

**Town of Bolton
PLANNING BOARD
MINUTES
Thursday, January 20, 2005
6:00 p.m.**

SEQR = State Environmental Quality Review
PB = (Town of Bolton) Planning Board
WCPB = Warren County Planning Board
APA = Adirondack Park Agency
LGPC = Lake George Park Commission
DEC = Department of Environmental Conservation

Present: Chairman Herb Koster, John Gaddy, Henry Caldwell, Chauncey Mason, Don Roessler, Susan Wilson, Zoning Administrator Pam Kenyon, Town Counsel Michael Muller

Absent: Sandi Aldrich

H. Koster opened the meeting at 6:06 pm by asking for corrections to the December 2004 minutes. J. Gaddy asked that on page 2 in the motion for SPR04-39 CASAVANT, the word “shielded” be add to the motion with regard to the lighting. Motion by H. Caldwell to approve the December 16, 2004 minutes as amended. Seconded by D. Roessler. All in favor. Motion carried.

1) BLUEBIRD COTTAGES SUBDIVISION. Philip & Cynthia Farbaniec.

Represented by Jim Chandler of the Michael’s Group. To discuss condition of approval set forth by the Planning Board on March 18, 2004. The condition reads as follows: Only 1-story additions (garages, decks and unenclosed porches) are allowed outside the specified footprints, which includes overhangs on each lot. Is a **screened** porch considered an enclosed structure. Section 186.14, Block 1, Lot 59, Zone RCH5000.

Atty Howard Krantz represented this application with regard to Lot 1 (the Farbaniecs’ lot) only, noting that Mr. Farbaniec could not attend this evening. He referred to the minutes of the discussion and the conditions that were negotiated last March. He noted that there was the general condition as listed in the agenda item above, but there was a more specific condition, condition #10, that reads: *the house on Lot 1 will be limited to 3,828 sq ft of living area on 2 floors, which also includes a garage.* There was no limitation mentioned as far as porches. Atty Krantz noted that the proposed screened-in porch on Lot 1 would be located entirely within the agreed upon footprint. He noted that the Farbaniecs would go on record as agreeing that the screened-in porch would not be glassed in, insulated or heated. Furthermore, the NYS Building Code does not classify a screened-in porch as living area, nor do other area municipalities he’s worked with, since it is not year-round, habitable space.

P. Kenyon noted that the agenda item was not referring to Lot #1 for which the PB allowed special circumstances, but instead Lot #6, where the screened-in porch is being proposed outside of the specified footprint. Mrs. Farbaniec noted that Lot #6 is the spec house for the Michaels Group, who chose not to appear this evening because they have decided to redesign the structure to address the issue. She asked P. Kenyon if she would

now issue a certificate of compliance for their home on Lot #1. P. Kenyon indicated that she was just waiting for the calculations for the footprint of the floor space of Farbaniecs' house (to compare to that approved by the PB). Mrs. Farbaniec asked if these calculations depended upon whether the screened porch on their home was considered living space. P. Kenyon indicated on Lot #1, everything was included, such as the garage, decks and porches. She stated that the calculations that were provided were not adequate. Mrs. Farbaniec asked if everything fit within the specified footprint that got approved by the PB and it was 3,840 sq ft, including the screened porch, would they be issued their permits. Counsel read condition #10 of SD03-23 Bluebird Cottages Subdivision approval from the March 18, 2004 minutes as follows: (the house on) *Lot 1 will be limited to 3,828 sq ft of living area on 2 floors, which also includes a garage.* Counsel asked Mrs. Farbaniec if they were at or under this limit, or did the screened-in porch cause a problem meeting it. Atty Krantz responded that if the screened-in porch were included in the square footage living area calculations, it would be 12 sq ft over the 3,828 sq ft limit (3,840 sq ft). P. Kenyon assumes that screened porches would be included if the garage were, but indicated this was the Board's decision.

Counsel advised the Board to interpret their own motion, not the Code. While he could not provide the Board with definitive law on screened-in porches, Counsel agreed with Atty Krantz in that they are not considered habitable spaces under the NYS Building Code. H. Koster also pointed out that the Board didn't mention anything about screened-in porches in their motion, only the garage. Counsel agreed, adding that the Board must make a decision on whether to allow screened-in porches for the Michael's Group, as theirs is clearly outside the allowable footprint.

H. Krantz wished to make it clear that he and Mrs. Farbaniec were not representing the Michaels Group in anyway this evening, noting that even if the Board determined that screened-in porches were living area, the Farbaniecs' porch would only exceed the approved square footage by 12 sq ft. P. Kenyon noted that Jim Chandler asked to withdraw the agenda item, but she kept it on for reference to future lots within this subdivision. She asked that the Board deal with this Lot 1 separately from the other lots, as to the matter of whether a screened-in porch is considered an enclosed structure. She added that she had spoken with former PB member Mitzi Nittmann, who felt that it should be considered part of the enclosed structure. D. Roessler felt that since the Farbaniecs are staying within the approved footprint (building envelope), it was not a major issue.

Motion by J. Gaddy that Lot #1 be allowed to exceed the square footage by 12 sq ft (originally approved under condition #10 which reads: *the house on Lot 1 will be limited to 3,828 sq ft of living area on 2 floors, which also includes a garage*), provided that the structure remain within the approved footprint. Seconded by D. Roessler. **All in favor. Motion carried.**

Motion by J. Gaddy that, with regard to the Bluebird Cottages Subdivision, the requirement that unenclosed porches would be allowed outside the specified footprint (specifically condition #4 of SD03-23 reads: *only 1-story additions [garages, decks and*

unenclosed porches] are allowed outside the specified footprints, which include overhangs, on each lot;) does not mean that those unenclosed porches can be enclosed with screening. Seconded by D. Roessler. **All in favor. Motion carried.**

After the motion, Atty Krantz asked the Board if, in essence, they just made a determination that screened-in porches are considered enclosed structures and living area for the purposes of calculations. The Board indicated that, with regard to Bluebird Cottages Subdivision, they only determined screened-in porches are considered enclosed structures, and did not go as far as to say they were considered living area.

2) V04-29a BAER, GEORGE & MARY. (MAYFAIR RESORT) Represented by David Barnes of the LA Group. For a proposed 8-lot subdivision (7 building lots and the remainder being common area), seek area variance for 1) deficient lot size. 20,000 square feet is required for each lot: 16,000 square feet is proposed for lot 6; and 2) deficient shoreline frontage (Section 200-37B4 Minimum shoreline) 180' is required; approximately 50' exists. Section 186.14, Block 1, Lot 60, Zone RCH5000. Property Location: 4618 Lake Shore Drive. The WCPB determined no County impact. The Zoning Board of Appeals is seeking a recommendation from the Planning Board with particular consideration to stormwater management feasibility on Lot #5, relative size of the proposed leachfield, restriction on building envelope placement of housing sites and what can be included in those envelopes, and the deficient shoreline aspect.

Atty Krantz, on behalf of the Farbaniecs, submitted a letter of concern on this application having to do with the docks.

Jeff Anthony noted that the Baers are out of town. He gave a brief summary of the project, noting that they have been in front of the ZBA, who referred the application to the PB for a recommendation. The applicants propose 7 building lots, one of which will be the location of the existing house. The eighth lot is a lakefront common area. Mr. Anthony explained that they need a variance for Lot #6 for deficient size because they have kept a large area of land (4,900 sq ft) as common property for lakefront access. He noted that had they not reserved this much land for common area, they could propose all the lots to be compliant in size. A variance is needed for deficient shoreline because they have only 50' of land where 180' is required for 7 lots, and neither neighbor to the north or south is willing to sell them any shoreline. Mr. Anthony noted that the ZBA did not want to grant the variance on Lot 6 if it caused the Planning Board to be unsupportive of the subdivision as a whole.

Mr. Anthony explained that the layout and concept of this subdivision is very similar to that of the recently approved Bluebird Cottages Subdivision to the north. There will be a common sewage disposal system situated on 2 of the lots, accessed through easements. The ZBA was concerned that this system seemed somewhat smaller in size to that of Bluebird, which services 9 lots, but that is the result of it being a totally different design. The applicants also propose the same concept of restricted building envelopes for the main portion (living area) of the structures, allowing for decks, garages, and porches to

be built outside this envelop, as long as they met the zone's required setbacks. Specifying the location of these building envelopes as proposed will allow the applicants to control where the houses are placed and minimize tree clearing.

Regarding the sewage disposal system, Civil Engineer Jim Smith stated that last April they conducted 5 deep test pits and several perc tests on the site, and using DEC sizing criteria, sized the absorption field in an area of 80' x 150'. Based on the soils, the recommended system consists of a community septic tank and conventional trench leachfields. As part of the project, they will be required to obtain a SPDES permit from DEC. Mr. Smith noted that only 1 lot ("the far lot") would have to be pumped, while the others will have a gravity flow system. The main reason the size of this leachfield is smaller than that of Bluebird is that the hydraulic loading rate used for sizing the system is based on the number of bedrooms, and not the number of homes. For this subdivision they anticipate seven 4-bedroom homes, whereas in Bluebird they had to account for one existing home and 8 new homes, half proposed to consist of 4 bedrooms and the other half of 5 bedrooms, as well as the reserve and capacity for the Werner residence, which is a pre-existing separate lot situated within the subdivision. Mr. Smith noted that the soils in the Baers' subdivision were similar to those of Bluebird, consisting of sand and gravel and having an average perc rate of 3 minutes. Both systems are dosing systems, but Bluebird has an absorption bed system and this is an absorption trench system. P. Kenyon noted that the Board could refer the application to Town Engineer Tom Nace for his review if they wished.

Project Manager Dave Barnes feels that they have addressed the ZBA's concerns about stormwater in their letter of December 23, 2004. He noted that generally the land slopes from Route 9N to Lake George, gradually on the west portion and more steeply to the east of the cul-de-sac, where there is a 10-12% average slope. They calculated the before and after impervious surface and found there to be about 39,500 sq ft existing and 44,900 sq ft proposed, which is about a 13.8% increase. While they have not yet compiled a full stormwater report, they proposed to follow the LGPC regulations on Lot 5, using grass swales, infiltration trenches, and shallow pools for holding and treating stormwater. H. Koster noted that the Planning Board would prefer to see a complete stormwater plan for all impervious areas proposed, as this is a very confined area. Mr. Anthony acknowledged this, noting that they plan on providing this information, as well as complete septic system detail, when they return to the PB. H. Koster suggested that the buyers be made aware that if any changes are made to what is presented, they would have to come back to the Board.

J. Gaddy did not agree with the applicants' argument that they should be entitled to an undersized lot because they have reserved the Lakefront as common access, and he wondered if the ZBA had issues also with minimum lot widths being met on Lots 5 & 6 (it was later determined that both lots met the requirement in the location of the building site, as has been the practice of the Board). Mr. Anthony pointed out that all the trees will remain between the Lake and the building site on Lot 5, which is at the crest of the hill, and the stormwater will actually flow slightly backward (away from the Lake).

Counsel indicated that the ZBA was looking for feedback from the PB prior to voting on the variance so that the PB didn't feel obligated to grant approval, even though they may have had concerns over the variance portion of the application. J. Gaddy would like to see the elimination of Lot 5 as a building lot to better meet the zoning requirements, adding that Huddle Bay has a high concentration of milfoil. Mr. Anthony responded that they are also concerned with this lot, and they will address these concerns by proposing deed restrictions limiting clearing and grading. J. Gaddy wondered if infiltration devices could be installed on the east end of Lot 5, but it was determined that the stormwater as proposed would pose less disturbance.

H. Koster noted a concern raised by Supervisor Gabriels, who indicated that the Town would like to see the water supply for this subdivision be tied in with Bluebird's water supply in an effort to avoid stagnation. Mr. Anthony was supportive of the idea, noting that technically, it made sense, but they would have to look at it closer, including approaching Bluebird owners to see if they were willing to do so.

H. Caldwell wondered about the status of the dock rights involving the docks along the northerly property line shared with Bluebird, noting that this has been a contentious issue between the 2 parties. It is Mr. Anthony's understanding that the Bluebird owners have a pending application in front of the LGPC to modify their docks, although he doesn't know exactly what it involves. He stated that the Baers' dock will remain as is, capable of berthing 6 boats in the 20' range. P. Kenyon confirmed that permits were issued today for Bluebird to reconfigure their most southerly dock so that it meets the 20' setback requirement from the property line. H. Caldwell wondered if a boat docked on the north side of the Baers' dock would infringe upon Bluebird's property. Counsel noted that it would, according to the letter submitted this evening (on behalf of the Farbaniecs who own the Bluebird property), which indicates the issue over the docks still remains. Counsel advised that this is a civil matter involving pre-existing docks, which doesn't necessarily have to be resolved in order for the PB & ZBA to vote on the project, although the Board may take into consideration the impacts from the Baers' dock usage going from one owner to 7 owners. Furthermore, the Farbaniecs may take the position that part of the north part of the Mayfair dock can't be used. J. Anthony noted that perhaps the Baers could relocate their dock further toward the south, if necessary.

H. Koster asked Counsel if the Board should be discussing issues other than the variance application in front of them. Counsel encouraged the Board to address any and all aspects of the application so that the ZBA is aware of any PB concerns when they review the variance application, as the PB's "hands will be tied" if and when the ZBA grants any variance. Mr. Anthony referred to Schedule C, which showed how the applicants addressed the concerns raised on the original application by the ZBA, WCPB and neighbors. Mr. Anthony reviewed each concern individually.

H. Caldwell asked if the building envelopes shown represented the maximum size of the proposed homes. Mr. Anthony noted that unlike the Bluebird Subdivision, the applicants of this subdivision are not concerned about placement of the houses to preserve the views of others, but instead providing as much privacy from one structure to another.

Therefore, they are suggesting that only the main house be restricted to the beige area (as shown on the presenter's map), as there is enough room to propose decks, garages and porches outside this envelope and still within the Town of Bolton setback regulations. Mr. Anthony noted that Lots 2, 3 & 4 would have cutting restrictions along the southerly property lines.

Mr. Anthony indicated that the existing impervious walkway (on Lot 5 accessing the common area) would be removed and replaced with a new pervious walkway. D. Roessler noted that there was a lot more freestanding common area in the Bluebird Subdivision, unlike in this subdivision where a good portion of otherwise usable land is dedicated to the common driveway, cul-de-sac and septic easements. In light of this, he would like to see Lot 5 or 6 eliminated to mitigate stormwater issues, clearing and non-compliance with zoning. S. Wilson asked what the percentage of the entire property was dedicated to common area. Mr. Barnes estimated it to be approximately 3%.

H. Caldwell noted that the Board is being asked to make a recommendation to the ZBA, who expressed specific concerns that he felt could be addressed by eliminating Lot 5 and therefore increasing the size of the non-compliant Lot 6. H. Koster noted that a variance would still be required for deficient shoreline. It was noted that there would also be less intense overall use with 6 lots than 7. Regarding the ZBA's concern that there be restrictions on building envelope placement, the Board indicated it would be fair to require similar conditions as were made on Bluebird.

Motion by D. Roessler to recommend to the ZBA to eliminate Lot 5 (reducing the number of lots from 7 to 6), which would allow for more common area and eliminate the variance (for deficient lot size) for Lot 6, as well as eliminate the stormwater issues on Lot 5. The Board recommends that there be deed restrictions similar to those of Bluebird (Cottages Subdivision) project with regard to building site envelopes and that tree-cutting be restricted along the southerly property line as proposed. The Board recommends that there be no tree removal for groundwork to be done between the cul-de-sac and the Lake, which includes replacing the impervious concrete walkway with a pervious surface. The Board recommends approval of the deficient shoreline variance. The Board does not object to the applicants' request to reconfigure the cul-de-sac, lots dimensions and building envelopes of those lots affected by the removal of Lot 5 in order to make Lot 6 compliant. **Seconded by J. Gaddy. All in favor.**

3) SPR04-43 GREEN, ELIZABETH. Represented by Atty Stefanie DiLallo Bitter from Bartlett, Pontiff, Stewart & Rhodes P.C. and/or John Carr. As part of subdivision (SD03-01) and stormwater (SPR03-31) approvals granted for the Wright's Farm Subdivision (Rolf Ronning) on February 26, 2004, seeks Type II Site Plan Review for a major stormwater project on Lot "7". Section 140.00, Block 1, part of Lot 5.1, Zone RL3. Property Location: West side of Federal Hill Road. Subject to SEQR. Subject to WCPB review.

Mr. Carr explained that they propose a 26' x 42' house with a small porch on the front and a deck on the side. The project will involve approximately 13,800 sq ft of cleared area. Stormwater for the entire project was done by Engineer Dennis Dickinson at the time the subdivision was reviewed. The stormwater for the house and driveway will flow into easement 2, as shown on the original subdivision. The original size of the proposed house on this lot as presented on the subdivision map was about 1,875' sq ft, but the applicants' house will only be 1,275 sq ft, so it is less. Mr. Carr stated that they have limited the amount of disturbance, as much of the house site was already cleared because it was once a pasture.

Mr. Carr explained the stormwater plan, which includes one side of the driveway to be sloped with runoff directed into catch basin "C", and infiltration trenches on both sides of the structure to catch and maintain runoff from the roof on site. H. Caldwell asked if the well could be moved closer to the house to decrease the clearing limits, but Mr. Carr explained that the well is proposed there to allow room for the infiltrators. J. Gaddy requested that the 20' clearing limit around the foundation be adhered to, as the plans show more than this. H. Koster added that the large loop of cleared area around the well shouldn't be necessary. Mr. Carr felt the applicant would agree to reduce the clearing limits as requested by the Board.

P. Kenyon noted that due to inclement weather the WCPB meeting was cancelled, resulting in a "no action" decision, which means that applications would not go back to the County unless the local Board so chose. The Board chose not to send the application back to the County.

C. Mason noted that there seemed to be a lot of lighting on the house, including some unspecified lighting labeled "lights by others". Mr. Carr believes there will be a light over the garage and one next to the door at the rear of the structure, as well as at the entrance door and by the 2 sliding glass doors. He noted that some of the lighting is required per NYS Building Codes. The lighting fixtures will be of an arts & crafts style with stained glass. J. Gaddy asked that the exterior lighting be downward-facing and shielded. Mr. Carr indicated the structure would be finished in cedar siding with a green roof.

The Board had no concerns with the application meeting the criteria of Section 200-31 or C1-C7 of the SEQR form. J. Gaddy, in making the following motion, made findings that the application met the criteria of Section 125-14B. He did this on the advise of Counsel, per his letter to the PB informing them of this requirement, as mandated by the stormwater regulations.

Motion by J. Gaddy to accept the application as complete, make a negative declaration and approve the site plan as presented with the conditions that 1) the (exterior) lighting be downward facing and shielded; and 2) the clearing limits around the house be reduced to 20' to comply with the zoning requirements. Seconded by H. Caldwell. All in favor. Motion carried.

4) SPR04-44 CASTRO, SAMUEL & JACQUELYN. Represented by Eugene Baker, Contractor. As a condition of approval set forth by the Planning Board when approving the South Farm Subdivision, seek Site Plan Review for the construction of a proposed single-family dwelling on Lot “3”. The condition of approval reads as follows: Planning Board will review building sites before any building is done to protect replanted and new growth vegetation. In accordance with Section 200.20D (Supplemental County Route 11 regulations) of the zoning ordinance, seek site plan review to construct a driveway. Section 156.00, Block 2, Lot 22, Zones RM1.3 & RL3. Property Location: South Farm Road off of County Route 11. Subject to SEQR. Subject to WCPB review.

Mr. Baker explained that the plan is to put the building on the lower portion the lot that it is already cleared, instead of the upper side of the lot, where clearing would be necessary. He noted that although the area is within the CR11 scenic corridor 75’ setback, no tree removal would be required. J. Gaddy asked why the area across the road (the existing driveway) had been cleared. Mr. Baker explained that Mr. Castro had done this clearing himself to try to help with stormwater and “make it look better” by removing the brook alders and sumac. He was unaware that he wasn’t allowed to clear, but he proposes to re-vegetate with larger trees such as oak and maple in this area. On the other side of the driveway, he proposes pines to shield the building.

J. Gaddy asked Counsel if the Board should deal with the violation prior to acting on the application. Counsel advised that such a decision was up to the Board, as they could grant some relief to help bring it into compliance or send it on to the Town Board. H. Koster felt the violation was being addressed by the applicant offering a re-planting plan. J. Gaddy requested the planting plan be presented to the Board next month, with a follow up review being scheduled in a year to ensure growth has taken.

Motion by J. Gaddy, in terms of the notice of violation, that the applicant is required to submit a replanting plan next month. The application does not need to be referred to the Town Board unless the Planning Board is dissatisfied with what is presented (or not presented) next month. Seconded by D. Roessler. **All in favor. Motion carried.**

Motion by D. Roessler to accept the application as complete, waive a public hearing, make a negative declaration and grant final approval as presented with the condition that the downward-facing, shielded lighting that was presented is utilized. Seconded by C. Mason. **All in favor. Motion carried.**

5) SPR04-45 ENGLISH, EDWARD. Represented by Eugene Baker, Contractor. Seeks Type II Site Plan Review for a new land use within 250 of the shoreline, specifically to construct a proposed boat “TIE-OFF”. Section 171.08, Block 1, Lot 12, Zone RCM1.3. Property Location: 18 Braley Point. Subject to WCPB review. Subject to SEQR.

Mr. Baker explained that the proposal is for a tie-off to secure one of the boats on the southern edge of his northern dock. The LGPC has issued a permit for the project. J.

Gaddy asked if there are many of these tie-offs around the Lake. Mr. Baker responded that this is the first one he has been involved with, noting that it is needed because the boat whips they had there had snapped off and damaged their boat. All the bracing for the mechanism will be under water, with the exception of 3 posts and a board above water to which the boat will be tied.

J. Gaddy asked if there would be a problem with Zebra mussels since studies have indicated that they are attracted to calcium, which is present in concrete blocks, as are proposed for this project. Chris Navitsky of the LG Waterkeeper Program, public in attendance, agreed with this concern. He noted that studies have been done on the matter, but they have not been convincing enough for the LGPC to take any action. He noted the following locations that had evidence of calcium leaching, where Zebra mussels were found: the Sheriffs dock in LG Village, in Cleverdale on concrete blocks that were part of a dock complex, as well as near Darrin Freshwater Institute. Mr. Baker noted that Lagoon Manor has a similar anchoring system with concrete blocks, but he is unaware of there being any Zebra mussels present there. H. Koster added that he has had concrete blocks anchoring his docking system for the 25 years, and no Zebra mussels are present.

The Board had no concerns with the application meeting the criteria of Section 200-31 or C1-C7 of the SEQR form.

Motion by D. Roessler to accept the application as complete, waive a public hearing, make a negative declaration, and grant final approval as presented. Seconded by S. Wilson. **All in favor. Motion carried.**

6) SPR04-46 QUEEN, LINDA. Represented by Jarrett-Martin Engineers. Seeks Type II Site Plan Review for a new land use within 250' of the shoreline, specifically to construct a proposed U-shaped dock. Section 213.17, Block 1, Lot 34, Zone RCM1.3. Property Location: 3832 Lake Shore Drive adjacent (south) to the Juliana Motel. Subject to WCPB review. Subject to SEQR.

Bob Holmes of Jarrett-Martin Engineers explained that they propose a new U-shape dock just under the 700 sq ft limit of LGPC. It will consist of a 4'6" wide north pier and an 8' wide south pier with a connecting land bridge in between. They have a permit application pending with the LGPC. P. Kenyon noted that she wouldn't issue a certificate of compliance until the LGPC issues their permit. No lighting is proposed on this dock.

Although not a public hearing, Eric Fahlborg, owner of Juliana Motel to the north, was allowed to speak. He noted that he has a swimming area for his guests in the vicinity of the proposed dock, and he is concerned for their safety. He also was concerned over whether the property line is properly shown. He contacted surveyor Dave Bolster who did the survey and he indicated there were several different lines. Mr. Fahlborg believes that the line should be shown perpendicular to the shore, which it is not. H. Koster noted that the reason the line is shown on this angle is because the Town requires that the most

restrictive line be shown, whether it is perpendicular or an extension of the property line from the land out into the water. Mr. Holmes noted that they used the perpendicular calculation for the shoreline due in part to it being a sandy beach area there, resulting in a slight daily variation of the shoreline. They looked at 3 different points north and south of the property line to arrive at a mean result. Regarding the 20' required setback for docks from a property line, Mr. Holmes indicated that on the south side they are 20' from the property line extension and on the north side they are 20' offset from the perpendicular shoreline projection.

The Board had no concerns with the application meeting the criteria of Section 200-31 or C1-C7 of the SEQR form.

Motion by D. Roessler to accept the application as complete, waive a public hearing, make a negative declaration, and grant final approval as presented. Seconded by J. Gaddy. **All in favor. Motion carried.**

7) SPR04-47 CARPENTER, PAT. Represented by Jarrett-Martin Engineers. Seeks Type II Site Plan Review for the construction of a proposed single-family dwelling with attached garage in the LC25 Zone. Section 139.00, Block 1, Lot 13.1, Zone LC25: Property Location: New Vermont Road just north of Greg Smith's property. Subject to SEQR.

Item #s 7 & 8 were discussed simultaneously.

T. Jarrett noted that the subject parcel is approximately 25 acres. He explained that the house and garage together encompass a 1,700-sq ft footprint situated approximately 200' west of New Vermont Road. They propose a 12' wide driveway in a serpentine fashion so that there won't be headlights shining across the road. The wastewater system will consist of a raised system in front of the house because they have relatively shallow groundwater. The stormwater system consists of a swale with small diameter drywells within. They have attempted to keep the clearing limits as narrow as possible.

When asked for the length of the driveway, Mr. Jarrett indicated he did not have the exact figure, but noted that the house is about 200' back from the road, and the driveway would be slightly longer. H. Koster asked if the Board had to complete the last page of the SEQR form. Counsel indicated they did. H. Koster read aloud the questions on the SEQR form to the Board, resulting in a negative declaration being made by the Board. There were no concerns with the application meeting the criteria of Section 200-31.

Motion by D. Roessler to accept the application as complete, waive a public hearing, make a negative declaration, and grant final approval as presented. Seconded by H. Caldwell. **All in favor. Motion carried.**

8) SPR04-48 CARPENTER, PAT. Represented by Jarrett-Martin Engineers. In accordance with Chapter 125.13C1 of the stormwater regulations, seek Type II Site Plan Review for a major project, specifically to remove more than 15,000 square feet of vegetation. 26,500 square feet is proposed. Section 139.00, Block 1, Lot 13.1, Zone LC25: Property Location: New Vermont Road just north of Greg Smith's property. Subject to SEQR.

The Board had no concerns with the application meeting the criteria of Section 200-31, Section 125-14B, or C1-C7 of the SEQR form.

Motion by J. Gaddy to accept the application as complete, waive a public hearing, make a negative declaration, and grant final approval of the site plan for stormwater as presented. Seconded by S. Wilson. **All in favor. Motion carried.**

9) SPR04-49 BENICASA, VALE & KOSSIANKOV, ANDRIE. Represented by Steve Nacua of Professional Building Systems. As a condition of approval set forth by the Planning Board on May 23, 2000 when approving the Indian Summit Subdivision, SD99-08, seek Specific Site Plan Review for the clearing of the building site and construction of a single-family dwelling on Lot #1. Section 140.00, Block 2, Lot 11, Zone RL3. Property Location: North/northwest side of Indian Summit Drive approximately 4/10th of a mile off of Padanarum Road. Subject to SEQR.

J. Gaddy asked if this was the area that looks like it's a logging header, where it is been cleared. Mr. Nacua indicated that it was, adding that it was partially cleared and there is an access road for the septic systems there. J. Gaddy asked Mr. Nacua if he anticipated further clearing, to which he responded he did not, noting that they had to clear some of the slope areas to do testing due to the presence of ledge and other things that would impact the building site.

J. Gaddy noted that the application indicated they would use flood lighting on the garage, entry area and over the deck. Mr. Nacua indicated that it was not so much flood lighting but instead accent lighting. Upon J. Gaddy's request, Mr. Nacua agreed to use downward-facing, shielded lighting.

H. Koster noted that the plans showed a retention pond about 20' away from septic area. Mr. Nacua indicated that the original stormwater management plan was designed by Engineer Tom Hutchins. They had to modify the plan to relocate the septic system because the original location interfered with the (septic) access road. The retention ponds are consistent with Mr. Hutchins original design. H. Caldwell asked if the retention area was too close to the septic system. H. Koster indicated it was supposed to meet a 100' setback. P. Kenyon agreed, apologizing that she did not catch this (it as since been determined that the required distance is only 20').

D. Roessler asked if there would be a problem with maintenance of the septic system due to the location of the septic easement area, as it is very close to the corner of the house.

P. Kenyon noted that she and Counsel believe this septic easement area is not considered a normal right-of-way and therefore is not subject to typical setback regulations. H. Caldwell noted that in order to build the initial system, heavy equipment would have to be able to maneuver around there.

Motion by D. Roessler to table the application pending the following information: 1) a redesign of the stormwater retention area to meet the 100' setback from the septic; and 2) and relocate the house (including the overhang) to be at least 5' from the septic easement/right-of-way. Seconded by J. Gaddy. **All in favor. Motion carried.**

10) SD04-30 STRANEY, LOUISE. Seeks to amend a previously approved plat (SD03-18) approved by the Planning Board on October 16, 2003, specifically to create multi lot line adjustments between those parcels designated as Section 186.00, Block 1, Lots 8.1, 8.2 and 8.3. Zones RL3 & LC25. Property Location: Long View Drive off of Trout Lake Road. Subject to SEQR. Sketch Plan Review. Major Subdivision. This item was tabled at the November 18th Planning Board meeting pending a road maintenance agreement and a stormwater plan for Lots A1, A2 and A3.

Engineer Alex Rhodes of CT Male also represented this application.

Mrs. Straney noted that Attorney Trish Watkins prepared the road maintenance agreement. H. Koster asked why the extension of the road doesn't go all the way down to Long View Lane. Mrs. Straney noted that there is a permanent parking easement area (as shown on the amended map SD04-30, received October 14, 2004 and also on map PP1 dated rec'd 12/28/04) through which the right-of-way goes.

J. Gaddy suggested that the stormwater plans be forwarded to Tom Nace. Ms Rhodes asked if there was anything the Board wanted her to clarify on the stormwater plan. H. Koster noted that the stormwater plan would be discussed under the next item, and that the subdivision map seems to reflect everything the Board had requested at the last review. Ms Rhodes asked if the shared driveway and stormwater maintenance agreement was satisfactory to the Board. Counsel indicated he reviewed the documents prepared by Atty Trish Watkins entitled "Declaration of Shared Roadway and Utility Easement" and "Stormwater Control Maintenance Agreement" and found them to be satisfactory.

Motion by D. Roessler to accept the application as complete, waive a public hearing, make a negative declaration, and grant final approval as presented. Seconded by J. Gaddy. **All in favor. Motion carried.**

11) SPR04-50 STRANEY, LOUISE. Represented by Alexandra Rhodes of C.T. Male Associates, P.C. In accordance with Chapter 125.13C1 of the stormwater regulations, seeks Type II Site Plan Review for a major project, specifically to remove more than 15,000 square feet of vegetation for the roadway. 20,000 square feet is proposed.

Section 186.00, Block 1, Lots 8.1, 8.2 and 8.3. Zones RL3 & LC25. Property Location: Long View Drive off of Trout Lake Road. Subject to SEQR.

Ms Rhodes asked the Board if they would like her to give a brief overview of the stormwater plan. H. Koster indicated that was not necessary. D. Roessler made a motion to accept and approve the application pending the review and approval of the stormwater plan by Town Engineer Tom Nace. Counsel advised that the Board wait for Mr. Nace's approval of the stormwater plan in order to make the required findings in accordance with Section 125-14B, as is a necessary part of the approval process.

Motion by D. Roessler to table the application pending the review and approval of the stormwater plan by Town Engineer Tom Nace. Seconded by J. Gaddy. **All in favor. Motion carried.**

12) SD04-36 TRIFILO, SCOT. Seeks to divide into 4 lots that parcel designated as Section 186.07, Block 1, Lot 6. Zone RCH5000. Property Location: 4818 Lake Shore Drive, formerly known as Victorian Village. Sketch Plan Review. Subject to SEQR.

Landscape Architect Jim Miller presented this application. The property currently contains a single-family dwelling and 31-unit motel. The proposal is to create 4 lots on this 4.13-acre parcel, removing the existing structures. The 4 lots range in size from .86 acres to 1.3 acres, with shorefronts ranging from 63' to 102'. All of the lots meet the zoning regulations for this zone. They have shown the proposed dock layout, utilizing existing docks and adding some new docks. Currently there is a common entrance with a stonewall and loop access, and driveways that access the motel units. They wish to maintain a single access point, reconstructing the entryway by creating some stone piers, and maintaining the stonewall along Route 9N. They will utilize existing driveways to access the home sites. Mr. Miller noted that Hutchins Engineering has completed the soil test pits, indicating that the septic systems can be accommodated as proposed. They will include septic designs at the next phase of review.

H. Caldwell asked if they would be eliminating the driveway entrance at the northerly portion of the property. Mr. Miller stated that ultimately they would like to eliminate that entrance, which currently accesses the motel units on the north side of the property, and only use the existing main entrance to access all the lots. H. Koster noted that the north access is a shared driveway, so he assumes it must be maintained at its current width. Mr. Miller indicated they would research the matter and discuss options with the neighbor, noting that the survey indicates the property line goes right down the center of this very wide access.

H. Caldwell noted that although the southerly most dock is pre-existing, it looks like it creates an encroachment problem. Mr. Miller noted that this dock, as well as that to the north of it, is pre-existing, non-conforming and they would prefer to keep both as they are. H. Caldwell noted that a boat couldn't be docked on the southerly portion of the dock without encroaching upon the neighbors. H. Koster pointed out the same situation

on the neighbor's most northerly dock, adding that a boat likely would not fit between the 2 docks. H. Caldwell asked if all the homeowners would likely be coming back to the Board for boathouses. Mr. Miller stated he had no way of knowing if they would, as he is proposing only the subdivision. H. Koster does not believe there is enough shoreline to fit 4 boathouses.

Mr. Miller indicated that the existing Victorian Village house would be torn down. H. Koster asked if all the trees shown without radius lines would be removed. Mr. Miller indicated that was not the case, noting that the ones that looked like they had radius lines designated spruce trees, and those without lines designated maples. They anticipate that the only trees they would have to remove (3-4) are those that fall within the proposed house footprints or septic areas. The few trees on the lakefront would remain. Mr. Miller noted that they would likely add additional plantings for buffers along the northerly and southerly property lines after the motel units are removed. Mr. Miller noted that the existing asphalt parking areas (in front of the motel units) would be removed under the plan.

H. Koster believes that the existing septic for the property is situated within the circle of the looped driveway. Mr. Miller indicated what they believe the current septic system consists of (leach pits and pump stations), based on their research of old drawings of the property. He noted that all components of the old system would be removed or abandoned and new systems would be put in for the homes.

D. Roessler suggested one driveway be proposed for the two southerly lots instead of the 2 driveways shown. Mr. Miller indicated that the only reason they are proposing it this way is because the driveways are pre-existing and there is approximately a 3' elevation change between them. They feel that the less shared property there is, the better, and if they were to combine them, they would have to cut or fill. He added that if it were new construction, they would likely have proposed a shared driveway.

When asked if they anticipate any major re-grading of the property, Mr. Miller stated that they will minimize disturbance as much as possible, but they believe they will be required to do a major stormwater report for the amount of overall disturbance, between the removal of existing pavement and the proposed new construction. The project will be done in phases, as the motel units to the south and the residence would be removed first while some of the buildings along the north would remain as the project gets built out from south to north. The property will no longer be operated as a motel, but the units toward the north will be used as storage and living quarters for the workers during the construction process. The previous owner will occupy one of these motel units until he settles on one of the homes, as he had right of first refusal. Upon completion of the last home (on Lot 4), these units will be removed.

H. Caldwell felt that the houses on Lots 2 & 3 were close together, and he asked if there could be more separation. Mr. Miller noted that there probably could be, but they are just showing typical house sites on the map using the existing driveways. H. Caldwell asked if the old stonewall along Route 9N could be redone. Mr. Miller stated that they plan to

do some upgrades to the wall, including building a new entranceway. H. Koster pointed out that the map has Route 9N incorrectly listed as 9L.

H. Koster felt that the Board should review the deed on the shared driveway at the north entrance. Counsel agreed. Mr. Miller indicated that the survey didn't show any easement here, but they would try to find documentation on it. Counsel asked that documentation be provided supporting the note on the survey map (showing the existing conditions) that reads "Driveway easement to be used in common with the Jennie Pfau Family Trust for ingress and egress to New York State Route 9N". H. Koster asked for meets and bounds on the common driveway (toward the south), as well as a maintenance agreement for the driveway and the stormwater.

J. Gaddy referred to the Town's recently adopted Comprehensive Plan that indicates a desire to increase pedestrian access to Town. He wondered if it would be possible to incorporate a sidewalk along Route 9N, since the applicant would be upgrading the stonewall there. H. Koster didn't feel there was room to do so, unless the stonewall were removed. Mr. Miller agreed, noting that it is only their intent to upgrade what is already there. Counsel advised that if economics were not an issue, it might be a consideration to ask the applicant to address this aspect of the Town's Plan, but it doesn't appear to be reasonable in this case. Furthermore, he asked who would be responsible for maintenance if it were feasible. H. Koster felt that this area is quite a distance outside of Town, and a stonewall such as this one is characteristic of scenic Route 9N.

H. Koster asked if the stonewall along the lakeshore would remain as is, to which Mr. Miller indicated it would. H. Caldwell indicated that other than the fact that the applicant would be tearing down the historic house of Madame Sembrich, the plan was a good one. Mr. Trifilo indicated that the current house is not the original house of Madame Sembrich, but a replacement house that her heirs built after tearing down the original in 1934.

P. Kenyon indicated that if the Board is considering scheduling a public hearing, it should be done at the final plat stage.

Motion by H. Caldwell to accept the sketch plan as complete and convert it to final plat with the condition that the following information is provided: 1) proposal for the northerly entrance with regard to the neighbors; 2) major stormwater plan; 3) road maintenance agreement on the common driveway; 4) possibility of looping the water lines so there won't be stagnation; 5) test pit information and septic designs; 6) plans stamped and sealed by the engineer; 7) name of the proposed subdivision; 8) copies of the deeds. H. Caldwell also moved to schedule a public hearing for the February PB meeting (*originally scheduled for February 24, but since changed to February 17*) at 6 pm. Seconded by D. Roessler. **All in favor. Motion carried.**

During the motion the following discussion took place. H. Koster asked Mr. Miller how they planned on accessing Town water for these 4 lots. Mr. Miller indicated that there is currently a water lateral that comes in and accesses the motel units along the north, which

they would like to use for the most northerly residence. There is another lateral that comes in along the south edge of the property that branches off to the other motel units and the house. They anticipate bringing in new laterals to the other 3 homes.

H. Koster noted that the Town Supervisor had asked the Board to look into the possibility of the applicant looping together the water lines for all 4 homes so that there wouldn't be a stagnation problem. Mr. Miller indicated they would discuss this with their engineer, perhaps looking into using the existing laterals and connecting them through lines running along the common access, including them in the easement for the same. P. Kenyon reminded the Board that test pit information was required, to which Mr. Miller indicated that they already dug test pits (done by Engineer Tom Hutchins) in the locations where the proposed septic systems are shown on the map. Mr. Miller stated that they hadn't yet provided this information pending completion of Mr. Hutchins' septic system design. The test pits indicated no high groundwater problems or ledge, but mostly sandy soils showing an average per rate of 3 minutes. H. Koster asked if they came across any clay, to which Mr. Miller indicated they had not.

13) KINCAID, BARRY. Seeking to appeal the Zoning Administrator's interpretation of a condition of approval set forth by the PB when approving the Mohican Heights Subdivision. Specifically, the condition of approval reads as follows: Selective tree clearing is to be reviewed by the Planning Board. Because very few trees remain on this parcel and given the history of the Mohican Heights Subdivision, the Zoning Administrator interpreted this condition to mean the clearing of all vegetation regardless of whether or not it is greater than 6" in diameter at 4 1/2 feet above the ground as specified in the Zoning Ordinance. Section 171.18, Block 1, Lot 3, Zone RL3. Property Location: Sunrise Lane off of Potter Hill Road.

Mr. Kincaid, of KLC Tree Removal and Land Enhancement, explained that he is not appealing the selective tree clearing condition itself. He was not going to remove any live trees, and doesn't understand why he was denied his request to clear what he had proposed. He did not feel he was violating anything in the ordinance. He presented copies of correspondence and pictures to the Board.

Mr. Kincaid explained that he went to P. Kenyon to ask her the definition of tree-cutting, because everything in the ordinance referred to 'anything over 6 inches (in diameter) measured at 4 1/2' height'. She asked Mr. Kincaid where he was contemplating cutting. He told her the subject parcel, after which time she visited the site and then denied Mr. Kincaid his request to do any clearing. He noted that he has been held up for two months on the matter.

H. Koster asked Mr. Kincaid what exactly he had asked to cut. Mr. Kincaid referred to the first page of the pictures he had distributed, showing dead pine trees approximately 12" in diameter, some down and some standing, and small brush under 6" in diameter that the owner wanted cleaned out so that he could get an idea of where he would like to place his house on the lot. Mr. Kincaid noted that the property once consisted of two lots

(Lots 11 & 12 of the subdivision), which were recently merged, and there is already a well drilled on site. He believes there were also test holes done years ago.

H. Caldwell stated that he understands why P. Kenyon asked that the PB review the request, as Mohican Heights was vastly cleared years ago and remains a sensitive site. Mr. Kincaid noted that the pictures on the second page were facing the Lake, and the other side of the property is at the bottom of a ledge. H. Caldwell noted that the vegetation that is there is the re-growth from the clear-cutting that was done years ago. Mr. Kincaid understood this, but feels that he did not propose to do anything that was not allowed in the ordinance.

Counsel stated that everyone would agree on what is in the ordinance, however, there is a stricter requirement put on this subdivision mandated by a previous PB. Mr. Kincaid noted that this requirement specified “selective *tree* cutting”. Counsel advised that the PB has reserved jurisdiction to make the decision as to what will be cut and what won’t be cut. H. Caldwell referred to picture #2 and noted that if all the trees under 6” (in diameter) were removed, there would be no trees left. He explained to Mr. Kincaid that he should basically disregard the ordinance when dealing with these lots (in Mohican Heights), and he should propose a specific plan to the Board. H. Caldwell indicated he was nervous about how many of the 6” trees will be removed. B. Kincaid noted that all the 6” vegetation in this area cannot be seen from the Lake. He further noted that there was a septic test hole dug off the road about 25’.

Mr. Kincaid again asked for clarification as to why he was in front of the Board, asking if it was for the fact that the requirement specified “selective tree clearing” must be reviewed by the PB. He would like to know for future reference, as tree clearing is what he does for a living, and he doesn’t want to come back to the PB every time he wants to clear. P. Kenyon stated that he would have to for this subdivision, unless the Board rules otherwise this evening. Mr. Kincaid asked if this meant the Board had to review clearing brush along the road or the driveway. P. Kenyon explained that Mr. Kincaid indicated to her that he wanted to take down some of the trees and cut out the underbrush. Upon his disagreement with her that the matter had to go before the PB, she had suggested to him that he apply for site plan review, inclusive of a planting plan, at the same time he appealed her decision, in order to expedite the process quicker.

Mr. Kincaid noted that he had sent a letter to P. Kenyon requesting the Board review the matter at its next meeting. P. Kenyon informed him at that time that he need to go through the proper procedure, which required Mr. Kincaid to send a letter appealing P. Kenyon’s determination.

D. Roessler asked Mr. Kincaid if he could mark the area that he wished to clear so that the Board could go and see it. Mr. Kincaid indicated he could, but he still needed some guidance from the Board as to what “selective tree cutting” needed to be reviewed. H. Koster noted that (lots in) most subdivisions that have been the subject of previous excessive cutting would probably have to be reviewed by the Board, from what Counsel has stated this evening. Mr. Kincaid again noted that this is not how it is indicated in the

ordinance. P. Kenyon again noted that this matter had to do with a condition of approval on a subdivision, not the ordinance. Mr. Kincaid again indicated that he needed clarification for future reference, such that he does not want to be in violation if he cuts a tree or some brush in a customer's back yard or along his driveway. He feels that his customers will not believe that such clearing requires PB review. P. Kenyon felt that this situation (in Mohican Heights) was different than someone wishing to take out some brush along their driveway, although she compared it to the scenic corridor restrictions along CR11. She noted that there are different circumstances throughout Town, referring to her letter addressing this matter, and citing several different sections of the ordinance.

J. Gaddy agreed with D. Roessler's suggestion to mark out the area to be cleared, noting that they're trying to get the area re-vegetated from the initial heavy clearing that was done. Mr. Kincaid asked if (lots in) other subdivisions that may have this same requirement (for selective tree cutting to be reviewed by the PB), but may not have undergone previous excessive cutting as did Mohican Heights, would be subject to Board review for clearing a sapling, or underbrush. H. Koster noted that each subdivision is different, as some subdivisions (with this requirement) may have large mature tree growth, and others may only have brush and no large trees. He also referred to scenic corridor restrictions, such as those along CR11, which prohibits cutting of any vegetation without PB review. Mr. Kincaid stated that, as a contractor, he needed to know how to proceed, noting that he would be losing a lot of work if he has to tell lot owners that cutting brush must be reviewed by the Board.

D. Roessler asked Mr. Kincaid to understand that it is not the contractor's or lot owner's fault for what was done by the developer years ago. Mr. Kincaid noted that the subdivision is 20 years old, noting that anyone who referred to the zoning ordinance would believe that they were allowed to cut brush, if they were unaware of a note on the subdivision plat. Mr. Kincaid felt that the condition shouldn't read "tree cutting", but instead should read "vegetation". H. Koster agreed that the strict interpretation of what it says on the map would indicate that cutting of brush was allowed, but he noted that the Board is being advised differently by Counsel.

Robert Pike, owner of the subject parcel, spoke saying that in P. Kenyon's letter (dated 12/17/04) it says that the definition of tree-harvesting most accurately answers the question about cutting the trees. On the same page of the letter, he referred to the definition of tree-harvesting as "The cutting of trees over six inches in diameter measured at 4½ feet above the ground." He feels there is no question what it involves, noting that nowhere does it say that because it is Mohican Heights it is less than that (measurement). H. Caldwell responded that he assumes when Mr. Pike purchased the property, he read his deed and the mylar. H. Koster noted that the map specifies 'no tree-cutting', and does not specify 'no vegetation cutting' and trees are considered 6" (or greater) in diameter.

Mr. Pike stated that the definition of a 'tree' in Webster's Dictionary is at 4½' height, 6 inches or larger. When Mr. Pike read his deed and walked his lot, he was under the impression he could clear all the brush that had grown up over the past 4 years, since

equipment was in there to drill the well and dig the test pits. He does not propose to remove any trees, but just brush and the dead “stuff” shown in the pictures.

H. Koster asked Mr. Pike to understand the Board’s predicament, in that Mr. Pike might be proposing something legitimate, while another lot owner who reads the definition might clear cut the entire lot, which would bring the situation right back to its previously clear cut condition. Mr. Pike noted that he was only going by what was in P. Kenyon’s letter. P. Kenyon responded that she was referencing things in the ordinance that she felt Mr. Kincaid would be concerned with when he’s cutting trees.

Mr. Pike noted that he only wanted to cut brush, to which the Board responded that that is all that is on the lot. Mr. Pike stated that there are some bigger trees (on the Lakeside). H. Koster noted that the Board is not only concerned with re-vegetating to lessen the visual impact from the Lake, but they are also concerned about stormwater management. Mr. Pike did not feel he should be punished for something somebody else did.

J. Gaddy indicated that he referred to the Comprehensive Plan when he was reviewing this particular application. He noted that two main objectives of the Plan are to preserve the natural environment and maintain the rural character, including reestablishing the quality of Bolton’s natural setting, open spaces, hillsides and ridgelines. It also recommended review of the Town’s current vegetative clearing policies. J. Gaddy feels the Town is not trying to hinder growth, but regulate development in highly visible areas. He felt that many of the current regulations in Town were probably initiated from the actions taken in Mohican Heights 24 years ago. Mr. Pike responded again that nothing they are doing is affecting the hillside toward the Lake. He understood the Board’s concern, but felt that what they were requiring was not written down anywhere in the regulations.

H. Koster agreed that the ordinance indicates that tree cutting means 6” (or greater in diameter at 4½’ height). Mr. Pike and Mr. Kincaid agreed, saying that is their whole argument.

Noting that the Board did not have to accept it, Counsel suggested the following: to make an interpretation that P. Kenyon is correct in that the matter (to require the clearing be reviewed by the PB), and that anything in Mohican Heights is a consideration for Planning Board review. Therefore, in order for this applicant to proceed further, they would have to present a site plan.

Mr. Pike felt that he could not provide a site plan until he removed some trees and could get a better idea for house, septic, and well location. Counsel disagreed, saying that Mr. Pike is basically contending that he needs to clear before he knows what he is going to clear. Mr. Pike felt that for the fact that Counsel was not a builder, he would not understand the building process. He added that he couldn’t believe that he as a lawyer was not standing by the ordinances of the Town. Counsel again indicated that the condition placed on the subdivision was more restrictive than the ordinances themselves. He suggested that applicants in Mohican Heights be required to present a plan to the PB

for anything they wish to do there. Mr. Kincaid stated that as far as he knows, he did just that. He feels that the only remaining issue is clarification of “selective tree cutting”, as he feels that, based on what the Board is telling him, the wording should be changed to “vegetation”, because selective tree cutting is anything over 6” (in diameter). Again, Counsel recommended that the Board make findings consistent with P. Kenyon’s instructions to Mr. Kincaid, and if they (Mr. Kincaid & Mr. Pike) wish to proceed further, they should submit a formal site plan review application, as anyone else in this subdivision would have to do. He added that the Board would likely not authorize the applicant to cut every dead tree on the lot.

S. Wilson asked if the current PB could authorized a change in the wording of a condition imposed by a previous PB. Counsel indicated they could, but it would not happen tonight, as doing so requires a public hearing. Mr. Kincaid asked what other subdivisions would be subject to such review. Counsel advised that this question could be answered (on a case by case basis) by consulting P. Kenyon to determine if such a condition exists on a particular lot. Mr. Kincaid wanted to be assured that all subdivisions having the same condition on them would be subject to the same review process for any vegetation under 6”. P. Kenyon indicated she would make that decision each time a person comes to talk to her about a particular lot in a subdivision.

Counsel read the second to last paragraph of P. Kenyon’s letter dated December 17, 2004 which states: *I have reviewed the minutes pertaining to the aforementioned condition and find that it does not specifically state the size of the trees that require Planning Board approval when removed. Based upon the past history of this development, I stand by my decision, in that Planning Board approval will be required for the selective cutting of trees in the Mohican Heights Subdivision, regardless of their size.*

H. Koster indicated he had a problem with the issue because there is no definition of “tree” in the ordinance, and the only definition of a tree is 6” (in diameter at 4½’ high). He felt that the matter should go to the Town Board in the future for clarification, as it is somewhat ambiguous right now.

D. Roessler asked if the Planning Board could make a recommendation to the Town Board to come up with a definition of “tree” to incorporate in the zoning ordinance. Counsel indicated that in doing so, he would probably begin by going on the internet to look at the general code authorship (if any other codes have defined “tree”), and would look in dictionaries for the definition of “tree”, followed by his drafting a proposed definition for the same. This would be passed on to the APA, who reviews everything for the Town’s land use plan. The Agency would likely provide its definition of “tree” followed by the Town scheduling a public hearing, which would eventually be closed and the matter voted upon.

Counsel suggested that the Board follow S. Wilson’s recommendation to revisit the original condition to perhaps clarify the language, which would require the scheduling of a public hearing and proper public notice of the same. Counsel advised the Board to make a motion on P. Kenyon’s decision.

Motion by H. Caldwell to uphold P. Kenyon's determination that the clearing proposed by the lot owner of parcel id #171.18-1-3 required site plan approval by the Planning Board. Seconded by J. Gaddy. 3 in favor. 3 opposed. Motion did not carry.

During the motion, the following discussion took place. H. Koster felt there was some ambiguity with the wording on the subdivision in relation to the definitions in the zoning ordinance. He indicated he had a problem voting in favor of something he felt was ambiguous, although he agrees with P. Kenyon's intent. In the same regard, he agrees with Mr. Pike's position that the language is not clear. D. Roessler agreed. H. Koster felt that P. Kenyon was caught in the middle because she was forced to make a decision. Counsel indicated that he felt P. Kenyon made the right decision in terms of being conservative in her approach and the attempt to preserve the integrity of the previous PB's requirements.

Motion by S. Wilson to table the interpretation, place it on the next agenda, and give public notice that the Planning Board is giving consideration to changing the wording of condition #8 of the Mohican Heights Subdivision plat (Phase II) that specifically reads: *Selective tree cutting to be reviewed by Bolton Planning Board.* Seconded by D. Roessler. All in favor. Motion carried.

Motion by D. Roessler to table Mr. Kincaid's appeal and schedule a public hearing to further define and consider modification of the Mohican Heights tree cutting restrictions as specified on the subdivision plat. Seconded by J. Gaddy. All in favor. Motion carried.

During the motion, the following discussion took place. H. Koster wanted to know if the Board tabled the matter, would P. Kenyon's determination still stand. Counsel indicated that was the case, and H. Koster supported doing so. He noted that Mr. Kincaid has several choices, one of which was to submit a site plan review application to show how he intends to clear Mr. Pike's lot. Counsel suggested the matter of possibly amending the wording on the plat be placed on the agenda prior to the site plan review application, because if the wording is amended, the applicant will likely want to be under the amended version. Counsel suggests that the lot owners in Mohican Heights be notified. H. Koster asked if the Board had to discuss proposed amended language this evening. Counsel indicated they should, but the Board did not feel prepared to do so at this time. Counsel indicated he could draft a public notice that indicates the Board would like to specify and clarify and consider modification of the requirement on the plat.

14) SPR03-41 RONNING, ROLF. To review Forester Chris Gearwar's findings pertaining to the timber-harvesting plan approved by the PB on December 18, 2003. Section 139.00, Block 1, Lots 74 & 8, Zones RIL3, RR10 & LC25. Property Location: Intersection of County Route 11 and Hendricks Road. 139.00-1-74 to be known as the Westwood Forest Inc. Subdivision.

H. Koster asked Mr. Gearwar to give a basic outline of what he found at the site, and if logging operation met the regulations of the Town, County and State.

Mr. Gearwar stated that he found that the east side of the property had been harvested, and the west had not. The cutting plan had called for trees 14" and larger dbh (diameter at breast height) to be harvested. After reviewing the harvesting plan that was submitted against the section of the ordinance that deals with timber-harvesting and land clearing, he found it was essentially in compliance. He added that the timber-harvesting was not perfect and does not follow everything exactly to the letter of the law. For example, the zoning ordinance talks about having water bars spaced at certain distances apart for different slope percents, but that is not always possible in cases where ledge or rocky areas are encountered. However, it was obvious that there was an effort made to comply.

H. Koster asked Mr. Gearwar if he had a problem with the gullies that were created up on the extreme east end of the property ("at the high end"). Mr. Gearwar responded that he feels that it will recover over time. H. Caldwell asked Mr. Gearwar if he had walked the property boundaries, and if there was any timber trespass. Mr. Gearwar indicated he had walked the boundaries and found there was not any trespass.

H. Caldwell asked how many trees less than 14" (dbh) were cut (as indicated by Mr. Gearwar's report). C. Gearwar explained that this is a discussion that he and P. Kenyon had, noting that you cannot use the dbh measurement when trying to define the size of a tree after it has been cut. In such cases, Mr. Gearwar explained that foresters try to work on averages based on the stump diameter, which will likely be larger than the dbh, according to the species of the tree, noting there are different ratios (stump width to dbh). He did not feel there were a lot of trees under 14" cut, but sometimes trees get damaged or knocked over in the harvesting process. He indicated that it was important for the ordinance to include a measurement of trees for after-the-fact cutting, if the Town wished to have enforcement capabilities. He further advised that the Board, prior to making a ruling on such matters involving trees, should consult a professional, perhaps a State forester. H. Caldwell noted that the WC Soil & Water Conservation District was consulted, and he asked if the plan was followed in accordance with what WCS&WCD approved. C. Gearwar stated that it was, although not perfectly as he noted before, but he feels that it was done within the letter of the law.

The Board thanked Mr. Gearwar. The Board did not express any dissatisfaction with Mr. Gearwar's findings.

15) SD04-32 WESTWOOD FOREST EAST (ROLF RONNING). Seeks to divide into 8 lots that parcel designated as Section 139.00, Block 1, part of Lot 8. Zones RIL3, RR10, and LC25. Property Location: Intersection of County Route 11 and east side of Hendricks Road. Major Subdivision. Sketch Plan Review. Subject to SEQ. This item was tabled last month pending a forester's findings pertaining to the timber-harvesting that had taken place, approved under SPR03-41.

Mr. Ronning explained that the property falls within 3 different zones. He proposed 5 lots greater than 10 acres apiece, all compliant. There are 3 lots in the industrial zone, all 3 acres or larger. Each complies with the required road front distance and lot width. No buildings or driveways are proposed at this time, as he wishes only to sell lots as they are. He is working with Niagara Mohawk to bring in power from Riverbank to Hendricks Road, as there is not enough power coming in through the back way off Alderbrook Lodge.

Mr. Ronning indicated that the lots are shaped as they are so that they would have good driveway access that would not be too steep. He stated that there has been a lot of interest in the industrial zone, as there are few places you can have an accessory use without a principal use, such as a riding stable without a principal structure. Mr. Ronning explained that the property line for the industrial lots is right on the zone line, and most of the industrial zoned property to the adjacent west is owned by the church. As shown on Mr. Ronning's property, this is as far east and north as the RIL3 zone extends.

H. Koster asked Mr. Ronning if he had gone to the site after the PB raised concerns last month about the ruts that were created during the logging operation. Mr. Ronning indicated he did go to the site with his forester Kurt Kostinan, who felt that the loggers complied with the ordinance. H. Koster felt that the ruts were deeper than are found in most normal logging operations.

At the Board's request, Mr. Ronning indicated he would have test pit and perc test information for next month. When asked about providing stormwater design, Mr. Ronning indicated that he wasn't proposing development on the lots at this time. J. Gaddy pointed out that according to Section 125-8H, the project was subject to stormwater design at this stage. Mr. Ronning indicated that he has no idea what potential buyers within the industrial zone will do with the lots, as he has had buyers express interest in uses ranging from riding stables to warehouse/storage facilities. He didn't understand what he is supposed to tell an engineer to design, noting that he can't sell the property until the lots are approved, and he can't know what will be proposed on the lots until they're sold.

Counsel advised that the Board require stormwater for typical development of lots within these zones now, and additional review as each lot gets developed. Mr. Ronning responded that for the 10-acre lots he would propose reasonably long driveways to building sites for 2,000-3,000 sq ft homes. On the industrial lots he would propose 1/3 of the surface area becoming impervious. H. Koster noted that test holes must be done first in order to determine perc rates, to which Mr. Ronning responded that some test holes were already done in the industrial zoned area. Mr. Ronning indicated he would come back with stormwater on typical development for these zones, as he suggested. He asked if a public hearing could be scheduled for next month. P. Kenyon indicated that information for new applications is due this coming Monday, and pending applications is due 2 weeks prior to the next meeting. D. Roessler requested that if the new information is not presented by the deadline date, the matter is tabled.

Motion by D. Roessler to approve the sketch plan and convert it to preliminary, schedule a public hearing for the next PB meeting (*originally February 24, 2005, but since changed to February 17*) with the condition that the following additional information is provided: 1) a major stormwater design as discussed; and 2) additional deep test holes and perc tests. If this information is not completely submitted by February 10, the application will be tabled until the following month. Seconded by J. Gaddy. **All in favor. Motion carried.**

It was determined that if the Board has questions about the feasibility of what is presented next month, the Town Engineer may be asked to review the plan at the Applicant's expense.

16) SD04-37 HIGH MEADOW FARM. Rolf Ronning. Seeks to amend a previously approved plat (SD04-05) approved by the PB on April 22, 2004, specifically to create a lot line adjustment between Lots 1 & 2 as shown on the High Meadow Subdivision plat dated May 5, 2004. Section 139.00, Block 1, Lot 48, Zone RL3. Property Location: 83 High Meadow Farm Road. Sketch Plan Review. Subject to SEQR.

Mr. Ronning explained that this property involves land within his proposed 24-lot subdivision called Saddlebrook, currently under review by the PB. The Board previously approved Mr. Ronning's creation of a 15-acre lot with an existing home (formerly owned by Mr. Mowery) on it, which he had hoped to sell off. Initially, when he was contemplating the Saddlebrook Subdivision lot layout, he had planned to have an access coming in off New Vermont Road (through tax parcel #139.00-1-26.22, along the westerly portion of the parent parcel), but the land was not conducive, as it was wet. He would instead like to improve the existing entrance coming in off of New Vermont Road through the easterly portion of the parent parcel.

Mr. Ronning is here this evening requesting approval of a line adjustment, changing the lot from 15 acres to 10 acres. One of the corners of the lot has been reconfigured so that access may be gained through the portion of the proposed subdivision roadway accessing CR11.

H. Koster asked where the 5 acres would be conveyed to, as the property is not yet considered subdivided as shown on the map. Mr. Ronning explained that it would eventually become part of proposed Saddlebrook Subdivision Lot 23, but for now, it is going back to the large 150-acre parent parcel. H. Koster advised the Board that if a motion to approve is made, it specifies that the Board is not approving any of the proposed Saddlebrook lots shown on the map.

Motion by J. Gaddy to accept the sketch plan as complete, make a negative declaration, waive a public hearing, convert it to final plat and approve the lot line adjustment reducing the 15-acre parcel to a 10.16-acre parcel, with the 5± acres being conveyed to the remaining lands in excess of 150 acres (tax map #139.00-1-48). The mylar will show

only the parent parcel and the 10.16-acre parcel with a right-of-way to the road as it exists now. Seconded by D. Roessler. **All in favor. Motion carried.**

17) SD04-16 SADDLEBROOK SUBDIVISION. Rolf Ronning. Seeks to amend previously approved plats (SD03-19 & SD04-05 formerly known as Mowery/High Meadow Farm), specifically to divide into 24 lots that parcel designated as Section 139.00, Block 1, Lot 48, Zone RL3. Access is proposed to be gained through Section 139.00, Block 1, Lot 46.1. Property Location: 83 High Meadow Farm Road. Major Subdivision. Sketch Plan Review. Subject to SEQR. This item was tabled last month pending additional information.

Mr. Ronning indicated that he has provided all information requested by the Board last month. He noted that several Board members walked the 2-mile roadway today. He also noted that the cross-sections and diagrams showing cuts and fills of the road every 50' (as requested by the Board last month) consist of 21 pages. He asked if he could submit only 1 or 2 copies for the Board to view in the Planning Office. The Board agreed to this.

Mr. Ronning noted that a couple of issues arose when they went to mark the centerline of the proposed subdivision roadway. The road was a little too close to Indian Brook (where it crosses between Lots 6 & 7), so they are moving it east approximately 50' from the brook, which results in Lot 6 decreasing by a quarter of an acre.

Mr. Ronning stated that as a result of the walk, it was the consensus of the Board to propose one instead of two stream crossings to access Lots 7, 8, 9, and 10. There will be a hammerhead or turnaround for emergency access. Also, the Budners and Mr. Ronning got approvals for a lot line adjustment to extend Budners' lot toward the west, although the land was never conveyed. Mr. Ronning is currently trying to work out another arrangement with Mr. Budner, as Mr. Ronning now wishes to extend the shared access along the Budner property to access the lots in his proposed subdivision.

D. Roessler, on behalf of the Fire Dept, requested that Mr. Ronning could please consult APA or EnCon to create a pond from which the Fire Department could draw water in case of a fire, perhaps across from Lots 5 and 6. Mr. Ronning agreed to this. In terms of size, D. Roessler indicated the pond should be similar in size to the pond at the intersection of Potter Hill and Trout Lake Roads, and should not be stagnant (he estimated 500 gals per minute intake).

H. Koster requested some type of turnaround for Mr. Ronning's proposed common driveway for Lot 7, 8, 9 & 10. Mr. Ronning plans on perhaps having 2 turnaround areas or a hammerhead. Mr. Ronning indicated he was hoping to get approval to begin cutting a 30' wide swath (15' on each side of the centerline) for the road while the ground is frozen, to avoid erosion. H. Koster was opposed to this, as he felt Mr. Ronning is constantly moving proposed road locations and lot lines. Mr. Ronning indicated he would like to just clear to Lot 12 from the existing driveway (by Budners). P. Kenyon noted asked Mr. Ronning if he spoke to the Fire Dept about the road, as she believes he

indicated he would require a waiver for the radius of one of the curves. Mr. Ronning indicated that he supplied a complete set of the maps to Steve Baker, Assistant Chief, and notified the Dept of tonight's meeting.

D. Roessler felt there should be some sort of turnaround area by the proposed pond. H. Koster again expressed his opposition to allowing Mr. Ronning to cut a road, noting that this project is very large, and would not be done in a couple of months. Mr. Ronning asked if the Board could move it to preliminary plat and schedule a public hearing. J. Gaddy asked when the Board could expect to hear from the APA. Mr. Ronning indicated that he sent in a jurisdictional inquiry form, which the Agency received on Dec 7, 2004.

It was determined that even though Mr. Ronning increased the turnaround area between Lots 2 & 23, it still required a waiver from the ordinance because it didn't meet the minimum radius requirements. Regarding the request by the Board to angle the entrance in from CR11, Mr. Ronning explained that while at the site, the Board saw the difficulty with the topography, and they are okay with the entrance as proposed. Regarding power, J. Gaddy and Mr. Ronning noted that Niagara Mohawk will not consider power arrangements until the subdivision is approved. When asked about getting power into Mr. Ronning's other proposed development Westwood Forest East, Mr. Ronning indicated that he spoke with Bill Johnson and Alex Hall.

P. Kenyon asked Mr. Ronning if he decided upon a bridge or a culvert (for the crossing over Indian Brook). Mr. Ronning has the understanding that if he proposed a bridge, it would require variance approval (which he already got). In speaking with the Army Corps of Engineers (ACOE) and EnCon, he has found that elliptical culverts are supposed to be the best option, as they pose the least disturbance to the streambed. They also do not require a building permit, and so are not under the PB's jurisdiction. Mr. Ronning noted that he still has to get permission from environmental agencies to cross the streams. He further noted that he's in the process of putting in a permanent elliptical bridge within his Westwood Forest East development, but DEC informed him that he can't install it until after the trout eggs hatch in spring. H. Koster noted that a culvert is more discrete and is probably cheaper. He noted that the Board would be concerned with the amount of fill placed on top of the culvert. Mr. Ronning indicated he would provide the Board with specs on the proposed elliptical, bottomless culvert with dimensions of 11'10" in diameter and 7'8" in height.

D. Roessler requested that the intersection in middle of property be widened. Mr. Ronning agreed to make it more rounded. H. Caldwell stated that the Board would need to know what it's going to cost to build the road for possible bonding. Mr. Ronning indicated that his excavator Mr. Fifield is in the process of calculating this, but he anticipates it will be between \$200,000-\$300,000. He will try to get a formal estimate by next month. H. Koster felt it would be more by the time stormwater is added in. Mr. Ronning indicated the road would be surfaced in Item 4, and would not be paved. He noted that the stormwater plan, being designed by Engineer Dave Myers, is just about done. P. Kenyon informed Mr. Ronning that the stormwater plan would be reviewed under site plan review as a completely new application, which is due on Monday. Mr.

Ronning indicated he would try to submit it by Monday. P. Kenyon asked how he would be able to provide stormwater when the Board has requested several changes to the map. Mr. Ronning felt that the changes were minimal as far as stormwater is concerned, and he asked if he could submit the stormwater application on February 10, the same deadline for submission of the changes to his pending subdivision application. H. Koster noted that there was a 2,500'± driveway that needed a stormwater plan as well. He did feel a public hearing could be scheduled until the changes and stormwater were addressed. He added that if Mr. Ronning is proposing a culvert, he should make sure it's long and wide enough to handle the amount of fill that will be placed on top of it. Mr. Ronning indicated it would likely be about 30' long, but H. Koster felt it would have to be much longer. H. Koster noted that this subdivision is so large, that if Mr. Ronning can't get a water source for fire emergencies, something else would have to be proposed, as the Board had to be concerned with the health and welfare of the neighborhood. D. Roessler noted that the pond that Mr. Ronning is contemplating for fire emergency purposes would also serve for sediment control. He suggested that Mr. Ronning also find out if he can put a dry hydrant in for the Fire Dept to hook onto. It was noted that the APA may have a concerns with the creation of a the pond, although it would serve a good purpose.

Motion by D. Roessler to table the application for additional information as discussed. Seconded by C. Mason. All in favor. Motion carried.

Meeting adjourned at 11:57 pm.

Respectfully submitted by,

Melanie Quigan
Recording Secretary
02/15/05