

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
August 4, 2015**

**MEMBERS PRESENT**

Art DePasqua  
Gerald Dolan  
Tracie Ruzicka

Eliot Werner

Arlene Campbell, Secretary

Mr. DePasqua called the meeting to order at 7:32 p.m.

**VARIANCE APPLICATION:**

None

**PUBLIC HEARING:**

**Kliros Steep Slopes Permit** – property owned by Hilary Kliros located at 434 Hibernia Road, **Tax Grid No. 6566-00-646093.**

The applicant is seeking Steep Slopes Permit in order to allow installation of a ±130-foot temporary road for equipment access related to the removal of a failed dam.

Rodney Morrison from LRC, applicant’s engineer, was back before the board. Also present for this application was Andy Learn, Town Engineer from Morris Associates.

Mr. Morrison briefly explained their project as indicated above. He also indicated the history of this project through the DEC. He illustrated the proposed temporary driveway on the map to get to the dam. The dam is 24 feet away from the edge of the house structure. There is one small pine tree that is going to come down. He noted that they’re working to minimize the number of trees that needs to come down on this site.

Mr. Werner motioned to open the public hearing, seconded by Mr. Dolan, All Aye, Motion carried, 5-0.

Margaret Lovell, 452 Hibernia Road asked where the bridge is and the affected areas are on the map. She noted that her barn borders this property.

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Mr. Morrison pointed out to the map where the bridge is and explained the details of their proposal on the map.

Ms. Lovell asked if there is still going to be a dam on that area. Mr. Morrison responded that there still going to be remnants of the dam. He indicated the history why they need to remove the dam.

Norene Coller from CAC asked how they are going to buffer this area to protect the stream and the habitat. Mr. Morrison responded that there is a flow calculated. He noted that this will be on the DEC report.

Hearing no comments from the public, the board agreed to close the public hearing. Ms. Ruzicka motioned to close the public hearing, seconded by Mr. Dolan, all Aye, Motion carried, 5-0.

**APPLICATIONS:**

**Kliros Steep Slopes Permit** – property owned by Hilary Kliros located at 434 Hibernia Road, **Tax Grid No. 6566-00-646093.**

The applicant is seeking Steep Slopes Permit in order to allow installation of a ±130-foot temporary road for equipment access related to the removal of a failed dam.

The board discussed the application. Mr. Learn indicated that most of their concerns were already addressed (see Morris's letter dated July 31, 2015). Based on their meeting at the site, the applicant has modified the plans to address issues related to drainage, traffic control and erosion & sediment control. Mr. Learn stated that additional traffic protection measures should be noted on the plans including signage, flag person and flashing lights on the temporary barriers. These items can be conditions to the approval.

The board agreed to review the Long Form EAF for SEQRA purposes.

After all the discussions were made, the board passes a resolution, to wit:

Mr. Werner motioned that the Town of Clinton Planning Board approves the following Negative Declaration prepared by the Town Planner in the Matter of **Kliros Property Shapp Pond Dam Removal Steep Slopes Permit, Special Permit and Wetland Permit Application.**

**State Environmental Quality Review  
NEGATIVE DECLARATION  
Notice of Determination of Non-Significance**

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

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The **TOWN OF CLINTON PLANNING BOARD**, as lead agency, has determined that the proposed action described below will not have a significant environmental impact and a Draft Environmental Impact Statement will not be prepared.

**Name of Action:**            **Matter of Kliros Property Shapp Pond Dam Removal  
Steep Slope Permit, Special Permit, and Wetland Permit Application**

**SEQR Status:**            Type 1              
   Unlisted       

**Conditioned Negative Declaration:**                        Yes  
               No

**Description of Action:**

The action is an application from Hilary Kliros for Steep Slope Permit, Special Permit, and Wetland Permit approvals to allow the installation of a ±130-foot temporary road for equipment access related to the removal of a failed dam located on the East Branch of the Wappinger Creek on a site located at 434 Hibernia Road in the Town of Clinton (“Kliros Dam Project”). The application involves tax parcel 6566-00-646093 located in the Residential Hamlet (RH) District and is also mapped as being located in the Ridgeline, Scenic, and Historic Protection Overlay District. Due to the location of the proposed site within the Ridgeline, Scenic, and Historic Protection Overlay District and within the boundary of a Critical Environmental Area designated by the Town, the application is automatically deemed a Type I Action pursuant to §250-15(B)(2) and (4) of the Town Code. The Planning Board has been established as the Lead Agency.

**Location:**

434 Hibernia Road in the Town of Clinton, Town of Clinton, Dutchess County, New York.

**Reasons Supporting This Determination:**

1. The Shapp Pond Dam has already been breached and water is presently running freely under the remains of the dam. The New York State Department of Environmental Conservation (NYSDEC) Division of Water, Bureau of Flood Protection and Dam Safety has determined that the remaining elements of the dam pose a risk to the public and to the environment and must be removed. As a separate action, the NYSDEC issued a Negative Declaration as part of an uncoordinated review of the dam removal. That Negative Declaration, however, did not consider the permits and approvals required by the Town for the proposed work.

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2. Access to the dam for the removal work would be via a temporary ±130-foot road from Hibernia Road down to the shoreline of the East Branch of the Wappinger Creek. The location and design of the access drive is subject to the approval of the Town Highway Superintendent for sight lines, safe stopping distances and constructability. Construction of the driveway as approved would assure safe and adequate all-weather access to the shoreline for equipment and personnel to perform the dam removal work.
3. During construction of the access drive and removal of the dam, truck traffic will slightly increase during the period the work would be performed. Any increase in the number of vehicle trips on Hibernia Road and other local roads would be of short-term duration, estimated to be three months. The additional vehicle trips would not significantly affect or result in a degradation of the operating characteristic of any nearby roads or intersections. This level of additional vehicle travel on local roads is not considered significant and would not result in changes to the operating level of service of area intersections, and would not result in a significant adverse change in air quality from vehicle exhaust.
4. The project would not result in an increase in the local population, and there would be no increase in solid waste production.
5. The design of the access drive would be in compliance with the Town's erosion control and flood safety requirements and would ensure that water quality is protected during construction and post-construction conditions. Accordingly, the project is not expected to cause a substantial adverse change in existing ground or surface water quality or quantity.
6. The work would occur in an area that was previously disturbed as part of the dam construction and operation, and the area of disturbance for the access drive would be limited. As a result, the Lead Agency has concluded that the project would not result in the removal or destruction of large quantities of vegetation or fauna, and would not substantially interfere with the movement of any resident or migratory fish or wildlife species. No disturbance to or a substantial adverse effect on any identified significant habitat areas, threatened, or endangered species of animal or plant, the habitat of such a species, or other natural resources has been identified.
7. The project is permitted under the Town Zoning Law subject to obtaining Steep Slope Permit, Special Use, and Wetland Permit approvals. The proposed activity is consistent with all current development plans and goals as officially approved and adopted, and would not result in a substantial change in the use, or intensity of use, of land devoted to agricultural, open space, or recreational use.
8. A review of the NYSOPRHP site data indicates that there are no sites or districts listed on the state or national registers of historic places adjacent to the property. Accordingly, the

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proposed project would have no known adverse impact on historic or prehistoric cultural resources of local, state, or federal significance.

9. The activity is a dam removal project that would be of short-term duration and would be consistent with the low-density rural residential character of the area. The proposed activity will occur in a rural, low-density, residential/agricultural area and is not expected to impair the character or quality of important historical, archaeological, architectural, or aesthetic resources or the existing community or neighborhood character.
10. The proposed action would not result in a major change in the use of either the quantity or type of energy, and will not create a hazard to human health.

Seconded by Mr. Dolan, All Aye, Motion carried, 4-0.

Deputy Chairman DePasqua asked for questions and comments from the board.

Ms. Kliros expressed her frustrations and strong objection about the restoration bond. She indicated her grief and stress from the whole process of this project. She noted that she already spent a lot of money for this project. She pleaded that the restoration bond be waived.

The panel discussed the need of a restoration bond. Ms. Ruzicka stated that board only recommends to the Town Board. It is the Town Board's purview.

Mr. Learn explained that the restoration bond is the funds to be used in case the temporary road is not restored property. Ms. Kliros responded that there is a home insurance. She asked, "Why do they still need this bond?"

Mr. Werner stated that they are just following the law. They cannot waive it. It is the Town Board's decision. He stated that the applicant can go before the Town Board meeting about the issue.

The board passed a recommendation.

Mr. Werner motioned that the Town of Clinton Planning Board approves the Restoration Bond Estimate prepared by the Town Engineer, Morris Associates LLC in the matter of **Kliros Steep Slopes Permit** regarding the installation of a ±130 foot temporary road for equipment access related to the removal of a failed dam located on the East Branch of the Wappinger Creek on a site located at 434 Hibernia Road in the Town of Clinton.

Seconded by Ms. Ruzicka, all Aye, Motion carried, 4-0.

After a very lengthy discussion, the board passes another resolution, to wit:

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Mr. Werner motioned that the Town of Clinton Planning Board approves the following resolution as prepared by the Town Planner, Neil Wilson, seconded by Ms. Ruzicka, All Aye, Motion carried, 4-0.

**Town of Clinton Planning Board  
Steep Slope Permit, Special Permit, and Wetland Permit Application**

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**Matter of Kliros Property Shapp Pond Dam Removal Project**

**Whereas**, the Town of Clinton Planning Board has received an application from Hilary Kliros for Steep Slope Permit, Special Permit, and Wetland Permit approvals to allow the installation of a ±130-foot temporary road for equipment access related to the removal of a failed dam located on the East Branch of the Wappinger Creek on a site located at 434 Hibernia Road in the Town of Clinton (“Kliros Dam Project”); and

**Whereas**, the applications involve tax parcel 6566-00-646093 located in the Residential Hamlet (RH) District and also mapped as being located in the Ridgeline, Scenic, and Historic Protection Overlay District and within the boundary of a Critical Environmental Area designated by the Town; and

**Whereas**, the proposed dam removal plans would meet the requirements of the New York State Department of Environmental Conservation (“NYSDEC”) for approval and permits required by that agency to undertake the work; and

**Whereas**, the dam removal work is required by NYSDEC Division of Water, Bureau of Flood Protection and Dam Safety after finding that the remaining elements of the dam pose a risk to the public and to the environment and must be removed; and

**Whereas**, the Planning Board determined that the Kliros Dam Project project is a Type I Action by virtue of §250-15(B)(2) and (4) of the Town Code, and as the designated Lead Agency issued a Negative Declaration for the installation of the temporary access drive on August 4, 2015; and

**Whereas**, a public hearing was held on August 4, 2015; and

**Whereas**, after review of the Steep Slope Permit application the Planning Board hereby finds that the proposed access drive plan meets the standards set forth in §250-72(E) and (F) of the Town Code in that the access plan is the only practical manner in which to

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reach the shoreline of the creek to perform the work, and the access drive would be temporary until completion of the dam removal; and

**Whereas**, after review of the Special Permit application the Planning Board hereby finds that the proposed access drive plan meets the standards set forth in §250-97(B) of the Town Code since the work would be of short-term duration and is not the type of “use” likely to adversely affect the quiet enjoyment of nearby properties or cause a permanent adverse visual or environmental impact to the creek or surrounding land; and

**Whereas**, after review of the Wetland Permit application the Planning Board hereby finds that the proposed access drive plan meets the standards set forth in §250-78(I) of the Town Code since the work would be consistent with the preservation and protection of surface water resources and would be compatible with protection of the public health and welfare; and

**Whereas**, the Planning Board is satisfied that the proposed site improvements are consistent with the amount of land available, and that the improvements would not impede or adversely affect the use and quiet enjoyment of neighboring lands, and that the project; and

- 1) Would have no short-term or long-term adverse impact on water sources or water courses; and
- 2) Would not adversely impact or change the ecology of the wetland or the general environment; and
- 3) Would not affect or create a flood hazard or significantly alter drainage patterns or hydrology; and
- 4) Would avoid or minimize potential adverse impacts to the wetland and watercourse natural capacity to support desirable biological life, prevent flooding, supply water, control sedimentation, prevent erosion, assimilate wastes, facilitate drainage, and provide recreation and open space.

**Therefore Be It Resolved**, the Town of Clinton Planning Board hereby grants Steep Slope, Special Permit, and Wetland Permit approvals for the Kliros Dam Project as described herein; and

**Be It Further Resolved**, the approvals granted herein are expressly conditioned on the work being carried out in accordance with the plans and details prepared by Silkworth Engineering dated December 29, 2014 and bearing a latest revision date of July 27, 2015 entitled “Dam Removal Plan” consisting of Sheet 1 and Sheet 2; and

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**Be It Further Resolved**, that this approval is expressly conditioned on the completion and/or adherence to the following:

- 1) *Respond to the comments of the Planning Board's Professional Engineer dated July 31, 2015.*
- 2) *Keep current all permits and approvals of the NYSDEC as may be required to completely implement the dam removal project. The owner shall be responsible for filing a copy of any modification of said permits with the Planning Board. The granting of the approvals herein does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from any other federal, state, regional, or local government agency or department, which may be required.*
- 3) *Payment to the Town of Clinton of any unpaid or outstanding application fees, and any review fees accrued by the Planning Board during the review of the application, and posting of a fee in an amount to be established by the Planning Board to cover the cost of periodic site inspections by the Board's representative.*
- 4) *The owner and the applicant shall notify the Planning Board and the Zoning Administrator in writing not less than 72 hours in advance of the time work is commenced, and shall promptly notify the Planning Board and the Zoning Administrator in writing of the completion of work.*
- 5) *The permitted work shall be subject to periodic inspection by an authorized representative of the Town.*
- 6) *Town of Clinton may order work suspended if the project is not implemented or conducted in accordance with the approved plans.*
- 7) *The Town of Clinton reserves the right to suspend or revoke this permit at any time after due notice when: a) the scope of the project is exceeded or a violation of any condition of the permit or provision of the law pertinent regulations are found; b) the permit was obtained by misrepresentation or failure to disclose relevant facts; or c) newly discovered information or significant physical changes are discovered.*
- 8) *The approvals granted herein shall not be construed as conveying to the applicant any right to trespass upon private lands or interfere with the riparian rights of others in order to perform the permitted work or as authorizing the impairment of any right, title, or interest in real or personal property held or vested in a person not party to this permit.*
- 9) *Any modification of these approvals is subject to prior approval of by the Planning*

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*Board and confirmation of such modification shall be in the form of a written resolution.*

- 10) All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediment, fuels, solvents, lubricants, epoxy coating, paints, concrete, leachate, or other environmentally deleterious materials associated with the project.*
- 11) All activities authorized by these approvals shall be in strict conformance with the approved plans submitted by the applicant or his agent as part of the permit application.*
- 12) All sediment and erosion control measures depicted on the approved plans shall be installed prior to commencement of the approved work and shall be continuously maintained during the term of the project. The sediment and erosion control measures shall be replaced as necessary or as directed by the Planning Board or its authorized representative.*
- 13) This permit shall expire upon completion of the activities specified and, unless otherwise indicated, shall be valid for a period of one year from the date of issuance of this approval.*
- 14) The applicant shall provide copies of all inspection and monitoring reports related to the project, as may be required by any other governmental agency, to the Planning Board.*

**Motion** : Eliot Werner

**Second**: Tracie Ruzicka

Michael McCormack, Chairman	Absent
Arthur De Pasqua	Aye
Tracie Ruzicka	Aye
Eliot Werner	Aye
Paul Thomas	Absent
Robert Marrapodi	Absent
Gerald Dolan	Aye

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**Lynda Femenella, Sharon Carbis, and Martha Mashburn 2 Lot subdivision –  
property located at 262-278 Hollow Rd, Tax Grid No. 6466-00-200341.**

The applicants wish to subdivide a 84.359 acre lot into 2 lots.

Kevin Halton and the sisters appeared were back for this application.

In 1983, Sol Mashburn on behalf of Catherine Smith, owner of this property obtained a Building Permit to demolish an existing barn and replace it with a new barn. Instead of constructing a barn, a one family dwelling was constructed. It was noted that the structure doesn't have Certificate of Occupancy.

Mr. Halton indicated the history of this property. This was before the board in the past for a 4-lot subdivision and due to the complexity and violations on the property the application wasn't acted upon.

Mr. Halton explained the application on hand. He stated that they want to separate the lot across the road from the parcel where the house is (Parcel 1). He noted that this property has one parcel number.

Mr. Halton indicated that there are variances needed on this property. They're hoping to receive a sketch plan approval to pursue the next step process.

Deputy Chairman DePasqua asked for questions and comments from the board.

Mr. Werner discussed the procedural process for this application. The board can act on Sketch Plan then the applicant can meet up with the Zoning Enforcement Officer about the required variances, come back before the board the recommendation of the variances before getting the final say from the Zoning Board of Appeals.

Mr. Werner indicated the items that are missing on the map. The big parcel (66 acres) across the road needs to be shown on the sketch map. The board needs to see both lots (Parcels 1 and 2) on the sketch plan. Names of the surrounding property owners and their addresses also need to be shown on the map.

The board discussed the violation on this property. Mr. Halton asked how they can proceed with this application due to the dwelling that doesn't have a CO. Mr. Halton expressed his hope to get a favorable resolution in order to obtain a CO from the Building Department.

Ms. Ruzicka remarked that the board cannot act on application with an outstanding violation. If Mr. Mashburn is living in this house and there is no CO, then this is clearly a violation.

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The panel has a lengthy discussion about the issue. Mr. Werner read the letter from the Zoning Enforcement Officer stating that there is nothing in the Subdivision Regulations that precludes the Planning Board from approving the subdivision on which there is a violation.

Ms. Ruzicka disagreed. She remarked that it's usually the other way around. She stated that she doesn't think that they can do that. If there is a fire then the Town is liable since is no Certificate of Occupancy on this house.

Mr. Werner stated that there is also a letter from the Town Attorney stating that the subdivision is a remedy to the violation on this property.

After a very long discussion, the board advised the applicant to see Mr. Fennell on how to proceed with this application.

The board agreed to issue a Sketch Plan approval. Mr. Werner noted that Sketch plan is just a conceptual idea.

Mr. Werner motioned that the Town of Clinton Planning Board grant conditional sketch plan approval to **Lynda Femenella, Sharon Carbis, and Martha Mashburn** for the purpose of subdividing lands on a ±84.359-acre site located at 262–278 Clinton Hollow Road, which is in an AR-5 Zoning District in the Town of Clinton, **tax grid #132400-6466-00-200341**.

***WHEREAS:***

- 1) The applicant is requesting a two (2) lot subdivision as shown on the plat created by Michael A. Dalbo, P.C., license #049311, dated 6/1/2015.
- 2) The acreage after the subdivision will be ±5.389 acres for Parcel 1 and ±78.97 acres for Parcel 2.
- 3) The applicant has submitted a Short Form EAF.
- 4) At its 8/4/2015 meeting, the Planning Board agreed to waive the following items from the Sketch Plan: Vicinity Map; scale of Area Map from 1 inch = 400 feet to 1 inch = 600 feet; wooded areas and other significant physical features (e.g., rock outcrops, stone walls, significant trees) within the parcel and within 200 feet of the site.
- 5) All appropriate fees have been paid.

***NOW, THEREFORE, BE IT RESOLVED***, the Town of Clinton Planning Board grants sketch plan approval for the requested subdivision of lands when the following **condition is met**.

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The following items are included in the Subdivision Plat:

- The complete layout of the property including hooks showing the three pieces of Parcel 2.
- The physical address of the property.
- Names and addresses of all adjoining property owners.

Seconded by Ms. Ruzicka, All Aye, Motion carried, 4-0.

**APPROVAL OF MINUTES:**

No minutes were approved.

**ADJOURNMENT:**

Mr. DePasqua motioned to adjourn the meeting at 9:40 pm, seconded by Mr. Dolan, All Aye, Motion carried, 4-0.

Respectfully Submitted,



Arlene A. Campbell, Clerk  
Planning & Zoning Board of Appeals