

TOWN OF SKANEATELES PLANNING BOARD
SPECIAL MEETING MINUTES
Hidden Estates SEQR Review
September 29, 2020

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

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

Continued Review – 9 Lot Subdivision

Applicant: Emerald Estates Properties, LP
Skaneateles, New York

Property:
2894 East Lake Rd
Skaneateles, New York
Tax Map #036.-01-37.1

Present: Read Spear, Marc Spear, Applicants; Robert Eggleston, Eggleston & Krenzer Architects; John Langey, Costello Cooney & Fearon, PLLC; Rudy Zona, RZ Engineering;

Counsel Molnar recommended to the board and in a dialog with the sponsor, to review his written summary of comments and the redline of the draft environmental impact statement (DEIS) that had been prepared for any edits, additions, or deletions. Comments were accumulated from board members and professionals and placed into a single letter from the board to the sponsor that fulfills the SEQR regulations of providing written comment back to the sponsor. John Langey has been copied and copies were given to the board so that an open dialog regarding the documents can occur. He suggested that tonight's review could begin with the comments letter.

Certain comments from the last review session to essentially suggest that the DEIS be edited and adapted wherever necessary to reflect an objective and balanced discussion of potential impacts, facts pertinent to them, proposed mitigation measures, potential alternatives and how the potential impacts will be addressed. In the specific comments submitted reflect the flattening of it, removing argumentative statements, with a suggestion to delete argumentative paragraphs.

The second general comment is that the DEIS should be modified by eliminating the discussion points referring to facts not in the record of the SEQR statement of significance or the scoping memo. Those would be facts concerning potential alternatives with the Town of Skaneateles or the Finger Lakes Land Trust, or otherwise that are not really viable alternatives, in his opinion.

The third general comment he had suggested is that the DEIS be edited wherever necessary to reflect the final design of the proposed conservation density road currently before the lead agency that is not a requirement by the lead agency but rather by the zoning code regarding the requirements for the road to be no greater than 12% slope, etcetera. It was the fire chief's conclusion that the proposed conservation road both cannot exceed 12% in slope and required additional width to permit fire protection for the proposed lots to be created.

That is a fair and accurate summary of the facts to date. With those continued general comments, John Camp, Counsel Molnar, and the board members put together a red line version of the submitted DEIS. Read Spear has circulated through Mr. Langey to the town, an additional red line of the DEIS as of this afternoon which accepted and rejected some of the comments. Read also provided, either acceptance or rejection, suggestion edits throughout the document that have not yet been reviewed from the submittal this afternoon until now and he continued saying that he had certain specific comments to the project sponsor beginning with, statements concerning the prior town engineer and his conclusions. It needed significant edit for clarity including additional data as to why the design of the driveway in its current condition at a steeper slope greater than 12%, such as under the context of reducing disturbance or for some other purpose. His and Mr. Camp's suggested edits together address some of that, to the extent that they were accepted or rejected, the board will have to go through and review the new DEIS submitted by Read.

The second specific edit is that edits should be made to reflect that the town engineer does not approve a SWPPP, the NYSDEC does. The town may review the document, but it is not approved by the town engineer or the town.

Thirdly, regarding discussion of mitigating measures proposed, delete reference that the Planning Board created the problem of magnitude of excavation by insisting the road width exceed code by 40%, which is not accurate. Again, that is the result of the Fire Marshall's input on what is a safe width of the road for fire access for emergency vehicles, and that is not a Planning Board mandate.

An additional general comment is to please see suggested edits to reflect it is "the Project Sponsor's contention or opinion" where necessary in the DEIS. Much of the wording implies that the Planning Board is of the same conclusion when that has not yet been determined. The DEIS has been submitted by the project sponsor where it contains a provision which reflects a certain position it should be well noted that it is the project sponsor's position and not imply that it is also the Planning Boards.

For everyone's consideration there are additional comments beginning with pages 6 and 7, which require editing to delete references to it being the Planning Board's current practice of approving one to four lot subdivisions, which implies that same is in lieu of others, and does not reflect that the Planning Board reacts to applications submitted by local professionals for one, two, and three lot subdivisions. It is not as if the Planning Board is rejecting multiple lot subdivisions and approving one, two, and three lot subdivisions. The board reacts to what is being applied for by residents.

Page 88 needs to have the discussion points edited to reflect objectivity. These have been noted in the red line as not balanced but argumentative instead.

Page 9 regarding the analysis that 52 building lots have been created over the course of 20 minor subdivisions, it was concluded that this information was not part of the existing findings of the Planning Board with respect to the potential significant impacts or in the scoping document. Counsel Molnar inquired if Mr. Spear agreed with the suggested edits and Read Spear said that he has accepted about 90% of the suggested edits. He continued saying that there are three to four points on the document he submitted today that he would like to discuss further and finalize as they are not interested in a lot of back and forth as they are interested in cooperating and getting this document to a state of completion. Counsel Molnar said that a review of each and every comment that he had including number 23, pages 65, 66, 67, 68 striking argumentative sections and requesting adaptation of the section to reflect an objective review of the alternatives, with mitigating factors listed, and discussion whether or not these alternatives are acceptable to the fire chief and delete/revise argumentative section to be objective. That was the final specific comment.

Counsel Molnar inquired if the board had any additional specific suggested edits. Mr. Brodsky commented that the mitigation measures regarding the fill from the road cut onto lot 11 were not indicated in the document. There is 18,000CY of material to be transported up to that lot that is worthy of some type of evaluation. Chairman Southern said that there was a discussion regarding it. Mr. Zona said that a grading plan for the upper lot has been provided and they stipulated that it is within the confines of the lot and kept all on site. Mr. Brodsky inquired if there is a narrative description that they are going to put up the 18,000CY of material on lot 11 and how much acreage it will cover. Mr. Zona replied that it was not in the scoping document, so it was not answered. Mr. Camp commented that the scoping document is more of a general concern in terms of the magnitude of excavation and grading. Mr. Brodsky said that the existing document says that lot 11 is the largest lot and placement of the fill there would be the least impactful, although there is nothing to substantiate that. Member Hamlin said that from his recollection someone did a calculation of how thick the layer would be and how large the area would be. Mr. Zona said they had provided the information at a meeting. Mr. Langey said that the purpose of the scoping document was to narrow down the open issues and get them to a point that the board was comfortable presenting to the public. He continued saying that Counsel Molnar and Mr. Camp's comments did not cover that, but he thought the board thought it was adequately addressed by Mr. Zona on the technical side. Mr. Zona said that he and Mr. Camp came up with some numbers that were not that far apart, and they had shown where it would go and how it would be. He continued saying that he thought it was not controversial anymore, as stating that it is going on a private lot should be adequate. He said that it could be thrown into an appendix somewhere. Mr. Camp suggested that a sentence or two could be added in the section to indicate the square footage and thickness of the deposit on lot 11. Chairman Southern inquired if Mr. Zona had specified what kind of ground cover would be placed on it. Mr. Zona said it was just going to be placed there and then used as needed for fill around houses on the other lots. When it was done, then it would be hydroseeded. In accordance with the SWPPP, the fill would have to be hydroseeded if it were open for more than 2-4 weeks. Mr. Brodsky said that he remembered that there would be a considerable amount of shale that would compose the fill. Mr. Zonal said that there would be shale and some topsoil. He continued saying that some of it would be for the driveway up there with some of it being separated and controlled with the SWPPP and whatever is left would be graded off that lot. Mr. Brodsky suggested that a few sentences or paragraph explaining the detail as Mr. Camp outlined on what would happen and your planned use of that material would be sufficient in that a substantial statement in your opinion would be the least impactful option for the fill. The scoping document page 9 concern 4, there was a statement that the engineer will identify alternatives such as haul away of fill instead of on-site placement. Mr. Brodsky said that the current DEIS does not provide enough mitigation alternative. Mr. Zona said that the information will be addressed under concern 4 of the scoping document. Counsel Molnar commented that he would add this discussion point at point 24 of his comments letter.

Member Winkelman said of concern 1 summary, under 3 talks about widening of the road beyond the code requirements of a conservation density subdivision road, The code requirements represent the minimum requirement of the conservation density subdivision road and it is important to clarify that because those minimum standards would be sufficient for a flat straight road being constructed. This site is steep, maxing out at 12% and it is curvy. The word minimum needs to be added to the statement. Read Spear commented that Dan Evans had wanted the road that wide because there was no water on site up top. Since they had added the two water tanks at the top, it might be within the board's ability to relax that. Member Winkelman said that his comment is generally that you would exceed the minimum on a steep slope curvy road just for safety reasons. Mr. Zona said that he does not feel that there is any engineering background for that view. He continued saying that unless there are some extenuating circumstances, he has not seen any engineering guidelines that you have to exceed the minimum road design because you have a slope. Read Spear said that the curves could be widened and not the straightaway sections. Mr. Zona stated that Member Winkelman is not correct in his reasoning as to why the road needs to exceed the minimum requirements just because the road is on a slope as there is no scientific reasons to support it. Counsel Molnar said that

in any event Member Winkelman is accurate to say that to widen the road beyond the minimum requirement of a conservation density subdivision road is an accurate statement. Mr. Zona said that he is correct in the statement although there is no engineering reason to widen the road because of the slope. Counsel Molnar continued that the sentence should continue to state to the extent requested by the fire chief and followed by the Planning Board is an accurate statement. Mr. Zona continued saying that the fire chief did not mandate but requested it. Counsel Molnar stated that it would be added to the comments and re-circulated tomorrow. He recommended that the applicant could address these two comments as well as the other suggested edits and come back to the board with an edited DEIS.

Mr. Langey stated that 90% of the comments have been accepted in Read's document and suggested that the board could review and discuss some of Read's comments tonight to get further resolution on the DEIS. Chairman Southern said that if there are a limited number of items it would help the board to get a better understanding.

Read Spear started with pages 8-9 where there is a comment by Mr. Camp regarding the bulleted items that should be deleted as they are not relevant to the DEIS. He continued saying that it has to do with the building lots and going into the minor subdivisions as opposed to the major subdivision. He felt that it is directly related in that it is a history of land disturbances deemed acceptable. Our point is that we had done all the bulleted items listed and yet here we are still discussing it five years into this. He said that they are open to deleting it but would appreciate hearing the rationale for why that is not relevant. Mr. Camp stated that they are not tied to any concerns by the board unless they see it differently. Read Spear said that his concern is more of a global concern about total impact as they are not seeing as high impact in comparison to what gets approved regularly. Mr. Camp said that the Planning Board addressed five or six concerns and he does not see how this text ties into any of them and Read Spear commented land disturbance. Mr. Brodsky said that as Counsel Molnar pointed out earlier, the town must react to what has been submitted, and your project is a major subdivision. Almost all the other ones you have cited are minor subdivisions, which is the choice of the applicants and not the town. Read Spear said that all the smaller subdivisions add up to six large subdivisions is their point. Mr. Camp inquired on how that ties into the concerns of the board. Read Spear said that the concern is one of total environmental impact; zoom out and look at this from our perspective. Mr. Zona stated that in their private conversations in the past, they wanted to make the point that in the comprehensive plan that they are doing responsible development by clustering these lots together not doing podunk one, two, or three lot subdivisions all over the place; Read Spear commented that that is the point. Member Marshall said that it is one viewpoint; however, the comprehensive plan takes about focusing development near the hamlets and in the northern part of the town, and this is neither. She continued saying that it could be argued a variety of ways. She said that comparing this one development to the small developments is subjective, and the board has various considerations. Mr. Zona said that the town has certain criteria like focusing on the hamlets here and there. On a bigger scale with this development they are not doing single, two off lots and they are trying to compile all their lots in a smaller section on 85 acres and only take up a certain portion of that. He continued saying that it seems to him that in the spirit of clustering and good development, you would at least want to make the argument that it would not be discounted. Being a Planning Board would not you want to at least have that brought up somewhere so that you could comment on your own if you agreed or disagreed. Member Marshall said that the sponsor states it well when discussing the proposed conservation cluster development and it is clear; however, it is not useful to compare it to six individual developments. Chairman Southern commented that there is an understanding of what will be done with that section and there will be further discussion. Mr. Zona requested that Mr. Brodsky reflect on page 35 as the location to incorporate his comments.

Read Spear stated that he wanted to find agreement and not provoke anyone. He continued saying that Mr. Camp wanted to delete the no action alternative. Mr. Camp stated that the no action would cause the least impact to the environment, and their position is that managed runoff for erosion is better than unmanaged

runoff and they feel that no action is more impactful to the environment. Chairman Southern inquired if they meant no action beyond what is in place now. Read Spear said no action means nothing happens. Chairman Southern said that if there is no action there it would not create an issue. Counsel Molnar stated that if there was nothing to happen, subject to the law you would have to follow stormwater mitigation measures. He continued saying that the bridge on this project has already been crossed once and even though there were no subdivision actions pending, the town acted in response to the neighbors. The Woodruff house across the street had taken additional action to restore the stormwater management on site and that happened during a pause of these proceedings. He continued saying that his point is that we are all subject to stormwater management and control; sections of the existing code, in that a no action must still stay in compliance with the law. Read Spear said that no action also permits agricultural use which would result in considerably lower quality runoff. Mr. Camp stated that his interpretation is that no action is leaving it in its existing state. Counsel Molnar stated that the sponsor had addressed an agricultural use as an alternative, but it is disfavored by the project sponsor for a multitude of reasons that are documented in the DEIS.

Read Spear said that on page 16-17, Mr. Camp was asking to correct existing language that was quoted from the board's SEQR determination. Because it was in quotation context it should remain that way. This is not a major concern. Mr. Camp said that his statement was a more general comment and he had picked up on that statement, suggested to frame the language as proposed and not as existing. He continued saying he understood that instance of the language being in quotations. Mr. Brodsky said that there are several instances where the sponsor is quoting the board and it is not necessarily understood clearly as being a quote. Member Hamlin commented that everything that is in the tables came out of the board meetings.

On page 41-42 Read Spear began addressing Counsel Molnar's comment that revisions are required for objectivity on scenic viewpoints. Read Spear said that he had missed some quotation marks on this as the section quotes the DEC EAF Workbook. He continued saying Counsel Molnar recommended to add the phrase may or may not appear to meet this definition and he felt it should only work with for officially designated spots. He inquired if there are such spots in the town and if there are they accept the change. If not, then they would reject the change and return to their original language. Member Marshall said that there are none; however, the conversation was regarding views from the lake and the agricultural and rural aesthetic character of the town, which is a more general view. He continued saying that it is important to the community and planning of this community although it may not be a designated pull off, but it is the general character. Counsel Molnar stated the EAF question this is tied to is 9d, with the direct quote from the scoping document and the positive declaration, impact of new road on view. The board rationale is as viewed from the lake by people traveling by boat or visitors riding the services provided in a community that has a lot of tourism not just on the water. He agreed with Member Marshall that it is a general conclusion that either from the lake or on the roads, that it is an impact on view. That was the determination of the board at the time of the positive declaration which was after the review of the EAF. Chairman Southern recommended that the sponsor state their concern and that it should not be applied to this as nothing has been identified viewshed. Read Spear said that he read the language and does not see how they fit into it. Chairman Southern said that the statement says as viewed from the lake. On page 42, regarding the same issue, Read Spear said that East Lake Road does not fit the definition and they would like it decided. Chairman Southern commented that the board is accepting statements from the sponsor currently and not passing judgement of the DEIS. Read Spear said that they do not feel they meet the description there. Chairman Southern inquired on how this statement being left in the document hurts the project and Read Spear requested that a decision be made. Chairman Southern said that he felt it is an opinion as it is not a listed byway with pull off. It is still a view and the project still would have impact on the view. Read Spear said that in their opinion, does it rise to the threshold of DEC workbook; it includes the lake but not East Lake or West Lake Road. Mr. Langey recommended that the applicant present their comments in the

document, and then when the board believes the document is acceptable for public review. That debate could continue. The applicant has a valid point, and they are not saying that the board is accepting it at this point. Counsel Molnar said that there is no argument that the lake is a public vantage point officially designated as Skaneateles Lake. Balancing Read's comment and his own to strike it altogether, he suggested that the section is left in per the DEC EAF workbook of public vantage points, conclude it with Skaneateles Lake and address the visual impact from the lake, the project sponsor believes as follows, and lay it all out. It is not the roadway as West Lake Road is not designated, and the DEC workbook does not appear to provide support for this classification of impact under SEQR. That does not do justice to the fact that Skaneateles Lake is a designated vantage point. Mr. Langey stated that it all has to do with the impact of the project from that vantage point, which is going to be in the eye of the beholder, and the position must be laid out in the document.

Read Spear said that condition 5 is vexing to him. He continued saying that he has a response to Counsel Molnar's objection concerning reasonable test for being responsible for essentially land that is not under their control. Page 6 of the SEQR handbook cites that private applicant's alternatives should be limited to parcels owned by or under option by the private applicant. To demand otherwise would place an unreasonable burden to commit to control of sites that the applicant does not have under their control. He continued saying he does not know whether it should be omitted or if it needs to be addressed. If it is addressed, they would comment that they cannot control what other property owners may or may not do with their land. There is a further comment from Counsel Molnar, and he inquired if they should show the approach on how this project is unique and that there would not be any future projects like this. Counsel Molnar stated that this project rises or falls on its own fact specific, condition specific aspects. He continued saying that the potential impact was thoroughly vetted with the positive declaration and then reviewed in the scoping memo. That is why the suggestions was made to adapt the potential impact is not too speculative based on the transcript of the proceeding and the record that was developed at the time of determination of the positive declaration. At this point, the DEIS must identify what the potential impact is. Suggest mitigating measures, design change, or alternatives to resolve it. Read Spear said that the alternative came from an earlier exchange with Counsel Molnar where they had objected to that being a concern and Counsel Molnar indicated they would have an opportunity to address the existence of that concern at a future time. He continued saying that they can adapt their response to that particular concern.

Read Spear said that the shared lakefront access with Counsel Molnar's comment to argue back why it is not shared lakefront recreation is that, according to their understanding, it is entirely a different legal function of the existing access easement. They would agree to delete the paragraph but do not want to assume the position of arguing that it is not something that they are not asking for. He continued saying that they are not looking for anything to be added there. Counsel Molnar referred to the paragraph on page 53 that states that "the project sponsor contends the concern for lake access is misconstrued as shared lakefront recreation. The lake access and shared lakefront recreation are all separate issues from potential future development on slopes and are not related. Shared lakefront recreation is not part of this proposed project." Counsel Molnar stated that his comment was for the sponsor to state why and list the factors that are part of the project sponsor's thinking. Read Spear said that his response to that is that it is not shared lakefront access not because of any mitigating factors but because it is entirely a different legal function. Counsel Molnar recommended that the sponsor say that.

Read Spear continued with page 59, saying it comes back and requested on how it should be addressed. He had commented in response to a request for a list that this access prohibits everything except the rights as written. They are not looking for friction, they are just wanting the access easement left in place. He continued saying that it would be an infinite list. He continued saying that it is a non-exclusive right of passage for pedestrian ingress and egress only: there would be no badminton, picnic tables, anything. The language is in exhibit 22. Chairman Southern inquired if the section could be left as is, and Counsel Molnar

stated no, not under the rationale that Read had provided. The only positive force from the easement is the access to the lake, pedestrian ingress and egress. He continued saying that it doesn't prohibit a list of activities; how do you tell the story that it is not shared lakefront recreation with what is and is not permitted. Many people on the lake with shared lakefront recreation have picnic tables, mooring fields, a dock, boat hoists, etcetera. Mr. Langey stated that the terms are already set forth in the agreement. He continued saying that if anyone on the lake is undertaking that type of use under the code, they would be subject to prosecution under the code so it would be well advised to not undertake those uses that are prohibited by the code. He said the easement is what it is, and nothing is banned by the current code definition. Mr. Brodsky said as the document was received today, it may be prudent to compare the easement language with the definition in the code. Counsel Molnar recommended that that could be reviewed after the draft DEIS is complete and prepared for publication to the public and interested parties for review and comment. He continued saying that the project sponsor should add what they are prohibiting and allowing in this section.

Read Spear said he would like to address page 64 regarding a deletion by Counsel Molnar concerning the existing driveway's peak grade being the way it is based on last minute design changes by the prior town engineer. They are not sure if the deletion request is to address the fact of how the driveway got so steep or simply because that it is not important. We want it to be noted that we did want the current slope, we did not design it and it was a major misstep by the previous town engineer in their opinion. Mr. Camp commented that this has been brought up a lot and it has not ever been verified. It is not relevant or appropriate for the DEIS. The minutes were checked and there were no comments regarding this request. Mr. Brodsky stated that there are no standards in the code regarding common driveways. Mr. Camp commented that the engineer does not require anything on an application; he only can make recommendations to the Planning Board that would set a requirement. Read Spear said that this goes back to the fire chief, and Mr. Camp you said that the fire chief does not propose road widths. Since the board is requiring these changes on that basis, where does the buck stop on the determination. Counsel Molnar stated that the fire chief made a recommendation that he would not approve the road if it was greater than 12% slope and not wide enough to permit fire safety vehicles from accessing the proposed lots and homes that are up there. The fire chief does have jurisdiction concerning roadways and driveways under the New York State building and fire code. The fire chief can set restrictions and weigh in on requirements including turnouts and turnarounds that may be on private driveways longer than 500 feet from the public way. The fire chief has jurisdiction and the Planning Board following it is in line with that jurisdiction. Read Spear asked if they could keep the statement that the storage of water obviates the need for the greater width, as he believes that was the recommendation of the fire chief. Chairman Southern inquired if the sponsor's intention is to reduce the width. Read Spear said they would like to leave it as an option for the board and Chairman Southern commented that it should be wide. Read Spear said that determination was developed on the basis of a letter from the former fire chief, Dan Evans, after providing him with water as a basis for widening the road, there would not be a reason for why the road would need to be so wide. Mr. Camp inquired if the fire chief reviewed and agreed to that. Read Spear said that they are being required to exceed the minimum and the nature of the question is why at this stage. He inquired as to who makes the determination because that is who they appeal to. Mr. Camp said he recalled that it was a question to the fire department relying on a private entity to maintain those tanks, and he did not believe it has been resolved. Mr. Zona said he thought the fire department was going to maintain them. Mr. Brodsky said that if the project sponsor wants to narrow the road because of the water storage tanks at the top, then the fire chief needs to endorse that. Read Spear said that the original issue was daisy-chaining fire trucks in order to reach the top as the reason for the road width. They offered to put the water up there so that it would not require daisy chaining. Chairman Southern asked how much water would be stored up on the hill and Mr. Zona said 20,000 gallons in two separate locations that would have 10,000 gallons each. Chairman Southern said that the average pump on a fire truck pushes out 1500 gallons a minutes, so you are talking 10 minutes from either tank. Read Spear said that they would be happy to add more tanks. He continued saying that they accepted Dan Evans recommendation of the storage quantity. Chairman Southern

recommended that they go back to the fire chief and get a new recommendation, and if that is something you want to include in the revised document then do so. He continued saying that the board is accepting the information, not agreeing with, or denying the information as part of the DEIS submitted by the project sponsor. Mr. Zona said that if the road can be narrowed, then it can help with the slopes and the excavation. He continued saying that they design to the minimum as that is what is required and they do not want to exceed it by any more than they need as there is another concern of the board regarding the side slopes. Counsel Molnar inquired if the width was a concern notwithstanding the tanks that Read was mentioning; or was the width there for the vehicles or was it there for water and vehicles. Counsel Molnar commented that he had made a recommendation in his letter for the project sponsor to obtain updated information from the current fire chief on the project design.

Mr. Brodsky commented that on page 35 starting with “RZ Engineering PLLC has prepared a chart”, is the paragraph where you talk about lot eleven and excess materials. This should be expanded to include how the excess materials would be stored, managed, etcetera.

Counsel Molnar said that he would edit the letter to include the additional comments made at the meeting. The letter will be circulated tomorrow that is from the lead agency to the project sponsor on the DEIS. The project sponsor has an unlimited time to turn the document back to the board. The Planning Board has 30 days maximum to review the comments although the board may not need the additional 30 days for the turnaround. The Hidden Estates application will continue at the Planning Board meeting scheduled for Tuesday, October 20, 2020.

WHEREFORE, a motion was made by Member Hamlin and seconded by Member Marshall to adjourn the meeting. The Board having been polled resulted in the unanimous affirmance of said motion. The Planning Board Meeting adjourned at 7:53p.m. as there being no further business.

Respectfully Submitted,
Karen Barkdull, Clerk

Additional Meeting Attendees:

Mark Tucker
John Delaney
Holly Gregg
Alan Briggs
Eva Pajak
James
R. Harms