town Board)

Chair Kiefer opened the meeting at 6:05 p.m.

J Skaley was made a voting member for this meeting.

**Public Comment**

None

**Approve Minutes**

The board discussed the minutes of June 27, 2019, and on motion of M Hatch, seconded by T Salerno, the minutes were approved. Yes – J Kiefer, D Weinstein, C Anderson, J Skaley Abstained – M Hatch, T Salerno, T Hatfield, J Wilson

**Public Hearing (continued)**

**Mill Creek Subdivision**

This public hearing remains open for comment. J Kiefer summarized comments from last month. A few people spoke about the nature of the site; that there is a lot wetlands, creeks, and a lot of wildlife in the area. There were comments that those delicate and sensitive areas be protected. There were comments about changes that could happen on the site that could affect surface and subsurface water and people expressed concerns about their wells. There was concern that the board take steps to ensure that nothing happens as part of the development process that will negatively impact well water or cause water to flow in a different way. People commented that there are very wet soils there and that it would complicate the design of sanitary sewer systems. The board talked a bit about the nature of the project, that this is a fairly low-density development. Not that many houses are proposed to be developed on quite a bit of property. The developer has delineated on the plat places within which development has to happen. It can't happen outside of that. That delineation protects the wetland areas from being developed and filled. The developer did a SWPPP and shows how storm waters flow on the site and produced a plan to protect adjacent properties. The sanitary sewer systems are reviewed by the county and the same may be true for wells drilled on the sites. So the board has heard public comment and talked a bit about what mitigations the developer is proposing.

Public comment:

Kenneth Peck, 157 W Dryden Road, at the previous meeting he commented on surface and subsurface water. He wants the board to know that through his realtor over the last three years he approached the previous land owners because he wanted to purchase 5 to 7 acres next to his property line. The way this subdivision is being proposed, with no further subdivision of parcels, it appears that he would now have to purchase a much larger parcel. He explained he would like to have part of lots 38 to 35 to expand his property line west and the fixed sizes and deed restrictions will make it impossible for him to do so.

Allen Lord said according to the town's regulations they can't offer for sale land that has not been approved by the Planning Board. A boundary line adjustment can be made after approval; that is not a subdivision.

Lot line adjustments can be approved by the Planning Director.  
The restrictive covenants will run with the land acquired in the case of a lot line adjustment.

**Bill Enslow** said he owns 4 acres on Caswell Road in center of all this. He has no problem if people want to build a house on what is not his land. He wants to control it, he should buy it. He would like to buy some land across the road if he can, but he won't say don't build something there because it will ruin his view.

He's hunted the land there since 1972. The large water body shown on the map is caused by beavers. That's a lot of water. What will happen when the dam breaks? It happened in the 70s and took the bridge out. Now it is ten times the amount of water it was. There is a lot of land that is not wet. He has seen houses built in wetter areas than this. There are some wetlands, but not that much when you get down to it. There's a piece on Caswell where beavers have built on the railroad bed, and they'll have the whole section flooded. It was flooded ten years ago. Does land wet because of beavers become wetlands forever? That shouldn't be.

J Skaley explained that wetland classification is based on the kind of plants growing there as well as the soil types.

Bill Enslow said he has no problem with this development.

The public hearing was closed at 6:35 p.m.

R Burger said the County's 239 determination is that there is no intercommunity or countywide impacts. They did comment on wetlands and lot 21 (that might be a typo and they may be referring to lot 24). He noted that the layer of wetland used is provided by the recent county effort, so it goes beyond what is DEC wetland and what is Federal wetland and adds more wet areas. The county's recommendation is to make sure it is a wetland. The intent of it was to raise a caution about building on wetlands.

A Lord said that over 500 acres of the 900 is preserved from any building envelope. He said if building is proposed in the extended wetland area, who would you go to for a permit. You don't go to the Army Corps because it is not a federal wetland, and you don't go to the DEC because it isn't a DEC wetland. What are you accomplishing?

D Weinstein said the concern is if putting a driveway in that particular spot on the lot, the natural flow of the wetland could be disrupted and could cause a problem with neighboring property where the wetland is draining from. But he doesn't see that being the case here. He thinks the county's concern is fine, but in this case, he doesn't see that impinging on that little piece of wetland will affect the nature of the wetlands around it. It seems no new action is necessary in this regard. C Anderson, T Hatfield and M Hatch agree.

There are dotted lines that presumably show where the purchaser can or can't build. That is not referenced in the covenants.

Alan Lord said those are building setback lines and they used the distances required by the town's zoning ordinance except where there are wetlands.

J Kiefer said there are areas outside the building setback lines that are not wetlands. If a property owner wants to mow the grass there or harvest trees or other such things outside those lines, that is fine. A way to address the meaning of the dotted line on the plat would be to say "there shall be no construction or fill done outside of the building setback lines." He suggested that the line be extended up to the road to make it clear that we know that the owner will install a driveway. That would define the building setback line and also address what the county is worried about (that there might be construction) in areas on the plat that were delineated as wetlands. The board agreed that a covenant should be added.

J Wilson said it would be helpful to be explicit that the town as a property owner is a beneficiary of the covenants and that the town can enforce. Comments/discussion following:

- Who will enforce?
- The town should protect the development plan and preserve the various environmental features.
- Town doesn't have a mechanism to discover it.
- The covenants say the owner of any parcel in the subdivision can enforce the covenants.
- DEC or Army Corps can enforce for their wetlands.
- Who enforces with respect to wetlands designated by the county?
- Beneficial for other property owners to be aware the town can enforce the covenants.
- A Homeowners Association could enforce if there was one.
- Covenants don't apply to the parcels being conveyed to the town currently, but they could.
- The town has a responsibility to care for the land being given to it.
- The covenants could prevent a trail constructed along the creek for fishing.
- Covenants will have to be signed off on prior to purchase.
- The town could be added to covenant 19 as an enforcer.
- The restrictive covenants could be added to the parcels to be conveyed to the town.
- Ambiguous wording should be avoided.
- Who initiates enforcement? Any neighbor in the subdivision.

R Burger said he doesn't see a problem with the covenants being applied to the town's parcels, but it is ultimately up to the courts as to whether they will allow the town to enforce it. The town would have to show there is some public value it is trying to protect.

J Wilson moved that the covenants apply to Parcel B to be conveyed to the town and that the town be clearly made a party for the purposes of potential enforcement. D Weinstein seconded the motion for purposes of discussion. T Salerno noted in that instance, the town would be unable to do anything with that lot. T Hatfield said it would mean giving up the recreational value of the parcel for the public in order to be able to police the other parcels. D Weinstein said the town asked for the parcel because it is a County Unique Natural Area, is fragile, a wetland and shouldn't have a lot of activity in it. After further discussion, the previous motion was withdrawn and the following resolution passed.

**RESOLUTION #13 (2019) - AMEND PROPOSED COVENANTS – MILL CREEK SUBDIVISION**

M Hatch offered the following resolution and asked for its adoption:

RESOLVED, that the Town of Dryden be added as an enforcer to Covenant #19 for Mill Creek Subdivision.

2<sup>nd</sup> J Wilson

Yes – Kiefer, Weinstein, Hatch, Wilson, Skaley, Salerno, Anderson, Anderson

No - Hatfield

The board has discussed the building set back limits and would like a covenant added that clearly defines what can happen outside of that set back.

**RESOLUTION #14 (2019) – ADD COVENANT WITH RESPECT TO BUILDING SET BACK LIMIT – MILL CREEK SUBDIVISION**

J Kiefer offered the following resolution and asked for its adoption:

RESOLVED, that a covenant be added to the covenants for Mill Creek Subdivision that clearly states that no building construction or fill work is permitted outside the building set back limits and that the set back limits be extended to the road.

2<sup>nd</sup> D Weinstein

All in favor

SWPPP - R Burger said a 300 page SWPPP has been submitted. It was reviewed by TG Miller. Their concerns were responded to and a revised SWPPP is expected next week. Each individual lot owner will be required to get their own Notice of Intent (NOI). As long as they stay with the proposed schematic for placement of the building and driveway, it should be straightforward. Any construction on any lot will require notice instead of the one-acre limit. TG Miller recommends covenant 12 on the Mill Creek plat will be replaced with language recommended by them.

Board members reviewed the Full Environmental Assessment Form page by page. Applicant answered questions with respect to some of the completed answers and how some calculations were made.

Part 1

Page 1 – OK

Page 2 – C.2.c was answered yes. The property is not in an ag district so 12.E.3.a should be answered No because it is not in an ag district to make the responses consistent.

Page 3 – OK

Page 4 – OK

Page 5 – OK

Page 6 - OK

Page 7 – OK

Page 8 – OK

Page 9 – OK

Page 10 – OK

Page 11 – E.2.f – slope percentages weren't addressed. 0-10% should say 100%. E.2.f should say yes. If it is in the 100-year floodplain, it would be in the 500-year floodplain.

Page 12 – E.2.n – The property does contain two officially designated unique natural areas. It should be checked yes and UNA numbers are 71 & 83. E.2.o should be checked yes for the northern long-eared bat.

Page 13 - OK

Applicant agreed to make the changes noted by the Planning Board.

The board reviewed Part 1

### ***SEQR Part 2 Identification of Potential Project Impacts***

***1. Impact on Land*** – Proposed action may involve construction on, or physical alteration of, the land surface of the proposed site. Yes

*If "Yes", answer questions a – h. If "No", move on to Section 2.*

*a) The proposed action may involve construction on land where depth to water table is less than 3 feet.*

No

*b) The proposed action may involve construction on slopes of 15% or greater.* No

*c) The proposed action may involve construction on land where bedrock is exposed, or generally within 5 feet of existing ground surface.* No

*d) The proposed action may involve the excavation and removal of more than 1,000 tons of natural material.* No

*e) The proposed action may involve construction that continues for more than one year or in multiple phases.* No or small impact

*f) The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).* No or small impact

- g) *The proposed action is, or may be, located within a Coastal Erosion hazard area.* No  
 h) *Other impacts:* No

**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).* No

*If “Yes”, answer questions a – c. If “No”, move to section 3.*

**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).* Yes

*If “Yes”, answer questions a-l. If “No”, move on to Section 4.*

- a) *The proposed action may create a new water body.* No  
 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.* No  
 c) *The proposed action may involve dredging more than 100 cubic yards of material from a wetland or water body.* No  
 d) *The proposed action may involve construction within adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body.* No  
 e) *The proposed action may create turbidity in a waterbody, either from upland erosion, runoff or by disturbing bottom sediments.* No or small impact  
 f) *The proposed action may include construction of one or more intake(s) for withdrawal of water from surface water.* No  
 g) *The proposed action may include construction of one or more outfall(s) for discharge of wastewater to surface water(s).* No  
 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.* No or small impact  
 i) *The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action.* No or small impact  
 j) *The proposed action may involve the application of pesticides or herbicides in or around any water body.* No  
 k) *The proposed action may require the construction of new, or expansion of existing, wastewater treatment facilities.* No  
 l) *Other impacts:* No

**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.* Yes  
*If “Yes”, answer questions a-h. If “No”, move on to Section 5.*

- a) *The proposed action may require new water supply wells, or create additional demand on supplies from existing water supply wells.* No or small impact.  
 b) *Water supply demand from the proposed action may exceed safe and sustainable withdrawal capacity rate of the local supply or aquifer.* No or small impact  
 c) *The proposed action may allow or result in residential uses in areas without water and sewer services.* Small impact.  
 d) *The proposed action may include or require wastewater discharged to groundwater.* Small impact.  
 e) *The proposed action may result in the construction of water supply wells in locations where groundwater is, or is suspected to be, contaminated.* No or small impact.  
 f) *The proposed action may require the bulk storage of petroleum or chemical products over ground water or an aquifer.* No or small impact.

g) *The proposed action may involve the commercial application of pesticides within 100 feet of potable drinking water or irrigation sources. No or small impact.*

h) *Other impacts: No*

**5. Impact on Flooding** – *The proposed action may result in development on lands subject to flooding. No. If “Yes”, answer questions a-g. If “No”, move on to Section 6.*

**6. Impacts on Air** – *The proposed action may include a state regulated air emission source. No. If “Yes”, answer questions a-f. If “No”, move on to Section 7.*

**7. Impact on Plants and Animals** – *The proposed action may result in a loss of flora or fauna. Yes. If “Yes”, answer questions a-j. If “No”, move on to Section 8.*

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. No*

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. No*

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. No*

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. No*

e) *The proposed action may diminish the capacity of a registered National Natural Landmark to support the biological community it was established to protect. No*

f) *The proposed action may result in the removal of, or ground disturbance in, any portion of a designated significant natural community. No*

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. Small impact*

h) *The proposed action requires the conversion of more than 10 acres of forest, grassland or any other regionally or locally important habitat. No*

i) *Proposed action (commercial, industrial or recreational projects, only) involves use of herbicides or pesticides. N/A*

j) *Other impacts: No*

**8. Impact on Agricultural Resources** – *The proposed action may impact agricultural resources. No. If “Yes”, answer questions 1-h. If “No”, move on to Section 9.*

**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. No*

*If “Yes”, answer questions a-g. If “No”, go to Section 10.*

**10. Impact on Historic and Archeological Resources** – *The proposed action may occur in or adjacent to a historic or archaeological resource. No*

*If “Yes”, answer questions a-e. If “No”, go to Section 11.*

**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. No

If “Yes”, answer questions a-e. If “No”, go to Section 12.

**12. Impact on Critical Environmental Areas** – The proposed action may be located within or adjacent to a critical environmental area (CEA). No

If “Yes”, answer questions a-c. If “No”, go to Section 13.

**13. Impact on Transportation** – The proposed action may result in a change to existing transportation systems. No

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

**14. Impact on Energy** – The proposed action may cause an increase in the use of any form of energy.

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

a) The proposed action will require a new, or an upgrade to an existing, substation. No

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. No

c) The proposed action may utilize more than 2,500 MW hrs. per year of electricity. No

d) The proposed action may involve heating and/or cooling of more than 100,000 square feet of building area when completed. No or small impact

e) Other impacts: No

**15. Impact on Noise, Odor, and Light** – The proposed action may result in an increase in noise, odors, or outdoor lighting. Yes

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

a) The proposed action may produce sound above noise levels established by local regulation. No

b) The proposed action may result in blasting within 1,500 feet of any residence, hospital, school, licensed day care center, or nursing home. No

c) The proposed action may result in routine odors for more than one hour per day. No

d) The proposed action may result in light shining onto adjoining properties. No or small impact

e) The proposed action may result in lighting creating sky-glow brighter than existing area conditions. No or small impact

f) Other impacts: No

**16. Impact on Human Health** – The proposed action may have an impact on human health from exposure to new or existing sources of contaminants. No

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

**17. Consistency with Community Plan** – The proposed action is not consistent with adopted land use plans. No

If “Yes”, answer questions a-h. If “No”, go to Section 18.

**18. Consistency with Community Character** – the proposed project is inconsistent with the existing facilities, structures, or areas of historic importance to the community. No

If “Yes”, answer questions a-g. If “No”, proceed to Part 3.



Part 3 reads: This project will result in no significant adverse impacts on the environment, therefore an environmental impact statement need not be prepared. Accordingly this negative declaration is issued.

**RESOLUTION #15 (2019) - NEG SEQR DEC –  
Conservation Subdivision – Mill Creek Subdivision (TM# 33.-1-3.2)**

D Weinstein offered the following resolution and asked for its adoption:

WHEREAS,

*A.* The proposed action involves consideration of the application of N.Y. Land and Lakes Development LLC to establish a Conservation Subdivision on Town of Dryden Tax Parcel #66.-1-7.3, approximately 900 acres.

*B.* The proposed action is an Unlisted Action for which the Planning Board of the Town of Dryden is the lead agency for the purposes of uncoordinated environmental review in connection with approval by the Town.

*C.* The Planning Board of the Town of Dryden, in performing the lead agency function for its independent and uncoordinated environmental review in accordance with Article 8 of the New York State Environmental Conservation Law - the State Environmental Quality Review Act “(SEQR), (i) thoroughly reviewed the full Environmental Assessment Form (the “full EAF”), Part I, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, (ii) thoroughly analyzed the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR §617.7(c), and (iii) completed the full EAF, Part II;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

*1.* The Planning Board of the Town of Dryden, based upon (i) its thorough review of the full EAF, Part I, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, (ii) its thorough review of the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR §617.7(c), and (iii) its completion of the full EAF, Part II, including the findings noted thereon (which findings are incorporated herein as if set forth at length), hereby makes a negative determination of environmental significance (“Negative Declaration”) in accordance with SEQR for the above referenced proposed action, and

*2.* The Responsible Officer of the Planning Board of the Town of Dryden is hereby authorized and directed to complete and sign as required the determination of significance, confirming the foregoing Negative Declaration, which fully completed and signed full EAF and determination of significance shall be incorporated by reference in this Resolution.

Seconded by C Anderson and unanimously approved.

When the sketch plan was approved, this board was concerned with three things: That Caswell Road be a road, that drainage be addressed by a SWPPP and that the Conservation Board have an opportunity to comment. Those three things have happened. Today this board added two items to the covenants and TG Miller has suggested new language for covenant 12: *A Stormwater Pollution Prevention Plan (SWPPP)*

*has been prepared for the Mill Creek Preserve Subdivision. Prior to any disturbance associated with the Grantee's development of any lot within said subdivision, Grantee must prepare his/her own SWPPP modification specific to his/her particular lot and file an individual Notice of Intent (NOI). Said SWPPP must identify permanent post construction stormwater management practices.*

**RESOLUTION #16 (2019) – ACCEPT PRELIMINARY PLAT  
MILL CREEK CONSERVATION SUBDIVISION (TM #33.-1-3.2)  
CASWELL ROAD**

C Anderson offered the following resolution and asked for its adoption:

RESOLVED, that this board hereby accepts and approves the preliminary plat (with the changes noted this evening) for a Conservation Subdivision to be known as Mill Creek Subdivision (TM #33.-1-3.2) on Caswell Road.

2<sup>nd</sup> by T Hatfield and unanimously approved

There will be a public hearing on the final plat next month.

### **Comp Plan Update**

R Burger reported that six firms had submitted proposals and the subcommittee has narrowed them down to three. There will be a special meeting of this board next Wednesday, July 31, at 4:00 p.m. in the conference room. Each of the three finalists will give a 15-minute presentation, there will be 30 minutes for questions, and then 15 minutes for discussion among the board. At 7:00 p.m. the board will make a recommendation to the town board. Any calls from those who submitted proposals should be referred to Ray. D Weinstein asked that questions for the finalists be sent to him for compilation. When the meeting is opened on July 31 the board will move to executive.

J Kiefer reported that the DEC/CFC grant application was submitted this week for a 50-50 match for the cost of the comp plan work. The notice of award will be later this year or early next year. Any work that happens pre-grant award will be paid for with \$20,000 budgeted for comp plan work this year. Emphasized climate related scope.

### **Varna Committee Update**

The subcommittee consists of D Weinstein, J Skaley and M Hatch. They are meeting at 10:00 a.m. next Thursday, August 1, at the Varna Community Center. This is a public meeting and people are welcome to attend. They will start putting together information on what ideas other communities have come up with to solve a similar problem in zoning. J Skaley still has notes from the initial scoping and public meetings and survey that were done prior to constructing the current plan. He will share those with the board.

### **Conservation Easements**

C Anderson reported that the Conservation Board went out and did evaluations of the two conservation easements on Ellis Hollow Road. They had problems at one finding the pins and locating boundaries. (We might want to ask developers to put in permanent stakes in the future.) They had concern over the stormwater. He looked at it and it was failing when he looked at it last month. He brought it up to the

Planning Department and brings up the question of who monitors stormwater. This development is a year old.

The stormwater construction has been taken out by the wet season. The developer did build it to specs and is on the hook for making it as presented. C Anderson said it appears they have tried to make a waterfall, and it appears to be about a zero grade. Making it a recreation area is not in keeping it an easement. The stormwater pond is on lot 5 in the second subdivision (private property) and the landowner is on the hook for maintenance, not the Homeowners Association as is responsible for the road maintenance. The board should keep these things in mind in the future.

D Weinstein said they are in violation of the easement and the stormwater plan is not in working order. R Burger said we have an enforcement SWPPP, so that will get constructed as specified in the SWPPP. He doesn't believe having the stormwater pond in the conservation easement is a conflict. D Weinstein said the recreational part is not what the board was thinking is an allowed use in the conservation zone. R Burger said the conservation easement can be enforced because is a contract with the town. When he gets the report from the Conservation Board he will put it in the queue for enforcement.

J Skaley said that about 2 weeks ago 5 junk cars appeared on a lot in Varna. There was a camper parked there and that is gone. This evening 2 of the cars are gone and a skid steer is there. It may be they are pulling cars from the back side of the property.

There being no further business, on motion made, seconded and unanimously carried, the meeting was adjourned at 8:34 p.m.

Respectfully submitted,

Bambi L. Avery