

**TOWN OF MANLIUS
PLANNING BOARD MINUTES
February 22, 2021**

APPROVED

The Town of Manlius Planning Board convened with the members live streaming from their homes and in accordance with the Executive Order of the Governor to assure compliance with the Open meetings Law. Chairperson Joseph Lupia presided, and the following Members were present: Fred Gilbert, Ann Kelly, Mike LeRoy, Arnie Poltenson, Richard Rossetti and Valerie Beecher. Also, present were Attorney Jamie Sutphen and Town Engineer Douglas Miller.

Also, Present: Tom Douglas, Scott Freeman, Rudy Zona, Vincent Ryan, Vaughn Lang

The Pledge of Allegiance was recited.

Chairman Lupia introduced and welcomed new Planning Board Member Valerie Beecher.

Minutes

Member Rossetti made a motion, seconded by Member LeRoy and carried unanimously to approve the minutes of February 8, 2021. Members Kelly and Beecher abstained.

Woodland Hills Subdivision (Hoag Lane Development)
201 Solar Street, Syracuse, New York 13204
Public Hearing - 21-Lot Subdivision –
5290-5320 Hoag Lane, Fayetteville, NY 13066
Tax Map # 104.-01-39.2

Member Rossetti made a motion, seconded by Member Poltenson and carried unanimously to Open the Public Hearing at 6:35pm.

Member Rossetti made a motion, seconded by Member LeRoy and carried unanimously to have Clerk Beeman read aloud the Public Hearing notice that was published in the Eagle Bulletin. Attorney Sutphen stated that the SEQR documentation had been distributed to all interested and involved parties pursuant to SEQR. The following members of the public addressed the Board.

1. Chuck White – 5121 Shiraz Lane – Licensed Professional Engineer – Mr. White made several comments as read from his prepared comments. The comments as provided by Mr. White are attached hereto.
2. Dr. Paul Massa – 612 Churchill Court – Dr. Massa made several comments as read from his prepared comments. The comments as provided by Dr. Massa are attached hereto.
3. John and Eileen Krell – 5205 Hoag Lane – Mr. and Mrs. Krell expressed concerns regarding the drainage and flooding in the neighborhood. They expressed agreement with the comments made by Mr. White and Dr. Massa.

They also expressed concern about the retention pond in relation to the safety of children in the area.

4. David Brittian -5270 Hoag Lane – Mr. Brittian expressed his concerns with flooding and drainage in the area and how this would impact same. He expressed concern with the number of homes that are proposed; extra impermeable pavement; the retention pond and its size. He noted that the “dam” is not being built to NYSDEC specs.
5. Walter and Elizabeth Merriam – 5347 Hoag Lane – Mr. and Mrs. Merriam expressed concerns about the roads being too small and there being no sidewalks; people and dogs walk all the time and 21 homes would be an increase in traffic in the area; lots of limestone and waterways under ground could be a problem for the site; neighborhood would be less desirable with the 21 homes that create too much traffic.
6. Nadine Bell, Attorney – Ms. Bell made several comments as read from her prepared comments. The comments as provided by Ms. Bell are attached hereto.
7. Dr. Denis Branson – 5120 Shiraz Lane – Dr. Branson expressed concerns regarding flooding and drainage; the impact on septic systems in the area. He stated that he agrees with everything that Chuck White said about the engineering issues. He expressed concerns about the proposed concerns about the HOA and the covenants.
8. Paul Gunther Kascha – 610 Churchill Court – Mr. Kascha stated that he was representing his father, Gunther, who passed away earlier this year. There are concerns about the character of the neighborhood and the houses that will abut his mother's property; sanitary sewer issues and the topography of the land; concerned with the limestone in the area and how unstable it can be. He questioned whether there will be a blasting plan.
9. Ellen Predmore – 5103 Shiraz Lane – Ms. Predmore stated that she agrees with Chuck White about the engineering issues and everything else the neighbors have said. She expressed concerns with flooding; issues with sump pumps. She spoke of the numerous underground springs that affect the area and concerns with plans to connect to sewers on Shiraz Lane. She expressed concerns regarding more water will be directed to her property; the size of the retention pond is alarming; many people walking the neighborhood and concerns about kids and the pond. Traffic is also a concern and she spoke of the issue with the trees that were already cut down by the developer.
10. Matt Mulcahy – 7815 Karakul Lane – Mr. Mulcahy expressed concerns that the developer said the development was going to be a cluster, then they cut all the trees. He also stated concerns that the developer originally said there were no wetlands or streams, but it was eventually proven there are. Also, the developer said the retention basin was good enough for the project, but it is really a dam and the dam plan is coming up short. He thanked the Planning Board for their service and expressed concerns about the hostility towards the Board by the Developer. He is concerned about the issues with the SEQR process and how the Developer is not answering the questions. He questioned whether the project meets the “spirit” of cluster development if the trees are all already cut down.

11. Rob Winter – 5256 Hoag Lane – Mr. Winter is strongly opposed to the current plan for the property but understands the desire to develop it. He stated his belief that the project will have a negative impact on the neighborhood; concerns about stormwater runoff; issues with the traffic study and concerns about the duration of the construction as well as access to the property for emergency vehicles. He thanked the Planning Board for their service.
12. Elizabeth Gigliotti and Wendy – 107 and 202 Dawley Road – They expressed concerns about the potential traffic issues; the construction timeline; concerns about environmental issues. Expressed concern with the issues with the dam/pond and who will be responsible for it including concerns about whether the HOA will hold up over time. They further agree with everything that was previously said and thanked the Board.

Chairman Lupia stated that the Board has received at least 15 letters from the residents concerning the project. Those are a matter of public record.

Hearing nothing more from the public, Member Rossetti made a motion, seconded by Member LeRoy and carried unanimously to close the Public Hearing at 8:08pm.

Chairman Lupia stated that under state law there is a period in which residents can continue to forward information regarding the project that the Board will take the matter under review. Member Rossetti made a motion, seconded by Member Beecher and carried unanimously to keep the Public Comment period open through Friday March 5, 2021.

Chairman Lupia asked the Applicant if they would like time to reply to the Public Comments? The applicants responded in the positive.

Attorney Vaughn Lang addressed the Board and the comments are summarized herein. Mr. Vaughn initially stated that the public comments have little to do with the subdivision. He stated that an adjacent subdivision drains through 2 pipes and dumps on to this property. The problem is not the problem of this land at issue. He stated that there is no easement for this drainage and he can plug it up tomorrow if he wants to; but he chooses to work it out. He further stated that the water flowing out and flooding the lower properties is not from this property but from the properties above this one. He stated that in regard to the subdivision that is being proposed, the developer intends to mitigate the water runoff and that is the difference between the subdivisions above that are causing the flooding and the one that is before the Board. He stated that the current flooding is the Town's problem not this applicant. He questioned as to where the issues should be discussed – i.e.: amongst ourselves, in a court of law? He stated that he heard comments about this project affecting Muirfield Basin and that the applicant has submitted graphs, maps and more to the Board, but they are still hearing that it will affect the Basin and that "water does not run uphill". Further, Muirfield is lower but there are other places lower on the way down. He stated there is no limestone on the property and that it has been proven by so many holes that were drilled it looks like swiss cheese. He stated that flooding already exists, and it has nothing to do with this

subdivision and that alternative facts about Limestone and alternative facts about the waters from this subdivision will affect the Muirfield Basin. Regarding a 40-foot detention basin; it is not even in the plans. Further there was never submitted any information about an HOA. These are all conflicting things. Does the subdivision satisfy the Towns requirements? Does the subdivision satisfy all of the DEC requirements? Has the DEC contradicted the Towns Engineer? Have our Engineers contradicted the Towns Engineer? Where should the issue be decided? The applicant thinks that they have satisfied everything that they can. The water from this subdivision is mitigated in this detention basin. In the last 3 years the issues could have been discussed but no one is willing to sit down and talk about it. There is nothing more to be said.

Chairman Lupia stated that the Town has sat down on numerous occasions at the Town Offices, and at counsel's office to discuss this and try to work out an understanding. The Town has gone out of its way to hold special sessions.

Attorney Lang stated that he did not mean to say we have not sat down but the greatest thing about Zoom is that it is all recorded. All conversations are recorded, and they have responded to 167 questions, then they get another 200 questions. Is that normal? He came on the project in late June so he cannot speak for anyone or anything before him in regard to sitting down.

Member Rossetti stated that he does not (personally) like to be threatened by the "do it my way or I'm going to sue you." That is what he is hearing from the applicant and he does not like it. Attorney Lang said that those who know him know that he is not threatening, he is saying that the focus is not exactly their problem, its not their situation to cure but it is the Town's issues of flooding that have happened for years/decades because of the way prior subdivisions have dumped their water across this property.

Other Business

With there being no further business, Member Gilbert made a motion, seconded by Member Rossetti and carried unanimously to adjourn the Regular Meeting at 8:26pm.

Respectfully submitted,
Lisa Beeman, Clerk

Town of Manlius – Woodland Hills Development (aka Hoag Lane Development)
Public Hearing on February 22, 2021 – Comments provided by Chuck White

To: Planning Board Chairman and Planning Board Members:
From: Chuck White – resident of 5121 Shiraz Lane

As a Licensed professional engineer that regularly deals with municipal boards and applications/projects like this one, I can say that there is a direct relationship between the quality of the application and the timeline/approval process for said project. Here we are, over three years later and this project is still far from approval. What does that tell you?? Simply put, this project has been flawed since day one and its applicant and professionals have failed to address the concerns of the town and public.

The applicant will have you believe that Manlius is in dire need of new building lots when existing subdivisions such as sections of Mallard's Landing and Austin Meadows are still not fully built out after many years. Further, the Reserve at Bishop Brook on NYS 173 between Hyde and North Eagle Village has not seen a single lot of the 16 available built out. There are plenty of building lots available and this proposed subdivision is not needed.

Significant and Unmitigated Downgradient Stormwater Impacts

Existing closed and open channel drainage systems immediately down gradient of the proposed Hoag Lane subdivision are undersized and flooding is routinely experienced along Hoag Lane and Muirfeld Drive. As engineered, the proposed subdivision will discharge all runoff from the project site to these existing drainage systems. The Town of Manlius is aware of the inadequacy of the downstream drainage system infrastructure and the flooding that regularly occurs. The closed drainage system is undersized to convey flows that regularly occur which results in surcharge of the closed drainage system. Surcharged flows then find overland flood routes through adjacent properties and are not conveyed to the stormwater basin on the north end of Muirfeld Drive as intended.

The applicant's engineer contends that the basis of their design is based on the NYSDEC Stormwater Design Manual. While this is an accepted guidance; their argument that there no precedents for addressing not only peak flow rates but also reduction of runoff volumes is not is defensible. As noted by the applicant's engineer in their DEIS response "runoff volumes increase for every project developed on every site in every state in the country". The applicant's engineer claims that volume is not a typical metric and that peak runoff is a better metric of flooding. Both are metrics that clearly identify the potential for flooding. While the applicant's engineer claims a reduction in peak discharge rates in post development conditions; there is no escaping the fact that the total discharge volume will be significantly increased by this proposed development. This will result in extended flooding events which is already well documented downgradient of the proposed project. (See attached photos for examples of flooding).

The applicant's engineer has indicated in the DEIS response that their project has no relationship or discharge connection to the stormwater facility on Muirfeld Drive. The applicant's engineer claims that

the site is not tributary to the Muirfeld Basin. This could not be further from the truth. Using dye testing methods, it has been previously confirmed that the entire closed drainage system beginning on Churchill Lane discharges at the Muirfeld Basin which clearly shows that the site proposed for development is directly tributary to this basin. The applicant's engineer has not performed necessary field reconnaissance to verify existing field conditions and has made statements that are not factual. Based on this example alone, one must question the entire design proposed by applicant's engineer.

The applicant's engineer contends that they are not responsible for drainage issues downgradient of the project site. If their project makes existing conditions worse, which it will, the Town is able to either reject the proposal outright or require the applicant to mitigate said impacts as a condition of any approval if granted.

This development as proposed will create a significant adverse environmental impact to the community downgradient of the project site. How can this impact be mitigated? It can be in part mitigated by either allowing no development as is currently proposed or by a significant reduction in the proposed development footprint (i.e. many fewer proposed development lots).

Basis for Cluster Development and Proposed Number of Lots

The Applicant has proposed a cluster subdivision which can offer many benefits to the community, including preservation of open space and buffers from adjacent properties. Relying upon alternative layout, configuration, and lot design, it is generally recognized that clustering allows for the efficient development of the most suitable portions of property, resulting in the preservation of the natural and scenic qualities of open lands.

The Applicant's current proposal is for 21 lots. The "Pre-Cluster Plan" submitted by the Applicant is flawed in many ways. The "Pre-Cluster Plan" which is proposed for use by the Applicant as the basis for determining the number of developable lots in the cluster subdivision has failed to adequately show how this conventional subdivision layout conforms to all requirements of the Zoning Code. The "Pre-Cluster Plan" depicts a stormwater pond that is to be excavated to a depth of greater than 40 feet (check the contours). The applicant has failed to provide subsurface documentation showing that such a pond could reasonably be constructed. Further, this deep pond would be constructed immediately adjacent and down gradient of an existing stream and jurisdictional wetland. Construction of this pond is expected to result in impacts to these features.

In summary, the basis of the applicant's proposal for 21 lots is based on something that is not constructible and therefore should not be considered as a basis for 21 lots.

This development as proposed will create a significant adverse environmental impact to the community and existing wetland resources as a result of the number of lots proposed by this subdivision. How can this impact be mitigated? It can be in part mitigated by either no development either allowing no development as is currently as proposed or by a significant reduction in the proposed development footprint (i.e. many fewer proposed development lots).

Impacts of Earthwork

The applicant's engineer states in the DEIS response that the site earthwork is not balanced and will require approximately 14,500 cubic yards of fill. This is fill for earth work purposes only and does not include delivery of other required construction materials (pavements, pipe, catch basins, house construction materials, etc.). The import of this volume of fill will result in approximately 1,500 heavy vehicle trips during construction. It should be noted that the Town of Manlius paved Hoag Lane in 2020 and is scheduled to repave both Shiraz Lane and Karakul Lane in 2021. These heavy vehicle trips will have an impact on the road systems local to our neighborhood. Consideration should be given to requiring the developer to enter into a Road Use Agreement that will ensure any potential damage to local roadways as a result of this project is corrected should this project ever move forward.

This development as proposed will create a significant adverse environmental impact to the community and existing roadway network as a result of this project. How can this impact be mitigated? It can be in part mitigated by either allowing no development as is currently proposed or by a significant reduction in the proposed development footprint (i.e. many fewer proposed development lots).

Adequacy of Wastewater Infrastructure (Sanitary Sewers)

As currently proposed, 7 of the 21 proposed lots cannot be served by a gravity sewer system given the elevation of the existing sewer main on Shiraz Lane. As proposed, the 7 homes would be served by individual (E-One) low pressure grinder pump stations at each home. While the use of these types of low pressure grinder pump stations is not uncommon in some areas, they are not ideal when their use can be avoided. Using this type of system puts the burden of sizing, installing, and maintaining these low pressure grinder pump stations on the home owner. As proposed, there is no guarantee that a back-up generator will be provided at each home in the case of a power failure and these low pressure grinder pump stations only have reserve capacity for approximately 70 gallons of waste water which is not a lot of volume. In lieu of individual low pressure grinder pump stations at each home it would be more advisable for the developer to design and construct a municipal scale sewer pump station with full backup generator capacity. This would allow all homes to be served by gravity sewer, would reduce the potential for a sewer overflow should one of the individual household systems fail, and would provide a more resilient sewer collection system.

It should also be noted that sewer capacity assurance letter provided to the development team by OCDWEP (Chris Deitman) was only valid for 24 months and has since expired. Given the duration this project has dragged on, there is a real possibility that that adequate capacity may no longer be available within the Meadow Brook Limestone WWTP service area. Furthermore, this project is subject to a 1:1 wet weather offset for the projected flows from this project to the Meadow Brook Limestone WWTP and no offset plan has been submitted for review and approval to our knowledge.

This development as proposed will create a significant adverse environmental impact to the community and existing sanitary sewer network and WWTP as a result of this project. How can this impact be mitigated? It can be in part mitigated by either allowing no development as is currently proposed or by

a significant reduction in the proposed development footprint (i.e. many fewer proposed development lots) which should include elimination of any lots requiring sewer pump stations to be served.

Flooding – Hoag Lane and Muirfield Drive



Muirfield Drive Pond, full to capacity 10/31/17



Muirfield Drive Pond, full to capacity 1/12/18

Flooding – Hoag Lane and Muirfield Drive

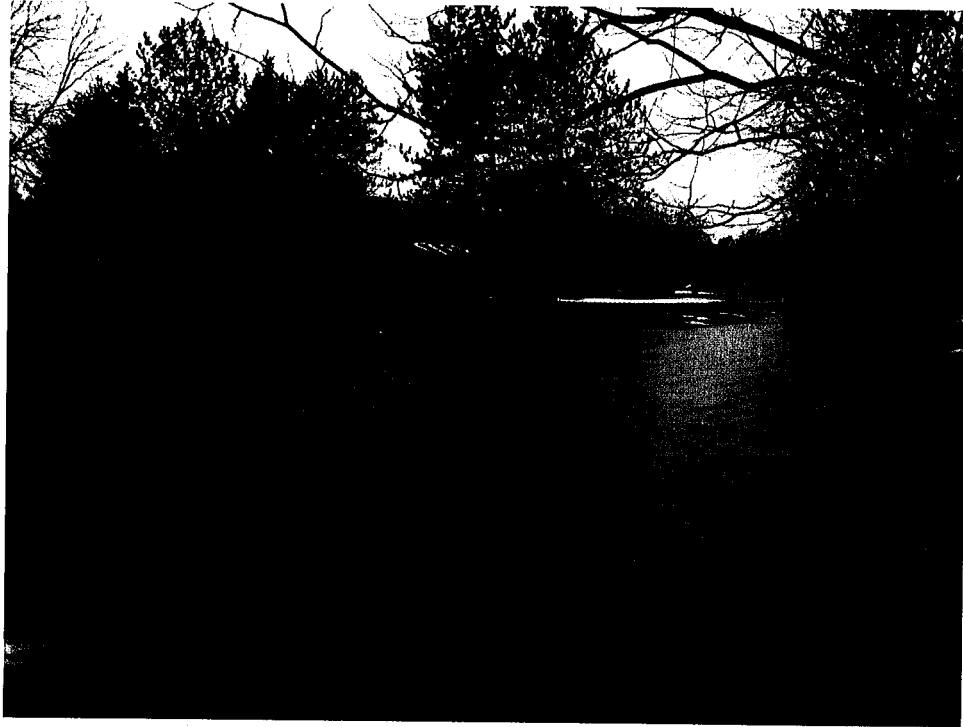


CMP outfall, Hoag Lane @ 5205 Hoag Lane 1/12/18

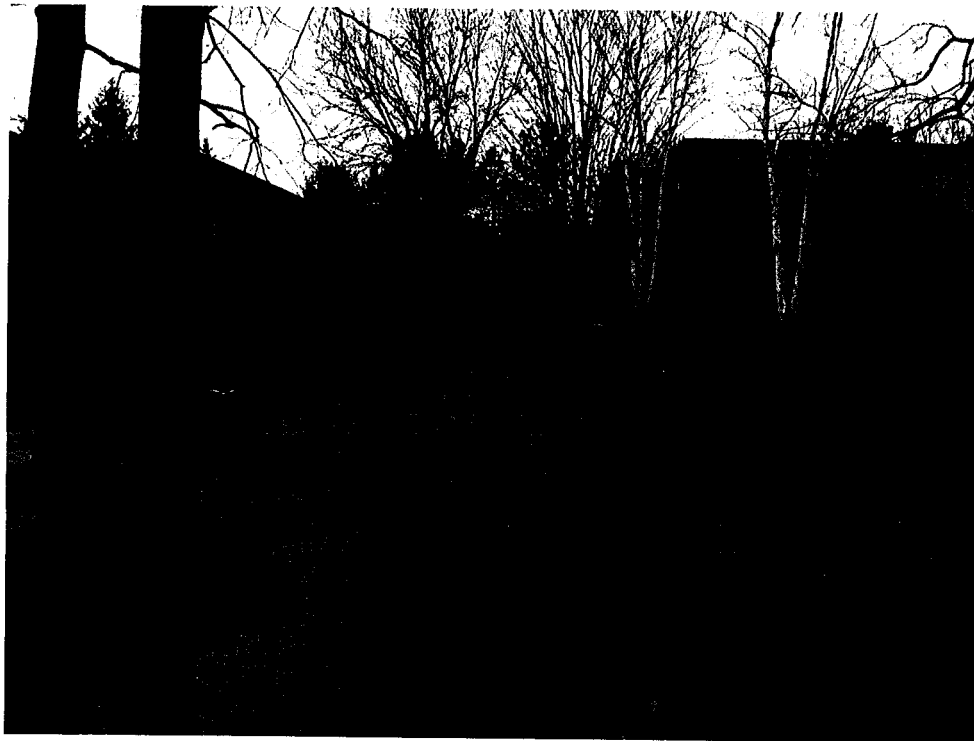


Backlot channel, Hoag Lane @ 5205 Hoag Lane 1/12/18

Flooding – Hoag Lane and Muirfield Drive



Backlot channel flooding, Hoag Lane @ 5205 Hoag Lane 1/12/18



Stormwater flowing back to Hoag Lane ROW @ 5205 Hoag Lane 1/12/18

Flooding – Hoag Lane and Muirfield Drive



Side lot flooding, Hoag Lane @ Muirfield Drive 1/12/18



Intersection of Muirfield Drive w/ Hoag Lane, note all catch basins are surcharged 1/12/18

Flooding – Hoag Lane and Muirfield Drive

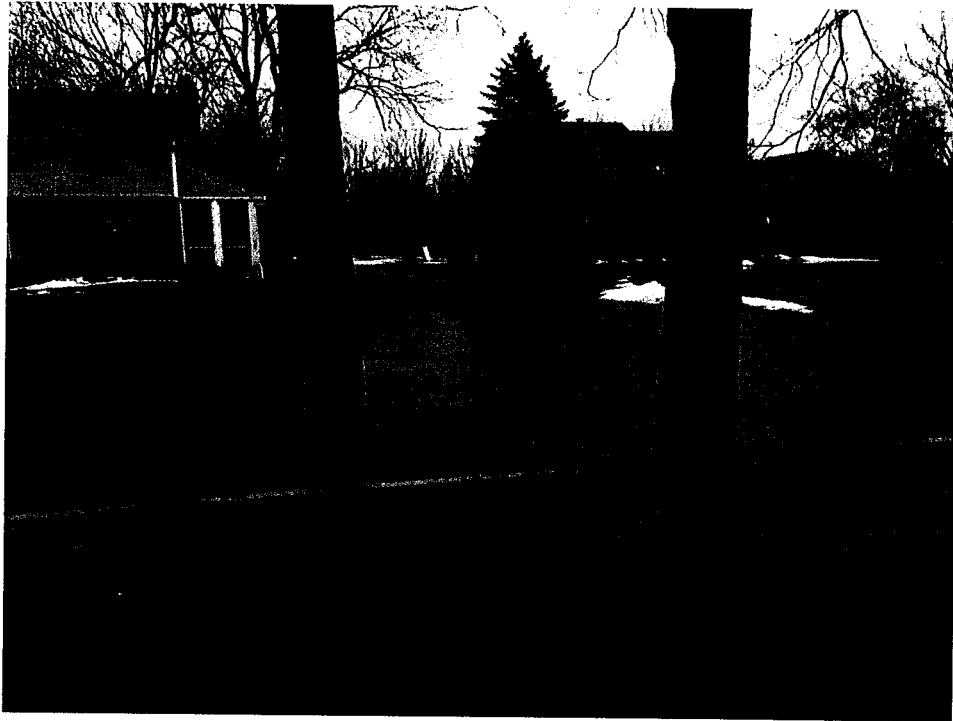


Hoag Lane flooding between Muirfield Drive and Foxcroft Lane 1/12/18

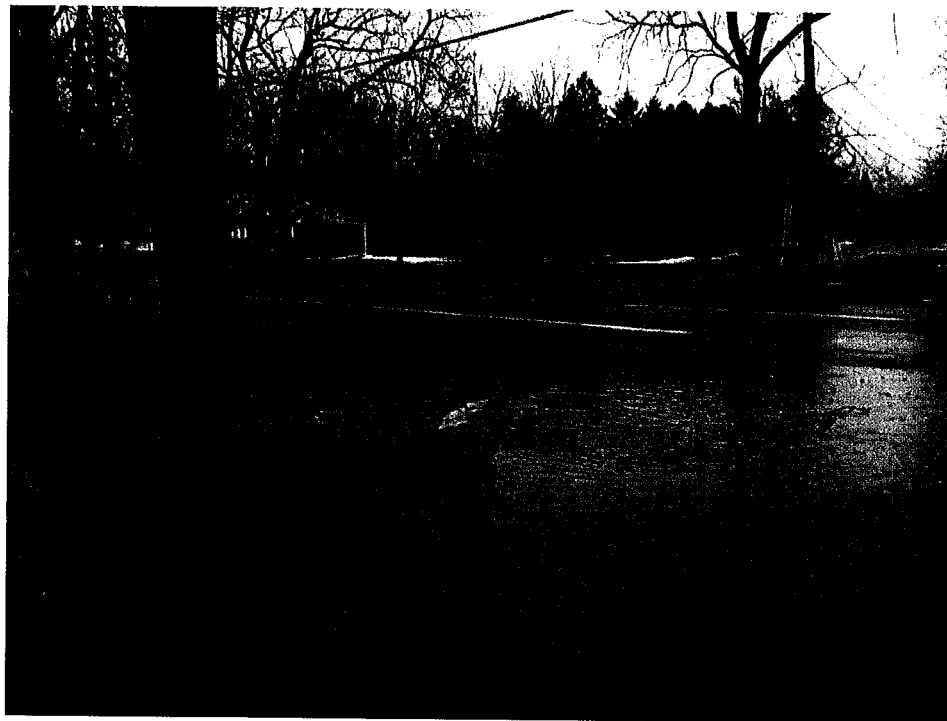


Hoag Lane flooding between Muirfield Drive and Foxcroft Lane 1/12/18

Flooding – Hoag Lane and Muirfield Drive

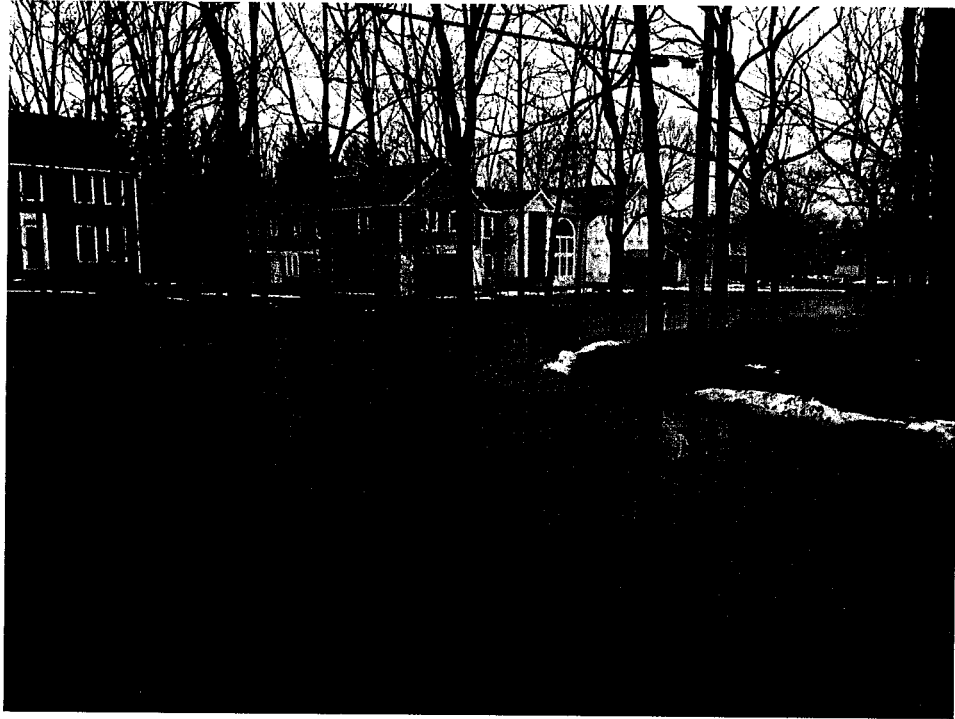


Water flowing over Hoag Lane draining south between homes 1/12/18



Intersection of Muirfield Drive w/ Hoag Lane, note all catch basins are surcharged 1/12/18

Flooding – Hoag Lane and Muirfield Drive

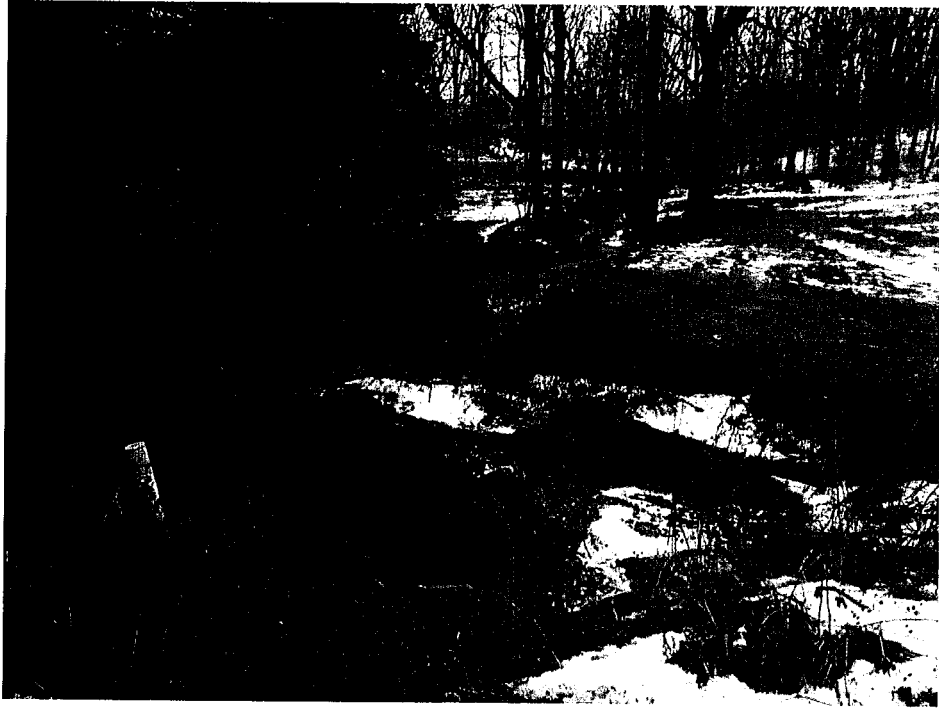


Intersection of Muirfield Drive w/ Hoag Lane, note all catch basins are surcharged 1/12/18

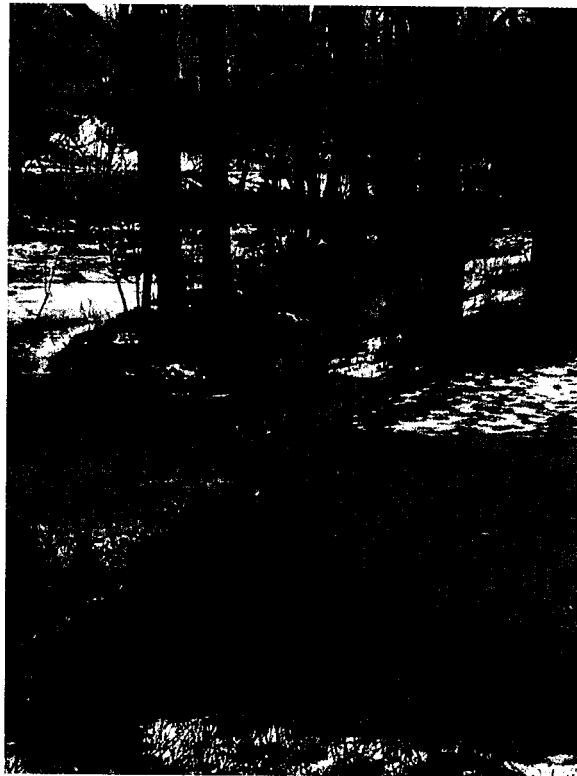


Water flowing west and crossing over Hoag Lane 1/12/18

Flooding – Hoag Lane and Muirfield Drive



Flows off lands proposed for development at culvert inlet – Churchill Drive 1/12/18



Flows off lands proposed for development at culvert inlet – Churchill Drive 1/12/18

Speaking is Paul Massa, current resident of 612 Churchill Court, Fayetteville, NY. As my entire northern border directly abuts the south border of the planned development (over 300 feet), I will likely be amongst the most impacted by the current development plans at Hoag Lane. The development property slopes steeply down from the north towards our home and therefore is in full view of from our home and the ~~for~~ is directly exposed to both noise and water runoff from this slope. So, I speak not only as a concerned neighbor but as someone that will be substantially impacted in a significant way by this drastic change in our neighborhood.

I would like to say that the development plans have evolved to some degree over the past few years. For instance, the developer has made some changes to address new evidence of important natural ^{stream & wetland} geological features of the property discovered during the planning process. However, in my opinion, the current plan for the development still falls short of addressing key concerns that have been described by engineers and neighbors and therefore the plan is unacceptable in its present form. Others will address many of these issues tonight. For my part, I believe that the following items need to be addressed before the plan can be approved by the Town of Manlius.

First, I believe that there is a general consensus in the community that the creation of a new million gallon pond in our neighborhood should be avoided at all costs because of environmental and safety concerns. Instead of a pond, alternative solutions to controlling water run off from the development should be designed. These might include rain gardens, structural flow impediments, and a greater percentage of forested areas in areas of high water flow rates that occur during storms. The Town of Manlius should encourage new practices such as these to avoid creation of new bodies of standing water and their associated detriments to the community. Design of these alternative mitigation strategies could be achieved for instance by experts at SUNY ESF possibly the Army Corps of Engineers as required. Moreover, we should plan on a system of flow controls to meet a 100 year flood instead of the minimum 25 year flood if possible.

Second, A permanent easement for the creek running through 612 Churchill Court should be continued into and across the development to assure future preservation of this creek and associated wetlands. This easement should be increased from the minimum width of 20 feet to address the health of the wetlands and allow incorporation of new water flow mitigation strategies where necessary in the development area.

Third, lot sizes should be substantially increased from the present approximately 0.5 acre to lots of at least 1.5 acres to conform to sizes of existing lots on both Hoag Lane and Churchill Court that directly abut to the development. As a result, I propose that the number of building lots/homes be correspondingly reduced to accommodate increased lot sizes. In addition, I propose widening the treed buffer zones especially at the southern border where it is presently the narrowest (20 feet). This will allow greater obstruction/absorption of water flow to the southern border neighbors and neighbors below the site through preservation of new and existing trees. An increased tree border will also allow greater migration of wildlife through our neighborhood.

In summary, reducing the number of homes on the development is likely to satisfy many key neighborhood demands to the developer including shortening the construction period (1 year max is the goal), eliminate the ecologically disruptive and potentially hazardous pond, decrease storm runoff, and increase the lot conformity to that in existing adjacent neighbors.



Sink holes
under mine
dum?

Date for
decision 10 days
Feb 22 - 7:30
public comment
in PM March
th.

February 25, 2021

VIA E-MAIL & FIRST-CLASS MAIL:

Town of Manlius Planning Board
Attn: Lisa Beeman, Planning Board Secretary
301 Brooklea Drive
Fayetteville, New York 10366

**Re: Woodland Hills Subdivision (Hoag Lane), Tax Map # 104.-01-39.2
February 22, 2021 Public Hearing Comments**

To Chairman Lupia and the Members of the Town of Manlius Planning Board:

Please accept this outline of my comments, as offered during the public hearing, on behalf of my clients, Charles White and those individuals residing in the immediate vicinity of the proposed Woodland Hills Subdivision. As noted during the public hearing, the comments offered are focused on environmental concerns identified by the Planning Board during its environmental review process and the inadequacy of the responses provided by the applicant in its Draft Environmental Impact Statement (DEIS). An outline of my comments is as follows:

- **Concerns 1 & 2, as set forth in the DEIS, relating to the impacts of stormwater surface runoff and the impacts of stormwater management facilities.**
 - Arguably, items of real concern. The Board is aware of existing stormwater drainage issues in the area.
 - The potential for the stormwater drainage concerns to be further exacerbated by the proposed subdivision has been raised and discussed in depth by C. White and other residents immediately surrounding the proposed subdivision.
 - Applicant's argument focuses, in part, on the Town's alleged "assumptions of alternative facts." This argument is first raised on Page 22 as a defense to the Town's environmental concerns; the applicant did not offer a proposal for mitigation.
 - Nor does the applicant offer any explanation of the "alternative facts" the Town is purportedly relying upon.

- Applicant doubled down on claim throughout the document and, on Page 36, argues that premise for a positive environmental impact “is based on alternative facts and lacks evidence to support its declaration.”
 - Essentially, the applicant makes no further effort to mitigate the proposed impacts on stormwater surface runoff or stormwater facilities.
 - Instead, applicant assumes an argumentative, “pound salt” approach to the Town’s concerns.
- **Concern 5, as set forth in the DEIS, Potential for Existing Project to be in conflict with community goals for Cluster Development.**
 - Applicant identifies 5 natural scenic qualities/ natural land features:
 - Natural knoll on the western portion of the property;
 - an intermittent stream;
 - ground water seep;
 - historical hardwoods southern buffer area; and
 - an eastern wooded hill.
 - Page 27 of the DEIS alleges “all five identified natural scenic qualities/ natural land features are protected on site through easements and covenants with individual property owners and HOA agreements.”
 - Applicant further claims property owners will have to “abide by all HOA stormwater regulations” on Page 28 of the DEIS.
 - There are inherent problems with arguments and proposed mitigation.
 - Only two paragraphs in the Declaration of Covenants may be arguably viewed as attempting to address the community goals for a Cluster Development. Paragraphs 10 and 12. AND YET -
 - Paragraph 10, allows “planting, landscape installation and buildings of any type within designated easement areas, **or areas designated as forever wild**, upon approval by the Architectural Control Committee and the Town of Manlius. Lot owners are generally required to mow and maintain all drainage easement areas on their lots. If the lot owners are not in compliance, the Architectural Committee, HOA and/ or the Town of Manlius may conduct the necessary maintenance and bill the lot owner for the costs of same.
 - Paragraph 12, allows permanent structures and fencing to be installed and trees which are 4 inches in diameter, or greater, to be altered, cut, or removed from a **forever wild area** upon the written consent of the HOA.

- This document is woefully inadequate to protect the Town and preserve the community goals of a Cluster Development.
- The language in the document is inconsistent; in one paragraph it is the Town and Architectural Committee (a committee of 2 people with no specific qualifications) with approval authority, the other paragraph imposes authority on the HOA generally, without any specification.
- No HOA documentation has been offered for the Town's review and approval. The Town has no idea how the HOA is to be structured and operated, which is a real concern when stormwater management facilities are located on land to be owned by the HOA.
- According to Paragraph 22 of the Declaration, neither the Town nor the HOA has the power to enforce the Covenants.
- Typically, municipalities rely upon a maintenance, covenant, and easement agreement, which is recorded with the County Clerk's Office; it gives the Town authority to enter onto premises, maintain property/ facility and assess the costs.
 - MCEA's cite to the specific facilities and the applicable maintenance guidelines. The Declaration doesn't provide this information and it will be difficult for the Town to enforce, as it will be subject to argument and interpretation by the property owners.
- In no way does the Declaration of Covenants specifically address the five natural scenic qualities/ land features as purported by the applicant.
- Further note, the applicant has not provided the Town with a draft forever wild easement; the terms and language of which are entirely unknown.
- To the extent, applicant argues on page 28 of the DEIS that "forever wild lands" have been preserved in perpetuity, thereby satisfying the requirements set forth in the Cluster Density Subdivision Regulations; I would argue it does not. By the very terms of the Declaration, buildings erected, fencing installed, and trees removed from the "forever wild" easement area.
- The importance of ensuring the continued maintenance and implementing funding mechanisms for the future ownership and care of green space/ forever wild areas and stormwater management facilities, was recognized by the OCPB, in both its December 2018 informal review and subsequent resolution.
- The DEIS prepared by applicant and supporting documentation fail to do this.

- The applicant further takes issue with the Board's conclusion that the proposal is not consistent with adopted land use plans or zoning regulations.
 - Again, mitigation is not proposed; rather, argument offered.
 - Applicant suggests that proposal complies with the Town's Code Chapter 127.
 - Argument ignores language of Code which permits cluster subdivisions, "subject to the conditions specified in Town Law Section 278 **and such other reasonable conditions as the Town Planning Board may in its discretion add thereto.**"
 - As well as the stated purpose, which is to, in part, **preserve the natural and scenic qualities of open land.**
 - On behalf of my clients, we continue to question the sufficiency of applicant's density calculation; case law confirms that the Planning Board is required to subtract acreage for environmental constraints, roads, streets, stormwater areas and forever wild areas, when making its density calculation.
 - While applicant focuses upon its preservation of "as much of the quality natural features" as possible, it does not appear that applicant's density calculation properly accounts for all environmental constraints, as required.

In summary,

- The environmental review of this application has extended over many months.
- The applicant has had many opportunities to provide the Board with documentation to support its proposed mitigation of the environmental impacts to be realized.
- In January, this Board accepted the DEIS, as prepared by the applicant, as complete.
- In doing so, the Board members acknowledged not being satisfied with the answers provided by the applicant and continuing to have concerns with the proposed stormwater mitigation.
- The Full EAF has been submitted and thoroughly reviewed. The Board determined there is a positive environmental impact and identified the areas that require mitigation.
- The applicant has prepared a DEIS (which was supposed to outline proposed mitigation) and the Board has accepted it and declared it complete. Contrary to Mr. Zona's contention to now prepare a "final DEIS" after public comments are

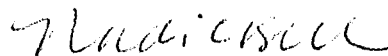
received, the DEIS phase is complete. The Board is now able to issue findings and a FEIS.

- In light of the concerns raised, it is respectfully suggested that the Planning Board determine that the environmental impacts to be realized have not been sufficiently mitigated and must, therefore, render a negative declaration and DENY the subdivision application on the basis of SEQRA.

Thank you for including the aforementioned concerns as part of the Planning Board's record. The Board's thorough review of the Woodland Hills Subdivision application and the environmental concerns relating to the proposal is appreciated.

Very truly yours,

COSTELLO, COONEY & FEARON, PLLC



Nadine C. Bell