

**Town of Bolton
PLANNING BOARD
MINUTES
Thursday, October 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, Sandi Aldrich, Henry Caldwell, John Gaddy, Chauncey Mason, Susan Wilson (arrived at 7:27 pm and voted on Agenda Items 7-10), Zoning Administrator Pam Kenyon, Town Counsel Michael Muller

Absent: Don Roessler

PUBLIC HEARING: None

H. Koster opened the regular meeting at 6:08 pm by asking for corrections to the Thursday, September 22, 2005 minutes.

J. Gaddy asked that on pages 18 and 20, in the Warren discussion, “fjords” and “fjord” be changed to “fords” and “ford.”

Motion by C. Mason to approve the September 21, 2005 minutes as amended. Seconded by J. Gaddy. **All in favor. Motion carried.**

REGULAR MEETING:

1) SD05-28 OTTO, MARILYN. Seeks to divide into 2 lots that parcel designated as Section 199.07, Block 1, Lot 9. Zones RL3 & RR5. Property Location: South side of South Trout Lake Road approximately 700’ from Coolidge Hill Road intersection. Minor Subdivision. Sketch Plan Review. Subject to SEQR. Due to the wetlands located on this parcel, APA approvals are required. *This item was approved by the Planning Board on December 16, 2004 and never filed. It is therefore considered null & void.*

Marilyn Otto gave an overview and read the conditions of APA approval with conditions filed with the County Clerk.

H. Koster asked if the drawings have changed at all and P. Kenyon said no.

The PB found no concerns with Section 200-31A-D of the zoning ordinance and C1-C7 on the SEQR form.

Motion by H. Caldwell to accept the application as complete, waive a public hearing, convert the sketch plan to final plat and grant final approval as presented. This motion includes a SEQR analysis and findings of no negative environmental impacts with all

aspects favorable to the application as presented. Seconded by S. Aldrich. **All in favor. Motion Carried.**

2) SPRO5-40 WUBBENHORST, ROBERT. Seeks Type II Site Plan Review for a major project, in accordance with Section 125.13C1 of the stormwater regulations. Specifically to remove more than 15,000 sq. ft. of vegetation. Approximately 50,529 sq. ft. is proposed. Section 171.00, Block 1, Lot 11, Zone RR5. Property Location: Potter Hill Rd., approximately 800 ft. east from Edgcomb Pond Rd. intersection. Subject to SEQR.

Note: A single-family dwelling is not proposed at this time.

Hugh Roberts, representing Robert Wubbenhorst, gave an overview and said (1) the project is being proposed not by the owner to build for himself but for the purposes of marketing it at a fair market value, (2) due to the unusual topographical features of this site, it is difficult to envision the site's development or determine its value, which is impossible without a plan, (3) detailed site development is needed which includes the obtained easement from Niagara Mohawk, regulatory approval and testing, (4) they have established a concept house envelope location, a reasonable grade objective for access to the house, the driveway location meeting criteria and proper stormwater management and (5) the owner may or may not undertake construction if approvals are received, which is to be determined based on cost and other situations.

H. Koster asked if Town Engineer Tom Nace has reviewed the project and P. Kenyon said no, but she recommends it goes to Tom Nace for review at the applicant's expense.

H. Koster asked if the applicant may or may not be building, because what is proposed is a large clearing and the PB is concerned with clearing at a specific site then moving it later. Hugh Roberts said (1) yes, it is correct that the applicant may or may not build and (2) he thinks if the owner made the determination to install the entire driveway that he would probably want to do some clearing at the proposed house location.

Peter David, from the LA Group and landscape architect for the project, said (1) the septic, driveway and house are interrelated and (2) the house doesn't have much flexibility in moving. H. Koster (1) said he is not worried about the road at all, but with the house site and (2) asked if the applicant would be adverse to restricting future owners to building in the proposed house footprint. Hugh Roberts said (1) that they would be hesitant to do that in its exactness, but would restrict future owners in location and (2) they need some flexibility with the precision of the building envelope. H. Koster said that since this is major stormwater project, he would be hesitant to allow clearing of the site until a permit is asked for, because he doesn't want to be re-doing this again.

H. Caldwell said (1) he is concerned because this is the most ambitious stormwater project that this PB has ever seen, (2) he questions whether this is even a buildable lot, (3) the applicant is not showing the clearings for a well or showing decks, (4) there will be more clearing involved—the applicant is already over 50,000 square feet, but he believes a more realistic number for clearing would be 60,000-70,000 square feet and (5)

on this 3-acre site, that would equate to clearing almost half of it or more. Peter David said (1) he figures they would disturb 1.03 acres (which includes disturbance already in the Niagara Mohawk right-of-way), but it might go up 10%-20%, (2) there will probably be more disturbance during the construction phase, but he believes it is doable.

H. Koster said (1) as opposed to H. Caldwell, the Zoning was designed for 3-acres simply to allow it to be used, (2) the driveway slope is less than 15% all the way and (3) he admits there is a lot of clearing for this project, but to say this lot is not buildable is a little severe.

Peter David said (1) they are in the process of working with the Lake George Waterkeeper on stormwater, (2) they are very close to handling all the water quality and the run-off, (3) there isn't going to be any additional stormwater run-off from the site, because of their ponds, infiltration trenches and check dams, and (4) they are adding level spreaders for erosion where needed.

J. Gaddy said (1) his concern with engineering on a road like this is the requirement of the cutbacks of the side of the hills, especially on the turn coming up to the last approach to the house where the house visibility begins to increase, (2) the degree of clearing would make this a very visible project and he would like to see some approaches to screening the house and (3) he would like to see clearing limits added to this plan. J. Gaddy said (1) he is looking to get the grades cut back along Potter Hill Road as there are 40'-50' of bank cut parallel to Potter Hill Road then it gets more extensive as you come up to the house and (2) the plan shows some pretty extreme cuts (14'-15').

Peter David said (1) what appears to be the "Tree Line" is mislabeled and it should be labeled "Limit of Disturbance" on the maps and (2) it is already open in the easement area. J. Gaddy said it looks like it will be a lot more open in the easement area after the project is started.

Correspondence: Counsel read the following correspondence into the record.

- Letter from Chris Navitsky, Lake George Waterkeeper – concerns
- Letter from Lake George Association – concerns
- Letter from Warren County Planning Board – recommended no County impact

Peter David said (1) regarding the Lake George Waterkeeper's comments, they have amended those and he thinks they are on the right course, as he thinks all the numbers are correct, all their applications are water quality storage as practiced by New York State Stormwater Management Design Manual and (2) they are willing to and want to abide by stormwater since it is their profession, (3) they do account for the septic area clearing in the disturbance and (4) it is in the client's best interest to selectively prune the trees as the project progresses—he won't just go in and clear cut. H. Koster said it depends on the client, because a lot of clients want a 180-degree view of the lake and nothing else will do.

H. Koster said (1) he is very hesitant to review the proposed project without an actual home site on it, because the PB has had a lot of applicants before it, where the PB has allowed home site clearing and the home site changes, so then there are two home site clearings which in essence, give a clear cut view as opposed to a filtered view and (2) regarding the proposed stormwater design, the applicant is going to have to satisfy Town Engineer Tom Nace.

Peter David said he just doesn't see the footprint moving other than about 5' in one direction or the other, as it is dictated by the topography and the driveway. H. Koster said a 40' x 80' footprint is an awful large footprint. Peter David said he is not opposed to putting an envelope that can't be removed, but they need a little bit of flexibility. H. Koster asked if they plan on putting a 40' x 80' house there, where two-stories would be 6,400 square feet and Peter David said he can't answer that. Hugh Roberts said they have space for a garage.

H. Koster said stormwater is very important to the PB and to analyze this as a half a project then to have to have the applicant come back because of movement, doesn't make sense to this PB. Peter David said all the stormwater calculations take the roof into consideration.

Hugh Roberts said (1) their agenda is to identify as many issues as possible at this point, (2) they are not looking to clear a lot of the site where the proposed house site is going to be as the most important thing is to get access to the site and (3) to actually clear a pad for the house is not absolutely necessary to them.

H. Koster asked if the applicant would have to come back to the PB after they come for the home site for major stormwater and P. Kenyon said yes, if the PB made that a condition. H. Koster said that would be a continuation of a major stormwater and Counsel said he thinks that is correct, as the PB would want to make sure the applicant was complying with what the PB first set as the requirement. P. Kenyon agreed.

H. Caldwell asked if the applicant will have to pump to the septic system and Peter David said yes. H. Caldwell asked if the water coming off the house would stay in the trench around the house or go into the driveway system and Peter David answered by saying that (1) he assumes there would be a peak on the house and the water from the roof would go into the trenches, but until he has a house design he can't be positive and (2) he was trying to show in good faith the amount of storage required for a roof of that size.

H. Koster asked if they have done test borings on the site and Peter David said that they did perc tests in the septic location. H. Koster asked if they have done any test holes in the home area to see if it will be able to take the infiltration at the home site and Peter David said no. H. Caldwell asked if they brought a backhoe up to the site for testing and Peter David replied by saying (1) no, he did the perc tests with a shovel and (2) the infiltration trench shown can be higher and the foundation lower for better infiltration, less erosion and more erosion control.

H. Koster asked if the rock face slope along the road is bedrock and Peter David said that (1) they don't know, but it possibly could be, (2) there may be a lot less disturbance and there won't be any more disturbance.

H. Koster said that (1) he feels something of this size has got to be further engineered to show a house can be accommodated on this site and (2) if there is a possibility for rock ledge there, there will be no infiltration in that area and the applicant may have the same situation where the house is. Peter David said that potentially that could happen, but the infiltration trench could be put above the eventual excavation, which shows that there are ways to accommodate for that type of run-off.

H. Koster said (1) he is not adverse to this project but he thinks it needs to be properly engineered before this PB can okay a 700'-800' of road that is cut through the forest and then at some future date they are going to come back and need some special engineering to accommodate stormwater for the home, (2) he doesn't believe they have the proper engineering for stormwater on the road—they have a steep slope that they have no test pits for so the applicants have no idea what the infiltration is going to be and (3) there is a possibility of rock ledge in a large part of this area and you get zero infiltration with that.

Hugh Roberts said that regarding the drainage around the house and dealing with the stormwater, their primary objective is to obtain approval that allows them to determine access and build the driveway up to the house site prior to a purchaser bringing in a specific house design, footprint and drainage.

H. Koster said he doesn't think this is an unusable lot but it is challenging and the applicant is looking for a permit to do a 600'-700' driveway that might just sit there. Hugh Roberts replied by saying that (1) the driveway may or may not be done by the owner at this time, (2) if the driveway is approved, then they know what they are dealing with and they can bring a purchaser in, but in the absence of that they don't know anything and (3) the owner is severely limited in his ability to market that site without some known quantity associated with its access and its drainage.

C. Mason said there are no assurances on whether that the site could take the infiltration trenches for the roof water. Peter David said they did perc tests and H. Koster said that the applicants didn't do any deep hole tests in the septic area, so the applicant doesn't even know if the septic area will be accepted where proposed.

H. Koster asked if the PB can put in the motion that the PB has concerns as to soil and ledge content of this lot and that it needs to go to Town Engineer Tom Nace and Counsel answered by saying yes, as well as forwarding the correspondence that was received so the Town Engineer is aware of all of the criticism that is coming in.

H. Caldwell said he would like to see a proposed well site in the plan, because it is going to create more disturbance.

H. Koster said (1) what is very reasonable to the current owner may be unreasonable to the next buyer, which is why he is concerned with clearing such a large area and (2) this proposal leaves too many variables to clear a lot more area than what is being asked for right now.

Motion by H. Caldwell to table the application until Town Engineer, Tom Nace reviews and approves the plans. Test holes to accommodate the road are to be dug, if Tom Nace feels it is necessary. Seconded by C. Mason. **All in favor. Motion Carried.** Although not part of the motion the board would like the location for a proposed well to be shown on the plans.

3) SPR05-42 THE MICHAELS GROUP. Represented by Matt Steves of Van Dusen & Steves LLS. As part of subdivision (SD03-23) and stormwater (SPR04-03) approval granted for the Bluebird Cottages Subdivision (Philip and Cynthia Farbaniec) on March 18, 2004, seek Type II Site Plan Review for a major stormwater project on Lot 7. Section 186.14, Block 1, Lot 84, Zone RCH5000. Property Location: 4632 Lake Shore Drive, Lot 7 of the Bluebird Cottages Subdivision. Subject to SEQR. Subject to WCPB review.

Matt Steves, of Van Dusen & Steves, LLS, representing The Michaels Group, gave an overview and said that for Lot 7 the total stormwater storage required with the infiltration trench is 3,800 gallons and 3,900 gallons is proposed, which complies with the requirements of approval from the PB on this subdivision.

H. Koster said this is a pretty flat lot and asked if this needs to go to Tom Nace and P. Kenyon said no, this does not need to go to Tom Nace.

No County impact.

J. Gaddy said (1) there is a consensus to approve this major stormwater project and (2) based upon the materials submitted and accepted as part of the record, the findings are as follows;

1. The project meets the design requirements and performance standards set forth in the code.
2. The project will not have an undue adverse impact regarding the criteria set forth in the code.
3. That the stormwater control measures proposed will function as designed and constitute the best possible methods feasible and practicable for the project site.
4. Adequate and sufficient provisions are presented as part of the plan to assure future function or responsibility in the event of failure.
5. The project will not contribute to flooding, siltation, or streambank erosion and will not pollute Lake George, its tributaries or streams with run-off.

The PB found no concerns with Section 200-31A-D of the zoning ordinance and C1-C7 on the SEQR form.

Motion by J. Gaddy to accept the application as complete, waive a public hearing and grant final approval as presented. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. Seconded by S. Aldrich. **All in favor. Motion Carried.**

4) SD05-06 GREENMIER, ALEXANDER & DAVIS, THOMAS. Represented by Atty John Ray. Seek to divide into two lots those parcels presently designated as Section 184.04, Block 1, Lots 19.1 & 19.2, Zones RR5 & LC25. Property location: 41 & 61 Northway Lane. Sketch plan review. Minor Subdivision. Subject to SEQR. NOTE: This is an after-the-fact subdivision. This item was originally approved on August 19, 2004 (under SD04-28) with the following conditions attached: *1) Don Kingsley signs off (the applicant's attorney provides the Town with an executed document signed by all parties agreeing to this subdivision), prior to filing the mylar; and 2) the three Davis parcels (shown on the tax maps as 184.04-1-18, 184.04-1-19.2 and 185.00-1-13.2) are merged.* The subdivision became null and void as it was not filed in time. *This item was tabled at the September 05 meeting at the applicant's request.*

Atty. John Ray, representing Alexander Greenmier and Thomas Davis, gave an overview and said (1) the essence of this boundary line was approved in August 2004 with the stated stipulations and (2) they were unable to obtain a fully signed stipulation of settlement, the stipulation was agreed to in open court throughout the minutes, on May 13th the Judge made an order incorporating the stipulation, so this should satisfy condition #1.

Counsel asked if Atty. John Ray will recite the situation about the order in his instrument of conveyance or whatever gets recorded in the clerk's office, because somebody might be looking for the reason for the absence of signature at a later date and Atty. John Ray said he could do that. Counsel said that being agreed, then condition #1 is satisfied.

Atty. John Ray explained and showed on the subdivision maps as to how the three Davis parcels were merged satisfying condition #2. H. Koster asked if Counsel is happy with the conditions being met and Counsel said yes.

H. Koster asked if this is all the same as what was previously approved and P. Kenyon said yes. Counsel agreed and said that it puts it right back into where the PB needed to have it go into compliance, but it does need the PB's final administrative approval, which he encourages the PB to do.

The PB found no concerns with C1-C7 on the SEQR form.

Motion by J. Gaddy to accept the application as complete, waive a public hearing, convert the sketch plan to final plat and grant approval with the following condition: 1) The three Davis parcels (shown on the tax maps as 184.04-1-18, 184.04-1-19.2 and 185.00-1-13.2) are merged. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. Seconded by Sandi Aldrich. **All in favor. Motion Carried.**

5) SD05-26 BAILLIE, WILLIAM. Seeks to divide into 2 lots that parcel designated as Section 186.14, Block 1, Lot 7, Zones RCH5000 & RL3. Property Location: 964 Trout Lake Rd. Minor Subdivision. Sketch Plan Review. Subject to SEQR

Skip Lower, representing William Baillie, said the applicant is seeking to divide one parcel into two lots.

The PB had no questions or comments on this item.

The PB found no concerns with C1-C7 on the SEQR form.

Motion by J. Gaddy to accept the application as complete, waive a public hearing, convert the sketch plan to final plat and grant final approval as presented. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. Seconded by C. Mason. **All in favor. Motion Carried.**

6) SD05 – 27 GREEN ISLAND ASSOCIATES & HAYES CONSTRUCTION GROUP LLC. Represented by Atty. Matthew Fuller. Seek lot line adjustment between those parcels designated as Section 156.00, Block 1, Lots 67 & 69. Zones LC25 & RL3. Property Location: Sagamore Golf Course & 384 Valley Woods Rd. Sketch Plan Review. Subject to SEQR.

Atty. Matthew Fuller, of Gerald, Morris, Baker & Firth, representing Green Island Associates and Hayes Construction Group LLC, gave an overview by referencing the submitted maps and said that the parties have agreed upon the proposed plan.

H. Koster said this item is pretty simple and asked if the numbers on the maps add up equally and Atty. Fuller said that they do.

P. Kenyon said that Atty. Fuller agreed to check with the APA tomorrow to see if they have to amend anything up there because of the approvals that were granted for the golf course. Atty. Fuller said he will follow through with that and will supply the Zoning Office with the outcome.

The PB found no concerns with C1-C7 on the SEQR form.

Motion by H. Caldwell to accept the application as complete, waive a public hearing, convert the sketch plan to final plat and grant final approval as presented. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. Seconded by S. Aldrich. **All in favor. Motion Carried.**

7) SD05-23 WIDE WATER SUBDIVISION (Keith Van Buskirk). Represented by Atty. Jonathan Lapper. Seeks to merge those parcels designated as Section 213.05, Block

1, Lots 6 & 7 and then subdivide into 3 parcels. Zone RM1.3. Property location: 4124 Lakeshore Drive, known as Wide Waters Motel. Minor subdivision. Sketch plan review. Subject to SEQR. Variance approvals were granted on 05/16/05 for deficient lot width and shore frontage. *This item was tabled at the September 05 meeting, pending additional information.*

Atty. Jonathan Lapper, representing Keith Van Buskirk, gave an overview and said (1) the applicant will abide by the deal that was cut between the PB and the ZBA to take down the boathouse on the lake, (2) the applicant is planning to renovate the house on Lot 1 instead of knocking it down and (3) a septic system variance will still need to be obtained from the Board of Health.

H. Koster asked if the applicant is maintaining all of the trees shown on the map and Atty. Lapper responded by saying yes, it should be similar to what is shown.

Please note: Susan Wilson arrived at this point in the meeting.

H. Caldwell asked what the setback is from the lake and Atty. Lapper answered by saying 75' and they are on there for the sake of the subdivision for the concept of houses, because they will be for sale.

S. Aldrich asked if there is a problem with contaminated soil on this site and P. Kenyon said that there is a possibility of some contaminated soil that she believes the applicants are working on. Atty. Lapper said that is correct as he is aware of the underground fuel storage tank was removed, there is some soil that still needs to be removed and DEC has been involved with monitoring that, so once it has been done they will get a closure letter from the DEC. P. Kenyon said that Tom Nace has recommended that any contaminated soil be addressed and that he feels it is very important to follow through on that issue. Atty. Lapper said (1) that could be a condition, (2) the applicant cannot remove the soils until they take possession of the property, but they agree it has to be done immediately and (3) they could provide a DEC letter as to the current status.

H. Caldwell asked if the proposal is for drilled wells for the two new lots and S. Aldrich said they are going to cap the old wells, and they will be putting new wells on all three lots. Atty. Lapper said that is correct.

P. Kenyon asked if the hashed buildings on the maps are the ones that are staying, specifically on Lot 1 where it shows the six cabins and Atty. Lapper answered by saying that (1) what is proposed at this point to be removed is the large building at the center between Lots 1 and 2, the boathouse building and the cottage on Lot 1 and (2) he expects the cabins will also be removed.

S. Aldrich asked if the original proposal was to remove the cabins and P. Kenyon read the conditions when, Donohue & Delceg applied for and received the variance into the record and said only two buildings—the boathouse and the building between Lots 1 & 2—that were conditioned to be removed and read excerpts from the September 2005 PB minutes

into the record for further clarification.. H. Koster said that if this is going from commercial to residential there isn't a need to leave the cabins and the PB can add that as a provision of approval. Counsel agreed that it can be added as a provision.

Counsel said that in the September 2005 PB minutes it says that "...Keith Van Buskirk said it is his plan to demolish the cabins on Lot 1." Atty. Lapper said that what happened is that Keith Van Buskirk incorrectly thought the ZBA required that and that is why he said that and (2) if the PB wants them down as a condition, he is sure Keith Van Buskirk will abide by that.

H. Caldwell asked what the septic system is designed for and Atty. Lapper said probably just the house and guest house. H. Caldwell asked if the cottage on Lot 3 is figured into the septic system, because no pump station or septic tank is shown for that. Atty. Lapper said that was always planned to be retained, so it would have to be figured into the septic system and it would have to be pumped up to the same leach field. P. Kenyon said that it looks like the septic systems were designed for five-bedrooms on all the lots, but these septic systems require Board of Health approval because they don't comply with the current regulations.

H. Koster asked which map is being used for the subdivision and Atty. Lapper answered by saying they are using the D. L. Dickinson map dated 08/25/05 and revised 10/15/05, which is sheet 2 of 7. H. Caldwell said he would like to see the number of trees to be removed on that map. H. Koster said there is also no metes and bounds on this map.

S. Aldrich said she would like the house on Lot 2 moved back farther (closer to where the existing red house sits) because it would save a lot of trees and it would visually break up the almost continuous line of houses from the lake. Atty. Lapper said (1) he is sure the applicant would have a problem with that because it is such a great distance from the lake and it is so far up the hill where it gets steep, (2) the proposed location is pretty flat and (3) he doesn't think moving the proposed house 10' or 15' would make a big difference, but the area S. Aldrich is proposing is pretty far back and a big compromise.

H. Koster asked if the applicant has a variance to allow the log cabin on Lot 3 to remain and P. Kenyon answered by saying (1) no, it wasn't a condition of approval and (2) right now the cabin on Lot 3 is just a pre-existing structure and (3) when they add to it, that proposed addition will require a variance and the ZBA never discussed that. Counsel said it would be a new idea that properly goes to the ZBA. Atty. Lapper said that there is no approval sought for that tonight. H. Koster asked if the proposed addition to the house should be listed on the map and Counsel said (1) ultimately no, but the PB did sort of lead the applicant down the path that it wants to see everything that will be put there and taken away, (2) eventually the applicant would need to show what will be left there with the artificial subdivided lots and asked which trees H. Caldwell wants to see on the map. H. Caldwell said he wants to see all the trees that are there now listing which will remain and which will be removed. H. Koster said he wants it to be in the motion that in no way is the PB approving the proposed additions, because that might mislead the ZBA that the

PB has kind of conceptually approved something that it hasn't and Counsel agreed. Atty. Lapper said all of those conditions are fine.

S. Aldrich asked when the applicants get approval for the septic systems and P. Kenyon said that she talked to Atty. Lapper today and suggested he start that process immediately.

H. Koster asked how the PB gets involved with the spillage, as oil and gas spillages have always been taken care of and monitored by ENCON. Counsel (1) said all the PB is going to do is ask this applicant to satisfy the Town that they are in compliance and that they are doing everything that DEC requires (remove soil, reclaim the area, encapsulate, etc.) and (2) asked if the PB believes the spillage issue would have been completed before a lot is offered for sale. Atty. Lapper said (1) he is sure it would have to be completed before a lot is sold and (2) his understanding is that it wasn't a big deal, but whatever it is, it has to be done. Counsel asked if it was on more than one lot and Atty. Lapper said no.

H. Koster asked if it was a gas or fuel oil and Atty. Lapper said he thinks it was fuel oil. H. Caldwell said it was a gas spillage and H. Koster said gas is a bigger problem because it is a fast moving contamination. H. Caldwell said he would be concerned if they applicants start drilling wells that they could hit some pumped gas or something and Atty. Lapper replied by saying DEC is aware of it already and it will have to be remediated to their satisfaction. Sue Wilson asked if the DEC anticipates closing this issue and Atty. Lapper said yes.

H. Koster asked if the PB gets into being allowed to sell and Counsel (1) said it could be sold with contaminated soil, (2) said the PB wants to assert some sort of authority to just make sure it has been done to DEC satisfaction and requirement and (3) asked when the applicant will have this completed. Atty. Lapper said (1) he doesn't know which lot the contamination is on and (2) the documentation would have to be submitted to the Town. Further discussion ensued as to which lot actually has the contaminated soil and what type of contamination it is.

Counsel asked if the applicant proposes to build anything on Lot 1 and Atty. Lapper said no, there will be renovation to the existing house. P. Kenyon said the applicant would need a variance to renovate an existing house on lot 1.

Counsel suggested that if the contamination is on Lot 1 that the applicant makes his peace with the DEC and get the paperwork in to the Town of Bolton simultaneously with the request for the certificate of compliance. Counsel said that would be accepted in the sense that it would have to be monitored because there are some future expectations, but that the applicant did everything that needed to be done, installed his monitoring system and everybody is on watch, which will satisfy the Town to make sure the applicant is in compliance with the DEC requirements.

H. Koster asked if DEC has any objection to wells being drilled on Lots 1 or 2. Atty. Lapper said they would want to put the well in up-gradient from the contamination. Counsel asked how far along the applicant is with DEC and Atty. Lapper answered by saying (1) the applicant has the property under contract, so it was the owners that have been dealing with DEC up to now.

Counsel said perhaps then on Lot 2, as they apply for a certificate of compliance, which is the predicate to the building permit, that they need to bring in a letter that where they propose to put the well is in conformity not a problem for DEC and Atty. Lapper said that is fine.

Counsel asked about PB concerns with Lot 3, because the proposed wells between Lots 2 & 3 are in very close proximity (30'-40' apart) and H. Koster said that he doesn't believe Lot 3 is affected, because it is up-hill of Lots 1 & 2.

Counsel said (1) he is very comfortable in that the Town has a system in place in terms of monitoring the proper separation between well and septic and a procedure by which variances can be obtained, (2) if the PB is concerned about DEC and that there is a situation that needs to be addressed, then this applicant has agreed to do everything that is required by DEC and the PB has acknowledged that it will be incomplete, because it needs to be monitored, but the applicant will have all of that done before asking for a certificate of compliance as the predicate to the building permit, (3) the applicant will do that on Lots 1, 2 & 3 and the PB said it is not necessary for Lot 3, (4) he is sure the applicant has the same interest as the PB, in that they are not interested in expending the effort and money to put a well in a bad spot, which can be monitored by asking that the DEC has said it is okay.

H. Koster said a well on a 3-lot subdivision does not need to be tested, so once it is in it is ok and Counsel agreed. Atty. Lapper said they will be dealing with the DEC on closure of the spill, so they will have the issues of the wells addressed in the DEC letter.

H. Koster asked if any of the metes and bounds have been changed from the Barrass map and the Dickinson map and Atty. Lapper said no. Further discussion ensued as to what items need to be added to the Dickinson map and H. Koster said the Barrass map should remain in the file as reference to the original variance granted.

H. Koster asked if the PB has the opportunity to ask for stormwater on this proposal and Counsel said yes. H. Koster said he is concerned with stormwater on Lot 1 since the buildings are right on the lake and Atty. Lapper said the applicant is going to do the renovations and proposals have been submitted to the Zoning Office. H. Koster said suppose the applicant doesn't get the variance and Atty. Lapper responded by saying that the variance is for stairs down to the lake area and to enclose part of the porch that is not next to the lake. P. Kenyon said (1) they are also proposing to change the roofline of the boathouse and (2) regarding the main house on Lot 1, the stairs would require a variance. Atty. Lapper said that was pre-existing and Counsel said the lot line being created now creates the requirement for the variance because it now is too close to the artificially

created new lot line. Atty. Lapper said that if that was the case, it was missed by the Planning Department last time when it was another applicant that applied.

C. Mason said that on Lot 3 the proposal shows extending the existing log cabin to the north and asked if that would also require a variance. P. Kenyon said yes and Counsel agreed and said the applicant would need a variance to extend a non-conforming building. H. Koster said the original application was to have another building on the one-story site on Lot 3 that is down by the lake, but this is totally different now.

Motion by H. Caldwell to table the application pending the following information to be shown on the Dennis Dickinson map: 1) Inventory of all trees (marking the ones to be removed). 2) Metes and bounds description. 3) The cabins to be removed on lot 1. 4) The cottage on lot 3 is to be hooked into the proposed wastewater disposal system. Seconded by S. Wilson. **All in favor. Motion Carried.** Although not a condition, at this time, prior to a certificate of compliance being issued for lots 1, 2, and 3, documentation from DEC regarding the contaminated soils must be submitted to the planning office.

8) SD05-24 WESTWOOD FOREST WEST. Rolf Ronning. Seeks to divide into 11 lots that parcel designated as 139.00, Block 1, Lot 8.1, Zones LC25, RR10 and RIL3. Property location: west side of Hendricks Road off County Route 11. Sketch Plan Review. Minor subdivision. Subject to SEQR. *This item was tabled at the September 05 meeting, pending additional information.*

Rolf Ronning gave an overview and said pursuant to the last conversations when he was before the PB, the map shows one large lot (62 acres) in two zones that includes all the wetlands, there are six more residential lots, there are four industrial zone lots each 3+ acres, the large culvert on Alder Brook is where the road would go with a cul-de-sac on the end to access most of the lots and there is another 50' right-of-way that goes through Lot 10 and through Lot 11 and can access the top part of Lot 9.

S. Aldrich said the PB has a different map than the one Rolf Ronning was presenting and Rolf Ronning said the only change is the size of Lots 10 and 11. H. Koster said that he can't have the PB looking at maps that are totally different from what the applicant is using. S. Wilson said Lot 12 is different too.

Motion by H. Caldwell to table the application pending the submission of a revised map. Seconded by C. Mason. **All in favor. Motion Carried.**

9) SPR05-10 WESTWOOD FOREST EAST. Rolf Ronning. 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. 3.71 acres is proposed. 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. No action was taken by the WCPB. Subject to SEQR. *This application is in conjunction with SD04-32, and was tabled last month pending review and approval by Town Engineer Tom Nace.*

Rolf Ronning gave an overview and said that (1) the PB approved the subdivision and (2) Town Engineer Tom Nace signed off on this proposal.

H. Koster asked if the Zoning Office received the note correction for pond #5 and P. Kenyon said yes, she specifically asked the applicant if everything submitted to the Zoning Office was a result of Tom Nace's letter and the applicant told her yes. Rolf Ronning said that is correct.

The PB found no concerns with Section 200-31A-D of the zoning ordinance and C1-C7 on the SEQR form.

J. Gaddy said (1) there is a consensus to approve this major stormwater project and (2) based upon the materials submitted and accepted as part of the record, the findings are as follows;

1. The project meets the design requirements and performance standards set forth in the code
2. The project will not have an undue adverse impact regarding the criteria set forth in the code
3. That the stormwater control measures proposed will function as designed and constitute the best possible methods feasible and practicable for the project site.
4. Adequate and sufficient provisions are presented as part of the plan to assure future function or responsibility in the event of failure.
5. The project will not contribute to flooding, siltation, or streambank erosion and will not pollute Lake George, its tributaries or streams with run-off.

Motion by J. Gaddy to accept the application as complete, as reviewed and approved by Town Engineer, Tom Nace. Waive a public hearing, convert the sketch plan to final plat and grant final approval as presented. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. Seconded by S. Wilson. All in favor. Motion Carried.

10) SD05-25 MCGURL, THOMAS. Represented by Atty. Jonathan Lapper & Matthew Steves LLS. Seeks lot line adjustment between those parcels designated as Section 170.00, Block 1, Lots 22.1 and Section 185.00, Block 1, Lot72. Then subdivide into 18 lots that parcel designated as 170.00-1-22.1. Zones RCL3, LC45 & LC25. Property Location: 539 & 520 Trout Lake Rd., known as Twin Pines Resort. Sketch Plan Review. Major Subdivision. Subject to SEQR

Atty. Jonathan Lapper, representing Thomas and Marylou McGurl, gave an overview and said (1) they were looking to change from commercial to residential, (2) Matt Steves came up with a subdivision that takes into the account that they are in two zoning districts (5-acre and 1-acre districts) and to cluster the lots in the 5-acre district to save on the amount of needed road construction, (3) they are proposing 17 building lots with 1 Homeowners Association and (4) they are proposing to take the wetland area and adding it to the applicant's son's adjacent lot.

Matt Steves, representing Thomas and Marylou McGurl, gave an overview and said (1) they are working with the APA on the wetlands area, (2) they will be doing soil borings throughout the area and perc tests for the septic system, (3) all of the lots comply with the minimum requirements in the LC25 zone and (4) the area being clustered is in the LC25 zone.

P. Kenyon said (1) there is a need to discuss the cluster regulations and (2) read Section 200-87D into the record and (3) read the motion from the ZBA regarding Farbaniec and clustering, referencing that clustering can only take place in zones that are zoned only residential, into the record. Counsel asked if the ZBA interpretation is that cluster developments can only occur in a zone that is exclusively residential and no other principal uses and P. Kenyon said yes, because Bluebird Cottages was in the RCH5000 Zone where it was residential/commercial and RCL3 is commercial, so if the only portion for proposed clustering is in LC25, it needs to be determined if Section 200-87D applies to this applicant.

Counsel said that (1) 200-87A talks about how the application is presented to the Planning Board, (2) the first sentence of 200-87B says "...must be zoned residential only. This procedure shall be applicable only to lands zoned for residential purposes and its application shall result in a permitted number of dwelling units which shall in no case exceed the number which could be permitted in the Planning Board's judgment if the land were subdivided into lots conforming to the minimum lot size or lot width and density requirements of the zoning chapter applicable to the district or districts of which such land is situated and conforming to all other applicable requirements," (3) if there is some ambiguity, where there certainly could be, then we go to the ZBA, (4) on July 14, 2003, on an interpretation of 200-87, the ZBA did exactly what they said, "...motion by K. Hoopes to interpret Section 200-87 as written, such that cluster developments can only occur in zones that are zoned only residential. Seconded by M. Murray. All in Favor. Motion Carried."

Atty. Lapper said the LC25 is always a residential zone and Counsel said that P. Kenyon is saying, and he thinks she is relying on her direction from the ZBA, that if the LC25 also permits other types of permitted uses then that cancels out the ability to cluster. P. Kenyon said that is correct and asked if Counsel agrees. Counsel said yes, he is following the ZBA hook, line and sinker.

Atty. Lapper said they could make all of the lots five acres. Matt Steves said (1) they were only using the cluster provision in this proposal within the LC25 Zone and (2) regarding whether commercial activities are allowed, he doesn't think it is commercial activities. Counsel said that (1) he definitely agrees that it is open to interpretation, (2) there is an interpretation that from a procedural standpoint he is entirely comfortable with, but from a zoning standpoint he thinks that it is not a good plan.

Atty. Lapper said that clustering is supposed to protect open spaces and in a 5-acre zone you don't want to have five-acre lots. Counsel said it brings us to a point where it says

that Bolton is really not favorable to clustering. Atty. Lapper said that (1) that was a very restrictive interpretation and (2) it is better to cluster in their case, but it's not going to make a drastic difference, so rather than fight that fight, they can come back with another plan. Matt Steves said that (1) they would still have the same number of lots, but you would have more road and (2) he was trying to utilize the best scenario. Counsel agreed and said it may not be a hard fight. H. Koster said he doesn't feel there would be much opposition. Matt Steves said it would be helpful if the PB gave its recommendations of this plan.

J. Gaddy said (1) they have been wrestling with the concept of clustering within the last year and (2) past clustering experiences have not been favorable. H. Koster said he was referring to real tight, condo-type clustering. J. Gaddy said we are getting into more and more marginal land and he thinks the whole goal of everyone in Town is trying to preserve as much as what we have. Matt Steves said that is what they did.

P. Kenyon said it only makes sense in land conservation and to her that is where you would allow clustering. J. Gaddy said this is whole new ground and the PB is open for discussion on this. Atty. Lapper responded by saying that all they are doing here is using the flat land for a couple of 2-acre lots in a 5-acre zone, because it is a good design, but if they have to be combined and they have to put a little more road in, it can be done.

P. Kenyon asked if the shore frontage was reconfigured so they have the correct amount of shore frontage they need for these lots and Atty. Lapper said no, they are going to go with 175' and will seek a variance for that. P. Kenyon asked if the map before the PB tonight showing common area on both sides is not going to be the case and Atty. Lapper said yes.

P. Kenyon asked if the recreation building by the shore may possibly be converted to a single-family dwelling and Atty. Lapper said yes. P. Kenyon reminded the applicants that converting that structure will require site plan review.

H. Caldwell asked about Cat Mountain Road and easements. Matt Steves said he wasn't aware of any and T.D. McGurl said they have a right-of-way, but nothing is deeded. Counsel said that is correct. H. Caldwell asked when they abandoned that road and Counsel said he searched that title and it was more than 25 years ago. H. Caldwell asked if there are people that have easements and Counsel answered by saying they have acquired right of access, but they do not have an instrument that manifests a deeded right-of-way or a deeded easement. H. Caldwell asked if that needs to be on the map and Matt Steves said he would show that the road is on the land. T. D. McGurl said that if someone has an easement by prescription you can't go look it up somewhere and Counsel agreed and said it is difficult. Matt Steves said they will add the road profile, clearing limits and wetlands.

P. Kenyon said she had asked that all existing structures be shown on the map noting the ones to be removed. Atty. Lapper said everything will be removed except for the house on the lake, the club house and the applicants' home. Matt Steves said they will add all

of the information for the preliminary submittal. S. Aldrich said that will give the PB a general idea of where the clearing area is now.

J. Gaddy asked if there are any plans for docks through the homeowners' access and T.D. McGurl said his idea is for a single dock for the Homeowners Association.

H. Koster asked if the PB thinks it is warranted, if it is proper for the PB to make recommendations to the ZBA to grant a variance for clustering for this particular instance and Counsel answered by saying (1) no, he doesn't want to lead the PB down that path, but he would concur with H. Koster if the sense and notion is that it is an awfully restrictive interpretation and the ZBA may want to re-evaluate it and take a look at the possibility that there are lots of zones in Bolton that ought to be appropriate for clustering where residences are permitted—not just in a zone that is only zoned for residences, (2) the ZBA's interpretation could also be changed, (3) another thing that would be good planning would also as a PB suggest that well, if the ZBA really thinks that's what it means then maybe the section of the code needs to be changed and the TB ought to address it and take a look at it, (4) he alone, as Town Counsel can't talk to the ZBA and say this is a good idea, because the ZBA will ask what the PB thinks, (5) it is a really good idea to get it straightened out—it is awfully narrowly construed, (6) it is advantageous to if you only want clustering in a zone that only has residential uses, but most municipalities that permit clustering certainly permit it in a proper case, upon proper review where residences are permitted and if it is a mixed use zone, residences and land conservation, it is certainly very appropriate and (7) this interpretation in this sentence says no, never in Bolton.

H. Koster said he is looking for a quicker solution to this. Counsel replied by saying that (1) one quick solution is to persuade the applicant that it is a very worthy plan and to not forget to tell the ZBA when they go for their variance that the PB seems to be very favorable to it, (2) obviously the ZBA members make up their own minds, but the applicant should add in the ZBA members' minds that the PB is very favorable to the grant of such a variance, (3) the next thing that, if it is still true, say to the applicant that he may also want to suggest to the ZBA that they might want to change that interpretation because it is awfully restrictive, (4) Counsel sits in the ZBA meetings and they are going to ask if that is what the PB discussed and is that true and he would tell them the same thing he is telling the PB here—that is very, very narrowly construed and that is unfortunate for Bolton and (5) he would encourage the applicant to get some movement on this.

H. Koster said that (1) he thinks it is effective for this PB to have it narrow right now and (2) he is not against this type of clustering, but the type of clustering townhouses and condos attached is what he is against in this Town. S. Wilson said clustering is defined as “a planned development in which lots are plotted with less than the minimum lot size and dimension requirements sited in the area regulations for each zone in Article IV of the Zoning Chapter for the Town of Bolton, but which have access to common open space that is part of the overall development plan approved by the Planning Board.” P. Kenyon said that would apply. H. Koster said there is not much open space, just the

HOA and beach. Atty. Lapper said they could include a mountain parcel for passive recreation if the PB would like, as they could use part of T.D. McGurl's property for that. T.D. McGurl said that would save on taxes.

Atty. Lapper said they are looking for approval of the sketch plan and they will come back with a preliminary plan. H. Caldwell wants some notation on the map of the abandoned road and Matt Steves said he will plot it on the preliminary plan.

P. Kenyon asked when the applicant plans on applying for variances, because the cut-off date is Monday and Atty. Lapper said they would be applying for the variance for the lake shore lot now.

Motion by H. Caldwell to table the application pending additional information, including the location of the abandoned Cat Mountain Road. Seconded by J. Gaddy. All in favor. Motion Carried.

OTHER BUSINESS:

J. Gaddy referenced the Straney issue and asked if the PB has any recourse to get damages for situations where trees were cut down and the applicant says they didn't do it. Counsel said it is a difficult case, but the answer would seem to be yes and asked how much time has passed since the trees were taken down by the previous owner. J. Gaddy answered by saying one year and Counsel said then he is comfortable.

J. Gaddy asked how the PB initiates that and Counsel answered by saying that the PB would tackle it in the administrative aspect, meaning that it goes the alternative remedies route which is the process that Mitzi Nittmann comes and makes a complaint and lines up the culprits in there is an innocent party who acquired the property as well as the person who sold it, (2) then it goes to Town Board review and the Board can if appropriate impose a monetary civil penalty—notice it doesn't necessarily associate itself with the land anymore, they can also do something that requires some remediation on the land, so in a sense, the person who no longer owns the land can be punished and the person who presently owns the land can be required to do something—that is one process—often times that is the cheap and inexpensive process and it gets done rather quickly, (3) the other method is to just go full speed ahead and bring a civil lawsuit and the Town Board authorizes Town Counsel to do that.

J. Gaddy said that nothing has happened and he went into Mitzi Nittmann saying that he would like to see some motion to at least get it on record that the Town doesn't want to have this kind of action to happen again. Counsel asked how much of the problem has run away on its own and asked if the present owner has been issued a certificate compliance because they are well on their way to doing something. P. Kenyon said the present owners had been issued a certificate of compliance and were required to come back to the PB with a planting plan as a result of the clearing that had been done and the PB approved that planting plan. J. Gaddy said (1) he still thinks it is a lousy solution, because once you cut the trees there is never the same quality of hillside again, (2) Barry

Kincaid was the only upright guy in the whole thing who said he wouldn't take that job, so the owners got someone else to do it, which will happen time and time again, (3) he doesn't feel someone like Barry Kincaid who is trying to be forthright and fight the battle with this is not taking a job because he doesn't want to go against Town wishes, but somebody else will do it and they can walk away scott free.

Counsel said (1) he thinks J. Gaddy sees the Straney fiasco as a hit and run where the Town got damaged and then the driver pulled away, (2) if this PB as a whole feels that that is the violation, then a motion, seconded and hopefully supported by the PB is something that you want the Code Enforcement Officer to do something, (3) the PB did in a sense create a remediation with that person and that seemed to be a remedy, (4) J. Gaddy can't do this one on his own, so if it is not a comprehensive resolution from this PB, then it is a hit and run and the driver got away.

J. Gaddy (1) said there is an issue on Braley Hill at The Cobble Hill Estates where the PB approved a building plan and he assumed that when the applicant came before the PB and gave it the plan that he would abide by Town laws which said that you could not have a cut any more than 6' deep, (2) said that in going up to the site he sees what seems to be a 12'-15' cut into the side of the hill where there is now a footing plan there, and (3) asked how the PB deals with the problem where someone has exceeded a 6' cut.

P. Kenyon asked if the applicant is not following the plan that was approved and J. Gaddy answered by saying he thinks the PB approved a plan with the idea that the regulations from the Town laws were going to be followed. Counsel asked which Town law wasn't followed and said it isn't a retaining wall.

H. Koster asked if the code encompasses to allow a basement to go into the side of the hill. J. Gaddy said that is right. H. Koster said that the 6' rule doesn't count for that because then you would stop everybody from having a basement. J. Gaddy said it is a minimum of 16' and he doesn't think that is what was presented to the PB. P. Kenyon said if it wasn't something that was presented to the PB and got approval then a stop work order should be issued and the applicant needs to come back before the PB.

Counsel said (1) what P. Kenyon said is true if that is inconsistent with the plan, (2) J. Gaddy has talked about three different things here and one is the cut where there is a retaining wall greater than 6' and this will not be the rule that applies in this case—it never will be, (3) it is entirely possible that in the code there is no prohibition in terms of cutting into the ground to put up your foundation to support your house, (4) now he thinks they are in the middle ground which is specifically a plan was presented and if it has deviated from the plan the PB reviewed and approved, that is the topic for stop work order from the Code Enforcement Officer, then you take a path on that remedy; again, that may be come back to the PB because the applicant deviated from the PB's permission, maybe it goes off to alternative remedies because it has already been concluded that it is so egregious that the Town Board can just settle up, consider it and impose a civil penalty, and (4) he is not comfortable in being able to tell the PB right here that it has in fact been a deviation from the plan—he does not that.

J. Gaddy said (1) he has to look at the plan himself, (2) this is not what he envisioned, (3) the PB has been in marginal land for two years now and the PB is going to have these kinds of things every month, (4) he feels the PB is getting beat up time and time again and he doesn't know what kind of protection the PB is doing here, and (5) until the PB has something like Checci—where he doesn't know how long that has been sitting there—before there is a resolution or a roof taken off or a change in the enforcement, he thinks they are just playing the patsies up there.

Counsel said (1) he thinks Checci is being enforced—it is on the November 1st Town Board agenda, (2) J. Gaddy needs to look at the plan on the one he feels is egregious and that has violated what where the requirements of the permission granted and see if in fact that is true, (3) not J. Gaddy alone, but if the rest of the PB feels the same way, it then can be brought back to the PB, a stop work order could be issued, you could sue them civilly, and the PB can present it for alternative remedies and (4) the code has a lot of choices, but he is just not comfortable saying to the PB right now that is sure looks like a violation to him and lets do something about it—he does not know.

J. Gaddy asked if he is wrong to assume that if someone comes before the PB, presents a plan and the PB has regulations on here and they do not comply with the plan when they present this plan and the PB approves it, then they are scott free. H. Koster said that (1) J. Gaddy is taking for granted again that he is interpreting what he saw in his mind, (2) if that is part of a foundation wall to get them into the side of a hill, that 6' rule J. Gaddy is reading does not apply. Counsel said it is correct that he rule does not apply. H. Koster said he is not saying J. Gaddy is wrong—it might be a retaining wall—but J. Gaddy can't just go around saying this is in violation because he just doesn't know. J. Gaddy said (1) he has looked at lots of excavations in Town and doesn't think this is what the PB was looking at when they approved this plan and (2) it is worth looking into and that is all he is asking.

Meeting adjourned at 9:38 pm.

Respectfully submitted by
Jennifer Torebka
Recording Secretary
11/01/05