

CONSOLIDATED ZONING BOARD OF APPEALS
TOWN OF HIGHLANDS, VILLAGE OF HIGHLAND FALLS

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In the Matter of

KOPALD AFFIDAVIT

DEBORAH KOPALD,

Applicant,

For a Decision Pursuant to New York Town Law
Article 16 and Town of Highlands Code Article VII
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1. I, Deborah Kopald, resident of 88 Forest Hill Road, Fort Montgomery, NY, whose property is adjacent to the Sec/Lot Blk 11-1-1.52 of concern (owned and under construction by David Tonneson, Deborah Tonneson and Jaidin Paisley-Tonneson ("Tonnesons") who, on information and belief, currently live at 35 Hemlock Street, Fort Montgomery, NY), submit this affidavit in support of my aggrieved neighbor appeal pending before the Zoning Board of Appeals requesting a reversal of the granting of certain permits and any certificate of occupancy issued by the Town's Building Inspector/Code Enforcement Officer to the Tonnesons. The Tonneson home footprint is 282 feet from my house and 173 feet to my lot boundary. My home is 180 feet from nearest part of the Tonneson land clearing.

2. The accompanying letter brief underscores my contention that several permits, approvals and variances were conditions precedent to the Tonnesons even applying for their building permits and a certificate of occupancy. This affidavit discusses the particularized impacts and injury to me resulting from the failure of the Tonnesons to obtain same. The attached exhibits are comprised of the affidavits of Michael W. Finkbeiner, and are in further support of my appeal.

3. The failure of the Tonnesons to seek proper permits and approvals before filing for building permits resulted in injury to me and deprived me of proper notice and the ability to weigh in to defend my interests and ensure the development of the property in a manner that would mitigate

the impacts to me, as the Town's Code procedures provide. The failure to obtain such permits and approvals resulted in the subject modular house being placed particularly close to my property with no regard for the Zoning Code §§ 210-2(A), (B), and (E) which seek to promote orderly growth, protect the established character and the social and economic well-being of private property such as my property, and to prevent overcrowding of land or buildings (when other options were available on a 13.926 acre parcel). Also, because an excessive number of trees were illegally cut without proper permits being sought (or being demanded by the Town), the Tonneson house and yard is visibly intrusive from the vantage point of my property, resulting from a huge gash in the tree line from the end of my yard caused by the Tonneson development. The illegal construction has marred the visual and physical integrity of the surrounding forest, including that portion of the forest on my property, as well as my privacy. It has created discontinuity in the landscape and disrupted the integrity of the neighborhood generally, and my property in particular, with the result, among other things, of reducing my property values. The rest of the neighborhood on Forest Hill Road, including my property, comprises the upper part of the mountain with houses ensconced in trees, not the huge gash in the mountain for a house irregularly placed on the subject property. The excessive number of trees removed during a consecutive 12-month period greatly exceeded more than three erect perennial trees with a definitely formed crown of foliage, DBH of at least 10 inches, and a total height of well over 13 feet from the ground."

4. Furthermore, the illegal tree destruction has also caused more light to shine on my property. The excess light is annoying and intrusive visually, and the marked difference is palpable in my driveway. It is an obvious fact that the lack of tree cover and excessive direct sunlight will cause my property to increase in heat and cause my cooling bill to go up in the summer.

5. Another impact/injury has been the increase in noise from the Tonnesons' property

resulting from this gash in the forest. While the overall decibel level is higher because of the lack of the noise deadening buffer of trees, the other effect is that man-made sounds drown out the prevalent natural animal sounds I otherwise heard on my property before the Tonnesons' development of their property without securing the necessary permits and certificate. Notably, most traffic and train noise were rarely heard on my property. Now, with the illegal development by the Tonnesons I can literally hear the rumble of trains on the railroad tracks and the sound of trains braking. I can now hear, unlike prior to the Tonneson development, both the frequent commuter and the freight trains as they pass by. I can hear rush hour traffic on State Route 9W inside my home, whereas prior to the Tonnesons' development I could not hear it at all indoors; the Tonnesons' loud leaf blowing equipment is also more readily heard than if a noise deadening tree buffer remained. These impacts and injuries are quite significant. It is affecting my quality of life and the value of my home and property to me. If the rules had been followed, the forest would not have been decimated and these adverse noises would not be noticeable and prevalent as has been the situation for over 45 years. I am asserting that the development of their property be done with the requisite permits and approvals which would result in the significant mitigation of these impacts to me.

6. Furthermore, there are fewer animals traversing the area since the forest has been decimated. While I generally have multiple animal sightings per week, since the spring has started, I haven't seen any. One obvious example are fireflies, which are usually out this time of year in the early evening and that would frequent my yard. They are completely gone. The obvious reason why is because of the excess destruction of the nearby forest. Besides being pleasant and an example of interaction with nature that is soothing, they are known to eat insects and other pests. Of note, there are many more mosquitoes on my property right now than before.

7. I also have a demonstrated and recognized sensitivity to electromagnetic radiation, levels

of which drop with the square of distance. Any transmitters, such as wireless technology (WiFi) and utility smart metering, placed on the Tonneson property closer than would have otherwise occurred had they been required to proceed through a public and probing Planning Board process to better site the home with adequate buffers, will create a further nuisance to me. If the Tonneson house was either required to be further away from my home, and/or there was more tree coverage dissipating the signal, the impact would have been greatly diminished, if not eliminated. After the trees were cut, wireless transmission signal that did not exist in my home previously now literally and negatively affects me in home. This was confirmed independently with an Acoustimeter radiation measurement device. I have been forced to install expensive radiation blocking shielding on my windows that, although reducing the electromagnetic radiation in some of my rooms, has not eliminated the problem. More expensive remediation is necessary to fix some of the rooms, including stapling materials to the exterior of my house. In any case, the remediation is not a perfect fix, and the environment has been degraded just by the unnecessary cutting of the trees, to say nothing of any transmitters that exist or could go on the Tonneson property.

8. By this Board's reversal of the wrongfully issued permits and any certificate the Tonnesons will be required to (i) proceed to the Planning Board to obtain a soil erosion permit (Town Code Chapter 101), and have reviewed and approved a stormwater pollution prevention plan for this land development (Town Code chapter 164), (ii) proceed to this Board for a Town Law § 280-a variance, and (iii) construct a driveway in accordance with State Fire Code. (septic?) These reviews and approvals will ensure, as is intended by these Code provisions and statute, that the Tonneson development will have mitigated its impacts, which necessarily will obviate the present impacts to me that have occurred because of the lack of such required reviews.

9. In support of my revised submission to the ZBA I attach the following exhibits:

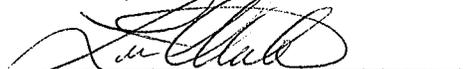
1. Exhibit "A": Two decisions of New York Supreme Court Justice Onofry – (i) Amended

9. In support of my revised submission to the ZBA I attach the following exhibits:
1. Exhibit "A": Two decisions of New York Supreme Court Justice Onofry – (i) Amended Decision, Order and Judgment (Index No. 7757/19), dated February 7, 2020, and (ii) Amended Decision, Order and Judgment (Index No. EF00818-2020), dated February 7, 2020.
 2. Exhibit "B": Two Building Permits (a September 5, 2019 initial foundation system permit, and an amended permit dated September 30, 2019, allowing the construction of a single-family home) issued by Town of Highlands Building Department.
 3. Exhibit "C": Finkbeiner affidavit (7 pages, with exhibits), dated January 24, 2020.
 4. Exhibit "D": Finkbeiner affidavit (5 pages, with exhibits), dated December 18, 2019.
 5. Exhibit "E": An additional Finkbeiner affidavit (1 page, with exhibits), also dated January 24, 2020.
 6. Exhibit "F": Childs affidavit, dated October 12, 2019.
 7. Exhibit "G": Finkbeiner affidavit (3 pages), dated January 29, 2020.
 8. Exhibit "H": Drone & Ground Photos
 9. Exhibit "I" Affidavit of Susan Kopald



Deborah Kopald

Sworn to before me this
8th day of June 2020


Notary Public

LISA ALVARADO
Notary Public, State of New York
No. 01AL6101150
Qualified in Orange County
Commission Expires November 3, 2023

EXHIBIT A

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, J.S.C.

SUPREME COURT : ORANGE COUNTY

-----X
In the Matter of the Application of
DEBORAH KOPALD,

Petitioner,
For a Judgment Pursuant to CPLR Article 78

To commence the statutory time
period for appeals as of right
(CPLR 5513[a]), you are advised
to serve a copy of this order, with
notice of entry, upon all parties.

- against -

Index No. 7757/19

THE TOWN OF HIGHLANDS, NEW YORK, DAVID
TONNESON, DEBORAH TONNESON, JAIDIN
PAISLEY- TONNESON,

Respondents.

**AMENDED DECISION,
ORDER and JUDGMENT**

Motion Date: December 4, 2019

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The following papers numbered 1 through 25 were read and considered on (1) a motion by the Respondents David Tonneson, Deborah Tonneson and Jaidin Paisley-Tonneson, pursuant to CPLR 7804(f) and 3211(a)(1), to dismiss the proceeding insofar as asserted against them; and (2) a motion by the Respondent Town of Highlands, pursuant to CPLR 7804(f) and 3211, to dismiss the proceeding insofar as asserted against it.

Amended Notice of Petition and Petition- Kopald Affidavit- Exhibits 1-9	1-4
Notice of Motion- Magrino Affirmation- Exhibits A-D- Tonneson Affidavit- Exhibits A-D ...	5-9
Affidavit in Opposition- Kopald- Exhibits 1-6	10-11
Affirmation in Reply- Magrino- Exhibits A& B	12-13
Affidavit in Sur-Reply- Kopald- Exhibits 1-4	14-15
Notice of Motion- Matsler Affirmation- Terwilliger Affidavit- Exhibits A-C	16-19
Affidavit in Opposition- Kopald- Exhibits 1-6	20-21
Affirmation in Reply- Matsler- Exhibits A & B	22-23
Affidavit in Sur-Reply- Kopald- Exhibits 1-4	24-25

Upon the foregoing papers, it is hereby,

ORDERED, ADJUDGED and DECREED, that the motions are granted and the proceeding dismissed.

Introduction

The Petitioner Deborah Kopald owns property adjacent to property owned by the Respondents David Tonneson, Deborah Tonneson and Jaidin Paisley-Tonneson (hereinafter “TX”) upon which they are building a single family home.

The Petitioner commenced this action to halt the construction on several grounds, including that the building permits should not have issued without approval from the Planning Board.

The Respondents have each moved to dismiss the petition on several grounds, including that the Petitioner failed to exhaust her administrative remedies.

The motions are granted.

Factual/Procedural Background

On May 23, 2019, the Tonnesons purchased the subject property from relatives of the Petitioner (Town’s Motion, Exhibit A). The property, listed as and located on Poplar Street, is identified as Sec-Blk-Lot 11-1-1.52.

On or about July 12, 2019, the Building Department of the Respondent Town of Highland Falls issued the Tonnesons a building permit to “drill well for future single family home” (Town’s Motion, Exhibit B).

On or about September 5, 2019, the Building Department issued the Tonnesons a building permit to “install foundation system according to drawings by Talcott Engineering Design, PLLC” (Town’s Motion, Exhibit B).

By amendment dated September 30, 2019, the Building Department issued the Tonnesons a building permit to “construct single family home” (Town’s Motion, Exhibit B).

All building permits are signed by Bruce Terwilliger, Code Enforcement Officer for the Town.

The Petitioner commenced this proceeding, *inter alia*, to stop the construction and other activity on the subject property.

The Petitioner alleges as follows.

The subject property is 13.926 acres, and formerly covered with trees.

However, she alleges, excessive cutting of trees and noise from the subject property has disturbed her peace, view and light, and local wildlife.

Further, she alleges, the building permits for the construction were issued in violation of relevant state and local codes.

First, she alleges, Town Law §280-A, prohibits the issuance of a building permit unless the building to be constructed is accessible by a road duly placed on a official map or plan.

Here, she alleges, the home being built is only accessible by a “proposed” road.

Further, she alleges, the subject project was never platted and, therefore, has never been approved for residential use.

Thus, she alleges, the Tonnesons must seek the same from the Planning Board before building on the lot. Pursuant to the same, the Town Code requires that all easements be documented (Section 404.07); that there be topographical mapping and a plan for drainage (Section 305.07); that there be a final plat drawing (Section 402.06); and that there be utility systems for the entire plat (Section 405.06).

Further, the Petitioner notes, although, pursuant to Section 210-21 of the Town Code, the Planning Board need not approve a site plan if the proposed construction is for a one-family

residence or two-family detached residence, plus accessory buildings, here: “A foundation is not accessory to a house, but integral to it, so the permit for the foundation was not allowed to be issued without Planning Board Review.” Thus, she alleges, the building permit issued for the foundation was “illegal.”

In addition, she alleges, the construction should not have occurred without SEQRA review.

Further, she alleges, the site plan cannot be certified, as here, by a surveyor. Rather, a site plan must be approved by an engineer. Here, she opines, this was not done because no legitimate engineer would have signed off on the Tonnesons’ “illegal site.”

The Petitioner alleges that a septic tank was also installed at the property prior to approval for the same. Further, she alleges, there is no evidence that any of the required tests were performed for the same.

Similarly, she alleges, the Tonnesons failed to comply with erosion and sediment control code provisions.

As a first cause of action, the Plaintiff/Petitioner alleges that the Town acted in excess of its jurisdiction because it issued a building permit for a foundation without requiring Planning Board review, and because it allowed a building on a lot with no approved street.

As a second cause of action, the Plaintiff alleges that the Town acted in excess of its jurisdiction because it issued a building permit for a foundation without complying with erosion and sediment requirements, and platting and subdivision requirements.

Wherefore, she alleges, the Court should rescind the building permit and enjoin further construction on the property until the TX have received approval from the Planning Board.

In support of her petition, the Petitioner submits, *inter alia*:

(1) Aerial photographs of the area in question.

(2) An affidavit from Michael Walter Finkbeiner, a professional and licensed land surveyor and forester. Finkbeiner, *inter alia*, details various alleged flaws and issues with the subject property and plans for the same.

The Tonnesons move pursuant to CPLR §7804(f) and §3211(a)(1) to dismiss the proceeding insofar as asserted against them.

In support of their motion, they submit an affirmation from David Tonneson.

Tonneson notes that he and his wife, the Respondent Deborah Tonneson, live on property adjacent to the subject property, which they purchased to build a home for their daughter, the Respondent Jaiden Paisley-Tonneson.

On July 12, 2019, he asserts, he was granted a permit to construct a well on the property for future residential use.

On September 4, 2019, he applied for and received a permit to install a foundation for the home in accordance with plans prepared by Talbot Engineering Design, PLLC.

That day, he commenced construction of the foundation.

On September 30, 2019, he commenced construction on the building.

All of the above, he asserts, was pursuant to valid building permits issued by the Town.

Tonneson notes that he acted as general contractor on the project.

The home being built is a “modular” building. Thus, sections are constructed off-site and assembled on-site.

Tonneson avers that he had personally met with the Town Building Inspector, Bruce

Terwilliger, on several occasions, and that Terwilliger had been to the site on several occasions. Tonneson notes that he had not been issued any violations concerning the project.

Nonetheless, he asserts, the Petitioner has “harassed” him and his family by, among other things, demanding that construction cease, trying to control the hours construction proceeded, and calling the police to report “violations” of the Town code. Indeed, he notes, the police had been to the property on several occasions.

Tonneson avers that he has been in the construction business for 50 years, and was fully aware of all codes and laws concerning the same.

He argues that the Petitioner is wrong that the project required Planning Board approval, or an erosion and sediment control plan. Rather, he asserts, the construction has been in accordance with all applicable codes and laws.

Finally, he notes, it was his understanding that neither the Petitioner nor anyone else had filed an administrative challenge to the issuance of the building permits at issue. Thus, he argues, the Petitioner failed to exhaust her administrative remedies.

The Town also moves to dismiss the petition insofar as asserted against it.

In support of the motion, the Town submits an affirmation from the Town Building Inspector, Bruce Terwilliger.

Terwilliger avers that he is fully familiar with all relevant code and zoning laws, and was personally familiar with the subject property.

He examined the Tonnesons’ applications for permits to install a foundation, well and septic system at the property, and to construct a modular home. The application included a (1) plot plan by their engineer, Charles Brown, P.C. of Talcott Engineering Design PLLC; (2) a

survey; and (3) a New York State Compliance Certificate approving the modular home design. Based on the same, he issued the permits for the project.

Terwilliger avers that the Town Code has no special provisions for modular homes.

Terwilliger notes that he had inspected the subject property based on complaints from the Petitioner about noise. However, he avers, he observed nothing out of the ordinary at the site, and nothing that indicated a violation of the Town Code or the need for an erosion control permit. Further, he asserts, the clearing of trees at the site appears to be no more and no less than what was needed to construct the home.

Terwilliger avers that he, not the Planning Board, has the authority to issue permits for one and two family homes.

In sum, he argues, the project at issue is in compliance with all codes and laws, and there is no basis to halt the construction or rescind the building permits.

In opposition to the Tonnesons' motion, the Petitioner notes that exhaustion of administrative remedies is not always required. Rather, there need be no exhaustion of administrative remedies when the conduct at issue is unconstitutional or wholly beyond the grant of the agency's power; or pursuit of administrative remedies would be futile or would cause irreparable harm.

Here, the Petitioner asserts, she could not seek administrative review because she could not prove what was going on with the subject property without access to the same. Had she gone to the Zoning Board of Appeals (hereinafter "ZBA"), she argues, "more destruction would be occurring." Further, she asserts, she would not have been able to bring all issues before the ZBA on a complete record. The Petitioner notes that she cannot obtain disclosure from the ZBA.

Further, she opines, there would have been “plenty of opportunity for evidence destruction,,” which has occurred and will continue to occur.

Fundamentally, she argues, the subject property is an unplatted lot that the Planning Board has never approved for subdivision or residential development.

Further, she contends, the Town Law prohibits the building of a home, as here, not accessible by an approved road.

In addition, she argues, because obtaining approval from the Planning Board for platting requires public input, and that there has never been an application for such approval, her constitutional rights have been “grossly violated.”

The Petitioner argues that the Tonnesons have also committed insurance fraud, as their application for insurance on the subject property indicates that it is located Poplar Street, when it is not. Indeed, she asserts, the Court should refer the Tonnesons to the District Attorney and to the State Insurance Commissioner.

Given all of the above, she argues, a halt to the project is now more important than ever.

The Petitioner notes that the Respondents object to her referencing allegations in her amended petition, and argue that only the allegations in the original petition are properly before the Court. However, she argues, the amended petition is properly before the Court, as the original petition was amended as of right pursuant to CPLR §3025. Thus, she asserts, the Respondents should either withdraw their motions, or address the allegations of the amended petition.

The Petitioner argues that issues at the subject property include that there has been an extensive cutting of trees. Indeed, she asserts, although the code allows the cutting of trees

within 40 linear feet of outside walls, and the Tonnesons had cut down trees up to 140 feet from the same.

In sum, she argues, the Tonnesons' motion should be denied.

In opposition to the Town's motion, the Petitioner raises essentially the same arguments *supra*.

In reply, the Tonnesons submit an affidavit from Terwilliger.

Terwilliger asserts that there is public road access to the right of way leading to the subject property, to wit: New York State Route 9W leads to Franklin Street, which leads to Hemlock Street, which connects to the right of way to the subject property.

Further, he notes, the right of way is at least 15 feet wide, which, according to the Town's fire chief, is sufficient for firefighting activities.

The Tonnesons also submit an affirmation from counsel, Michael Matsler.

Matsler argues that the amended petition is not properly before the Court, and that CPLR 3025 is not applicable.

In reply, the Town submits an affirmation from counsel, Robert Magrino.

Magrino argues that, contrary to the Petitioner's contention, no exception is present to the requirement that she exhaust her administrative remedies. Further, he asserts, the Petitioner's amended petition is not properly before the Court. In addition, he argues, the Tonnesons made no misrepresentations to any insurance company. Rather, he asserts, the address of the subject property was correctly identified as Poplar Street.

Finally, he argues, the subject property has access to a public street.

The Town also submits an affidavit from Jonathan Millen, a licensed land surveyor.

Millen avers that, on or about August 30, 2019, he completed a title survey/site plan for the subject property. The survey shows that Poplar Street is a right of way and is part of the subject property. It is owned in fee by the Tonnesons, although others have a right of way over the same. Thus, he avers, the subject property has direct access to Hemlock Street, a public street.

In sur-reply, the Petitioner argues that, even if the Respondents are correct that the subject property is a legal, buildable lot, there were still the following questions: (1) whether an unplatted lot may be built upon without Planning Board approval; (2) whether a home reachable only by driving through other people's driveways may be built without Planning Board approval; (3) whether, if so, Hemlock Street a public road as required by Town Law § 280-a; and (4) whether a home be built without erosion control permits approved by the Planning Board.

In sur-reply to the Tonnesons' motion, the Petitioner argues, *inter alia*, that, even if her amended petition is not properly before the Court, she is still entitled to relief on her initial petition.

Discussion/Legal Analysis

It is hornbook law that one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law. *Town Law § 267-a[4], [5] [b]*; *Town of Highlands Code § 210-43 through § 210-46*; *Watergate II Apts. v. Buffalo Sewer Auth.*, 46 N.Y.2d 52; *Svatovic v. Town of Southold*, 156 A.D.3d 893 [2nd Dept. 2017]; *Carnelian Farms, LLC v. Village of Muttontown Bldg. Dept.*, 151 A.D.3d 845 [2nd Dept. 2017]; *Aliano v. Oliva*, 72 A.D.3d 944 [2nd Dept.. 2010].

Further, the Petitioner has demonstrated no exception to the exhaustion rule. *Watergate*

II Apts. v. Buffalo Sewer Auth., 46 N.Y.2d 52; *Vineland Commons, LLC v. Building Department of Town of Riverhead*, 165 A.D.3d 808 [2nd Dept. 2018].

Thus, all of the issues raised by the Petitioner should be addressed in the first instance by the Consolidated Zoning Board of Appeals of the Town of Highlands and Village of Highland Falls. *Town Law § 267-a[4], [5] [b]*; *Town of Highlands Code § 210-43 through § 210-46*; *Watergate II Apts. v. Buffalo Sewer Auth.*, 46 N.Y.2d 52; *Svatovic v. Town of Southold*, 156 A.D.3d 893 [2nd Dept. 2017]; *Carnelian Farms, LLC v. Village of Muttontown Bldg. Dept.*, 151 A.D.3d 845 [2nd Dept. 2017]; *Aliano v. Oliva*, 72 A.D.3d 944 [2nd Dept.. 2010].

Consequently, the motions are granted, and the petition is dismissed without prejudice to the Petitioner seeking relief before the Consolidated Zoning Board of Appeals of the Town of Highlands and Village of Highland Falls.

Finally, the Court notes as follows.

The Petitioner, acting *pro se*, has made numerous additional, voluminous, submissions to the Court. In addition to several proposed amendments to the petition, the papers include, *inter alia*, a cross motion “to correct or be deemed disregarded pursuant to NY CPLR 2001” and a “Request to Act on My Request to Reduce *Sua Sponte* Orders into Written Orders Before Ruling on Other Extant Motions and To Recuse and Vacate Return Dates.”

At a conference on the case held November 14, 2019, the Court noted that the successive motions being filed by the Petitioner were delaying and/or preventing a substantive decision from being reached on any issue, including her request for preliminary injunctive relief. Further, the Court noted, not only were some of the filings duplicative, or not in cognizable form, but also, the record was becoming unmanageable.

On December 4, 2019, after the Petitioner filed a grievance that her action was being ignored, the Court issued an order directing that all further submissions be held in abeyance. The intent of the order was to assure the Petitioner that her case was not being ignored, but rather that the Court was seeking to render a timely determination, on the merits, on her request for injunctive relief, and on dispositive motions pending before the Court that were already marked for decision. The Petitioner filed no new motions.

However, on January 1, 2020, the Petitioner purchased an index number and commenced a new action against the same Defendants (Index No. EF0000818/20). The allegations in the new petition arise from the same facts giving rise the petition at bar. Indeed, the Petitioner asks that the two actions be joined.

Further, apparently, the Petitioner also filed another related action which she withdrew.

The Court notes that it has examined all of the allegations in all of the additional submissions from the Petitioner, including the “new” action, and finds that all of the further and subsequent allegations and requests for relief are either barred by the Petitioner’s failure to have exhausted administrative remedies, or have been rendered moot or academic by the dismissal of the petition herein. Thus, all further and additional relief requested by the Petitioner in this and the “new” action is denied and dismissed.

Finally, although public policy generally mandates free access to the courts, a party may forfeit that right if he or she abuses the judicial process by engaging in vexatious litigation. *Lew v. Sobel*, 151 A.D.3d 954 [2nd Dept. 2017]; *Ram v. Hershowitz*, 76 A.D.3d 1022 [2nd Dept. 2010].

Here, based on all of the above, the Court orders that the Petitioner is precluded from filing any further or additional actions concerning these Respondents and the subject property

without the prior written permission of the Court. *Lew v. Sobel*, 151 A.D.3d 954 [2nd Dept. 2017]; *Ram v. Hershowitz*, 76 A.D.3d 1022 [2nd Dept. 2010].

Court Orders and Further Court Directives

Accordingly, and based upon the foregoing, it is hereby,

ORDERED, ADJUDGED and DECREED, that the motion of the Respondents David Tonneson, Deborah Tonneson and Jaidin Paisley-Tonneson to dismiss the proceeding insofar as asserted against them is granted; and it is further,

ORDERED, ADJUDGED and DECREED, that the motion of the Respondent Town of Highlands to dismiss the proceeding insofar as asserted against it is granted; and it is further,

ORDERED, ADJUDGED and DECREED, that all other pending motions are denied; and it is further,

ORDERED, ADJUDGED and DECREED, that the petition is denied and proceeding dismissed; and it is further,

ORDERED, ADJUDGED and DECREED, that the Petitioner is precluded from filing any further or additional actions concerning these Respondents and the subject property without the prior written permission of the Court; and it is further

ORDERED, ADJUDGED and DECREED, that the within Decision, Order and Judgment is intended to, and shall, supersede, in all respects, the Court's Decision and Order dated February 3, 2020, and in the event the within Decision, Order and Judgment, or any of its terms, is inconsistent with the Decision and Order of February 3, 2020, then, and in that event, the Decision, Order and Judgment of February 7, 2020, and its terms, shall control, and all such terms and provisions shall be construed so as to effectuate that intent.

This constitutes the Decision, Order and Judgment of the Court.

Dated: February 7, 2020
Goshen, New York

E N T E R



HON. ROBERT A. ONOFRY, J.S.C.

TO: Deborah Kopald
Pro Se Petitioner
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Fort Montgomery, New York 10922

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South Nyack, N.Y. 10960

cc: Robert Magrino, Esq.
Former Attorney for the Tonnesons
Office and P.O. Address
222 North Main Street
New City, New York 10965

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, J.S.C.

SUPREME COURT : ORANGE COUNTY

-----X

In the Matter of the Application of
DEBORAH KOPALD,

Petitioner,
For a Judgment Pursuant to CPLR Article 78

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

- against -

Index No. EF00818-2020

THE TOWN OF HIGHLANDS, NEW YORK, DAVID
TONNESON, DEBORAH TONNESON, JAIDIN
PAISLEY- TONNESON,

Respondents.

**AMENDED DECISION,
ORDER and JUDGMENT**

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NOW, upon the Court’s own motion,

ORDERED, ADJUDGED and DECREED, that the petition is denied and the proceeding is dismissed for the reasons stated in *Kopald v Town of Highlands*, pending in the Supreme Court, Orange County, under Index No. 7757-2019 [decided herewith]; and it is further,

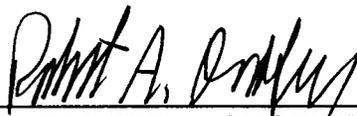
ORDERED, ADJUDGED and DECREED, that the motion to consolidate this action with the action pending in the Supreme Court, Orange County, under Index No. 7757-2019 [decided herewith] is denied as moot; and it is further

ORDERED, ADJUDGED and DECREED, that the within Decision, Order and Judgment is intended to, and shall, supersede, in all respects, the Court’s Decision and Order, dated February 3, 2020, and in the event the within Decision, Order and Judgment, or any of its terms, is inconsistent or conflicts with the Decision and Order of February 3, 2020, then, and in that event, the Decision, Order and Judgment of February 7, 2020, and its terms, shall control, and all such terms and provisions shall be construed so as to effectuate that intent.

This constitutes the Decision, Order and Judgment of the Court.

Dated: February 7, 2020
Goshen, New York

E N T E R



HON. ROBERT A. ONOFRY, J.S.C.

TO: Deborah Kopald
Pro Se Petitioner
88 Forest Hill Road
Fort Montgomery, New York 10922

Michael Matsler, Esq.
Rider, Weiner & Frankel
Attorneys for the Town
Office & P.O. Address
655 Little Britain Road
New Windsor, New York 12553

Feerick Nugent MacCartney, PLLC
Attorneys for the Tonnesons
Office & P.O. Address
96 South Broadway
South Nyack, N.Y. 10960

cc: Robert Magrino, Esq.
Former Attorney for the Tonnesons
Office and P.O. Address
222 North Main Street
New City, New York 10965

EXHIBIT B

Town of Highlands Building Department
254 Main St. Highland Falls, NY 10928
Phone: 845-446-4280 ext. 316 Fax: 845-446-4298

Appl No: 2019-107

File Date: 09/05/2019

Permit No: 2019-107

Expire Date: 09/05/2020

BUILDING PERMIT

Permit Fee: \$1500.00

SEC-BLK-LOT: 11-1-1.52

Receipt #

A permit is hereby given by the Building Department, TOWN OF HIGHLANDS, COUNTY OF ORANGE, N.Y., for the project described herein:

Owner: David, Deborah, & Jaidin Tonneson
PO Box 183
Fort Montgomery, NY10922

Contractor: Bill Lake Homes
188 Flanders Rd.
Sprakers, NY12166

Location of Work: Poplar St Prop, T/O Highlands

Description of Work:
INSTALL A FOUNDATION SYSTEM ACCORDING TO DRAWINGS BY TALCOTT ENGINEERING DESIGN, PLLC

**AMENDED 9/30/2019
CONSTRUCT SINGLE FAMILY HOME

Cost of Construction: \$145,000.00

Bruce C. Terwilliger

Bruce Terwilliger
Code Enforcement Officer

IMPORTANT

Upon completion of work and PRIOR TO OCCUPYING areas covered by the permit, a final inspection must be performed and a valid CERTIFICATE OF COMPLIANCE or a CERTIFICATE OF OCCUPANCY must be issued by the Building Department. (Please note that a failure to obtain a valid certificate could adversely affect property owner's future ability to sell or refinance the property).

If owner or applicant is a corporation, attach separate sheet stating names and titles of two officers and signature of duly authorized officer.

Town of Highlands Building Department
254 Main St. Highland Falls, NY 10928
Phone: 845-446-4280 ext. 316 Fax: 845-446-4298

Appl No: 2019-107

File Date: 09/05/2019

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Code Enforcement Officer

IMPORTANT

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A permit under which no work has commenced within six (6) months after issuance, shall EXPIRE by limitation, and a new permit must be secured before work can begin.

All work shall be performed in ACCORDANCE with the construction documents which were submitted with and accepted as part of the application for the building permit.

EXHIBIT C

with perc test and deep test results not identified as to location, as well as septic tank and field details for a 4-bedroom waste water sub-surface disposal system. This is neither called a site plan nor actually a site plan. It lacks tree locations, pre-development topography and the underlying zones of which there are four on the zone map: R-1, R-4, R-5 and no zone.

14. The proposed septic system is noted as being subject to the N.Y. State Sanitary Code, Appendix 75-A, N.Y. State Health Dept. "Residential Onsite Wastewater Treatment System Design Handbook 2012", and "Planning the Subdivision as Part of the Total Environment," N.Y. State Dept. of Health. A permit for septic is required under N.Y. State Sanitary Code, Appendix 75-A. A permit is also required prior to installation and prior to building construction pursuant to the Town of Highlands code. According to the plot plan, the septic tank was already installed, and the Plot Plan is dated August 27, 2019. The permit was received on September 5, 2019, but the septic tank had already been installed without a septic permit, which is evidenced by the Surveyor's last date of field work on Aug 8, 2019.
15. An additional part of the application is a Title Survey/Site Plan prepared for the Tonneson owners of Parcel 11-1-1.52, dated 8/30/2019 by Jonathan N. Millen, Licensed Land Surveyor NY#050746, said plan Certified by Millen "to be correct and accurate." This document should have been denominated as a boundary survey, which contains metes and bounds of the parcel land description.
16. Surveyors are not empowered under the Town of Highlands Code to prepare a site development plan; only engineers and architects are. In the State of New York only engineers are authorized to design catch basins, stormwater piping, stormwater detention or retention systems, and erosion and sedimentation control systems. The Engineer's so-called Plot Plan contained none of these systems. Surveyors cannot practice any aspect of civil engineering in the State of New York.
17. The surveyor did not provide topographic contours, analysis of pre-development slopes, trees, wetlands, watercourses and installed drainage features in the pre-existing roadways (Poplar St. proposed and Hemlock), all of which are within the purview of what a surveyor should submit. The surveyor's role is to provide the design engineer with a map of existing conditions and site parameters prior to development and design. There was a 2005 filed plan for drainage improvements and easements (Orange County Map # 2005-333) that was not documented in the survey, which ignored the issue of drainage. Instead, the Engineer called an incomplete engineering plan a "Plot Plan" instead of a "Site Plan", while the Surveyor called his incomplete survey lacking topography, wetlands, drainage features and slope analysis a "Site Plan" instead of a "Plot Plan."
18. Sheet 2 of 2 in the drawing set is called a "Survey Site Plan." The Surveyor, who ordinarily is supposed to produce an existing conditions topographical survey and a title survey has produced a "site plan" lacking all physical details of the site at 60 scale that incorporates the site design elements from the Engineer's Plot plan at 40 scale. (Septic plans are typically done at 20 scale on an Engineer's Site Plan.)
19. The existing drives are not shown on the Surveyor's title survey. There are no details for driveway access into the parcel from Hemlock St., being an extension of a curb cut for shared residential drives servicing the houses of McCutcheon on lot 11-1-7 and Tonneson on Lot 11-1-5.2 (as distinguished from 11-1-1.52), which lots are already developed. The Engineer's Plot Plan depicts a proposed drive but he does not delineate what elements are existing versus what are proposed as of the date of the Plot Plan.

20. Through analysis of drone photography, the driveway from 11-1-1.52 goes into the driveway of Tonneson's current residence on the adjacent 11-1-5.2, which passes back through 11-1-1.52 to reach the driveway serving McCutcheon on 11-1-7, and then continues to Poplar St. which is denominated as Parcel II on the Millen Survey.
21. Additionally, the Title Survey notes and depicts a 50-foot-wide extension of Hemlock St. from Poplar St. to Forest Hill Rd, crossing through Lot 20-2-6 of Canterbury Forest. No such easement or right-of-way is supported by deed conveyance to Tonneson.
22. The gravel and asphalted driveway, which does not appear on the 2016 New York State aerial photography of Orange County, climbs from the 300 contour to the 330 contour in 149 horizontal feet. This is a gradient in excess of 20% slope.
23. The development envelope has been moderated in pre-development slopes, over 75% in excess of 1.5 ft vertical per 10 ft horizontal (15% slope), by a boulder retaining cut wall on the upslope side, top of wall elev. 342, bottom of wall 340. The house site and attached garage are on land at elev. 336. The existing septic tank is contained within the 336 contour, 100 ft. from the well to the south of the house. The four disposal trenches run to the north and comprise four rows of 11 units each with end caps of the "Quick 4 Equalizer 36" as manufactured by Infiltrator Systems. The September 28, 2019 drone photography shows the disturbed land in the area that the Engineer's Plot Plan dated August 27, 2019 slated for septic disposal. This is copied on the August 30, 2019 survey site plan. This plan showed that the septic tank was in the ground and that the two retaining walls were already in place by August 27, 2019. The ground elevation of proposed trenches is listed on the Engineer's Plot Plan, and the Survey Site Plan between 334 and 336 ft. NAVD (North American Vertical Datum of 1988.) These trenches were in the early process of being dug sometime on September 30th but not fully in existence then. They did not exist on September 28th, 2019.
24. The development envelope is retained by a boulder fill wall on the downslope side, with top of wall at elev. 334 ft. and bottom of wall at 326 ft. This is an 8-foot deep fill.
25. The locations of the perc tests and deep test pits do not appear on any of the plan sheets.
26. Perc Test P2 indicates a rate of 1 minute per inch. The location of this test is not disclosed.
27. Deep Tests D1 and D2 yield identical data, with "gravely loam" from 17 to 60 inches. On information and belief, it is highly unusual for two deep tests to have the same results in disturbed fill. The test did not go deeper than 60 inches and because of cutting and filling on the proposed septic site, we do not know the soil conditions below 60 inches. Because the two deep test hole locations are not shown on the plans, we have no constructive knowledge of the soil conditions under the trenches, which are being installed in disturbed soil on the Sept. 30 photographs.
28. The actual location of the septic trenches is now in an area with disturbed soil and grading pursuant to the Engineer's Plot Plan and the Surveyor's Site Plan.
29. Using the N.Y. State high precision topographic mapping of 2 ft. contours in 2017 for Orange County, I was able to apply the pre-development contours to the site plan. The original ground of the septic

30. trenches was 332 on the SE corner to 338 on the NW corner. Therefore, the intended finished grade of approximately 335 for the level trenches represents a cut into natural soil at elevation 338 and a fill over natural soil at elevation 332, so that the conditions of the soil under the septic trenches is unknown, and it is necessary under the State code to know the clearance above bedrock or above high groundwater.
31. No stormwater or drainage design is noted or depicted to mitigate the effects of added impervious areas (asphalt which existed on September 28, 2019 and any future building roof) and increase in run-off curve numbers over the pre-development forest land.
32. No trees were depicted on either the surveyor's or engineer's plans.
33. No water courses or possible wetland soils were noted or depicted.
34. The N.Y. State 2 ft. contours of 2017 show a natural swale in the topography that captures stormwater runoff from the Kopald house and southerly yard area at 88 Forest Hill Rd, crossing by gravity onto the impacting parcel to the south. This runoff is directed into the disturbed area and retaining wall on the north side of the new house, the foundation of which shows open on the Sept 28th 2019 aerial drone photographs.
35. The drone photos of September 28th permit a measurement of the disturbed areas, which amount to more than 20,000 sq. ft. The photos show an additional clear-cut that can be seen in the September 28th photographs, however these photographs were taken earlier in the day and at a different angle than the photographs on September 30th. In the former, the shadows from the trees can be seen over a clearcut on the Southeast side of the paved road. In the latter, there are no shadows, limited sun, and the drone captured the photos at a lower altitude. It is my professional opinion that that area had already been clearcut and largely dug out on September 28th, 2019. The footprint, that is, the area cleared is the same on September 30th, 2019 as it was on September 28th, 2019. The company that took the pictures only mapped the area in the house envelope on the Northwest side of the paved road. I mapped the rest. They did take pictures that showed the Southeast side, where the clear-cut was somewhat overlaid with tree shadows, but they did not map that area from existing photos and did not map the asphalt driveway. Subsequent mapping and compilation took place from drone flights on October 14th, 2019 and January 6th, 2020.
36. The drone photos of Sept. 28th permit a measurement of the disturbed areas, which amount to more than 20,000 sq. ft. and in fact appeared to be 36,698 sq. ft. The drone photos of January 6th, 2020 without leaves on the trees, show that the disturbed area, that is to say the area of stripping, was 52,228 sq. ft. or 1.20 acres. The earlier analysis was partial because leaves were still on the trees. Tonneson also stripped vegetation in the area of a wooded road approaching 20-2-6.
37. There are three contiguous disturbed areas.
38. The measured driveway area as of September 28th was 12,461 sq.ft. By January 6, 2020, it was 24,056 sq. ft. because there was additional disturbance from drainage work and paving and also, less of the driveway was obscured with the leaves off the trees.
39. The borrow pit for excavation or future turn-around south of the driveway was measured at 4,123 sq.ft. on September 28th. By January 6, 2020, with the leaves off the trees, it was measured as 5,650 sq. ft.

40. The house and septic envelope including area extended beyond the drive pavement was measured at 20,114 sq. ft. on September 28th, 2019. The September 30th, 2019 photos were higher resolution, and ultimately showed the same area cleared. The January 6th, 2020 measurement of the house and septic envelope was extended by Tonneson to the Northwest along the wooded road; the total amounts to 22,522 sq. ft. In another contiguous area 2801 sq. ft were stripped by the Tonneson's timber trespass on 20-2-6, where they cut 11 mature trees on the property of Canterbury Forest Corporation without permission.
41. It can be inferred that since the road starts out of the Tonneson Driveway of their pre-existing house with a 35 Hemlock Street address that it had to be cleared first to get the machines into the building envelope. No clearcutting and no road is visible in the 2016 aerials.
42. The initial slopes in the envelope of the area of disturbance were measured from the 2017 topographic mapping. A table of 5% incremental classes of slope is broken out in notational form in Exhibit MWF1 with a mapping of slope 5%-increment. The slope analysis exhibit covered the areas that could be discerned as disturbed as of September 30th, 2019. Less than 25% of the clearing is original slope less than 15% (1.5 ft vertical in 10 ft horizontal). More than 75% of the clearing is original slope in excess of 15%.
43. The tree clear-cutting area extends northerly from the house more than 140 ft. The drone photos of the site show that the trees that were visible in the 2016 New York aerial survey on the site were cleared before September 28, 2019. It is my opinion that they were largely if not fully cleared prior to starting work on the foundation.
44. Many trees over 10" DBH are visible in the 2016 aerial photograph that were cleared by September 28th, 2019 and some of these cut trees are presumably in the log pile visible on Sept 28th, 2019 in the borrow pit. Aerial photogrammetry shadow analysis demonstrates that 42 trees over 10DBH were in the clearcut area in 2016. See Exhibit MWF-2. Again, the clear-cut area on Sept. 28th and September 30th were the same.
45. A mature consistent canopy of both hardwood and conifer trees is visible in the 2016 4-spectrum color New York State aerial photography for Orange County. (Red, Green, Blue and Infrared).
46. The impacting parcel 11-1-1.52 appears to have been re-subdivided from its original configuration in 1967. The new house on the impacting parcel is the fifth residence to have come out of the original parcel 11-1-1 since the enactment of subdivision regulations as Chapter 173 of the Town of Highlands Code. The first four are residences built west of Poplar St at 3 Poplar, 7 Poplar, 28 Hemlock and 35 Hemlock St. Poplar St. itself is noted as Parcel II conveyed to Tonneson on the Survey Title Sheet 1.
47. From the above facts, I conclude that there are numerous land site development preparation activities that are properly subject to site plan review by the Planning Board.
48. On January 6th, 2020 the new aerial survey of 11-1-1.52 was performed with the leaves off the trees for the purpose of providing a basis for calculation of excavation, cutting, filling and grading during the development process. It was noted that septic trenches lying open on October 14, 2019 are still open, and that over an acre of disturbed soil is not stabilized with erosion controls other than a small amount of silt fencing that has not been properly maintained. The new photography also showed installation of a stormwater catch basin, trenching, and drainage piping in new trenches leading to Hemlock Street.

This will dump water onto Hemlock Street without drainage controls including engineered detention, curbing or other improvements made to Hemlock Street.

49. "Excavation" under the erosion control regulations should be considered as the sum of volume cut and volume filled. In my analysis 1,285 cubic yards were cut and 1,625 cubic yards were filled, for a total excavation of 2,910 cubic yards.
50. "Grading" should be considered as the ground surface area changed in elevation from cutting and filling. In my analysis, 48,412 sq. ft. or 1.11 acres were graded on the parcel.
51. The Town of Highlands NY Code, Sections 101-5, 101-7(A), 101-8 (Erosion) state:

§ 101-5 Conflict with existing regulations.

Where this chapter imposes greater restrictions than are imposed by the provision of any law, ordinance, regulation or private agreement, this chapter shall control. Where greater restrictions are imposed by law, ordinance, regulation or private agreement than are imposed by this chapter, such greater restrictions shall control.

§ 101-7(A) Activities Requiring a Permit

None of the following activities shall be commenced until a permit has been issued from the Planning Board under the provisions of this chapter:

- 1) Site preparation in the subdivision of land into two or more parcels.
- 2) Site preparation within waterlands
- 3) Site preparation on slopes which exceed 1 1/2 feet of vertical rise to 10 feet of horizontal distance
- 4) Site preparation within the one-hundred-year floodplain of any watercourse.
- 5) Excavation which affects more than 200 cubic yards of material within any parcel or any contiguous area.
- 6) Stripping which affects more than 20,000 square feet of ground surface within any parcel or any contiguous area.
- 7) Grading which affects more than 20,000 square feet of ground surface within any parcel or any contiguous area.
- 8) Filling which exceeds a total of 100 cubic yards of material within any parcel or any contiguous area.
- 9) Site preparation pursuant to a special exception permit issued by the Town Planning Board or the Town Board.
- 10) Site preparation affecting or contiguous to the shoreline of the Hudson River.
- 11) On all properties, the removal or destruction of more than three trees 10 inches DBH or over during any period of 12 consecutive months or any one tree 30 DBH inches or over.

§ 101-8 Permit application, review, issuance and compliance procedures.

A. No site preparation requiring a permit under **§ 101-7** of this chapter shall be commenced until six copies of a permit application have been filed with the Town Clerk and an application has been approved and a permit has been granted pursuant to the provisions of this chapter.

List of Exhibits Attached

MWF Exhibit 1
Slope Analysis: Lot, Area Clear-Cut and Building Envelope 3 Pages

MWF Exhibit 2
Tree Cutting Analysis 3 Pages

MWF Exhibit 3
Statement of Methodology for Slope

MWF Exhibit 4
Statement of Methodology for Tree-Cutting Analysis

MWF Exhibit 5
Clear Cut Area (less full driveway) as of 9/30/19

MWF Exhibit 6
Clear Cut Area (less full driveway) as of 9/30/19
superimposed on the orthophoto from the New York State
aerial survey of Orange County in 2016

MWF Exhibit 7
Statement of Method to Geo-Locate Drone Image Ortho
Photos in State Plane Coordinate Grid

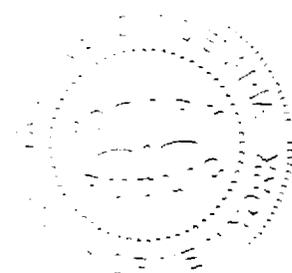
MWF Exhibit 8
Underlying Zoning Town of Highlands, NY

MWF Exhibit 9
Statement of Methodology for Estimation of Volumes of Cut and Fill 2 pages
Cut-Fill Heat Map



Michael W Finkbeiner

Michael W. Finkbeiner



Sworn to before me this
24th day of January 2020

Notary Public

[Signature]

NOELIA B. CANDELARIA
Notary Public - State of New York
ID No. 01CA6145126
Qualified in County of Broome
My Commission Expires 2/1/2025

MWF Exhibit 1
Slope Analysis:
Lot, Area Clear-Cut and Building Envelope



SLOPE ANALYSIS OF PARCEL 11-1-1.52
TOWN OF HIGHLANDS NY

Based on Orange County
Topography 2016 (NYS GIS)

Graded into two zones:

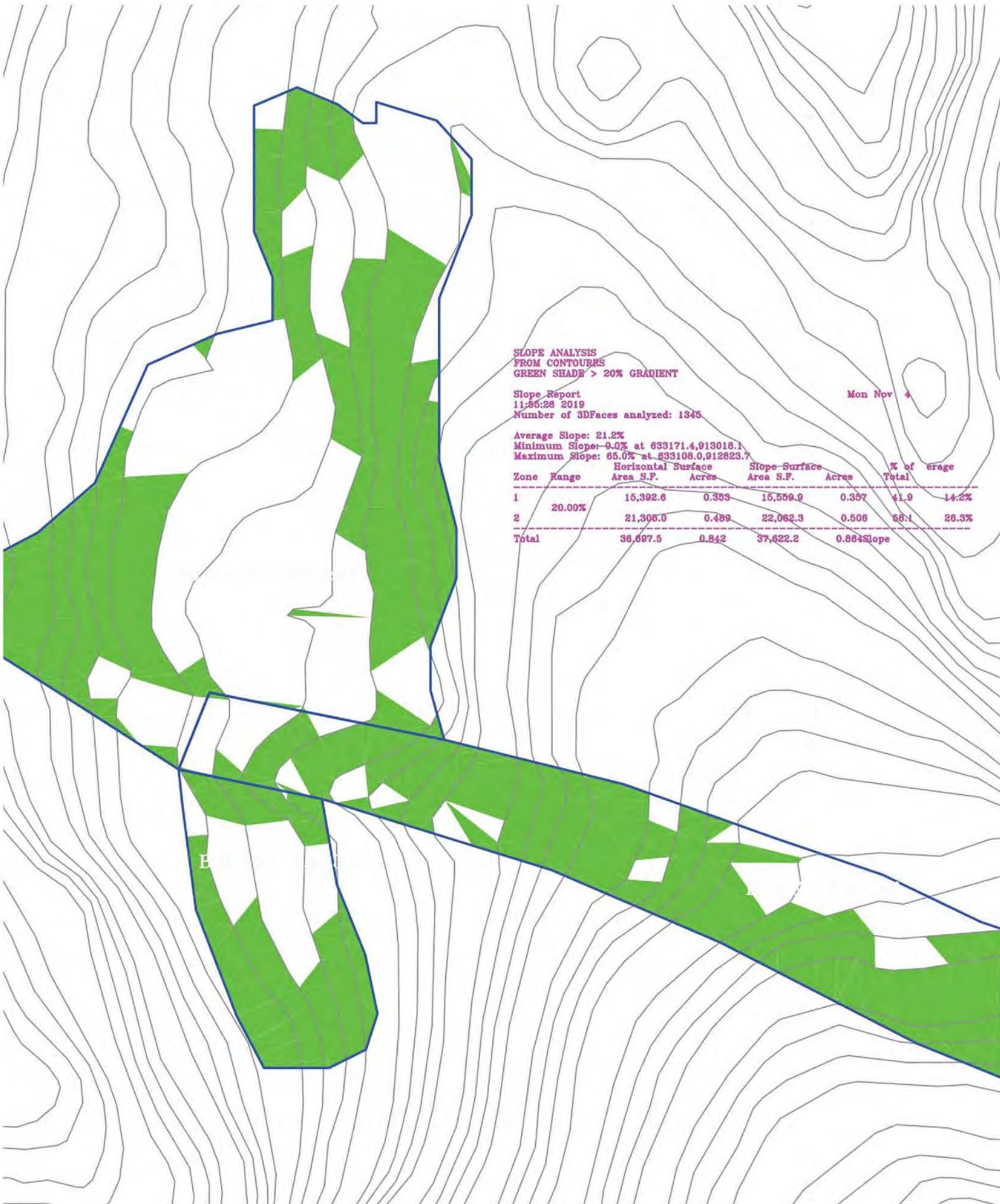
30% of Area is less than 20% gradient

70% of Area is above 20% (In Green)

Carlson Survey Software 2019

by Michael W. Finkbeiner, LS 11/1/2019





**SLOPE ANALYSIS
FROM CONTOURS
GREEN SHADE > 20% GRADIENT**

Slope Report
11:55:28 2019
Number of 3DFaces analyzed: 1345

Mon Nov 4

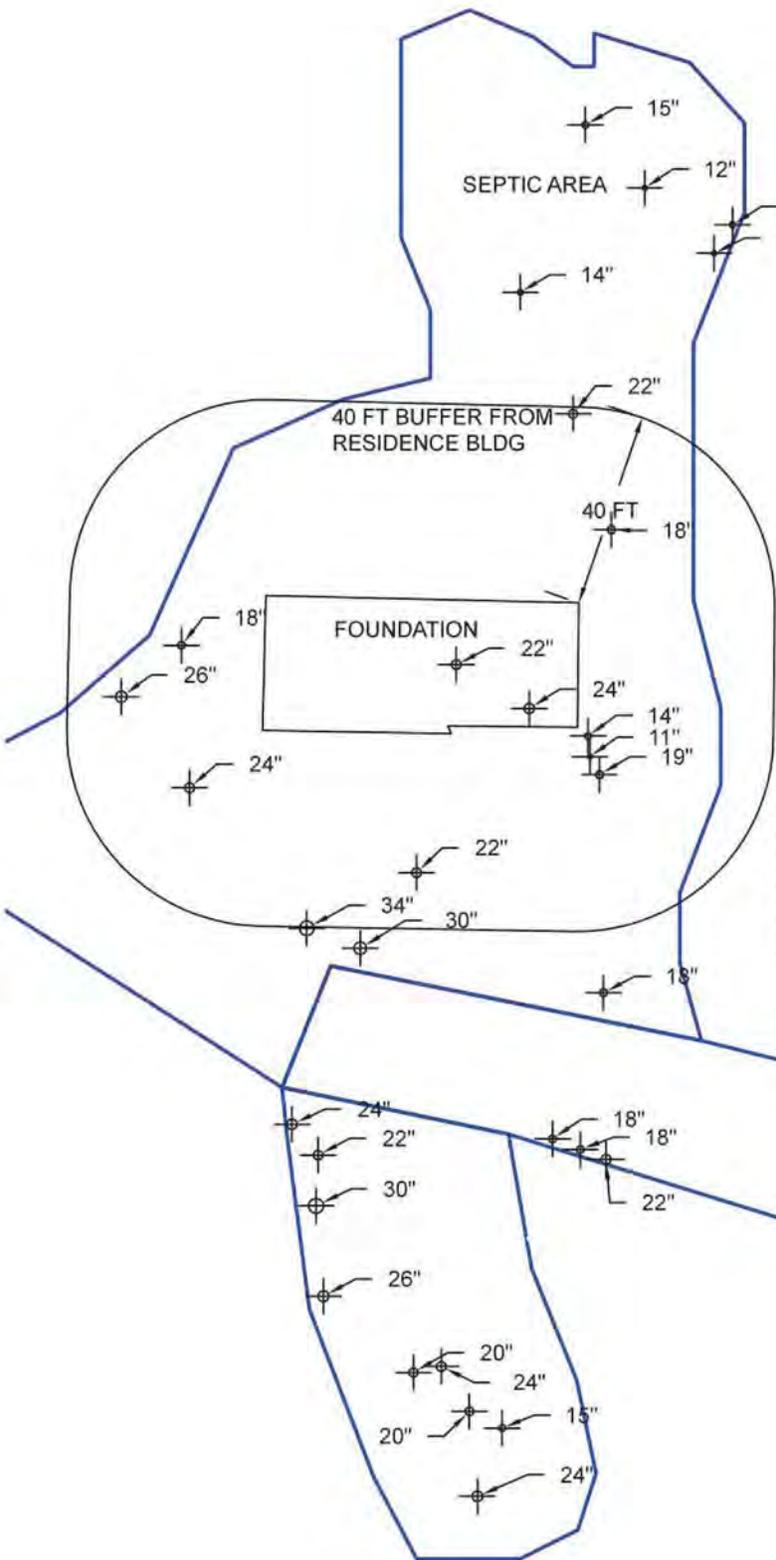
Average Slope: 21.2%
Minimum Slope: 0.0% at 633171.4,913018.1
Maximum Slope: 65.0% at 633108.0,912823.7

Zone	Range	Horizontal Surface Area S.F.	Acres	Slope Surface Area S.F.	Acres	% of Total	erage
1	20.00%	15,392.6	0.353	15,559.9	0.357	41.9	14.2%
2		21,305.0	0.489	22,062.3	0.506	58.1	26.3%
Total		36,697.5	0.842	37,622.2	0.864	Slope	

MWF Exhibit 2
Tree Cutting Analysis







TREE CUTTING ANALYSIS 2016 AERIAL SHADOWS

TREES OVER 10" CUT PRE-PERMIT BY ZONE

SEPTIC AREA	5 TREES
HOUSE ENVELOPE 40 FT	11 TREES
BETWEEN HOUSE AND DRIVE	3 TREES
BORROW PIT AREA	9 TREES
DRIVE WAY	14 TREES

TOTAL TREES >10" IN CLEARCUT AREA = 42

MWF Exhibit 3
Methodology for Slope Analysis

**Michael W. Finkbeiner, LS
Land Surveyor -NY #050352
6 Oak Street West Suite E
Greenwich, CT 06830
tel:203-661-3897**

Nov 12, 2019

Statement of Method Used by Carlson Survey to Analyze Slopes on Topography

Slope is a percent of vertical to horizontal. When two-foot vertical contours are mapped, as they were by the State of New York High-Precision topography for Orange County in 2016, available from the Orange County GIS Dept, then a 20 % slope occurs when those contours are closer together than 10 horizontal feet.

The Carlson Survey software uses a method of taking each point on a contour line and comparing its distance to the adjacent segments of the contours on the next lower and higher interval.

When that distance is less than 10 ft, a triangle section created and tagged as slope in excess of 20%.

MWF Exhibit 4
Methodology for Tree-Cutting Analysis

Michael W Finkbeiner
Land Surveyor & Forester
Earth Image, LLC
6 Oak St West – Suite E
Greenwich, CT 06830

Nov 6, 2019

**RE: Methodology for location and diameter measurement of hardwood trees in
Geo-Referenced Aerial Ortho Photos of High Resolution.**

To Whom It May Concern:

An aerial ortho photo aligned to the State Plane Coordinate grid has its individual pixels adjusted to the correct ground coordinates of the zone in question. The Orange County 2016 Aerial Ortho Photos available from the NYS GIS (<https://orthos.dhsec.ny.gov/?id=974134#>) were taken in 4 color bands (red,green,blue & infrared) with ground resolution of six inches beginning Mar 12 and ending March 30, 2016.

In the subject photo the shadows from trees and poles are at a geodetic azimuth of 238.5 degrees facing the sun, indicating a time of taking the photo at about 4:10 pm. The altitude of the sun was 32 degrees above the horizon, giving a means to measure heights of objects in relation to shadow lengths. The cosine of the sun's zenith angle in the photo was 0.533, establishing the height to length ratio. Since the rays of the sun are parallel, the width of the shadow indicates the diameter of the tree or pole. As a means of calibration, a standard class 5 street telephone pole is 35 ft tall and 11 inches in diameter at breast height.

Using CAD software, a circle can be inserted along the shadow of a tree at a distance from its intersection with the pole base or tree stem image equal to 4.5 ft for the measurement of diameter at breast height. The circle diameter is set to match the width of the shadow on the ground. The circle is then dimensioned annotated for its diameter in inches. The area of clearcut on parcel 11-1-1.52 Town of Highlands NY was outlined by drone photographs taken Sept 28 and 30th, 2019. See 3 attached images. The raw drone photographs were processed in Pix4D software and geo-referenced to NY East Zone.

With this method, the diameter of trees can be measured from leaf-off full-sun photographs of hardwood forests in geo-referenced ortho photos.

Respectfully,

Michael W. Finkbeiner

Michael W. Finkbeiner
Professional Land Surveyor
Consulting Forester



MWF Exhibit 5
Clear Cut Area (less full driveway) as of 9/30/19



MWF Exhibit 6

Clear Cut Area (less full driveway) as of 9/30/19 superimposed
on the orthophoto from the New York State aerial survey of
Orange County in 2016



MWF Exhibit 7
Methodology for Geo-Locating Drone Image
Orthophotography in State Plane Coordinate Grid

**Michael W. Finkbeiner, LS
Land Surveyor -NY #050352
6 Oak Street West Suite E
Greenwich, CT 06830
tel:203-661-3897**

Nov 12, 2019

Statement of Method to Geo-Locate Drone Image Ortho Photos in State Plane Coordinate Grid

Congress authorized the National Geodetic Survey to create a State Plane Coordinate grid throughout the US. Orange County NY is mapped in the New York East Zone system, presently in the North American Datum of 1983.

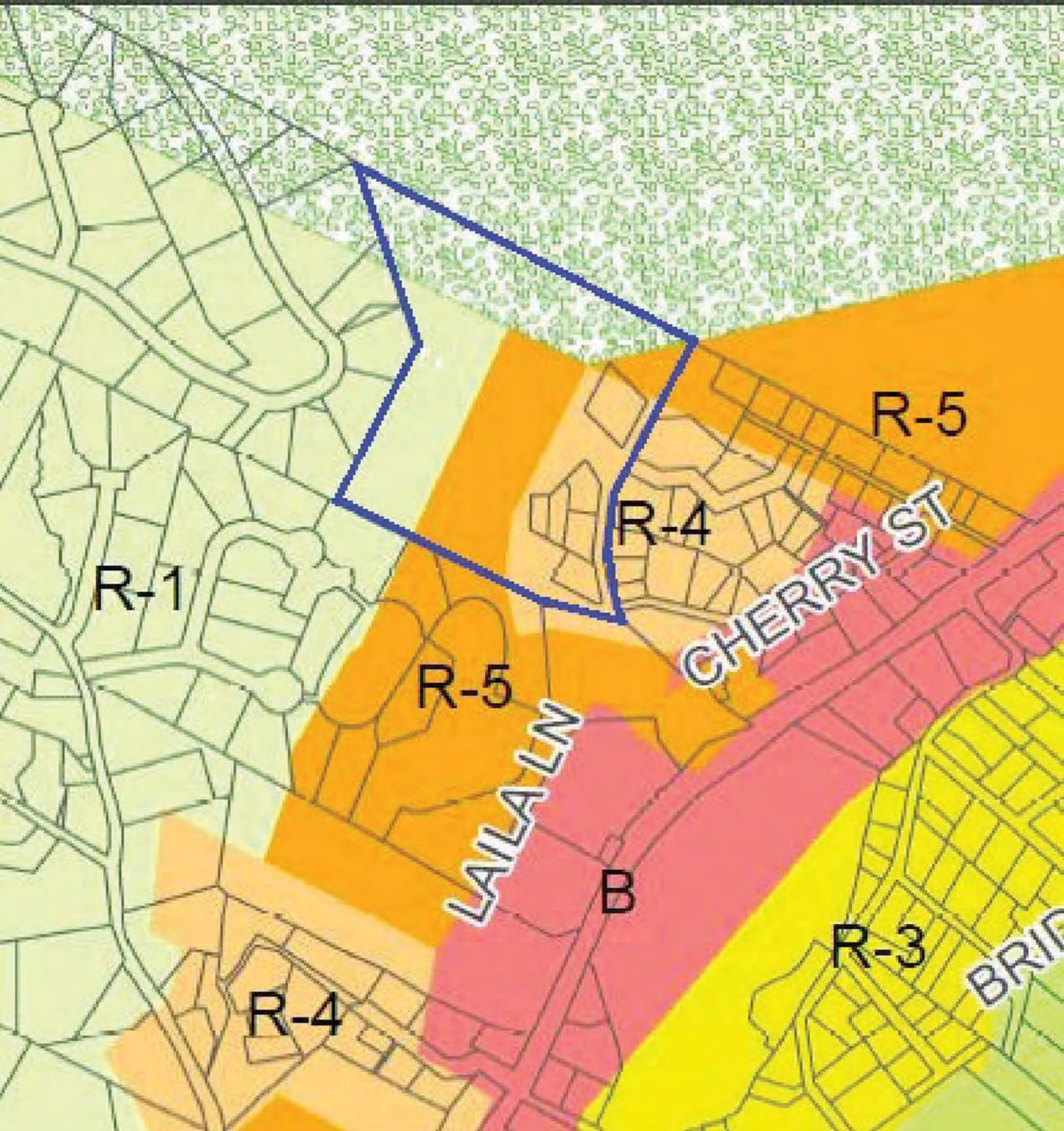
N Y State has performed a periodic aerial mapping, which in Orange County was last updated with Ortho Photos in March of 2016. See meta data:

<https://orthos.dhSES.ny.gov/content/metadata/2016/2016-6-inch-Resolution-4-Band-Orthoimagery-East-Zone.html>

Each pixel in the ortho photo is set to its correct latitude and longitude position in East Zone x,y coordinates, regardless of elevation. This provides a base layer of 2016 conditions.

The drone photos are individually tagged with latitude, longitude and altitude over terrain of the camera focal point. The drone photo pixels are moved to their correct coordinates in the New York East zone by the Pix4D processing software. See quality reports generated for each of the drone flights performed Sept 28, Sept 30 and Oct 14, 2019 by DronePix. Processing of the raw photos was performed under my direction in Pix4D software.

**MWF Exhibit 8
Detail
Zoning Map Town of Highlands**



MWF Exhibit 9
Statement of Methodology for Estimation of Volumes of Cut and Fill
Cut-Fill Heat Map

Michael W. Finkbeiner
Land Surveyor & Forester
6 Oak St West – Suite E
Greenwich, CT 06830

January 14, 2020

RE: Methodology for Estimation of Volumes of Cut and Fill Grading Materials on Property of Tonneson, et al., Town of Highlands, NY 10922 with Ground Surfaces from Geo-Referenced Aerial Ortho Photos of High Resolution.

To Whom It May Concern:

This is to certify that an aerial survey was performed and processed under my direction to measure grids of 12 foot x 12 foot square surface cells, which were calculated for net change in elevation during development of the property. I utilized the 2016 Orange County Topographical Contours at 2 foot vertical intervals in comparison to a compiled photogrammetric surface model from Jan 12, 2020, which measured 1.47 acres of re-graded ground as a portion of tax lot 11-1-1.52. Ground Control photo targets had been placed and surveyed Dec 31, 2019 around the perimeter of subject property. These were surveyed on the same date in the NY East Zone State Plane Coordinate System grid by a real-time connection to the NYS DOT Reference System by CORS (Continuously Operating Reference System) with elevations established in the NAVD 1988 datum using Geoid 2012-B, as provided by the National Geodetic Survey of NOAA, using receivers calibrated by the same Federal Agency.

An aerial survey was performed of the subject parcels of Tonneson, et al., being tax lots 20-2-7.2 and 11-1-1.52 in the Town of Highlands, NY, on Jan 12, 2020. The coordinated ground control targets were used to prepare a 2 foot contour survey of the regraded areas of cut and filled land. The disturbed 1.47 acres observed was divided into 12 foot squares of 144 square feet surface area each. The elevation of each corner was noted, both in the 2016 contour mapping and the 2020 finished land surface. In each grid square, the four corners were averaged in elevation, and the resultant change in elevation noted for each cell between the dates of 2016 and 2020. These ranged from a maximum cut of 6 feet to a maximum fill of 8 feet. The height of the downslope retaining wall of 8 feet over natural grade was previously noted on the site development plan by Surveyor Millen, dated Aug 30, 2019.

Across the length of 44 east-west grid cells and a length of 36 grids cells in the north-south direction, the average cut was 0.98 feet and the average fill was 1.53 feet. In a single 12 x 12 foot grid cell, an average elevation change of 1.00 foot would calculate to 144 cubic feet, or 5.33 cubic yards graded.

It is my professional opinion that during the Tonneson site development, grading of 1,285 cubic yards of cut was performed, and grading of 1,625 cubic yards of filling was performed. This statement is an attachment and addendum to my grid by grid calculation and heat mapping, dated Jan 14, 2020 for the subject property.

Respectfully,

Michael W. Finkbeiner

Michael W. Finkbeiner
Professional Land Surveyor

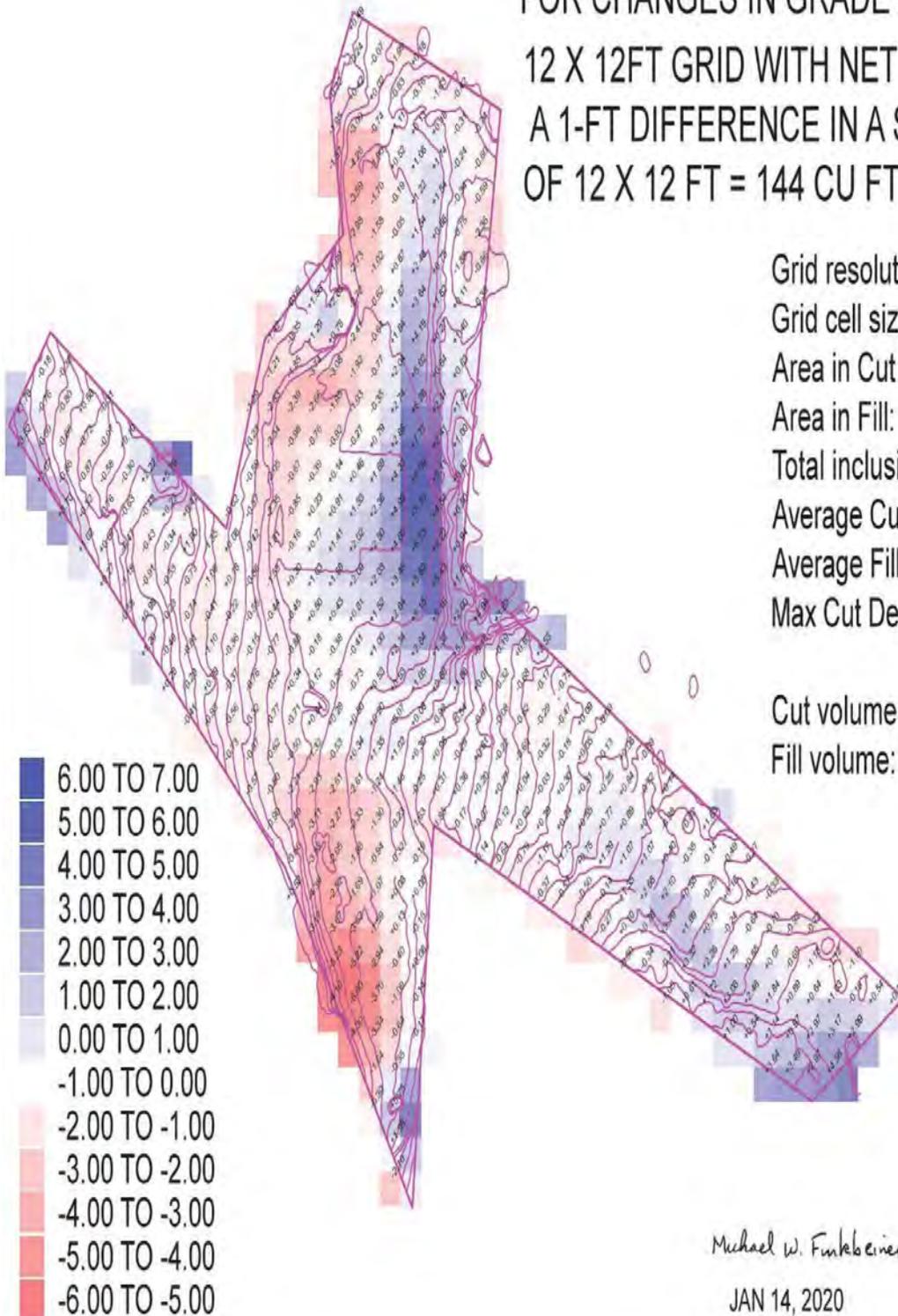


CUT-FILL HEAT MAP ON TONNESON PROPERTY FOR CHANGES IN GRADE 2016 TO 2020

12 X 12FT GRID WITH NET CHANGE IN ELEV
A 1-FT DIFFERENCE IN A SINGLE CELL
OF 12 X 12 FT = 144 CU FT OR 5.33 CU YDS

Grid resolution X: 44, Y: 36
Grid cell size X: 12.00, Y: 12.00
Area in Cut : 0.81 Acres
Area in Fill: 0.66 Acres
Total inclusion area: 1.47 Acres
Average Cut Depth: 0.98
Average Fill Depth: 1.53
Max Cut Depth: 6.00 Max Fill Depth: 8.09

Cut volume: 1,285 C.Y.
Fill volume: 1,625 C.Y.



Michael W. Finkbeiner

JAN 14, 2020

EXHIBIT D

AFFIDAVIT

STATE OF NEW YORK)
)) SS:
COUNTY OF WESTCHESTER)

I, Michael W. Finkbeiner, being duly sworn deposes and states:

1. I am a Licensed Land Surveyor and am fully familiar with the facts pertaining to Section 11, Block 1, Lot 1.52 ("11-1-1.52") in the Town of Highlands.

2. I have read the Town of Highlands' Building Inspector Bruce Terwilliger's Affidavit of November 26, 2019 and the Tonneson's surveyor Jonathan N. Millen's Affidavit of November 30, 2019. When read in tandem they demonstrate circular reasoning. Mr. Terwilliger says:

I have confirmed with the Town of Highlands Highway Superintendent Pat Patterson that there is public road access to the right of way leading to the parcel from Hemlock Street, shown on the Jonathan Miller survey and site maps filed in my office. The maps indicate that this right of way appears on the real property records. It is at least 15' wide to a reasonable degree of certainty, is in reasonably good condition, and has obtained the Fort Montgomery Fire Chief's approval for access for fire apparatus.

The "public road access" Mr. Terwilliger claims was "confirmed" by the Town Highway Superintendent Pat Patterson appears functional rather than legal, based on the current Tax Map Section 11 notation that Hemlock Street is noted "Proposed." The status of Hemlock Street as a public road is neither confirmed by a platted and approved street layout on the Orange County Clerk's Land Records nor on information and belief, by a resolution of the Planning Board. With regard to the verbiage on "right of way", it is verbal sleight of hand: "public access" "to the right of way" "leading to the parcel". This does not mean that there is direct access to a public road coming from the parcel. Perhaps there is some right of way for some party leading to the parcel from Hemlock as stated, but there is no right of way over the parcel except for one that constitutes a right to pass and repass, which is a reservation belonging *exclusively* to Susan N.

Kopald, Ned Kopald, and their heirs and assigns¹. There is no width called for or defined in the deed that was recorded on July 26, 2019; and the right of way is described as being “over the existing Wood Road or any road subsequently constructed by the Grantees.” The Millen survey's “True Point of Beginning 50’ Right of Way” is at best an opinion of Millen's that is unsupported by deeds and/or maps recorded in the Orange County land records. The 50 foot right of way imagined by Mr. Millen is drawn through the Canterbury Forest Lot 10 on the recorded subdivision plat 1668-2379 (Tax SBL 20-2-6) See Exhibit C. This lot does not belong to the Tonnesons and is not encumbered with a right-of-way. In fact, the recorded plat depicts a septic field drawn parallel and next to the boundary of 11-1-1.52 (which is Tonneson’s parcel).

3. Mr. Millen says:

I have read the affidavit of Bruce Terwilliger, Building Inspector of the Town of Highlands who indicates that Hemlock Street is a Town public road.

Millen is relying on Terwilliger’s statement just as Terwilliger relied upon Millen’s statement, but neither provides evidence that Hemlock is a public road. See Tax Map as Exhibit A identifying Hemlock as a *proposed* road. Mr. Terwilliger claims that Mr. Millen’s survey and site maps filed in his office show public road access to the right of way leading to the parcel from Hemlock Street. By not mapping the existing driveways in his survey, Millen fails to reveal salient facts. Prior to the adoption of The Town of Highlands Code Section 173 Subdivision Regulations in 1967, the end of Hemlock Street was and still is used to service a driveway leading to Lot 11-1-7² (McCutcheon’s lot). When a residence for Deborah and Dave Tonneson was constructed on Lot 11-1-5.2 a few years ago (note their residence lot is “5.2”, not “1.52”, which is the parcel that is the main subject of this case), they made a second driveway that was

¹ This right of way reserved to Ned and Susan N. Kopald, their heirs and assigns is explicitly created in the deed from Susan N. Kopald and Ned Kopald to David Tonneson, Deborah Tonneson and Jaidin Paisley-Tonneson (“Tonneson”) filed on July 26, 2019 in the Orange County Land Records. (Exhibit D)

² Currently owned by David McCutcheon (“28 Hemlock”)

attached to the McCutcheon driveway, which runs into what is called "Hemlock Street". Before Tonneson put up a modular home on Lot 11-1-1.52, they built a *third* driveway, attached to the second driveway (that for 11-1-5.2- the David and Deborah Tonneson house lot) which is attached to a first driveway (the McCutcheon house lot on 11-1-7) which is attached to the terminus of Hemlock Street (which appears itself to have never been approved). Thus, a mapping of the driveways would have revealed a drive off a drive off a drive off what appears to be the unapproved Hemlock Street (unapproved pursuant to the 2019 tax map).

4. To the south of the terminus of Hemlock Street on the tax map is a paved, unapproved driveway often referred to as Poplar Street. The Town has allowed five house lots to be developed that were given Poplar Street addresses. These parcels are lots 3.1³ and 4⁴ in Block 1 and lots 19⁵, 20.2⁶ and 22.2⁷ in Block 3. (Of these lots, 3.1 and 4 are two house sites carved out of the original parcel that is now 11-1-1.52 along with the McCutcheon house at lot 7 and the residence of David and Deborah Tonneson at lot 5.2 all in Block 1.) Poplar Street was never approved by the Town, and this unapproved road, which functions as an extended driveway for five houses, runs off the left end of the terminus of Hemlock. This unapproved driveway physically connects to Cherry Street. Contrary to Millen's statement, there is no direct access from 11-1-1.52, the parcel in question, to Hemlock, except by crossing the unapproved Poplar Street.

5. The Tonnesons failed to connect a driveway from 11-1-1.52, the parcel in question, to Cherry Street, which was feasible; instead they connected a driveway to a driveway to a

³ Currently owned by Mary Mitchell-Campbell ("3 Poplar")
⁴ Currently owned by Elizabeth Fitzgerald ("7 Poplar")
⁵ Currently owned by Rose Baglivi ("2 Poplar")
⁶ Currently owned by Zbigniew Surowka ("4 Poplar")
⁷ Currently owned by Eric Schofer ("8 Poplar")

driveway to Hemlock (which is merely a proposed road according to the 2019 tax map.) Details are shown in Exhibit B.

6. I agree with Millen's creation of a separate road parcel for Poplar Street, but this constitutes a subdivision on which the Planning Board must rule. Also significant is the fact that while the land under Poplar proposed was conveyed to the Tonnesons, road rights were not conveyed easterly of the center line, so the Parcel does not have road access past the center line of Poplar to the edge of Hemlock in the absence of the approval of Poplar as a road. This is because Poplar is not a road. It was never approved for such use. On page 1 of the deed conveying 11-1-1.52 to the Tonnesons, it is stated:

Together with all right, title and interest, if any, of the Grantors in and to any streets and roads abutting the above described premises to the center lines thereof, subject to rights of others over Poplar Street lying within bounds and reservations for utilities and drainage
(Emphasis added)

See Exhibit D (deed).

7. There is no recorded map or platting of the subject parcel in the Orange County land records. I make this statement based on my own personal search of these records with the assistance of the staff of the Orange County Clerk's office. The 1947 survey that is referenced in the deed to Tonneson is not recorded in the Orange County land records. Millen makes no reference to this survey either.

8. With regard to Mr. Terwilliger's statement that the driveway which was constructed, "has obtained the Fort Montgomery Fire Chief's approval"; Appendix D Section D 103.2 of the 2015 International Fire Code ("IFC") prohibits slope greater than 10% on a driveway, unless as slope greater than 10% has been approved by the fire chief. As stated in my sloping analysis (Exhibit 1 of my December 4th 2019 affidavit, the slope on the driveway exceeds 20% in some places.) Section 511 of the International Fire Code (see 2017 uniform code supplement)

mandates if the road is greater than 500 feet (this one is about 750 feet long), it has to have a turnaround at the end of the driveway. This driveway does not meet these specifications for turnouts or turn-arounds. Turnouts are supposed to be 20 feet wide and 50 feet long spaced not more than 500 feet from each other in the IFC. This driveway does not have any at all. Inasmuch as the modular house is part of a subdivision that includes 5 houses carved out of 11-1-1.52, Section 503 of the International Fire Code regarding subdivisions was ignored as well.


Michael W. Finkbeiner, LS

Sworn to before me this 18th day of December, 2019



Notary Public

NOELIA B. CANDELARIA
Notary Public - State of New York
ID No. 01CA5145128
Qualified in County of Bronx
My Commission Expires 5/1/2022

Exhibit A

Tax Map Sheet 11 Detail

Tax Map Sheet 11

Exhibit B

**Driveways from Cherry and Hemlock St (proposed) from NYS Aerial
Detail and Enlarged**

FINKBEINER EXHIBIT B1 - DRIVEWAYS FROM CHERRY AND HEMLOCK ST (PROPOSED) FROM 2016 NYS AERIAL

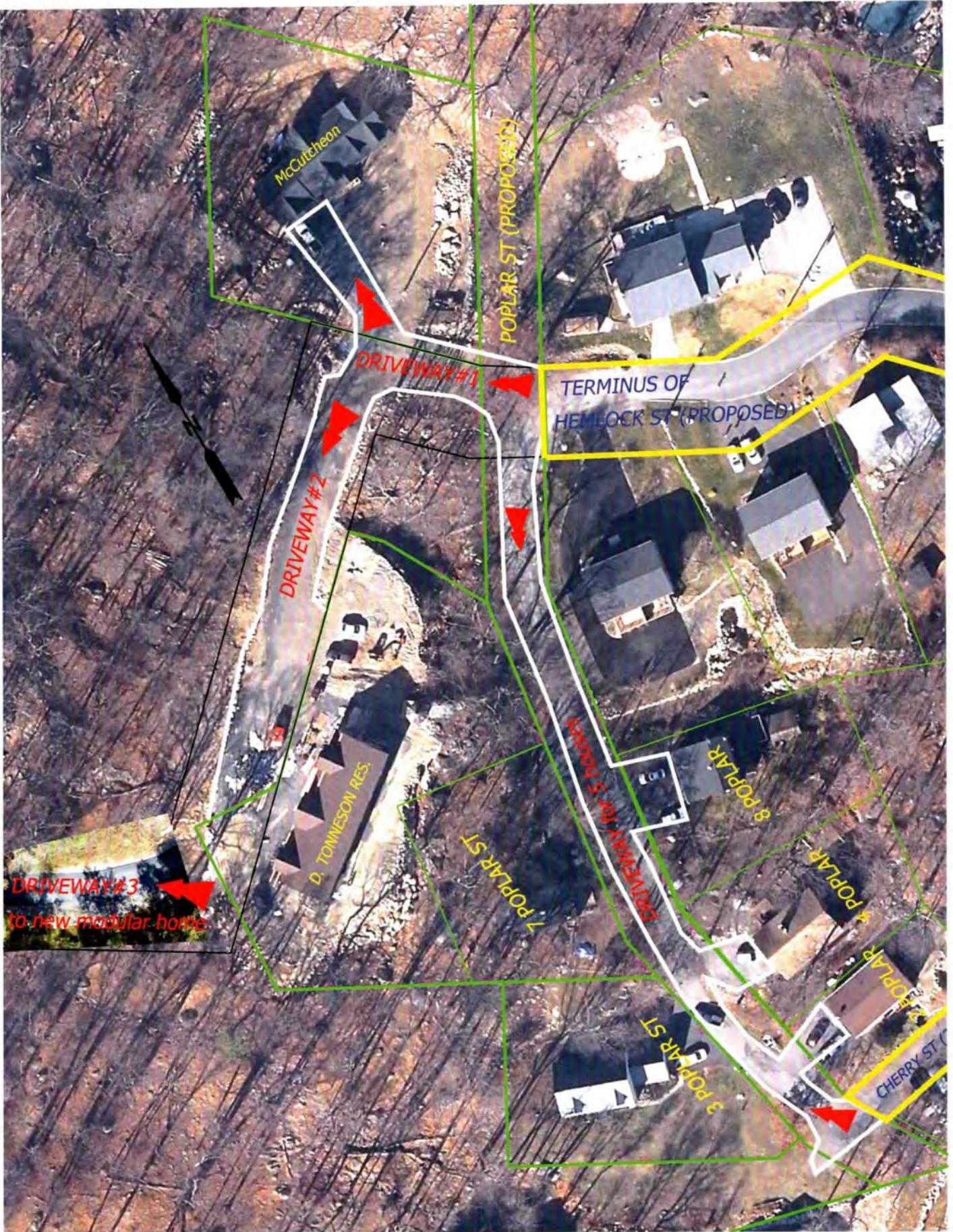


Exhibit C

Subdivision Map 1968_2379

Orange County Land Records

Lot 10

today known as 20-2-6

no easement noted or depicted

Exhibit D

Deed 11-1-1.52



ORANGE COUNTY - STATE OF NEW YORK
ANN G. RABBITT, COUNTY CLERK
255 MAIN STREET
GOSHEN, NEW YORK 10924

COUNTY CLERK'S RECORDING PAGE

THIS PAGE IS PART OF THE DOCUMENT - DO NOT DETACH



BOOK/PAGE: 14599 / 679
INSTRUMENT #: 20190053030

Receipt#: 2681958
Clerk: MP
Rec Date: 07/26/2019 11:28:24 AM
Doc Grp: D
Descrip: DEED
Num Pgs: 7
Rec'd Frm: HILL N DALE ABSTRACTERS INC

Party1: KOPALD JONATHAN R BY EX
Party2: TONNESON DAVID
Town: HIGHLANDS (TN)
11-1-1.52

Recording:
Recording Fee 55.00
Cultural Ed 14.25
Records Management - Coun 1.00
Records Management - Stat 4.75
TP584 5.00
RP5217 All others - State 241.00
RP5217 - County 9.00

Sub Total: 330.00

Transfer Tax
Transfer Tax - State 692.00

Sub Total: 692.00

Total: 1022.00

**** NOTICE: THIS IS NOT A BILL ****

***** Transfer Tax *****
Transfer Tax #: 11234
Commercial Transfer Tax
Consideration: 173000.00

Transfer Tax - State 692.00

Total: 692.00

Payment Type: Check ___
Cash ___
Charge ___
No Fee ___

Comment: _____

Ann G. Rabbitt
Orange County Clerk

Record and Return To:

MR & MRS TENNESON
P.O BOX 183
FORT MONTGOMERY, NY 10922

Executor's Deed
Individual or Corporations

HN163445A

Section: 11
Block: 1
Lot: 1.52

**CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT
THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY**

THIS INDENTURE, made the 23rd day of May, two thousand nineteen

BETWEEN

Estate of Jonathan R. Kopald, by Susan Norma Kopald, as Executrix, residing at 1420 North Atlantic Avenue, Apt. 1603, Daytona Beach, Florida 32118 and Ned Kopald, an individual, residing at 189 Main Street, Highland Falls, New York 10228, Grantors, each titled to an undivided 50% interest in the premises conveyed herein;

and

(NK)

David Tonneson a/k/a Dave Tonneson and Deborah Tonneson, as husband and wife, and ~~as tenants in common~~ with Jaidin Paisley Tonneson, with a mailing address of P.O. Box 183, Fort Montgomery, New York 10922, Grantees

joint tenants w/ rights of survivorship

WITNESSETH, that Susan Norma Kopald, to whom letters testamentary were issued by the Surrogate's Court, Orange County, New York on October 24, 2006 and by virtue of the power and authority given in and by said last will and testament, and/or by Article 11 of the Estates, Powers and Trusts Law, and pursuant to paragraph SECOND of said Last Will and Testament and Ned Kopald, do hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever for consideration of One Hundred Seventy Three Thousand and 00/100 (\$173,000.00) Dollars,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Highlands, Orange County, New York, bounded and described as follows:

Schedule "A" attached

Property: Vacant Land *Poplar Street Town of Highlands*
Tax Map: Section 11, Block 1, Lot 1.52

BEING a portion of the premises as conveyed by Feith Realty, Inc. to Jonathan R. Kopald and Ned Kopald by Deed dated December 3, 1971 and recorded in the Office of the Orange County Clerk on December 15, 1971 in Liber 1893 at page 512, less any conveyance of record made since receipt of deed dated December 3, 1971 and recorded December 15, 1971 in Liber 1893 at page 512.

Together with all right, title and interest, if any, of the Grantors in and to any streets and roads abutting the above described premises to the center lines thereof, subject to rights of others over Poplar Street lying within bounds and reservation for utilities and drainage as set forth in Liber 1073 page 388, Liber 1073 page 392, Liber 1685 page 475, Liber 1691 page 419, Liber 1747 page 910, and Liber 1773 page 58

Together with the appurtenances, and also all the estate which the said decedent had at the time of decedent's death in said premises, and also the estate therein which the Grantors has or has power to convey or dispose, of whether individually, or virtue of said Will or otherwise,

Reserving the right of ingress and egress for both vehicular and pedestrian use to Ned Kopald his heirs, successors and assigns and Susan N. Kopald, her heirs, successors and assigns, to travel over the existing Wood Road or any road subsequently constructed by Grantees, their heirs, successors and assigns, over and upon premises SBL: 20-2-7.2 and SBL: 11-1-1.52 from and to Forest Hill Road to and through Hemlock Street and

Poplar Street. This reservation of right shall run with the land and shall be binding upon Grantees, their heirs, successors and assigns.

Together with all right, title and interest if any, of the Grantors, in and to the private road known as Poplar Street.

To Have and to Hold the premises herein granted unto the Grantees, the distributees or successors and assigns of the Grantees forever,

And the Grantors covenants that the Grantors has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

And the Grantors, in compliance with Section 13 of the Lien Law, covenants that the Grantors will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvements an will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the Grantors has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Estate of Jonathan R. Kopald

By:

Susan Norma Kopald, as Executrix
Susan Norma Kopald, as Executrix
Ned Kopald
Ned Kopald

State of Florida)
County of *Volusia*) ss.:

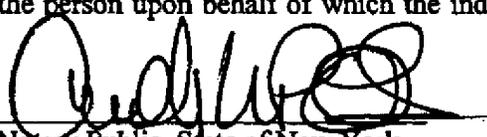
On May *22*nd, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared **Susan Norma Kopald**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Carol A. Brown
Notary Public, State of Florida



State of New York)
)
County of Orange) ss.:

On May ^{30th}, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Ned Kopald, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public, State of New York

Cindy L. Prince O'Shea
Notary Public State of New York
Qualified Orange County No. 4960382
Commission Expires April 24, 2023

✓ Record & Return To:
~~Mark D. Stern, Esq.~~ Mr & Mrs. D. Tonneson
~~15 Matthews Street~~ PO Box
~~P.O. Box 1028~~ Fort Montgomery Ny
~~Goshen, NY 10924-0238~~ 10922

Parcel

ALL that certain piece or parcel of land lying, situate and being in the Town of Highlands, Orange County, New York, bounded and described as follows:

BEGINNING at an iron pipe in the northerly line of lands of the Grantor, said point being in the easterly line of Poplar Street, as shown on a map entitled "Property of Feith Realty, Inc., Fort Montgomery, New York" prepared by Briggs Associates, Ridgewood, New Jersey, and last revised 1 October 1947, and said point also being in the line of lands of the Interstate Park Commission, and running thence, along said easterly line of Poplar Street, the following eight (8) courses:

1. S43° 35' 35"W 249.04' to an iron pipe;
2. S43° 35' 35"W 118.27' to an iron pipe;
3. S43° 27' 11"W 121.91' to an iron pipe;
4. S22° 27' 26"W 151.92' to an iron pipe;
5. S22° 48' 16"W 32.70' to an iron pipe;
6. S 3° 39' 27"W 30.19' to an iron pipe;
7. S 3° 37' 56"W 55.81' to an iron pipe;
8. S 3° 39' 45"W 249.95' to an iron pipe;

thence, crossing Cherry Street, as shown on the aforementioned map, S15° 49' 19"E 71.65' to a one-inch (1") steel rod in the northerly line of lands now or formerly of Garrison; thence, along said lands, N81° 47' 06"W 244.75' to an iron pipe; thence, still along said lands, N49° 03' 06"W 565.50' to a chiseled cross cut in stone; thence, still along said lands, N47° 52' 30"W 86.96' to a hub in the southeasterly corner of a subdivision of lands of Canterbury Forest, Inc., as shown on a map last revised 30 September 1968 and filed 21 October 1968 (Map No. 2379); thence, along the easterly line of said lands, N42° 13' 20"E 500.00' to an iron pipe; thence, still along said lands N2° 58' 45"W 552.39' to a steel spike in a rock ledge, said point being in the line of lands of the Interstate Park Commission; thence, along said lands, S47° 16' 58"E 1084.88' to the point or place of beginning.

Excepting therefrom, however, the following three (3) parcels of land:

Parcel I: (11-1-7)

Those lands conveyed to David McLellan by Feith Realty, Inc., by deed dated 8 July 1966 and filed 11 July 1966 in Liber 1747 at page 910; more particularly bounded and described as follows:

BEGINNING at an iron pipe in the northerly line of Hemlock Street, as shown on the aforementioned map of lands of Feith Realty, Inc., said point being at the intersection of said northerly line of Hemlock Street with the westerly line of Poplar Street, and running thence, in part along the northerly line of said Hemlock Street, N30° 33' 06"W 150.00' to an iron pipe; thence, through lands of the Grantor, N43° 20' 54"E 150.00' to an iron spike; thence, still through lands of the Grantor, S30° 33' 06"E 150.00' to an iron pipe in the westerly line of the aforementioned Poplar Street; thence, along said street line, S43° 20' 54"W 150.00' to the point or place of beginning.

Containing 0.496 Acres of land, more or less.

Parcel II (11-1-5) & 11-1-4

Those lands conveyed by Feith Realty, Inc. to the following parties, by deeds recorded in the Libers and pages listed:

Walter L. and Shirley A. Martin, Liber 1685, page 475
 Louis, Jr. and Anna Grazioli, Liber 1773, page 58
 John and Angelo Arrigo, Liber 1073, page 388
 George J. and Nancy E. Jimkoski, Liber 1691 page 419,
 more particularly bounded and described as follows:

BEGINNING at a chiseled cross cut in a stone in the westerly line of the afore-described Poplar Street, said point being the northern most corner of lands now or formerly of Budesheim, and N3° 39' 11"E 116.07' from the intersection of the westerly line of said Poplar Street with the northerly line of Cherry Street, as shown on the afore-mentioned map of lands of Feith Realty, Inc., and running thence, through lands of the Grantor, and along lands now or formerly of Jimkoski, N46° 47' 02"W 100.00' to an iron pin; thence, along lands now or formerly of Grazioli, N47° 15' 40"W 50.71' to a chiseled cross cut in a stone; thence, along lands now or formerly of Arrigo N 46° 47' 02"W 53.23' to an iron pipe; thence, still along said lands, N18° 05' 11"E 98.34' to a masonry nail (PK) set in a large boulder; thence, still along said Arrigo lands S 71° 54' 49"E 50.00' to an iron pipe; thence, along lands now or formerly of Grazioli and along lands now or formerly of Martin, N60° 35' 11"E 141.80' to a chiseled cross cut in a large stone; thence, still along said Martin lands S29° 24' 40"E 20.00' to an iron pipe; thence, still along said lands, S14° 06' 54"E 64.83' to an iron pin in the westerly line of the afore-mentioned Poplar Street; thence, along said street line, and along lands now or formerly of Martin and lands now or formerly of Jimkoski S22° 30' 11"W 196.34' to an iron pipe; thence, still along said Jimkoski lands S3° 39' 11"W 26.57' to the point or place of beginning.

Containing 0.801 Acres of land, more or less.

Parcel III (720 111-3)

That parcel conveyed by Feith Realty, Inc. to Anna Budesheim by deed dated 25 October 1947 and filed 26 January 1948 in Liber 1073 at page 392, more particularly bounded and described as follows:

BEGINNING at a chiseled cross cut in a large stone at the intersection of the westerly line of Poplar Street and the northerly line of Cherry Street, both of which streets as shown on the afore-mentioned map of lands of Feith Realty, Inc., and running thence, along the northerly line of Cherry Street N86° 22' 38"W 16.50' to an iron pipe; thence, still along said street line N 46° 47' 02"W 61.21' to a chiseled cross cut in a large stone; thence, through lands of the Grantor N43° 12' 58"E 100.00' to a chiseled cross cut in a large stone marking the beginning point of Parcel II above; thence, along the westerly line of Poplar Street, S3° 39' 11"W 116.07' to the point or place of beginning.

Containing 0.092 Acres of land, more or less.

FURTHER EXCEPTING

ALL that certain piece or parcel of land lying and being in the Hamlet of Fort Montgomery, Town of Highlands, County of Orange and State of New York, more particularly bounded and described as following:

BEGINNING at a point formed by the intersection of the northerly side of Cherry Street with the westerly side of Poplar Street both of which streets are laid out through lands now or formerly of Faith Realty, Inc., and which point is about 33 feet distant on a course of North $86^{\circ} 49' 10''$ West from the southwest corner of lands conveyed by Faith Realty, Inc. to Nicholas Miraglia by deed dated July 23, 1947, recorded August 4, 1947, in Liber 1053 of Deeds at page 437, said distance being the width of Poplar Street from said corner, running from said point of beginning the following courses and distances:

1. North $86^{\circ} 22' 28''$ West 16.05 feet to a point in an angle in said Cherry Street, and running thence;
2. North $45^{\circ} 47' 02''$ West 145.12 feet passing through an X cut at 61.21 feet partly along the northerly side of Cherry Street, and running thence;
3. North $43^{\circ} 12' 58''$ East 100.08 feet through lands of the Grantor, to a point in the common boundary line of the lands of the Grantor and lands of Kocher in Liber 2162 at page 1044 and running thence;
4. Along the dividing line between the lands of the Grantor and Kocher, South $45^{\circ} 47' 02''$ East 100 feet to a point on the westerly side of Poplar Street, running thence;
5. South $03^{\circ} 39' 11''$ West 116.7 feet along the westerly side of Poplar Street to the point and place of BEGINNING.

HILL-N-DALE ABSTRACTERS, INC.
20 SCOTCHTOWN AVENUE
P.O. BOX 547
GOSHEN, NEW YORK 10924
(845) 294-5110
FAX (845) 294-9581

EXHIBIT E

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS:
COUNTY OF WESTCHESTER)

I, Michael W. Finkbeiner, being duly sworn, deposes and states:

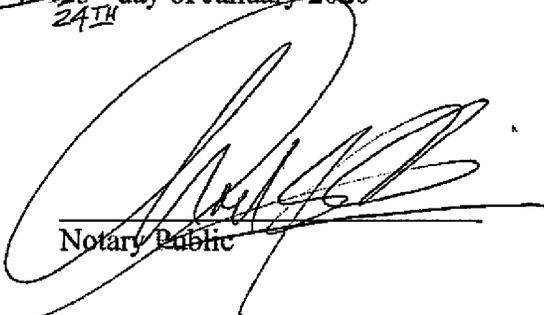
1. Exhibit 1 attached is my Methodology for location and diameter of cut stumps on Property of Canterbury Forest Corporation, 20-2-6, with timber trespass sub-exhibits. The salient point in this exhibit that applies to the tree analysis in the affidavits of Michael W. Finkbeiner of December 21st, 2019 and November 2nd, 2019, and January 24th, 2020 is that the method to determine width of trees cut with aerial shadow analysis corresponds to calculations taken on the ground. With regard to the tree survey of 11-1-1.52 the subject property in this proceeding, where I was only able to perform aerial shadow analysis, the analysis on the adjacent Canterbury Forest lot that involved both aerial shadow analysis and on the ground measurements provided the same result. It can be inferred that my analysis that 42 trees greater than 10 DBH cut on the 11-1-1.52 is accurate in the sense that at least that many trees were in fact cut. However, the limitation of aerial analysis is that if shadows overlay other shadows, those trees won't be captured. In other words, Tonneson cut at least 42 trees greater than 10 DBH on the 11-1-1.52, but possibly more.

2. Furthermore, significant erosion damage without any control was suffered on land of Canterbury Forest Corp., 20-2-6, by a culvert directing storm water through Tonneson's lot 20-2-7.2, which discharges into a rutted roadway on 20-2-6 and 11-1-1.52 disturbed by Tonneson's tree trespass on 20-2-6. The ensuing runoff flows onto 11-1-1.52 without controls for erosion and sedimentation.

Michael W Finkbeiner

Michael W. Finkbeiner, LLS

Sworn to before me this
MWF 24th day of January 2020
24th


Notary Public

NOELIA B. CANDELARIA
Notary Public - State of New York
ID No. 01CAS145126
Qualified in County of Brox
My Commission Expires 5/1/2025

MWF EXHIBIT 1

**Statement of Methodology for Location and Diameter Measurement of
Trees**

With Sub-Exhibits

(Timber Trespass Diagram, Erosion, Ground Photos)

Michael W. Finkbeiner
Land Surveyor & Forester
6 Oak St West – Suite E
Greenwich, CT 06830

Jan 13, 2020

**RE: Methodology for Location and Diameter Measurement of Cut Tree Stumps
on the Property of Canterbury Forest Corp., Fort Montgomery, NY 10922
With Use of Geo-Referenced Aerial Ortho Photos of High Resolution.**

To Whom It May Concern:

This is to certify that the cut stumps depicted on my survey dated Jan 12, 2020 of timber trespass on tax lot Section 20 Block 2 Lot 6, being also known for conveyance purposes as Lot 10 of Map 2379 of the Orange County NY Land Records, were located by a direct conventional field survey performed on site on Dec 31, 2019. A baseline in the NY East Zone State Plane Coordinate System grid was established by a real-time tie-in to the NYS DOT Reference System by CORS (Continuously Operating Reference System.)

A Leica 16i imaging total station was used to locate stumps on the property from the baselines, with direct measurement of the stump cut width, usually a foot or two above the ground as they lay. The relationship of stump diameter and height to diameter breast height was quantified with Girard form class taper equations. An overlay of the survey result on the 2016 aerial ortho photo obtained from the New York State aerial photography for Orange County permitted comparison of this calculation with the shadow analysis used to perform an inventory of trees cut and removed from the adjacent property of Tonneson, et al., being tax lot 11-1-1.52 in the Town of Highlands, NY.

The aerial shadow analysis to calculate the width of the trees that were cut on tax lot 20-2-6 yielded the same calculation from on the ground measurement.

Respectfully,

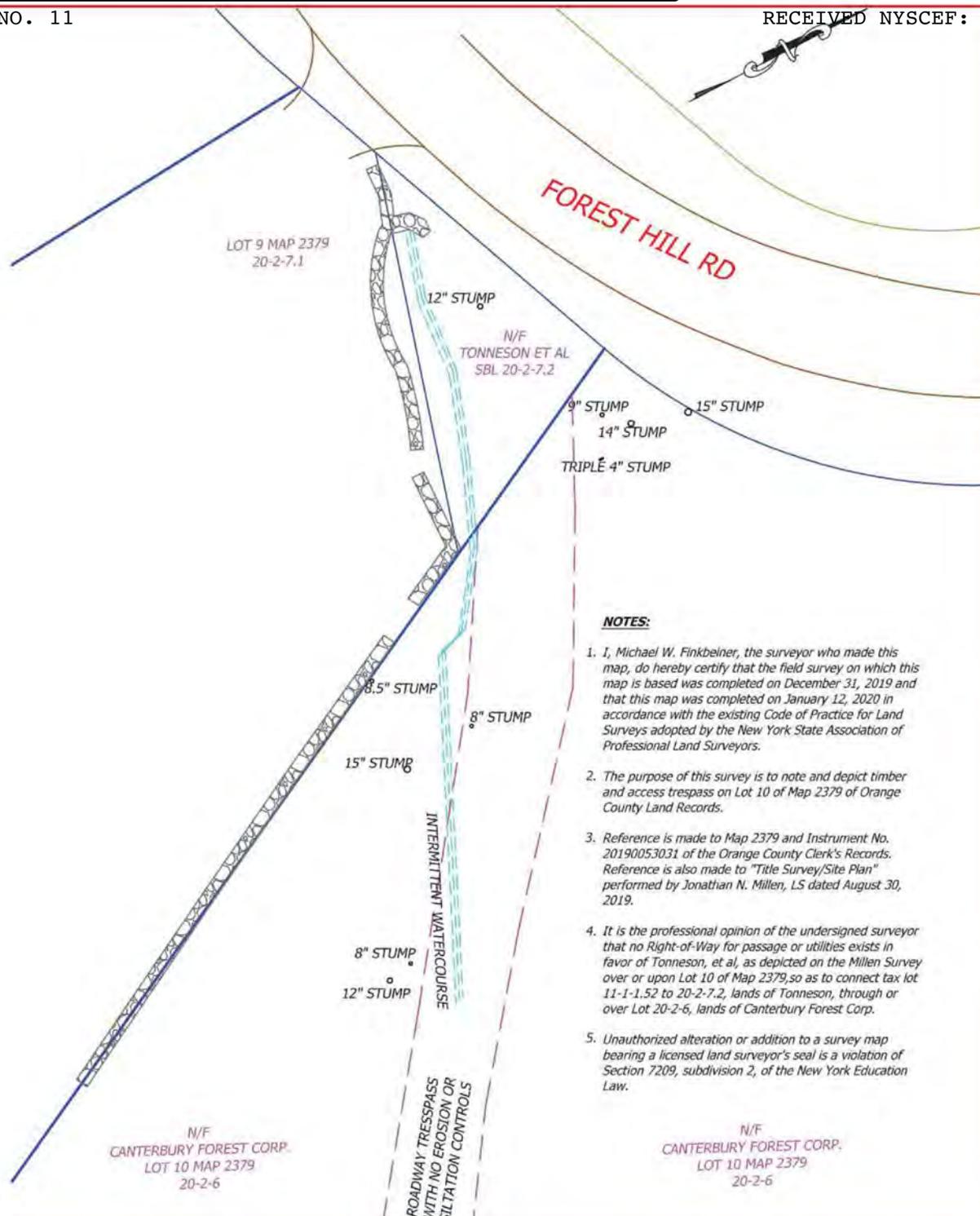
Michael W. Finkbeiner

Michael W. Finkbeiner
Professional Land Surveyor
Consulting Forester (CT #150 inactive)



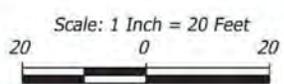
MWF-Sub-Exhibit 1

Timber Trespass Diagram



NOTES:

1. I, Michael W. Finkbeiner, the surveyor who made this map, do hereby certify that the field survey on which this map is based was completed on December 31, 2019 and that this map was completed on January 12, 2020 in accordance with the existing Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors.
2. The purpose of this survey is to note and depict timber and access trespass on Lot 10 of Map 2379 of Orange County Land Records.
3. Reference is made to Map 2379 and Instrument No. 20190053031 of the Orange County Clerk's Records. Reference is also made to "Title Survey/Site Plan" performed by Jonathan N. Millen, LS dated August 30, 2019.
4. It is the professional opinion of the undersigned surveyor that no Right-of-Way for passage or utilities exists in favor of Tonneson, et al, as depicted on the Millen Survey over or upon Lot 10 of Map 2379, so as to connect tax lot 11-1-1.52 to 20-2-7.2, lands of Tonneson, through or over Lot 20-2-6, lands of Canterbury Forest Corp.
5. Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of Section 7209, subdivision 2, of the New York Education Law.



N/F TONNESON ET AL 11-1-1.52

Michael W. Finkbeiner
 Michael W. Finkbeiner CT#16105 - NY#050352-1
 6 Oak St West, Greenwich, CT 06830
 203.661.3897 mwf@earthimage.com

TIMBER TRESPASS SURVEY
 CANTERBURY FOREST CORP. LOT 10 MAP 2379
 FOREST HILL RD, FT. MONTGOMERY, NY 10922



Prepared by:	Michael W. Finkbeiner, PLS
Date:	JANUARY 12, 2020
Scale:	1" = 20'
Field Book #:	G20
Proj. No.:	G157
Sec-Blk-Lot #:	20-2-6

TS2

MWF-Sub-Exhibit 2

Erosion on 20-2-6 caused by timber trespass
which has created further erosion on 11-1-1.52





MWF Sub-Exhibit-3
Timber Trespass
Photos of Cut Tree Stumps











EXHIBIT F

AFFIDAVIT

STATE OF CONNECTICUT)
) SS:
COUNTY OF LITCHFIELD)

I, Starling W. Childs being duly sworn, deposes and states:

1. I have a Bachelor degree in Geology and Geophysics and a Master of Forest Science Degree from Yale University where I currently teach as part time lecturer in the practice of forestry and field methodology. I co-own a Forestry consulting business, EECOS Environmental and Ecological Consultants, which is based in Lyme, CT. In addition to my professional work in all aspects of forest management from forest type mapping and stand structure to selecting and measuring trees for timber sales and harvesting oversight, I have expertise in storm water management, erosion and sedimentation control, forest road layout and construction, disturbed site reclamation and reforestation, soils and bedrock classification and mapping.

2. I reviewed a Google Satellite Map with some of the construction area on Poplar Street in Fort Montgomery, NY overlaid on top of it (EXHIBIT A) and compared it to an air photo taken on Saturday September 28 (EXHIBIT E) from a Drone of the main construction area on the west side of the paved road of this construction. I also reviewed Drone footage taken on Monday, September 30 of the section cut out of the mountain on the East side of the paved road (EXHIBIT C) of this construction that was not part of the plot mapped by the Drone footage taken on Saturday, September 28 of the main site on the west side of the paved road. I also examined more Drone Footage of the main site on the West Side of the road taken on Monday, September 30 (EXHIBIT D).

3. On the section on the West side of the paved road of the Poplar Street construction (EXHIBIT D), in my professional estimation, there are six mature trees or stumps well in excess of 10 inches in diameter visible on the ground in the drone photos and with some forensic

extrapolation by satellite imagery one can essentially pinpoint which trees have been felled by looking at the 2016 photo layer generated by Google Earth before there was any construction (EXHIBIT B). I know this because the trees are visibly casting shadows in this Google Earth photo layer and some of these that are still standing are still visible in current drone shots.

4. Based on two distinct piles of logs photographed still on the construction site (on the east side of the road), (EXHIBIT C) it appears that several other large trees have been felled and cut into lengths and piled out of the way for now. Without on the ground observation, these stems cannot be reconstructed, but relating them to other scalable objects in the photo, it would indicate they were large diameter trees as well much like their still standing neighbors. The newly constructed and paved road enters in to the site from lower elevations and this roadway would have required additional tree cutting and potentially undermined other large diameter trees in the process of bulldozing and excavation, but there again, ground truthing would be required to ascertain the level of impact, possible trees and number.

5. Perhaps the most concerning detail that emerged from my aerial assessment is the location and scale of earth moving, retaining walls and filling that is quite obvious in the drone footage. (EXHIBIT D) It would appear at first glance that the location of the homesite and excessive rock and earth fill may have encroached on a forested wetland and possibly even resulted in filling of an intermittent watercourse which is a Federally protected wetland feature on the landscape. Silt fence has been compromised over 60 feet in length and not maintained and no longer exists. Also, there is a visible oil spill stain on the clean fill near the silt fence.

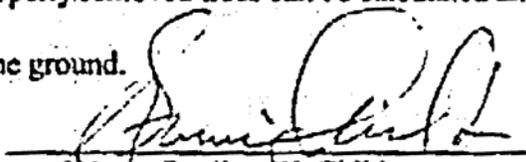
(EXHIBIT E)

6. Disturbance or filling of any perennial or intermittent stream channels which can carry

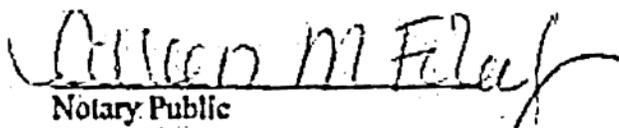
storm water flows can only be permitted through the U.S. Army Corps of Engineers regional offices and it must be conducted in cooperation with both NYS Department of Environmental Conservation ("NYSDEC") and local authorities who serve to authorize Inland Wetlands and Watercourses permitting procedures. (Section 404 of the Clean Water Act of 1972). None of the above seems to have been addressed prior to site clearing and construction.

7. The Forest on the mountainside in the Poplar Street and Forest Hill Road area appears very uniform in regard to its age and size class based on the very high resolution Google Earth spring of 2016 satellite imagery. (EXHIBIT B) Measurement of similar trees cast shadow shapes and lengths and their spectral "signatures" can be correlated with the large crowns of trees shown in real time drone footage (Exhibits B, C, D). Trees with large live crowns, such as those seen both on and around the disturbed area (east of paved road-EXHIBIT C) would simply have to have large diameter boles or stem wood to support both the mass of the live crown and relative wind and other load stresses such as snow and ice that come along with becoming mature forest trees. This is all fundamental to the science of silviculture, and I do believe any other professional forester looking at these same photos and satellite layers would come to the same conclusion that a large diameter, high canopy mature forest has been significantly reduced and/or altered as a result of ongoing construction activity there.

8. The lost carbon sequestration potential of improperly removed trees can be calculated and assessed but must be confirmed by measurements on the ground.


Starling W. Childs

Sworn to before me this
12th day of October 2019


Notary Public

Colleen M. Foley
Notary Public-Connecticut
My Commission Expires
October 31, 2022

Starling W. Childs, MFS_EXHIBIT A
Drone Deploy Layer on Google Earth Map



Starling W. Childs, MFS_EXHIBIT B
Google Earth Map Before Construction



Starling W. Childs, MFS_EXHIBIT C
East Side of the Newly Constructed Road
(Towards River)
Poplar Street Project



Starling W. Childs, MFS_EXHIBIT D
West Side of the Newly Constructed Road
Poplar Street Project



Starling W. Childs, MFS_EXHIBIT E
West Side of the Newly Constructed Road
Poplar Street Project
Oil Spill Visible



EXHIBIT G

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS:
COUNTY OF WESTCHESTER)

I, Michael W. Finkbeiner, being duly sworn, deposes and states:

1. I am a licensed NY Land Surveyor since 1999 (NY LS# 050352), registered to practice until Aug 2022.
2. I have reviewed documents of record regarding the dedication to the public of roads in the Town of Highlands, NY, namely Franklin, Cherry, Hemlock and Poplar Streets, derived from offerings by Feith Realty and/or Kopald, et al.
3. I have reviewed land conveyances from Feith Realty to Kopald et al., and from Feith Realty to Canterbury Forest Corp.
4. The metes and bounds descriptions conflict with N.Y. Highway Law Chapter 171 in several regards to be enumerated below.
5. I have reviewed a letter from the NYS DOT dated Jan. 30, 1968 regarding the public status of Cherry Street and Hemlock Street.
6. It is my professional opinion that the accepted and recorded metes and bounds of each street fail to reach as far as the title lines of Poplar Street, which has never been offered to the public, and which was transferred as an undeveloped private road 33 feet in width on paper from Kopald et al. to Tonneson et al. by a deed recorded July 26, 2019 at Book 14599 Page 679. Poplar Street (Proposed) is by description undivided and undifferentiated from the main body of Parcel A, being a portion of Lot 11-1-1.52 by deed. Parcel A excepts from its interior four parcels previously conveyed to create house lots fronting on Poplar Street along its westerly side.
7. Surveyor Jonathan Millen (NY LS#050746) prepared a Title Survey/Site Plan of the subject parcel on Aug 30, 2019, which depicts three parcels, each citing the Deed recorded at Liber 1893 Page 512: Parcel I, 13.926 acres as a portion of tax map 11-1-1.52; Parcel II, same deed, being 0.669 acres in the same tax parcel, but labelled as "Poplar St. (R.O.W. 33' wide.)"; and Parcel III, same deed and tax lot, being "Hemlock St. (R.O.W. width 50') 2.252 acres.
8. Millen fails to disclose that Parcel III carries metes and bounds significantly different from Parcel D in the underlying deed he cites, or that his "corrections" change the substantive geometry of the description.
9. Millen fails to identify that Parcel III with its original metes and bounds was offered to the public and accepted by the Town Board, first from Feith Realty on Dec 13, 1967 (Town clerk minutes say Dec 31, 1967) and by the State of NY DOT on Jan 31, 1968, subject to Hemlock being wider than 3 rods (49.5 feet.) An Indenture of transfer to the public for both Hemlock Street and Cherry Street was executed from

Feith to the Town on July 19, 1968 and duly recorded on the Orange County Land Records at Liber 1774 Page 924 on Aug 21, 1968 at 9:35 am.

10. Millen fails to call his survey of Parcel III a corrective survey of land dedicated to the public, which by its original metes and bounds was less than 3 rods wide at its departure from Franklin St (20 feet wide), and in length not adequate to extend to Parcel II in his survey, unless correctively lengthened from a point of beginning, which the original description specified as being 688 feet from Route 9-W.
11. I have computed the original metes and bounds geometry, starting from a point 688 ft west of the location of Route 9-W along the southerly side of Franklin St. on Map 1930-571, per the Indenture specification for the point of beginning.
12. While the description purports to be 50 ft wide, the actual calculated width of the initial segment of the roadway at Franklin is only 46.67 feet wide, not the required 3 rods (49.5 feet) required by the N.Y. Highway Law, Section 171.
13. Millen's metes and bounds lengthen the southerly side of Hemlock St. by 8.19 ft over the original deed description. His reference to "true point of beginning" is not related to the actual called for point of beginning in the deed. It is my opinion that Millen made this correction in length to cover the deficiency in length to meet Poplar St. He also fails to acknowledge the public dedication and acceptance of the original metes and bounds, which contains no reference to Poplar Street. The original metes and bounds express no intention to reach Poplar Street or the subject parcel, but rather refer simply to the terminus of Hemlock at "a point on Hemlock St. as now laid out".
14. Millen's survey also fails to acknowledge that Parcel B and Parcel C in the cited deed were contiguous contained parcels within the single deed, which were later developed into house lots known as 4 Poplar and 8 Poplar St. on the easterly side of Poplar St.
15. Cherry Street was approved as a public dedication by the same DOT letter of Jan 31, 1968 for a length of 900 ft. This distance falls 100 ft short of Poplar Street, to which no reference is made. Further, the dedication is based upon an expansion to at least 3 rods in width, should Cherry Street be extended beyond 900 ft. This condition was never fulfilled by the Town, despite the fact that there are now houses at 2 Poplar, 4 Poplar, 8 Poplar, 3 Poplar and 7 Poplar Street that can be reached through an extension of Cherry Street.
16. Therefore, it is my opinion that the approved public portion of Hemlock Street falls at least 3 feet short of reaching Poplar Street, and Cherry Street falls 100 feet short of reaching Poplar Street. It is my opinion that since Feith and/or others did not convey the shortfall sections to the public, the titles to these gaps still reside with Feith Realty, its heirs and assigns.
17. The public acceptance of the offer of Hemlock Street, which was transferred by deed in 1968 vitiates all subsequent transfers of the underlying real estate interest in Hemlock Street. Subsequent to the public acceptance and deed transfer to the Town, Feith attempted to execute transfer of the same Hemlock Street to Ned and Jonathan

Kopald in a private transaction in 1971. The meets and bounds of Hemlock Street were the same in the deed given to Ned and Jonathan Kopald as in the deed previously given to the Town. These metes and bounds again were not contiguous to the parcel of which Poplar Street was a part, due to the deficiency in length and width geometry.

- 18. Therefore, the offer of dedication by Ned and Jonathan Kopald to the Town in 1977 of Hemlock Street was invalid, since the public already owned the land being offered.
- 19. It is my professional opinion that all five lots with a Poplar Street address (2,4,8,3 and 7 Poplar Street) do not front on public roads.
- 20. It is my professional opinion that houses on lots 11-1-5.2 (Tonneson current), 11-1-7 (McCutcheon) and the new modular home on 11-1-1.52 are not accessible from frontage on a public highway, due to deficiency in the public dedication of Hemlock Street and Cherry Street, as to both width and length.

Michael W Finkbeiner

Michael W. Finkbeiner, LLS



Sworn to before me this
29th day of January 2020

[Handwritten Signature]

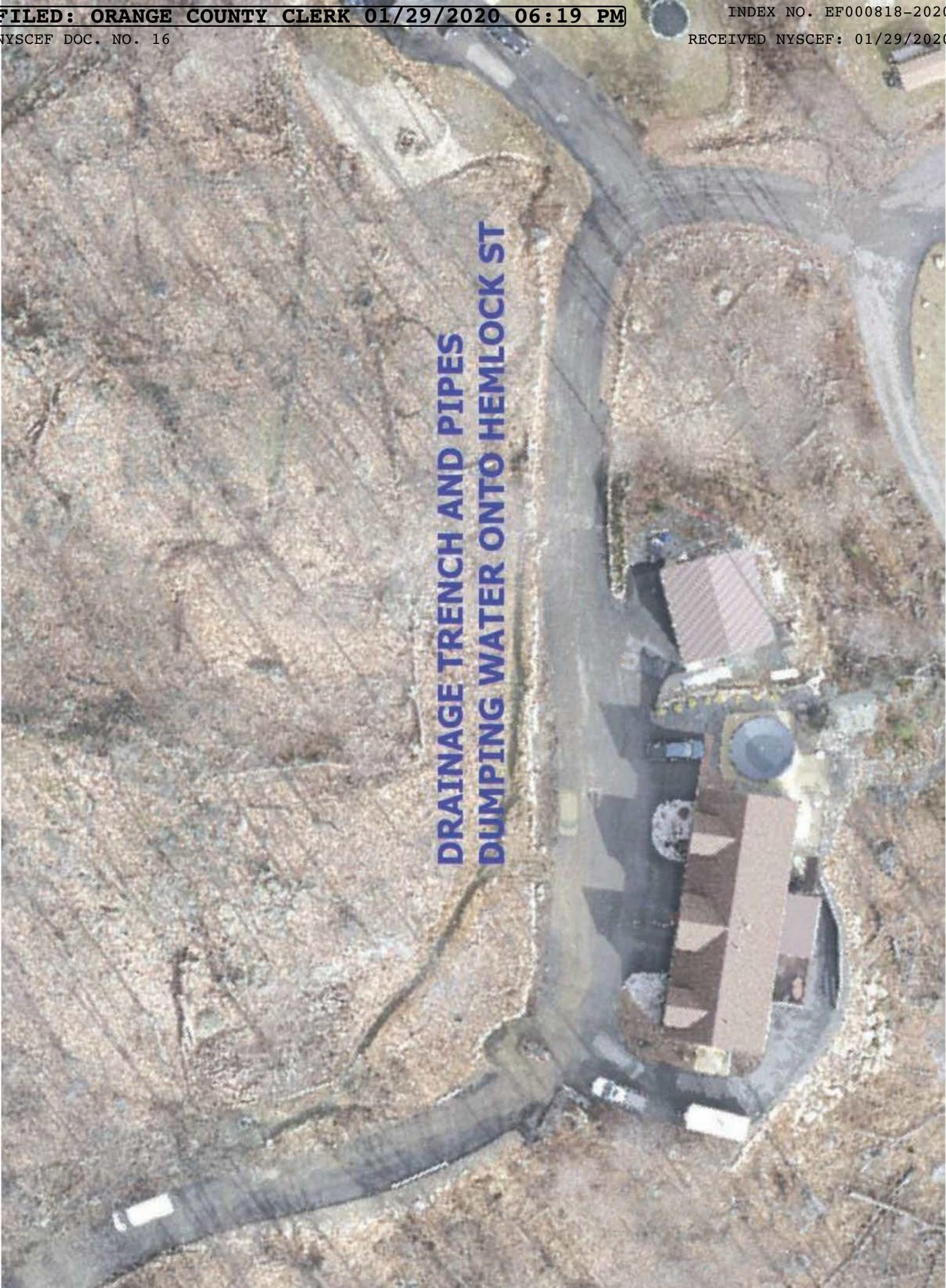
 Notary Public

NOELIA B. CANDELARIA
 Notary Public - State of New York
 ID No. 01CA6145126
 Qualified in County of Bronx
 My Commission Expires *5/1/2022*

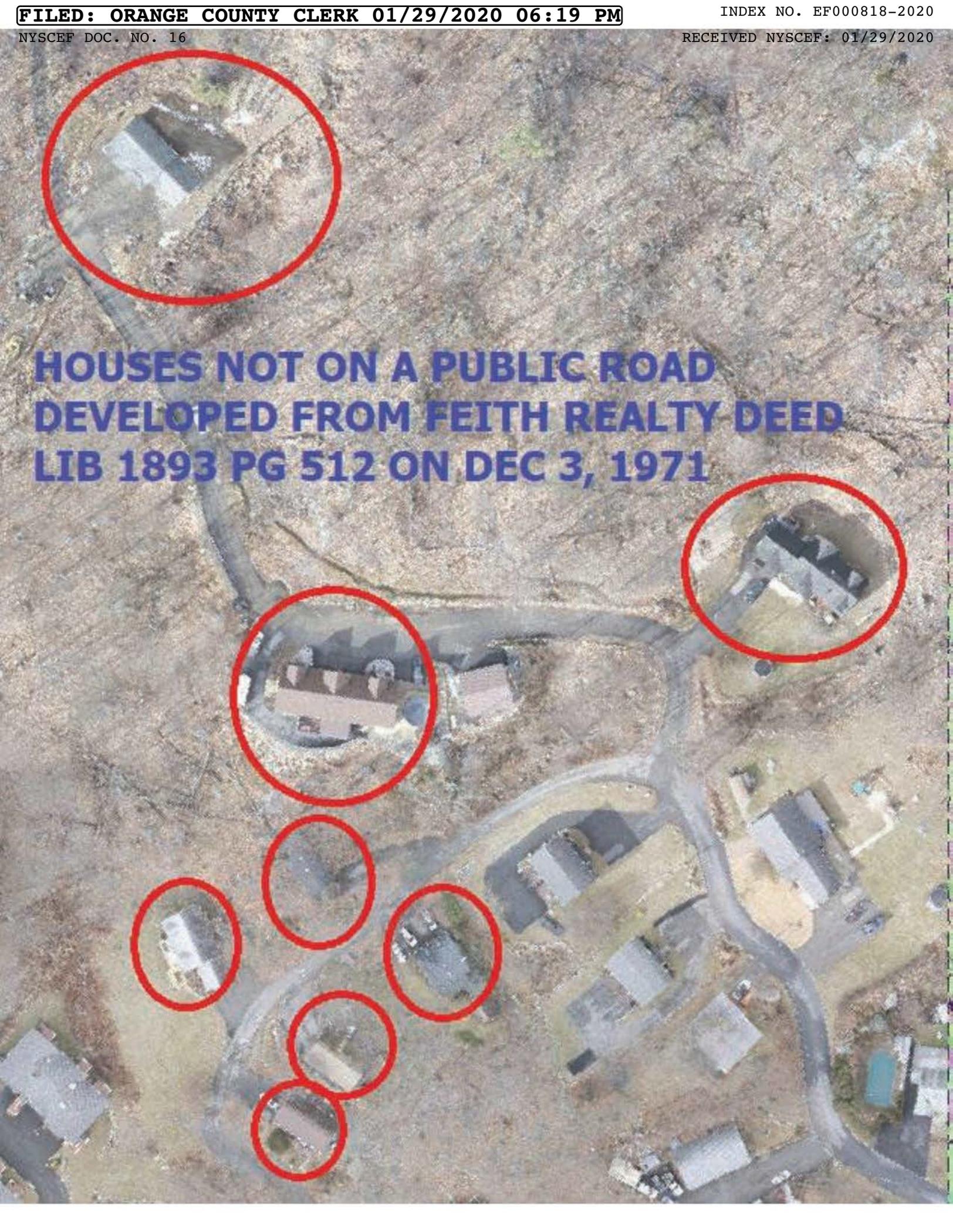
EXHIBIT H

JANUARY 6, 2020
Aerial Drone Photography

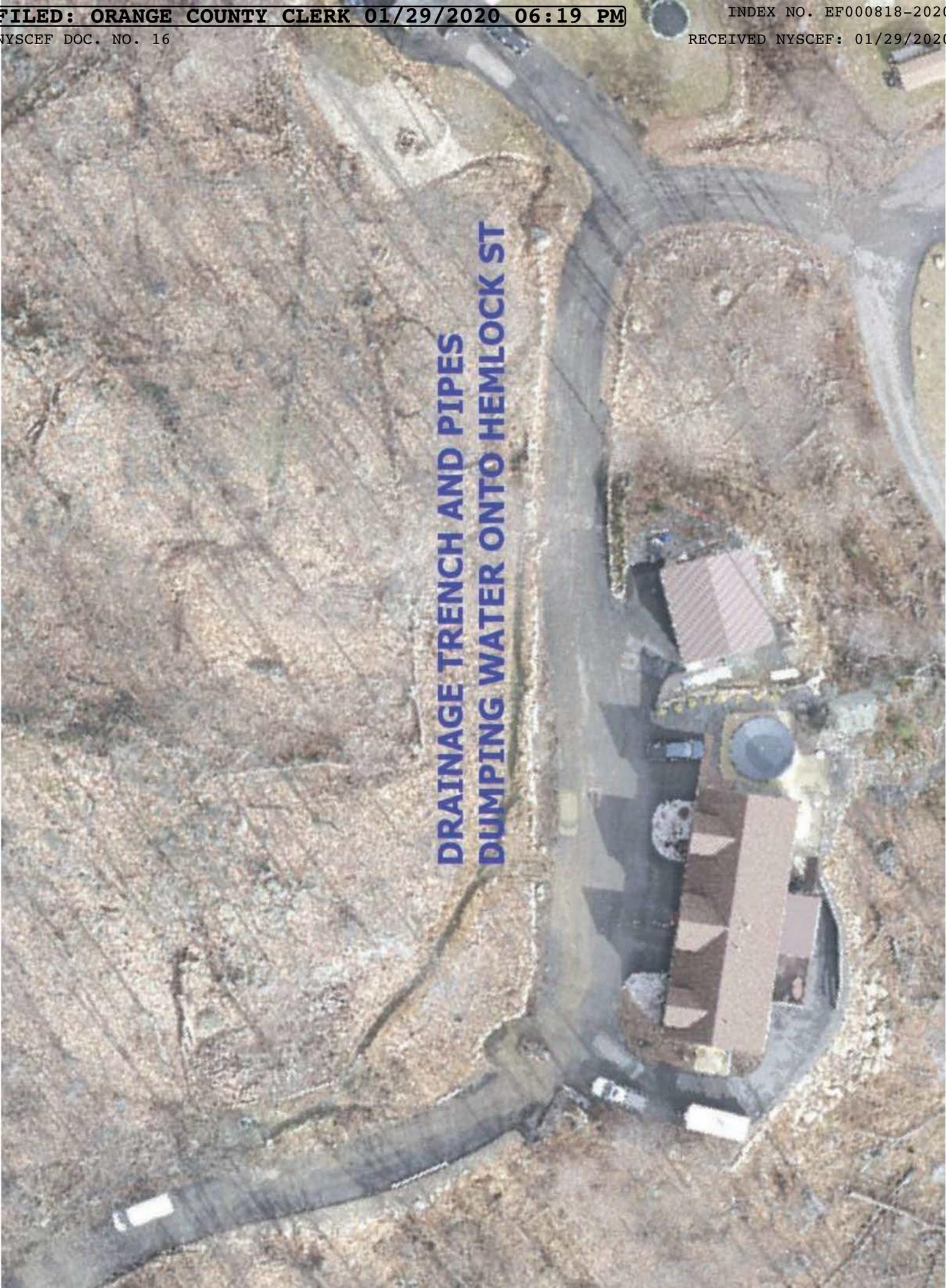
**DRAINAGE TRENCH AND PIPES
DUMPING WATER ONTO HEMLOCK ST**

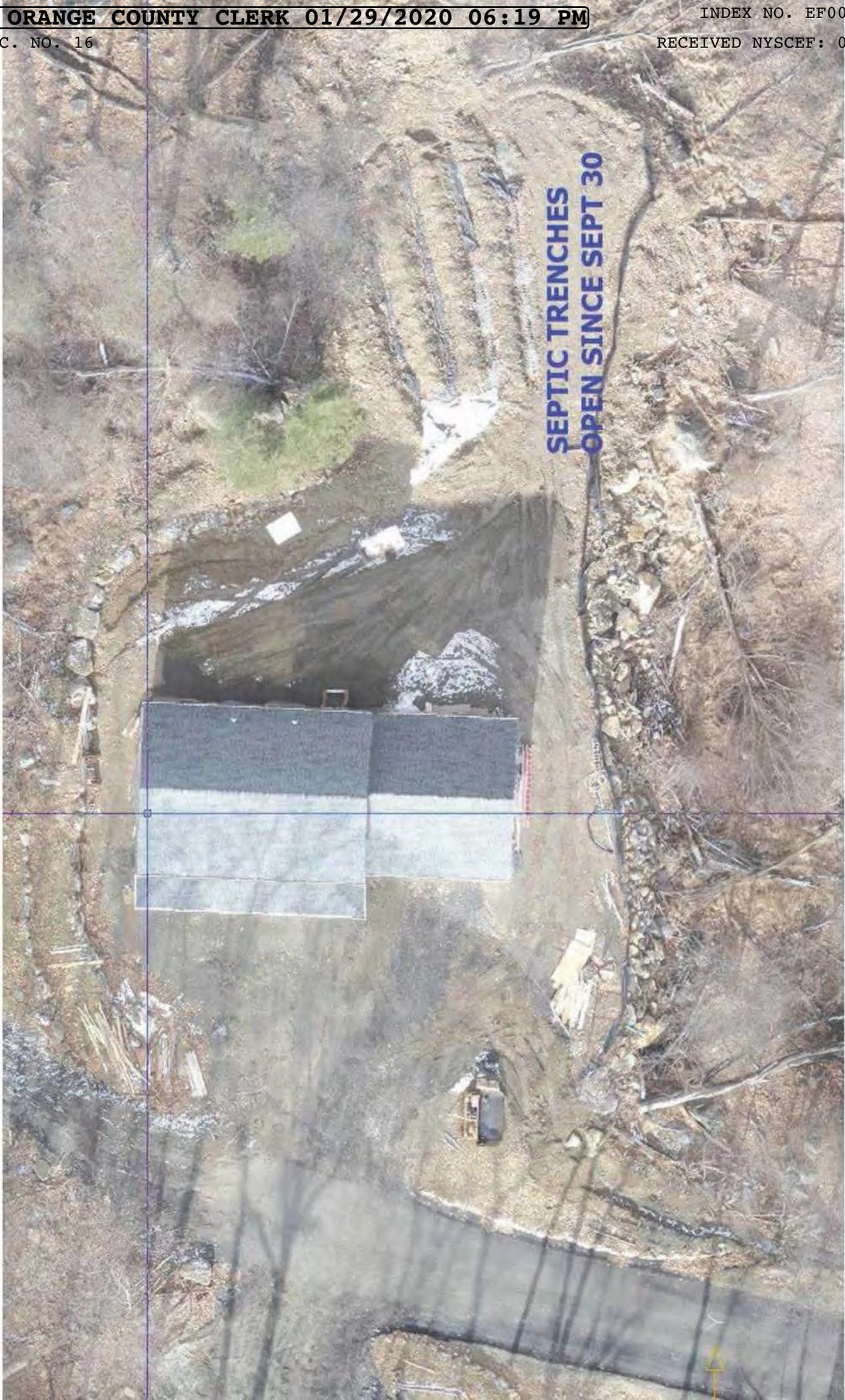


**HOUSES NOT ON A PUBLIC ROAD
DEVELOPED FROM FEITH REALTY DEED
LIB 1893 PG 512 ON DEC 3, 1971**



**DRAINAGE TRENCH AND PIPES
DUMPING WATER ONTO HEMLOCK ST**





SEPTIC TRENCHES
OPEN SINCE SEPT 30

September and October 2019

Photos from My Yard



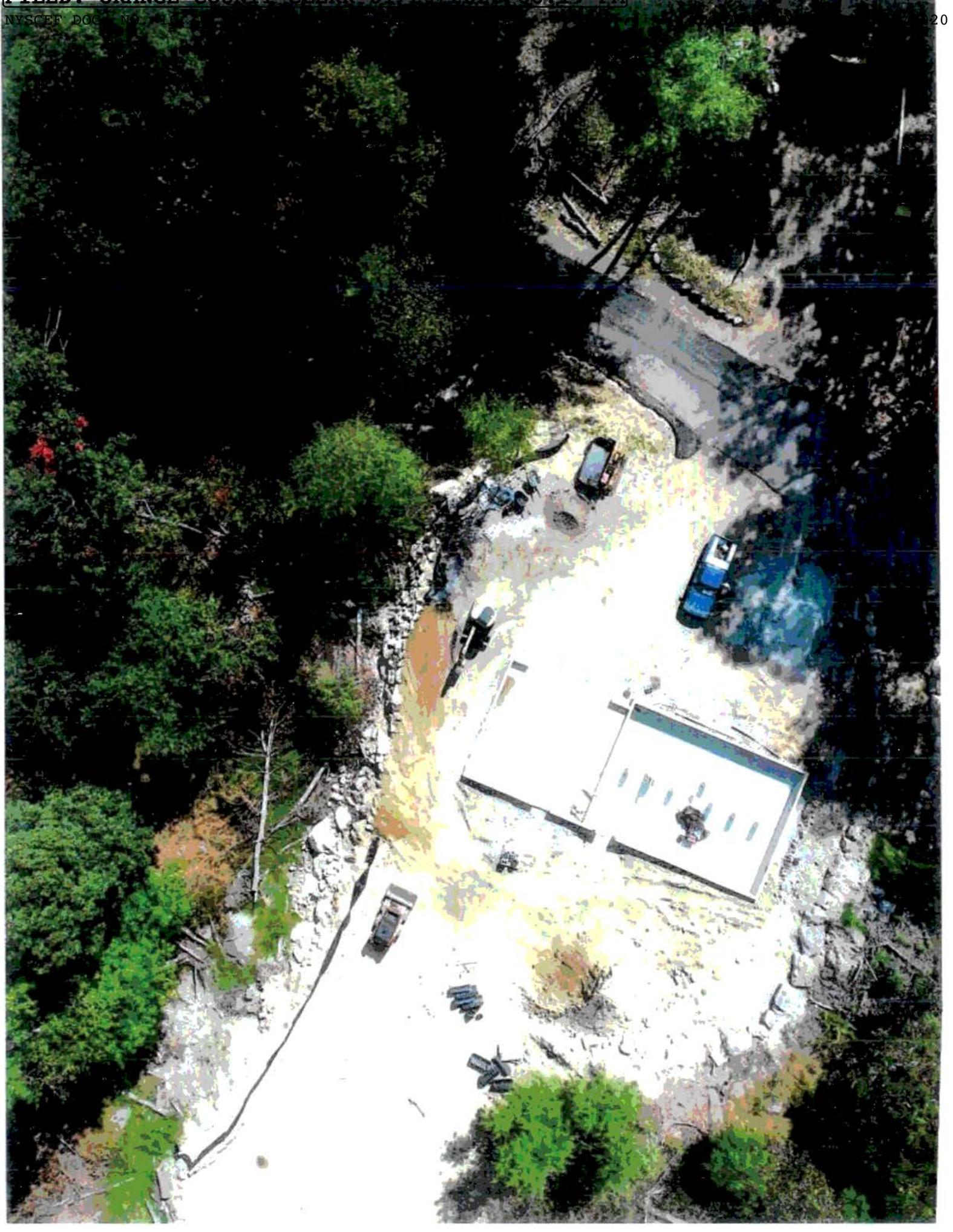


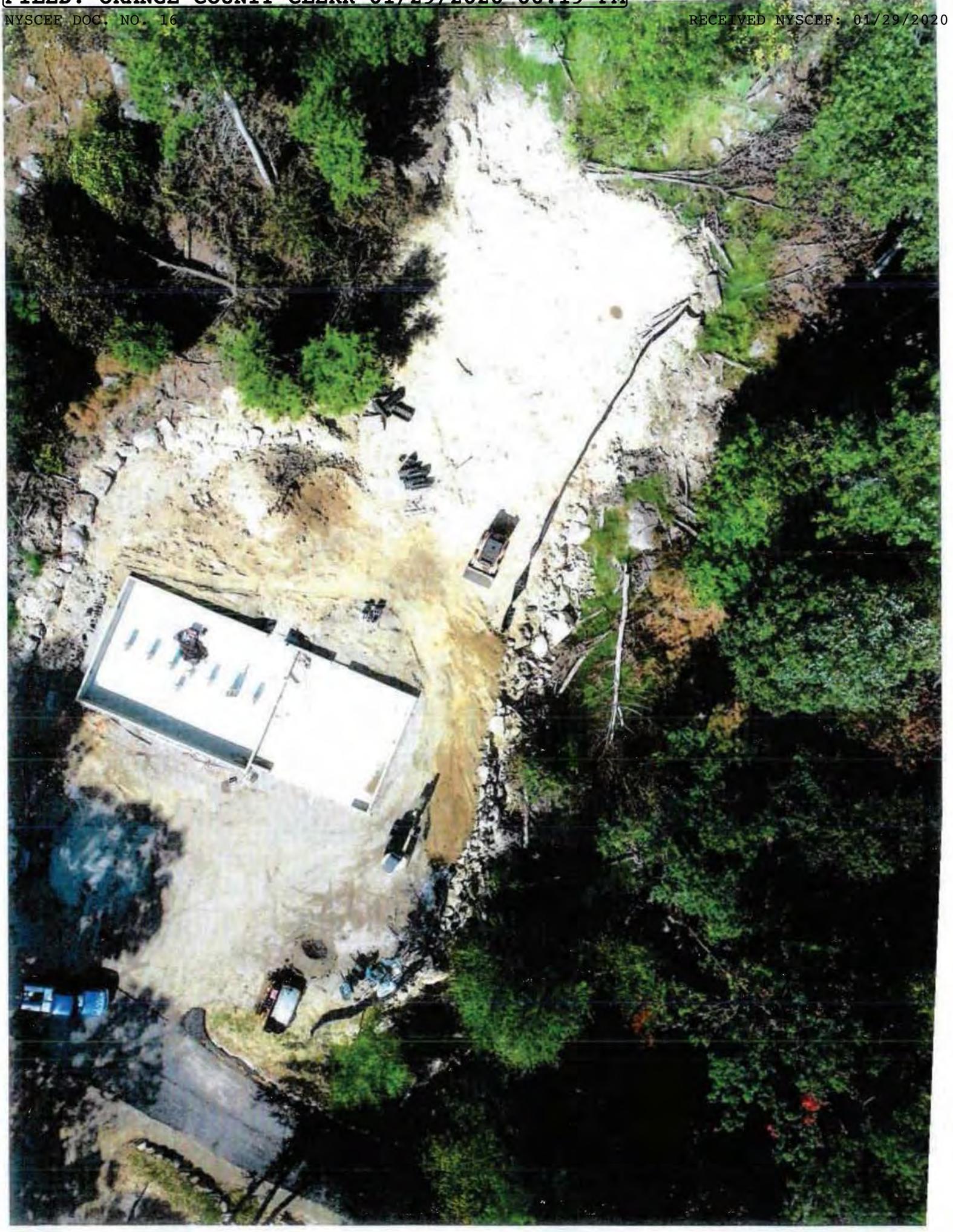




September 28 and 30, 2019
Oil Spill at West End Septic Area











September 30, 2019

Overhead of the Borrow Excavation Area, not noted on the
Plans submitted to the Building Department

Oblique Overhead of 11-1-1.52 Project

Overhead of My House at 88 Forest Hill Road (with corner of 93
Forest Hill Road at top right of the screen) - How the rest of my
subdivision is- with the homes respecting the forest and
provisions of code that are designed to make a minimal
footprint on the natural environment

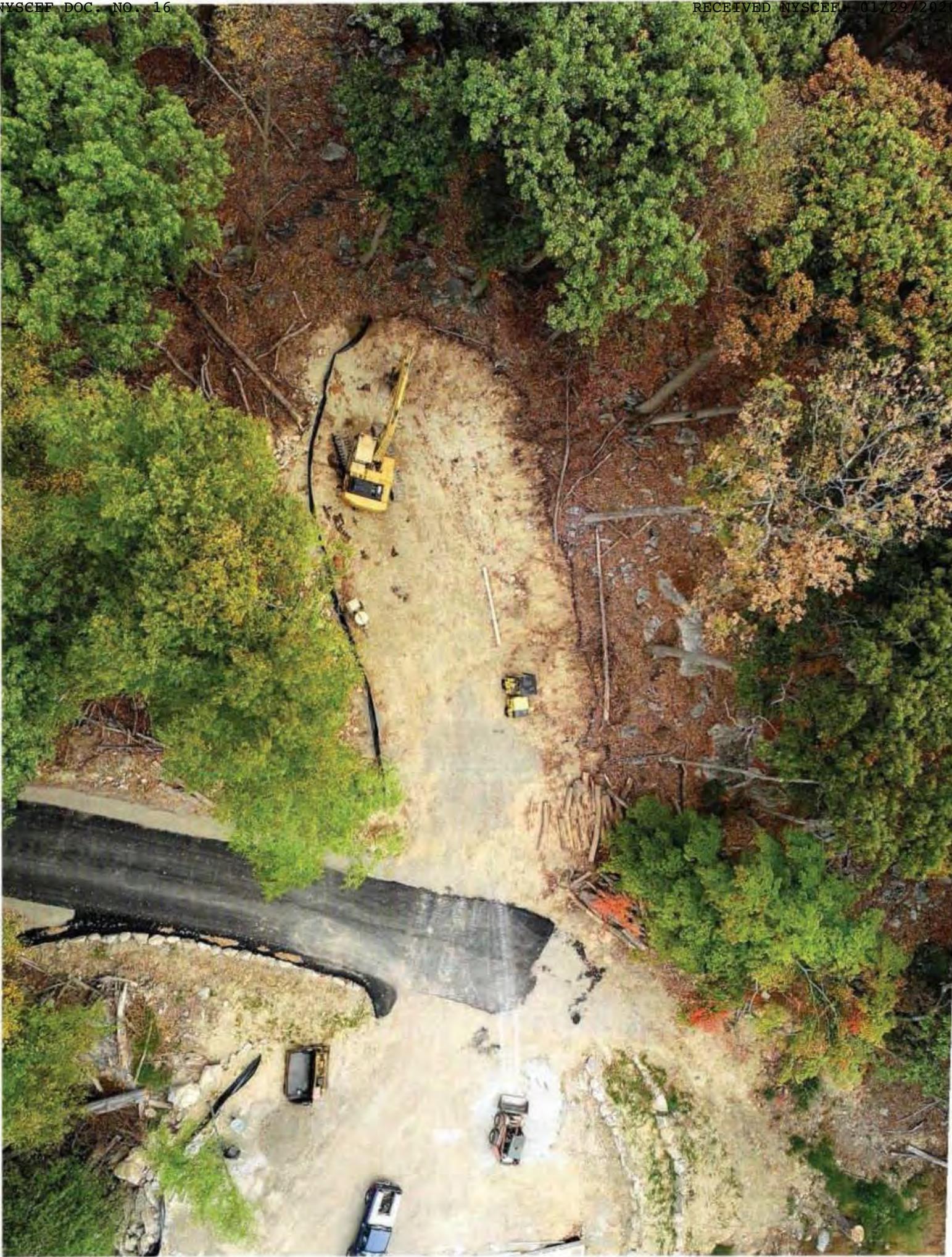






EXHIBIT I

AFFIDAVIT

STATE OF FLORIDA)
) SS:
COUNTY OF VOLUSIA)

I, Susan Norma Pliskin Kopald being duly sworn deposes and states that

1. I am over the age of 18.

2. I sold lot 11-1-1.52 as Executrix to the Estate of Jonathan R. Kopald with my brother-in-law Ned Kopald to Tonneson on May 30th, 2019. The property had been in the Estate of Jonathan R. Kopald since October 13, 2006, and I have been executrix since shortly after that date. I did not cut any trees on the property while I was Executrix since 2006, nor did I authorize the cutting of any trees during that time. On information and belief, no trees were cut on the property during that time or at any time in the decades before, that I can recall.

3. Canterbury Forest Corporation, of which I am secretary, sold lot 20-2-7.2 to Tonneson on May 30th, 2019. I have been secretary of this Corporation for decades and I did not cut any trees on the property during that time, nor did I authorize the cutting of any trees during that time. On information and belief, no trees were cut on the property in decades.

Susan Norma Pliskin Kopald
Susan Norma Pliskin Kopald
1420 North Atlantic Ave
Daytona Beach, FL 32118
(386) 252-7578

Sworn to before me this 12th day of November, 2019

Carol A. Brown
Notary Public

