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March 31, 2021

Via Facsimile and E-mail

Gilman Albert
Town of Saratoga Zoning Officer/Building Inspector
12 Spring Street
Schuylerville, NY 12871

Town of Saratoga Town Board
12 Spring Street
Schuylerville, NY 12871

Town of Saratoga Planning Board
12 Spring Street
Schuylerville, NY 12871

Dear Mr. Albert, Members of the Town Board, and Members of the Planning Board:

Re: Demand for enforcement pursuant to Town Law § 268(2) against Witt Construction for clearcutting in violation of state and local law

My office represents the Saratoga Lake Association (“SLA”) and John R. Cashin, Joanne Santangelo, and Paul F. Murphy, three taxpayers of the Town of Saratoga (the “Town”). On their behalf, I write to demand, pursuant to Town Law § 268(2), enforcement of the Town of Saratoga Zoning Regulations (the “Zoning Regulations”) against Witt Construction (the “Developer”). The Developer has begun land-clearing activities at the proposed Cedar Bluff Subdivision site (the “Project”) with no prior approvals by the Town in clear violation of state and local laws. The Town must put an immediate stop to this unlawful behavior. If the Board refuses to act within ten (10) days to enforce the applicable state and local laws against the Developer, my clients will commence the appropriate action, with full authority of the Town as granted to them by Town Law § 268(2).

The Developer submitted an application for approval to subdivide a 111-acre property in the Town to create the proposed Cedar Bluff Subdivision (*i.e.* the Project Site). The Developer plans to develop 32 single-family homes and set aside 60 remaining acres for required open space. However, the Developer has agreed to lease one of the proposed lots with an option to purchase, allowing the lessee to convert a portion of the dedicated open space for use as a vineyard. Even further, the Developer has allowed this future lessee to begin clearcutting part of

the Project site to prepare it for use as a vineyard—with no prior approvals—in order to unlawfully sidestep the review process pursuant to the New York State Environmental Quality Review Act (“SEQRA”). As such, the current actions of the Developer and its future lessee are in flagrant violation of the Zoning Regulations, the Town’s subdivision laws, and SEQRA, as set forth more fully below.

Firstly, it is wholly impermissible to allow commencement of any type of development action until all necessary approvals have been obtained. The Developer is still in the initial stages of the approval process, having only submitted a subdivision application. Allowing any construction activities to commence before the Board reviews the subdivision plan is a direct violation of Section II of the Subdivision Regulations and Design and Construction Standards of the Planning Board of the Town of Saratoga, New York (the “Subdivision Law”). Further, as it relates to Conservation Subdivisions specifically, pursuant to Sections 400-14(C) and (D)(1) of the Zoning Regulations, “review and permit authority is through the Planning Board” and “[e]ach step of the design process must be discussed and approved by the Planning Board.” The Town, by allowing this construction activity as a commencement to the Developer’s subdivision plan without its full, complete approval, is violating its own Zoning Regulations and Subdivision Law.

Further, not only is this clearcutting being done without Town approval, there has been no environmental review previously completed as required pursuant to SEQRA. Because the Developer and the future lessee have chosen to start developing the land without regard to the clear procedural steps set forth in the Subdivision Law and Zoning Regulations, the environmental review process under SEQRA has not yet been completed. Again, the Developer has only submitted a subdivision application and a Full Environmental Assessment Form (“EAF”) has not yet been reviewed in full. This is particularly concerning given that the Project site is located in an area with steep slopes, vital wetlands, and ecologically important plant and animal species.

Additionally, environmental review of an action cannot be segmented in order to avoid scrutiny of potential impacts identified during this crucial process. Pursuant to SEQRA, 6 NYCRR § 617.3(g), the entirety of the proposed action—rather than any individual steps or phases that comprise it—must be reviewed by the agency when executing its environmental review process. For an agency to consider only a part or segment of a proposed action is contrary to the intent of SEQRA. 6 NYCRR § 617.3(g)(1). Only where an agency clearly states in its determination of significance that segmented review is warranted is such review permissible. *Id.* It is not difficult to understand the Developer’s true intentions here: the Developer is trying to remove all of the trees in this area of the Project site before the SEQRA process can be fully completed to avoid having to answer for the environmental impacts that will inevitably result. The Board cannot allow such obvious, deceitful actions to be taken to avoid a process of environmental review designed specifically to protect the Town’s own crucial natural areas.

Thirdly, it is a blatant violation of Section 400-14(H)(1) of the Zoning Regulations for anyone other than a homeowners’ association, the Town, or the developer to own and maintain the open space land in a conservation subdivision without approval by the Town Board. As stated, there has been no final approval by the Board or Town of any action taken by the Developer thus far. Therefore, the Developer transferring ownership or maintenance responsibility of the area currently being clear-cut to the lessee is a violation of the Zoning Regulations, since this area of

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the Project site is intended to be part of the open space land in the proposed Cedar Bluff Subdivision.

Lastly, clearcutting forested land in the Town without a permit violates not only the letter of the Zoning Regulations but one of its clearly stated purposes. Section 273-1 of the Zoning Regulations states that the “purpose of this article is to properly preserve forested land in the Town of Saratoga” and that “[f]orested land is an important natural resource and an integral part of the scenic beauty and healthy ecosystem of the Town.” Additionally, Section 273-3 of the Zoning Regulations states that a property owner must obtain a special permit from the Planning Board “before any clear cutting of trees may begin” and approval of such permit must be consistent with the stated purpose of this section. Obviously, none of this has occurred. The Developer and lessee have blatantly violated the outlined procedures in the Zoning Regulations by commencing a clearcutting operation at the Project site. Additionally, the two exemptions to this permit requirement have not been satisfied by the Developer because (1) this clearcutting activity is not being done as part of an ongoing bona fide farm operation since the proposed vineyard is simply an idea at this point and (2) this clearcutting is not part of the work being done for completion of a subdivision previously approved by the Board since there have been absolutely no prior approvals by the Board to date. Zoning Regulations § 273-4(A)-(B). As such, this clearcutting activity is an ongoing violation of the Zoning Regulations, the Subdivision Law, and SEQRA.

Please respond in writing within ten (10) days. If we do not hear from you within that time, we will be forced to commence litigation and pursue any and all remedies in law and equity available to enforce the applicable state and local laws as discussed herein.

I look forward to your timely response. Please feel free to contact me with any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "C. Malcomb".

Charles W. Malcomb

cc: Linda A. McCabe, Town Clerk