

**Town of Bolton  
PLANNING BOARD  
MINUTES  
Thursday, September 22, 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, Don Roessler, Susan Wilson, Code Enforcement Officer Mitzi Nittmann, Town Counsel Michael Muller

**Absent:** Zoning Administrator Pam Kenyon

**PUBLIC HEARING\***

Chairman H. Koster opened the public hearing at 6:02 pm.

**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 (48.1 & 48.2), Zone RL3. Access is proposed to be gained through Section 139.00, Block 1, Lot 46.11. Property Location: 83 High Meadow Farm Road. Major Subdivision. Preliminary plat. Subject to SEQR. This item was tabled last month pending review and approval of the plan by Town Engineer Tom Nace.

*\*The Planning Board last month resolved that the public hearing would remain open until such time that the plans for SD04-16 (Saddlebrook Subdivision) & SPR05-11 (Saddlebrook Subdivision stormwater) were reviewed and approved by Town Engineer Tom Nace. Furthermore, the Board resolved that in order for these items to be placed on the agenda this month, Town Engineer Tom Nace must have reviewed and approved the plans two weeks prior (09/08/05) to the meeting date. Tom Nace had not signed off as of this date, therefore these items will not appear on the agenda, but the public hearing for SD04-16 remains open for public comment.*

No public comment.

H. Koster (1) said the PB does not have all the information it requested and (2) invited any public in attendance to speak on the application even though it is incomplete and there may be changes on this application.

Rolf Ronning (1) asked that the PB to adjourn this item to next month and to keep the Public Hearing open to the October 2005 meeting and (2) said he thought all the stormwater information would have been completed, but they are still tweaking the numbers.

**Motion by D. Roessler** to table SD04-16 (Saddlebrook Subdivision) and to keep the Public Hearing open to the October 2005 PB meeting. **Seconded by C. Mason. All in favor. Motion carried.**

## REGULAR MEETING

H. Koster opened the regular meeting at 6:12 pm by asking for corrections to the Thursday, August 18, 2005 minutes.

S. Aldrich asked that on page 2, paragraph 2, item (9) be changed to "... (9) the National Audubon Society's concern is to preserve birds and other wildlife by protecting their habitat from destruction, *invasive species*, development and from pollution threats..."

S. Aldrich asked that on page 12, paragraph 4, first sentence be changed to "*S. Aldrich* asked if the porch on A2..." and the second sentence be changed to "*S. Aldrich* asked that the porch be labeled..."

S. Aldrich asked that on page 14, paragraph 2, first sentence be changed to "*Glenn Warren gave an overview* of this evening's proposal and said..."

S. Aldrich asked that on page 17, paragraph 2, line 10 be changed to "... (2) the idea is to make a road where he can tend and log every year instead of coming in every 20 years and the idea will be to use these *roads* for logging every year indefinitely."

Counsel asked that on page 20, the last paragraph his comments be changed to "Counsel said (1) several aspects of what the applicant would persuade the *Town are construction processes* under the normal course of what the applicant is permitted to do for timber harvesting. *This* is the same timber harvesting that has been construed by the *Zoning Administrator* to be more particularly an activity that in and of itself is a regulated activity and (2) P. Kenyon would have to be a little more specific about *that*. *Those* would be the construction demolition *aspects* of what the applicant *proposes*, the tire part and whatever else it is. (3) *The* applicant has the absolute right, if P. Kenyon's decision is contrary to his position, to appeal that *determination* to the ZBA. In turn the applicant will argue his position to the ZBA and the ZBA is free to overrule or abide by P. Kenyon's interpretation and (4) the PB needs to table this so the applicant has his rights preserved here and should the applicant get an interpretation that is favorable to his explanation, he will be back before the PB and the PB is obliged to deal with it as presented."

**Motion by D. Roessler** to approve the August 18, 2005 minutes as amended. **Seconded by S. Wilson. All in favor. Motion carried.**

**1) SPR05-36 RONNING ROLF.** Seeks Type II Site Plan Review for an advertising sign greater than 4 square feet, specifically 32 sq ft is proposed. Section 139.00, Block 1, Lot 46.11, Zone RL3. Property location: County Route 11 to be known as the Saddlebrook Subdivision. Subject to WCPB review. Subject to SEQR.

All PB Members agreed that they feel they should table SPR05-36 and SPR05-37 until further information is received and in light of the letter from the DEC that there are still questions on this application on whether or not the DEC will be willing to have this access to the proposed subdivision.

Rolf Ronning said (1) he is willing to have a condition that the sign is going to be used if and when the approvals for the subdivision occur and (2) he has approval for a bridge which will satisfy the DEC 100%, (3) he would like to go forward with both applications.

**Motion by H. Caldwell** to table the application pending approval of the Saddlebrook Subdivision, SD04-16. **Seconded by S. Aldrich. All in favor. Motion carried.**

**2) SPR05-37 RONNING ROLF.** Seeks Type II Site Plan Review for an advertising sign greater than 4 square feet, specifically 32 sq ft is proposed. Section 139.00, Block 1, Lot 48.1, Zone RL3. Property location: New Vermont Road to be known as the Saddlebrook Subdivision. Subject to SEQR.

**Motion by H. Caldwell** to table the application pending approval of the Saddlebrook Subdivision, SD04-16. **Seconded by S. Aldrich. All in favor. Motion carried.**

**3) SPR05-38 MacEWAN, ROBERT & DEBORAH.** Represented by Mark Rehm, Esq. Seeks Type II Site Plan Review for a 4-unit townhouse complex. Section 171.15, Block 1, Lot 74, Zone GB5000. Property location: 22 Goodman Avenue, formerly known as Wilson's Laundry. Subject to WCPB review. Subject to SEQR.

Atty. Rehm, representing Robert and Deborah MacEwan, gave an overview and said (1) the ZBA approved the requested relief for deficient front-yard, rear-yard and side-yard setbacks and for deficient density, (2) WCPB recommended approval with the condition the applicants comply with Town of Bolton stormwater management, (3) they are proposing to demolish an existing laundering facility and replace it with a four townhouse structure, (4) the applicants and Mitzi Nittmann have done basic stormwater calculations (which he handed out to PB Members) showing a smaller amount needed than what is proposed, (5) the applicants will do some basic engineering and there are also existing drains on the roads to deal with stormwater management, (6) they propose to add some green space to the facility, which doesn't currently exist, (7) the applicants have spoken with the landowners around the site and they all seem to be happy with the proposed project, (8) they propose a one-car garage with each unit, (8) each unit will be sold individually, so the applicants need subdivision approval, (9) they believe the PB should send them back to the ZBA for substandard lots, (10) he said the ZBA approved of the 0 lot line adjustments and he believes they were on board with the overall proposal, (11) the applicants seek to improve the overall existing neighborhood, will comply providing neutral colors and will establish a loosely held homeowners association (HOA) to maintain the green areas, maintain the exterior of the building and remove snow from the driveways and (12) the applicants are looking for PB input on this proposal.

S. Wilson asked if there will be a common area and Atty. Rehm answered by saying (1) no, the end lots will own a little extra property on the ends, so the only thing that may be common area

would be the wall and (2) they are looking to have a HOA to keep the units looking consistent even though they will be individually-owned units.

J. Gaddy said he sees no provisions for sidewalks or plantings and Robert MacEwan replied by saying that the existing trees and proposed small plantings are drawn on the plans and showed the PB the areas on the plans. J. Gaddy referenced Bug Bytes as an example and said (1) his concern is having a large structure put on a lot with a whole lot of variances and no sidewalk, (2) people should be able to walk to the amenities in Town without walking in the road or across the street and (3) he thinks this plan should have provisions for sidewalks on Goodman Avenue and on Cross Street as well. Robert MacEwan said they are willing to look into it.

S. Aldrich asked how much green space is proposed on the current plans and Robert MacEwan said approximately 14'. S. Aldrich said there would still be room for shrubbery if a sidewalk was put in. Atty. Rehm asked what the average sidewalk width is and H. Koster said 5'. Atty. Rehm said they would be willing to make provisions in the proposal for areas for the sidewalk and wait to be consistent to install them when they are ready to connect. J. Gaddy said (1) the standard has to start somewhere and (2) he feels that it should start with this project.

D. Roessler asked for the distance from the garage to the property line on Unit B and Atty. Rehm said 20'. D. Roessler asked if there would be any fence or privacy fence separating the units in the back area and Atty. Rehm answered by saying that is not the intention as of now. D. Roessler asked if someone wants a privacy fence and Atty. Rehm said (1) the applicants can take the ability to build the fence into consideration on the proposal and (2) he thinks each individual owner would have to deal with the Town again if an individual owner decided to put in a fence without a provision in this plan. Counsel asked if it would be permitted in a restrictive covenant and Atty. Rehm said it could be added in the declaration of covenant. D. Roessler said he thinks it should be addressed now.

J. Gaddy asked if the right and left side elevations would be provided on page 2 of the plans at the next meeting and Atty. Rehm said yes.

S. Wilson asked who is responsible for the maintenance and liability of the sidewalk and Counsel answered by saying (1) the homeowner and (2) municipalities can enact their own ordinance requires that if the homeowner didn't clean it or maintain it, the Town will at the homeowner's expense, (3) he doesn't believe Bolton has such an ordinance, but it puts enforcement into that situation and (4) currently there is only civil law that says a homeowner cleans his own sidewalk.

Counsel asked for the PB's expectation for the sidewalk and J. Gaddy said it should be up to the applicant. H. Koster said the PB should also look into curbs. Counsel said (1) the PB needs to give this applicant some guidance as to what it wants Bolton to look like and (2) there are municipalities that have a 50/50 program where they encourage property owners to build sidewalks and the municipality actually builds it and shares the expenses 50/50 with the homeowner. J. Gaddy said (1) he has no suggestions for the sidewalk design at this point and (2) the recommendation of the Strategic Plan and Master Plan talks about sidewalks being crucial to small towns such as Bolton.

H. Koster asked if the outer units (A and D) will be larger than the middle units (B and C) and Atty. Rehm answered by saying that the units themselves will all be the same size, but the two outer units (A and D) will have larger lot sizes.

H. Koster asked if the PB is at liberty to give specifications of Town roads and curbing and sidewalks on Town property. Counsel answered by saying yes, but the applicant needs to get that answer from the Town, which may be granted or not forthcoming—it's a matter of permission and asked if the road widths shown on the plan are actual or conceptual measurements. Atty. Rehm said (1) they are actual measurements, but he didn't survey Goodman Avenue and (2) the applicant is willing to propose a plan with guidance from the Town including Counsel and PB Members. Counsel suggested the applicants also speak with Highway Supervisor Tim Coon and Atty. Rehm said they will. M. Nittmann said (1) that she knows someone was trying to put a fence in the right-of-way of a county road, they got permission to do so with a waiver that says if the County comes in and has to do something then the fence is gone and (2) the applicants can do it, but there is a procedure that needs to be followed to get the waiver.

S. Aldrich asked if the applicants also need to address handicap access if they are going to do curbs and Counsel answered by saying yes, that is a mandate.

C. Mason asked if cars will be able to park in the driveway or if they will be restricted to parking in the garage. Atty. Rehm answered by saying that there is enough room for one car in the garage and another can go out in the driveway. J. Gaddy asked if pedestrian access is available on Cross Street if cars are parked in the driveways and Atty. Rehm said yes.

H. Koster said the PB wants to set a precedent for sidewalks. H. Caldwell said (1) the PB is sort of a reaction board, but in this case the PB needs to be careful, (2) the Catholic Church is talking about doing 12-20 units, (3) he thinks this proposal is the wave of the future for Bolton Landing, (4) the proposal is doable, but the applicant needs to be very careful and (5) he is concerned with the concerned with 90' of roof with no break and thinks the fire code requires that. H. Koster said he believes that the fire code will require the applicant to put a fire-rated wall that goes through the roof and H. Caldwell said that would also break up the roofline.

H. Caldwell said (1) he would like to see more details on the side and rear elevations, (2) the use of water will go way down with this proposal, which is a good thing, (3) he prefers to see two 2-bedroom and two 3-bedroom apartments as opposed to the proposed four 3-bedroom units, (4) the addition of the proposed units and those talked about by the Catholic Church, will put a lot of pressure on the sewer treatment plant and (5) he likes how it looks off Cross Street, but would like the roof broken up.

J. Gaddy asked how snow removal will work on this property and H. Koster said he doesn't believe anything will come off the roof facing Cross Street until it melts and said the applicants will need to talk to the Highway Superintendent about how plowing will effect parking at this site.

H. Koster said (1) on the whole he thinks this is a great concept for that property and (2) he thinks that with further development, the entire PB is basically in favor of this type project. Atty. Rehm said this is a preliminary but they welcome as much PB comment as they can get so it can be incorporated into their next proposal.

Atty. Rehm asked the PB to give the applicants some flexibility on submitting the next proposal. M. Nittmann replied by saying that the applicants have until two weeks before the next meeting to submit new information since this isn't a new application. Counsel said for any new information, like creating substandard size lots for the new subdivision and the new minor 4-lot subdivision, the applicant would have to have the information submitted by Monday, September 26<sup>th</sup> as a new application.

H. Caldwell asked if the PB can make a recommendation to the PB tonight and Counsel said no, the PB has nothing to act upon.

C. Mason asked if the applicants can make architectural changes in order for there to be a degree of separation in the façade of the building and Atty. Rehm said there will be different tones of colors used to differentiate. Several PB Members suggested the applicants stagger the units in order to break it up. S. Wilson asked if staggering the units will affect the zoning and variances that have already been granted. Counsel said (1) that if the applicants were to change the limits they've been granted they would need another variance and (2) the PB needs a motion to table the application for further submissions and it is up to the applicant to do that.

**Motion by D. Roessler to table the application pending further information, as discussed. Seconded by S. Aldrich. All in favor. Motion carried.**

**4) SPR05-39 TENNENT, JEFFREY.** Seeks Type II Site Plan Review to construct a single-family dwelling in the LC25 Zone. Section 212.04, Block 2, Lot 10, Zone LC25. Property location: Diamond Ridge Road approximately 5,000' from Route 9N intersection. Subject to WCPB review. Subject to SEQR.

Jeffrey Tennent said he is requesting site plan review approval for a home to be constructed on Lot 88C on the Diamond Ridge Subdivision.

D. Roessler asked for the reason the property line is part of the road and Jeffrey Tennent answered by saying that he showed the property line as it would be after approval of SD05-22 with the addition of the proposed cul-de-sac. H. Caldwell asked if the proposed cul-de-sac location is at the end of the present road and Jeffrey Tennent replied by saying (1) yes, and showed the Town of Lake George line on the map, (2) the Town of Lake George won't let the other road come through from where it ends presently, (3) the chances of it ever connecting with the Town of Lake George is slim and (4) he is not counting on the road ever going through, there is not a good turn around situation there now, so the cul-de-sac would be a good solution.

H. Caldwell asked (1) when the road on top is going to be finished and (2) asked if the stormwater in that location was addressed and if it is working in regard to if there is any water sheeting at the end onto Route 9N. Jeffrey Tennent said (1) he would like to start upon approval

of this evening's items, (2) yes, they have taken care of stormwater and (3) there was a culvert that had some dirt in there and it wasn't draining, but it has been cleaned out and they will grade the section by Route 9N and pave it and they have a DOT permit for that.

H. Caldwell asked what type of lake view this house will have and Jeffrey Tennent answered by saying that he going to tell the purchaser that it is the owner's responsibility to come back to the PB to address clearing and cutting for views and come up with a plan.

C. Mason asked if the glass facing the east could be minimized and Jeffrey Tennent said (1) he thinks it is minimal, (2) the point in living here is for a lake view and (3) he takes lighting, glare, etc. into consideration because it is important to him also. S. Aldrich asked if the use of UV rated glass would create less glare from the outside than regular glass and Jeffrey Tennent said no, not necessarily, as most of the coatings go on the inside if coating is chosen to be used.

S. Wilson asked if any additional cutting restrictions were put on this subdivision and Jeffrey Tennent said no. S. Aldrich asked if the change in the lot line effects lot limitations and Jeffrey Tennent said (1) the cul-de-sac would make the lot a little bit smaller and (2) the house will be dark brown with dark windows and it will be indirect lighting. S. Aldrich asked if the original subdivision required stormwater for each house and Jeffrey Tennent said no. J. Gaddy said the applicant's goals with the design work well.

No County impact.

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

**Motion by D. Roessler** to accept the application as complete, waive a public hearing and having found the application meets the criteria of Section 200-31, grant final approval as presented with the following conditions: 1) any exterior lighting will be downward-facing and shielded; 2) colors are to be consistent with the house across the street (dark colors); and 3) if clearing around the structure is to exceed the 20' limit as per allowed in the zoning regulations, the applicant must return for approvals. 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.**

**5) SD05-22 TENNENT, JEFFREY.** Seeks to amend previously approved plats SD90-08 & SD92-16 (Diamond Ridge Subdivision) & SD87-24 (DeHann Subdivision), specifically to create lot line adjustments between those parcels designated as 212.04-2-16, 212.04-2-6 & 212.04-2-10, Zone LC25. Sketch plan review. Subject to SEQR.

Jeffrey Tennent said he is requesting a lot line adjustment to create a cul-de-sac at the end of the Diamond Ridge subdivision road.

D. Roessler asked if the road continues after the proposed cul-de-sac or if that would be the end of the road and Jeffrey Tennent answered by saying (1) right now, the way it was approved on the previous subdivision, it would have continued to the Town of Lake George line or the other

property and (2) he could do that, but they have chosen to end the road and make it impassable. S. Wilson asked what the proposed cul-de-sac width would be and Jeffrey Tennent answered by saying it would be a standard sized cul-de-sac of 140'.

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

**Motion by D. Roessler** to accept the application as complete, waive a public hearing, convert the sketch plan to final plat and grant final approval as presented of the map dated 08/01/05, and received 09/01/05. 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.**

**6) SD05-20 CICCARELLI, RAYMOND & ROSALIE.** Seek to amend previously approved plats, last revised under SD01-14, specifically to create lot line adjustments between those parcels designated as Section 186.06, Block 1, Lots 7, 8 & 10, Zone RM1.3. Property locations: 14, 18 & 20 Belle Lodi Lane. Sketch plan review. Subject to SEQR.

Raymond Ciccarelli gave an overview and said (1) he had previously subdivided the land in 1959 into small individual lots and after buying most of the lots back over the years, with the exception of two small houses that exist on the top of the property, the PB granted permission to make his property into one large lot again and (2) he is seeking a lot line adjustment, because the lots with the two houses at the top of the property are approximately 68' X 70' now, he has agreed to sell 30' and the other owners have agreed to buy 30', and the new proposed lot sizes for each of the mentioned houses would be 68' X 100'.

There were no PB questions or discussion on this matter.

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

**Motion by D. Roessler** to accept the application as complete, waive a public hearing, convert the sketch plan to final plat and grant final approval as presented on map dated 08/29/05 and received on 09/01/05. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. **Seconded by J. Gaddy. All in favor. Motion carried.**

**7) SD05-21 MORGAN, WILLIAM.** Seek to amend a previously approved plat, SD87-14, approved by the Planning Board on June 25, 1987, specifically to re-aggregate those parcels designated as Section 156.00, Block 2, Lot 75 & 76, Zones RCL3 & LC25. Property location: 5477 Lakeshore Drive. Minor subdivision. Sketch plan review. Subject to SEQR.

William Morgan gave an overview and said (1) he bought the two lots together, (2) he feels the bigger lot is not desirable to put a house on or do anything with and (3) he'd like to join the two lots together.

S. Aldrich asked if a house currently exists on either of the lots and William Morgan answered by saying yes, there is a house on the small lot.

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

**Motion by S. Wilson** to accept the application as complete, waive a public hearing, convert the sketch plan to final plat and grant final approval as presented on the map dated June 10, 1987 and received 08/29/05. The proposed house location on Lot #2 is non-existent. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. **Seconded by D. Roessler. All in favor. Motion carried.**

**8) SD05-23 WIDE WATER SUBDIVISION (Keith Van Buskirk).** 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.

Attorney Stephanie DiLallo Bitter, representing Keith Van Buskirk, gave an overview and said (1) this application was before the PB in April 2005, but at that time was under the ownership of Delceg & Donohue Builders, Inc., (2) the property currently exists in two parcels and the proposal is to make it into three parcels, (3) the applicant proposes to maintain the existing house, (4) Lots 2 and 3 are new proposed houses, (5) Lots 2 and 3 will share the existing access, while lot 1 will have its own access and (6) septic and stormwater plans were incorporated into the application and are being reviewed by Tom Nace at this time.

H. Caldwell asked which buildings are going to be demolished and Keith Van Buskirk answered by saying that every building on Lot 1 will be demolished except the white house, the guest house and the boathouse. D. Roessler asked if the garage near the gas pump, the upper garage and the house between Lots 1 and 2 would be removed and Keith Van Buskirk replied by saying yes, whatever was required by the variance would be removed.

Counsel (1) read into the record the original ZBA variance for this property stating that the ZBA granted approval with conditions and said (2) the applicant said all of the little cabins on Lot 1 are going to be removed because it is required by the variance, but was not a requirement in the variance. Keith Van Buskirk said it is his plan to demolish the cabins on Lot 1. H. Koster said his recollection is that the proposal in April before the PB was that all of the buildings would be removed and in exchange for that the PB would allow the house and cottage on the lake remain. Counsel said the PB had some concerns that the cinder block building be removed but they were going to still build a building that would hug the line. H. Koster said (1) that is correct, but the ZBA had that building come down altogether with nothing on that site and (2) the ZBA basically overshot the PB's recommendation, which is fine.

H. Caldwell asked what happened to the gas pumps and tanks and Keith Van Buskirk answered by saying that (1) the DEC was just there and approved the water and soils, (2) the DEC is

monitoring the site and (3) his plan is to remove the rest of the soil that is there in an attempt to have DEC close the file. H. Caldwell asked if the applicant will be able to drill a well on lot 1 and Keith Van Buskirk said yes. H. Caldwell asked if the septic on lot 3 will straddle onto lot 2 and Atty. DiLallo Bitter answered by saying no.

The PB agreed that it would be extremely helpful for the PB to have a plan showing what will be demolished and what will be staying as well as marking where trees will be coming down. Atty. DiLallo Bitter said they would provide the requested plan. J. Gaddy asked who owns the property to the east of Route 9N and H. Koster responded by saying that the state owns that piece.

S. Aldrich said while the original plan was not the current applicant's plan, (1) the proposed houses on Lot 2 was west of the "U" in the driveway and (2) the proposed house on Lot 3 was closer to where the cottage sits now and (3) her personal opinion is that even though the applicant's plan meets the setback, she would like to see them staked back farther rather than encroaching this close to the lake. H. Caldwell asked if the proposed houses on Lots 2 and 3 are right on the setback line and H. Koster answered by saying basically, yes, as the proposed house on Lot 2 is right on the setback line and the proposed house on Lot 3 touches the setback line in two places. H. Caldwell said (1) the proposed homes will have to be moved back if the applicant plans on having a deck or porch on either of the proposed houses and (2) it will make it much more critical in removing trees between the proposed houses and the water if the proposed houses are so close to the water.

**Motion by D. Roessler** to table the application until next month pending the following additional information requested by the Board, as discussed, including the following: the applicant provide a map showing exactly what is existing, which buildings are to be removed and exactly what is proposed. **Seconded by S. Aldrich. All in favor. Motion carried.**

**9) 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 applicant's request.**

**10) SD05-10 ESTATE OF ISABEL LaROCHE GODWIN.** Represented by Mary Volz-Peacock. Seeks to divide that parcel designated as Section 124.00, Block 1, Lot 51 into 3 parcels. Zones RL3 & LC25. Property location: Padanarum Road. Sketch Plan review. Minor Subdivision. Subject to SEQR.

Mary Volz-Peacock, representing the estate of Isabel LaRoche Godwin, gave an overview and (1) said that in 1989 her mother, Isabel LaRoche Godwin, established a contract with Joe Schwenk which they are trying to resolve and finalize now that her mother has passed away and (2) she pointed out on the maps the areas in question.

S. Wilson asked if it was correct that Joe Schwenk purchased pieces of property that weren't actually approved pieces at the time of purchase and Mary Volz-Peacock answered by saying (1) they are in front of the PB for the subdivision and (2) the two pieces of property Joe Schwenk contracted for are not attached to the larger piece of property shown on the maps. J. Gaddy said this is basically subdividing the wetland. Joe Schwenk said that (1) years ago the properties were to remain as they were when sold prior to that, (2) Isabel LaRoche Godwin didn't subdivide officially back then, because that was not how it was done at that time and (3) the APA gave Isabel LaRoche Godwin permission saying they didn't mind as long as Joe Schwenk and the estate of Isabel LaRoche Godwin met the Town's setbacks to build on the pieces of property.

Counsel said (1) his understanding based on the applicant's statements is that this is a long-standing agreement or some understanding creating a previous subdivision, but only in their minds—not as a matter of public record, (2) it is a factor to consider, but this is a brand new proposed creation of new lot lines that the public doesn't know about and (3) his concern is that if it involves wetlands, then it does involve APA review. Mary Volz-Peacock said they have been in communication with the APA. Counsel referenced and read into record part of a letter from the APA in the Town's file dated June 2005 referring to jurisdictional determination of J2005-259 stating the proposal doesn't require a permit or variance from the APA with conditions.

H. Koster said (1) Lot 49 was sold to the Tekmitchovs in 1969 and (2) Padanarum Road divides Lot 2 on the east side and Trout Falls Road divides it on the west side, so to him, it is not being subdivided off of anything—Lot 2 already exists, since the property is already separated because of the existing road, which is stated by the Ordinance. Counsel said (1) it seem so, but the exception is that from time to time the Town finds that there are some Tax Map Parcels that are on both sides of the road, (2) the PB has already made a decision on this issue and (3) Lot 2 is bounded by all the roads and capped off by the lands of Smiths, so he doesn't see a subdivision going on there.

D. Roessler asked if the applicant gets one tax bill for all three lots. S. Wilson said in looking at the County website, this comes up as one parcel and Counsel said it is then. H. Koster said it doesn't even touch though and Counsel said this is a very weird configuration of land. H. Koster said he feels the PB should take this under the interpretation of the Ordinance as it states now that these parcels already exist as three separate parcels, but the PB wants to be emphatic about it that from here on in, they be three separate tax numbers. S. Wilson asked if the PB would be better off stating that it wants these to be three separate parcels based on their review, not the Ordinance and H. Koster said that it already is. Counsel said (1) that is correct, but the Tax Map Parcels have not been inventoried separately, but all as one and (2) the PB has to do something to help the applicant out.

Mary Volz-Peacock said she spoke with Ron Dixon of Warren County who told her that once the PB approval is given, the mylar would then go to him and the Lots would be listed as three separate parcels. Counsel said (1) that is correct, Ron Dixon will follow in lockstep with whatever the outcome is here tonight, (2) it seems the applicant needs it, not because it isn't already defined as separate lots, but because the Tax Map Parcels seem to consider it as one and (3) the PB just needs to make a decision the applicant can then use to get this filed on the mylar. H. Koster said (1) he can't see how the Tax Department can give this one number and (2) it should be mentioned in the motion that the PB approved the subdivision because as far as the Town of Bolton is concerned and with the way the Ordinance reads, these three parcels are already separated and should have three separate tax numbers. Counsel said (1) the PB's previous ruling was that a Town road bisecting a tax parcel does not create subdivided land and that it was already and still remains one parcel, (2) the PB needs to do something to rectify this particular situation tonight and (3) the PB's previous ruling would somehow support this weird result.

M. Nittmann asked for specifics on the Ordinance H. Koster referenced and H. Koster said (1) there was a precedent long before Wright's Farm Road that a Town or County Road separated a parcel automatically into two separate lots and (2) then Counsel gave the argument with Wright's Farm and convinced the PB to go in the other direction. Counsel said (1) that is correct and (2) the reason he did that is because then it puts the PB in conformity with the APA requirements, which is to do it under that old system created additional building rights, additional principal buildings and actually created density issues that were violating the PB's own code and the APA regulations and (3) subsequent to that, the PB did make an interpretation that a Town road bisecting a single tax parcel will not be considered a subdivision.

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

**Motion by D. Roessler** to accept the application as complete, waive a public hearing, convert the sketch plan to final and grant final approval as presented on the map dated 03/23/05, received September 1, 2005. It is noted that the 3 parcels are already separated by Trout Falls Road and Padanarum Road and are in no way connected. 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.**

**11) 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. Major subdivision. Subject to SEQR.

Rolf Ronning gave an overview and said (1) Lot 12 shows 24 acres which includes a wetland area, (2) he can incorporate 15 acres of wetland into another lot or sell it to the Town or anyone else who would want it, as it is no value to anybody and (3) he is looking for PB input.

S. Aldrich asked if it is the intent for all four industrial Lots 18-21 to access the road that ends in the cul-de-sac or if Lots 18 and 19 will also have access off of Alder Brook Road and Rolf

Ronning answered by saying no, all industrial lots will not have access off of Hendricks Road, because there is not enough usable land between the road and the brook. J. Gaddy said (1) for the two submitted designs the cul-de-sac on Lots 19-22, he would like to get a design that would incorporate the least clearing possible and as much buffer space around the County Route 11 area as possible and (2) you may be able to see it on the right as you are coming down the hill. Rolf Ronning said there is quite a bit of forest at the end of the property line, so nothing will be seen. Counsel said Lot 22 is not shown on the applicant's revised map. J. Gaddy said he was referring to the map dated August 29, 2005. H. Koster said the applicant omitted Lot 20 from the first map.

H. Koster asked if the Town would be interested in the wetland area on the property off of Hendricks Road and Counsel said (1) it would be up to the applicant to offer it to the Town Board and (2) the Town Board members are of independent mind—he cannot say if they would or would not be interested. H. Koster said (1) the only advantage in adding it into one of the lots is that it gives the Town a few extra bucks in tax money and (2) if it goes to the Town it comes off the tax rolls. Counsel said (1) from the environmentalists' point of view, they would suggest that the land is already protected and it should be kept on the tax rolls by being made a part of Lot 12, as nobody can use it and nobody can take it away, (2) if the Town asked him as Town Counsel if they have any other liability if they were to take the property, Counsel would advise that the Town does have insurance, but the Town is also probably responsible—then they won't want it and (3) the PB should persuade the applicant to make the wetlands part of Lot 12. Rolf Ronning said (1) he would do whatever the PB wants, (2) he will flag out the wetlands and locate them exactly and (3) Niagara Mohawk promised power this fall coming off of the end of Hendricks Road.

D. Roessler said (1) there is a small piece of land located by the "Y" in the proposed road by the proposed culvert and (2) asked if that piece of land is part of Lot 17. Rolf Ronning said it is not clear if it goes with Lot 17 or Lot 18. D. Roessler said he would like further information as to what lot that goes with and Rolf Ronning said (1) he will research it and make it clear on the next map submitted, (2) he will make that piece of land part of Lot 18 if it is not already and (3) he will give more detail for the cul-de-sac including cross-sections.

J. Gaddy said that he is concerned with the encroachment on the wetlands from Lot 14, because it gives access to Lots 11, 12 and 13. Rolf Ronning said that (1) they are on the edge of it because of the steepness there, but they are not intending to get anywhere near the wetland and (2) if the PB agrees to it, he can also stop the road before the wetland and take four of the lots make them into five-acre lots and relocate them and make a 60-70 acre lot area forever wild. J. Gaddy said that at the last Public Hearing what was being said was this was a conservation development type of idea. H. Koster said the backs of Lots 15 and 16 are steep also. J. Gaddy said if the applicant can hide the lots, he'd be more supportive of the plan. S. Aldrich and S. Wilson agreed that it is a better plan to go with smaller lots that stop approximately the border of Lots 14 or 15. J. Gaddy asked if people are not adverse to being closer to neighbors in wooded areas and Rolf Ronning answered by saying that (1) people don't want to see each others' houses, (2) he thinks a 3-5 acres is a good minimum size and (3) he thinks they are marketable lots.

H. Koster said (1) he doesn't want cluster developing because it doesn't fit in this Town, (2) cluster developments clear a large area in the woods and puts a big hole in and creates a stormwater nightmare, (3) he would rather small lots of 2-5 acres each and (4) the question is if the PB wants one big lot with the wetland and everything included in it or does the PB want a large area of common ground. Rolf Ronning said he would prefer one big lot with the stipulation the land would never be further subdivided. D. Roessler said he would like to have Lots 11, 12, 13 and 14 be added to the wetlands as one big lot approximately 60-70 acres, where one person can build one house and would be responsible for the wetlands. H. Koster said (1) the PB would like to see the currently drawn road farther away from the wetlands and (2) there is a need for the plan to protect the road from run-off from the land to the wetlands.

S. Wilson asked if the applicant is looking for the same amount of lots within 30 acres now and Rolf Ronning said yes, some lots may be smaller than others. D. Roessler said that this would protect the wetlands.

**Motion by D. Roessler to table the application pending additional information for the sketch plan as discussed. Seconded by S. Aldrich. All in favor. Motion carried.**

**12) SPR04-37 GLENN A. WARREN FAMILY TRUST.** Represented by Glenn Warren. Seeks Type II Site Plan Review to 1) timber-harvest an area greater than one acre on one parcel in the RL3 zone; and 2) timber-harvesting involving the clear-cutting of an area greater than one acre on one parcel in the LC25/45 zones. Section 140.00, Block 1, Lots 44, 47 & 49, Zones RL3, LC25 & LC45. Property location: 34 Padanarum Road. Subject to SEQR. This item was tabled last month pending additional information. See the Zoning Administrator's letter dated September 1, 2005.

Glenn Warren, representing Glenn A. Warren Family Trust, gave an overview and said he is here on two issues before the PB tonight; (1) clear-cut timber harvesting and (2) recycling, given the fact that Zoning Administrator Pam Kenyon could not make a determination since the last meeting, so he wants to discuss the issue of recycling and how it pertains to the permitted use, accessory use, or use requiring variance with the PB making a decision.

S. Wilson asked if Pam Kenyon made a decision that recycling is not a permitted use there and would require a variance and M. Nittmann said no, Pam Kenyon has not made a determination on whether it is a recycling center, plant or whatever and referenced Pam Kenyon's letter which said "...it is not a recycling center however she thinks it could be a recycling plant." S. Wilson referenced P. Kenyon's letter which said "...a recycling plant is not permitted and thus a use variance would be required before commencing such activity on property in those zones." M. Nittmann said Pam Kenyon referred it to the ZBA for their interpretation, so she hasn't made a determination yet, she is just providing the PB with information.

Glenn Warren said that (1) regardless of what the term is for the activity he is doing, the more important thing and real issue is how this will fit into the permitted site plan review or the permitted variance or not permitted aspect of working on this particular parcel of property, (2) his presumption is that, regardless of whether it is to be called a "recycling center," "recycling plant" or "recycling activity involving recycling materials," it is incidental and subordinate to the

construction of the logging roads he is proposing, which is an approved use on all of the property and (3) the character of the road construction project, no matter what you build a road out of it requires a fair amount of heavy machinery and involves excavation, the importation and exportation of materials and in certain situations, processing of materials.

H. Koster asked if the applicant intends to export the recycled rubber and Glenn Warren answered by saying (1) absolutely not, (2) he was pointing out that if you were to build any general road—not his project specifically—that act of construction requires excavation and if you have surplus materials you may end up exporting materials, which you don't always do, but you can, (3) his project, which he has discussed with the Zoning Office on multiple occasions in the last year-and-a-half to two years, is that his plan is to use recycled materials as a portion of the materials that will be used in the road construction, where some of those materials will be processed on-site and used in the construction, but he has no intention of creating, by the Town's definition, a commercial activity where he would export or sale materials either wholesale or retail and (4) in his case specifically, he plans on excavating material from the road alignment, remove trees, import virgin and recyclable materials and process the recyclable materials into the materials that can be used in the road.

H. Koster asked what type of virgin material the applicant plans on importing and Glenn Warren replied by saying some items he would import would be gravel, geo-textiles, culverts and bridge filling materials. H. Koster said he thought the applicant's previous explanation of recycled rubber was the elimination of having a gravel base on the road and Glenn Warren responded by saying that the rubber is the base material and there is still a need for the top material that goes above the rubber.

H. Koster (1) asked if the applicant sees any reason why he will have to bring in or export any soil for that road other than the gravel, the rubber and the geo-textile and (2) asked if the applicant can figure out a way to cut and fill to make it break out even, because the applicant claims he has an excess of soil and H. Koster is concerned there will be a big sand pit for export. Glenn Warren said (1) yes, he can cut and fill to make it break out even and (2) he is attempting to satisfy the test written in the Zoning Regulations under the definition of accessory use, where the proposed accessory use does not change the character of the principle use, (3) in this case, the principle use is the construction of a logging road, so he was attempting to describe the character of logging road construction—not his proposal, because his proposal differs somewhat from others.

D. Roessler (1) asked if the applicant is looking to use the recycled tires as a fill, (2) asked the proposed thickness of the recycled materials to be used on the road, (3) asked how much gravel or earth would be put on top of the recycled material and (4) if the recycled tire chips compact at all. Glenn Warren answered by saying (1) the recycled tires would be used as road base material, (2) the thickness would be up to, but not exceeding 12", (3) there would be 6-12" of gravel on top of the tire chips and (4) the tire chips compacts somewhat and behaves as an open-graded coarse aggregate and it allows the permeability of water into the sub-soils below and provides a thermal barrier to protect the road from freeze-thaw damage as opposed to normal roads.

D. Roessler (1) asked if a logging truck will be able to ride across the surface without it breaking through and Glenn Warren said yes, that is correct. D. Roessler asked if the recycled tire chips will withstand breaking down and Glenn Warren answered by saying that based on NYSDEC studies the material is very stable, only under severe—either caustic or acid conditions—is there any change in the materials and under normal conditions nothing happens to it. H. Koster asked if the structured fabric will be under or over the rubber and Glenn Warren answered by saying both, it will be basically in a wrap like a big flat sausage. D. Roessler asked if the structured fabric would give the road more support and H. Koster said yes.

H. Caldwell said (1) he thinks this is road building, not timber harvesting and (2) he has 110 acres that has been timber harvested twice and never put in one road. Glenn Warren said (1) in the overall scheme of the Forest Management Plan he has developed, he is trying to promote a growth rate that is more than what has been achieved, so the purpose of the logging roads is to give access to all of the stands so there will be regular maintenance to the trees, (2) regarding constructing the roads, if he builds the roads and doesn't cut trees down wider than 16' where the alignment of the road would not go beyond 16' then he understands that because the property is existing forest use and because construction and maintenance of a logging road is a permitted use and because they are not structures that require building permits, then he can go ahead and those roads as long as he doesn't cut the trees down beyond 16', (3) his only aversion to not doing that and bypassing this project entirely is that in the research he did and with the plan that was reviewed and approved by Warren County Soil and Conservation service, what he has discovered is that the best management practices for building a 21<sup>st</sup> Century logging road that will provide the access he desires sometimes requires clearing more than 16' of the trees, (4) the proposal is not to go clear a 40' or 70' swath through the entire area, but for each section he is building, the Forest Management Plan defines how to evaluate that section to determine the appropriate amount of clearing to do based on the soil conditions and other variables, (5) it is to his advantage to keep the amount of construction lower to keep his cost down and the amount of remaining trees larger so that over time they will grow big and he can harvest them and (6) the road alignment would vary.

S. Wilson asked if it is two different things here and M. Nittmann answered by saying (1) no, this property has a history of logging, (2) this property has been used as that for a long time, (3) the applicant's logging roads are an accessory to that actual thing and (4) the applicant just chooses to build a different type of road, so he is asking the PB to allow his timber harvesting and he is trying to give the PB all the answers to their questions, because they have concerns especially about the rubber tires and whether it is a permitted use or not, (5) the applicant is not selling any of the tires, (6) the applicant's shredder is not like a processing plant where he shreds this rubber and then sells it to some factory in Rochester so they can make more rubber tires, (7) the applicant is using everything on-site, (9) if the applicant wanted to make his own gravel, just like Peckham does, he could bring in a crusher—an accessory use to his logging—and make his own gravel and not have to import any and (10) the point the applicant is trying to make to the PB is that it is not a manufacturing for retail thing, he is making his own everything and using it on-site for his own personal use—it is not going anywhere.

Glenn Warren said he is perfectly aware that any time he changes the use of that machinery while it is on his property and make material that is exported for sale, that would be commercial

activity and he would have had to come to the PB for permission or M. Nittmann would be there to stop work or impose a fine.

H. Koster asked what the applicant is looking for tonight and Glenn Warren answered by saying he is looking for the PB to act on the application before it on timber harvesting—yes or no. H. Koster asked if that is on the full map the applicant presented to the PB two months ago and Glenn Warren said yes. H. Caldwell asked if the applicant has presented the PB anything on what he plans on harvesting, for example, marked trees and Glenn Warren answered by saying (1) he has done a rough survey of the property dividing it into different compartments and further subdivided it into 26 stands of varying sizes, (2) he is starting to develop the data on what is there in the particular stands, (3) he bought the property from Ken Cook, who harvested it aggressively in the mid to late 1990's, so there is not much of anything ready to harvest at this point, (4) the first 10 years or so will be a thinning operation for the purposes of species selection and to get rid of the lesser quality trees and preserve the ones with growth potential, (5) as he is extending the logging roads, there will be some marketable timber that comes out of the alignments, so as he builds out the road it will give him easier access to do the thinning and maintenance he wants to do and (6) hopefully at the end of 10 or 15 years, he will have thinned the beginning chunk of the 250 acres and he will have identified some timber that can be removed and marketed.

S. Wilson asked if it is accurate that the applicant does not anticipate to do any timber harvesting right now and Glenn Warren answered by saying (1) yes and no, he is asking for permission for timber harvesting so as he builds the road, he will be harvesting timber from the alignment, (2) as the road extends and opens up access to the stands, then he will do thinning which will generate firewood, (3) yes, he will harvest some along the way, but he doesn't expect it to be returning a huge amount of money, either the amount of it or the value of it. S. Wilson asked if the Forest Management Plan was prepared by the applicant and Glenn Warren said yes.

H. Koster said (1) he has a problem approving the map as it was presented to the PB, because there are large areas on the peaks of mountains listed as clear cut for wildlife management, there are flag poles on that map and (2) the applicant is basically asking for a free hand without interference from the PB for the next 25-50 years. Glenn Warren said he totally disagrees. H. Koster said that this is all on the plan presented to the PB, which is the plan the applicant just said he is asking for approval on. Glenn Warren said (1) he is asking the PB to act on the request to clear cut timber harvest, (2) the fact that he has some other elements shown on this plan, as discussed in the two prior meetings, is primarily for the benefit of letting the PB and Planning Office know what some of the future puzzle pieces might be, (3) he has acknowledge over and over again to the PB and the Planning Office that for those items that require permits, site plan review or a variance, that he would come back before the PB, (4) the PB is not approving the construction of stream crossings, bridges, culverts, fjords or anything with this particular plan, (5) he is asking the PB about the timber harvesting associated with the alignment of the proposed road and (6) when he gets to the stream, he will be back before the PB with a plan for the stream crossing.

H. Koster asked what the length of the road is that the applicant is looking for now and what goes with it. Glenn Warren said (1) he is specifically asking for permission for along the road

alignment, which is approximately four miles of logging roads, to clear trees from that road alignment beyond 16' as prescribed by his Forest Management Plan, which is the best management practices for constructing logging roads and (2) he is not asking for permission to put flag poles up, he is not asking for stream crossings and he is not asking for buildings to be built tonight.

J. Gaddy said (1) he was under the impression that the applicant was going to segment the project with internal boundaries within the whole project and (2) the applicant is now asking for 4.5 miles worth of road permission. Glenn Warren said (1) his understanding at the first meeting was the PB wanted him to break the plan down to present two years of work to the PB, (2) the up to now history with the Planning Office and the PB, he needs to know it is okay to do this whole project from an investment and a financial point of view, (3) this project won't start paying for itself for 10-15 years and he can't afford to invest two years worth of his time, capital and retirement account and then come back to the PB and have his project shut down for a year or be told he can't proceed, (4) he needs to know if it is okay conceptually for the whole project or if it is not and if it is not, he may or may not appeal it to the ZBA, (5) he brought his original version of the Forest Management Plan dated March 2003 has been in Zoning Administrator Pam Kenyon's hands since June 2003 (however, it was revised in June 2004) and he has asked her to do a jurisdictional determination to help define what needs to be done and to get recommendations of how to present it to the Board, (6) he asked about meeting with the PB, such as the one he had with J. Gaddy, C. Mason and P. Kenyon a month-and-a-half ago to start going through, but he was told "...no, no they aren't going to want to meet with you...", (7) he submitted his application for site plan review in November 2004 and he wasn't put on the agenda until July 2005, (8) he started things going last fall after having in his mind resolved the jurisdictional determination issue about recycling and road building and he determined with P. Kenyon a year-and-a-half ago that he could use recycling in this project and because of the way the clear cut regulation is designed in the Town of Bolton that he could do an acre of cutting without fear of exceeding the regulatory limits before he started triggering things, (9) he started the project last fall with three people working the project and in November he was put on hold after he had put his application in and it wasn't acted upon, (10) he has laid three people off, the project has been stopped since November 2004 and he is getting frustrated.

H. Koster asked if it is accurate that the applicant put in an application to be on the agenda in November and didn't get put on until July. Glenn Warren said (1) he submitted his application in November, (2) there was a lot of discussion in person and on the phone about why he wasn't getting put on and whether he needed this or whether he needed that, (3) the point was that the first meeting of this proposal before the PB was not going to be acted upon—the first meeting was needed just to get the thing going and it didn't happen until July, (4) he needs the PB to approve the whole thing either the way it is or not, because from an investment point of view, he needs to know if this is a viable project for him in the future, (5) he needs a commitment that once he starts the project, he can finish the roads, access the forest and make the project sustainable economically and as a forestry project, (6) if the PB wants to deny him, at this point he doesn't really care, he just wants the PB to make a decision, (7) once the PB makes a decision, he can either go to the ZBA or his other options are at this point after being delayed for a long time—longer than he cares to be delayed—it would be much less risky and bring a higher return on investment for him to take this whole plan off the table and come back in the spring

with a subdivision plan and (8) his preference is to stay in the community, participate in the community and create a very interesting project that would be hopefully a leading edge way to manage forestry.

H. Koster said (1) he doesn't have a problem with the applicant's concept for logging, (2) the PB has no drawings in front of them tonight, (3) the only drawings the PB has seen have all the items he previously mentioned, (4) he doesn't know enough about the crushed rubber—it sounds viable and apparently it has been approved by the County and the State and (5) a concept for the next 25 years is great, but he doesn't want the applicant to feel if he gets approval from the PB he gets free reign going down the line.

Glenn Warren said (1) the free reign that he is asking for tonight is to be able to proceed with the development of the logging roads according to the best management practices for their design as detailed in his Forest Management Plan and as approved by the Warren County Soil and Water Conservation service, (2) he is looking to be able to clear trees next to/adjacent to the road alignment so he can do the best job he can in putting the road in and (3) at this point, the position of the Trust is that it has gotten stuck for too long and a decision is needed—either yes or no—and then they will move on.

H. Koster said that he is very comfortable with the concept, but it is all the tangent issues he is concerned about, for example, the ridge line, the several mountain peaks to be cleared and the towers. Glenn Warren said that he agreed that the towers would need approval at the Town and the APA level. C. Mason said the PB also discussed last month of a 900' elevation maximum for clearing and H. Koster said when the applicant got beyond the 900' elevation the applicant would need to come back before the PB.

Glenn Warren said (1) where he stands right now is that he would prefer the PB act on the request as it stands before it, (2) if the PB desires to put conditions on it, then do so, whatever is required to get a vote tonight, (3) he needs something to go forward with, either to take to the ZBA or to make the assessment that is necessary to decide whether to continue with the project.

S. Aldrich asked if at this point in time the applicant can do anything in practicality beyond the stream crossing without permission for a stream crossing and Glenn Warren answered by saying that if the PB gives him permission to cut trees down in the alignment he could cut those trees and use the existing logging roads to get them out. S. Aldrich asked if there is a stream crossing and Glenn Warren said there is a fjord, yes, which is not the most environmentally way to take trees out, but when it freezes in the winter, it is standard practice to drag trees across a frozen fjord with very minimal environmental impact.

S. Aldrich asked if it is accurate that the applicant could continue beyond there at this point without a stream crossing or a bridge or whatever and Glenn Warren said (1) yes, he could, but in the point of view of building the road, if he has to bring materials across the stream it becomes impractical, (2) to some extent, which is a risk on his part, he could get permission to build all these roads and invest \$750K building out the front side, which is what he told the PB is first on his list, get to the stream crossing and the PB can shoot him down, stall him for a year and cause the project great financial harm at that point, (3) he is taking some calculated risk that the PB

will be going to like what he does on the front side and hopefully enable him to go further in future applications, (4) for over two years he has been very willing to meet with anybody to talk about this plan and regardless of tonight's decision, he is very willing to sit down with individuals or all PB members as a group and discuss aspects of the plan and what will come in the future in order to get feedback as to what aspects are favorable and possible changes and (5) there will be at least one or two stream crossings in the next two years and he may come back for an accessory building.

M. Nittmann (1) said that the applicant wants the okay for timber harvesting and (2) asked if the applicant would be averse to coming back before the PB after a half-mile or a mile of the road is completed just so the PB can take a look at it and see how the applicant is doing. Glenn Warren said (1) he is more than happy to show it off, (2) he is willing to accept conditions, but unless the conditions are reasonable, he is reluctant to accept some condition that says he can only do so much then if the PB does or doesn't like it, it gets foggy and hazy, (3) his intention is to show the PB and the public what he is doing and (4) people have shown interest in the processes planned for this property, such as the NYSDEC and the Warren County Soil and Water Conservation Department.

H. Koster asked if any PB Members have a problem with the general concept being proposed. C. Mason said the only problem he would have with the concept are the cell phone towers and/or flag poles, (2) as far as for forestry he feels it conforms with what the industry is doing, (3) sustainable forestry is becoming the norm now, not an oddity, (4) he feels what the applicant is trying to do is real good and the PB should get behind him and support him instead of throwing up roadblocks.

H. Koster said (1) he is trying to find how the PB verbalizes it in a motion, (2) the applicant's biggest fear is that he will invest a lot of money and the PB will put a stop to the project and (2) the PB's biggest fear is that they give the applicant carte blanche and the applicant runs amuck, which he doesn't believe will happen, but the applicant has to understand that the applicant is asking for 4.5 miles of road for the PB to approve tonight and if the applicant runs amuck at one mile into the road, the PB is the one holding the bag. Glenn Warren said (1) his plan calls for staging the construction, where he plans on doing a segment at a time, (2) there is a lot of financial disincentives not to get half-way through a mile of road and there are a lot of incentives to do a section, have it completed and useable and be able to show it off and (3) from a practical point of view, it makes sense for him to be careful for the same concerns the PB is expressing. The applicant then approached the PB bench and submitted a motion he drafted to the Chairman.

From the public, Rolf Ronning said that he supports the proposal but with the condition that the applicant be required to file a map of his property that indicates where the logging roads are with the 12" of rubber, because a buyer in the future should be aware that there are strips of land with rubber underneath it.

H. Caldwell said (1) he is still uncomfortable with the plan, (2) he thinks the road building is the primary purpose and the timber harvesting is secondary and (3) timber harvesting can be done without building any roads. Glenn Warren said (1) he agrees that the logging road construction is the principle and permitted use, as it is an aspect of forestry management and (2) he is building

this kind of road so it is a year-round permanent road and it is built to the best management standards that exist today to make the forest accessible on a year-round every year basis to cultivate.

J. Gaddy (1) said they are trying to have people harvest in the winter and (2) asked if that can be done with this proposal. Glenn Warren said yes, part of the plan does encourage winter harvesting. J. Gaddy asked why the PB would approve 4.5 miles of road when that same type of winter harvesting can be done without building a road and H. Koster said that some parts of that property can't be logged that way. Glenn Warren said he does have a fairly detailed section on the practice of logging and a discussion that leads to the determination of making good quality roads to access the overall system, which he would be happy at another time to sit down and go through that logic that came to creating the roads. J. Gaddy said (1) he agrees with C. Mason that this is the way forestry is going and it is a good plan and (2) he has no objections to the materials, but he is concerned about the 4.5 miles of road.

Glenn Warren said (1) the logging roads that exist on the property have areas that are severely eroded, (2) the effect of using the existing logging network would result in badly eroded sections and (3) to take care of the storm drainage and to re-mediate the eroded areas, they need to re-correct the road alignments and put drainage in and you need working room to do that and to add in the appropriate shoulders, swales, infiltration basins, sediment ponds and whatever is required. S. Wilson asked if the applicant plans on doing all of this for a logging road and Glenn Warren replied by saying (1) yes, absolutely, (2) there was a discussion in last month's meeting where three or four people said he had to have a stormwater management plan and Counsel came back at the end of the discussion and said the applicant was exempt from stormwater, (3) it is not that he is not addressing or does not want to address stormwater management, the issue is that he has addressed stormwater management that includes all of those special design features and they are in the Forest Management Plan that the Warren County Soil and Water Conservation reviewed and approved saying that it meets the best management practices and (4) he thinks he took a step too far, but he applied for a SPEDES permit, which apparently no other logger has done in this state, so the NYSDEC is looking at and reviewing what he is doing and he is comfortable doing that because he is putting the roads in according to best management practices and he has nothing to fear in having them reviewed by the NYSDEC.

S. Wilson asked if the PB can vote on the concept of the 4.5 miles of road alone and M. Nittmann said she doesn't think the PB can, because it is part of the timber harvesting. Counsel said (1) the applicant's position would be that the roads themselves are incidental and subordinate to the permitted use—the permitted use is timber harvesting and (2) the applicant doesn't seek permission for these roads per se, he is here seeking the PB's site plan review permission for timber harvesting. H. Koster said the applicant is seeking permission for the road, because he is asking to make them wider than 16' in some areas and Counsel said (1) that is how clear cutting is defined and (2) he thinks the gist of why the applicant is here is that he wants to engage in timber harvesting which is permitted in the zone by site plan review.

Counsel said (1) he wants to make mention, but it is not intended in any way to infer that other things the applicant does would then be prohibited, but those things the applicant then has in his application—his best management plan and practices talks about roads—he thinks it's pretty

clear that the applicant is going to build a logging road that is quite different than any logging road the PB has ever seen or heard of before, (2) he thought at an earlier meeting the applicant said that part of the constituent parts of what might go on, in or within the logging road might be crushed brick, block and concrete that would be crushed on site—not found on site, but crushed on site—then distributed on site and not exported out for sale, (3) the tires would be transported to the site—not found on the site—and the applicant processes them so they become a recyclable, usable material for his road and (4) the aforementioned items are offered up to the PB as being incidental and subordinate to the permitted use of timber harvesting, which the PB may determine to be so, (5) P. Kenyon's letter is out there and floats out there and the PB cannot determine that because it is a ZBA determination, (6) it is unimportant whether Counsel, the applicant or the PB agree or disagree with P. Kenyon's letter, because it is a ZBA issue and he thinks P. Kenyon laid it at the feet of the ZBA suggesting that she has found a definition, not necessarily in our Code but in a book of development definitions and it is a ZBA issue that is laid out there, (7) the PB just has to deal with the part that the applicant has presented a timber harvesting application and he wants site plan review and if the PB can accept and abide by the applicant's representations that those activities that Counsel has emphasized are incidental and subordinate to the permitted use of timber harvesting, then the PB has something it can act on, obviously they would act favorably, which is fine, but there's still P. Kenyon's letter that will be acted upon at the next ZBA meeting, so the PB doesn't have a complete green light, and (8) if the PB wishes to act unfavorably, the PB cannot do that unless it asks for a public hearing.

S. Wilson asked if it is accurate that the applicant is looking to timber harvest 4.5 miles graded at 16' and Glenn Warren said that is correct, according to the best management practices described in his Forest Management Plan approved by Warren County Soil and Water Conservation. S. Wilson asked if that is all the applicant is looking for from the PB right now and Glenn Warren answered by saying yes, the timber harvesting is the request before the PB, but also to clear timber from the approximate 2-acre area and for the wildlife enhancement areas. S. Wilson asked how much acreage the applicant is looking for and H. Koster said (1) the applicant is looking for the full ball of wax, because he doesn't want to start this operation then be stopped at some point and (2) as far as the road goes and timber harvesting the applicant wants all or nothing from the PB. Glenn Warren said (1) on the road part, that is correct and (2) the total acreage would be approximately 10-15 acres for the full length of the road. H. Koster said that some of the wildlife enhancement areas are located on the high peaks and that is what bothers him the most for now.

S. Aldrich asked if presuming the PB gave the applicant permission tonight and the ZBA finds not in the applicant's favor next month so far as the recycled tires, if the project would come to a screeching halt. Glenn Warren said that (1) it is his understanding in looking at the Zoning Code is that both the Zoning Administrator has the power and duty to administer and enforce the provisions of the chapter, which includes making determinations, but also, the PB has the original jurisdiction for all matters pertaining to the Zoning Code, so presumably, the PB can make determinations as well, (2) his questions is that if the PB was to make a determination about the nature of recycling as an incidental use to the forestry use, whether P. Kenyon could, at her discretion, withdraw her request for an interpretation from the ZBA, (3) the reason for his previous question, which he brought to the attention of the Zoning Office and Counsel, is that in his view of looking at the Zoning Code and determining how he believes in how it is designed to

work, is that the Zoning Office or the PB makes determinations then if the applicant doesn't like it, an appellate body is approached and maybe above it all to give a fair hearing, (4) his concern is that if the ZBA is being used to make the original determination there is no longer an appellate body within the Town Offices to go to for another hearing and it would force him to go to the courts to get an appeal, because you can't go to the ZBA to appeal a decision they've just made and (5) from that point of view, if the PB approves it and the ZBA hears it and denies it, his Board of Trustees hears that and gets put to the proposition of if it wants to fight it in court and he will leave it to the PB Members' imaginations to decide whether his Board of Trustees wants to go to the court over this issue or come back in the spring with a subdivision plan.

S. Aldrich asked if the applicant has an alternate plan to the chipped rubber or not and Glenn Warren answered by saying that there is also an alternate of building the road with 100% imported virgin materials which has a different expense and different issues associated with it.

Counsel said that (1) his reply to the applicant would be that he certainly defers to the applicant on all of the engineering he has done—he certainly knows a hell of a lot more than Counsel does on how to build a road and recycling materials, but best management practices for Zoning interpretations and statutory requirements are only the ZBA—no wiggle room and (2) regarding P. Kenyon's determination, which he doesn't have here, doesn't want to go over it here and doesn't want to second guess it, she's made a decision and if the applicant doesn't like it—which Counsel assumes he does not—then it will be properly reviewed by the ZBA and he can assure the applicant that determination will be appealed, (3) presumably, the perfect way to have done it would have been P. Kenyon giving the applicant her determination and he didn't like it and he appealed it, but somehow P. Kenyon got the issue before the ZBA by pretty much saying this is her determination and she is asking for the ZBA to interpret it or support it or whatever, (4) it is before the ZBA and when they review it—and the applicant should be there—and the applicant state's his case, if there are any ambiguities or shortcomings in the Zoning Code, they are presumed to be favorable to the applicant.

Glenn Warren said he was under the impression that P. Kenyon had not made a determination. Counsel read P. Kenyon's letter to the applicant referring to the applicant's plan and Tax Map Number dated September 1, 2005 into the record and said that he honestly interprets that letter to mean that P. Kenyon has made a decision which is one that the ZBA can support or overrule. Glenn Warren asked if her determination is that the proposed project is a recycling plant and Counsel responded by saying that (1) for P. Kenyon's determination, she relies on what she found in the referenced book as a definition of a word, an activity, (2) it is not clear and in those cases she presents it to the ZBA and the ZBA will back her or back the applicant and that is the end of that as far as the Town of Bolton is concerned, (3) if it comes out favorable to the applicant, the applicant's got everything he that he thought he was looking for and (4) if it comes out unfavorable to the applicant, the proper path for appeal is in a court of law—the Article 78 proceeding—arguing to the judge that nowhere in the Town of Bolton Code does it specifically prohibit the activity that the applicant proposed and if it doesn't, the applicant is entitled to a construction of this Code favorable to his application, which would be the applicant's argument.

H. Koster said the PB should really table this then and Counsel responded by saying (1) maybe not, because the application is for site plan review for timber harvesting and the applicant

suggested to the PB—which is what Counsel suggests as well—that the PB is in a position to make a determination as to whether or not these other processes or things constitute activities that are incidental and subordinate to the permitted use and (2) he thinks the gist of the applicant's argument is that these activities (crushing, grinding, etc.) are not the primary activity—timber harvesting is and (3) if the PB says yes to the timber harvesting in the manner the applicant proposes along the alignment of that proposed road, the applicant does not have to put rubber particles in that road, but he does wish to and the answer to that aspect will come from the ZBA. M. Nittmann asked if the ZBA will also determine if the applicant needs a variance for it and Counsel said yes.

H. Koster said the PB needs a motion on the timber harvesting remembering that the PB cannot turn down timber harvesting without a public hearing. D. Roessler asked if having a public hearing would be the next step and Counsel answered by saying (1) the PB has the option to do that and (2) that would put the public on notice and they can be heard on the issue. D. Roessler said that if the PB decides on a public hearing, they would be able to hear the public on this matter and also have time to see what the ZBA determination is. J. Gaddy said he would like to endorse this project as something that is taking land and putting it into productive use without it being used for development.

Counsel asked if the applicant needs to come back before the PB should the ZBA determine the applicant's interpretation is the correct interpretation, to then get permission from the PB to make those applications of crushed glass, stone, brick, cement and rubber products on his road. S. Wilson asked if that means the ZBA could tell the applicant he could recycle it there and the PB has to say if the applicant can put it there and Counsel answered by saying (1) the PB has the opportunity to say the applicant can put it there, which is what that site plan review is all about and (2) the ZBA will tell the applicant if he is within the proper requirements of the Code and that he is not running a recycling plant.

H. Koster said if the applicant gets that type of ruling from the ZBA, then that becomes incidental to logging and Counsel said that is correct. H. Koster said if the PB gives the applicant permission tonight to do a 4.5 mile road and to log as long as it is virgin materials for now, he would imagine the applicant is home-free if the ZBA rules in the applicant's favor. Counsel said the applicant needs permission from the PB to do the roads he has explained to the PB and if the PB limits the applicant to virgin materials, Counsel would guess the applicant will not have received the PB's permission. H. Koster said he doesn't want to let the applicant use his recyclable material until there is a ruling from the ZBA. Counsel said it is possible for the PB to say the applicant is permitted to use all of the recyclable materials if the ZBA determines favorably to the applicant's application that he is not operating a recycling plant.

Glenn Warren said (1) if the PB were to turn his application down, his understanding is that he could construct 4.5 miles of logging road as long as he doesn't cut trees down wider than 16', which creates practical limitations on how wide the road is and the level of difficulty in using equipment to build it, (2) if he chose to go ahead and do that and ran into a section that was impassable because of the 16' restriction, he would have to either come back to the PB if he was clearing more than an acre or he could do a small section if it was less than an acre, (3) on the issue of recycled materials and the use of them, he is not sure whether the PB wants to make a

ruling that he can't use recycled materials and (4) he understands the PB's concerns about processing recycled materials on-site, but he is not sure it would help the PB or himself to say he can't build the road out of recycled materials, because in theory he could bring recycled materials from off-site for this.

M. Nittmann read the Clearing Regs. 200-51 into the record and said that the 16' road width restriction is for single-family dwellings. Counsel said that (1) the width of the applicant's road becomes a function of how much money the applicant wants to spend on that road and (2) asked the applicant what the typical width of the proposed road is. Glenn Warren said (1) that his proposal is for the majority of the road to be an 8'-10' wide roadway with stable shoulders so tractor equipment can ride on the shoulders, (2) he plans on making the first 900-1,000 feet from Padanarum Road to the proposed construction area wider so two rubber-tired vehicles could pass each other—about 16'-20' range and (3) he suggests the PB make the motion to approve clear cut timber harvesting with conditions, then list any conditions. D. Roessler said he is not sure if he is comfortable with the definition and language of the road, for example where the applicant is talking about 16'-20' in areas and Counsel responded by saying that the applicant will be clearing an area 20' wide or wider, but the PB wants to limit the width of the road. D. Roessler said that (1) that is correct, but for a driving surface for two vehicles to pass each other, he doesn't think it is necessary and (2) he understands the applicant needs a header for a staging area, but for the applicant to have the ability or right to put in a 16'-20' road. H. Koster said (1) it is not advantageous for the applicant to put in a 20' road where it is not needed and doesn't know why the applicant would do that and (2) there are certain areas on the side of a mountain where you cannot get past it unless you allow somebody to go wider, because the cut and fill area of that particular area.

Glenn Warren said that (1) because his interpretation was that he wasn't coming before the PB to build a logging road, he did not provide the PB with section of the Forest Management Plan that describes the specifics of the logging road, (2) the logging road is designed to be economical and (3) there are a bunch of practical and efficient directives on how this road is going to be constructed. S. Wilson asked if the applicant knows the topography of the road and the drop-offs, which should be in the plan and Glenn Warren answered by saying the plan is basically a design-built document or a specification in great detail. S. Wilson asked if the applicant knows exactly what he needs and Glenn Warren replied by saying that he couldn't tell the PB today exactly what a specific piece of road will look like, but when he gets to that section the plan will tell him how to design the elements for that section of the road.

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

**Motion by D. Roessler** to approve the application for timber-harvesting as presented with the following conditions: 1) no harvesting for wildlife areas above 900' in elevation or areas visible from the Lake; 2) no use or manufacturing of recycled material on-site is to occur until approval is granted by the ZBA; 3) approval is granted to clear the area, which was formerly a Sagamore dumpsite, involving approximately 2 acres; and 4) the applicant is to provide updated as-built drawings of the logging roads, showing location of all recycled materials; and 5) the as-builts drawings are to be updated and filed with the County every year. It is noted that the parcel is

meant to support a sustainable timber harvesting project. 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. 6 in favor. 1 (H. Caldwell) opposed.**

13) CHARLES J. McNULTY CLASS A MARINA INQUIRY. Letter sent by the Lake George Park Commission for Application # 5220-31-05, Asking the Town of Bolton if they would like to be lead agency of a site plan review to modify a Class A Marina. The construction to include modifying of an existing dock, increasing berthing from 2 to 5 vessels not belonging to the owner, and construction of 2 new docks. Section 186.07, Block 1, Lot 9, Zone RCH 5000. Property Location: 4802 Lakeshore Drive. Subject to SEQR.

H. Koster said (1) he received a notice from the LGPC regarding if the Town of Bolton wants to be the lead agency of a site plan review to modify a Class A Marina and (2) if he does not reply within 30 days, the LGPC will assume to be lead agency on the review.

**Motion by D. Roessler** to send letter to the Lake George Park Commission stating that the Bolton Planning Board shall reserve the right to remain the lead Agency for the McNulty project. **Seconded by S. Aldrich. All in favor. Motion carried.**

#### Other Business:

J. Gaddy said he would like to request the PB show its support or request of the Town Board to get the status of certain situations like Straney and Checci. S. Aldrich said (1) her understanding is that the Town Board gave Checci no time limit, so it is an open-ended deal and (2) they have no reason to do anything because nobody told them they have to do it by such. H. Caldwell suggested the PB recommend to the Town Board that it gives a 30 day time limit and after the 30 days it is a \$500-a-day fine. All PB Members agreed to give PB recommendation to the Town Board to put Checci on the Town Board agenda for October 2005.

J. Gaddy said (1) he went to the Town Board meeting regarding trees coming down on the lake side, (2) he made the recommendation to go forward with the scenic overlay and (3) the Town Board asked what the PB Member's feeling were on this project. H. Koster asked what a scenic overlay district means and J. Gaddy answered by saying that (1) it means there is a certain higher level of review for items like the ledges or where someone is proposing to put a house in a very visible spot (the Louise Straney situation) and (2) it is saying that the PB believes the way the hillsides are looking should be held to a higher review. S. Aldrich asked who does this higher review and C. Mason said the PB does. H. Koster (1) asked if this is needed, (2) said that what the PB did on the ledges with that 55-acre lot he thinks the PB has the common sense to pick out what needs additional review, (3) he thinks the PB has the sense where to do it—not according to a map that is greened out and (4) he wants the PB to be deciding as to what has to be reviewed and it has done it. J. Gaddy said (1) he agrees with that, (2) this is something the PB should adopt as its policy, (3) he is very thankful for the PB's support on lighting, colors and items like that and (4) this is a Master Plan recommendation that needs to be carried further. H. Koster said that would mean further legislation in front of the PB that demands it has to over-review

something that might be in a valley there that isn't even seen from the lake, (2) he doesn't want to get into that and (3) he wants the PB to use its common sense—he believes it does—he believes the PB is a great board that is capable of using its common sense without any extra legislation. J. Gaddy said his ultimate concern is that the Town is losing trees left and right and there is nothing the Town can do. Counsel said (1) J. Gaddy came before the Town Board at the last Town Board meeting and made a very good pitch that there is a comprehensive plan and nothing has been done, (2) J. Gaddy left after his presentation and at the end the Town Board voted to spend over \$30K to hire Lisa Nagle from ELAN specifically for the purpose of creating a prototype model code that will incorporate all that is in the comprehensive plan, (3) Lisa Nagles will work with the PB, a special committee and the ZBA to come up with a better code and (4) if anyone wants to argue for or against the scenic overlay that will be the forum to do it.

Meeting adjourned at 10:50 pm.

Respectfully submitted by  
Jennifer Torebka  
Recording Secretary  
10/13/05