

January 23, 2018

Good evening. I am Joel Weingarten and I reside at 14 Tulip Tree Lane. I am also the President of the Birchwood Neighborhood Association and an officer in the Colonie Coalition of Neighborhoods.

I am here tonight to provide information to the members of the Planning Board as you review **Shelco Developers LLC's** application for an Open Development Area. We do not believe that this application should be approved. It does not conform to the Town Comprehensive Plan and NYS Town Law section 280-a.

Housekeeping Questions/Factual Inaccuracies in Proposal

1. The site plan identifies the school districts as Niskayuna and South Colonie and the Narrative lists South Colonie as the school district. 34 Denison is not within the Niskayuna School district.
2. The site plan does not provide any site elevations and therefore does not accurately depict the extreme steep slopes and the extent of mature trees covering the 3 proposed lots. The aerial provided makes it difficult to discern that there is a heavily wooded area existing on the site. This is very misleading. There is also no mention in the narrative that there was site clearing activity all last summer. Town Attorney Magguilli informed the Town board at an Executive Session last summer that a cease and desist letter was issued to Shelco to stop site clearing. There should be a copy of this letter in the Planning Board files on this project.
3. Site plan indicates that Verdoj and Midway fire departments service this site. Verdoj fire department would only be responsible for emergency response at the proposed ODA subdivision lots. Have they been consulted regarding these plans?
4. Water service to the development-narrative does not confirm what Latham Water District water connection is proposed. Right now there are two water systems in this area. A new high pressure closed loop water system to only serve the new subdivisions Forest Hills and Londonderry ridge. And an older water system which provides inadequate water pressure for the residents along Denison Road and the surrounding older subdivisions. Shelco's last two minor subdivision approvals required a deed covenant be filed that advised that only well water would be provided at these lots. The Albany Airport Area GEIS specifically prohibits new residential development in elevations over 410 feet.
5. Narrative and site plan identify this site as being within a conservation overlay district. This is misleading as the conservation overlay district regulations do not apply to the subdivision of lands for 4 lots or less.
6. Overall project site acreage needs to be verified/determined as the 2009 concept review approval for this 34 Denison Road property listed the site containing 118 acres. Narrative states the 34 Denison road site totals 102.79 acres.

7. The narrative lists Shelco Developers LLC as the applicant. Does this entity even exist? We could find NO Shelco Developers LLC filing with the NYS Department of State. Is this a new business entity? Is Jeffory Myers still associated with this company? We believe that he was the President of Shelco, Shelterenterprises and Sheltertherm prior to his 2016 criminal crack and cocaine convictions and prison sentence.

Site History

According to the application this ODA approval would allow Shelco Developers LLC to subdivide approximately **3.94** acres for 3 building lots from the remaining 102.8 acres of land designated as 34 Denison Road. The narrative provided by the applicant states that the remaining approximately 99 acres will be retained for future development.

The larger 34 Denison Road parcel was originally part of a 238 acres tract of land spanning both sides of Denison Road and extending to Vly Road which was acquired by Shelco Development LLC in 2001. The CT Male family originally owned this property and donated it to Union College in September 1999. Shelco has already received 3 minor subdivision approvals from this large tract of land- 17 Tulip Tree Lane, Lot 5A Denison Road and Walnut Lane West. Deed covenants were required for 17 Tulip Tree Lane and Lot 5A Denison Road that notified subsequent purchasers that there would be no municipal water hookups for these lots because the lots were at an elevation at or greater than 410 feet.

Single family residential development in this area is subject to the 1991 Airport Area GEIS. The 1991 Airport Area GEIS prohibited any further development without the installation and construction of a new high pressure water tank and high pressure zone pumping station to serve any new development and the surrounding areas at elevations above 410 feet. Right now, homes which are not located within the Forest Hills and Londonderry subdivisions are not hooked up to the new high pressure water system and are not scheduled any time soon for a hookup and improvement in their low water pressure situation. The two subdivided lots 17 Tulip Tree Lane and Lot 51 Denison were approved with only private wells.

After Shelco Development LLC purchased the property from Union College, Shelco pursued two separate applications for two subdivisions- one at 33 Denison Road and the other at 34 Denison Road with CT Male as its consultant for both subdivision applications. Shelco received final subdivision approval for a 75 lot on 33 Denison Road for a subdivision known today as Forest Hills. In December 2009 Shelco received concept approval for a 96 lot conservation subdivision including a pocket park for 34 Denison Road. This concept approval has since expired.

The Comprehensive Plan designated the 238 parcel including lands of 34 Denison Road a Conservation overlay zoning district. As illustrated on the Open Space and Recreation map, several areas have been identified as areas where conservation is appropriate and the use of conservation design should be considered for all developed land that occurs in these areas. These areas represent relatively large tracts of undeveloped land that is either in the path of development or could support additional development. Recognized as the few remaining areas of open space in the Town, the intent is to preserve the character of these areas as open spaces, while allowing for development to occur.”

Unfortunately, the Town did not honor the conservation overlay district development standards for Forest Hills and it was developed without any regard for the conservation overlay district development standards.

Why is all of this important?

1. An ODA approval to allow Shelco to develop 3 residential building lots again without any conservation overlay district review will not be in accordance with the Town Comprehensive Plan.

We believe that Shelco's current proposal is a blatant attempt to circumvent the Town's Comprehensive Plan and the conservation overlay district requirements because they have selected the creation of 3 development lots on already identified constrained lands which contain steep slopes and open space areas. If a full subdivision application was submitted by Shelco for the entire 102.8 acres, these lots and their location would all be subject to all of the requirements for development within a Conservation overlay district. Section 190-29 of the land use law specifically exempts a minor subdivision from the conservation overlay district regulations

The ODA approval request ignores the availability of improved road access points which were already vetted during the 2009 Concept Approval. An access point further south on Denison Road and an access point via the Londonderry Ridge subdivision. The proposed ODA access point was not approved in 2009.

The aerial site plan Shelco provides does not show the entire 118 acres site with already existing road access via the Londonderry Ridge subdivision. It also does not show the existing full site frontage along Denison Road to the south. Given these alternative access points, Shelco would not need to construct on steep slopes for the ODA roadway request.

The 2009 Concept site plan confirms that the proposed lots are located in constrained lands. I have a copy of the site plan layout which received 2009 concept approval. It shows a connection to Londonderry Ridge as well as a road connection at a more southerly location along Denison Road. The 2009 Concept approval shows two building lots 34 and 36 directly along the frontage of Denison Road. I am assuming that CT Male did its job in 2009 to confirm whether the proposed 34 and 36 Denison road lots were buildable and compliant with the Town Code.

2. Shelco's ODA request does not comply with NYS Town Law Section 280-a.

PB Chair Stuto has remarked on several occasions that the Board should carefully review any ODA applications as the approval of a development which does not have adequate road frontage is troublesome and not desirable.

In fact, NYS Town Law 280-a expressly forbids just that:

No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, or if there be no official map or plan, unless such street or highway is (a) an existing state, county or town highway, or (b) a street shown upon a plat approved by the planning board as provided in six and two hundred seventy-seven of this article, as in effect at the time such plat was approved, or

(c) a street on a plat duly filed and recorded in the office of the county clerk or register prior to the appointment of such planning board and the grant to such board of the power to approve plats.

Shelco's ODA application clearly violates the directive of NYS Town Law 280-a.

This PB has reviewed ODA approval requests before. As you know these are not mandatory approvals but allow the Town board to take into account the State law prohibition in light of an individual applicant's circumstances. Chairman Stuto, each time you recognized that there is a reason for a requirement that building lots have road frontage. Courts have recognized that an integral part of a municipality's approval of an ODA should be whether the applicant is suffering from a practical difficulty or unnecessary hardship requiring a municipality to deviate from the requirements of NYS Town Law 280-a. Section 280-a of the Town Law requires a consideration for whether there is adequate emergency access for fire and first responders and whether the road's maintenance will be ensured to allow such access.

Shelco's narrative identifies no practicable difficulty with site access to justify a violation of NYS Town Law section 280-a. Shelco's only justification that this application must is that they will be minimizing site disturbance for a shared driveway. The narrative further advises that the intent is to keep as many trees as possible for the development while maintaining screening around the proposed homes." Shelco has made no showing that it is facing any practical difficulty requiring this ODA application access point and layout for the 3 lots with this particular configuration and location other than for Shelco's own convenience. As I stated earlier, Shelco is able to design a plan where there are separate lots directly along the frontage of Denison Road which presumably are in compliance with the Town Law.

Minimizing tree removal/site disturbance as stated in the "hardship" section of the site narrative is also not a proper justification for a violation of Section 280-a. Shelco is already required pursuant to Chapter 177 of the Town Code to minimize tree disturbance. Chapter 177 restricts the cutting and removal of trees upon a plat or subdivision unless the area is to be occupied by the building thereon and for driveways within a distance of 10 feet around the perimeter of such building or driveways. This ODA approval request is purely for Shelco's convenience and a subterfuge to the application of the conservation overlay development standards, the Town Comprehensive Plan and even Chapter 177 of the Town Law.

3. Segmentation

Based on the applicant's own project narrative, this ODA request will allow the developer to divide the site and develop 3 lots consisting of approximately 4 acres, and retain the remaining approximately 99 acres for future development. Given this statement of intent to develop the remainder of the site, and the previous proposal by this applicant for a major development of this site approved (albeit expired) by the Town, we believe this project approval would be segmentation under State Environmental Quality Review Act (SEQRA).

For these reasons, the Planning Board has the grounds to summarily recommend that this request be disapproved by the Town Board, and I urge you to do so.

4. Technical Concerns

If this ODA is request is permitted to be reviewed, we believe that there are many technical reasons why this application must not be approved:

- The proposed location of the private driveway has a site distance problem with traffic on Denison Road. A knoll and rise exists on Denison Road right before the proposed entrance;
- The proposed location of the private driveway is too close to the existing entrance to Forest Hills Development. Is this a proper offset intersection layout?
- The grade of the private driveway exceeds town slope standards posing a problem for snow removal and access for fire equipment, police and emergency services vehicles. Is the proposed Cul de sac arrangement good for fire truck, police and emergency vehicle access. The 2009 PB concept approval identified the need for an archeological survey of the greater 34 Denison Road site. The narrative does not indicate that an archeological survey has been done for this site;
- The private driveway must have a minimum 50 foot width per Staff comments at the May 12, 2008 PB meeting. At that meeting, an access road at this location for the greater 34 Denison Road subdivision was rejected by Planning Staff. Will this cul de sac and entrance be restricted to any modification to allow a future cull access to the subdivision build out.?
- Will the adjacent homes be provided adequate buffer- is 50 feet sufficient?
- Water drainage- lots are located above steep slopes- how will storm water runoff be managed by these 3 lots. There are existing residential homes below the proposed homes?
- Will the 3 new lots be hooked into the Latham Water District service in violation of the Albany Airport Area GEIS prohibition? We note that despite this deed covenant, the 17 Tulip Tree land lot has already constructed a water line easement to access the Forest Hills closed loop water transmission system. How was this possible? No existing surrounding neighborhood lots have been allowed to be connected to this new high pressure water system. The existing adjacent residential homes along Denison Road for the new 3 lot minor subdivision are not allowed to be hooked into the new water system despite suffering from low inadequate water pressure since the 1950's. How is this fair???

5. Ethical considerations involving CT Male appearance before the PB and Town Departments as Shelco's Consultant

We believe that this Board must address the ethical issues presented by CT Male's appearance before this board as a private applicant's consultant for Shelco.

Section 17-12 of the Town Code provides

“A town official, employee or appointee of the Town of Colonie shall treat all members of the public whether a person, firm, corporation or other organization, with equal consideration and without special advantage. **Every such employee shall also endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of their trust.**”

CT Male is currently providing town engineering services to the Town of Colonie and the Latham Water District. CT Male is currently the SWPP site inspector for Forest Hills. CT Male was the design engineer for the new high pressure water tank installation and infrastructure and also the contract manager for the new high pressure system water tank. We are most concerned that there is a demonstrated lack of an arms length relationship between CT Male and Department staff. The morning after the 2011 Final subdivision approval was granted for Forest Hills, the President of CT Male and the head of the Latham Water District exchanged congratulatory emails. This email exchange expressed satisfaction that the Birchwood neighborhood association was not able to convince the Planning Board that the project should have been reviewed under the new Conservation Overlay district regulations.

6. Public Notification of Planning Board Agenda Items

Finally, it is important for the PB to know that there must be improvements in how the public has been notified by the Planning and Economic Development Department not just for this project but for all projects. My experience as a project neighbor and President of the Birchwood Neighborhood Association has shown a need for better communication with neighborhoods.

Despite my repeated requests to the PEDD for a copy of the narrative and site plan, I was never provided a copy of either of these documents before the documents were uploaded on the PEDD website last Wednesday January 17. We believe the Town can do better. Especially because the Town Planning Department knew that the Birchwood Neighborhood Association was interested in development at 34 Denison Road. Last summer Birchwood Neighborhood representatives attended the Town Board meetings where the ODA approval was discussed and ultimately voted upon. PEDD has had an application since at least September 2017. At any time after the application was received, PEDD staff could have emailed me or called me to let me know that Shelco was moving forward. Why wasn't this information conveyed to my attention in September? Why did I need to email the Town Supervisor in November after I noticed construction activity at the site? Why did I only receive an email response from the PEDD director without any of the narrative and site plans mid December 2017? Why did I receive an email from PEDD employee Tengeler on January 10, 2018 stating that no site plans and narrative were available? Town residents deserve better customer service from the PEDD. We hope you can use your influence as a Planning Board to ensure that the Planning and Economic Development Department institute better neighborhood notification procedures.

For the reasons I have outlined the **Planning Board has the grounds to summarily recommend that this request be disapproved by the Town Board**, and I urge you to do so.

Thank you very much for your time.

Encl: Photographs of site and maps

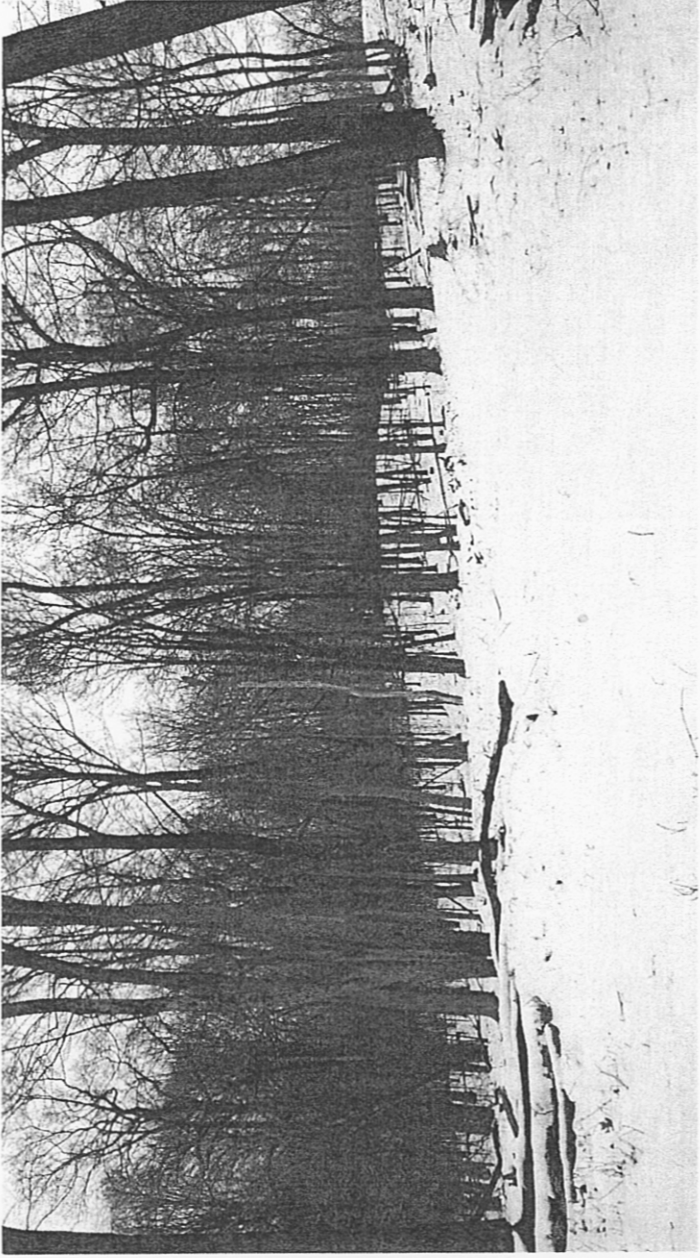


Image 1: Looking at existing driveway from Denison Rd. View shows steep slopes and forested areas on property.

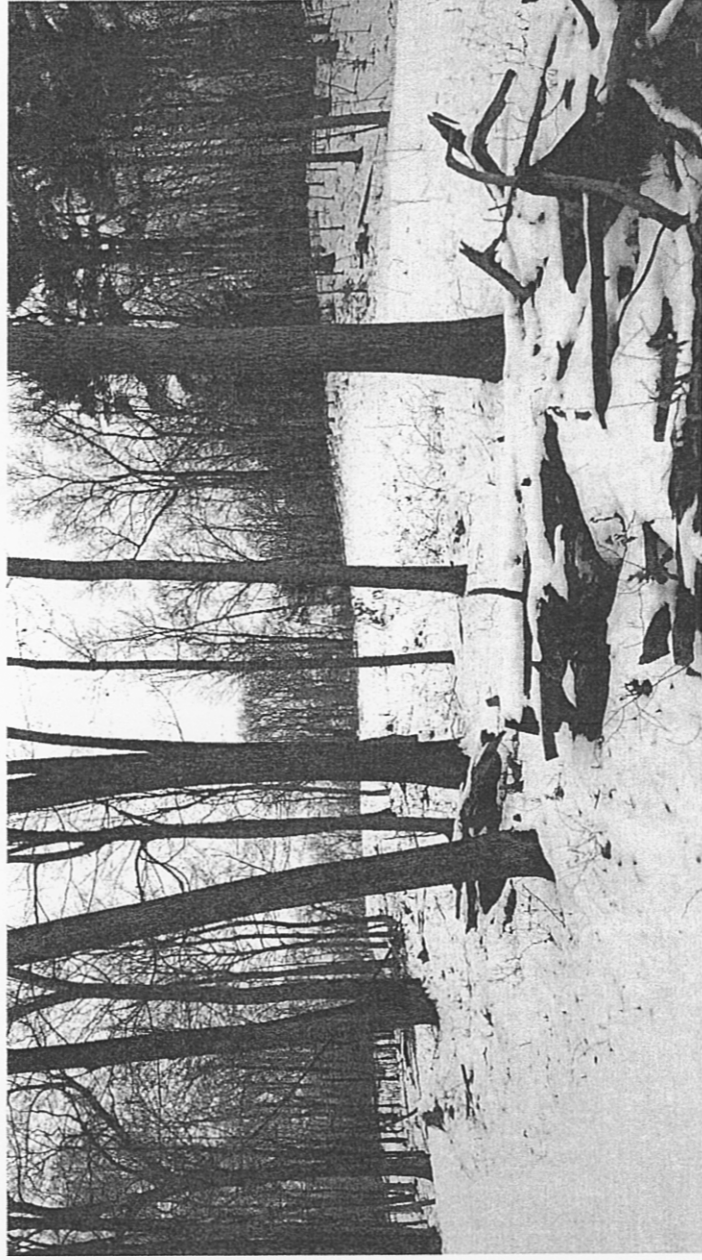


Image 2: Cleared area on the right of photo shows clearing done for high pressure water line installed for Vly-Denison High Service Area of Latham Water.

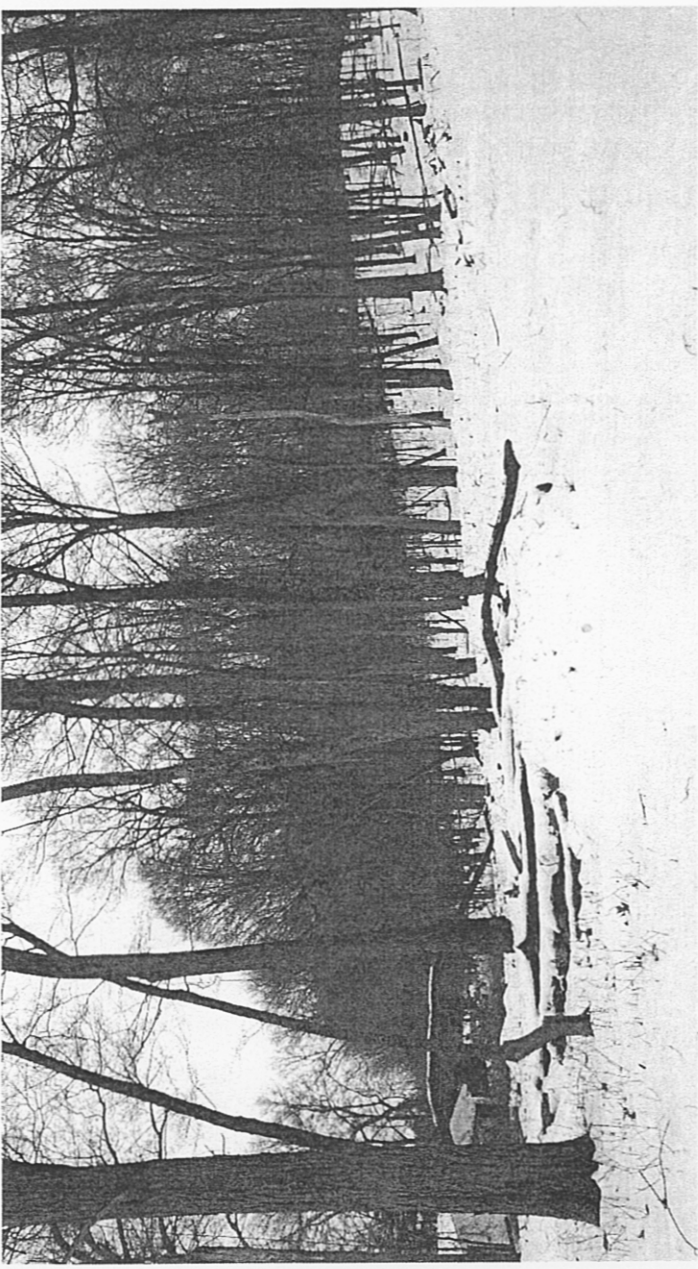


Image 3: View from 34 Denison Rd. looking towards 32 Denison Rd. Photo shows steep slopes and forested areas on property.

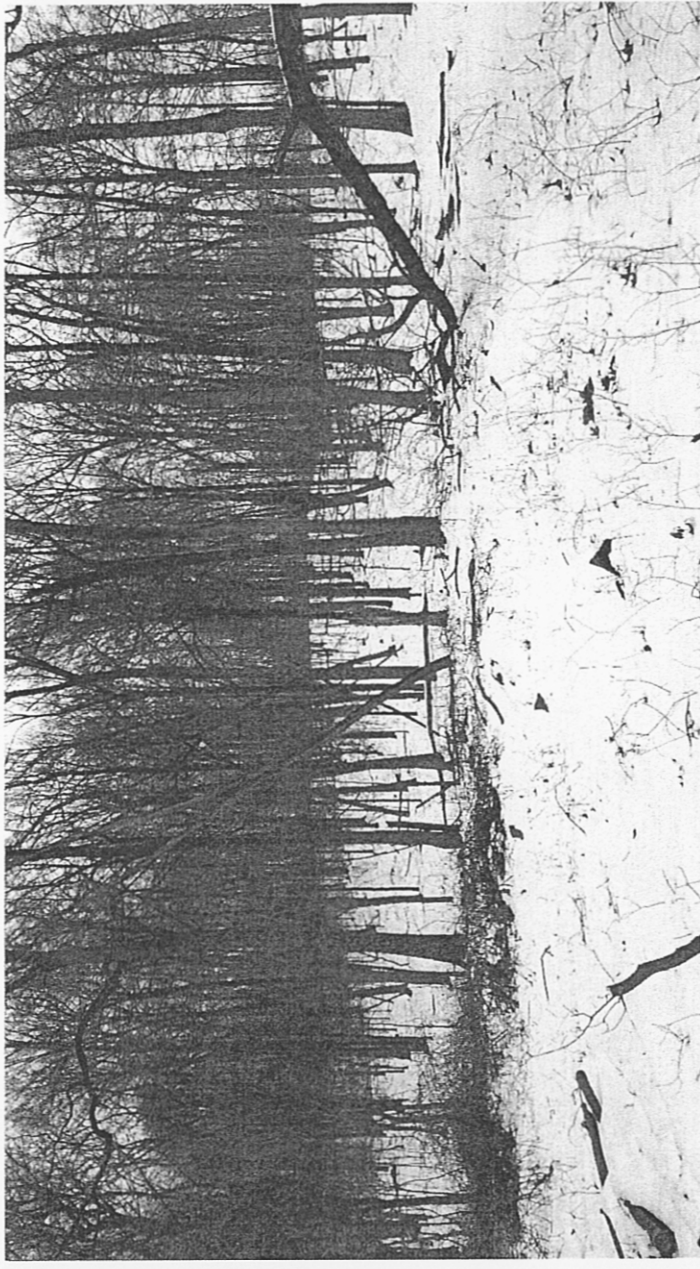


Image 4: Proposed 34 Denison Rd. would be constructed in foreground of photo. Proposed 36 Denison Rd per applicant plan would be constructed in steep sloped area in background.

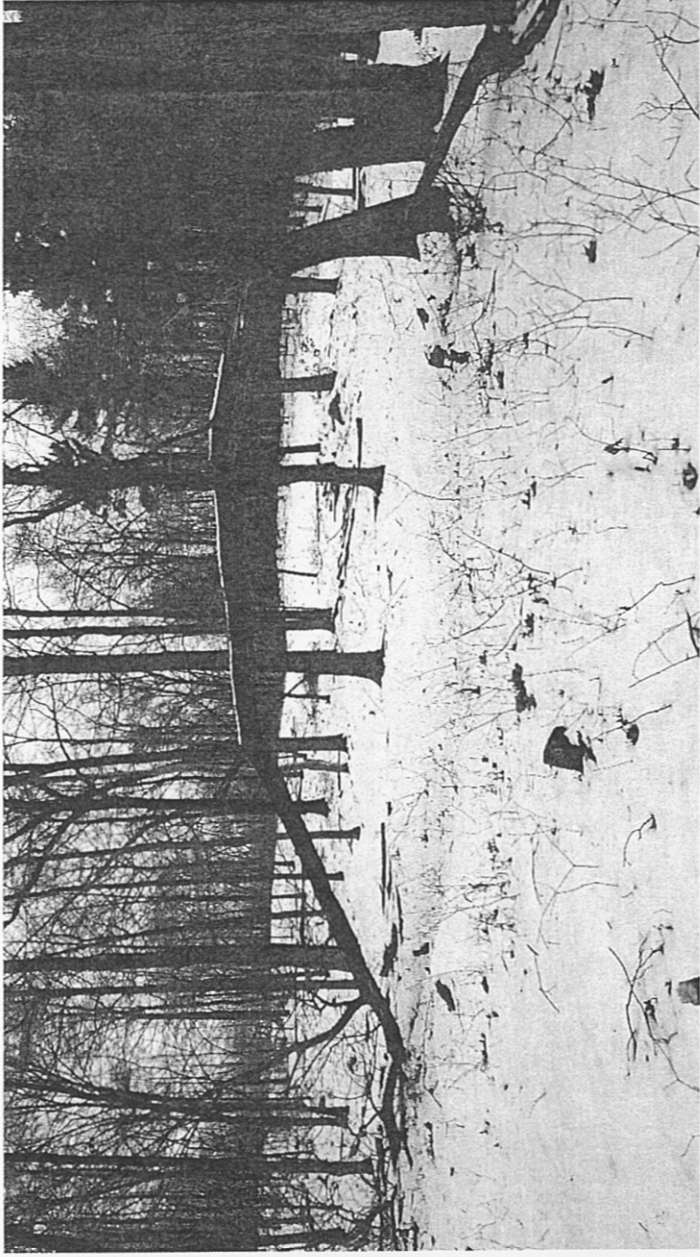


Image 5: View from 34 Denison Rd. looking across to area where proposed 38 Denison Rd. would be constructed. You can see cleared area for High Water Service Area in the background. This area also has steep slopes.

Nearby Development Projects

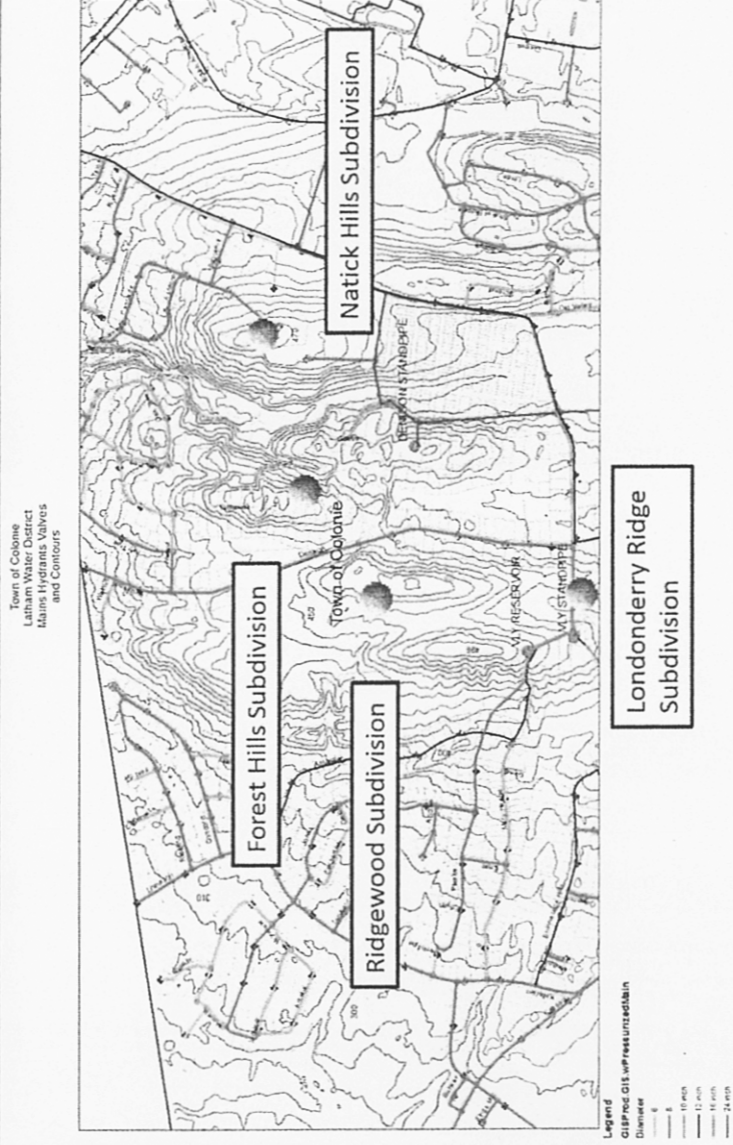


Image 6: Slide (12 of 14) from presentation by John Frazier, Latham Water District, to Birchwood Neighborhood Association on May 18, 2016 showing contour lines indicating steep slopes, water district mains, hydrants and valves.