

Niels Tygesen

From: Bob Sprole [REDACTED]
Sent: Tuesday, March 19, 2024 2:54 PM
To: Niels Tygesen
Cc: Mollie Duell
Subject: 1513 Taughannock Blvd Public Hearing
Attachments: Updated Motion to Renew[74].PDF; Complaint.pdf

Importance: High

Good afternoon,

We write to provide comments regarding the application submitted by Kenneth Kearn at 1513 Taughannock Blvd. My wife, Shari Sprole, and I reside at 1517 Taughannock Blvd, the parcel directly to the north of the applicant Kenneth Kearn. We wish to inform the Board that there is currently pending litigation over the area that Mr. Kearn is seeking to relocate his gravel drive.

We believe it is important for the Board to be aware of the current litigation as it would make little sense for Mr. Kearn to receive the requested permit before the Court has determined the rights of the parties over the subject area. We do not believe that the Board should issue a decision on Mr. Kearn's application until the pending litigation is settled and the property rights are determined.

Attached please find a copy of the complaint that was filed in Tompkins County Supreme Court on August 17, 2020, regarding the subject area. Litigation in the matter is ongoing. Attached please also find a draft copy of a motion related to the subject area and Mr. Kearn's permit application that we intend to file this week. We will supplement this submission with executed documents once they have been filed with the court.

Again, we respectfully request that the Board abstain from rendering a decision on Mr. Kearn's application until such time that a decision is issued by the Court on this matter.

Thank you,
Robert and Shari Sprole

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STATE OF NEW YORK
SUPREME COURT: COUNTY OF TOMPKINS

SHARI SPROLE and ROBERT SPROLE,

Plaintiffs,

COMPLAINT

v.

PATRICIA KEARL and KENNETH KEARL,

Defendants.

Plaintiffs, by their attorneys, Coughlin & Gerhart, LLP, for their complaint against the defendants, herein, alleges and shows to this Court as follows:

1. That at all times hereinafter mentioned, plaintiffs were and still are residents of the County of Tompkins and State of New York.
2. That at all times hereinafter mentioned, defendants Patricia and Kenneth Kearl are, upon information and belief, residents of the County of Hartford and State of Connecticut, residing at 395 Dayton Road, South Glastonbury, Connecticut 06073.

RELEVANT FACTS

3. Plaintiffs were and still are the owners of a parcel of real property situate in the Town of Ulysses, County of Tompkins, and State of New York, described in a deed dated September 9, 2016, and recorded that same day with the Tompkins County Clerk as Instrument number 2016-10776; said premises is known as 1517 Taughannock Boulevard.
4. That Plaintiff Shari Sprole acquired title to the described parcel of real property from Duane Moeser who in turn had acquired the property from Ward Wilson and Betty Jane (Funke) Wilson by deed dated July 8, 1993 and recorded July 9, 1993 with the Tompkins County Clerk in Liber 703, page 25.
5. That after purchasing the property, the said Moeser in turn negotiated a right of way agreement with the owners of the neighboring property, Jay Wilson and John Kuschner; said neighboring property is known as 1513 Taughannock Boulevard.
6. Upon information and belief, it is believed that the owners prior to Moeser parked in the area at issue here, albeit without any formally recorded agreement evidencing the same.

7. That the Defendants in the present matter acquired title to the property known as 1513 Taughannock Boulevard from Jay C. Wilson and John Marsh Kurschner by deed dated August 15, 2003 and recorded September 19, 2003 with the Tompkins County Clerk as Instrument number 440267-001.
8. That said right of way agreement was dated July 8, 1993 and recorded November 16, 1993 with the Tompkins County Clerk in Liber 713, page 267.
9. That said right of way forms the basis for the present action and is attached hereto as Exhibit 1.
10. That said right of way agreement created dominant and servient rights between the respective parties to the agreement.
11. That the said Moeser, and by subsequent extension, the Plaintiffs in the present matter, were the dominant estate owners.
12. That the said Wilson and Kuschner, and by subsequent extension, the Defendants in the present matter, were the servient estate owners.
13. That said right of way agreement, upon information and belief created the rights of the dominant estate owners, the Plaintiffs, to exercise rights of egress and ingress over a gravel drive area on the property of the servient estate owners, the Defendants, while also creating rights to a gravel parking area on the servient estate owners property.
14. That attached to said right of way agreement is a survey that establishes both the gravel drive area and the gravel parking area.
15. That in addition to the survey attached to said right of way agreement identifying a gravel parking area, that a survey map of the Defendants' property, created on February 3, 2003, entitled, "Survey Map Showing Lands of Jay C. Wilson and John Marsh Kuschner Located on the West Shore of Cayuga Lake Town of Ulysses, Tompkins County, New York" by Lee Dresser of T.G. Miller P.C., identifies both a gravel drive area and gravel parking area on the property of the servient estate owners.
16. That upon information and belief, upon execution of the right of way agreement referenced and attached hereto, said Duane Moeser begin exercising his right to the gravel parking area by parking vehicles in said area and maintaining the same
17. That upon information and belief, Plaintiff Shari Sprole, formerly known as Shari Avery, began exercising her right to said gravel parking area after taking title to the property with her ex-husband, James Avery through a deed from Duanne

Moeser to Shari Avery and James Avery, dated June 28, 2000 and recorded that same day with the Tompkins County Clerk in Liber 878, page 290.

18. That Plaintiff Shari Sprole has exercised her rights over said gravel parking area by parking vehicles in said area and maintaining such area up unto the date of the complained of action by Defendants that forms the basis of this action.
19. That said right of way agreement states in part at paragraph eight on page four:
“Grantor hereby represents, covenants and warrants to the owner of the Property that the owner of the Property shall quietly enjoy the rights granted hereby and that Grantor shall forever warrant said rights. Grantor shall not interfere with or suffer or permit interference with the use and enjoyment of the rights granted hereby by the owner of the Property or restrict, prohibit or otherwise limit the owner of the Property’s access to the parts of the Grantor’s Parcel that are the subject of this agreement. Grantor shall not use or suffer or permit any use of the areas that are the subject of this Agreement. Grantor shall not use or suffer or permit any use of the areas that are the subject of the rights granted hereby in any manner which is inconsistent with or in conflict with the rights granted to the owner of the Property, and Grantor shall not grant or purport to grant any such rights relevant to the areas that are and subject to the rights granted hereby to any other person or party.”
20. That on or about October 3, 2019, the Defendants engaged in actions that interfered with, restricted, prohibited, and limited the Plaintiffs rights to the gravel parking area by plowing said area, placing a fence in, around, and on said area, and placing rock boulders in said area.
21. That the actions taking by the Defendants are in violation of said right of way agreement referenced and attached hereto.
22. That said actions by the Defendants exceed and continue to exceed the boundaries set forth in said right of way agreement.
23. That said actions by the Defendants constitute a past, present and continuing trespassing on the gravel parking area established in the referenced and attached right of way agreement.
24. That said actions by the Defendants deprive the Plaintiffs of the full use and enjoyment of the gravel parking area established in the referenced and attached right of way agreement.
25. As a result of the Defendants intentional trespass on the gravel parking area, Plaintiffs have been, continue to be and will continue to be damaged.

COUNT 1

26. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 – 24 as if set forth herein.
27. That the Defendants' failure to comply with the terms of the right of way agreement constitutes a breach of said right of way agreement.
28. As a result of the Defendants' breach of the terms of the right of way agreement, the Plaintiffs have been, and will continue to be damaged.

COUNT 2

29. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 – 27 as if set forth herein.
30. That on or about October 3, 2019 to the present, the Defendants continue to intentionally trespass onto and destroy the gravel parking area established in the referenced and attached right of way agreement and over which the Plaintiffs and the previous owners of the dominant estate have exercised their rights over said gravel parking area.
31. That as a result of the Defendants' trespassory conduct, the Plaintiffs have sustained continuing damages by being deprived of the use of gravel parking area established in the referenced and attached right of way agreement and over which the Plaintiffs and the previous owner of the dominant estate have exercised their rights over said gravel parking area.

WHEREFORE, Plaintiffs demand judgment as follows:

1. With regard to Count 1:
 - a. That it be adjudged the Defendants have breached the right of way agreement;
 - b. That Plaintiffs are entitled to compensatory and consequential damages to be determined by the Court according to the proof presented;
 - c. That Plaintiffs are entitled to punitive damages due to the Defendants' willful and intentional misconduct in breaching the right of way agreement;
 - d. That Defendants be required to restore the gravel parking area to the condition that existed prior to their actions identified in paragraph twenty above.

- e. That Plaintiffs are entitled to the attorney's fees, costs, and disbursements of prosecuting this action; and,
- f. And that the Court grant the Plaintiffs such other and further relief as may seem just and proper.

2. With regard to Count 2:

- a. That the Defendants be estopped from asserting any possessory or rights of title over the gravel parking area established in the referenced and attached right of way agreement;
- b. That the said Defendants be enjoined from interfering with the Plaintiffs' full use and enjoyment of the gravel parking area established in the referenced and attached right of way agreement;
- c. That Defendants be required to restore the gravel parking area to the condition that existed prior to their actions identified in paragraph twenty above.
- d. That Plaintiffs are entitled to compensatory and consequential damages associated with Defendants' trespassory conduct to be determined by the Court according to the proof presented;
- e. That Plaintiffs are entitled to punitive damages due to the Defendants' willful and intentional conduct in trespassing on the gravel parking area established in the referenced and attached right of way agreement;
- f. That Plaintiffs are entitled to the attorney's fees, costs, and disbursements of prosecuting this action; and,
- g. That the Court grant the Plaintiffs such other and further relief as may seem just and proper.

Dated: August 14, 2020



Michael C. Pehinec Jr.
Coughlin & Gerhart, LLP
Attorneys for Plaintiffs
798 Cascadilla Road, Suite A
Ithaca, New York 14850
Phone: (607) 379-6709
Fascimile: (607) 216-9688
Email: mpehinec@cglawoffices.com

VERIFICATION

STATE OF NEW YORK
COUNTY OF TOMPKINS: ss:

Shari Sprole and Robert Sprole, being duly sworn, deposes and says that deponents are the plaintiffs in the within action; that deponents have read the foregoing complaint and know the contents thereof; that the same is true to the deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Dated: July 30, 2020



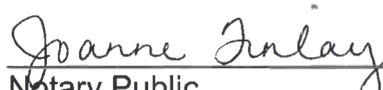
Shari Sprole



Robert Sprole

Sworn to before me this

30 day of July, 2020

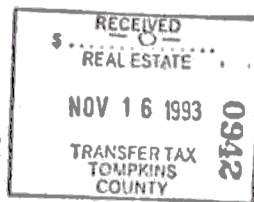


Notary Public

JOANNE FINLAY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01FI6190415
Qualified In Cortland County
My Commission Expires ~~07-28-2020~~
2024 (JF)

EXHIBIT 1

USE 713 267



RIGHT-OF-WAY AGREEMENT

THIS RIGHT-OF-WAY AGREEMENT is made as of the 8th day of July, 1993, by and between DUANNE D. MOESER, c/o Peter G. Grossman, 315 North Tioga Street, Ithaca, New York 14850 ("Buyer"), and JAY WILSON and JOHN KUSCHNER, PSC 464, Box 30, FA, AP, Hong Kong 9522-0002 (collectively, "Grantor").

WHEREAS, as of the date of this Agreement, Buyer is the owner of certain real property described in more particular detail on Schedule A annexed hereto and made a part hereof, depicted on the survey map (the "Survey") referred to in said Schedule A and annexed thereto and known by the address of 1517 Taughannock Boulevard, Ithaca, New York (the "Property"); and

WHEREAS, Grantor is the owner in fee simple absolute of certain real property located adjacent to the Property, a northwesterly boundary of which co-exists with the southeasterly boundary of the Property, and which property of Grantor was conveyed to Grantor by deed recorded in the Tompkins County Clerk's Office in Liber 657 at Page 581, and which real property of Grantor is depicted, in part, on the Survey (the "Grantor's Parcel"); and

WHEREAS, as is depicted in part on the Survey, the gravel drive (the "Gravel Drive") providing access to the Property is located on Grantor's Parcel, and is not located within the twenty foot right-of-way also depicted on the Survey (the "Existing Right-of-Way"); and

WHEREAS, as is also depicted on the Survey, the dock that provides access from the Property to Cayuga Lake (the "Dock") is located, at least in part, on the Grantor's Parcel and that portion of the shoreline of Cayuga Lake adjacent to Grantor's Parcel to which portion of said shoreline Grantor's Parcel has appurtenant riparian rights; and

WHEREAS, Buyer desires to obtain a right-of-way to use the Gravel Drive for access to the Property and to use the Dock for access from the Property to Cayuga Lake, in accordance with the terms and conditions of this Agreement; and

WHEREAS, Grantor desires to grant to the owner of the Property a right-of-way to use the Gravel Drive and Dock in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the legal sufficiency and mutual receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Grantor hereby grants and conveys to the owner of the Property, said owner's heirs, successors and assigns, an exclusive, perpetual right-of-way for the use, repair and

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maintenance of a driveway to provide ingress to the Property and egress from the Property over and across the Grantor's Parcel, and extending over the boundary line in common between the Grantor's Parcel and the Property, located in the location of the Gravel Drive, as same exists as of the date of this Agreement, and as a portion of same is depicted on the Survey, in accordance with the terms and conditions of this Agreement. The rights granted hereby for use of the area of the Gravel Drive include the right to repair, maintain and remove snow and ice from such area as may be necessary to exercise the rights granted hereby. The owner of the Property shall hold Grantor harmless from, and shall indemnify Grantor for, any loss or damage occurring as a result of the owner's undertaking such repair, maintenance or snow or ice removal.

2. Grantor hereby grants and conveys to the owner of the Property, said owner's heirs, successors and assigns, an exclusive, perpetual right-of-way for the use, repair and maintenance of the Dock for ingress to Cayuga Lake from the Property and egress from Cayuga Lake to the Property over and across the Grantor's Parcel, and extending over the common boundary line between Grantor's Parcel and the Property, and over any such portion of Grantor's Parcel that may be necessary to provide access from the Property to the Dock, together with all riparian rights and rights of accretion appurtenant to the real property upon which the Dock has been erected, subject to the terms and conditions of this Agreement. The right-of-way granted hereby to use the Dock shall include the right to repair, maintain and/or replace the Dock with a dock of like dimensions and quality, as well as to attach to the Dock such fixtures, fittings and appurtenances as may be customarily used in connection with the use of a dock to the north side thereof, as well as the right to use the Dock for all such purposes as a dock is customarily used, including the mooring of such boat or boats as the owner of the Property chooses. In addition, the rights to use the Dock granted hereby shall include the rights to perform such dredging around the Dock as may be necessary for the use and operation of the Dock. The owner of the Property shall hold Grantor harmless from, and shall indemnify Grantor for, any loss or damage resulting from the use of the Dock by the Property owner or the owner's invitees, contractors or licensees, except if such loss or damage is the result of the negligence of Grantor, its invitees, contractors or licensees.

3. Grantor represents, covenants and warrants to the owner of the Property that at no time shall any vehicle of any nature or description be parked on the Gravel Drive in a manner or location that obstructs the Gravel Drive, nor shall any part of the Gravel Drive at any time be obstructed in any manner.

4. Grantor represents, covenants and warrants to the owner of the Property that at no time shall Grantor or any succeeding owner of Grantor's Parcel have any right to use all or any portion of the Dock, and any such use shall be considered to be a trespass against the Property.

5. Grantor reserves the right to relocate the right-of-way and terminate the right-of-way granted in Section 1 above for driveway purposes ~~granted in accordance with Section 1 above~~, provided that (a) no later than the time that the area of the Gravel Drive is no longer

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usable for the right-of-way purposes described herein, Grantor shall have constructed, at Grantor's sole cost and expense, a driveway that provides access to the parking area located on the Property, as depicted on the Survey, which driveway is located entirely within the area described on the Survey as the twenty foot "unopened r.o.w." and which driveway is constructed at a grade equivalent to that of the Gravel Drive and of a quality and material equivalent to that of the Gravel Drive, and which driveway has a width no less than that of the Gravel Drive: (b) Grantor provides to the owner of the Property written notice, no less than thirty (30) days in advance of such relocation, and (c) the improvements constructed by Grantor are of the same nature and quality of improvements as the improvements currently existing as the Gravel Drive.

6. The rights-of-way granted hereby shall be appurtenant to the Property as well as to any land that may hereafter come into common ownership with the Property and that is contiguous to the Property.

7. The terms, covenants and conditions of this grant shall run with the Property and shall be binding upon and shall inure to the benefit of the heirs, administrators, successors, assigns and personal representatives of the parties hereto.

8. Grantor hereby represents, covenants and warrants to the owner of the Property that the owner of the Property shall quietly enjoy the rights granted hereby and that Grantor shall forever warrant said rights. Grantor shall not interfere with or suffer or permit interference with the use and enjoyment of the rights granted hereby by the owner of the Property or restrict, prohibit or otherwise limit the owner of the Property's access to the parts of the Grantor's Parcel that are the subject of this Agreement. Grantor shall not use or suffer or permit any use of the areas that are the subject of the rights granted hereby in any manner which is inconsistent with or in conflict with the rights granted to the owner of the Property, and Grantor shall not grant or purport to grant any such rights relevant to the areas that are the subject to the rights granted hereby to any other person or party.

9. The rights granted hereby shall be deemed to have come into existence as of the date first set forth above and shall continue in perpetuity unless otherwise agreed in writing by the parties hereto or their respective successors or assigns. No term or provision of this Agreement may be amended or modified in any manner except by a writing executed by the parties hereto or their respective successors or assigns.

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Schedule "A"

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Ulysses, County of Tompkins, State of New York shown as Lot 2 on "Map of Lots on Leslie L. and Louise F. Wilson Property at Willow Creek in Town of Ulysses, N.Y.", dated December 13, 1966 made by Carl Crandall, C.E. amended December 12, 1967 and bounded and described as follows:

Beginning at a point marked by a pin set in the west shore of Cayuga Lake at the base of an existing dock, which point marks the southeast boundary of Lot 2 as above referenced and the northeast boundary of premises of Wilson and Kushner (R.O.) Liber 657 Deeds at page 481;

Thence south 54 degrees 27 minutes west a distance of 226.5 feet to a found pipe;

Thence north 1 degree 47 minutes west a distance of 180.7 feet to a found pipe (along western line of other premises of Wilson and Kushner R.O. Liber 674 Deeds 167);

Thence north 54 degrees 46 minutes east 134.6 feet (along southerly line of Lot 1 being premises of Wilson R.O. Liber 473 Deeds 253), to a found pipe in the western shore of Cayuga Lake;

Thence south 32 degrees 17 minutes east 150 feet to the point or place of beginning.

Together with all riparian rights appurtenant in and to Cayuga Lake, its present shoreline or futura accretions.

TOGETHER WITH AND SUBJECT TO a right of way extending across the south westerly portion of the above described premises which right of way is 20 feet in width and is for the benefit of the owners of Lot No. 1 and Lot No. 2 as shown on the aforesaid map and which right of way extends southerly to Lot No. 3 as shown on the aforesaid map and extends thence south westerly to Route 89. Said right of way to be for ingress and egress by vehicles and pedestrian traffic to and for the benefit of the owners of Lots No. 1 and 2 and other owners of premises along said right of way and their heirs, successors, and assigns and invitees and guests. The construction and maintenance of the 20 foot right of way shall be borne jointly with the other users thereof.

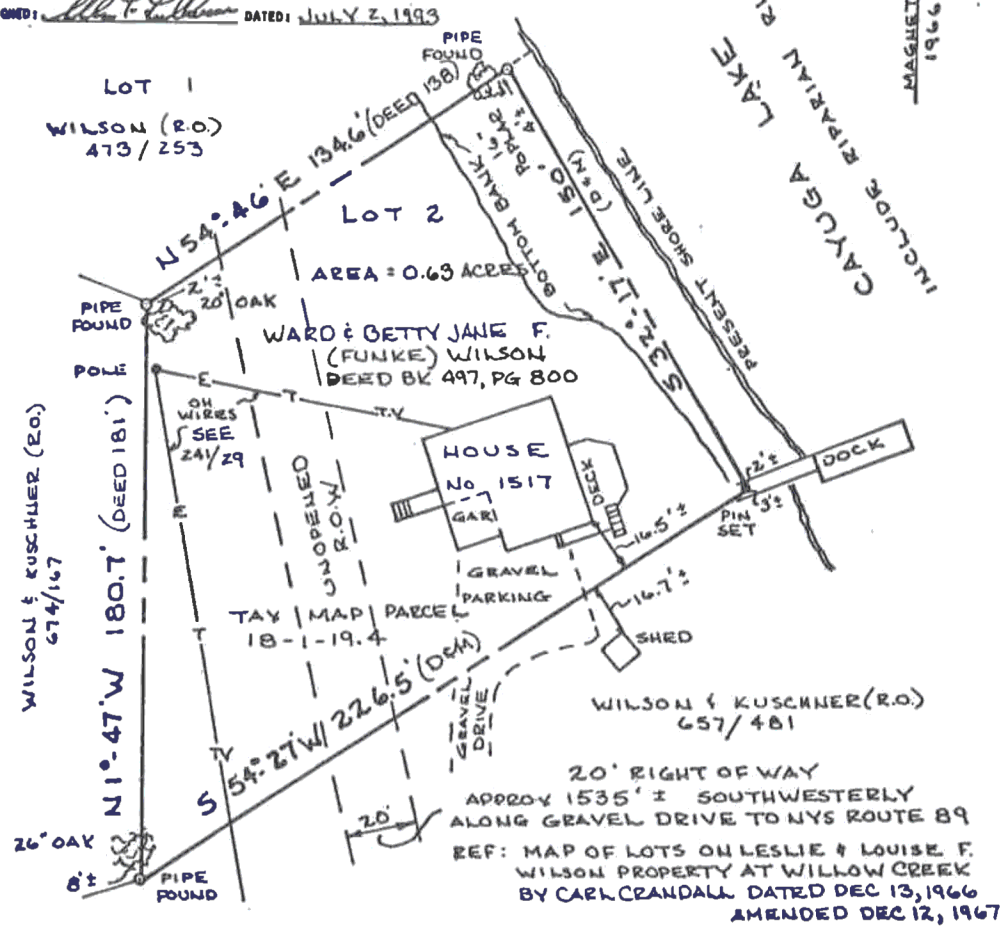
It is understood and agreed that no portion of the premises herein conveyed shall be used for commercial purposes and this covenant shall run with the land and bind the Grantees, their heirs, successors and assigns.

The above described premises are more particularly described in a survey map entitled "Survey Map 1517 Taughannock Boulevard N.Y.S. Route 89 Town of Ulysses Tompkins Co. N.Y." dated July 2, 1993 prepared by T.G. Miller P.C. Engineers and Surveyors, which Map is intended to be recorded as a part of this Deed.

Being the same premises conveyed to the Mortgagees herein by Warranty Deed dated December 31, 1971 and recorded in the Tompkins County Clerk's Office at Liber 497 Deeds at page 800.

PETER G. GROSSMAN ESQ., DUANNE C. MOESER LIBER 713 PAGE 271 N
BRUCE D. WILSON ESQ., WARD & BETTY JANE F. FUNKE WILSON

CERTIFICATION
I hereby certify to
that I am a licensed land surveyor, New York State License No. 049229, and that this map correctly delineates an actual survey on the ground made by me or under my direct supervision; that it was prepared in accordance with the current code of practice for land title surveys adopted by the New York State Association of Professional Land Surveyors; and that I found no visible encroachments either way across property lines except as shown hereon.
SIGNED: *[Signature]* DATED: JULY 2, 1993



SURVEY MAP
1517 TAUGHANNOCK BOULEVARD
N.Y.S. ROUTE 89
TOWN OF ULYSSES
TOMPKINS Co. N.Y.
JULY 2, 1993
SCALE 1" = 40'

T.G. MILLER P.C.
ENGINEERS & SURVEYORS
ITHACA, NEW YORK



WARNING
ALTERATIONS TO THIS MAP NOT CONFORMING TO SECTION 7209, SUBDIVISION 2, NEW YORK STATE EDUCATION LAW, ARE PROHIBITED BY LAW. ALL CERTIFICATIONS HEREON ARE VALID FOR THIS MAP AND COPIES THEREOF ONLY IF THIS MAP OR COPIES BEAR THE SIGNATURE SEAL OF THE LICENSED LAND SURVEYOR WHOSE SIGNATURE APPEARS HEREON.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

BUYER:

Duane D. Moeser
DUANNE D. MOESER

GRANTOR:

Jay Carol Wilson
JAY WILSON

John Kuschner
JOHN KUSCHNER

STATE OF NEW YORK :
: ss.:
COUNTY OF TOMPKINS :

On the 8th day of July, 1993, before me personally came DUANNE D. MOESER, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

Randall B. Marcus
Notary Public

RANDALL B. MARCUS
Notary Public, State of New York
No. 4987141
Qualified in Tompkins County
Commission Expires May 29, 1994

STATE OF NEW YORK
SUPREME COURT: COUNTY OF TOMPKINS

SHARI SPROLE and ROBERT SPROLE,

Plaintiffs,

**NOTICE OF
MOTION**

v.

Index No. EF2020-0413

PATRICIA KEARL and KENNETH KEARL,

Defendants.

Upon the affirmation of Michael C. Pehinec Jr., Esq., sworn to on March _____, 2024, the affirmation of Shari Sprole, sworn to on March _____, 2024, Plaintiffs' motion for injunctive relief filed on or about January 12, 2024, identified as Motion No. 4, Defendants' cross-motion for attorneys' fees and costs filed on or about January 24, 2024, identified as Motion No. 5, together with all affidavits and exhibits annexed thereto, and all papers and proceedings had herein, the Plaintiffs will move this Court at the Tompkins County Courthouse, located at 320 North Tioga Street, Ithaca, New York 14850, on the ___ day of _____, 2024, at ___ AM / PM, or as soon thereafter as counsel may be heard, for an order pursuant to CPLR § 2221: (1) granting Plaintiffs leave to renew the prior motions identified as Motions No. 4 and 5 and, on renewal, (2) granting Plaintiffs' Motion No. 4 for injunctive relief, (3) denying Defendants' Motion No. 5 for attorneys' fees and costs, (4) imposing sanctions on Defendants, (5) awarding Plaintiffs attorneys' fees and costs, and (6) granting such other and further relief as this Court deems just and proper.

Pursuant to CPLR § 2214(b), answering papers, if any, are required to be served upon the undersigned at least seven days before the return date of this motion.

Dated: March _____, 2024
Ithaca, New York

Michael C. Pehinec Jr., Esq.
Coughlin & Gerhart, LLP
Attorneys for Plaintiffs
798 Cascadilla Street, Suite A
Ithaca, New York 14850
(607) 379-6709
MPehinec@cglawoffices.com

To: Sharon M. Sulimowicz, Esq.
Attorney for Defendants
M&T Bank Building / TC3 Tioga Place
118 North Tioga Street, Suite 202
Ithaca, New York 14850
(607) 256-0727

STATE OF NEW YORK
SUPREME COURT: COUNTY OF TOMPKINS

SHARI SPROLE and ROBERT SPROLE,

Plaintiffs,

**ATTORNEY
AFFIRMATION**

v.

Index No. EF2020-0413

PATRICIA KEARL and KENNETH KEARL,

Defendants.

MICHAEL C. PEREHINEC JR., an attorney admitted to practice in the State of New York, affirms the truth of the following under the penalties of perjury:

1. I am the attorney for the Plaintiffs Shari Sprole and Robert Sprole in the above-entitled action and as such I am fully familiar with all the facts and circumstances of this matter as set forth herein.

2. I make this affirmation in support of Plaintiffs' motion for leave to renew pursuant to CPLR § 2221.

3. On or about January 12, 2024, Plaintiffs filed an order to show cause seeking injunctive relief against Defendants to restrain them from engaging in recently commenced site work and construction on the portion of their property—1513 Taughannock Blvd—subject to the right-of-way and disputed parking easement central to this action (“Motion No. 4”). ECF No. 114.

4. Plaintiffs filed Motion No. 4 after witnessing Defendants operate a large CAT excavator and miniature bulldozer on their property to upheave sections of the disputed parking area without prior communication. ECF No. 137 at ¶ 4. Although the extent of the site work was unclear, it was alleged upon information and belief that Defendants were constructing a path to

Cayuga Lake across the disputed parking area and that Defendants began construction without receiving the necessary permits or approvals from the Town of Ulysses. ECF No. 115 at ¶¶ 8, 9.

5. On or about January 24, 2024, Defendants filed a notice of cross-motion seeking denial of the preliminary injunction and an award of attorneys' fees and costs incurred by Defendants in litigating the motions ("Motion No. 5"). See ECF No. 123.

6. In support of Motion No. 5, Defendant Kenneth Kearl filed a sworn affidavit dated January 23, 2024, stating that Defendants were engaged in "landscaping" activities consistent with the site plan approved by the Town of Ulysses, that no additional permits were required for the site work, and that Defendants were laying gravel simply to facilitate the movement of heavy equipment across wet and muddy areas. ECF No. 130 at ¶¶ 3, 6. The affidavit further claimed that Plaintiffs' allegations were "completely frivolous" warranting the imposition of sanctions by the Court. *Id.* at ¶¶ 10, 12.

7. A virtual hearing was set by the Court for February 1, 2024, to decide Motion No. 4 and Motion No. 5 (the "Virtual Hearing"). See ECF No. 122. At the hearing, Defendants' attorney reaffirmed Defendant Kenneth Kearl's affidavit and continued to represent to Plaintiffs and the Court that Defendants were performing landscaping activities and that no additional permits were required for the work. Defendants' attorney also accused Plaintiff Robert Sprole of misrepresenting the work that Defendants were performing. *Id.*

8. On or about February 13, 2024, trial commenced and continued until all evidence was submitted and trial was adjourned pending attempted settlement negotiations. See ECF No. 98; ECF No. 149.

9. At no point during the trial did Defendants or their attorney amend, withdraw, revoke, or modify the representations made in response to Motion No. 4 or Motion No. 5. At no

point between the Virtual Hearing and trial did Defendants or their attorney disclose any updated survey or permit application.

10. On or about March 4, 2024, the Court entered an order denying Plaintiffs injunctive relief under Motion No. 4 and awarding Defendants attorneys' fees and costs in the amount of \$2,638.85 under Motion No. 5, implicitly and necessarily holding that Plaintiffs' request to enjoin Defendants from constructing a gravel path across the disputed parking area was frivolous. *See* ECF No. 151, 152.

11. On or about March 7, 2024, it became evident that the parties could not reach a settlement agreement. *See* ECF No. 154. A written status update was filed to notify the Court and request a date for submission of post-trial closings. *Id.*

12. On or about March 9, 2024, Plaintiffs received a Notice of Public Hearing in the mail from the Town of Ulysses for a Permit Application submitted by Defendants Kenneth and Patricia Kearl dated January 29, 2024, three days *prior to* the Virtual Hearing, requesting approval to complete approximately \$30,000 to \$40,000 of work at their property. *Sprole Aff.* at ¶ 8. Attached hereto as **Exhibit 1** is a copy of the Permit Application.

13. Further investigation revealed that Defendants supported their Permit Application with a survey dated January 24, 2024, eight days *prior to* the Virtual Hearing, expressly providing for a gravel drive extending from Plaintiffs' right-of-way, across the disputed parking area, and down to Cayuga Lake. *See* Exhibit 1 at 6.

14. Defendants did not disclose the Permit Application or survey prior to or at the Virtual Hearing or trial despite possessing the same. Instead, at the Virtual Hearing, Defendants represented that no permits were required for the work at their property, that the work was simply landscaping that had no effect on the disputed parking area, and that gravel was being placed to

facilitate the movement of heavy equipment across wet and muddy areas, rather than for construction of a road to Cayuga Lake.

15. The recently discovered Permit Application and survey reveal that Defendants made numerous misrepresentations during both the Virtual Hearing and trial and committed multiple discovery violations.

16. Defendants had a continuing discovery obligation to produce the Permit Application and survey but failed to do so at any time prior to the Virtual Hearing or trial. Attached hereto as **Exhibit 2** is a copy of Plaintiffs' discovery demands.

17. As a result of Defendants withholding the January 24, 2024, survey and January 29, 2024, Permit Application from discovery and misrepresenting certain facts at the Virtual Hearing and in the papers responsive to Motion No. 4 and Motion No. 5, Plaintiffs were found to be acting frivolously, charged with paying Defendants' attorneys' fees, denied injunctive relief, and were unfairly prejudiced at trial.

18. Defendants may attempt to argue that the survey that was attached to the public hearing notice does not show that a paved gravel drive would exist in the area where a potential parking area could be found by this Court in favor of the Plaintiffs.

19. But the survey lacks measurements and it is up to this Court to decide whether a parking area exists, and if so, what the size of it may be, not the Defendant's unilateral determination.

20. The Defendants proposed plans based on the survey and amended site plan lack specificity and again, arguing that this would in some way benefit the Plaintiffs, is disingenuous at best and another flat-out misrepresentation by the Defendant at worst.

21. On or about February 2, 2024, a Staff Memo was issued to the Town of Ulysses Planning Board regarding Defendants' Permit Application and setting a meeting date for consideration of the application on February 20, 2024. A second Staff Memo was issued on February 23, 2024, setting a meeting date on March 5, 2024. Attached hereto as **Exhibit 3** are copies of Staff Memos to the Town of Ulysses Planning Board related to Defendants' Permit Application.

22. The Planning Board minutes for the March 5, 2024, meeting provide that Defendants' Permit Application dated January 29, 2024, "is to amend the road going down to the lakeshore to a pad that is already built" because "a stop work order was issued on the driveway extending down to the lake." Attached hereto as **Exhibit 4** is a copy of the Planning Board minutes.

23. Planning Board Chair Pete Angie stated "that the stop work order was issued because of the gravel that has been deposited at the top of the slope." See Exhibit 4 at 3. The Planning Board adjourned the meeting to March 19, 2024, for a public hearing. *Id.* at 4.

24. Upon information and belief, the reason that Defendants stopped construction and site work on their property was because of the Town of Ulysses stop work order. However, Defendants' intentions regarding the scope of work are clear from the undisclosed Permit Application and survey, which are both dated prior to the Virtual Hearing. The Permit Application and survey expressly contradict the representations made by Defendants in Defendant Kenneth Kearl's affidavit, at the Virtual Hearing, and at trial.

STANDARD FOR RENEWAL

25. Pursuant to CPLR § 2221(e), a motion for leave to renew must “be based upon new facts not offered on the prior motion that would change the prior determination” and must “contain reasonable justification for the failure to present such facts on the prior motion.”

ARGUMENT

26. On the prior motion, the Court did not have an opportunity to review Defendants’ January 24, 2024, survey or January 29, 2024, Permit Application. Instead, the Court relied on Defendant Kenneth Kearl’s affidavit, which misrepresented several material facts regarding the scope of work and the need for a town permit approval.

27. Consideration of these documents would likely change the Court’s prior determination in several respects. First, these documents clearly show that Plaintiffs’ request for injunctive relief was not frivolous. Defendants misrepresented several material facts to make Plaintiffs’ request appear frivolous while at the same time engaging in the very actions that they denied to be necessary.

28. Second, these documents show that Defendant Kenneth Kearl’s credibility is questionable at best. It is clear from Defendant Kenneth Kearl’s own Permit Application and survey that he misrepresented several material facts in his affidavit, at the Virtual Hearing, and at trial, including the scope of work and alleged “landscaping” activities, the reason why gravel was being laid across the disputed parking area, and the need for a permit from the Town of Ulysses to complete the site work and construction he was performing.

29. Defendant Kenneth Kearl’s questionable credibility has a material impact on the Court’s determination of Motion No. 4 and Motion No. 5 since he was the only individual with

personal knowledge of the site work that submitted an affidavit, as well as the Court's trial determination since he was Defendants' only non-expert witness.

30. Third, these documents further support Plaintiffs' request for injunctive relief by demonstrating the potential harm to Plaintiffs' easement interest. Namely, Defendants are seeking approval from the Town of Ulysses to build a gravel drive directly across the disputed parking area, essentially foreclosing Plaintiffs from any recovery in this action.

31. Consideration of Defendants' Permit Application and updated survey would have likely influenced the Court's decision on Motion No. 4 and Motion No. 5.

32. Plaintiffs are justified in failing to present these documents at the Virtual Hearing because Defendants withheld the documents from discovery and misrepresented facts that were only within their personal knowledge, leading Plaintiffs to believe that no permit applications were submitted to the Town of Ulysses.

33. Plaintiffs could not have presented the documents at the Virtual Hearing because they were not aware that the documents existed and Defendants denied the same.

34. Plaintiffs engaged in a reasonable effort to retrieve the documents by alleging their existence upon information and belief and by demanding such documents in discovery. However, Defendants denied that permits were required and failed to disclose the documents in discovery.

[Intentionally Blank]

WHEREFORE, Plaintiffs request an order pursuant to CPLR § 2221: (1) granting Plaintiffs leave to renew the prior motions identified as Motions No. 4 and 5 and, on renewal, (2) granting Plaintiffs' Motion No. 4 for injunctive relief, (3) denying Defendants' Motion No. 5 for attorneys' fees and costs, (4) imposing sanctions on Defendants, (5) awarding Plaintiffs attorneys' fees and costs, and (6) granting such other and further relief as this Court deems just and proper.

Dated: March , 2024
Ithaca, New York

Michael C. Pehinec Jr.

EXHIBIT 1



PERMIT APPLICATION
TOWN OF ULYSSES PLANNING DEPARTMENT

INSTRUCTIONS: Complete form, sign, and date.
 See applicable application packet for all required checklist items.

CONTACT INFORMATION				
APPLICANT	KENNETH AND PATRICIA KEARL			
ADDRESS	1513 TAUGHANNOCK BLVD			
CITY	ITHACA	STATE	NY	ZIP 14850
PHONE	860-463-5110	EMAIL	KENNETHKEARL@GMAIL.COM	
OWNER	SAME			
ADDRESS				
CITY		STATE		ZIP
PHONE		EMAIL		
PRIMARY CONTACT:	<input checked="" type="checkbox"/> APPLICANT	<input checked="" type="checkbox"/> OWNER	<input type="checkbox"/> OTHER, PLEASE SPECIFY BELOW	
NAME	SAME			
PHONE		EMAIL		

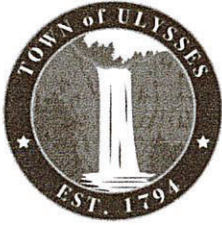
PROJECT SITE INFORMATION	
ADDRESS	1513 TAUGHANNOCK BLVD
PARCEL NO(S)	18.1-19.8

PROJECT INFORMATION	
PROJECT NAME	KEARL COTTAGE LANDSCAPE
PROJECT DESCRIPTION	AMENDMENT TO 2018 SIDE PLAN TO COMPLETE CERTAIN LANDSCAPE PROJECTS ON THE PROPERTY
VALUATION	\$30,000 - \$40,000

Authorization: I am the owner or am authorized by the owner to sign and submit this application. I certify under penalty of perjury of the laws of the State of New York that the information on this application and all information submitted herewith is true, complete, and correct.

SIGNATURE	<i>Kenneth Kearl</i>	DATE	29/JAN/2024
PRINT NAME	KENNETH KEARL		
CITY, STATE	ITHACA, NY		





SKETCH PLAN APPLICATION PACKET

PLANNING AND ZONING DEPARTMENT

INSTRUCTIONS: Submit the following items listed in the checklist below. Electronic submittal via email is preferred. Hard copies may be submitted by mail or in person; however, digital files of all hard copies will be required to be submitted.

APPLICATION CHECKLIST		
<input checked="" type="checkbox"/>	1. Application	The application sheet must be filled out completely and signed by the owner, applicant, or primary contact.
<input checked="" type="checkbox"/>	2. Property Owner Letter <i>NA</i>	If the applicant is not the property owner, written approval from the owner to submit the application must be submitted.
<input checked="" type="checkbox"/>	3. Fees	\$155.00 + costs for new site plan proposals. \$77.50 + costs for amendments to approved site plans.
<input checked="" type="checkbox"/>	4. Sketch Site Plan	A sketch site plan, drawn in accordance with the Sketch Site Plan Requirement Checklist.
<input checked="" type="checkbox"/>	5. SEAF <i>NA</i>	Complete, sign, and date <u>Part 1</u> of the short environmental assessment form along with <u>supporting documentation</u> ,
<input checked="" type="checkbox"/>	6. Agriculture Data Statement <i>NA</i>	Complete and sign the agricultural data statement if the subject property contains a farm operation or is within 500 feet of a farm operation within a County designated agricultural district.
<input checked="" type="checkbox"/>	7. Narrative Statement	A typed narrative that describes the proposed project.
<input checked="" type="checkbox"/>	8. Conceptual Stormwater Management Plan <i>NO CHANGE</i>	Submit a conceptual stormwater management plan that outlines the approach to manage runoff and its post construction treatment on the site.

If this checklist or any of the items above are not included with your application submittal, your application may be deemed "incomplete" and returned to you.



10 Elm Street
Trumansburg, NY 14886



607.387.5767



planner@townofulyssesny.gov
www.ulysses.ny.us

UPDATED 2024

29/Jan2024

Kearl Site Plan Amendment Narrative

The updated site plan amendment map dated 24Jan2024 provides more accurate detail of the landscape plans for our house located at 1513 Taughannock Blvd than the approved 2018 site plan map utilized primarily for house construction purposes.

In July, 2022 I contacted Mark Washburn via email to request guidance regarding the additional construction work contemplated, plans and permits required. In October, 2022 after a conference call with Mark and additional clarification that landscape work associated with the installation of dry stacked stairs (directly on the ground) and landing on my approved site plan required no additional permits or inspections. Based on my understanding, I ordered materials for the landscape activities and scheduled a contractor.

Recently, based on my discussions with Neils Tygesen, Zoning Officer, Town of Ulysses, I decided to submit a new Site Plan Amendment package to the Town Board for approval. The updated site plan amendment map includes ~20 landscape features that we plan to complete during the next 1-3 years, as funding is available.

Our proposed 2024 landscape activity will focus on landscaping the north end of our property along the lakefront, as follows:

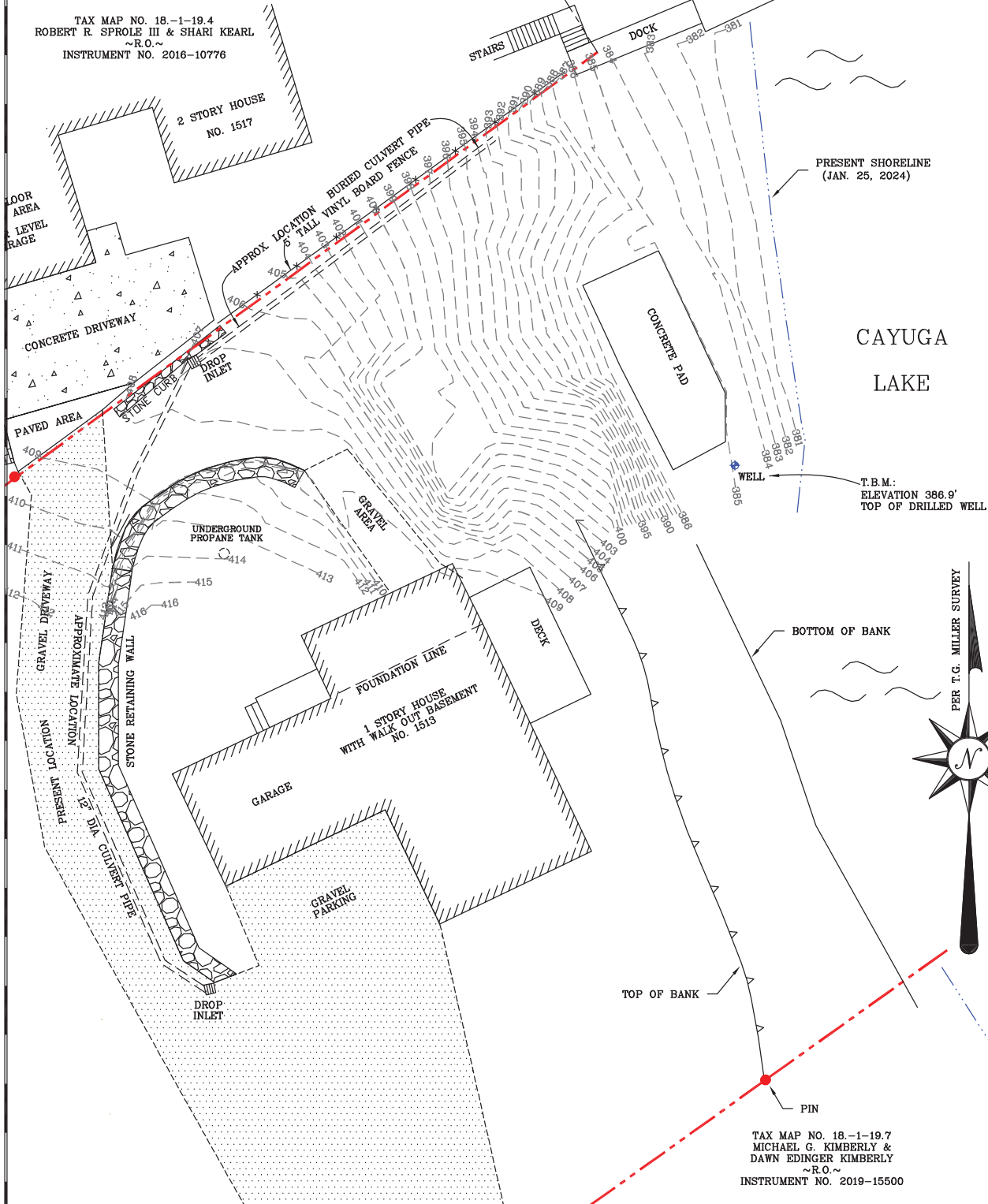
- 1) Grading, excavation, and gravel fill to support installation of a dry stacked stairway from lake patio to landing; excavation of a landing; installation of 6" gravel on landing; grading, excavation, and gravel fill to support installation of a dry stacked stairway from the landing to house level; Installation of a ~5ft dry stacked limestone blocks retaining walls on three sides of the landing; excavation of existing clay soil above the limestone retaining wall and backfill of garden soil from top of retaining wall to house level; installation of weed cloth and planting of perennials, grasses, and bushes on the hillside around landing and stairway to stabilize.
- 2) Grading, excavation, and gravel fill to support installation of a gravel driveway from house level to lakefront patio
- 3) Grading, excavation, and rip rap to support extension of the underground Stormwater system toward the lake and stabilize
- 4) Grading, excavation, and gravel fill to support the installation of gabions along the east side of the gravel driveway to stabilize
- 5) Grading, excavation, and gravel fill to support installation of a limestone block raised bed garden north of landing and south of gravel drive

Kearl Site Plan Amendment Narrative

- 6) Grading, excavation, and gravel fill to support installation of a 10 ft wide gravel driveway across the north end of our property from ROW access drive to existing gravel drive extending from under the north covered porch
- 7) Installation of pole lighting on the corners of the lake patio utilizing electrical conduit installed in concrete patio and underground electric feed from the electric breaker box located at lake level.
- 8) Installation of pole lighting at the top and bottom of the dray stacked stairs with underground feed from an exterior electric box with stubbed off electric line at the house; on near the stairs on the landing (switched electrical feed stubbed off on exterior of house)
- 9) Installation of stone gabions and/or spread grass seed and install straw mats (pinned) as required to stabilize other areas

KEARL SITE PLAN
 TOWN OF ULYSSES ~ COUNTY OF TOMPKINS
 STATE OF NEW YORK
 TAX MAP NO.: 18-1-19.8

TAX MAP NO. 18-1-19.4
 ROBERT R. SPROLE III & SHARI KEARL
 ~R.O.~
 INSTRUMENT NO. 2016-10776



PRESENT SHORELINE
 (JAN. 25, 2024)

CAYUGA
 LAKE

T.B.M.:
 ELEVATION 386.9'
 TOP OF DRILLED WELL

PER T.G. MILLER SURVEY



TAX MAP NO. 18-1-19.7
 MICHAEL G. KIMBERLY &
 DAWN EDINGER KIMBERLY
 ~R.O.~
 INSTRUMENT NO. 2019-15500

REAGAN LAND SURVEYING
 298 CORTLAND ROAD, P.O. BOX 1124
 DRYDEN, NEW YORK
 PHONE/FAX: (607) 844-8837
 EMAIL: office@reaganlandsurveying.com

JOB NO.: 24-005B SCALE: 1"=20'
 DRAWN BY: A. PUZO DATED: JAN. 24, 2024

SIGNED: _____
 "Copyright 2024: All Rights Reserved, Reagan Land Surveying"



GRAPHIC SCALE



TOWN OF ULYSSES

DEPARTMENT OF PUBLIC WORKS

Public Works Permit Application

INSTRUCTIONS: Complete form and include any applicable attachments.

Digital submittal is preferred. Please send all application materials to mduell@townofulyssesny.gov.

Applications can also be submitted at the Town Hall in person or mailed.

Incomplete applications will not be accepted.

APPLICATION CHECKLIST:

- Completed application form
- Site plan: A map of the entire parcel including the following details:
 - Locations of the proposed work sites
 - All existing structures (buildings, sheds, wells, septic tank, driveways & paved areas)
 - All areas of environmental concern (streams, wetlands, Unique Natural Areas)

CONTACT INFORMATION				
APPLICANT	KENNETH AND PATRICIA KEARL			
ADDRESS	1513 TAUGHANHOCK BLVD			
CITY	ITHACA	STATE	NY	ZIP
PHONE	860-463-5110	EMAIL	Kennethkearl@gmail.com	
OWNER	SAME			
ADDRESS				
CITY		STATE		ZIP
PHONE		EMAIL		
PRIMARY	<input type="checkbox"/> APPLICANT	<input type="checkbox"/> OWNER	<input type="checkbox"/> OTHER, PLEASE SPECIFY BELOW	
NAME				
PHONE		EMAIL		

PROJECT SITE INFORMATION	
PROJECT SITE ADDRESS	SAME
PARCEL NO(S)	1
SITE WORK FOR PROJECT TYPE	<input checked="" type="checkbox"/> Single-Family Residence <input type="checkbox"/> Multi-Family Residence <input type="checkbox"/> Commercial <input type="checkbox"/> Duplex <input type="checkbox"/> Accessory Dwelling Unit <input type="checkbox"/> Industrial
IF APPLICABLE	<input type="checkbox"/> Land Use Project # _____

DESCRIPTION OF SITE WORK / RIGHT-OF-WAY WORK		
Fill in all quantities of work below, as applicable:		DRAINAGE MITIGATION QUESTIONS
FENCE IN ROW	NA FT IN HEIGHT	PROPOSED STORMWATER DISCHARGE TO :
DRIVEWAY APRON / CURB CUT	NA FT WIDE	
ASPHALT / CONCRETE PAVING	NA SF	
RETAINING WALL / ROCKERY IN RIGHT-OF-WAY	NA LF	
RETAINING WALL / ROCKERY OVER 4FT IN HEIGHT	37.5 FT TOTAL HEIGHT	TRIGGERED REQUIREMENTS
CLEARING / GRADING / FILL / EXCAVATE	50 CY	<input type="checkbox"/> MS-4
CUT / BORE IN PAVEMENT (PARALLEL)	NA LY	QUANTITY OF PROPOSED HARD SURFACES
CUT / BORE IN PAVEMENT (NON-PARALLEL)	NA LF	Proposed Roof Area
POLE WORK / AERIAL / OVERLASH	NA LF	Proposed Hardscape
		Total New + Replaced
ADDITIONAL DESCRIPTIONS (AS NEEDED):		

Authorization: I am the owner or am authorized by the owner to sign and submit this application. I certify under penalty of perjury of the laws of the State of New York that the information on this application and all information submitted herewith is true, complete, and correct.

SIGNATURE	<i>Kenneth Kearl</i>	DATE	29/JAN/2024
PRINT NAME	KENNETH KEARL		
CITY, STATE	ITHACA, NY		

Office Use Only	
Permit Number	
Zoning Approval	
Building Approval	
DPW Approval	

EXHIBIT 2

BAINBRIDGE
BINGHAMTON
HANCOCK
ITHACA
MONTROSE
OWEGO
CORTLAND

www.cglawoffices.com
798 Cascadilla Street, Suite A
Ithaca, New York 14850
(607) 379-6709
(877) COUGHLIN
Fax: (607) 216-9688
e-mail: MPerehinec@cglawoffices.com

March 29, 2021

VIA EMAIL AND HAND DELIVERY

Sharon Sulimowicz, Esq.
118 N. Tioga Street, #202
Ithaca, New York 14850

RE: Sprole v. Kearl
Index No. EF2020-0413
Plaintiffs' Omnibus Discovery Demands

Dear Sharon:

Pursuant to our agreed upon scheduling order, enclosed please find Plaintiffs' Omnibus Discovery Demands.

Thank you for your time and attention to this matter.

Sincerely,



Michael C. Perehinec Jr.

/mcp
Encl.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF TOMPKINS

SHARI SPROLE and ROBERT SPROLE

PLAINTIFFS' OMNIBUS
DISCOVERY DEMANDS

Plaintiff,

vs.

PATRICIA KEARL and KENNETH KEARL

Index No. EF2020-0413

Defendants.

Plaintiffs, by their attorneys, Coughlin & Gerhart, LLP, in accordance with Article 31 of the Civil Practice Law and Rules, demands that the Defendants produce, by no later than April 30, 2021, at Coughlin & Gerhart, LLP, 798 Cascadilla Street, Suite A, Ithaca, New York 14850, a true copy of the following:

DEFINITIONS

“Documents” and/or “Documentation”, is used in the broadest sense and means all writing of any nature whatsoever, whether originals or copies including all non-identical copies (whether different from the original because of notes made on or attached to them, or otherwise) and including: drafts, preliminary, proposed, or final versions, whether printed, recorded, produced or reproduced by hand or other mechanical process, whether written or produced by hand, within your possession, custody or control. Such documents include, but are not limited to, contracts, text messages, agreements, arrangements, understandings, communications, including intra-company communications, correspondence, telegrams, records, reports, studies, bills, receipts, memoranda, including memoranda of meetings or conferences, notes, e-mail messages, instant messages, letters, drawings,

estimates, advertisements, notices, telex communications, telephone bills and records, cables, books, journals, diaries, forecasts, statistical statements, graphs, summaries, lists, tabulations, charts, maps, diagrams, blueprints, tables, indices, pictures, recordings, tapes, microfilms, charges, accounts, minutes, brochures, pamphlets, circulars, trade letters, articles, press releases, stenographic, handwritten, or any other notes, projections, working papers, checks, check stubs, receipts, invoices, data processing cards, discs or c.d.'s or any other documents or writings of whatever description, including without limitation, any information contained in any computer or memory system, although not printed out, or any material underlying, supporting, or used in the preparation of such documents, now or formerly in the possession, custody or control of any defendant, or any of its counsel, or any of its agents, representatives, employees or associates. Handwritten notations of any kind on any copy of a document render it non-identical.

The term “concerning” is used in the broadest sense and includes, but is not limited to: relating to, referring to, alluding to, responding to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, mentioning, reflecting, analyzing, touching upon, supporting, substantiating, constituting and being. A document may “concern” a certain person or subject being the sole or even the significant topic of that document.

DOCUMENT DEMANDS

1. Any and all documents associated with designs for landscaping of the property located at 1513 Taughannock Blvd.
2. Any and all documents associated with the request for a building permit and/or other required permits from the Town of Ulysses for the property located at 1513 Taughannock Blvd.

3. Any and all architectural drawings associated with the site plan and construction of the premises located at 1513 Taughannock Blvd.
4. Any and all documents associated with the movement of the access road and/or gravel drive.
5. Any and all documents wherein the Plaintiffs, Plaintiffs' agents, or any individual or entity of the Plaintiffs gave permission to the defendants to relocate the access road and/or gravel drive.
6. Any and all emails between either of the Defendants and Plaintiff Shari Sprole involving the premises located at 1513 Taughannock Blvd., and/or 1517 Taughannock Blvd.
7. Any and all emails between the Defendants and Plaintiff Robert Sprole involving the premises located at 1513 Taughannock Blvd., and/or 1517 Taughannock Blvd.
8. Any and all text message communications between either of the Defendants and Plaintiff Shari Sprole involving the premises located at 1513 Taughannock Blvd. and/or 1517 Taughannock Blvd.
9. Any and all text message communications between either of the Defendants and Plaintiff Robert Sprole involving the premises located at 1513 Taughannock Blvd. and/or 1517 Taughannock Blvd.
10. Any and all documents that evidence alleged intent by either Plaintiff to abandon the easement and/or gravel drive area.
11. Any and all documents associated with Defendants' fourth affirmative defense of laches.
12. Any and all documents associated with Defendants' fifth affirmative defense of unclean hands.
13. Any and all documents associated with Defendant's sixth affirmative defense of equitable

estoppel.

14. Any and all documents evidencing that the Plaintiffs caused damages to the root of the tree complained of in the complaint.
15. Any and all documents evidencing that the Plaintiff installed a drainage pipe.
16. Any and all documents evidencing any alleged agreements between the Plaintiffs and Defendants referenced in the Defendants' Answer.
17. Any and all documents evidencing the alleged damages described in Defendants' First cause of Action.
18. Any and all documents evidencing the alleged damages described in Defendants' Second cause of Action.
19. Any and all documents evidencing the alleged damages described in Defendants' Third cause of Action.

DEMAND FOR WITNESSES

20. Demands that Defendants provide a written statement detailing the names and current addresses of any and all known witnesses or parties whom the Defendants intend to call upon to testify at this trial, whether the same is for purposes of direct testimony or impeachment.
21. List the names, address and contact information of all persons acting on behalf of Defendants to have communicated with the Plaintiffs herein (or someone on the Plaintiffs' alleged behalf) regarding the actions forming the basis for all of Plaintiffs' causes of action in Plaintiffs' Complaint, including but not limited to:
 - a. Title of person communicating on Defendants' behalf;
 - b. Party communicated with on Plaintiffs' behalf;

- c. Approximate time and date of said communication;
- d. Method of said communication (oral, written or otherwise); and sum and substance of said communication.

DEMAND FOR EXPERT WITNESSES

22. Demands that Defendants supply a statement specifying the following, identifying each person you expect to call as an expert witness at trial, and disclose in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinion on which each expert is expected testify, the qualifications of each expert witness and a summary of the grounds for each expert's opinion.
23. If you have not retained the services of any such expert at this time, we demand that Defendants respond in writing so stating, and further, supplement their response to this notice with notification of any such expert subsequently retained to give testimony at a trial within seven (7) days after the hiring or retention of such an expert, the information demanded above being supplied as per the CPLR.

DEMAND FOR PHOTOGRAPHS, VIDEOTAPES, AUDIO RECORDINGS, ETC.

24. Demands that Defendants produce copies of any and all photographs, videotapes, audio recordings, digital recording, surveillance, or any other recorded devices in your possession, custody or control, for photocopying and inspection which relate to any of the issues in the above-captioned action.

DEMAND FOR STATEMENTS

25. As to Defendants' statement of fact, state the dates, times, and means by which either Plaintiff contacted the Defendants regarding relocating the access road serving 1513 and 1517

Taughannock Blvd. from the date the property was purchased by Defendants to the present.

DEMAND FOR A VERIFIED BILL OF PARTICULARS

26. As to the Defendants' First Cause of Action, set forth the factual basis that Defendants incurred damages based on the alleged relocation of the access road and gravel drive.

27. As to the Defendants' Second Cause of Action, set forth the factual basis that Defendants incurred damages based on the alleged nuisances and trespasses.


This Notice is continuing in character so as to require further and supplemental production if, between the date hereof and the conclusion of hearing or trial, any additional documents responsive to this Notice come into the possession, custody, or control of any defendant or its agents, agencies, subdivisions, departments, attorneys, accountants, advisers or representatives. Defendant shall produce such additional documents within a reasonably prompt time of their coming into the possession custody or control of defendant or its agents or representatives. If any additional document or any portion thereof are withheld from production upon a claim of privilege or for any other reason, defendant is required to serve promptly upon Plaintiff a written identification of each such document or portion of a document setting forth the information below. If for any reason, you are unable to produce a copy of any responsive document:

- a. Identify the document by describing its form (e.g., letter);
- b. Describe the relevant information contained in the document;
- c. Identify by name, address, title and job description the person who prepared the document; and,
- d. If the document is not readily available, identify where it is stored or maintained and explain why it is not available.

- e. If any of the documents cannot be produced in full, produce to the extent possible and specify the reasons for the inability to produce the remainder and the subject matter of the omitted information.

If there is any document called for in this Notice which is claimed to be privileged, identify such document by stating:

- a. Its date;
- b. The number of pages, attachments and appendices;
- c. The name, address, and occupation at the time of dissemination of the person or persons to whom it was directed or circulated or had access the same;
- d. Its nature (e.g., letter)
- e. Its subject matter
- f. The name, address and present occupation of the person or persons now in possession of the document; and,
- g. A statement constituting the basis of any claim of privilege, work product or other ground of nondisclosure.



Dated: March 29, 2020

MICHAEL C. PEREHINEC JR, ESQ.
Coughlin & Gerhart, LLP
Attorneys for Plaintiffs
798 Cascadilla Street, Suite A
Ithaca, New York 14850
Telephone: (607) 379-6709
Email: mperehinec@cglawoffices.com

EXHIBIT 3



TOWN OF ULYSSES

PLANNING AND ZONING DEPARTMENT

STAFF MEMO

TO: Planning Board
FROM: Niels Tygesen, Planner
DATE: February 2, 2024
MEETING DATE: February 20, 2024
SUBJECT: Kearl Site Plan Amendment, Sketch Plan Review

PROJECT NUMBER: SPR2401-02
PROJECT ADDRESS: 1513 Taughannock Blvd
PARCEL NUMBER: 18.-1-19.8
ZONING: LS: Lake Shore Zone, HpE (Howard and Palmyra soils, 25% to 35% slopes) and Ro (Rock outcrop) Steep Slope Overlay, UNA 61: Willow Creek Glen and Lake Slopes

INTRODUCTION

The applicant and property owners, Kenneth and Patricia Kearl, applied for a site plan amendment for the subject site to permit civil work within the HpE steep slope overlay including grading, excavation, and fill of approximately 50cy, retaining walls, steps, rip-rap, gabions, and realignment of the driveway. The LS zone requires site plan approval from the Planning Board for excavation, grading, or fill greater than 10cy per the Code of the Town of Ulysses [\(CTU\) 212-48.D.3](#). The applicant previously received [site plan approval from the Planning Board on May 2, 2017](#), and subsequently received [Planning Board approval on November 20, 2018](#) for an amendment to the approved site plan. Portions of the civil work as proposed will occur in the flood zone which will require a floodplain development permit along with any applicable federal and state approvals; the [current FEMA FIRM](#) designates the flood zone elevation at 386'.

PROCESS

During this sketch plan review, the Board should review the proposal in respect to [state law pertaining to site plan review](#), local laws and regulations, provide comments and direction to the applicant on any additional required items to be submitted, determine whether a public hearing will be required, and determine the public notice procedure if further site plan review will be required. 239 County review is not required per the [Inter-Governmental Agreement with Tompkins County Section II.C](#). Per [6 CRR-NY 617.5.c.11 and 12](#), the proposed work is considered a Type II action under SEQR (determined not to have a significant impact on the environment or otherwise precluded from environmental review under Environmental Conservation Law, article 8) and requires no further review or determination.

REQUEST TO THE PLANNING BOARD

Review the information in this memo and the [submitted application materials](#); create a checklist of additional items the Board will require if any from the applicant in order to facilitate its deliberations, determine whether a public hearing will be required, and determine which of the following public notice procedures will be required if a public hearing will not be required: posting of the subject site and/or notice to property owners within 500' of the subject property. Alternatively, the Planning Board may waive further site plan review based upon the information provided in the sketch plan per [CTU 212-19.C.5](#).



TOWN OF ULYSSES

PLANNING AND ZONING DEPARTMENT

STAFF MEMO

TO: Planning Board
FROM: Niels Tygesen, Planner
DATE: February 23, 2024
MEETING DATE: March 5, 2024
SUBJECT: Kearl Site Plan Amendment, Sketch Plan Review

PROJECT NUMBER: SPR2401-02
PROJECT ADDRESS: 1513 Taughannock Blvd
PARCEL NUMBER: 18.-1-19.8
ZONING: LS: Lake Shore Zone, HpE (Howard and Palmyra soils, 25% to 35% slopes) and Ro (Rock outcrop) Steep Slope Overlay, UNA 61: Willow Creek Glen and Lake Slopes

INTRODUCTION

The applicant and property owners, Kenneth and Patricia Kearl, applied for a site plan amendment for the subject site to permit civil work within the HpE steep slope overlay including grading, excavation, and fill of approximately 50cy, retaining walls, steps, rip-rap, gabions, and realignment of the driveway. The LS zone requires site plan approval from the Planning Board for excavation, grading, or fill greater than 10cy per the Code of the Town of Ulysses [\(CTU\) 212-48.D.3](#). The applicant previously received [site plan approval from the Planning Board on May 2, 2017](#), and subsequently received [Planning Board approval on November 20, 2018](#) for an amendment to the approved site plan. Portions of the civil work as proposed will occur in the flood zone which will require a floodplain development permit along with any applicable federal and state approvals; the [current FEMA FIRM](#) designates the flood zone elevation at 386'.

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Review the information in this memo and the [submitted application materials](#); create a checklist of additional items the Board will require if any from the applicant in order to facilitate its deliberations, determine whether a public hearing will be required, and determine which of the following public notice procedures will be required if a public hearing will not be required: posting of the subject site and/or notice to property owners within 500' of the subject property. Alternatively, the Planning Board may waive further site plan review based upon the information provided in the sketch plan per [CTU 212-19.C.5](#).

EXHIBIT 4



Planning Board
Zoom Hybrid Meeting
Meeting Minutes Draft
March 05, 2024
Approved: _____

Board Members Present: Chair Pete Angie, Mo Klein, Linda Liddle, Bart Gragg, Karl Klankowski

Board Members Present on Zoom: Rebecca Schneider

Quorum Present

Applicants Present: Michael Hamilton, Rebecca Hamilton, Steve Terwilliger, Kenneth Kearn, Ed Crossmore, Deena Crossmore, Andy Sciarabba, Noah Demarest

Town Board Members Present: Michael Boggs

Town Staff Present: Niels Tygesen, Mollie Duell

Members of the Public Present: Mason Peck, Orion Peck

Proceedings

Chair Pete Angie called the meeting to order at 6:59 PM at Town Hall.

Approval of Agenda

Chair Angie requested that the Bennett subdivision be removed from the agenda.

Motion: Klein motioned to approve the amended agenda; Gragg seconded.

Vote: Chair Angie, aye; Liddle, aye; Gragg, aye; Klein, aye.

Motion Carried.

Approval of Past Minutes

Motion: Gragg motioned to approve the February 20 Planning Board meeting minutes as written; Liddle seconded.

Vote: Liddle, aye; Gragg, aye; Klein, aye; Schneider, abstain; Chair Angie, abstain.

Motion Carried.

Privilege of the Floor

No members of the public addressed the Board pertaining to items not on the agenda.

Old Business Items

A. MGSUB2401-01: Hamilton 2 Lot Cluster Land Division Preliminary Plat Review

The applicant and property owner, Michael & Rebecca Hamilton, applied for a two-lot cluster subdivision for the subject site to subdivide the existing 18.67 acre lot into 2 lots. The A/R zone requires a minimum lot area of 2 acres, 200 feet of lot depth, and 400 feet of lot width at the front lot line per the Code of the Town of Ulysses ([CTU 212-29](#)). The current parcel has approximately 654 feet in lot width and one of the proposed lots will have 250 feet of lot width. [CTU 212- 142.4.D.7.f](#) grants authority to the Planning Board to deviate from the dimensional standards of CTU 212-29, including minimum lot width, provided there is adequate lot area for the siting of on-site wells and on-site wastewater treatment systems.

Chair Angie reviewed the information discussed at the February 20 meeting, during which the Planning Board discussed the conservation goals of the owners and the reasons for pursuing a cluster subdivision instead of a minor subdivision. Creating a flag lot in a minor subdivision would impact the location that is

currently used as a hay field.

Chair Angie stated that the application is missing a delineated survey map showing the location of conservation areas as well as language about the conservation areas for the deed.

Schneider noted that buffers must also be included in the map.

Liddle asked how an easement would be codified. Tygesen spoke about a recent subdivision where one of the subdivided parcels had a conservation easement with Finger Lakes Land Trust (FLLT) and explained that it would be added into the deed and referenced on the plat map.

Liddle asked if there are other options besides working with a conservation trust, and if this would be typical to ask for any cluster subdivision. Tygesen replied that this is only one option, and a deed restriction without working with a conservation trust is also possible.

Schneider explained that when FLLT takes easements, they generally require \$10,000 for management costs, and property owners will need to incorporate such expenses in their strategy.

Liddle asked if the land can be farmed under an easement. Schneider explained that this depends on the specific arrangement that is made for any subject property. Wetlands and associated buffers are already protected, but the extra forest area and other factors can be negotiated and decided by the FLLT.

Chair Angie suggested that options should be explored and considered.

Steve Terwilliger expressed concern that the process would become too complicated by working with a land trust.

Chair Angie stated that he wants to see the area to be preserved delineated on the map, by a licensed surveyor or landscape architect.

Terwilliger explained that the cost of bringing in a surveyor prematurely adds significant expenses for the owners.

Discussion ensued over survey map requirements.

Chair Angie noted that this is a town code requirement for approval.

Gragg asked at what point the delineation needs to be completed.

Liddle suggested discussing the easement with the town lawyer to verify that it is possible before drawing it into a map.

Chair Angie suggested that the delineated conservation area should include the wetlands and associated buffers, the current land being farmed, and the additional forest area.

Klein noted that the location of the house and roads will also need to be included on the map.

Schneider suggested that further clarifying language should be added that explains that no structures should be allowed in the hayfield area.

Klankowski asked if there is a percentage specification of how much area needs to be included in the easement. Klein responded that there is no minimum requirement, just that the area is clearly delineated on the map.

Klein asked if it would be acceptable for the applicants to return with the language and a crude map that could later be completed by a surveyor after being approved by the Planning Board.

Gragg stated that he would be comfortable with this if the dimensions are clear on the map.

Klein agreed that this would work, and then a surveyor can finish the job.

Schneider left the meeting at 7:24.

Tygesen noted that survey requirements can be added as a condition of the preliminary review and approval for the final subdivision review.

Chair Angie stated that he would like to see the survey map for a public hearing and final approval. Tygesen stated that Town Legal can review the deed language to be provided by the applicants.

B. SPR2401-02: Kearl Site Plan Amendment, Sketch Plan Review

The applicant and property owners, Kenneth and Patricia Kearl, applied for a site plan amendment for the subject site to permit civil work within the HpE steep slope overlay including grading, excavation, and fill of approximately 50cy, retaining walls, steps, rip-rap, gabions, and realignment of the driveway. The LS zone requires site plan approval from the Planning Board for excavation, grading, or fill greater than 10cy per the Code of the Town of Ulysses ([CTU 212- 48.D.3](#)). The applicant previously received [site plan approval from the Planning Board on May 2, 2017](#), and subsequently received [Planning Board approval on November 20, 2018](#) for an amendment to the approved site plan. Portions of the civil work as proposed will occur in the flood zone which will require a floodplain development permit along with any applicable federal and state approvals; the [current FEMA FIRM](#) designates the flood zone elevation at 386'.

Chair Angie reviewed the history of the project. A site plan proposal was partly approved in 2017 and 2018, which included the two separate staircases, landing, and part of the driveway. The current application is to amend the road going down to the lakeshore to a pad that is already built.

Kearl stated that the prior amendment was for the installation of a stormwater system, because ultimately the drainage swale that was conceived was eliminated due to the construction north of the property.

Chair Angie expressed concern for the current state of the site, where there is a significant amount of land disturbance and excavation for both sets of stairs, as well as a very steep ground with no tree cover and not a lot of vegetative cover. There is currently a significant amount of exposed soil, and a stop work order was issued on the driveway extending down to the lake. There is already significant erosion occurring. Chair Angie asked the Planning Board to review what has already been approved and decide what measures need to be taken to further protect the area.

Kearl explained his intentions for creating the driveway and described the steep grade going down to the property. This area was difficult to maintain, and dangerous to walk over.

Chair Angie stated that the stop work order was issued because of the gravel that has been deposited at the top of the slope, and further expressed doubt that the unapproved driveway would stop runoff, because the steep grade and heavy rains will lead to the dirt and gravel will ending up in the lake.

Liddle asked why two access routes are necessary, noting that the Board wants to minimize impact. Kearl stated that he needed to access the lake to build a dock and believed that a driveway would be easier to maintain than grass. There is currently no dock on the property.

Chair Angie explained that adding vegetation with root structures will help stabilize the slope and slow the heavy erosion already occurring. For lakefront constructions such as docks, it is possible to bring construction equipment and materials in on a barge from the lake.

Klankowski asked if there was a staircase previously; Kearl responded no.

Chair Angie asked about the rip-rap. Kearl stated that there are limestone blocks that he is planning to stack along the landing.

Liddle asked what the approved stairway was supposed to be constructed from. Chair Angie and Liddle reviewed the original map. Kearl stated that the staircase plans have been changed from wood to stone. Liddle asked if this would be better or worse than wood. Chair Angie stated that this will cause more disturbance initially but is maybe a better solution in the long run. Gragg agreed that if the stone staircase is constructed properly, it will outlast a wooden set.

Klankowski described a solution to mitigate erosion from stormwater that he has used on other properties that used 4 inches of drainage tube to control the flow of runoff and suggested leading a tube such as this into the existing swale on Kearl's property. Liddle asked what maintenance would be required. Klankowski stated that the tube he has had on his property for 3 years has not yet required maintenance.

Klein stated that he reviewed shoreline stabilization recommendations from the NYDEC and retaining walls are no longer encouraged. Kearl stated that he is not building a retaining wall, just placing stones.

Chair Angie asked if the pad was approved by FEMA and the US Army Corps. Kearl stated that this happened around 2009 or 2010.

Tygesen confirmed that the driveway was delineated on the previously approved site plan, but only to a certain point. Chair Angie reviewed the previous plan and confirmed it is not delineated much farther than the edge of the house.

Discussion ensued regarding changes from the previously approved site plan.

Klein noted that he would like to hear Schneider's thoughts before moving forward.

Chair Angie suggested that Klein and Schneider should visit the site and stated that he would like the full board to be present for the next review at the March 19 meeting, during which a decision could potentially be made.

Motion: Liddle motioned to schedule further discussion and a public hearing for March 19; Gragg seconded.

Vote: Chair Angie, aye; Liddle, aye; Gragg, aye; Klein, aye.

Motion Carried.

New Business Items

A. SPR2401-01: Crossmore ADU Sketch Plan Review

The applicant and owner, Deena and Edward Crossmore, propose to construct a new detached accessory dwelling unit (ADU) approximately 960sf with improvements to an existing driveway curb cut. Per the Code of the Town of Ulysses [UTC 212-44.A.2](#), ADUs are permitted in the LS zone subject to the provisions of [CTU 212-128](#), but require site plan review when within a unique natural area or slope overlay area, pursuant to the provisions listed under [CTU 212-19](#).

Crossmore described the current layout of the site and explained that they currently live in a renovated boathouse on the same parcel. The number of stairs and long driveway has become increasingly challenging, especially when there is snow and ice. The Crossmores propose to build an accessory dwelling unit about ¾ way up the hill, where the Crossmores would live about 3 months a year, and the new accessory dwelling unit would be used by family visiting in the summer.

Chair Angie asked if there are any intermittent streams on the property. Crossmore stated that there is a stream about 75 feet from where the house would be built.

Discussion ensued over stream and wetland maps.

Chair Angie asked about stormwater management plans. Demarest explained that they would like to soften the grading of the driveway. Sciarraba spoke about plans for new vegetative grass swales and noted that the driveway will be adapted from the existing driveway and is not completely new.

Demarest stated that an ADU is permitted below a certain size; this new home will be single story building with two bedrooms and a living area.

Liddle asked about the plans for a basement. Demarest explained that the basement will be unfinished and used for storage. The basement would be opened from the outside and is intended to be accessible for an aging in place living space.

Demarest spoke about the driveway and explained the grading is too steep for a permeable surface to be beneficial since the water will runoff before it is absorbed. Sciarraba added that a grading plan can be provided.

Gragg asked where water will be sourced from. Crossmore replied that this has not been decided, but water could possibly be piped up from the lake.

Discussion ensued over the timeline to produce the requested materials. Chair Angie suggested that any changes to the current plans would not be significant.

Klankowski noted that the other houses in the area are further down by the lakefront.

Motion: Klein motioned to schedule a public hearing on April 16; Gragg seconded.

Vote: Chair Angie, aye; Gragg, aye; Liddle, aye; Klein, aye.

Motion Carried.

Board Member Reports

Michael Boggs explained that he recently attended the Association of Towns Annual Meeting and Training and asked about the wetland maps and is still working on having a clear answer for the Board. Other concerns include code enforcement in the ag district and maintenance of signs in Ulysses.

Chair Angie stated that he and Schneider had attended the ag district hearing with Tompkins County Legislature to follow up on their recommendations for the ag district.

Motion: Klein motioned to adjourn; Liddle seconded.

Vote: Chair Angie, aye; Liddle, aye; Gragg, aye; Klein, aye.

Motion Carried.

ADJOURNED 8:45 PM

Mollie Duell
Planning Board Secretary

STATE OF NEW YORK
SUPREME COURT: COUNTY OF TOMPKINS

SHARI SPROLE and ROBERT SPROLE,

Plaintiffs,

**AFFIRMATION OF
SHARI SPROLE**

v.

Index No. EF2020-0413

PATRICIA KEARL and KENNETH KEARL,

Defendants.

SHARI SPROLE, affirms the truth of the following under the penalties of perjury:

1. I am a Plaintiff in the above-entitled action and as such I am fully familiar with all the facts and circumstances of this matter as set forth herein.

2. I make this affirmation in support of my motion for leave to renew pursuant to CPLR § 2221.

3. On March 4, 2024, Robert Sprole and I were order to pay Defendants' attorneys' fees and costs in the sum of \$2,638.85, and were denied injunctive relief to prevent Defendants from engaging in construction and site work on our right-of-way and parking area easement.

4. I requested that my attorney secure a preliminary injunction after discovering that Defendants were operating heavy equipment and grading sections of my parking area without permission.

5. My belief was that Defendants were constructing a path to Cayuga Lake over and across my parking area without receiving the necessary permits and approvals from the Town of Ulysses. I was worried about the effect that Defendants' actions would have on my rights in this case.

6. In speaking with my attorney, I learned that Kenneth Kearn denied my allegations and claimed to simply be engaging in landscaping activities that required no additional permits or approvals.

7. I understood that the Court reached its decision based on Kenneth Kearn's representations. Although I did not believe that Kenneth Kearn was telling the truth, I was willing to abide by the Court's decision.

8. On March 9, 2024, Robert Spole and I received a Notice of Public Hearing in the mail from the Town of Ulysses for a Permit Application submitted by Kenneth and Patricia Kearn dated January 29, 2024. Attached as **Exhibit 1** is a copy of the notice we received.

9. The Permit Application submitted by Defendants for consideration by the Town of Ulysses Planning Board at the Public Hearing directly contradicts the representations Kenneth Kearn made to the Court.

10. I was not aware of the Defendants' Permit Application or the survey Defendants submitted in support of the Permit Application prior to March 9, 2024.

11. I believe that I have an obligation to bring this matter to the Court's attention for reconsideration of the prior decision, which was issued in reliance on Kenneth Kearn's misrepresentations.

WHEREFORE, I respectfully request an order pursuant to CPLR § 2221: (1) granting Plaintiffs leave to renew the prior motions identified as Motions No. 4 and 5 and, on renewal, (2) granting Plaintiffs' Motion No. 4 for injunctive relief, (3) denying Defendants' Motion No. 5 for attorneys' fees and costs, (4) imposing sanctions on Defendants, (5) awarding Plaintiffs attorneys' fees and costs, and (6) granting such other and further relief as this Court deems just and proper.

I affirm this ____ day of March 2024, under the penalties of perjury under the laws of New York which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Shari Sprole

EXHIBIT 1



TOWN OF ULYSSES PLANNING BOARD

Notice of Public Hearing

PROJECT FILE SUMMARY

Project Name: Kenneth Kearl Site Plan Amendment
Project File No.: SPR2401-02
Applicant: Kenneth Kearl
Project Address: 1513 Taughannock Blvd
Tax Parcel #(s): 18.-1-19.8
Zoning: LS: Lake Shore Zone, HpE (Howard and Palmyra soils, 25% to 35% slopes) and Ro (Rock outcrop) Steep Slope Overlay, UNA 61: Willow Creek Glen and Lake Slopes

PROJECT DESCRIPTION

The applicant and property owners, Kenneth and Patricia Kearl, applied for a site plan amendment for the subject site to permit civil work within the HpE steep slope overlay including grading, excavation, and fill of approximately 50cy, retaining walls, steps, rip-rap, gabions, and realignment of the driveway. The LS zone requires site plan approval from the Planning Board for excavation, grading, or fill greater than 10cy per the Code of the Town of Ulysses ([CTU\) 212-48.D.3](#). The applicant previously received [site plan approval from the Planning Board on May 2, 2017](#), and subsequently received [Planning Board approval on November 20, 2018](#) for an amendment to the approved site plan. Portions of the civil work as proposed will occur in the flood zone which will require a floodplain development permit along with any applicable federal and state approvals; the [current FEMA FIRM](#) designates the flood zone elevation at 386'. The Board previously discussed the proposal during its meeting on [March 5, 2024](#).

PUBLIC COMMENT PERIOD

The application is available for inspection at 10 Elm St., Trumansburg or online at: <https://townofulyssesny.gov/calendar/>. Written comments on the application are solicited and all interested parties or their representatives will be afforded an opportunity to submit written and/or oral comments during the hearing. Written comments may be sent in advance to the Town Planner at 10 Elm St., Trumansburg NY 14886 or via email to planner@townofulyssesny.gov by 3pm on March 19, 2024.

PUBLIC HEARING

Date & Time: Tuesday March 19, 2024 at 7:00 PM.
Location: Town Hall, 10 Elm St., Trumansburg.
Videoconferencing will be used, and the public may either join in person at Town Hall or via Zoom at: <https://zoom.us/j/96593175470>
Meeting ID: 965 9317 5470
+1 646 876 9923 US (New York)

The Town strives to provide accommodations for individuals with disabilities. Please contact our office at least two days prior to the scheduled event if accommodations are needed.

K GORGE



TAX MAP NO. 18-1-194
 ROBERT R. SPROLL, III & SHARI KEARL
 INSTRUMENT NO. 2016-10776

TAX MAP NO. 18-1-194
 KENNETH & PATRICIA KEARL
 INSTRUMENT NO. 4-0085-001

2ND FLOOR LIVING AREA
 LOWER LEVEL GARAGE
 2 STORY HOUSE NO. 1517

FOUNDATION LINE
 GARAGE
 1 STORY HOUSE WITH WALK OUT BASEMENT NO. 1513

CAYUGA LAKE

PROPOSED STEPS
 WIDTH 16" TREAD
 (TYPICAL)

1 B.M. ELEVATION 395.9'
 TOP OF DRILLED WELL

PROPERTY LINE

TOP OF BANK

PROPERTY LINE

0.94 E 77° N

N 1/2 1/4 N/O

73.11'

PROPERTY LINE

HEX 6"

74°

PRESENT SHOEBELINE
 (LAK. SS. 2024)

PROPOSED DOCK

BOTTOM OF BANK

PROPOSED STACKED STONE STAIRWAY

RAISED BED PLANTER

RAISED BED PLANTER

RAISED BED PLANTER

GRAVEL PARKING

GRAVEL DRIVEWAY

PROPOSED GRAVEL DRIVE

PROPOSED GRAVEL DRIVE

CONCRETE DRIVEWAY

PAVED AREA

CONCRETE DRIVEWAY

ELEC. METER

U/G SERVICES

APPROX. LOCATION BURIED CULVERT PIPE

5" TALL VINYL BOARD FENCE

PROPOSED 1/2" DIA. CULVERT PIPE

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