

**Bill Lorensen**

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877-5070

John Scavo  
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Clifton Park, NY 12065

January 20, 2015

**Subject: Kain Preserve Tree Clearing Building Code Violations**

John,

My neighbors and I have been monitoring the on-going construction in Kain Preserve. Since the work started in February 2013, there have been many issues with this subdivision. Your department addressed the SWPPP design problems and required the developer to change the original storm water infiltration basin to a storm water retention pond.

This letter addresses the ongoing tree clearing in Kain Preserve that is in violation of the Town Building Code, Section 86-10 **Trees**.

The Building Code Section 86-10's intent is honorable: *"The Town of Clifton Park desires to protect its environment and preserve its character and determines that trees are an important natural resource. In order to ensure this intent, the town desires to keep clearing of trees to a minimum. Therefore, the only trees that can be removed from a construction site are those necessary for approved construction to be completed."*

The builder has violated both the spirit and letter of the Town Building Code:

1. Except for the 50 foot no-cut buffer, most lots have been completely cleared. The builder has made no effort to cut down *"only trees that can be removed from a construction site are those necessary for approved construction to be completed"*. **The Town should not approve tree clearing plans that show no effort on the builder's part to meet the intent of the Code.**
2. In many of the cleared lots, the following section of the code has been ignored. *"If the ground level of the property is altered causing additional filling, tree wells or other landscaping techniques shall be employed to ensure the protection of the trees."* **The Town should require the builder to save more trees even if grading endangers some trees.**
3. On several lots, trees marked *"trees to remain"* on the approved tree clearing plans have been removed. The consequences for this violation are clearly stated in the Building Code Section 86-10(B6) *"If trees which are designated to be saved are re-*

*moved by the applicant, they shall be replaced by three new trees that meet the tree specifications of this section.” If the builder removes “to remain” trees, the Town must require the builder to plant three new trees for each wrongly removed tree.*

I understand that the developer and the builder have the right to develop and build homes on their land. Once the Town Planning Board approved the subdivision in 2007 I expected the Town to monitor the project for deviations from the original plan and require the builder to follow the Town Building Code. The builder has offered excuses for removing so many trees. I realize that it is a lot easier and cheaper to build a home on a clear-cut lot than building on a lot with trees. But the character of the surrounding Country Knolls neighborhoods proves that trees can be conserved during construction.

The Town has the opportunity to protect and restore parts of the Longkill Forest for future generations by enforcing the Building Code. The builder should make realistic and responsible tree clearing plans. These plans should respect the Town's intent to preserve the natural resources in the subdivision. If the builder removes trees that are designated to be saved, new trees must be planted.

Sincerely,

Bill Lorensen

Cc: Phil Barrett, Town Supervisor  
Steve Myers, Director - Building and Zoning  
Rocco Ferraro, Chairman - Planning Board  
Friends of Longkill (FOLK)

The following sections provide background, status and my analysis of the approved tree clearing plans.

### **Background:**

From October 2004 through June 2007 the Clifton Park Planning Board reviewed the application from Kain Development to subdivide 18 acres of the Longkill Forest. The application was approved in 2007. This subdivision is now called Kain Preserve. Neighbors in northern Clifton Park opposed the development primarily because:

- 1) The area has a high water table. Current bordering neighbors have dealt with basement water issues for decades. Many homes were built above grade level to lessen the impact of the water. New homeowners on Longkill Road have also experienced water problems.
- 2) The area has numerous wetlands. These seasonal wetlands are subject to flooding in the spring.
- 3) The area is heavily forested and the developer sought to clear cut over 18.5 acres of

the land.

The neighbors asked the Board to issue a positive SEQRA decision and require the developer to prepare a full environmental impact statement. After eight Planning Board meetings, the Board issued a negative SEQRA. The Friends of the Longkill (FOLK) filed an Article 78 against the Planning Board and in the summer of 2007 the New York State Supreme Court rejected the Article 78, ruling in favor of the Town Planning Board. In response to citizen concerns, the Board, chaired by Steve Bulger, presented a sixteen page document with over forty Planning Board comments. Among the comments, the Board specifically addressed tree clearing.

- **PB#14 Tree Protection** *“The Planning Board has advised the applicant to place the clearing limit lines on the plans. If approved, these limits will be monitored closely by Town Engineers and staff during the development of the project. In addition, the board has requested that all large trees within the lot areas be surveyed to determine which ones can remain.”*
- **PB#4(A) and (B) Site Fill and Grading** *“The proposed site clearing and disturbance must be completed in accordance with all Town laws, including Town Design and Construction Standards. Of particular note are §86-7(B)(1) that requires that “existing vegetation on a project site be retained and protected as much as possible to minimize soil loss from the project site and §86-10(A) (1) states that “the only trees that can be removed from a construction site are those necessary for approved construction to be completed. In addition, the Planning Board is requiring a minimum 50 foot buffer to be deed restricted around the portion of the parcel that abuts nearby residences. A tree survey will be required to be completed to determine which trees will need to be maintained and which ones can be removed...”*

Tree clearing was also the subject of two Planning Board meetings in 2006 and 2007.

- **From the June 2006 Board Minutes:** *The ECC strongly requests that the applicant perform a mature tree inventory. Based on those results, the Planning Board may consider increasing the number of trees required to be replaced to offset losses due to cutting and extensive backfilling that is proposed.*
- **Also at the June 2006 meeting,** *“Mr. Larkin (board member) stated his opposition to the issuance of a negative declaration for the application and the granting of preliminary approval, explaining that, in his opinion, environmental impacts had not been sufficiently evaluated and addressed. He submitted calculations regarding the potential impacts that the proposed tree removal would have on air quality.”*
- **And from the June 2007 Board Minutes,** *“A tree survey must be completed to determine which trees will be preserved and which ones will be removed. Trees of 8” or greater in diameter are to be identified on site. Clearing limit lines must be flagged prior to clearing and grading and approved by Planning Director and Town Engineer.”*

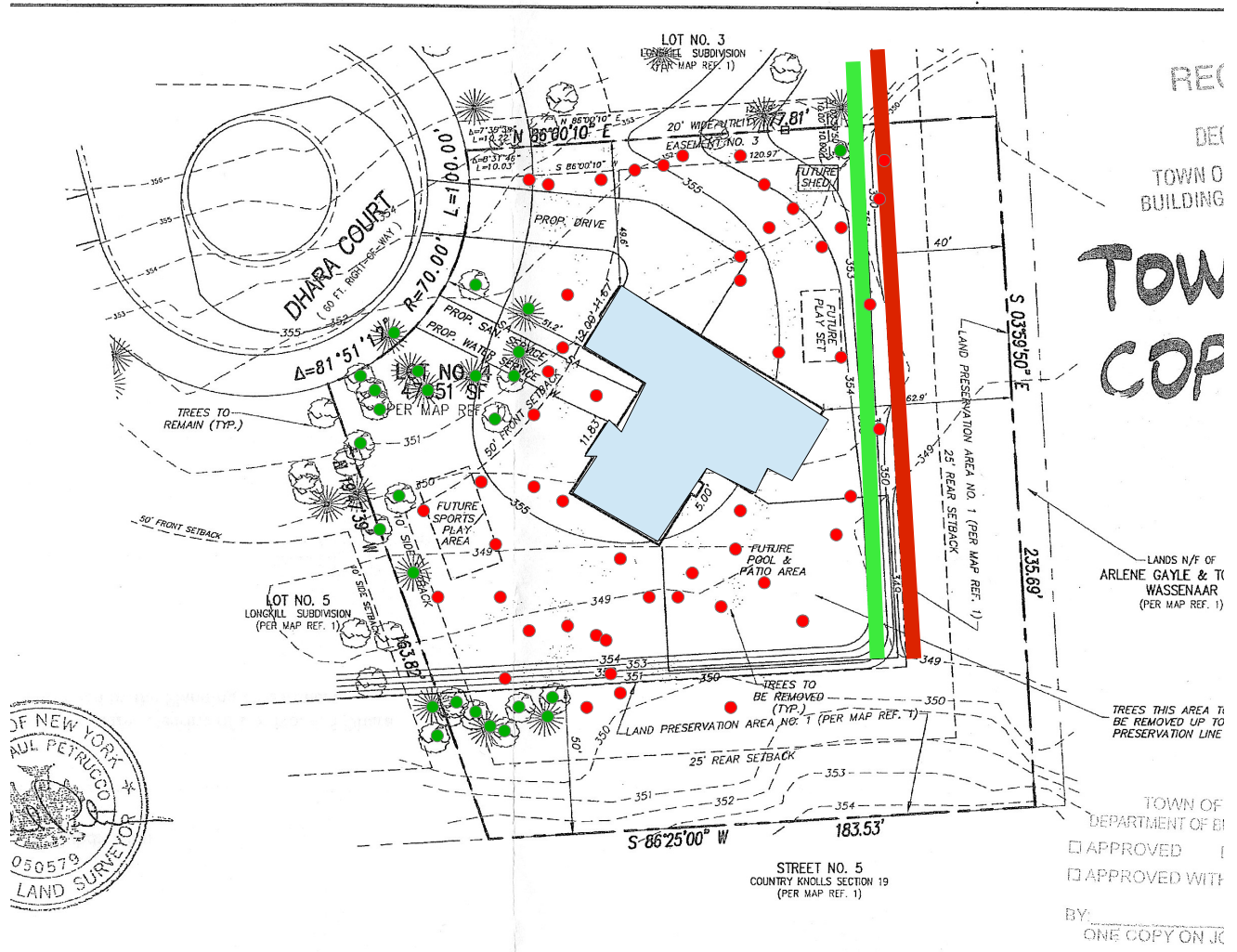
**Status: Fall 2012 – Present**

The Kain project finally got underway in the Fall of 2012. In February 2013 the developer began clearing a lot for the Model home. When I saw them clear-cutting the lot, I called the Town and expressed my concerns. I felt that we had been assured that the Town would oversee and approve clearing plans that were in the spirit of what the Planning Board had promised. In a subsequent field meeting with the Town Engineer, I was told that, as promised, the builder had submitted a plan and the Town had approved it. The builder's plan was to clear-cut the lot. This certainly was to the letter, but not in the spirit, of our agreement with the Planning Board. The Town Engineer justified the clear-cutting. He stated that the builder had to remove all of the trees due to grade changes on the site. The model home has been built and I see no grade changes that would require all of the tree clearing. The current grade is the same as surrounding land.

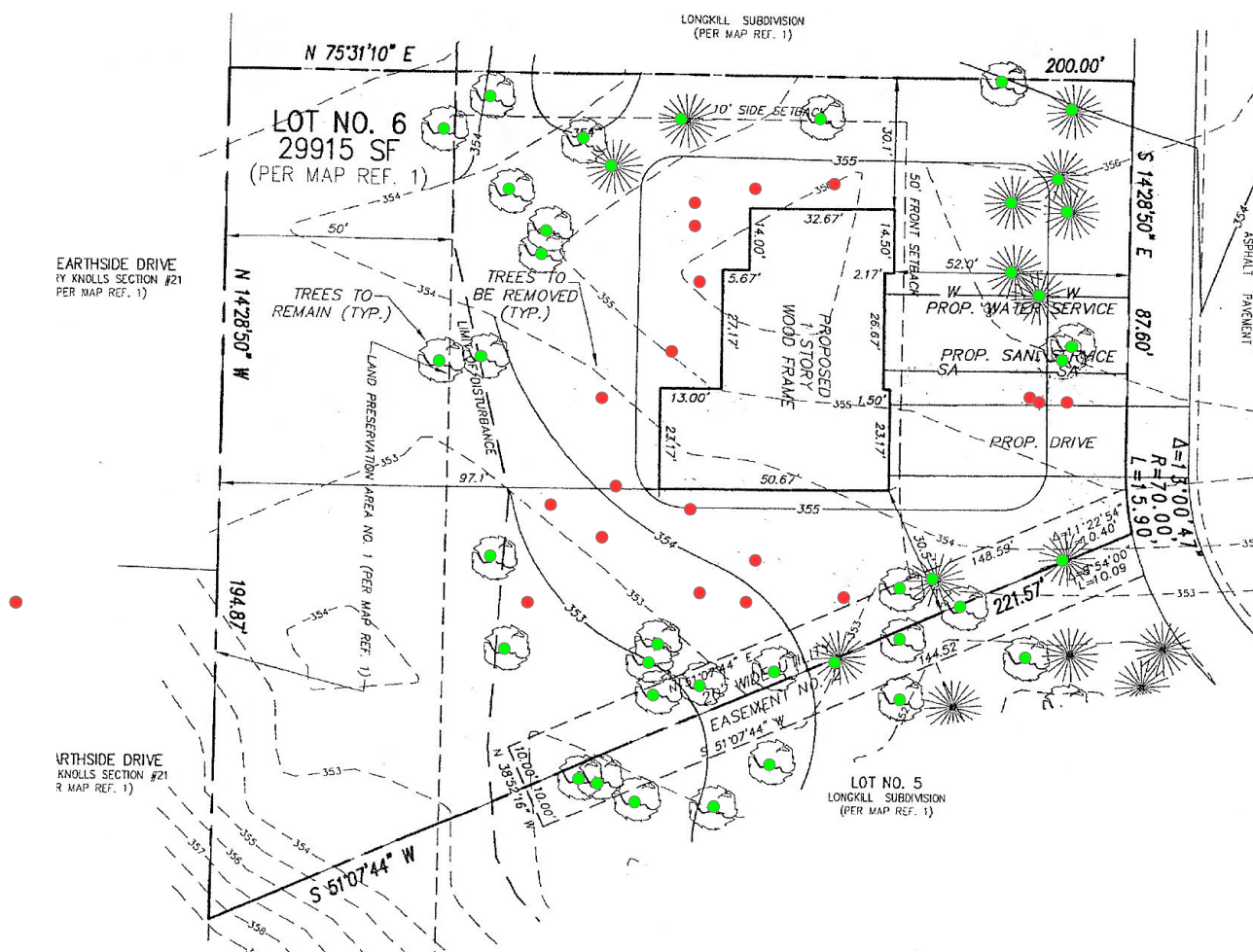
Since February 2013 seven tree clearing plans have been approved by the Town Planning Department. The plans have little impact on the builder's actual clearing. In a conversation with the builder, Lee DeGraff, in late 2014, Lee told me that the tree plans were "not realistic" since many of the trees had already been cleared during the infrastructure phase and utility installations. From these discussions and the reality of the lots under construction it is clear that builder is not taking the Town seriously regarding tree preservation in this subdivision.

**Approved Tree Clearing Plans**

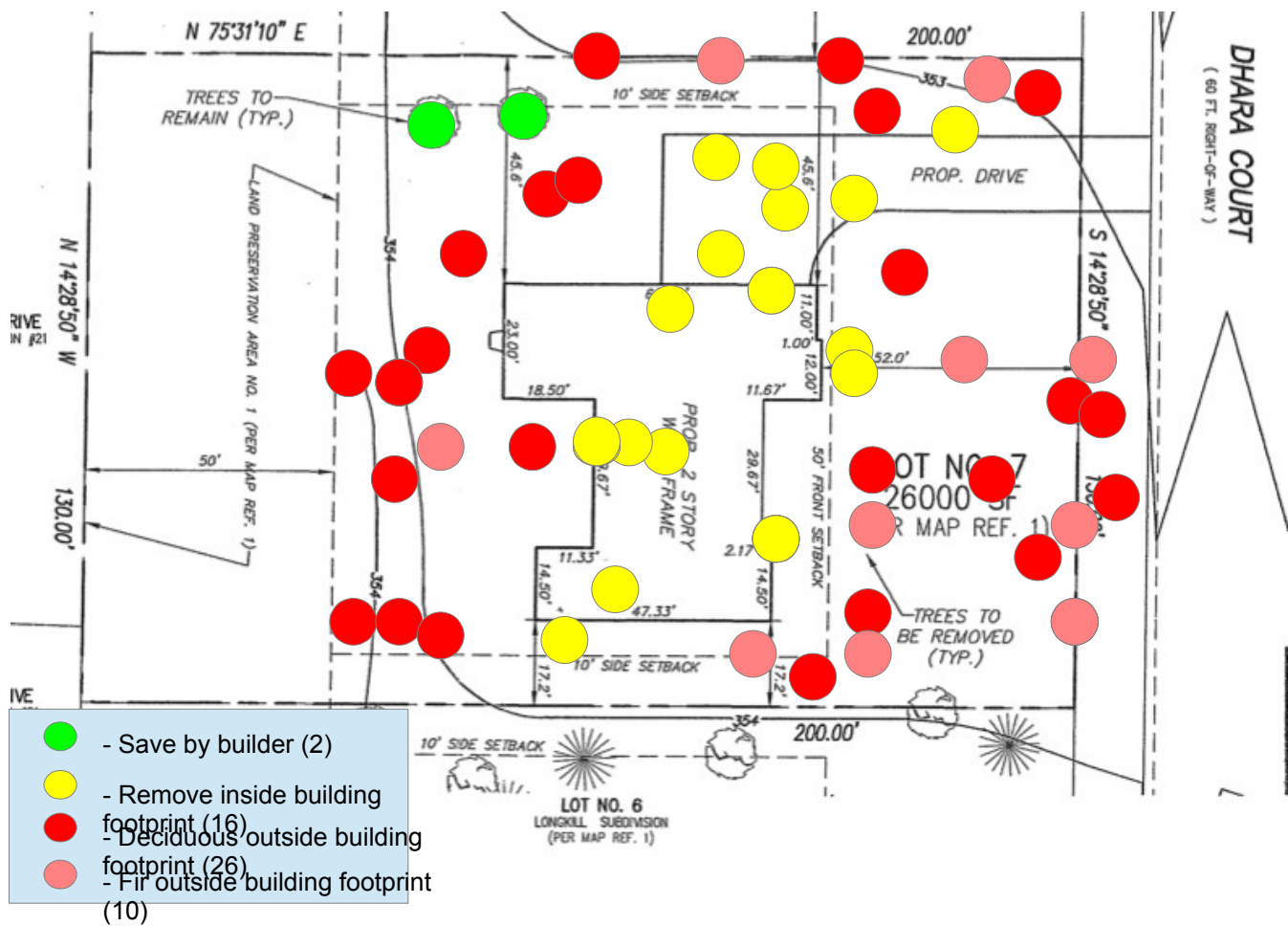
Here are my observations for the lots that have been cleared. These illustrations are derived from FOIL'ed plans provided by the Planning Department. The annotations and color additions are mine. Some lots show that the Town approved clear-cutting without regard for the intent of the Building Code. Others show "trees to remain" that have been removed. These trees should each be replaced by three trees according to the Town Code.



**Lot #4. Recently cleared.** This lot has a significant grade drop from the road. The owners have asked to clear trees for play areas and a future pool. The approved tree clearing plan shows over fifteen trees (green) marked "to remain". All of these trees have been removed. Code would require 45 trees to be planted. The easement area was cleared during the infrastructure phase and should be planted with replacement trees.



**Lot #6: Under construction.** The approved tree clearing plans shows over 20 trees marked (green) “trees to remain”. All of those trees were removed. Code would require almost 90 replacement trees. The 11 trees in the easement area were cleared during the infrastructure phase. This easement should be planted with replacement trees. Without prompting, the new home owners told me they “wished the builder had left more trees.”

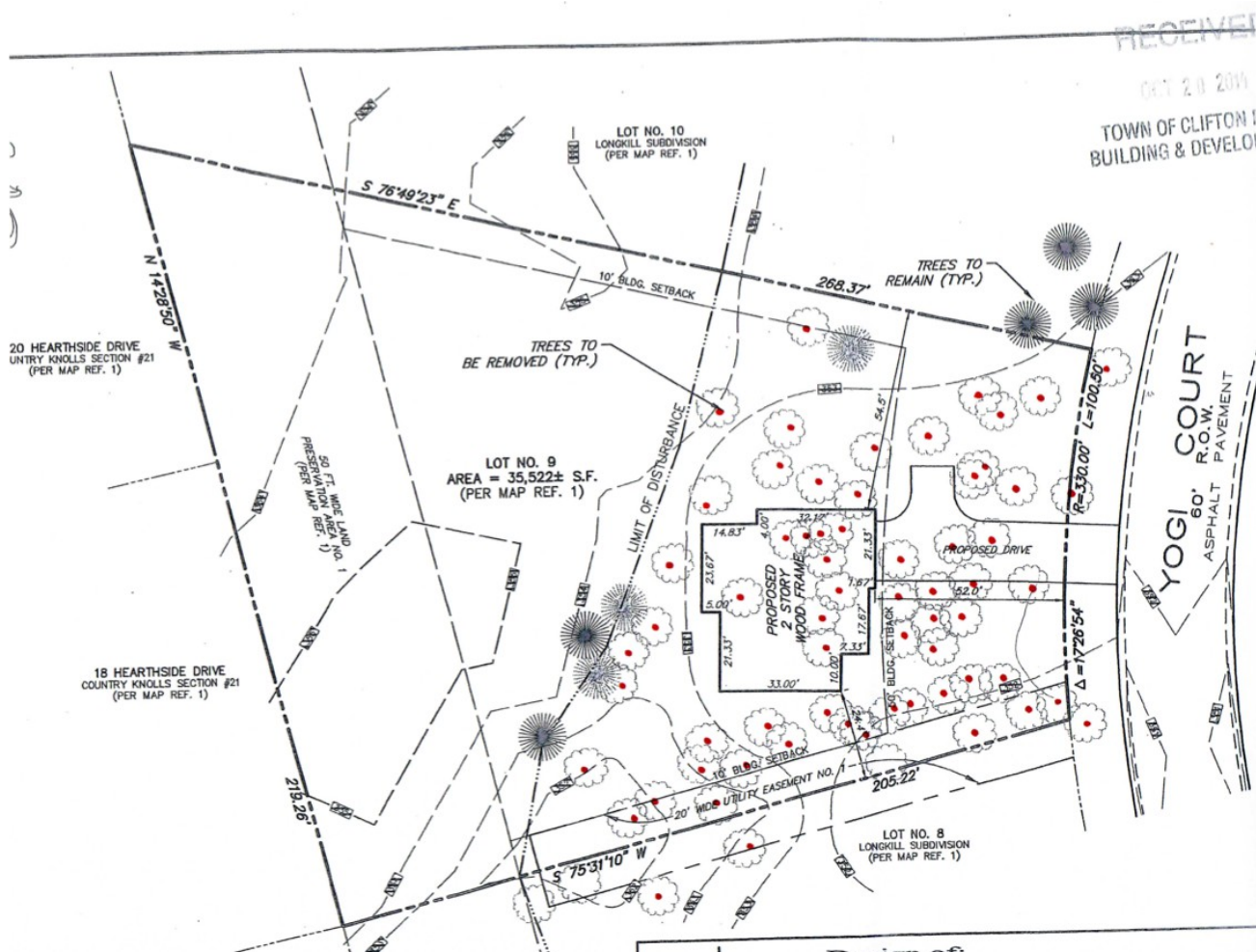


**Lot #7. No activity.** The approved tree clearing plan shows (in red and pink) over 35 trees that might be saved according to the intent of the Building Code. The builder plans to save 2 trees.



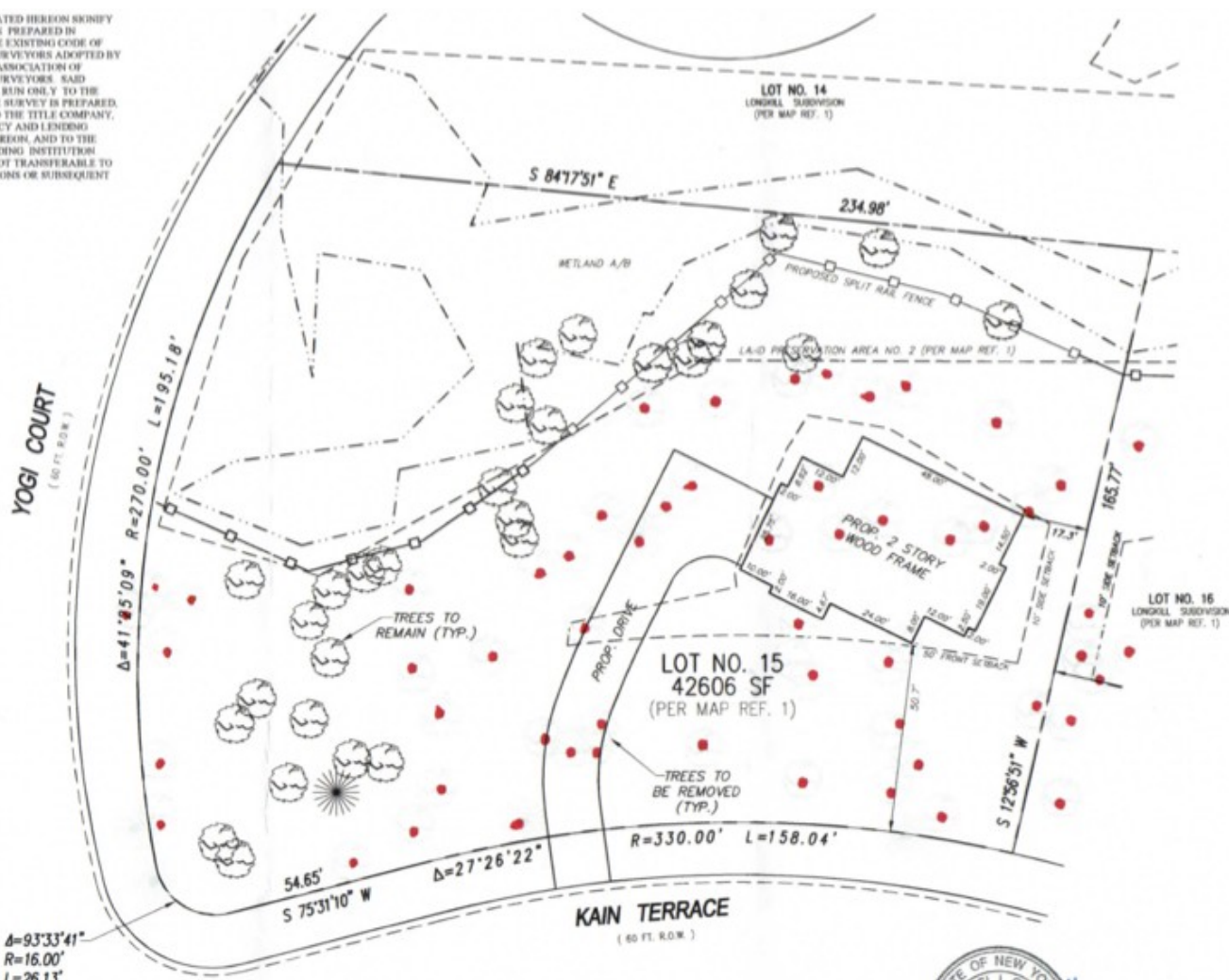




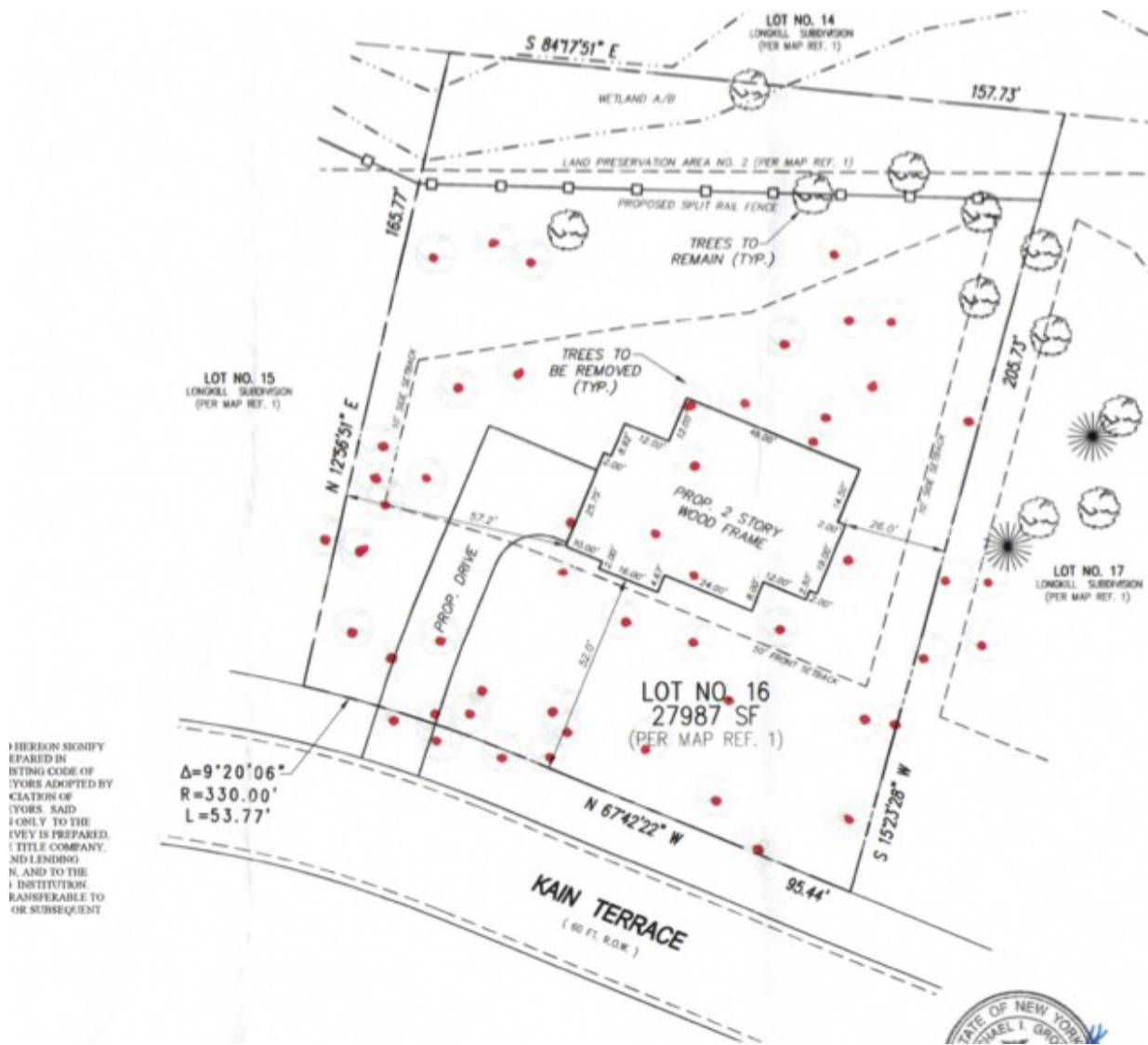


**Lot #9. Under construction.** This lot has wet areas in the rear that extend beyond the 50 foot no-cut buffer. That wet condition limited the number of trees that were removed from the back yard. However, over twenty trees (in red) were outside the construction area for the home. The easement was cleared during the infrastructure phase and should be planted with new trees. Without prompting, the homeowners told me that they wished the builder had left more trees, especially at the sides of the lot to provide privacy.

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 DEEDING INSTITUTION  
 NOT TRANSFERABLE TO  
 OTHER PERSONS OR SUBSEQUENT



**Lot #15. Staging lot.** This lot has been used to hold temporary fill and debris. The approved tree clearing plan shows a reasonable number of “trees to remain.” The Town must require the builder to follow the approved plan. The new homeowners across the street at Lot #9 said they picked their lot because of the protection offered by the remaining trees on this lot.



**Lot #16. Spec House.** This home was built as a speculation house. The approved plan shows no trees left in the front yard. The front is mostly fill and those trees would have required special landscaping as mentioned in the Building Code. The back yard was clear-cut, including the three trees mark “trees to remain.”