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# *Appendix A*



**Sidney B. Bowne  
& Son, LLP**

235 East Jericho Turnpike  
PO Box 109  
Mineola, NY 11501  
Phone: 516-746-2350  
Fax: 516-747-1396  
www.bownegroup.com

May 26, 2009

Peter Weiler, Esq.  
Humes & Wagner  
147 Forest Avenue  
Locust Valley, NY 11560

Re: Proposed Oaks at Mill River Subdivision  
Mill River Road  
Village of Upper Brookville

Dear Mr. Weiler:

At this point in the SEQR process, the Board, as Lead Agency, may either accept the DEIS as "complete" and suitable for public review, or require that revisions be made to the DEIS. According to SEQR, the acceptance of the DEIS is determined if the document is "satisfactory with respect to its scope, content and adequacy for the purpose of commencing public review." The DEIS should be analytical, but not encyclopedic, and contain relevant subject matter with respect to the accepted scoping document. According to the NYSDEC, a DEIS is generally considered "complete" if the following criteria are met:

- Items listed in the Scoping Document have been addressed or discussed at a level that contains enough detail for public review;
- The document satisfies all formal requirements of 6NYCRR Part 617.9 that pertain to the contents of an EIS; and
- The document complies with the guidelines provided in 6NYCRR Part 617.9 regarding the DEIS form and clarity.

Based on our review of the DEIS dated April 2009, and our review of the proposed subdivision plans included with the application, we believe the DEIS must be revised prior to public review. The applicant should consider the following comments.

1. The preparer and contact phone number on the Cover Page is incorrect. It should be (631) 234-3444.
2. On page 5, the DEIS mentions that natural gas is available in the vicinity, but it does not tell where gas is available, or how far away it is located, or what would be required to extend service to the project site. We believe there is a gas main on Mill River Road.

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3. It is difficult to follow the discussion of the "clusters" of existing structures mentioned in the Project Description. The Project Description should clearly describe what exists on the property. It would be helpful to describe existing structures relative to the addresses, i.e., what exists at 45 and what exists at 57 Mill River Road, and to reference an exhibit noting the address locations.
4. The DEIS mentions on pages 9, 107 and 147, that the water supply and sanitary sewage volumes are based on proposed 5 bedroom houses. According to the Nassau County Department of Health, sanitary sewage disposal systems on lots greater than 1 acre must be designed for a minimum of 6 bedroom houses. To be conservative, the sanitary sewage disposal systems and the water usage figures presented in the DEIS should follow the NSDOH guideline.
5. The DEIS should clarify whether the impervious coverage figures given on page 10 include driveways, swimming pools, accessory structures and tennis courts, as shown on the conceptual lot development plan on the subdivision plan.
6. The Final Scope specifically mentions the requirement for a discussion of the effects of rights-of-way encumbering the property. The discussion on page 12 of the DEIS is inadequate. The location of the easements or rights-of-way should be provided on an exhibit, as well as a discussion of their legal status.
7. The section on need and benefit on page 12 does not provide an adequate discussion of either. This should include a discussion of public need, and benefits to the community.
8. The discussion pertaining to demolition on page 13 of the DEIS should provide the status of the demolition permit issued to the property owner in 2008, and include what the permit was for, which structure was involved and what work had taken place, if any.
9. The discussion of construction phasing on page 14 includes infrastructure as a phase of construction. The DEIS should clearly define what is included in infrastructure as it pertains to construction phasing.
10. The reference to clearing on page 14 should clarify whether this is limited to the road system, and it should be referenced to a plan.
11. The NYSDEC has updated their criteria regarding the inspection requirements for erosion control measures for Stormwater Pollution Prevention Plans (SWPPPs). The new criteria are found in Appendix G of the NYSDEC Stormwater Management Design Manual, and are based on the type of specific erosion control measure. Pages 14 and 101 of the DEIS should be revised accordingly.
12. The discussion of clearing at the top of page 15 implies that clearing would be limited to the area within the road right-of-way until building permits are issued for construction on individual lots. This seems not possible in the vicinity of station 7+00

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of South Drive where a 50 foot cut is proposed, as well as other locations where the roads would be constructed through steep areas of the property.

13. The Required Permits section should indicate *subdivision approval* as the type of approval by Nassau County under section 239-m review.
14. The Required Permits section should indicate that the NYSDEC requires written permission for disturbances of greater than 5 acres of disturbance, as part of the SPDES Stormwater review.
15. The description of the site topography at the top of page 30 should clarify that the low point of approximately 70 feet is along Mill River Road, rather than simply the northeasterly corner of the site.
16. The water table map on page 34 should show the outline of the site since the site is so large that it may span water table contours, meaning that there may be a significant groundwater gradient across the site.
17. The discussion pertaining to sanitary sewage on page 40 should include a description of what sanitary sewage disposal systems exist on the site, and where they are located. Abandoned systems should be noted, and the method of abandonment should be described.
18. The discussion pertaining to stormwater on page 42 states that the site discharges to a 36-inch overflow pipe. This implies that there is a piped discharge from the site. If runoff from the site is sheet flow, it should be clarified. The location of the pipe is shown on the Mill River Road detail sheets, which should be referenced in the DEIS text for clarity.
19. The Nassau County stormwater basin referred to on page 42 should be shown on an exhibit in the DEIS. The basin location and number should be provided. We understand that it is Nassau County basin number 600.
20. The FEMA maps referred to on page 48 of the DEIS should refer to the newly adopted 2009 FEMA maps, which have new map panel numbers.
21. The discussion of habitat types on page 52 mentions white tailed deer as a characteristic animal in the Coastal Oak Laurel Forest found on the property. The DEIS should specifically state whether deer exist on the site based on field evidence by qualified professionals, to avoid any confusion between findings in the field versus what is found in the literature.
22. The list of woody plant species on pages 62 and 63 should indicate whether the species are trees, shrubs or vines to more accurately give the reader an indication of the vegetation on the site.

C1

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23. The northern portion of the property, where parcels 11, 12, 13 and 14 are proposed, is an area of steeper land and larger trees, and is a mature forest with no evidence of prior disturbance or clearing like the remainder of the site to the west and south. Based on our site investigations and observations, this is an area of more significant habitat and is a regionally significant natural area. The DEIS should specifically note this and the plans should maximize the protection of these natural areas. C2
24. Area residents have reported box turtles in the neighborhood, but they are not included in the list of reptiles found or expected to be found on the site. C3
25. According to the FGEIS of the Long Island North Shore Heritage Area Management Plan, the Arthur Dean estate is included on a priority list of for open space pursuant to recommendations included in the 2002 New York State Open Space Plan. Additionally, according to the 2006 NYS Open Space Plan, Regional Advisory Committee, the Arthur Dean Estate is included in their open space priority list. This should be included in the DEIS.
26. The Zoning and Land Use section of the DEIS must include a discussion of the Village's Comprehensive Plan as mentioned in the Final Scope.
27. The discussion of the existing road network on page 95 should include a discussion of accident history on Mill River Road in the site vicinity.
28. The discussion of education facilities on page 96 should include the location of the schools in relation to the site. A discussion of area private schools available should be included.
29. Page 101 should mention that the SWPPP also must be submitted to the NYSDEC.
30. Page 102 indicates that more than 106,000 cubic yards of material would be removed from the site for construction of the roads. Although this has not been verified by this office, we estimate that this would be 7,000 truck loads of material. The discussion of the potential impacts of the 7,000 trucks must be included in the discussion of the traffic impacts on page 142.
31. Although the project site is within the Jericho Water District and the Oyster Bay Water District, the Jericho Water District has water mains in the area and presently services a portion of the property. The Jericho Water District has indicated that it is likely that they plan to service the entire project site. The discussion of proposed water service on page 108 of the DEIS must be modified to include this information. We are also aware that in order to service the project, a booster station would be required, regardless of which water districts provide water supply. The plans must indicate the location of the booster station on the subdivision plans. Additionally, in order to service the project, the Jericho Water District franchise area would have to be expanded. The DEIS should

discuss the process of expanding the franchise area, within the NYSDEC guidelines, and the DEIS must indicate that a NYSDEC approval is required.

32. The 8-inch rainfall event referred to on page 111 is equivalent to a 100-year storm.
33. The discussion of tree removal on pages 122 and 123 does not give an indication of the tree sizes of the trees to be removed. The DEIS addresses the issue of tree removal in terms of the percentage of site clearing and the total number of trees (20 inches in circumference or greater) to be removed for various site activities and improvements. Although the Village Code regulates trees 20 inches in circumference or greater, there is no indication of the number of larger trees or specimen trees to be removed, other than what is contained in the lengthy tree listing on the tree location plan (3 sheets) attached to the DEIS. Since the tree inventory is in random order, it is difficult to concentrate on a specific area of the site and look up the tree sizes. The DEIS should mention the number of trees larger than 18-inches (in diameter) that would be removed. C4
34. The tree inventory indicates a number of "deciduous" trees. This is too general for the Planning Board to make an informed decision regarding planning issues such as road locations and the location of other improvements. C5
35. The applicant should classify the condition of the trees within the areas of proposed disturbance for road construction. C6
36. As stated on page 141 of the DEIS, the existing sight distances for the proposed subdivision access road are inadequate to the left (north). As a mitigation measure, the applicant proposes to remove some vegetation within the Villages right-of-way of Mill River Road, including "limbing-up" trees along roadside, as well as signage. The applicant should include an alternate roadway access plan that provides acceptable site distances at the entrance to the development (if feasible). C7
37. A portion of the Village in the vicinity of the project site is within the Oyster Bay Sewer District. If any portion of the site is within the district, the houses within the district must be served by the district sewer system.
38. The section on fire and ambulance services on page 145 should include a provision for emergency access. Due to the size of the development and length of the proposed cul-de-sac, it is good planning to provide a second means of access to the site, even if it is for emergency use only. C8
39. There are several groupings of existing buildings on the property, but the subdivision plan indicates that proposed new home locations are not shown within the previously disturbed areas. The plan as presented would cause the disturbance of additional steep wooded areas on proposed parcels 2 and 3, beyond the areas currently cleared. The applicant should review alternative lot layouts that would better utilize previously disturbed areas. C9

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40. Pools, tennis courts and other accessory structures must not be shown in the steep slope areas because they are prohibited by Village Code, unless variances are obtained from the Village. ] C10
41. The plan entitled "Alternate Subdivision Study Slope Analysis Post Roadway Construction" indicates no slope disturbance for the existing driveway which is proposed to serve four homes. Access ways that serve more than one residence shall be a minimum of 18 feet wide, and be limited to a maximum grade of 10%.
42. The road profiles included in the plans attached to the DEIS indicate that South Drive as proposed requires a 50-foot deep cut in a steep slope area. The DEIS should indicate how the resultant side slopes would be maintained and stabilized until construction occurs on the lots. Similarly, the alternative plan indicates a 45-foot deep cut.
43. The plans should indicate whether retaining walls would be used in the deep cut areas to limit the extent of disturbance for road construction. The visual impact of retaining walls should be included in the DEIS.
44. The trees to be removed shown on the Tree Location Plan appears to be underestimated, based on the width of disturbance shown through the deep cut locations according to the Slope Analysis Post Roadway Construction plan. ] C11
45. A detail of the new road and its transition to the existing driveway to the out-parcel should be provided because there appears to be a 45 foot difference in elevation, according to the proposed road profile sheets.
46. The stormwater storage for Mohawk Drive does not account for a significant amount of runoff from large areas of proposed parcels 1, 11, 12 and 14.
47. Dry wells are proposed within steep areas throughout the plans. The installation of these dry wells would cause additional disturbance within the wooded areas. The DEIS should address constructability of the dry wells in steep areas, or the dry wells should be relocated.
48. Dry wells are shown on a number of lots beyond the conceptual limits of clearing shown on the plans. The plans should be clarified to indicate what is meant by "natural" areas shown and why dry wells would be needed in these areas.
49. The edge of dry well walls should be placed a minimum of 10 feet from the edge of the road to preclude settlement. A ten foot drainage easement is necessary, and should be shown on the plans.
50. Details are required for the reconstruction of sluiceways on Mill River Road. ] C12
51. A concrete gutter should be added along the edge of Mill River Road to contain runoff and protect the edge of road from erosion. ] C13

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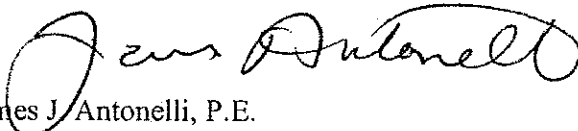
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52. On the alternative subdivision plan, the applicant should consider an alternative access between proposed parcels 9 and 10, to the out-parcel and adjoining proposed lots in order to disturb less sloped land.

C14

53. It should be noted that any revisions made to the DEIS as outlined above shall also apply to the appropriate portion of the DEIS Summary.

Sincerely,



James J. Antonelli, P.E.

Director of Planning & Environmental Services

Cc: Paul Stevens, P.E.



## VILLAGE OF UPPER BROOKVILLE

April 27 - May 11, 2009

Memo to file

From: Peter M. Weiler

Re: The Oaks at Mill River - Review of DEIS

### 1.0 Executive Summary

#### Page

- i First and second paragraph - Reference should be to Planning Board not Board of Trustees.
- ii Second paragraph - Road length exceeds 900 foot limit which will possibly require the installation of a midpoint circle to provide access for emergency vehicles. ] C15

Sixth paragraph - Also verify the 8 inch rainfall requirement.

- viii Sewage Disposal - third paragraph - Is it true that the Nassau County Department Of Health has no jurisdiction whatsoever with respect to the sanitary systems because the lots exceed 5 acres in the area? If such is the case I presume the proper installation of the sanitary systems will be reviewed by the Village Building Department. I believe a portion of the subdivision is located in the Oyster Bay Water District. A check should be made to determine whether any portion of the subdivision lies within the Oyster Bay Sewer District which might have boundaries co-terminus with the water district.
- ix Paragraph 5. The declaration of covenants and restrictions for the mentioned drainage reserve area will have to be very specific to ensure that no undesirable activity will occur. ] C16

Paragraph 8. Even though no part of the property is within a New York State Department of Environmental Conservation wetland it is my belief that there are certain plants on the west side of Mill River Road which would qualify some areas as wetlands if the Village wanted to designate such an area that such. I suggest that our environmentalists examine the situation and require mitigation measures to preserve any wildlife in those areas.

- xi Tree Survey - It is claimed that there are no endangered or threatened or rare tree species. Nevertheless, this should be checked by someone representing the Village, such as the Village Arborist to ensure such is the case. ] C17

- xii Rare Species/Habitat Potential - A village representatives should ensure that the claim of there being no rare plants animals or other ecological communities is true.

Zoning and Land-Use - the word "Additionally" appears twice in the third line of the third paragraph-delete one.

The Village Engineer must carefully check whether all lots comply with zoning regulations.

With respect for the waiver of the 900 foot limitation on the length of cul-de-sacs it's questionable whether South Drive should not be required to have an interim turning circle to facilitate emergency vehicles. Topography might make this difficult but it should be explored.

- xiv \*There is no mention of the Village of Upper Brookville Comprehensive Master Plan and Its Recent Update.

- xv \*As to site access consideration must be given to the discontinuance of right of access to the property via Wash Hollow Road to the West. ] C18

- xvi Construction Traffic -The Village must take appropriate action to ensure that wear and tear to Mill River Road is properly compensated for either through existing or enhanced billing department fees.

- xix \*Water Resources - Will there be enough water pressure in the north portion of the subdivision being served by the Oyster Bay Water District for fire protection in view of the fact that it is anticipated that each house will require a booster pump to ensure adequate water pressure for domestic use? ] C19

## 1. DESCRIPTION OF THE PROPOSED ACTION

2.1 Introduction. No comment.

5. 2.2 Existing Conditions and Brief History of the Property.

8. 2.3 Project Description.

9. \*I question whether the drainage plan to have the entire site drains with the use of dry wells would be acceptable to the Nassau County Department of Public Works. If such a plan is approved it will be vitally important that there be very strict covenants which will require the individual property owners to maintain the dry wells properly and to allow a simple procedure for the Village to gain access to the property when the required work is not performed by the homeowner or the homeowners association.

12. \*Second paragraph. Old easements affecting the property must be reviewed and plotted on a map to know exactly how they may affect certain portions of the subdivision. Possibly, some may have been terminated due to prescriptive action on the part of the property owner. If such is the case title insurance may be the only way to ensure that outsiders will not be able to have access to the subdivision from undesirable access points.

2.4 Workers, Need and Benefits of the Proposed Project. No comment.

13. 2.5 Demolition and Construction

17. 3.0 EXISTING CONDITIONS

3.1 Soils and Topography

3.1.1 Soils. It appears that the soils are suitable for development, drainage and sanitation systems. No further comment.

33. 3.2 Water Resources. No comment.

3.2.1 Groundwater. No comment.

3.2.3 Water Supply. No comment.

42. 3.2.4 Storm Water.

45. 3.2.5 Surface Water, Wetlands and Floodplain

47. \*Representations of DEC findings should be checked by Village environmental consultant.

55. \*Significant storm water and erosion occurs near Mill River Road. During storm of violence how will this condition be exacerbated by the new subdivision roads?

C20

56. \*Does the existence of Facultative Wetland Plants justify any special protection of the area where they exist along Mill River Road?

C21

66. \*Rare and Endangered Plant Species Potential - I would recommend that the specific locations of the "exploitable vulnerable" (EV) plants be specifically located so that attention could be drawn to their existence to avoid their unnecessary removal or destruction.

C22

67. It appears to be stated that the exploitable horrible plants are permitted to

C23

be removed from the premises because of the proposed subdivision. It is my recommendation that such plants be protected.

68. \*Wildlife Setting- All reasonable measures should be made to preserve animal habitat

82. 3.4 Zoning and Land Use

3.4.1 Zoning. Should make mention of "Special Use" resulting from recent amendment of zoning code. ] C24

87. \*Master plans. No mention is made of the Upper Brookville Master Plan which deserves comment.

94. 3.5 Traffic Access - No comment.

3.5.1 Methodology - No comment.

95. 3.5.2 Existing Roadway Network - No comment.

3.5.3 Traffic Volumes - No comment.

96. 3.6 Community Facilities and Services

3.6.1 Education - No comment.

3.6.2 Fire and Ambulance - No comment.

97. 3.6.3 Police Protection - No comment.

97. 3.6.4 Solid Waste - No comment.

98. 3.6.5 Water Supply - No comment.

99. 3.7 Aesthetics and Cultural Resources

3.7.1 Aesthetics - All efforts should be made to preserve the natural existing views of the premises from Mill River Road.

3.7.2 Cultural Resources - The Westerly side of the premises should be developed in a manner which will preserve the cultural resources of Planting Fields Arboretum.

100. 4.0 PROBABLE IMPACTS OF THE PROPOSED ACTION

#### 4.1 Soils and Topography

4.1.1\*Soils - Proper enforcement of all of the recommendations mentioned in this section is going to be a challenge. All these measures look good on paper but to enforce them properly will require almost constant supervision during construction phases and substantial penalties for any violations.

103. 4.1.2\*Topography - Grading of the property especially for roads and driveways will be critical. It may be near impossible to comply with the maximum 8% road gradient requirement without the creation of switchbacks or the granting of waivers.

#### 104. 4.2 Water Resources

4.2.1 Groundwater -Appropriate measures should be taken to require a clearance to the Long Island Special Groundwater Protection Area Plan As Well As the Long Island Comprehensive Waste Treatment Management Plan ("208 Study").

106. 4.2.2 Sewage Disposal - It appears that the soil conditions on the premises are ideal for individual septic systems.

107. 4.2.3 \*Water Supply - Attention must be given to the possible conflict between the Jericho Water District and the Oyster Bay Water District in view of the fact that the premises do not lie within one district. The proposal to use pressure pumps for individual homes in the Oyster Bay Water District should be studied carefully especially any questions relating to adequate pressure for fire protection purposes.

110. 4.2.4 Stormwater -This will become one of the most serious problems relating to the development of the premises. The recommendations to control storm water runoff and to prevent illegal discharges will be difficult to implement and enforce on individual property owners. This is especially true because there is a proposal to use a series of dry wells rather than a standard recharged basin.

C25

118. 4.2.5 Surface Water, Wetlands and Floodplains - Although there are no officially designated wetlands on the premises there exist certain vegetation in the wet areas on the west side of Mill River Road that should be reasonably protected by having such areas designated and protected by conservation easements.

C26

#### 119. 4.3 Ecology -

Vegetation Impacts - The proposed plan (Figure 14) purports to show limited disruption to the existing natural features on each proposed lot. Efforts should be made to prevent gradual intrusion into the native tree areas and consider a way of documenting these limits through the use of aerial photography to ensure that property owners adhere to the original plans of development.

Tree Survey - The village arborist should be retained to examine all trees which are expected to be removed due to the layout of any new subdivision road as part of the planning process so that the board can consider alternatives. Also, the Planning Board should maintain continuous jurisdiction over the subdivision so that you can review development plans for each plot in cooperation with the Architectural and Site Plan Commissioner before building permits are issued.

124. Wildlife Impacts - This section proposes that the project will have insignificant effect on wildlife which is expected to adapt to the new environment of structures in human activity. Nevertheless, an educational effort should be made for the purchasers of all undeveloped lots in the subdivision to encourage them to leave as much of property in its natural state so that animal habitat is protected.

C27

131. 4.4 Zoning and Land Use

4.4.1 - Zoning - Compliance with that area requirements must be carefully checked by the village engineer and some mention should be made about the Upper Brookville Comprehensive Master Plan of 2005.

140. 4.5 Traffic Access

4.5.1 Site Generated Traffic Volumes -These appear to be acceptable.

141. 4.5.2 Site Access -This must be further analyzed.

142. 4.5.3 \*Construction Traffic - An analysis must be made to determine whether it might be better to require construction traffic into the property from only the north or south. This may be difficult to enforce that it should be considered

143. 4.6 Community Facilities and Services - The Project does not appear to have any significant adverse effect on such facilities and services. Chances are the project will add more tax revenue than expenses for such services.

148. 4.7 Aesthetic and Cultural Resources - As proposed, site views from Mill River

Road will remain essentially the same with the establishment of the conservation areas.

150. 5.0 MITIGATION MEASURES - All mitigation measures seem to be acceptable except the proposal to use individual booster pumps for properties located in the Oyster Bay Water District.

155. 6.0 AVOIDABLE ADVERSE EFFECTS - These all appear to be reasonable and acceptable.

157. 7.0 ALTERNATIVES AND THEIR IMPACTS

7.1 No Action Alternative - No comment.

158. 7.2 Alternate Access Alternative - I believed that the two road access plan would not necessarily create significant increases in storm water runoff velocities and the like have stated on page 159. The elimination of steep grades on the new subdivision roads is of paramount importance and if the two road layout achieves that goal it may be worthwhile.

## APPENDIX REVIEW

**Appendix A.** (Final Scope). This document contains mention of the Upper Brookville Master Plan which is not mentioned in the DEIS.

### Appendix B.

1. The Line of Sight Profile provides only two views, one from Mill River Road and the other from the Planting Fields Arboretum. It may be desirable to obtain additional views especially from Mill River Road which has been designated as a historic road by the Village.

2. The Tree Location Plan does not seem to properly describe all of the trees sufficiently by using the term "deciduous" too frequently. Other varieties of trees such as oak, cedar, maple, Birch are mentioned. Am I to conclude that the term "deciduous" only indicates invasive type trees such as Norway maples and the like that are sometime called "weed trees"? Furthermore, should some "deciduous" trees be saved by relocating proposed roads, driveways and structures?

3. Storm Water Pollution Prevention Plan Erosion & Sediment Control Details appears to be acceptable but should be carefully checked by the village engineer.

4. Storm Water Pollution Prevention Plan needs to be analyzed by the village engineer. The legend should be amended to indicate that the pink squares and circles refer to catch basins and dry wells respectively.

C28

5. Drainage Analysis Plan shows so many dry wells on the lots that I question whether the Village can ensure diligent maintenance of the dry wells regardless of the provisions of any Declaration of Covenants and Restrictions affecting each lot. Will a lot owner diligently maintain the structures that are on steep slopes in remote portions of the lot? There appears to be over 200 dry wells on the lots shown on the plan. I believe there would be considerable destruction of trees and ground cover to install these dry wells by reason of regrading and allowing access for the machinery necessary for their installation.

C29

6. Slope Analysis Map will require spot checking and analysis by the village engineer to ensure that applicant is not exceeding permissible in lot yields.

7. Slope Analysis Post Roadway Construction plan shows a cut at the north portion of South Drive which is over 200 feet wide at its widest point. Is the amount of cut reasonable especially in light of the problem of providing access to Parcel 10 and the out lot.

8. Mill River Road Detail - Will the present users of Mohawk Drive agree to the diversion of their present right-of-way into the new subdivision road at its intersection with Mill River Road?

C30

9. Road Profiles - Apparently, based on comments by Michael Schwerin, in the Road profiles are not adequately show the transition to access the common driveway for his property and Lot 10 on the map. This problem must be resolved.

C31

10. Proposed Landscape Plan for Parcel 10 - No comment.

#### **Appendix C - Environmental Survey**

1. The inquiries to the New York State Department of Environmental Conservation and the answers appear to be acceptable and in accordance with standard practices.

#### **Appendix D - Traffic Survey**

1. The traffic survey should have page numbers at the bottom of each page so that it will be easier to describe where appropriate corrections and revisions should be made. I have inserted the following page numbers starting with Table of Contents - as page " i ", pages 1 through 8 Section 1 entitled " Introduction" to Section 4 entitled "Conclusions".

2. Page 2. The comment on Mill River Road should be corrected to show that this roadway is under the jurisdiction of the Village of Upper Brookville, not Town of Oyster Bay.

#### **Appendix E**

1. The premises being located in two different water districts may create difficulties in the event the water districts develop conflicts. It appears that the Oyster Bay Water District will not be



able to produce sufficient pressure to provide adequate services to the future homes located within its district court to provide fire hydrants.

## **Appendix F**

1. No comment.

## **Appendix G**

1. Alternate Subdivision Study. At first glance it appears as if the two road layout will result in less cutting and filling and the destruction of natural foliage. However, the creation of another subdivision road on Mill River Road might tend to create an overdeveloped look on Mill River Road.

2. Alternate Subdivision Study Slope Analysis Post Roadway Construction. This layout seems also to involve a fair amount of cutting filling in tree destruction that will have to be explained by our engineer as well as the environmentalist to make an intelligent decision as to which layout should prevail. However, it seems to obviate the access problem to the out lot by utilization of the Pres. Mohawk Drive as a common driveway thus eliminating the transition problem from South Road to the out lot.

3. Alternate Subdivision Study Storm Water Pollution Prevention Plan. No comments except I question whether the catch basin plus dry well facilities will be adequate substitute for a recharge basin.

4. Alternate Subdivision Study Storm Water Pollution Prevention Plan Erosion & Sediment Control Details. No comment.

5. Alternate Subdivision Study Drainage Analysis Plan. This, as in the single road layout, has an extraordinary number of dry wells as a substitute for a recharge basin. I question whether such a plan is reasonably feasible to ensure future functionality over the years without a failsafe program to ensure that all structures will be properly maintained by the homeowners/homeowners association.

C32

6. Road Profiles-Alternate Plan. The Road profiles seem to be as severe and drastic as shown in the proposed single road layout. It appears that a very detailed comparison must be made to determine which layout is the best which must also factor in the disadvantage of having two roadways.

7. Alternate Subdivision Study Tree Location Plan. A careful comparison of each tree location plan must be made to determine whether any significant trees can be saved by using one plan compared to the other. This will tagging in the field of trees to be removed under each plan so an intelligent decision can be made.

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**Sidney B. Bowne  
& Son, LLP**  
235 East Jericho Turnpike  
PO Box 109  
Mineola, NY 11501  
Phone: 516-746-2350  
Fax: 516-747-1396  
www.bownegroup.com

October 12, 2009

Chairman Quinn and Planning Board  
Village of Upper Brookville  
PO Box 548  
Oyster Bay, NY 11771

Re: Oaks at Mill River  
Proposed 14 Lot Subdivision  
Mill River Road  
Village of Upper Brookville

Dear Chairman Quinn and Members of the Board:

We have reviewed the DEIS dated August 2009, and we have reviewed the proposed subdivision plans included with the application. Please note the following comments, which must be addressed to the Board's satisfaction as Lead Agency prior to acceptance of the FEIS.

- |  |     |
|--|-----|
| 1. There is an easement over the property for access to the Schwerin property, which is an out-parcel in the center of the property to be subdivided. Easements and rights-of-way must be maintained for continued use after development, and access, as well as utilities within the easement must be maintained during construction.   | C33 |
| 2. The plan entitled "Alternate Subdivision Study Slope Analysis Post Roadway Construction" indicates no slope disturbance for the existing driveway which is proposed to serve four homes. Access ways that serve more than one residence shall be a minimum of 18 feet wide, and be limited to a maximum grade of 10%. Therefore, the existing driveway area and adjacent areas would have to be disturbed and must be shown on the plans.   | C34 |
| 3. According to the Village's Master Plan, the Village envisioned an "open" development master plan that stresses the importance of preserving the natural environment and open space. Although the proposed plan offers 5-acre and 7-acre wooded lots, the overall development plan of the infrastructure on very steep slopes would cause a significant amount of disturbance to the natural environment, including wooded areas and sloped land that are in some ways unique to the Village and therefore is contrary to the Master Plan. The proposed plan should be modified to show less impact to the natural environment and to comply with the intent of the Master Plan. | C35 |
| 4. Although lot sizes proposed are increased in accordance with the Village's steep slope regulations, there are significant portions of regulated slopes that are proposed for disturbance. This includes areas that are in the steep slope category (15% to 25%  |     |

**Sidney B. Bowne & Son, LLP**

Chairman Quinn and Planning Board

October 12, 2009

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slopes) as well as severe slopes (greater than 25% slopes). The intent of the slope protection laws is to limit development on steeply sloping land. According to the plans submitted, including the Subdivision Plan and the Alternate Subdivision Plan, proposed lot numbers 1, 2, 3 11 and 13 indicate future houses within the regulated slope areas. We realize the house locations are conceptual at this stage, but it appears that houses on these lots would have to be constructed in the regulated slope areas due to the way the property is subdivided which would require a variance from the Village Board of Zoning Appeals. A plan should be proposed that is compliant and does not require variances from the Village Board of Zoning Appeals.

C36

5. There are several groupings of existing buildings on the property, but the subdivision plan indicates that proposed new home locations are not shown within the previously disturbed areas. The plan as presented would cause the disturbance of additional steep wooded areas on proposed parcels 2 and 3, beyond the areas currently cleared. The applicant should consider alternative lot layouts that would better utilize previously disturbed areas.

C37

6. Pools, tennis courts and other accessory structures must not be shown in the steep slope areas because they are prohibited by Village Code, unless variances are obtained from the Village.

C38

7. The DEIS indicates that more than 106,000 cubic yards of material would be removed from the site for construction of the roads. We estimate that this would be 7,000 truck loads of material. A review and calculation of cut and fill volumes by our office indicates that the volume of soil to be removed may be double when consideration is given to all areas of required excavation. The number of trucks required would also double and the impacts to the road and neighborhood would be significantly more than what is presented. Specific information for excess fill for all alternative plans should be presented in a comparison table of all earthwork (including drainage) for the following, so that alternatives may be evaluated.

C39

- Mohawk Drive;
- Roadway Access to Parcels 12, 13 and 14;
- Roadway access to parcels 1, 10, 11 and existing tax lot 7;
- South Drive; and
- Individual lots 1 through 14.

8. Both plans presented in the application show proposed deep "cut" areas where there would be extreme grade changes to the natural topography. The road profiles included in the plans attached to the DEIS indicate that South Drive, as proposed, requires a 50-foot deep cut in a steep slope area. The DEIS should indicate how the resultant side slopes would be maintained and stabilized until construction occurs on the lots.

C40

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- Similarly, the alternative plan indicates a maximum of a 45-foot deep cut in order to construct the subdivision road. C40 cont'd
9. A detail of the new road and its transition to the existing driveway to the out-parcel should be provided because there appears to be a 45 foot difference in elevation, according to the proposed road profile sheets. A temporary access to the existing driveway should be indicated and would have to be maintained as mentioned in item number 1 above. C41
10. The plans should indicate whether retaining walls would be used in the deep cut areas to limit the extent of disturbance for road construction. If this is the case, the location, length and height should be shown and the visual impact of retaining walls must be considered by the Village, and details of the visual impact should be provided for review. C42
11. The discussion of the potential impacts of the truck traffic must include impacts to Mill River Road and its residents, as well as neighboring communities, either along Northern Boulevard and possibly NYS Route 106. The number of trucks may be significantly more than what was originally estimated based on the amount of excavation provided in the DEIS, which is for roads only. It is likely that the amount of earthwork required would be more than what was given in the DEIS, considering the additional earthwork for the construction of homes and other improvements on each lot, including drainage structures. The specific proposed truck routes should be assessed in detail as to the ability of the roadways to safely handle the truck traffic, in terms of road width, pavement condition, curves, signage, truck size, etc. C43
12. The trees to be removed shown on the Tree Location Plan appears to be underestimated, based on the width of disturbance shown through the deep cut locations according to the Slope Analysis Post Roadway Construction plan. There are other areas of the site beyond the right-of-way that will have to be cleared to construct the roads on the steep terrain. For example, the road in the vicinity of station 7+00 of South Drive is an area where a 50 foot cut is proposed, and the area of disturbance in this vicinity would extend far beyond the proposed road right-of-way, even if retaining walls are used. Additionally, areas to be disturbed for construction on the lots must be analyzed for the Planning Board to make an informed decision on the plan. C44
13. The discussion of tree removal in the DEIS indicates that more than 25% of the total number of regulated trees (20 inches in circumference or greater) would be removed for various site activities and improvements. The FEIS should include the number of specimen trees (larger than 18-inches in diameter) that would be removed, including those to be removed for the construction on the lots in the development. A comparison chart of alternative plans should be provided. C45

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14. The condition of the trees within the areas of proposed disturbance for road construction should be taken into consideration when comparing alternative plans. ] C46
15. The tree inventory indicates a number of "deciduous" trees. This is too general for the Planning Board to make an informed decision regarding planning issues such as road locations and the location of other improvements. ] C47
16. The stormwater storage for Mohawk Drive should include a significant amount of runoff from large areas of proposed parcels 1, 11, 12 and 14. ] C48
17. Dry wells are proposed within steep areas throughout the plans. The installation of these dry wells would cause additional disturbance within the wooded areas. The DEIS should address constructability of the dry wells in steep areas, or the dry wells should be relocated. ] C49
18. Dry wells are shown on a number of lots beyond the conceptual limits of clearing shown on the plans. The plans should be clarified to indicate what is meant by "natural" areas shown and why dry wells would be needed in these areas. ] C50
19. The edge of dry well walls should be placed a minimum of 10 feet from the edge of the road to preclude settlement. A ten foot drainage easement is necessary, and should be shown on the plans. ] C51
20. Details are required for the reconstruction of sluiceways on Mill River Road. ] C52
21. We are aware that in order to service the project, a booster station would be required, regardless of which water districts provide water supply. The location of the booster station on the subdivision plans, with modifications to the adjacent lot as required. ] C53
22. In order to service the project, the Jericho Water District franchise area would have to be expanded. The DEIS should discuss the process of expanding the franchise area, within the NYSDEC guidelines, and the DEIS must indicate that a NYSDEC approval is required. ] C54
23. On the alternative subdivision plan, the applicant should consider an alternative access between proposed parcels 9 and 10, to the out-parcel and adjoining proposed lots in order to disturb less sloped land. ] C55
24. As stated in the DEIS, the existing sight distances for the proposed subdivision access road are inadequate to the left (north). As a mitigation measure, the applicant proposes to remove some vegetation within the Villages right-of-way of Mill River Road, including "limbing-up" trees along roadside, as well as signage. The applicant should include an alternate roadway access plan that provides acceptable site distances at the entrance to the development. ] C56

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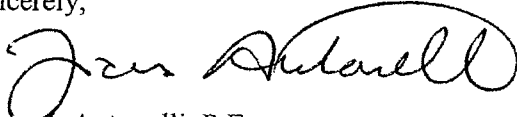
25. Due to the size of the development and length of the proposed cul-de-sac, it is good planning to provide a second means of access to the site, even if it is for emergency use only.

C57

26. The three main environmental issues for this project are significant tree removal, the volume of earthwork during construction (including construction truck traffic) and the disturbance of regulated sloped land. The applicant should prepare an alternate subdivision layout that would minimize impacts to all three.

C58

Sincerely,



James J. Antonelli, P.E.

Director of Planning & Environmental Services

Cc: Paul Stevens, P.E.

10/6/09

# 1

Oral Remarks and Written Submission by Michael F. Schwerin to the Village of Upper Brookville, Planning Commission regarding the proposed subdivision The Oaks at Mill River (P-107) and the recently approved Draft Environmental Impact Statement (DEIS) for that project.

October 6, 2009

My name is Michael Schwerin. My wife and I have our primary residence at 39 Mill River Road (Lot #7 on current county tax maps). We have lived at this site for over 17 years.

As is evident from the plats submitted by the Applicant, our property is completely surrounded by the proposed subdivision. We are the "hole in the doughnut." In addition to ownership of this lot, we enjoy and are burdened by various deeded rights of way and utility maintenance agreements relating to the lands proposed for development. For these reasons, we are likely to be uniquely impacted by this subdivision, should it proceed.

C59

The proposed subdivision encompasses over 97 acres of largely undisturbed native land. This is one of the largest contiguous, undeveloped parcels of land in Nassau County. It is a beautiful site, but its topography is challenging: large sections of it are very hilly. According to the DEIS submitted by the Applicant (Table 12, p.113), 41.5 acres or 43% of the total, are classified as either "steeply sloped" or "severely sloped." These sloped areas are concentrated in the eastern and northern 60% of the property and are generally closest to Mill River Road.

In order to protect and preserve the flora and fauna on sloped lands and to protect and preserve the natural habitat of wooded areas, our Village Code restricts the development of sloped areas [Part II, Chapter 205-10(F)] and flatly bans development of severe slopes except "for the purpose of constructing an access driveway and facilities for drainage and utilities" [205-10(F)(1)(a)].

On the other hand, the property also includes roughly 40 contiguous acres of nearly flat, "table top" land at the highest elevations in the western section, which is largely surrounded by the Planting Fields Arboretum. This is prime, buildable land, the development of which would have little impact on neighboring property owners.

I recognize that the Applicant has the right to develop his property. However, it is imperative that this development be done responsibly. As residents of beautiful Upper Brookville, and custodians of its uniquely bucolic setting, I am sure the members of our Planning Commission share this sentiment.

Fortunately, by all appearances, the Applicant also seems to understand and respect the imperative to do this right.



Nevertheless, my initial review of the DEIS reveals several deficiencies, which I would like to note for the record. Rather than take up too much of the Committee's time and the public's time at this hearing, I am prepared to submit these points in written form.

Thank you.

Points of Objection to the DEIS:

First:

As is evident to anyone who has visited the property, and as is shown on the topographic maps submitted, the property in question is very hilly, with extensive areas of "steep" (>15%) and "severe" (>25%) slopes, particularly in the front (eastern and northern) two thirds of the property. To create access to the several lots proposed for the back (western) portion of the property, a new road (South Drive) is anticipated. For about ½ of its length, this new road follows the existing driveway serving both my house and the former Warren house (Parcel 10). However, to accommodate the elevation gains necessary to serve the back lots, significant regrading is needed.

Focusing on the point where the proposed South Drive would veer off the existing driveway in a southerly direction, the current elevation is about 190'. The Road Profile submission shows that this point will be lowered by as much as 45' under the proposed regrading, giving the new South Drive an elevation of about 145' here.

The problem is that the driveway serving my house and the former Warren house will need to connect to the new road at this point, which will now be as much as 45' below where it stands today. The driveway enters my property at an elevation of about 220'. The current rise of 30' (from 190' to 220' elevation) across a run of about 300' is already steep. The proposed regrading of the existing lower driveway to accommodate the new access road would require a rise over the same run of about 75' (from 145' to 220').

This would result in a dangerously steep driveway for the two existing residences, as well as for the proposed Parcel 11 shown on the subdivision plan. This problem is acknowledged in the DEIS under 4.1.2 Topography (pp.114-115), but is not resolved. The DEIS states: "It should be noted that the Village engineer has raised concerns regarding these road width and gradient issues."

Furthermore, although the extensive grading that would be necessary to tie the existing driveway to the proposed new road is shown on a 1"=40' scale mini-map titled Driveway Detail Tax Lot 7 (p.115), this work (and the associated environmental impact) is not included on the larger Subdivision Study Slope Analysis Post Road Construction.

Also, the DEIS fails to include the excess material resulting from a regrading of this portion of the driveway in the cubic yard totals and truck hauling calculations mentioned below.

C60

C61

C62

Second:

The DEIS makes no mention of what measures the Applicant will need to take to ensure that my family and I have safe and suitable opportunities for ingress to and egress from our property during the construction phase of the proposed development.

C63

According to the DEIS notes (p.24): "During construction, heavy vehicles, primarily large trucks (three axles or more) making deliveries of building materials and equipment, dump trucks, earth moving dump trucks, equipment trucks, and asphalt and concrete trucks, will be traveling to and from the site." All of this heavy equipment will be using the Right of Way that currently serves as my driveway.

The DEIS goes on to say (also p.24) that as much as 106,000 cubic yards of earth will be removed from the site during infrastructure development, that this work will extend over two or more years, that approximately 14,000 truck trips will be necessary to transport the excess material, that assuming a Monday through Friday schedule, during the hours of 8:00 AM to 6:00 PM, this would result in approximately 27 truck trips per day or about one truck trip every 22 minutes for an entire year, after which about ½ of the total amount of excess material would remain to be moved in subsequent years. This calculation only includes the truck traffic necessary to remove excess material. All of the other traffic mentioned above (for building materials, equipment, asphalt and concrete) would be in addition. Also, consider the traffic necessary to bring workmen and supervisors to and from the site.

C64

Putting aside the legal issue of whether all of this traffic defeats the purpose and thereby violates the terms of the right of way for my driveway, it certainly raises the question: How will my family and I safely enter and leave our home during this multi-year construction project? The DEIS needs to answer this question.

Third:

In addition to the question of personal use of my driveway, the DEIS also fails to demonstrate how the Applicant will ensure that suitable access to my home and property will be continuously provided during the construction phase for heavy vehicles, such as oil delivery trucks, and for emergency vehicles such as fire trucks.

C65

The only viable solution to the Second and Third points above might well be the construction of a temporary driveway, connecting my property to Mill River Road during the construction phase. If the Applicant intends to construct such a temporary driveway, it should be detailed in the DEIS.

C66

Fourth:

The water main which currently provides service to my home runs along the existing driveway. The Applicant proposes to significantly regrade and modify this driveway. The DEIS fails to show how the Applicant intends to provide, during the construction phase, continuous, suitable, and safe supplies of potable water to our home as well as water of sufficient capacity and pressure for fire protection to the hydrant on our property, which protects our home and the former Warren home next door.

C67

Fifth:

Other utilities such as power, telephone, and television cable are supplied across the development site to our home. The DEIS fails to detail how these services will be maintained during the construction phase.

C68

Sixth:

Regarding water, power, telephone and other utility services beyond the construction phase, the DEIS mentions (p.17) that the Applicant's property is a party to a deeded water and utility easement agreement which includes my property, but the DEIS does not detail with appropriate specificity how the rights and obligations of this agreement will be permanently preserved. It says merely that: "The respective rights of the Applicant and the other remaining parties to the Agreement will be dealt with in connection with the extension of water service to the subdivision and through a Homeowner's Association to be created." This is insufficient disclosure. It is entirely written in the future tense ("will be dealt with", "to be created").

C69

Specifically focusing on one aspect of this issue, water service, the DEIS raises the question of adequate water pressure (p.122): "The Jericho Water District has indicated that, since the project site is located near to the outer limits of the District, pressure for domestic use and fire protection will have to be amplified with the use of a booster pump station." If the Applicant plans to replace our existing water service with a new service, it will be necessary to give credible assurances that continuous and adequate pressure and supply will be provided. If the new water service, including whatever ancillary support is necessary, such as the operation of a booster pump, were to cost more than the current service, the Applicant will need to cover this cost in some manner or seek our agreement to contribute to it.

C70

Seventh:

The DEIS language in Table 2 (p. 16) regarding my deeded right of way across proposed Parcels 10, 9, 8 and 4 (Liber 1593 Page 140) is misleading. It suggests that: "This easement may no longer [be] enforceable due to the merger of the benefited and burdened parcels involved." This is incorrect. The burdened properties (those formerly belonging to Warren and to Dean) have been merged, but the benefited property (mine) has not.

C71

The DEIS goes on to say that: "In any event, it will be the subject of affirmative insurance from Applicant's title insurer." Such insurance, should it be available, which seems unlikely under the circumstances given the clear 78 year trail of deeds which record the right of way, would in any event protect the Applicant and subsequent buyers of his property. Title insurance would not protect me, the beneficiary. The DEIS needs to spell out how the Applicant intends to protect me from possible impairment of the rights conveyed by this easement.

C72

Eighth:

Although the Applicant purports to satisfy the Village's Zoning Code with respect to steep slopes by complying with the minimum acreage requirements for each lot, it should be noted that several of the proposed parcels do not contain "Potential Building Sites" as defined by the Code §205-7, comprised of at least 30,000 sq. ft. of contiguous land with slopes less than 15%. Also, the main building and accessory building sites indicated on these lots, although presumably only schematic at this time, show construction on areas of severe slopes, in violation of §205-10 (F)(1). In situations such as this, §205-10 (F)(3) would presumably apply, such that no development shall be permitted unless a variance is obtained from the Board of Appeals.

C73

The Village should please confirm that variances from the Board of Appeals will be required for the location of building sites on Parcels # 1, 2, 3, & 11. Also, given my unmitigated exposure to the environmental impact of this development, I formally request that I be notified directly of any and all Village hearings to consider possible building sites for this project.

Ninth:

Given the vast amount of material proposed to be removed from this site, and the fact that much of it is likely to be commercial grade sand, it is important that the Village protect itself against the possibility that this project could fall into the hands of a developer whose primary purpose is to mine and sell sand. As far fetched as this notion sounds, many of us remember that the Village previously encountered this exact problem at a site on neighboring property at Wash Hollow Road. This does not seem to be a risk with the current owner, but somewhere in the future we don't want to find that 106,000 cubic yards of sand have been removed from this site and sold with no roads built. Such protection conceivably could take the form of a large performance bond.

C74

Tenth:

Three of the most mature trees on or near this site stand at the intersection of our existing driveway and Mill River Road. Tree tagged #507 (42" diam.) and tree tagged #502 (32") are apparently the two largest evergreens on the entire site, but they are marked for removal. In addition, a massive deciduous tree (not tagged; ~ 44") stands on the north side and partly within the existing driveway. Steps should be taken to preserve these ancient trees. If necessary, the entrance of the new road should be relocated southward on Mill River Road to avoid destroying them.

C75

Finally:

Nothing in this statement should be construed as waiving any of my rights with respect to my property, including rights established under associated, pre-existing agreements. These comments are based on a preliminary study of the DEIS and other issues may surface upon closer inspection and consideration. Also, I have not, as yet, hired professional counsel to advise me on these matters and nothing here is intended to foreclose any avenue to protect my rights available to me once so advised.

C76

Thank you for your consideration.

Second Written Submission by Michael F. Schwerin (residing at 39 Mill River Road) to the Village of Upper Brookville, Planning Commission regarding the proposed subdivision The Oaks at Mill River (P-107) and the recently approved Draft Environmental Impact Statement (DEIS) for that project.

October 7, 2009

Upon further review of the documents, I respectfully tender the following additional

Point of Objection to the DEIS:

Eleventh:

Page (ii) of the Executive Summary states that:

“The existing driveway at Mill River Road (Mohawk Drive) would be improved, and would serve as access for the proposed subdivision. The proposed internal roadways would be improved with a 22-foot-wide paved area within a 50-foot right-of-way, in accordance with Village standards.”

This statement is not entirely true. The term “Village standards” presumably refers to our Village Code. Under our Code at Paragraph 180-17 (I)(2), local and marginal streets should have a grade not greater than 8%, “unless warranted by extenuating circumstances.” For most of its ~3,000’ length, the proposed Mohawk Drive continuing as South Drive is engineered to a grade of 10%.

C77

Perhaps I overlooked it somewhere else in the document, but I could not find where the Applicant notes that the proposed grade exceeds Village standards. Not doing so is a deficiency in the DEIS. Further, the Applicant should demonstrate why he feels “extenuating circumstances” prevail in this case.

Presumably, that is a determination only the Village can make.

There is a policy trade-off between limiting maximum grades as a safety matter and avoiding switchbacks and other means of extending run as an aesthetic and environmental matter.

Personally, in this case, I would argue that the circumstances warrant an accommodation by the Village allowing 10% grades. A lower limit would force the developer to extend his roads and thereby worsen the aesthetic and environmental impact of the project. However, for safety reasons I would be very concerned if the Applicant were to request any further latitude to exceed our Village standards.

C78

Thank you for your consideration.



# **NORTH SHORE LAND ALLIANCE INC.**

151 Post Road  
Old Westbury, NY 11568  
Tel: 516.626.0908  
Fax: 516.484.4419  
info@northshorelandalliance.org  
www.northshorelandalliance.org

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UBPB-P-107

10/6/09

*(signature)*

Public Ex.

# 2

October 6, 2009

Planning Board  
Incorporated Village of Upper Brookville  
Village Hall  
1395 Planting Fields Road  
Oyster Bay, New York 11771

Re: The Oaks at Mill River Subdivision Application

To the Members of the Planning Board,

The North Shore Land Alliance (NSLA) is a not for profit land trust whose mission is to preserve and protect the green spaces, farmlands, wetlands, groundwater and open spaces of Long Island's North Shore. The Village of Upper Brookville lies within our service area. Many Upper Brookville residents are NSLA members and supporters. Recently, we have received calls from residents of this village and nearby villages who are concerned with the impact to the environment from the proposed development of this site.

### The Oaks at Mill River Proposed Subdivision

The Planning Board is considering an application to subdivide a 97.16 acre parcel, into 14 lots upon which will be built 13 custom designed homes of 6000-8000 square feet, each with pool, cabana and tennis courts, for a potential impervious surface of 16,500 square feet each.

While we recognize that the owner of the property has a right to develop it, we hope that with a little creative thinking on the part of both the village planners and the developer, that the developer's goals and objectives can be realized with as little impact to the environment as possible. The kind of creative thinking that we are proposing would allow development of the site while protecting its slopes and trees to a much greater extent than what is currently proposed in this application while still allowing the developer to realize its development rights.

C79

The applicant states that the proposed subdivision has been designed to preserve the natural slopes to the maximum extent practicable, but because the parcel includes over 41 acres of steep or very steep slopes, it will be impossible to construct roads and build homes on this site without a huge negative impact to the natural environment. The applicant further states that the proposed subdivision conforms to existing zoning laws. Even accepting this statement at face value, it is clear that subdividing this parcel as proposed does not conform to the stated goal of the Village Master Plan which is to preserve natural vegetation and slopes, protect trees, and other natural resources. The Village has laws that regulate disturbing steep slopes, yet eight of the fourteen lots on the proposed plan site structures on steep slopes, but conform to existing zoning in that they are seven acres or more.

C80

### Conservation Planning

A few years ago, NSLA had a seminar featuring Randall Arendt as the featured speaker. Mr. Arendt is a nationally recognized authority on conservation planning. Mr. Arendt points out that in many cases conventional zoning ordinances work at cross purposes with the Master Plan, and can be destructive of the very natural resources that they are meant to protect. In short, there are often gaps between the stated goals of the Master Plan and existing laws. His idea is that the residential subdivision design process can be reformed so that such developments become a major tool to achieve a community's conservation objectives, at no additional cost to developers.

C81

Conservation subdivision design requires consideration and preservation of natural and cultural resources as part of the design process of a development. Studies have shown that they save money on expensive site grading and road construction, and that the lots sell more quickly and at premium prices. Local subdivisions that have used similar conservation planning include Cherrywood on Piping Rock Road and Matinecock Farms on Duck Pond Road. Both feature well designed homes on smaller lots than required under existing zoning in order to preserve more trees and natural features with more open space under common ownership.

### Conservation Easement

Although the applicant proposes a conservation easement on 29.7 acres the 29.7 acres is highly fragmented and includes buffers between individual lots which would not do much to protect the natural resources of the property. Nor is it clear how this proposed conservation area would be protected. NSLA works with private landowners and local governments to protect open space and would be happy to work with the developer to place a conservation easement on the property to ensure its permanent protection.

C82

### Conservation Planning Resources

NSLA has examples of Conservation Subdivision ordinances which have been adopted and successfully implemented in many New York and Long Island villages which illustrate how such laws can help to protect natural resources. We also have examples of very well designed conservation subdivisions which also show how such designs can really benefit a community which we would be happy to share.

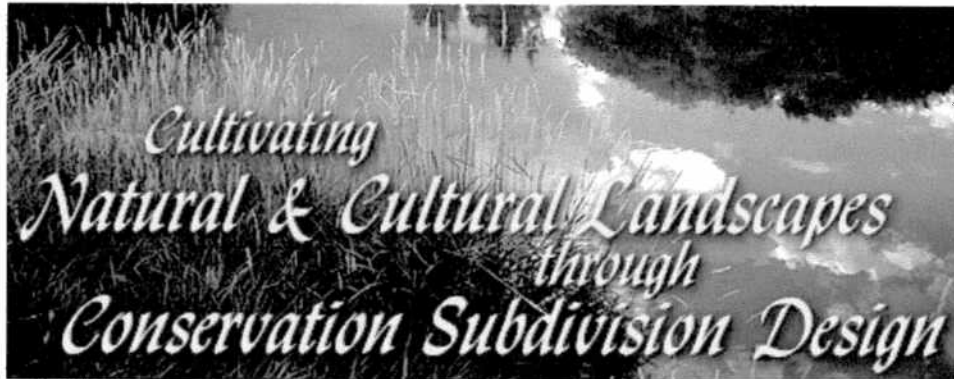
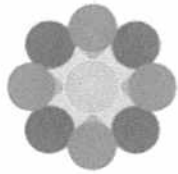
C83

NSLA would like to thank the Planning Board for giving us the opportunity to comment on the application and will submit its comments in writing prior to the stated deadline of October 23, 2009.

Respectfully submitted,



Judith Goldsborough  
Associate Director



by **Randall Arendt**

[See slideshow at end of introduction]

If you have ever driven by a development site both before and after construction, you will probably have noticed how drastically the pre-existing landscape—both natural and cultural—has been altered, sometimes almost beyond recognition. Very typically, woodlands have been felled, hedgerows have been pulled up and cleared away, the natural contours of the terrain have been ironed out into dead-flat building platforms, drainages have been relocated, old houses and barns have been razed.



Usually not as obvious is the lack of necessity for many of those changes, which forever impoverish the community by permanently erasing special features that are often impossible to replace or replicate. The loss of habitat, familiar landscapes, and character-defining buildings are often the result of indifference by developers and their engineering consultants, and ignorance of practical alternatives by local planning staffs and officials who approve such proposals, based on outdated zoning and subdivision codes which legitimize this kind of corporate and municipal misbehavior.

Much has been written concerning practical alternatives to standard "cookie-cutter" development patterns, particularly those involving residential subdivisions, which alter far more acreage in any given year than any other land-use type.

Readers of this magazine may recall an [article that appeared in Issue No. 7](#) in 2000 ("Designing Traditional Neighborhoods Around Natural Features"), where this theme was sounded.

In that piece, I quoted Raymond Unwin, one of the great leaders of the Garden City movement, who in 1911 told members of the Chicago Club, "City planning must be a combination of the art of man and the beauty of nature... We therefore preserved the trees and the hedgerows, so the site would not look so bare from the beginning."



The inspired notion of designing the city as a garden had sadly faded by the late 1920s, but many of the underlying premises of the movement were revived and greatly expanded by perceptive landscape architects several generations later, most notably by Ian McHarg, whose seminal volume Design with Nature brought the nascent idea of ecological planning into sharper focus for many students and practitioners of his era. Many of those ideas have, in turn, evolved into the art and practice of "conservation planning," together with its implementation tools: conservation zoning and conservation subdivision design.



At the heart of this approach is the idea that the residential subdivision design process can be reformed so that such developments become a major tool for achieving a community's conservation objectives, at no additional cost to developers. In fact, studies have shown they save money on expensive site grading and street construction, and that the lots tend to sell more quickly and at premium prices.

These concepts have been the subject of several books—such as *Growing Greener* and *Conservation Design for Subdivisions*—in which the landscape approach to site design has been simplified into a four-step design process easily understandable by lay members of local planning boards, not to mention developers and their engineers. The critically-important first step consists of inventorying resources worth designing around and preserving, either because they represent daunting obstacles to development (such as wetlands, floodplains, and steep slopes), or because they encompass special value-adding natural or cultural features that are extremely vulnerable because they are NOT located in unbuildable areas.

The second distinguishing feature of this approach is its commitment to pre-identifying and preserving a community-wide network of conservation lands, "linked landscapes", as it were, not merely a hit-or-miss collection of isolated green pockets dotted here and there around the township or county.

The following narrative slideshow presents two dozen images capturing different site features that have been inventoried, evaluated, designed around, and saved through this common-sense approach to land development. Half are located in conservation subdivisions that I have personally designed in various landscapes and regions, ranging from New England to the Upper Midwest, and from Texas to Florida. These photos are divided into four broad categories: Cultural Features, Natural Features, Restoration Examples, and Community Lands & Commercial Applications. As the pictures themselves are each worth a proverbial thousand words, captions have been limited to a brief statement or two providing background for the reader.

Further Reading: The central tenets of conservation planning and subdivision design are described and illustrated in several free downloadable publications posted on [www.greenerprospects.com](http://www.greenerprospects.com).

## **Slideshow Follows**

Randall Arendt is an author, lecturer, educator, and site designer specializing in land conservation through more compact development design. Propelled by outrage at the lamentable state of land-use planning in many parts of this country, he is the author of numerous articles and four volumes on this subject, has designed conservation subdivisions in 24 states, and has lectured in 46 states and seven Canadian provinces. Randall is an Honorary Member of the American Society of Landscape Architects, and a Fellow of the Royal Town Planning Institute in London. Further information on Randall, plus numerous free downloadable publications, are posted at [www.greenerprospects.com](http://www.greenerprospects.com).

## **Sideshow of 25 cultural, natural, and restoration features of conservation subdivision design**

### **Cultural Features**



#### **Trace**

##### **Lakeland Green, Lakeland, Tennessee**

This ancient woodland footpath, trodden by Native Americans well before the appearance of European settlers, was encountered on a large property in western Tennessee during a site walk I conducted with the landowner's son as part of a five-day charrette held by Duany Plater-Zyberk & Company (DPZ) staff, who had asked me to serve as their "designated walker" and their "eyes on nature." Many features were identified and located during this extensive perambulation, and were very easily "designed around" with the flexibility that smaller lots give site designers, be they New Urbanists or rural conservationists.

*Photo by Randall Arendt.*



#### **Stone Wall**

##### **Brown's Farm, Kingston, Rhode Island**

Retaining stone walls in the New England landscape would seem to be basic, but it is a true rarity in subdivision design in that region, where surveyors' convenience and rigid codes regularly combine to impose insensitive layouts upon the land. This particular example stands out for its creativity in lying within a long, broad central green, akin to a boulevard median, located in a cul-de-sac setting where the looping street neatly wraps around it. Another bonus: parts of this wide median/green include rain gardens to encourage stormwater infiltration and aquifer recharge.

*Photo by Randall Arendt.*



### **Cellarhole**

#### **Chapman's Woods, Willington, Connecticut**

This stone artifact anchors the conservation lands to its farmstead origins in the 18th century. The nearby circular well exhibits considerable masonry skill, and will be covered with an iron grate to reduce liability concerns. We discovered this quite by accident during a three-hour site walk, attended by numerous Town officials—which is the preferred way to begin a design process, a sort of "charrette-on-foot."

*Photo by Randall Arendt.*



### **Earthworks**

#### **The Fields at Cold Harbor, Hanover County, Virginia**

Many farms near Southern cities contain earthen fortifications hurriedly dug and heaped up by Union or Confederate forces. Unless they are located within a national military park, however, chances are they are completely unprotected. When helping Hanover County, Virginia write new zoning regulations to encourage rural conservation subdivisions, I was asked by a developer to draw up a concept plan for property adjoining the Cold Harbor Battlefield, preserving the earthworks, and enabling him to offer the extensive conservation land to the National Park Service. This is one of twenty such developments created since that code was adopted seven years ago.

*Update:* I recently learned that conservation subdivisions in Hanover County have already preserved some 4,400 acres of land during the eight years since I helped staff write the current ordinance.



### **Ditch and Hedgerows**

#### **West Haven, Franklin, Tennessee**

This drainage ditch, bordered by two lines of scraggly trees separating open fields, was the only item of visual interest in an otherwise featureless landscape. Very much to their credit, New Urbanist designers at DPZ recognized that, with a bit of editing and pruning, these trees could be transformed into something much more than the sum of their paltry parts. This ensemble now serves as the central median in one of the boulevards leading into the heart of this new traditional neighborhood.

*Photo by Randall Arendt.*



### **Log Buildings**

#### **Chimney Rock, Flower Mound, Texas**

Part of preserving "the view from the road" lies in designating conservation areas within the public viewshed. A very old log building and the chimney of the original farmhouse are all that remain to tie us back into this neighborhood's long history. I preserved another part of the frontage by creating a large ten-acre "conservancy lot," essentially non-common open space adding to the developer's bottom line, while relieving the home association of land they would otherwise be obligated to manage.

*Photo by Randall Arendt.*



### **Farmhouse**

#### **Grande Park South, Plainfield, Illinois**

This plain old farmhouse epitomizes the simplicity of much of the vernacular architecture in Kendall County, south of Chicago. Not fancy but in good solid condition, this structure sits atop a low ridge, crowning the horizon, highly visible from the country road that passes below. It is being sold with the condition that it be restored in a historically appropriate manner. Convincing my client that this was the right thing to do required several conversations, but he eventually saw the merit of sparing the structure and turning a liability into an asset.

*Photo by Randall Arendt*

### **Natural Features**



### **Trout Lily**

#### **Montgomery Farm, Allen, Texas**

This delicate wildflower, sometimes also known as dogtooth violet (*Erythronium americanum*), derives its more common name from the speckles on its leaves, not unlike the distinctive pattern seen on a trout's body. This specimen springs from the floor of a natural woodland garden that has been carefully preserved in the heart of a 500-acre development north of Dallas. Members of the landowning family that hired me to assist with their planning process joined me on the walk and readily endorsed the suggestion that this forest remnant be spared the bulldozer's blade.

*Photo by Randall Arendt.*



### **Trillium**

#### **Mendon Green, Mendon, New York**

Most woodland wildflowers such as the trillium (*Trillium grandifolium*) blossom in late spring, before tree foliage emerges, blocks the sunlight, and shades the forest floor. With three leaves and three large white petals, this plant has long been associated with the Trinity and the Christian faith. This property in upstate New York is blessed with extensive woodlands, all of which were saved by locating the development on the previously disturbed areas devoid of ecological significance: the farmland.

*Photo by Randall Arendt.*



### **Florida Pinks**

#### **King Grove, Lake County, Florida**

When my landowner client pointed out a patch of pinks (*Sabatia angularis*) on his property, gracing a meadow behind his house, the exquisite beauty of the plant's structure was not immediately evident, but became clear when viewed at close range. When visiting meadows and woodlands where choices exist regarding the location of development areas and conservation areas, landowner input can be critically important, particularly during seasons when such species are not in bloom.

*Photo by Randall Arendt.*





### **Azaleas**

#### **The Ridge at Chukker Creek, Aiken, South Carolina**

Stands of wild azalea dot a client's property in western South Carolina, but fortunately were easily avoided because they covered a relatively small percentage of her acreage. On another property in New England, where about half the land was vegetated with mountain laurel, a color aerial photo taken just after snowfall helped enormously in identifying the stands and designing around the most significant of them.

*Photo by Randall Arendt.*



### **Vernal Pools**

#### **The Preserve, Old Saybrook, Connecticut**

These shallow woodland ponds are significant precisely because they are ephemeral, appearing only during the wetter months. As they are typically bone-dry by midsummer, they do not support a fish population, meaning that the larvae and young of many woodland amphibians (such as spotted salamander, spadefoot toad, and wood frog) are safe from piscine predators. However, such features are not even on the screen of most code writers, and are frequently graded over in total ignorance of their importance. At this project, numerous pools were identified and prioritized according to the richness and diversity of their amphibian life, as estimated by a specialist in this field.

*Photo by Randall Arendt.*



### **Grove of Live Oaks**

#### **The Park at Wolf Branch Oaks, Mt. Dora, Florida**

A dentist attending one of my conservation design workshops asked me to look at a property he had purchased for investment purposes, but which he did not wish to wreck in the pursuit of money. An aerial photo enabled me to spot the greatest concentrations of live oaks in his cow pasture and to design around them easily, creating a 13-acre park in the center of his 80-acre rural neighborhood.

*Photo by Randall Arendt.*



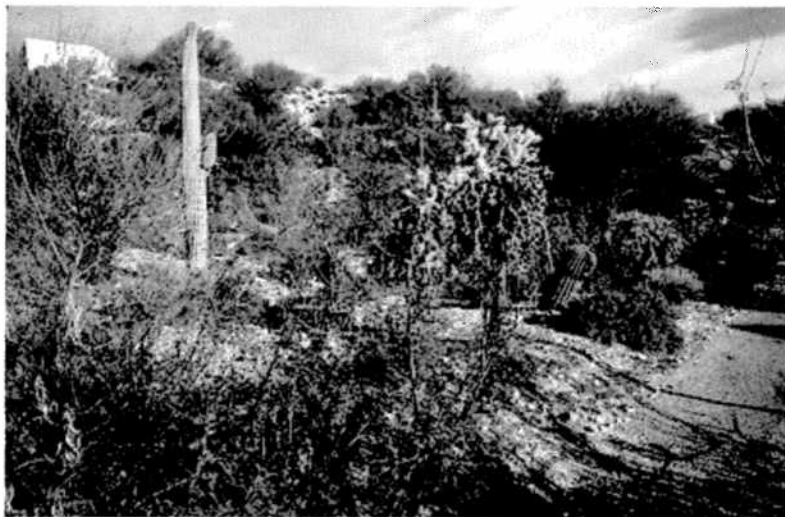
### **Wiregrass and Longleaf Pine Habitat**

#### **Centerville, Tallahassee, Florida**

Consultation with local experts in Florida panhandle ecology informed my decision as to which parts of this property to designate as a preserve, including habitat for gopher tortoises. Money really does grow on trees, as 86 of the first 87 lots sold on the first day of offering, a record for developers in Leon County.

*Photo by Randall Arendt.*





### **Saguaro Cactus Habitat Fairfield, Tucson, Arizona**

Xeriscaping principles limited the size of lots in this 20-year-old subdivision, and extensive areas of native saguaro cactus were the beneficiaries. In this example, local regulations did not cause the good design, but at least did not impede it either, as is often the case with conventional zoning codes.

*Photo by Randall Arendt.*



### **Wetlands**

#### **Tryon Farm, Michigan City, Indiana**

Much of the Midwest was historically dotted with "prairie potholes," providing welcome rest stops for migrating waterfowl. But most of these natural watering-holes were tiled and drained as farmers gradually extended their areas of cultivation. Experts tell us that the majority of wetlands loss in this country has occurred not in coastal locations, but rather in interior areas such as this. Recognizing the ease with which such water features could be brought back into existence, developers Eve and Ed Noonan re-created several ponds where Mother Nature had intended them to be, adding something of beauty (and wildlife value) to this new rural neighborhood as part of an overall sales and marketing strategy.



**Trout Fishery**  
**The Ranch at Roaring Fork, Garfield County, Colorado**

With technical advice from Trout Unlimited, a superb fishery, which had been utterly destroyed by generations of ranching, was restored by a developer who had first thought of—and rejected—the boring notion of creating a golf course as an amenity or "draw." Where cattle once drank, muddied the water with their huge hooves, and relieved themselves, trout now thrive, attracting buyers who value—and pay more for the privilege of living near—this special natural resource.

*Photo by Randall Arendt.*



**Prairie Flowers**  
**Hawksnest, Delafield, Wisconsin**

Large sections of a fifteen-acre central green have become a natural garden, planted with native grasses and wildflowers by Siepmann Realty, arguably the nation's leading developer of conservation subdivisions. I took this photo three years after the meadow had been planted, truly a riot of color, and a haven for honeybees and butterflies, during high summer.

*Photo by Randall Arendt*



### **Prescribed Burns**

#### **Prairie Crossing, Grayslake, Illinois**

An essential part of proper prairie management is the annual controlled burn, illustrated here. Residents are advised beforehand to make plans to be away on the burn date, if they have asthma or other respiratory ailments. However, for the majority, these burns provide an enjoyable educational experience.

*Photo by Michael Sands.*



### **Plant Nursery**

#### **Cloverdale Farm, Lake Elmo, Minnesota**

Developer Robert Engstrom has created plant nurseries of his own to provide native grasses, wildflowers, and trees to his nearby projects, north of St. Paul. This nursery supplies needs for several of his nearby conservation subdivisions, including the one where this photo was taken and another directly across the street.

*Photo by Robert Engstrom.*

## Community Lands and Commercial Applications



### **Community Gardens and CSA: Berrying Prairie Crossing, Grayslake, Illinois**

Community gardens with individual allotments for each family are a popular tradition in Europe, and also in some new conservation subdivisions in our own country. Here children are seen berrying at Prairie Crossing's organic berry farm, in Grayslake, Illinois, where the berries are growing through a rye cover crop.

*Photo courtesy Prairie Crossing*



### **Community Gardens and CSA: Farmstand Fields of St. Croix, Lake Elmo, Minnesota**

A variation on this theme is the concept of community-supported agriculture (CSA), where a farming couple typically leases land from a home association and raises a variety of fresh vegetables, berries, herbs, and flowers, to be picked (or cut) by CSA members, who pay an annual membership fee for the privilege. Some parents bring their children to these "Pick-Your-Own" operations, turning it into a family activity, while others prefer to simply stop by the farm stand and collect their weekly share of the produce.

*Photo by Robert Engstrom.*



### **Vineyard**

#### **Village Homes, Davis, California**

Add viniculture to the list of agricultural activities that can be accommodated in conservation subdivisions. This one, built compactly at 4.5 du/acre overall, saved land for the developers, Michael and Judy Corbett, to establish a small vineyard.

*Photo by Randall Arendt.*



### **Deer Farming**

#### **North Oaks, Minnesota**

Herds of deer roam large fenced areas in this conservation subdivision created by clients Doug and Mari Harpur, north of Minneapolis. Bred primarily for their antlers and secondarily for their venison, this operation is one of the more unusual in my own experience.

*Photo by Randall Arendt.*



**Wholesale Tree Nursery  
Indian Walk, Doylestown Township,  
Pennsylvania**

Substituting long-term crops for corn and soybeans, the owner of the conservation land in this development in the Philadelphia suburbs grows trees and shrubs for professional landscapers. Low-impact operations such as this, and others illustrated here, are best suited for conservation subdivisions, with their proximity to residents.

*Photo by Randall Arendt.*



**Equestrian Facility  
Summerfield, Elverson, Pennsylvania**

Rather than burdening the homeowners association with the huge weekly expense of mowing extensive grassy recreation areas, this developer utilized the concept of "non-common" open space. This approach also enabled him to enhance his bottom line, not simply giving the land away to an association, but rather selling it to an experienced equestrian operator. Permanent easements and a municipally-approved management plan ensure that the paddocks are never developed, and always kept in good condition.

*Photo by Randall Arendt.*



**Randall Arendt and Rick Darke  
Allen, Texas**

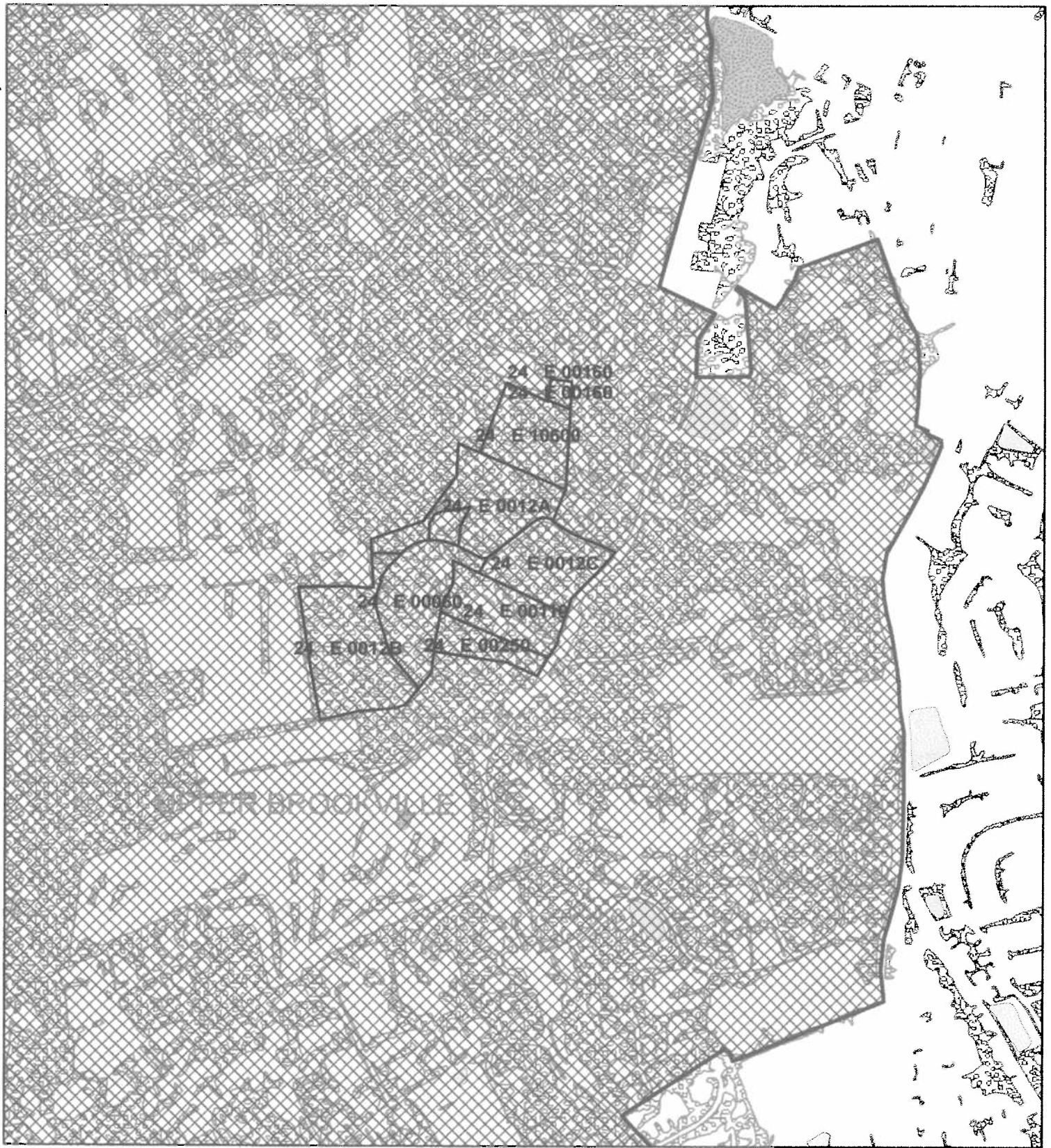
Our host Randall Arendt, left, with landscape designer and garden writer Rick Darke, right, in a site feature comprising part of the cultural landscape on a project they are collaborating on in Allen, Texas.

For more information on conservation planning and subdivision design, visit the author's website at:




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
*Photo by Rosa Finsley.*

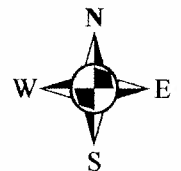




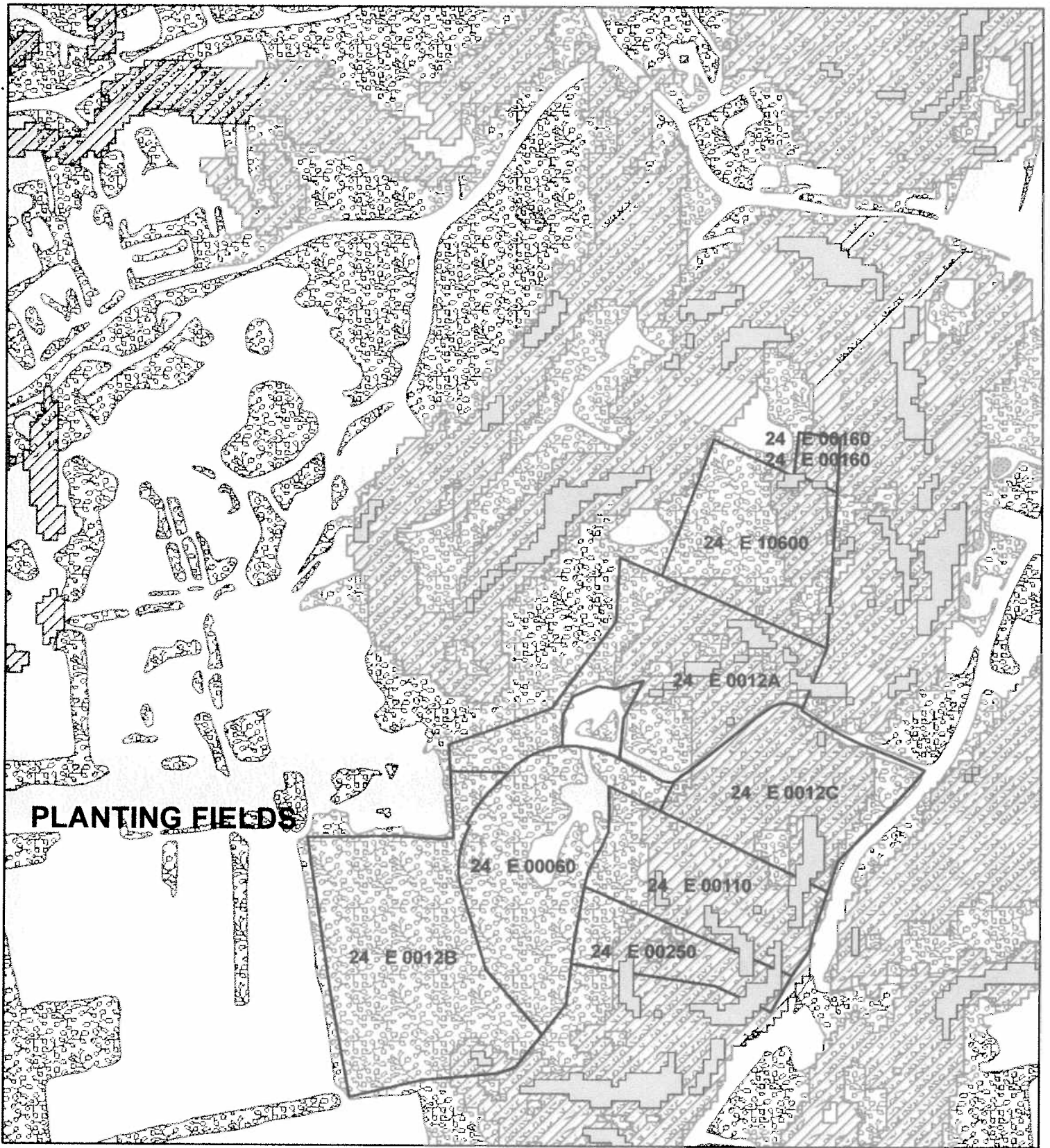
## The Oaks at Mill River - 97+ Acre Subdivision

-  Wang Properties
-  Special Groundwater Protection Area
-  Inland Water




-  Recharge Basins
-  TreeCover






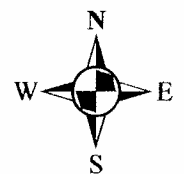


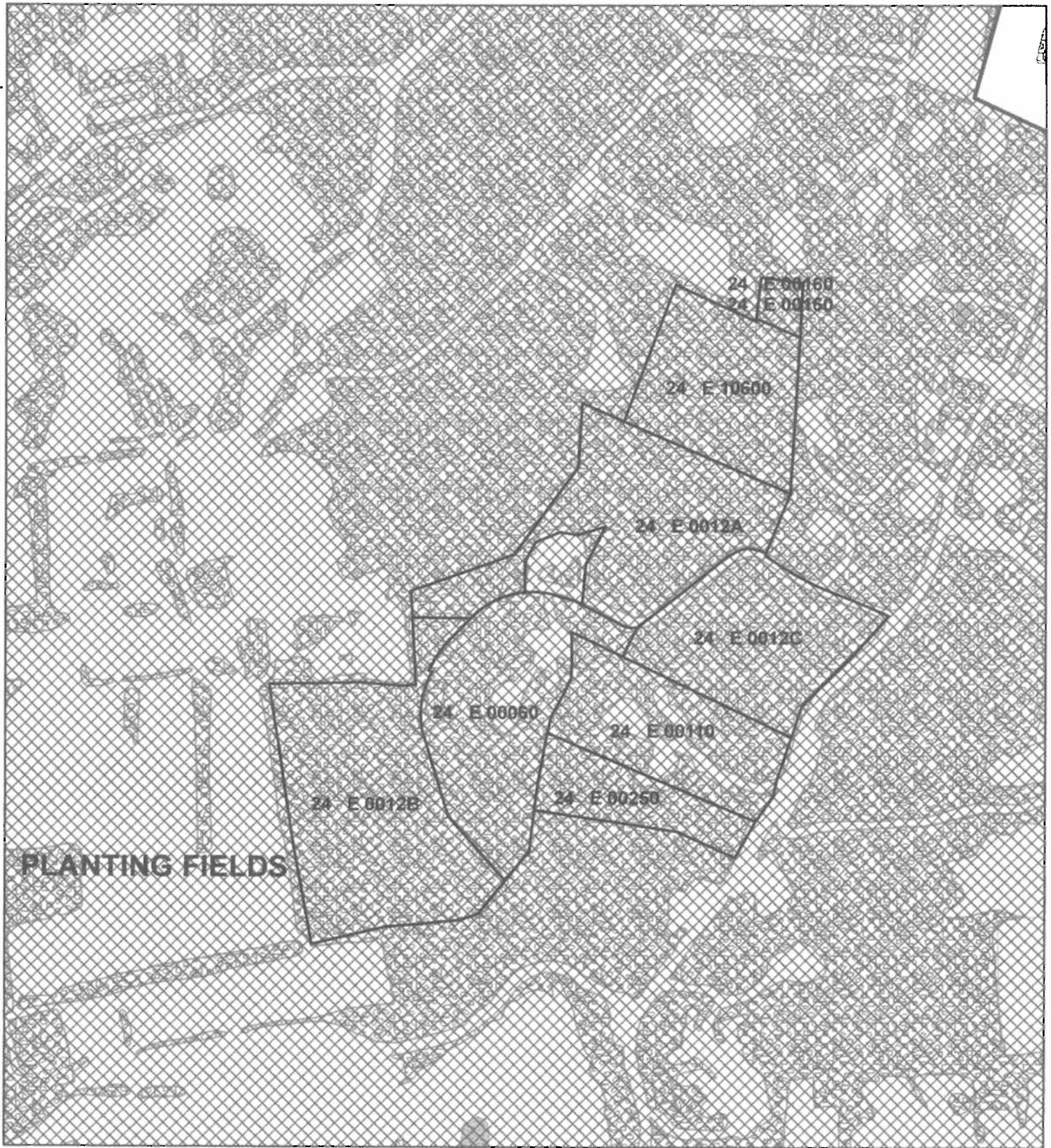


## The Oaks at Mill River - 97+ Acre Subdivision




-  Proposed Subdivision
-  Steep Slopes up to 25%
-  Slopes 25% and up



-  Recharge Basins
-  Tree Cover
-  Inland Water





## The Oaks at Mill River - 97+ Acre Subdivision

-  Proposed Subdivision
-  Special\_Groundwater\_Protection\_Areas
-  InlandWater

-  Recharge Basins
-  TreeCover



## **New York**

### **Law**

## **Open Space Preservation, Conservation Subdivision, Natural Resource Protection, Scenic Resources**

### **EPA Region 2**

## **Municipality- Town of Briarcliff Manor**

### **Conservation Development**

#### ***Summary***

This law is designed to protect environmentally sensitive undeveloped areas, within the Town of Briarcliff Manor, from harmful development practices. To this end, the Board of Trustees authorizes the village Planning Board to approve conservation subdivisions, according to procedures outlined in the law.

#### ***Law***

Village of Briarcliff Manor NY Conservation Development

Code of the Village of Briarcliff Manor NY

Chapter 220 Zoning

General Code

[http://www.e-](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=1701%2D220%2Ehtm%23Section220%2D7%2E&cn=678&n=[1][132][678])

[codes.generalcode.com/codebook\\_frameset.asp?t=tc&p=1701%2D220%2Ehtm%23Section220%2D7%2E&cn=678&n=\[1\]\[132\]\[678\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=1701%2D220%2Ehtm%23Section220%2D7%2E&cn=678&n=[1][132][678])

§ 220-7. Conservation development. [Amended 5-21-1998 by L.L. No. 2-1998; 5-20-1999 by L.L. No. 2-1999]

A. Findings; purpose and intent.

- (1) The Board of Trustees of the Village of Briarcliff Manor hereby finds that a substantial proportion of the remaining vacant land in the Village is environmentally sensitive and topographically difficult. The Board of Trustees further finds that it is to the benefit of all, wherever practicable, to promote the conservation of remaining open space, preserve environmentally sensitive areas in their natural state and preserve the existing aesthetic qualities of the Village.
- (2) The general purposes and intent of this section are to enable and encourage flexibility and diversity of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economical provision of streets and utilities, to preserve the natural and scenic qualities of open lands, to protect areas of meaningful ecological, architectural, scenic and historic value and to reserve suitable lands for park and recreation purposes.

B. Authorization to approve conservation subdivisions.

- (1) The Board of Trustees upon application of the owner of the land to be subdivided, or upon the application of the Planning Board, may authorize the Planning Board simultaneously with the approval of a subdivision plat, to modify applicable provisions of this chapter, subject to the procedures, conditions and requirements set forth in this section, in § 190-16F of Chapter 190, Subdivision of Land, and in § 7-738 of the Village Law. This procedure may be followed:
  - (a) When applied for by the owner of the land to be subdivided if, in the judgment and discretion of the Board of Trustees, its application would benefit the Village by satisfying one or more of the purposes set forth in Subsection A; or
  - (b) Where the Planning Board applies to the Board of Trustees for such authorization and where the Planning Board had determined that its application would benefit the Village by satisfying one or more of the purposes set forth in Subsection A and where the Planning Board determines that one or more of the criteria for conservation development, as set forth in § 190-16F of Chapter 190, Subdivision of Land, would be met. In this case, if so authorized by the Board of Trustees, the Planning Board may require the owner of the land to submit a preliminary subdivision plat application which reflects such modifications of applicable provisions of this chapter.
- (2) This authorization shall be applicable in all zoning districts which permit residential development in the Village.
- (3) Except as specified in this section, all development standards and controls of this chapter and Chapter 190, Subdivision of Land, which are otherwise applicable in the district in which the property is located shall also be applicable within any conservation development.
- (4) Except as otherwise provided in Subsection B(6) regarding the type of residential dwelling units permitted, the permitted principal and accessory uses within a conservation development shall be the same as those otherwise permitted in the zoning district in which the property is located.
- (5) The number of building lots or dwelling units permitted within a conservation development shall in no case exceed the number which could have been permitted, in the judgment of the Planning Board, if the land were subdivided into lots conforming to all normally applicable requirements of this chapter, Chapter 190, Subdivision of Land, the Westchester County Department of Health regulations and all other applicable requirements. However, where the plat falls within two or more contiguous districts, the Planning Board may approve a conservation development representing the cumulative density as derived from the summary of all units allowed in all such districts, and may authorize actual construction to take place in all or any portion of one or more of such districts. The basis for these density determinations by the Planning Board



shall be a conventional preliminary subdivision plat for the subject property, plus such other information as may be required by said Board.

- (6) The type of residential dwelling units permitted within a conservation subdivision shall be, at the discretion of the Planning Board and subject to the conditions set forth herein, in detached, semidetached and/or attached buildings.
- (7) The plat showing such conservation development may include areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street and enclosed parking spaces, streets, driveways and any other features required by the Planning Board.
- (8) Within the framework of the limitations set forth in this section, § 190-16F of Chapter 190, Subdivision of Land, and § 7-738 of the Village Law, the Planning Board shall establish, on a case-by-case basis, the appropriate modifications of lots, bulk and parking requirements which said Board has determined are necessary or appropriate to properly accomplish the purposes and intent set forth in Subsection A, and, where applicable, one or more of the specified objectives set forth in § 190-16F of Chapter 190, Subdivision of Land, consistent with the protection of private property values and the preservation of the character of land and buildings on neighboring sites.
- (9) Conservation subdivisions shall result in the preservation of open space areas having meaningful scenic, ecological, environmental and/or recreational characteristics, with such access, shape, size and location as determined appropriate by the Planning Board to satisfy the intended purpose. The permanent preservation of such open space areas shall be legally assured to the satisfaction of the Planning Board and the Village Attorney by filing of appropriate covenants, deed restrictions, easements or other agreements.
  - (a) The ownership of conserved land areas shall be divided equally among all owners of building lots within the conservation subdivision, except where all or an appropriate portion of the conserved land areas are deeded to a recognized conservation organization dedicated to the preservation of open space and such dedication is acceptable to the conservation organization and to the Village Planning Board, or offered for dedication to the Village of Briarcliff Manor and the Board of Trustees has voted to accept such offer. Except in those cases where the ownership of the conserved land areas is to be vested in the Village of Briarcliff Manor or an approved conservation organization, the subdivider shall execute and file with the Planning Board such documents as, in the opinion of the Village Attorney, will be sufficient to create a property owners' association responsible for the continued ownership, use and maintenance of all conserved land areas in accordance with the following requirements:
    - [1] Membership in the association must be mandatory for each property owner within the subdivision and for any successive property owners.
    - [2] All restrictions on the ownership, use and maintenance of conserved land areas must be permanent.

- [3] The association must be responsible for liability insurance, local taxes and the maintenance of the conserved land areas, including any active recreation areas and related facilities.
  - [4] Each lot owner within the subdivision shall be made responsible for paying a proportionate share of the association's costs, and the assessment levied by the association shall become a lien on the property if not paid.
  - [5] The association shall have the power to adjust assessments to meet changing needs.
  - [6] In the event that the maintenance, preservation and/or use of the conserved land area(s) ceases to be in compliance with any of the above requirements or any other requirements specified by the Planning Board when approving the subdivision plat, the Village shall be granted the right to take all necessary action to assure such compliance and to assess against the association and/or each individual property owner within the subdivision, all costs incurred by the Village for such purposes.
  - [7] The establishment of such an association shall be required prior to the final approval of the plat.
- (b) Except where otherwise approved by the Planning Board, conserved land areas shall be preserved in their natural state and the use of such areas shall be limited to appropriate conservation, open space and recreation purposes as determined by the Planning Board.
  - (c) Notwithstanding anything contained in this law and in the Land Subdivision Regulations to the contrary, conditions on the ownership, use and maintenance of open lands shown on the plat shall be approved by the Board of Trustees before the plat may be approved for filing.



# NORTH SHORE LAND ALLIANCE INC.

151 Post Road  
Old Westbury, NY 11568  
Tel: 516.626.0908  
Fax: 516.484.4419  
info@northshorelandalliance.org  
www.northshorelandalliance.org

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October 23, 2009

Planning Board  
Incorporated Village of Upper Brookville  
Village Hall  
1395 Planting Fields Road  
Oyster Bay, New York 11771

Re: The Oaks at Mill River Subdivision Application

To the Members of the Planning Board,

The North Shore Land Alliance (NSLA) would like to submit the following comments on the DEIS for the above-captioned application, in addition to those submitted at the public hearing held on October 6, 2009.

NSLA believes that this project, as proposed, will have a negative impact on the village's environmental resources and in particular, on the Mill River Watershed. The projected residential subdivision of 97.16 acres with the destruction of over 2000 trees and construction on steep slopes which drain directly into Mill River cannot help but negatively impact the Mill River Watershed.

Although the DEIS is thorough with analysis of many of the significant environmental impacts of the proposed subdivision, there are a few areas with which we disagree, or that omitted relevant facts or available research, which should be taken into account in any decision on this application. In particular, the DEIS did not reference the Mill River Watershed Study which recommends actions to protect the watershed from further degradation.

The Mill River Watershed Study and Public Stewardship Program, ("Mill River Study") a recent study commissioned by the Town of Oyster Bay in conjunction with Friends of the Bay, makes abundantly clear that the health of Oyster Bay harbor depends on proper management of the human impact on the watershed. The Mill River Study points out that:

*Land development alters stormwater drainage characteristics within a watershed, which can have a profound effect on water quality of adjacent waterbodies. Development results in the replacement of permeable natural land surfaces (i.e., woodlands, meadows, etc.) with impervious surfaces such as roadways, buildings, walkways and pavements. Even in areas cleared for development that are subsequently replaced with landscaping, the planted vegetation generally has a lower capacity for absorbing rainwater than the original vegetation; this is especially true with respect to turf areas. The overall consequence of these conditions is that development generally increases the amount of runoff generated on a given parcel of land. The augmented volume of runoff from developed properties can result in an increase of pathogens and other deleterious substances carried from the land surface to receiving waters.*

The Mill River Study notes that the Mill River watershed encompasses two Important Bird Areas (IBA). IBAs are identified as key sites for birds as designated by the National Audubon Society and the American Bird Conservancy. In the 1980s, Bird Life International, “a global alliance of conservation organizations working for the world’s birds and people” (Bird Life International, 2005), began designating IBAs, which are sites that provide habitat for breeding, wintering, or migrating birds, shorebirds, and waterfowl.

C87

As noted in our earlier submission, the loss of wildlife and bird habitat due to the development of this property can-to the extent it is practicable- be minimized by use of a conservation subdivision design which maximizes preservation of natural features and minimizes fragmentation of woodlands, meadows and other open space.

C88

The applicant offers as mitigation for the negative impact of the proposed development that 29 acres of the combined parcels would be conserved through conservation easements. This 29 acre figure is misleading as it combines fragmented buffers around individual lots which would be very difficult to monitor. Moreover, a conservation easement affords no permanent protection of property unless it is donated to an entity that will monitor and enforce the restrictions on the property. The village should insist that the conservation easements so proposed be held by a responsible entity which can insure the permanent protection of the eased property.

C89

Despite its extensive volume, NSLA maintains that the DEIS report did not thoroughly evaluate the project’s impact on the Mill River watershed.

C90

According to the DEIS, “[T]he proposed subdivision has been designed to preserve the natural slopes of the site to the maximum extent practicable. However, it is expected that approximately 106,232 cubic yards of excess material would have to be removed from the site to develop the infrastructure associated with the proposed subdivision. To the extent that the proposed lots include very steep slopes which are projected to eventually have built upon them tennis courts, swimming pools and cabanas, it is unrealistic to aver that the construction anticipated for each lot will not result in severe destruction of the steep slopes and loss of protective natural vegetation, resulting in erosion and sedimentation of the watershed.

C91

As the DEIS correctly notes, the subject property is located within the state- designated Oyster Bay Special Groundwater Protection SGPA (“SGPA”) The DEIS discussion of the Long Island Special Groundwater Protection Area Plan (“SGPA Plan”) is deficient. The DEIS states that development of the subject property would be consistent with the intent of the SGPA Plan. The Plan calls for concerted actions by municipalities to guide and manage development to prevent or minimize groundwater degradation in the SGPAs. The SGPA Plan notes as a concern for the Oyster Bay SGPA that:

“Many of the existing estates could be re-subdivided, thus freeing up additional acreage for future development of land uses.” It further states that these as yet un-subdivided estate lands provide opportunities for the reservation of new well sites.

C92

“There is an urgent need to preserve existing and potential watershed protection areas as infilling of already subdivided properties adds to the population and water usage in the SGPA. The possible development of ...lands within the environmentally stream corridors... constitute a major concern.”

While the subject parcel was not specifically named for acquisition, it is clear that the subdivision and development of estates within the SGPA’s does not comport with the intent of the SGPA Plan, but instead is a major concern and cause of loss of crucial aquifer recharge.



The DEIS further states, incorrectly, that "To the applicant's knowledge, no governmental or not-for-profit entity has contacted the applicant regarding acquisition of this property for open space purposes." To the contrary, NSLA has contacted representatives of the owner about conservation options for the property, and the owner was approached by representatives of the Town of Oyster Bay, on more than one occasion, but the owner was only interested in selling-at a very steep price- the entire property, which was more than the Town could afford.

C93

While the project's DEIS report enumerates several remediation plans to mitigate impact, mitigation- to have any real value- must be monitored and enforced to ensure that it is actually carried out as promised.

C94

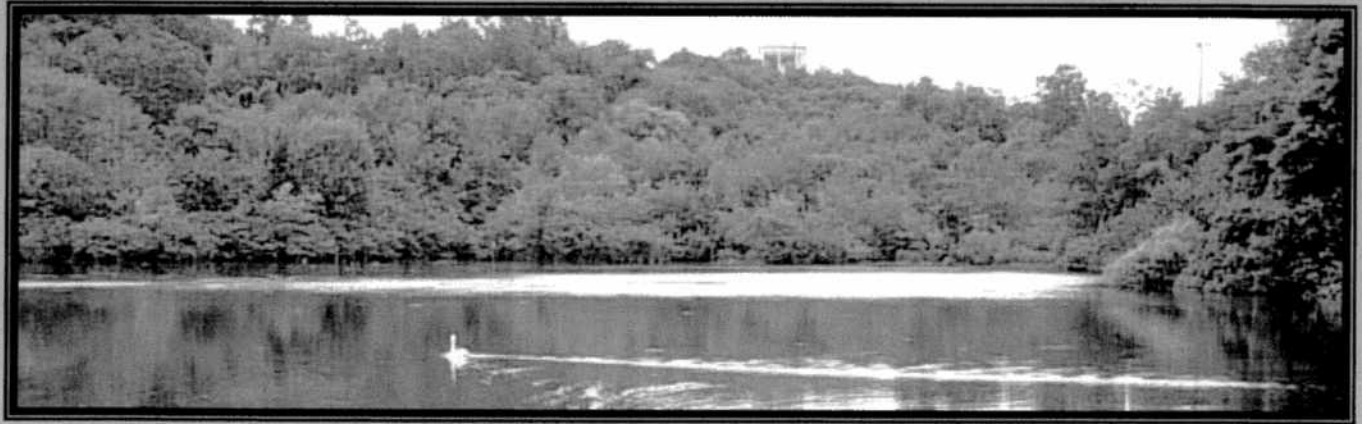
NSLA would like to thank the Village for considering these comments and would be happy to help in any way toward a solution with the least impact on the Mill River watershed.

Sincerely,



Judith Goldsborough  
Associate Director

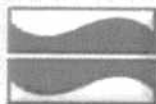
cc: Peter M. Weiler, Esq.



# **Town of Oyster Bay Mill River Watershed Study and Public Stewardship Plan**

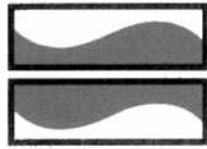


**Cashin Associates, P.C.**  
in association with



**Friends of the Bay**

**October 2008  
FINAL**



# Friends OF THE Bay

Keeping the oyster in Oyster Bay

PUBLIC EXHIBIT # 4  
10/22/09

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October 22, 2009

The Incorporated Village of Upper Brookville  
Planning Board  
c/o Tracy Lynch, Village Clerk  
P.O. Box 548  
Oyster Bay, NY 11771

Dear Planning Board Members,

Friends of the Bay is gravely concerned about the proposed development known as "The Oaks at Mill River". The location of the property in relation to the Mill River watershed, Mill Pond and Oyster Bay Harbor, as well as the topography of the site itself, lead us to believe that this project has significant potential to adversely impact the Bay. This project was only recently brought to our attention and as such we have had very limited time to review the DEIS and accompanying documents. However, even a cursory review has given us reason to be concerned.

We ask that this application be painstakingly reviewed. The site where the project would be situated lies within a Special Groundwater Protection Area, and has been identified as a Priority Open Space by New York State and Nassau County. According to Friends of the Bay's recently completed State of the Watershed Report, "ongoing development, intensification of land use, and everyday activities within the watershed has the potential to adversely impact groundwater and public drinking water supplies." Stormwater runoff from this project will flow through the Mill River to the Mill Pond and into Oyster Bay Harbor and the Oyster Bay National Wildlife Refuge. The outflow of the Mill Pond into Oyster Bay Harbor has been identified as an area where water quality is strongly influenced by freshwater sources and activities on the land and as a significant contributor of pollutants to the harbor complex. In 2005, the Defenders of Wildlife identified the Oyster Bay National Wildlife Refuge as one of the Ten Most Endangered Refuges in the United States. Polluted stormwater runoff, habitat destruction, non-sustainable development, and inadequate on-site septic systems were among the reasons cited. Human-induced impacts adversely affect the entire Oyster Bay/Cold Spring Harbor Complex.

Stormwater runoff from the Mill Pond would also contribute to siltation in the harbor complex. This, combined with additional stormwater runoff, would have a potentially adverse impact on the shellfish population (the harvest of which contributes \$7 million yearly to the local economy, without including revenues due to tourism and recreational boating, or property values) and could interfere with shellfish reproduction and setting.

C95

C96



Of particular concern is the fact that the topography of this site consists of 19.3% Steep slopes and 23.4% severe slopes. As proposed, the partitioning of this site creates several building lots that appear to be comprised entirely of steep slopes. Development of these sloped areas will result in accelerated runoff and increased erosion, both during and after construction, due to excavation and disturbance of the soil, loss of tree cover and vegetation, and increased impervious surfaces. This development will also disturb the natural contours and drainage patterns of the land and compromise the stormwater filtering capacity of a property that is located entirely in a Special Groundwater Protection Area.

C97

In adding Section 205-10 (F) to the Village Code in January of 2006, it is apparent that the intent of the Board of Trustees was to preserve steep slopes from this type of development. Unfortunately, it is nearly impossible to predict how effective a new regulation will be under every varying circumstance. For this reason, new regulations are periodically reviewed after adoption to assess their effectiveness. In this case, it appears that limiting the maximum size of a building lot that the Village can require to seven acres has inadvertently resulted in the creation of lots in excess of seven acres that are comprised almost completely of steep slopes.

C98

Friends of the Bay would like to formally request that the hearing be re-opened and the period for public input be extended, in order to:

- Allow Friends of the Bay and other interested parties to more thoroughly review the application and submit comments to assist the Planning Board in rendering a decision that will adequately protect the Oyster Bay National Wildlife Refuge and the Mill River Watershed.
- Allow the Incorporated Village of Upper Brookville Board of Trustees to review and consider amending the Village's steep slope regulations.
- Provide additional time for the Planning Board to investigate and consider less conventional ways to partition the land and concentrate development away from these slopes.
- Allow for the possibility of public acquisition of the property or a portion of the property.

C99

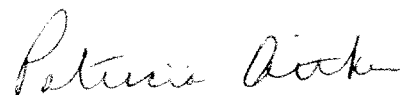
It is the hope of Friends of the Bay that, as the lead agency, the Planning Board will invest the necessary time and effort to ensure that this application meet the Village's own Standards for Approval including the "Preservation of existing natural resources, such as native trees, streams, slopes and natural vistas, natural flora and fauna"

Thank you for your consideration of this request.

Sincerely,



Barry E. Lamb  
Vice President



Patricia Aitken  
Acting Director

## PWeiler

**From:** Steve Perrotta [SPerrotta@csfllc.com]  
**Sent:** Thursday, October 22, 2009 3:40 PM  
**To:** pweiler@humeswagner.com  
**Subject:** The Oaks at Mill River Comments  
**Attachments:** Oaks at Mill River CSF\_Comments.pdf

Mr. Weiler,

Please accept these comments from Cashin Spinelli & Ferretti on behalf of the Town of Oyster Bay. When you receive same, please respond to this email so I can ensure you have done so.

If you should have any questions or concerns, please do not hesitate to contact me through email or one of the numbers listed below.

Thank you for your time and attention to this matter.

Truly yours,

Steve

Steven Perrotta  
Planner  
Cashin Spinelli & Ferretti, LLC  
801 Motor Parkway  
Suite 103  
Hauppauge, New York 11788  
Phone: (631) 737-9170 x254  
Cell: (631) 375-3772  
Fax: (631) 737-9171  
Email: [Sperrotta@csfllc.com](mailto:Sperrotta@csfllc.com)  
[www.csfllc.com](http://www.csfllc.com)



Please consider the environment before you print this e-mail or any attachments

10/22/2009



## Cashin Spinelli & Ferretti, LLC

SURETY CONSULTING • MUNICIPAL PLANNING • CONSTRUCTION MANAGEMENT

New York • Connecticut • Pennsylvania • Illinois

October 22, 2009

Via Email Sperrota@csfllc.com

Peter M. Weiler, Esq  
Village Attorney  
Village of Upper Brookville  
147 Forest Avenue  
Locust Valley, New York 11560

**RE: Draft Environmental Impact Statement (DEIS, August 2009) for The Oaks at Mill River, Village of Upper Brookville**

Dear Mr. Weiler:

Cashin Spinelli and Ferretti, LLC (CSF) provides technical assistance to the Town of Oyster Bay with respect to issues regarding the New York State Environmental Quality Review Act (SEQRA), and we have been asked by the Town to review and submit comments regarding the above referenced document.

The Town of Oyster Bay is an interested party in this matter, whose concerns relate primarily, but not exclusively, to those aspects of the proposed development that may impact the resources of Mill River, which discharges to Oyster Bay Harbor via Mill Pond.

On behalf of the Town of Oyster Bay, CSF respectfully submits the following comments for inclusion and appropriate response in the FEIS.

1. Section 2.3 (*Description of the Proposed Action: Project Description*), page 13, 2<sup>nd</sup> ¶ – The DEIS states “A Homeowner’s Association (‘HOA’) will be formed as part of the development of the subject property. The HOA will be responsible for... maintenance of the drainage systems.” It is recommended that more detail be provided regarding the inspection and maintenance schedule for the proposed drainage structures (including regular clean-outs as needed) to ensure their proper functioning over the long term.

C100

The *Mill River Watershed Study and Public Stewardship Program*, prepared by Town of Oyster Bay in association with Friends of the Bay, recommends developing systematic maintenance programs to clean debris from all drainage structures in the watershed of the Mill River. The subject property is located within the Mill River watershed. Therefore, it is requested that the FEIS verify whether the Village of Upper Brookville has developed a drainage structure maintenance program; and if so, it is requested that the HOA apply the relevant Village regulations to the proposed drainage infrastructure on the subject property, even though the Village would not be responsible for maintenance of same.

C101

2. Section 3.2.5 (*Existing Conditions: Water Resources: Surface Water, Wetlands and Floodplain*), pages 53-57 – It is requested that FEIS analyze the consistency of the proposed development with the *Mill River Watershed Study and Public Stewardship Plan*.

C102

3. Section 4.1.1 (*Probable Impacts of the proposed Action: Soils and Topography: Soils*), page 111, last ¶ – §205-10(F)(1) of the Village Code states “no development shall be permitted on those portions of a lot which contain severe slopes (i.e., greater than 25%)” and §205-10(F)(2) of the Village Code states “no development shall be permitted on those portions of a lot which contain steep slopes (i.e., between 10% and 25%). The DEIS states “within the proposed residential lots, the typical homesites depicted on the *Subdivision Study* are located in areas where slopes are less than 15 percent.” Several issues relating to slopes arise in regard to this statement:

The *Subdivision Study* and the *Slopes Analysis Map* appear to show that several proposed lots would involve development on slopes of 15 percent or greater in contravention to the Village Code, including:

C103

- Lot 1 would contain development in areas with slope gradient of 25 percent or greater;
- Lot 2 would contain development in areas with slope gradient of 15 percent or greater;
- Lot 3 would contain development in areas with slope gradient of 25 percent or greater;
- Lot 11 would contain development in areas with slope gradient of 25 percent or greater; and
- Lot 12 would contain development in areas with slope gradient of 15 percent or greater.

4. Section 4.1.2 (*Probable Impacts of the proposed Action: Soils and Topography: Topography*), page 114, 1<sup>st</sup> ¶ – With respect to roadway construction, the DEIS states “It should be noted that the Village engineer has raised concerns regarding these road width and gradient issues.” The precise concerns raised by the Village Engineer, and the applicant’s proposed methods to resolve same, should be discussed in the FEIS. If the Village Engineer’s concerns are set forth in a letter, memorandum or other written form, this document should be included in the FEIS appendix.

C104

5. Section 4.2.1 (*Probable Impacts of the proposed Action: Water Resources: Groundwater*), page 117, 2<sup>nd</sup> bullet – One of the recommendations of the Long Island Comprehensive Waste Treatment Management Plan is to “restrict the use of inorganic, fast-acting fertilizers. Promote the use of low-maintenance lawns.” The DEIS’s analysis of this recommendation, in part, states that “the use of low maintenance lawns will be encouraged within the individual proposed lots...” The FEIS should identify the specific, concrete actions that would be taken to advance this recommendation. If the use of low maintenance lawns for individual lots would be not required and enforced by the HOA, the FEIS should explain why this would be the case.

C105

6. Section 4.2.3 (*Probable Impacts of the proposed Action: Water Resources: Water Supply*), page 120, 1<sup>st</sup> ¶ – The subject property is split between the Oyster Bay and Jericho Water Districts. The DEIS indicates that both water districts are amenable to presenting a petition to the Town of Oyster Bay Town Board requesting an adjustment of the boundaries of the water districts, so that the Jericho Water District would be the sole water service provider to the subject property, in accordance with the requirements of the Nassau County Civil

C106

- 
- Divisions Act. Details of this procedure and the anticipated timing of the petition to the Town Board should be discussed in the FEIS. C106 cont'd
7. Section 4.2.3 (*Probable Impacts of the proposed Action: Water Resources: Water Supply*), page 122, 2<sup>nd</sup> ¶ – The DEIS states that “prior to the decision of the water districts to consolidate services to the subject property, the applicant had filed all required applications for a certificate of water availability from each district.” C107
- a. As it is proposed that water district boundaries be adjusted so that the Jericho Water District is the sole water service provided, it should be indicated whether the water availability request to the Jericho Water District (JWD) inquired as to whether the JWD would be able to provide water to the entire subdivision, or only that portion of the subdivision currently within JWD boundaries.
- b. If available, responses from the water districts regarding their ability to provide water service to the proposed project should be included within the FEIS.
8. Section 4.2.4 (*Probable Impacts of the proposed Action: Water Resources: Stormwater*), page 126, Table 13 – The *Drainage Summary* table does not appear to include runoff from the proposed 1,000-square foot booster station and associated driveway/parking areas. Although the exact location of the station has yet to be determined, it should be indicated that proper drainage facilities will be provided at this location. C108
9. Section 4.2.4 (*Probable Impacts of the proposed Action: Water Resources: Stormwater*), page 127, 2<sup>nd</sup> ¶ – The DEIS states “no drainage for surface water runoff will be required for areas to be left in a natural state and protected by ‘Conservation Areas’, as noted in Table 13...” However, the portions of the subject property to be left in a natural state are situated up-gradient from the proposed drainage structures, and stormwater runoff generated in these areas may flow into the drainage infrastructure, thereby decreasing the capacity of this infrastructure available to accommodate runoff from the portions of the site which are proposed for development. On this basis, it is requested that the FEIS re-examine whether additional stormwater storage capacity should be provided to account for runoff from Conservation Areas during the design storm event. C109
10. Section 4.4.2 (*Probable Impacts of the proposed Action: Zoning and Land Use: Land Use*), page 160, 2<sup>nd</sup> through 3<sup>rd</sup> ¶¶ – The subject property is identified as being “potential open space” in the *Nassau County Open Space Plan* and identifies the use of “conservation easements” as a tool to help maintain open space on the subject property. C110
- The DEIS indicates that 29.7 acres will be placed under conservation easement and 21.89 acres will be undeveloped. However, the “conservation areas” are non-contiguous strips located along lot lines and at the boundaries of the subdivision, calling into question the value of the easement as it appears it will be fragmented.
- The *Subdivision Study* reveals the conservation areas as being dark green, and other areas are shaded in light green. The fate of this light green area is unclear; however, page 162 states “additional portions of the individual proposed lots may be retained as undisturbed areas, at the discretion of the future landowner,” indicating that these



areas may be partially cleared. The FEIS should definitively indicate whether or not these areas are meant to be left in a natural state, or should recognize that future fragmentation of natural areas are possible in the event individual land owners decide to clear these areas.

C110  
cont'd

11. Section 4.7 (*Probable Impacts of the proposed Action: Aesthetics and Cultural Resources*), page 173 - 174 - Page 122 of the DEIS indicates that one possible location for the proposed booster station is on the east side of the subject property with direct driveway access to Mill River Road. The FEIS should describe the measures to be implemented to screen this facility from view, and to blend it in with the surrounding vegetation so as to maintain the existing viewshed along Mill River Road to the greatest extent practicable. If possible, a graphic depiction of how Mill River Road should be provided, taking into account this facility and screening methods of same.

C111

Very truly yours,

CASHIN SPINELLI & FERRETTI, LLC



Steven Perrotta  
Planner

cc: Neil O. Bergin, Commissioner, Department of Environmental Resources  
Attention: Aldona Lawson, TEQR Division

10/23/09

OCT 23 2009

**Cheryl DeGroat**  
69 Mill River Road  
Oyster Bay, NY 11771  
(516) 922-2652  
[cdegroat@optonline.net](mailto:cdegroat@optonline.net)

October 23, 2009

Planning Board  
Village of Upper Brookville  
Village Hall  
1395 Planting Fields Road  
Oyster Bay, NY 11771

**Hand Delivered to Village Attorney's Office**

**Re: The Oaks at Mill River Subdivision Application**

To the Members of the Planning Board:

I write to you today as a proud resident of Upper Brookville to voice my concerns regarding the proposed subdivision of land called "The Oaks at Mill River." This land surrounds my property almost entirely.

I moved to Upper Brookville 3 years ago; it was a neighborhood I had aspired to live in for reasons that are obvious to anyone else who lives here. After watching the real estate boom, I was impressed with how well the Village held to its Master Plan by not encouraging overdevelopment and protecting its environment and aesthetic appeal; it was clear to me that the management of the Village of Upper Brookville held to the density and quality of life standards which I sought.

As the owner of a home at 69 Mill River Road, I have apprehension about "The Oaks at Mill River" project for the following reasons:

I strongly feel increased traffic will arise to access and develop this land. Upon moving here, I regrettably underestimated the amount of traffic that already exists on Mill River Road ("MRR") What I had perceived to be a "cut through" road is really a major thoroughfare. The traffic and frequent presence of construction and service vehicles on this road is undeniably bothersome. Our house lies only 45 feet from the roadway, so I can personally attest to this.

C112

This road is not only congested, but dangerous as a result of constant speeding. In the few years I have lived here, there have been several fatal or near-fatal auto accidents that could have been viewed from my bedroom window. For example, on October 12<sup>th</sup> my mother and I were awakened at 4:40 am by a shocking head on collision; we called 911 immediately upon hearing someone screaming for help. It was very upsetting. Given this, I strongly feel that this road is a problem as it is and increased traffic will only make

C113

October 23, 2009

it worse. Personally, and as a resident, I cannot see how this wouldn't diminish the appeal of living here.

C113  
comt'd

Regarding specific comments in the DEIS report:

**The Report says:**

The trips generated by construction vehicles which will travel primarily from the south to the site, and when distributed over the course of a day, will not have any significant impact on traffic flow conditions during peak hours given the low volume of traffic which exists on MRR.

**My concerns are:**

I disagree with this statement. Low volume? For who?

C114

"According to NYSDOT traffic counts in 2003, the average annual daily traffic on MRR in the vicinity of Mohawk Drive is 1227 vehicles northbound and 1447 vehicles southbound.

These traffic counts are outdated (2003) and I can say that I have seen a noticeable increase in the traffic since living at 69 Mill River Road.

C115

MRR is a north-south collector roadway under the jurisdiction of the Village of Upper Brookville with one lane of traffic in each direction, and a posted speed limit of 35 mph. In the vicinity of the project site, the asphalt road is 22 feet wide.

Although the posted speed limit is 35 mph Unfortunately many of the travelers on the road **do not adhere to it**, as I have mentioned at a Village public hearing within the past year.

The distance from the double yellow line to the edge of the pavement at my driveway is only 120" with two other points even narrower at 113" and 118". Because the road is too narrow, it is unsafe to stand in front of my mailbox and retrieve my mail unless there are no cars on the road. I cannot imagine wide-load construction vehicles traversing it for years to come.

C116

The impacts associated with these construction activities would be intermittent and temporary, with no significant adverse impacts to traffic on MRR.

As a resident on the street I do not believe this.

C117

Generally, construction vehicles will be operating between the hours of 8:00 am and 6:00 pm, Monday through Friday, with various construction activities, mainly

Does that mean after working in NYC all week I can look forwards to noisy construction trucks in my relax time? For several years? This qualifies as a declining

C118

deliveries, occurring on Saturdays.	quality of life issue which I am hoping the Planning Committee will weigh.	C118 cont'd
During construction, heavy vehicles, primarily large trucks (three axles or more) making deliveries of building materials and equipment, dump trucks, earth moving dump trucks, equipment trucks and asphalt and concrete trucks will be traveling to and from the site using MRR as there are no other routes to and from the site.	This would be a personal horror and a clear negative to my property value. As it is, cement trucks that often pass the house cause the windows to rattle.	C119
The truck traffic generated would tend to be spread throughout the workdays, while trips generated by workers would tend to peak in the early morning and late afternoon, depending on work and shift hours.	This means that the occasional and <u>rare</u> still moment on the street in front of my house will now be gone. Long Island has no "peak" traffic period. It is congested more or less at <u>all</u> times.	C120
All the traffic generated by the 14 proposed single family residences would enter and exit at the northern location.	Why would residents use the northern access when there is a closer southern access also?	C121
The proposed 14 residences will generate minimal amounts of traffic during peak periods. As determined by trip rates provided by the ITE Publication , Trip Generation, 7 <sup>th</sup> Edition, a nationally recognized and adopted publication for forecasting trip generation.	The Highway Capacity Manual they refer to is outdated by a decade and I believe traffic on MRR has seriously increased since then. Not all 2-lane "highways" are the same.	C122
Since MRR clearly operates at well below capacity, the low volume of traffic expected to be generated from the project will not significantly impact MRR. Additionally, the low volume of traffic on MRR will provide sufficient gaps in traffic to allow for turning movements into and out of the development.	This is the most incorrect statement in the report – referring to MRR traffic as well below capacity and "low volume of traffic" on the road. This is just NOT the case.	C123
It is only logical to conclude that most traffic coming and going from this developed area will be using the south access which is <500 feet from my driveway. This necessitates passing my house. This will have an important negative impact on me and my neighbors.		C124
I want to note the increased noise that will come with development of this land. More traffic means more <b>noise</b> . Construction means <b>noise</b> . Increased density means increased		C125

**noise.** My house is situate in a relative low point with elevated topography to the left and the right; because of this all noise tends to be amplified. The main appeal of living in Upper Brookville is the lack of congestion, and the relative peace and quiet. This is why I chose to live here and why I have been willing to pay such levels of property taxes. I hope and trust that the Village can protect this.

C125  
cont"d

MRR already has a problem with water and drainage. There is either inadequate or non-existent storm drainage all along MRR in the Village and this has been a historic problem. Those of us who live close to the street witness significant stretches of the road underwater during heavy rainfalls or snow melts. These often turn into ice in the winter and I have literally slid out my driveway. Large portions of the former Dean Property, and nearby, absorb a great amount of runoff in "marsh-like" areas which parallel MRR. The street is notoriously narrow and curved along these specific stretches of the road and it becomes impassable for more than one car. With the addition of several driveways and other impervious surfaces and the disruption of sloped areas on some of these properties this can only mean a significant amount of additional run-off and disruption to the absorbent "marsh-like" areas running parallel with MRR. The problem with understanding the severity of this issue is that it is only apparent to residents whose driveways become flooded and others who venture down MRR during rain storms or snow melts. Without a complete and proper study and adequate engineering/construction allowances, this problem will go from bad to worse. When it rains heavily the gullies near the street swell but often the water backs up onto the street. I am concerned that runoff from those properties higher than mine could affect my land negatively. My assumption is the fewer the trees above me the higher the chance of runoff down at the bottom near the road.

C126

Mill River Road is the preferred short-cut for most traffic where the residents live north and northwest of Oyster Bay, i.e., Bayville. With the growing volume of traffic using this road, the water run-off issue becomes more pronounced and hazardous to the Village residents living along MRR and other motorists traveling along MRR to points north from the Village, i.e., stalled cars, accidents, and road closures.

C127

Next, I would voice concern about the protection of existing wildlife. My property is 5+ acres and most of it is wooded. I love to garden and spend a lot of time outdoors. I am always pleasantly surprised when I see a deer or a fox. I have rabbits and owls and more beautiful birds than I could have imagined. I can't see that developing this much land would not have a damaging impact on wildlife.

C128

When I purchased my home in 2006, I was told the lot next door was unbuildable due to slope restrictions. I recall perusing the Village Code online to confirm that a certain percentage of flat land would be needed in order to build. Admittedly I should have researched the issue further. Soon after buying I was approached to purchase the adjoining 2-acre lot, (24 E 71) which I wasn't ready to take on. Soon after that, a "For Sale" sign appeared. I then had intrusive prospectors, realtors with clients, and surveyors showing up on my property and asking me questions. Since there is no shoulder on the road in front of this lot they felt quite free to drive or walk up my driveway without permission to

October 23, 2009

access a path to view the property. I hear that this lot is now under contract to a builder, the final sale being contingent upon the Village's authorization to build. I don't know the exact status of this situation since the property and the contract terms are private. Understandably, this feels threatening. Had I understood that the view from my front door and kitchen window could be radically changed, it would have affected my purchase decision. This adjoining lot is likewise close to the proposed road (Private Drive) that would be carved out to build the Oaks project. I think the owner of record for this lot resides out of state and would not likely be one to champion the cause of limiting further development of the surrounding acreage nor would increased noise affect him/her. *Either one of these development projects would create disruption but the **both** of them together would be a personal nightmare for me and my neighbors.*

I recognize that the owner of the property has a right to develop it, but I perceive the impact on my property value and quality of life to be radically negative, mostly because of the additional volume on the road and the noise that it will bring.

C129

Please consider these points in your deliberation and thank you for your consideration.

Respectfully,



October 23, 2009

Peter M. Weiler, Esquire  
Village Attorney  
Humes & Wagner, LLP  
147 Forest Avenue  
Locust Valley, NY 11560

Dear Attorney Weiler:

I am writing to provide comments on the Draft Environmental Impact Statement on the Proposed 14-Lot Subdivision Mill River Road. We appreciate the opportunity to review and provide comments. As you are aware the project is adjacent to Planting Fields Arboretum State Historic Park which is part of our State Park and Historic Site System.

In addition to providing safe and enjoyable recreational and interpretive opportunities, the mission of OPRHP includes responsible stewardship of our valuable natural, historic and cultural resources. We are also committed to providing encouragement to all agencies and individuals to identify, evaluate and protect recreational, natural, historic and cultural resources.

- |  |   |      |
|--|---|------|
| 1. We note the close proximity of some of the proposed homes to the Arboretum boundary. This is especially true for the northernmost units. We request greater consideration for creation of a minimum 100 foot buffer between any altered areas within the Mill River Road subdivision and the State Historic Park.   | } | C130 |
| 2. Fragmentation of habitat is an increasing concern with respect to protection of biodiversity. We ask that the Village consider use of modified cluster development to minimize fragmentation and increase the continuity with habitat within Planting Fields.   |   |      |
| 3. As indicated in the DEIS this property is identified as a priority open space parcel with special importance attributed to groundwater protection. Buffers and use of cluster design will maximize protection of groundwater.   | } | C132 |
| 4. Please provide additional evaluation of the importance of the Coastal oak-laurel forest within the property especially those areas contiguous to the same ecological community in Planting Fields. It seems very probable that this community has regional and local significance if not statewide when combined. Consideration should be given to clustering and/or decreasing the size of parcels in order to minimize the effects of fragmentation on this ecological community. The coastal oak-laurel area is also within steeper areas of the park. Large slope cuts with concomitant concerns regarding erosion and drainage control could be limited with reduced development within this area. |   |      |
| 5. The inclusion of conservation areas is commendable. However, some of the proposed conservation areas consist of portions of lots and, as a result, do not maximize contiguity. We note also that the Village's plan calls for preservation of natural forest cover in contiguous patterns. Clustering is one way to accomplish this.  | } | C134 |

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|---|---|------|
| 6. An emphasis should be placed on use of native species within the subdivision.  | ] | C135 |
| 7. The DEIS should provide additional detail on how construction activities will be implemented in a manner that minimizes the spread of invasive species particularly adjacent to and within the coastal oak-laurel community. For the most current information on invasive plants please refer to Nassau County's list of invasive species at <a href="http://nyis.info/LIISMA/Legislation.aspx">http://nyis.info/LIISMA/Legislation.aspx</a> . | ] | C136 |
| 8. The plan should include consideration of the Town of Oyster Bay's Mill River Watershed Study and Public Stewardship Plan (2008), including an emphasis on non-structural drainage and erosion control methods.   | ] | C137 |
| 9. Mitigation measures should include discussion of measures to minimize long term adverse impacts due to increased potential for erosion and sedimentation (not only measures during construction).  | ] | C138 |
| 10. Photographs (Appendix F) showed existing views only; no photo simulations were provided.  | ] | C139 |

Thank you, once again, for this opportunity to provide comments and for your assistance in the stewardship of Planting Fields State Historic Park.

Sincerely,

Thomas B. Lyons  
Director of Resource Management

cc: Tracy Lynch  
Ron Foley Regional Director Long Island State Park Commission  
Vincent Simeone Manager of Planting Fields Arboretum and State Historic Park  
Tom Alworth Deputy Commissioner  
NYS Office of Parks, Recreation and Historic Preservation  
Pam Otis



**Katherine A. Cimonetti**

---

**From:** PWeiler [pweiler@humeswagner.com]  
**Sent:** Monday, October 26, 2009 2:00 PM  
**To:** 'Katherine A. Cimonetti'  
**Subject:** FW: Objection to the Proposed 14-Lot Residential Subdivision

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**From:** Cat\_Colvin@pall.com [mailto:Cat\_Colvin@pall.com]  
**Sent:** Friday, October 23, 2009 3:36 PM  
**To:** villageclerk@upperbrookville.org; PWeiler@humeswagner.com  
**Subject:** Objection to the Proposed 14-Lot Residential Subdivision

I would like to make you aware of my strong objection to the proposed subdivision of the The Oaks at Mill River. In particular, the failure by the Village to prohibit the destruction of the steep slopes on the site will undoubtedly have a devastating effect on nearby bodies of water. As I understand, a full 43% of the site consists of slopes, 23% of which have greater than 25% slope. The Oaks at Mill River is in the Mill River watershed, and drains into Mill River, through Mill Pond and into Oyster Bay alongside the WaterFront Center. There is no doubt that if the slopes are not protected, the run-off created will severely impact the pristine waters of Oyster Bay that the whole community enjoys and has worked hard to protect. In addition, I have seen no meaningful consideration of the fact that the site falls within the Oyster Bay Special Groundwater Protection Area.

C140

I was shocked to learn, in view of current knowledge and learning regarding the importance of environmental protection, that the Village would even consider a subdivision plan that calls for such a significant amount of destruction of steep slopes and removal of 2000 trees. I urge you to prevent this subdivision from proceeding, without more carefully considering and the impact on the Bay, Upper Brookville, and the surrounding communities.

C141

Thank you in advance for your attention to this very important matter.

---

Cathleen M. Colvin  
Corporate Counsel  
Pall Corporation  
tel: 516-801-9844

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**Attention:**

This communication may contain information that is confidential, privileged and/or exempt from disclosure under applicable law. If you are not the intended recipient, please notify the sender immediately and delete the original, all attachments, and all copies of this communication.

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10/26/2009

# CITIZENS CAMPAIGN

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Empowering Communities. Advocating Solutions.

Planning Board Members  
Incorporated Village of Upper Brookville  
Village Hall  
1395 Planting Fields Road  
Oyster Bay, New York 11771

October 23, 2009

## Re: The Oaks at Mill River Subdivision Application

To the Members of the Planning Board,

Citizens Campaign for the Environment (CCE) is an 80,000 member, not-for-profit, non-partisan advocacy organization working for the protection of public health and the natural environment on behalf of its members in New York and Connecticut. The protection of water quality is of the utmost importance to CCE. CCE has been working to protect water quality and quantity across New York State and throughout the Nation since its inception in 1985.

CCE would like to offer comments on the ***Draft Environmental Impact Statement for The Oaks at Mill River Subdivision Application***, which proposes to subdivide a 97.16 acre parcel, into 14 lots. The development will include building 13 custom designed homes of 6000-8000 square feet, each with pool, cabana and tennis court, resulting in a combined impervious surface of 16,500 square feet each. The site is currently listed on the Nassau County Open Space Plan and the New York State Open Space Conservation Plan.

### 1. **Regrettably this project is located within the Oyster Bay Special Groundwater Protection Area (SPGA).**

This development is located within the Oyster Bay Special Groundwater Protection Area. Special Groundwater Protection Areas (SGPAs) are critically important hydrologic areas that allow for deep flow recharge of rain water to our underground aquifer system. Long Island contains nine such areas and Nassau County contains only two SGPAs, making the Oyster Bay SGPA of vital importance to the quality and quantity of groundwater recharge for this region.

The **Long Island Comprehensive Special Groundwater Area Protection Plan**, published by the LI Regional Planning Board in 1992 states, "There is an urgent need to maintain them [SGPAs] as sources of high quality recharge. They represent a unique, final opportunity for comprehensive, preventive management to preclude or minimize land use activities that can have a deleterious impact on groundwater. Therefore, the protection of groundwater in these areas is a

C142

first-order priority.” CCE believes the clearing of natural vegetation, the flattening of steep slopes, combined with the development footprint of 16,500 square feet threatens the quality and quantity of Nassau County’s drinking water.

C142  
cont'd

**2. The development should be conducive to the surrounding lands and should not include the degradation and flattening of steep slopes found on the property.**

The proposal, in its current state, does not protect the 41 acres of steep slopes. Rather the development proposes to reduce the steepness of the slopes and projects that “approximately 106,232 cubic yards of excess material would have to be removed from the site to develop the infrastructure associated with the proposed subdivision” (page ES iii).

C143

It is clear that subdividing this parcel as proposed does not conform to the stated goal of the Village Master Plan which is to preserve natural vegetation and slopes, protect trees, and other natural resources. The Village has laws that regulate disturbing steep slopes, yet eight of the fourteen lots on the proposed plan site structures on steep slopes. It is good planning practice to eliminate development activity on slopes that are 15% or greater. Many municipalities have strict zoning laws that prohibit development on these sensitive areas, including the town of Huntington and the Suffolk County Planning Commission. *CCE would urge the Village to work with the developer to ensure that the steep slopes are protected rather than flattened.*

**3. The current proposal disrupts 70% of the existing property, leaving the natural vegetated areas disjointed.**

The DEIS states, “The areas of the most intensive human activities, the hard surfaces and landscaping are proposed to be distributed throughout the site, with natural habitats between them” (page ES xii). CCE is concerned that the proposed plan will leave the native habitats disjointed, this is type of development is unsuitable for wildlife. New roads and pavements will also act as anthropogenic borders prohibiting free migration of wildlife and changing the character of the existing estate.

C144

In addition, the applicant proposes a conservation easement on 29.7 acres, however the 29.7 acres is highly fragmented and includes buffers between individual lots which would not do much to protect the natural resources of the property. It is also unclear how this proposed conservation area would be protected.

**4. Stormwater Management - The project should contain a plan for the installation of Green Infrastructure to manage wet weather flows and enhance water quality recharge into the Special Groundwater Protection Area as well as for the protection of the Long Island Sound (LIS).**

The DEIS states “The proposed project will result in a increase in the quantity of stormwater run-off generated at the subject property due to an increase in the total area of impervious surfaces. However, all stormwater will be collected and recharged at the subject property will be filtered through the use of catch basins and drywells unless the Planning Board requires recharge basins or reserve areas” (page ES x).

C145

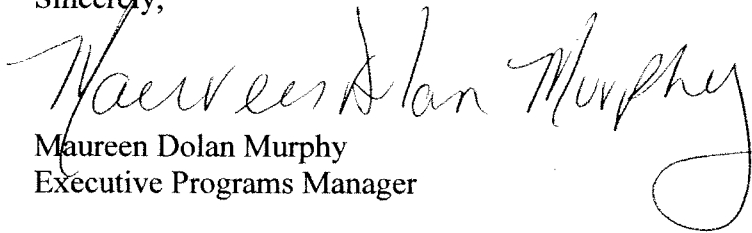
***This proposal woefully fails to capitalize on the benefit of creative stormwater management.***

Stormwater runoff has been traditionally treated as a by-product of development to be disposed of as quickly and efficiently as possible. The result has often been increased flooding, degradation of surface and subsurface water quality, and degradation of water quality in Long Island rivers, streams, tributaries and bays. In addition, stormwater runoff causes soil erosion and sedimentation. New planning tools and techniques, referred to as "Green Infrastructure" are emerging across the nation to better manage stormwater. These include Best Management Practices (BMPs) which are structural, vegetative, and managerial practices designed to treat, prevent, or reduce degradation of water quality due to stormwater runoff. ***CCE would encourage the developer to incorporate cutting edge green infrastructure into the proposal, including pervious pavement, and rain barrels.***

C145  
cont'd

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Maureen Dolan Murphy". The signature is written in black ink and is positioned above the printed name and title.

Maureen Dolan Murphy  
Executive Programs Manager