

Clifton Park Planning Board Meeting, November 24, 2015  
Discussion Item

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14 Hearthside Drive

I present these comments here tonight because my correspondences “Kain Preserve Preservation Area (LPA) Notification” on November 11 and “Due Diligence on the Lussier Drive Subdivision” on November 16 have no response from Chairman Ferraro, John Scavo, or Phil Barrett.

At the November 10, 2015 Planning Board Meeting, the Chairman expressed surprise that homeowners in the Kain Preserve subdivision were never notified about the restrictions listed in the Land Preservation Area (LPA) for the subdivision. The 2006 Town PB had promised that:

- 1) Deed restrictions would be filed with the deed, describing the LPA and its limitations.
- 2) Homeowners would receive a copy of the subdivision notes that describe the LPA and its limitations.

According to the Saratoga County records database, not one of the four existing homeowner deeds have the restrictions, nor have any of the homeowners been informed of the restrictions listed on the subdivision maps. Four more lots have been sold in the subdivision and I suspect that none of these purchasers have been informed.

I recognize that the Kain Preserve deeds, and most deeds, include what is called, *Deed Covenants, Conditions, and Restrictions*.

The deeds are “***Subject to any and all existing and enforceable covenants, conditions, easements and restrictions of record, if any, affecting said references.***”

One could argue that this notation refers the owner to the project's approved site plan to get more detailed information on restrictions. I expect that most

people probably do not go that far. And, I ask the Chairman if this is in the spirit of the current situation regarding the use of deed restrictions by the Planning Board.

The Kain subdivision is not an isolated example. I also did a quick analysis of the Lussier Drive Subdivision. This subdivision has some properties with Land Preservation Areas, according to map M2013212 on the Saratoga County online records. This subdivision was discussed at the Planning Board Meeting on August 13, 2013, chaired by Mr. Ferraro.

*“In response to Mr. Ophardt’s question regarding the demarcation of the designated conservation easements, Mr. Scavo stated that restrictive language will be included in individual property deeds and split-rail fencing with applicable signage will define the restricted areas. “*

As far as I can tell from the Lussier Drive Subdivision map, the following addresses include a Land Preservation Area(LPA):

3 Elizabeth Ct, 12 Lussier, 14 Lussier, 15 Lussier, 16 Lussier, 18 Lussier

Only 18 Lussier has a deed restriction noting the LPA.

How is this possible? All but 18 Lussier were deeds between the builder and the owner. 18 Lussier was from one owner to another. I speculate that the Title Company discovered the restriction and added it to the deed.

Because of the experience with the Longkill Subdivision (aka Kain Preserve) and now the Lussier Subdivision, I believe that more Clifton Park home buyers are misinformed about restrictions on their property.

I recommend that the Town:

- 1) Notify each homeowner of the Land Preservation Area restrictions in the Kain and the Lussier subdivisions.
- 2) Require deed modification that will include the restrictions.
- 3) Require the builder and realtors of the seller to inform interested parties about the LPA and its restrictions during the negotiation process.

4) Ensure that subsequent deeds have the LPA restrictions as deed restrictions and that each potential homeowner has a copy of the Subdivision Plan that describes the LPA and its restrictions.

There is precedent for deed restriction oversight by the Planning Board. For example, at the March 24, 2015 Planning Board Meeting, *2015-054 Caruso Home Builders* and *2015-003 Neil, Andrew* both have the following comments:

***“§208-16(F)(2) of the Town Code States, “A deed restriction or a permanent conservation easement must be placed on the parcel and/or lot(s) with permanent open space.” Prior to any stamping of a final subdivision plan a copy of the proposed deed descriptions for each lot containing permanent conservation easement language should be given to the Town Planning Board Attorney for his review and approval. “***

A similar condition could be placed on Land Preservation Areas and other deed restrictions required by the Planning Board. Without enforcement, the deed restrictions required by the Planning Board are paper tigers.

Finally, I think there should be an audit of the last ten years of subdivision approvals to look at each subdivision with deed restrictions. I realize that the Town may not have the resources for this. I would be happy to discuss how we could use citizens like myself to do such an audit. There have been several successful efforts to use Crowd Sourcing to solve open government issues.