



**Office of the Town of Nassau Supervisor
David F. Fleming, Jr.**

November 8, 2023

Dear Burden Lake Neighbor,

This is an important update on the Woods on Burden Lake residential development located on Totem Lodge Road on the east side of Burden Lake, in the Town of Nassau. Although the Town has provided updates in person and at Town Board meetings, which are broadcast each month, as well as through social media, I feel it important to reach out to you directly at this time due to the numerous comments I have received about this project over the last several months, much of which appears to be based on widespread misinformation and selective sharing of information. So to set the record straight, I will provide you with some background on this project and the current status.

Project Overview

Before I took office, a review and approval process took place on an application submitted by Terri Gold that culminated in the approval of 18 residential lots for this project. The size of these lots range from 5 to 6+ acres. Based on the records of this review process (which are all available for review on the Town website) and my own personal knowledge of this matter, the Town Planning Board over several years, performed a thorough review of the proposal with the aid of environmental impact statements, its own engineer, and many public meetings and hearings. You may remember these meetings and may have participated in the process which many of you did. That participation and the Planning Board review resulted in both a reduction in the number of building lots created, an increase in the lot sizes and very strict conditions being imposed on this development including the following:

- The 150' forested shoreline setback buffer applies to all buildings, clearing and wastewater disposal systems
- Tree clearing and grading of the building development shall be limited to one acre on each lot
- Homeowners are required to maintain membership in the Burden Lake Improvement Association

The final subdivision approval was rendered on August 17, 2006, the subdivision maps were signed as approved on December 14, 2006 and the approved maps were filed in the Rensselaer County Clerk's office in February 2007. At that point, these lots became legal existing lots of record and were able to be conveyed and developed in accordance with the conditions imposed by the Planning Board which are memorialized on the filed subdivision maps.

Development of the Project

For whatever reason, these lots were not conveyed for a very long time until they were all purchased by an out-of-state developer, American Land and Lakes. However, due to the foresight of the Planning Board with the direct involvement of residents of the Burden Lake, since the conditions were placed directly on the subdivision map, the developer took title to this land subject to those conditions. The developer worked directly with the Town Board to

develop the needed infrastructure as set forth in the approved plans. This infrastructure entailed the construction of a private road to access 11 of the lots and the necessary drainage improvements associated with the private road. Pursuant to the Town's requirements for the road construction, the Town has continued to hold a performance bond from the developer in the amount of the cost of the road construction and hired its own independent engineer to inspect the construction so that it was completed properly in accordance with the plans. The road, Cayuga Court (not Galen Drive as it was improperly named by the County - long story), is now in place as you know and is one of the better constructed private roads in Rensselaer County. In the summer of 2022, most of these lots were legally conveyed, oddly enough by auction, to individuals. Again, they received the conveyance of each lot subject to the conditions described above.

Starting in 2022, these individual lot owners started to submit site plan review applications to the Town for their respective lots. **It is important to note that site plan review and approval for each lot is required prior to the commencement of building or the issuance of a building permit is one of these conditions for the development.** It is also important to note, as stated by many professionals that have vast experience in residential subdivisions, that this is an extraordinary condition for construction. The Planning Board realized back in 2006 that this additional requirement would provide another level of review and approval in making sure all of the conditions imposed on the overall subdivision would be adhered to so that Burden Lake would be protected.

The Planning Board has utilized the professional licensed engineer that the Town hired to oversee the road construction to assist the Planning Board in reviewing the site plans for each lot and the individual applicants are paying for that extra cost. The site plans for a number of lots have been approved by the Planning Board and more are pending. **Neither I nor the Town Board have participated in the Planning Board site plan review on this project because it is solely within the Planning Board's legal jurisdiction.** However, based on my review of the approved site plans, the Planning Board is making sure that the conditions imposed in 2006 are being met including, but not limited to, the restrictions on development - land disturbance is confined to under one acre on each lot (less than 20% of the total lot size) and the 150-foot wide natural buffer along the shore of Burden Lake is being imposed. The Planning Board is also requiring further information as issues arise. For instance, in response to ongoing visitors to the Lake, the American Bald Eagles, the Planning Board required lot owners to engage a licensed biologist in order to determine that there are no eagle nests that would be impacted by the proposed development on individual lots.

The Town Board and I have remained involved in the completion of the road improvements and drainage. As I mentioned above, the road has been completed and there are no issues remaining with that but there have been issues following abnormally powerful rainstorms with the supporting drainage facilities over the last year which you probably have heard about. The drainage facilities were designed pursuant to the NYS Department of Environmental Conservation (the "DEC") regulations and permitting authority. There has been the need to monitor the site and require additional enhancements to the drainage facilities to make sure they are stabilized but particularly at the cul de sac portion of Cayuga Court. **The DEC has principal jurisdiction over the drainage facilities and not the Town.** For those that know me, it should be no surprise that is not a deterrence to me getting involved. Thus, I have not only had the Town's engineer do site inspections and be in contact with DEC and the developer but I personally have had phone conversations with the developer representatives, with representatives of the homeowners association comprised of the lot owners, and with DEC officials, **and I have been on site with DEC officials, engineers, and property owners.**

With a collective and collaborative effort between the Home Owners Association (HOA), the Town and DEC, a drainage swale was installed with large stones and several small check dams that would slow the water down and spread it so that the water would be absorbed more into the natural landscape without bringing sediment to the

lake. **Upon continuous monitoring, and my ongoing and permitted visits to the site**, additional stone was recently placed between the installed drainage way spreader dam and the lake, to further enhance the mitigation of sediment and erosion occurring in the undeveloped woods. The Town's independent engineer has inspected the latest work completed by the subdivision developer and has found that this is acceptable. Based on my communications with the DEC, I fully expect the DEC to sign off on this work and that this aspect of the subdivision will be complete. I have attached photographs of this drainage area so that you might have a better understanding of this work.

Another point of protection for the Lake is that each individual lot owner has or will have to develop their own stormwater protection plans for construction and register same with the DEC pursuant to the Stormwater Pollution Prevention Plan Regulations (aka, SWPPP). This is another extraordinary requirement being imposed. Our engineer and the Planning Board are also reviewing those plans being formulated by the engineer of each lot owner.

Please note that the review documentation for the original subdivision approval and a copy of the approved subdivision map itself have been available on the Town website.

Public Comment

Based on the Town's involvement in this project from the beginning to date as summarized above, you can understand if I take umbrage with a few members of lake organizations and the comments they have been circulating on behalf of the greater lake community that paint the Town as disinterested, lacking the resources, or otherwise not being on top of this project. Nothing can be further from the truth and, thus, my desire to communicate directly with you. I have read and seen all sorts of allegations, threats of lawsuits, and dire warnings of imminent degradation of the quality of Burden Lake due to this project in recent months. But in fact, we are dealing with single-family residences on large lots that are being subject to thorough review by Town officials and professional staff, with public hearings and detailed information on a project which was approved in 2006, without any legal challenge to that approval. The owners of these properties are property owners and taxpayers of the Town of Nassau and our future neighbors and, as such, they should be treated fairly. **They can be treated fairly and the lake may be protected at the same time.** To what I can see, our new neighbors (to be distinguished from out of state developers) are cooperating with the Planning Board and seek no more than the rights they acquired. But they have been subject to numerous trespasses on their properties, which has been documented, and constant misinformation being circulated against them. This must stop. While I always welcome participation and comments from residents and property owners in the Town, I do not appreciate comments that are intentionally misleading and fabricated.

I have now stated the following several times on the record. I will not tolerate the ongoing and recorded trespass and vandalism that is being perpetrated against our new property owners. It is extremely disappointing that instances of trespass have been recorded and allegedly involve individuals claiming they speak on behalf of the residents of the lake community. These acts only undermine otherwise constructive comments from the lake community. These issues and the concerns outlined above, have forced the Town to waste too many resources to play peacemaker between the parties and to deal with misinformation.

Next Steps

The Planning Board will continue to review and process applications that are submitted for single-family homes on this project. Now that the drainage work is completed for the private road, the next step is for the HOA to take over the obligation of maintaining the infrastructure shared in common with the lot owners. The Town Board and myself will continually monitor this situation and will step in when factually warranted.

We will continue to keep conservation and protection of our natural resources at the forefront of our efforts. Just as we have always done.

There will be homes developed on the east side of the lake. This new development will include our new neighbors and I know we all wish them the best as they transition into their new role as members of our community and new members of the Lake Association.

On a personal note, I greatly appreciate the constant discussions with those lake residents that have had constructive ideas and criticisms. We welcome the individual dialogue with you based on mutual respect and consideration. It has been an honor to work side by side with so many lake residents for years as we have successfully addressed conservation and public health protection of the area.

My best wishes to you and your family as we enter into the holiday season and as the beauty of fall is evident across our lake. Thank you for taking the time to read this information and to better understand the facts that confront us all.

Best regards,

A handwritten signature in black ink, appearing to read "David Fleming", written in a cursive style.

David Fleming
Nassau Town Supervisor

Enclosure

Permitted Site Visit Photographs by Supervisor Dave Fleming



Surveillance photograph of one of my site visits after completion of another stage of remediation work.



Close-up view of the drainage way so often discussed.



Clarity of the waterway during a storm on October 21, 2023 with over 1" of rain.



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