

**Town of Bolton
PLANNING BOARD
MINUTES
Thursday, August 24, 2006
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 = LGPC
DEC = Department of Environmental Conservation

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

Absent: Don Roessler

PUBLIC HEARING: None

REGULAR MEETING:

H. Koster opened the regular meeting at 6:04 pm by asking for corrections to the July 20, 2006 minutes. Having just received those minutes, the PB members agreed to review and address them at the September 2006 PB meeting.

Note: The agenda items were heard in the following order: 2, 3, 1, 4, 5, 6 & 7 together, 8, 9, 10, 12, 13, and 11.

1) **SPR06-38 TENNENT, JEFFREY.** In accordance with Section 200-22 of the Zoning Ordinance, seeks Type II Site Plan Review for an advertising sign greater than 4 square feet. Specifically 42 sq. ft is proposed (excluding planter and posts). Section 171.15, Block 2, Lot 51, Zone GB5000. Property Location: 5023 Lake Shore Drive formerly known as the Dairy Queen. Subject to WCPB review. Subject to SEQR. NOTE: This is an amendment to SPR03-16 approved May 22, 2003.

Jeffrey Tennent said that he is requesting to modify the existing sign (that was already approved by the PB) by adding a roof to protect the sign and to hide the lighting.

J. Gaddy asked if the addition to the sign would block any driving visibility in either direction and Jeffrey Tennent said no. H. Koster asked if everything in the sign's design as shown is the same as what was previously approved except for the added roof and P. Kenyon said yes.

H. Caldwell asked about the stormwater measures taken on the back side of the property, because it was done very well and Jeffrey Tennent said he did more than was required. J. Gaddy said that this project is a great addition to Main Street.

The WCPB determined 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 John Gaddy to accept the application as complete, waive a public hearing and grant 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** Sue Wilson. **All in favor. Motion Carried.**

- 2) **SD06-05 OBERER, ERNEST.** Represented by Joseph Fuerst PLS. Seeks to divide into 3 lots that parcel designated as Section 171.00, Block 1, Lot 6, Zone LC25. Sketch Plan Review. Minor Subdivision. Subject to SEQR. *Note: This item was adjourned from the April 2006 meeting pending additional information. Also, the Planning Board must determine if the roadway is considered a road or a shared driveway.*

Note: Susan Wilson recused herself as a PB member from this agenda item, as her son is a neighboring property owner.

Joseph Fuerst PLS representing Ernest Oberer, gave an overview and said (1) they have provided the additional information requested by the PB and (2) they are looking for sketch plan approval.

John Gaddy asked if a Type II Special Permit application is needed at this time since the property is in LC25 and P. Kenyon said no, but when the applicants go to construct the single-family dwellings, they will require site plan review.

H. Koster said that some of the cross-sections are shown on straight sections of the road and Joseph Fuerst replied by saying that the cross-sections they did were the areas of the greatest cuts and fills to give an idea of what would happen. H. Koster said he thinks it would be significantly more at the switchbacks, which is where the applicant has the deepest cuts and fills.

Peter Loyola of CLA Site, project landscape architects/engineers, said (1) the cross-sections give prototypical 2:1 cross-sections representing worse case scenarios, (2) they have located the road where they think it will generate the least amount of disturbance, (3) in some areas, they can use the existing roadway, (4) they can use a 15% grade all the way, as they want to make it the safest road possible, (5) he feels the house site locations represent areas that will have the least amount of impact and (6) some of the changes they made that they think will make significant improvements in the plan is that they moved one of the homes off the pinnacle toward the middle of the property and they decided to locate the driveway to the rear of the pinnacle instead of to the front as originally proposed.

H. Koster said that at the switchbacks, there is a great transition of existing contours—about 70 feet in elevation—there is a 20% grade between 25+00 and 26+00. Peter Loyola responded by saying that (1) they will be using the existing drive to

approximately station 650, where they will then start coming in and lengthening the road and the point he wants to make with the vertical profile is that they can establish a 15% grade. H. Koster said he is still concerned with the 96 foot and 106 foot disturbance areas. Peter Loyola said that they graded the 2:1 out just with the slope.

John Gaddy said that (1) he has concerns with fire protection and visibility, (2) he would like to see the amount of roadway reduced, (3) he would prefer a reduction in the roadway—something like a 1,000 foot contour and the road coming around the mountain, (4) he is not in favor of having these houses so close together in an LC25 zone, although it is legal, (5) he doesn't think the Town of Bolton has ever had a 15% grade road—he is not comfortable with it or in favor of it, and (6) regarding Section 150-12, it says that "...sites exposed to Lake George shall have a cluster design alternative.", so while it is clustered on top, he doesn't think this project will enhance the visibility of the hillside from Lake George. Peter Loyola responded by saying that (1) his firm has worked and continues to work on many projects in the Adirondacks and Lake Placid and (2) they are very aware of the sensitivity to view shed and view shed preservation to the greatest extent possible, which is one of the reasons they pulled one of the homes right off of the pinnacle. John Gaddy responded by saying that (1) he is not questioning the firm's professionalism or its ability to do this project and (2) he is concerned about the way these projects look after they change hands once or twice—somehow or other, buildings that were well-placed and well-shielded somehow become exposed. Peter Loyola said that in this geographic area there is language written into deeds, so there are lots of options in deeds regarding this project. John Gaddy said that (1) he agrees the project could be done and can be very well hidden, but he doesn't believe that is the eventual outcome as time goes on and (2) the concern with the 15% grade still exists.

Peter Loyola said that the Town of Bolton allows a 15% grade driveway and H. Caldwell replied by saying that (1) the PB still needs to determine tonight if this is a road or a driveway and (2) he has relative ties to neighboring properties and offered to recuse himself on this matter if anyone felt it necessary. The applicants, Counsel, and the PB members did not say it was a necessity for H. Caldwell to recuse himself from this item.

H. Caldwell said that he would like to see the house sites staked out before proceeding. H. Koster asked if the drive was staked out and Peter Loyola said no, but he can stake the drive and the house sites. J. Gaddy asked if it is correct that the Town of Bolton allows 15% grade driveways and P. Kenyon said yes, 15% grade driveways, but if this is considered a road it needs to be a 12% grade. H. Koster said he thinks the 15% grade is an arbitrary number used for driveways in the past simply for emergency access, but the PB has never dealt with a driveway that is 4 ½ miles long and the PB needs to determine if this is a road or a driveway. Peter Loyola said that while he wasn't present at the last meeting, he believes that the PB asked them to provide a road at 15%, which is why they chose the 15%. H. Koster said that (1) the reason the PB asked for that was to see how long this driveway/road would be at 15%, which is just to help the PB see the viability of it and (2) if the PB decides it is a road then it is an absolute maximum of 12%.

Michael Hill, of Miller Mannix Law Firm, representing Ernest Oberer, said that (1) they recognize the health, safety and welfare concerns with the grade, (2) they can work with emergency services to make sure they are comfortable with the grade of the driveway and the ability to get up there and (3) by approaching this as a driveway they hope to minimize the degree of disturbance. C. Mason said he would like the total disturbed area including the fills and cuts to be shown and Peter Loyola agreed. H. Koster said he would like to know the widths of the disturbance and Peter Loyola said they would provide that information.

H. Koster asked if the PB should make a determination on a driveway versus a road before proceeding and Counsel replied by saying (1) yes, the PB has to make a decision and he thinks the PB can invite the applicant as well as a wide open discussion as to what criteria the PB relies upon to make that determination—it has to be grounded in some understandable criteria, (2) up to now, he and P. Kenyon haven't been able to make a distinction between a road and a driveway, (3) the best approach would be to give the Zoning Administrator some criteria that she can rely upon so the distinctions can be made and so the applicant will also know what he is expected to do, and (4) he (Counsel) thinks one of the big problems here is the length. H. Koster said that the PB doesn't want to design it, but he thinks the PB members would be more favorable to a shorter drive.

J. Gaddy said he is still interested in Section 150-12 regarding clustered sites and in seeing how that might work out with this project. H. Koster said (1) the driveway/road is doing the most disturbance and (2) the PB would like to see a lot less disturbance on that mountain site. Peter Loyola said that the existing road is not visible now and it won't be visible from anywhere when further constructed. H. Koster said that while the actual road may not be visible, the cut across the area would be. Peter Loyola disagreed and said (1) the question is that if you can't see the disturbance then is there really disturbance and (2) they want the homes to have some view of the lake and will minimize disturbance to do so. H. Koster said that disturbance is not only visible disturbance, but physical disturbance as well. Peter Loyola said that (1) they can stabilize soils during construction—they are mandated by NYSDEC to make sure that there will be no erosion of soils and (2) they will provide the PB with ample stormwater management practices on this project that are used throughout the Adirondacks and work quite well.

H. Caldwell said that he would like the road and houses staked out and Peter Loyola agreed.

Motion by Henry Caldwell to table the application pending additional information as follows. 1) The houses and roadway is to be staked out. 2) The applicant is to contact the Zoning Administrator when complete so the Planning Board members can visit the site. **Seconded by** Sandi Aldrich. **All in favor. Motion Carried.**

3) **SD06-03 MJ REAL ESTATE HOLDINGS, LLC.** Represented by the LA Group. Seek to merge those parcels designated as Section 124.00, Block 1, Lots 12 & 13 and Section 123.00, Block 2, Lot 57.1, then subdivide parcel into 7 lots. Zones RL3 & LC45. Property Location: New Vermont Rd. Major Subdivision. Sketch Plan

Review. Subject to SEQR. *Note: This application was tabled at the April 27, 2006 meeting pending additional information. In accordance with Section 150-27 “waiver of requirements” the applicants are requesting relief from the Town road standards in order to minimize site disturbance. By revising the initial entrance grade of 3% increased to 5% for approximately 175 ft., and the maximum grade of 12% increased to 13% - 15%, the applicant has the ability to access the hillside closer to the existing grade thus minimizing site disturbance.*

Note: Susan Wilson rejoined the PB for this and all additional agenda items.

Jeff Anthony, of the LA Group, representing MJ Real Estate Holdings, LLC, gave an overview and said (1) they are here to discuss options to access on the first 1,000 feet of road, (2) they can construct a 12% grade driveway and the first 100 feet at 3% as the Bolton code requires, but that would have roughly a 200 foot wide clearing in grading area of disturbance on the site, and (3) if they are able to increase the grade of the first 100 feet from 3% to 5% they would be able to limit the disturbance area.

Peter David, project manager, referenced the graph and said (1) they want to raise the entrance to a 5% grade and go for 1,000 feet at a 14% grade which would virtually eliminate the 200 foot swath of disturbance and (2) once they are at the 1,000 foot location, they will be able to go to the 12% grade as per Town of Bolton standards.

J. Gaddy asked where the 1,000-foot mark is and Jeff Anthony said it is in the middle of Lot 3. J. Gaddy said that (1) he is concerned with the 8-10 feet from the roadway to the intermittent stream that is now dry, because a lot of water comes down in the springtime, which would pose an engineering challenge and (2) said he is wondering if the existing logging road that accesses Lots 6 and 7 go onto the neighbors' property as he is concerned with the amount of water that would be coming down with the proposed road disturbance as proposed. Jeff Anthony replied by saying that (1) they are still working on building locations and (2) the existing road has no stormwater management techniques on it at all. J. Gaddy asked if the applicants would be using the existing road and Jeff Anthony said yes, they are proposing to stay on the existing road centerline with the exception of a spot where it straddles the neighbors' property, which can be moved so it is totally on the applicant's property. J. Gaddy said that there is an area along Lot 3 where there would be a lot of disturbance that would lead directly to the stream that runs across the Prosser property. Jeff Anthony asked for the PB members' suggestions and said (1) another option would be to keep the first 100 feet at a 5%-6% grade then have a 12% grade all the way up, but there would be some cut and some disturbance with this option.

H. Koster asked for the size of the right-of-way and Peter David said it is 50 feet. H. Koster asked about the distance the right-of-way runs through the property and Peter David said 350 feet. H. Koster asked if the stormwater could be disbursed in the last 350 feet before it leaves the applicant's right-of-way and Peter David said that they would probably have to collect it somewhere within Lot 2. Jeff Anthony said another choice would be to do a series of infiltration devices along both sides of the road right down the

road—it is sandy down there—and in the ditch they would put infiltration basins and infiltrate frequently as they go down through the ditch.

H. Caldwell recommended that the applicants make a presentation to emergency services first to get recommendations. H. Koster asked if the 50-foot right-of-way border is all the way through the Prosser property, because if it is then the applicants would need lateral right-of-ways and Jeff Anthony said no, it isn't. H. Koster asked if the applicant could move the proposed roadway out of the shared right-of-way and Jeff Anthony said yes. J. Gaddy said that (1) the roadway is 8 feet to 10 feet above the stream now and (2) if this road is approved as presented it will encroach on the stream.

Matt Langermeyer, property owner, said that he would prefer the PB recommend and approve a plan of least disturbance in fairness to his neighbors.

H. Caldwell asked how many feet of driveway/roadway is proposed up to the house on Lot 7 and Jeff Anthony replied by saying that it is 2,700 feet to the cul-de-sac at the border of Lots 5 and 6. H. Koster asked how long the driveway is beyond that point and Jeff Anthony said that they haven't located the houses on those sites yet, so he doesn't have a definitive answer at this point until they look at house site locations. H. Koster said that this plan shows home sites on the highest point on the whole piece of property and Jeff Anthony replied by saying they told the PB at the last meeting they would be adjusting that, but they haven't looked at that yet.

J. Gaddy said that in looking at the test pits, they are in a beautiful spot on Lots 1, 2 and 3, but there is ledge all up on Lots 6 and 7—he would like to see some other exploration along the way and (2) it is a catch 22 for applicants because the Fire Dept. wants wider roads, but the PB wants less disturbance.

Motion by Henry Caldwell to table the application pending additional information as follows: 1) The applicant is to seek input from the Fire Department and EMS as it pertains to the road. 2) The width and depth of disturbance is to be shown up to the cul-de-sac. 3) The width and depth of disturbance is to be shown on the driveways on lots 6 & 7. 4) House locations to be shown. **Seconded by Chauncey Mason. All in favor. Motion Carried.**

4) SPR06-16 SHEPANZYK, DEREK. Represented by Dennis Dickinson of D.L. Dickinson Associates. For the construction of a proposed single-family dwelling, seeks Type II Site Plan Review for a new land use within 250' of the lake shore in the RCM1.3 Zone. Section 213.13, Block 1, Lot 51, Zone RCM1.3. Property Location 3932 Lake Shore Drive known as the Monaco Motel. Subject to WCPB REVIEW. Subject to SEQR. *Note: This item was adjourned at the June 2006 meeting pending additional information. The WCPB determined no county impact with the condition that the plans identify the capacity of the septic system and water supply system in regards to maximum capacity of usage.*

Dennis Dickinson, of D.L. Dickinson Associates, representing Derek Shepanzyk began giving an overview and S. Wilson asked if the map he was referencing was the same one the PB was given to review. It was determined the maps were different. Counsel said that if all of the PB members feel comfortable that they can work from the applicant's map from the presentation board then the PB could proceed, but if any one PB member feels he/she can't work from the applicant's map then the PB shouldn't proceed and the item should be tabled.

Motion by John Gaddy to table the application pending additional information as follows: 1) A revised site plan to be presented showing the location of the proposed house. **Seconded by** Sandi Aldrich. **All in favor. Motion Carried.**

5) SPR06-38 DOMERS GOLDEN PROPERTIES. Cobblestone Subdivision. Represented by Tom Hutchins of Hutchins Engineering. Seeks to amend major stormwater project approved as part of the Cobblestone Subdivision SD02-12 on January 23, 2003. Section 171.07, Block 1, Lots 55-66, Zones RM1.3 & RL3. Property Location: Braley Hill Rd. Subject to WCPB Review(The WCPB recommended approval with the condition that there is confirmation that the revision address the Nace Engineering letter). Subject to SEQR.

Tom Hutchins, of Hutchins Engineering, representing Dormers Golden Properties, gave an overview and presented a revised stormwater plan for the Cobblestone Subdivision.

H. Caldwell said that this is not a unique piece of property in terms of stormwater—it is the same thing the PB is addressing on every site in Bolton Landing. H. Koster asked if the applicants are going to eliminate the spillway at Lot 1 coming on Braley Hill and Tom Hutchins replied by saying that (1) the current owner doesn't own and has never owned Lot 1 and (2) they believe that the Town of Bolton did the work that H. Koster is referencing.

J. Gaddy asked if it would be an additional 1,285 square feet of disturbance area per lot and Tom Hutchins said that there would not be additional disturbance to what will need to be done on each lot. J. Gaddy said that (1) he is trying to look at the project at a cumulative level and (2) he feels this is a contributing factor, in some degree, to the sedimentation at Braley Point. Tom Hutchins said that (1) he can't say it hasn't been a contributing factor, but he hasn't seen it and (2) there is some silt build-up within one of the ditches, which is part of the job of the ditch, but he has never seen it going off the site.

H. Caldwell asked which lot has the large pile of fill on it and also asked why it has been there so long. Tom Hutchins answered by saying that it is on Lot 3 and it is supposed to be stabilized—this spring it was seeded and wrapped in silt fence and it will be used as general fill material as required in building the site.

H. Koster asked if Town Engineer Tom Nace is satisfied with the re-design and P. Kenyon said yes, and these new owners will do a revised stormwater maintenance agreement.

H. Caldwell asked if the applicants are going to remove the sedimentation in the roadside ditch and Tom Hutchins said yes, they are going to re-work the whole ditch. H. Koster asked if the natural drainage that comes through Lots 10, 9, 3 and 2 runs into Lot 1 and Tom Hutchins said no he doesn't think it runs into Lot 1. H. Koster said the natural drainage seems to dissipate at some point.

P. Kenyon said she and Tom Hutchins discussed the relocation of the septic on Lot 8 and asked about a drainage basin collecting the water on Lot 8 going onto Lot 9. Tom Hutchins said that there is a temporary sediment trap in the area of the line between Lots 8 and 9, which is currently there, which was seeded and is not functioning at this point. P. Kenyon asked if it is the run-off from the house and Tom Hutchins said no, it is the run-off from the hill. Counsel asked if it is being handled by the adjacent property or if this is just not intended to continue, but be undone and Tom Hutchins replied by saying that it was built as a temporary sediment trap. Counsel said that temporary means that the final plan does not anticipate this will be there and Tom Hutchins agreed. Counsel said then there is no issue.

The WCPB recommended approval with the condition that there is confirmation that the revision address the Nace Engineering letter.

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 constitutes 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 stream bank erosion and will not pollute Lake George, its tributaries or streams with run-off.

Motion by John Gaddy to accept the application as complete, waive a public hearing and grant 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** Henry Caldwell. **All in favor. Motion Carried.**

Note: All PB members resolved to hear agenda items #6 and #7 together, but to vote on them separately.

6) 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. Preliminary Plat. Major subdivision. Subject to SEQR. *Note: This application is in conjunction with SPR06-23. This item was adjourned from the July 2006 meeting pending additional information.*

Rolf Ronning gave an overview and said that (1) they addressed the PB's past concerns and (2) the plan has been approved by Town Engineer Tom Nace. Rolf Ronning then passed out the revised plans. H. Koster said that Dennis Dickinson doesn't have the plan revised.

H. Caldwell questioned the re-vegetation and tree planting along the road and Rolf Ronning said that (1) he will re-vegetate because it is part of the stormwater and (2) he agreed that he would re-plant the pine trees. H. Caldwell said that 3-foot pine trees would suffice and Rolf Ronning agreed and said that if the pine trees die he would re-plant them in two years.

H. Caldwell said that Bruce Fifield came up with a \$148,500 bond amount for construction of the road/stormwater and Rolf Ronning said he would be willing to have a \$150,000 bond. Counsel asked where the applicant would be getting the bond from and Rolf Ronning said from the AON Bonding Service—the same bonding company he used for the Wright's Farm project. Counsel asked if this bonding surety is licensed to sell insurance in New York State and Rolf Ronning said yes. Counsel said that (1) if Rolf Ronning is using the same surety, than that was a satisfactory surety and they were licensed in New York State and (2) it is not that it is illegal to use an out-of-state licensee, but if there was a problem you couldn't sue it in New York—you would have to go where they got their license, which is why he (Counsel) prefers New York.

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

S. Wilson said that the APA letter Rolf Ronning submitted is not a jurisdictional letter. Rolf Ronning said it is a letter on the wetlands, which is what the PB requested. P. Kenyon said the APA letter is on the wetlands, but the APA goes on to say that the applicant should send a jurisdictional inquiry and Rolf Ronning said they have already sent the jurisdictional inquiry on August 3, 2006. Counsel said regarding the APA, (1) if the subdivision at large involves any wetlands then ordinarily it becomes jurisdictional, (2) there is a theory going around that if you are not subdividing the wetland in your subdivision then it is non-jurisdictional, which is not entirely true, (3) if the land mass has any wetland on it, the applicant can proceed and get subdivision approval from the municipality, but it is not a final approval, if the APA also takes the position that they have jurisdiction, it is entirely possible that the same plan, as long as it is not subdividing

any wetlands, will probably also pass the APA's scrutiny, but the APA has its own process and it would probably be a minor application even though the magnitude of the number of the lots is major for Bolton, without subdividing wetlands it is minor for the APA, (4) it is not a complete subdivision without the APA either saying they don't have jurisdiction or that they do have jurisdiction and they will entertain a minor project application—it is not final, (5) hypothetically, when you buy a lot that hasn't been approved by the APA (either pending, unresolved or never applied for) people innocently buy these lots and later on they will get a letter from the APA stating that it was not reviewed by the agency and has not been approved and although the Town of Bolton approved it, it is not an approved subdivision. H. Koster asked if it is accurate that the APA has 10 days to respond to the applicant's letter and Counsel said yes, but that doesn't mean that if the APA didn't respond in 10 days that they forfeit their jurisdiction—they have no timetables and no statute of limitations. Counsel asked how long the applicant has had this application pending, because he didn't send in the jurisdictional inquiry until August 3, 2006 and Rolf Ronning said that (1) the reason for that is because Mary O'Dell of the APA told him to wait until she flagged out all the wetlands and had it approved and (2) Mary O'Dell called him on August 2, 2006 and told him she was good with it, so to go ahead and send in the jurisdictional inquiry, which is why he sent it on August 3, 2006. Counsel said the APA letter says, "...This letter pertains to wetlands only and is not a jurisdictional determination by the APA...and if the applicant needs a jurisdictional inquiry then he should apply for one..." Rolf Ronning said they did apply for one and Counsel said he understands that but the question is did Rolf Ronning get an answer. Rolf Ronning said he hasn't received a response on the jurisdictional inquiry yet. H. Koster asked Counsel's advice and Counsel said the PB should not give approval if the applicant has not obtained a jurisdictional letter indicating that the APA has no interest or the PB should require that if the applicant does have APA jurisdiction then the applicant should proceed to obtain that—he (Counsel) thinks the applicant does and he thinks the APA is going to come back with that the applicant has some wetland and the APA will entertain a minor project application.

Counsel said that (1) if the PB makes the motion conditional upon APA approval, then there would need to be the understanding that if somebody is interested in buying a lot then they shouldn't be sold a lot, because those people will not be given a Certificate of Compliance by the Town of Bolton Zoning Administrator without APA approval and (2) when the applicant finalizes this application here, it is not truly final without APA approval. Rolf Ronning said he is willing to put it in the mylar that it's Town of Bolton approved, but not APA approved and asked if Town Counsel will call the APA on his behalf. Counsel replied by saying yes, he'll call Ellen George at the APA and ask the status.

Motion by Henry Caldwell to approve the preliminary plat, convert the preliminary plat to final plat and grant final approval as presented with the following conditions: 1) One 3 ft. tree is to be planted every 25 ft. in disturbed areas where the road was cut. 2) The trees are to be replaced in kind if they do not survive. 3) A bond in the amount of \$150,000 insured by a bonding agency licensed in the State of New York is to be submitted for Town Counsel's approval. 4) There is to be no further subdivision of any

lot. 5) Site Plan Review is required for the construction of a single-family dwelling on each lot. 6) A \$400 recreation fee is to be paid to the Town of Bolton prior to a certificate of compliance being issued. 7) No lot is to be sold until a jurisdictional determination is made by the APA. Subdivision map shall show "Town of Bolton Planning Board subdivision approval subject to Adirondack Park Agency review." 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.**

7) SPR06-23 WESTWOOD FOREST WEST. Rolf Ronning. In accordance with Section 125.13C1 of the stormwater regulations, seeks Type II Site Plan Review for a major project to remove more than 15,000 sq. ft. of vegetation. 8.7 acres is proposed. Section 139.00, Block 1, Lot 8.1, Zones LC25, RR10 & RIL3. Property Location: West side of Hendricks Road off County Route 11. Subject to WCPB REVIEW. Subject to SEQR. *Note: This application is in conjunction with SD05-24. This item was adjourned from the July 2006 meeting pending additional information.*

The WCPB recommended no County impact with the stipulation that clarification of the amount of land to be disturbed for each lot is to occur and each lot to be developed is to have a stormwater and erosion control plan associated with it.

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 constitutes 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 stream bank erosion and will not pollute Lake George, its tributaries or streams with run-off.

Motion by John Gaddy to accept the application as complete, based on a public hearing and Town Engineer, Tom Nace's approval, grant approval for the major stormwater project as presented with the following conditions: 1) Applicant is to notify the Zoning Administrator before stormwater and road construction is undertaken. 2) Town Engineer is to make periodic inspections and approve the construction prior to bond being released. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. **Seconded by Sue Wilson. All**

in favor. Motion Carried. *Note: Although not a condition of approval, it is noted that when each lot is developed the stormwater controls will be a continuation of the major stormwater project.*

8) **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 48.1, Zone RL3. Access is proposed to be gained through Section 139.00, Block 1, Lot 28.1 & 36.1. Property Location: High Meadow Farm Road. Major Subdivision. Preliminary plat. Subject to SEQ. *Note: This application is in conjunction with SPR05-11 and was tabled at the September 22, 2005 meeting pending additional information.*

Rolf Ronning gave an overview and said (1) there will be two areas accessed from land over Billy Reed and the other over land of Michael Leone and (2) the only change that there will be is that what are shown as Lots 9A and 9B is actually supposed to be a lot line adjustment where Michael Leone gets approximately 5 acres of land added to his land and he (Rolf Ronning) gets one lot, which is Lot 9 along with a right-of-way through Michael Leone's property—so it will be reducing the number of lots by one.

J. Gaddy said that (1) he is concerned with the amount of road in the watershed, which has been affected twice in the last year, (2) there is an awful lot of road on Lots 18, 17 and 16, which is a low area and (3) he has a letter from Town Highway Superintendent Tim Coon who is against the Town of Bolton taking over a road like this because the amount of disturbance will change the hydrology along the way. Rolf Ronning said that they have stormwater approved that will take care of this for each lot. J. Gaddy said it seems like a lot of driveway to access two lots—Lot 16 and Lot 17—and he would like to see if there are any alternatives. Rolf Ronning said they looked at it, but this is the only way to do it.

J. Gaddy said that Lot 23 shows a house site in the middle of the pond and Rolf Ronning said that is not where the house site is—if there is a stake in the pond it may be a locating stake, but that doesn't mean anything will be there.

H. Caldwell asked if the existing road would be used to access Lot 5. Rolf Ronning said that (1) Lot 5 is where the old marina is, there is a driveway into the old marina and that driveway is going to connect to the subdivision road and (2) the map shows the old road that exists—it is not meant to be accessed, it just exists.

H. Caldwell asked if the piece of land that was in question between the applicant and Mr. Budner has been taken care of and Rolf Ronning said yes, he sold a piece of land to Mr. Budner as a lot line adjustment. H. Koster asked why that area is still shown on the maps as two lots, because it is supposed to be combined into one lot. Rolf Ronning said the former lot line is shown and it can be eliminated now because of the lot line adjustment from Mr. Budner. H. Koster asked if it is all the same tax number now and Rolf Ronning

said yes, it should be now. S. Aldrich asked what the total length of the proposed road is and Rolf Ronning said that it is just about one mile.

J. Gaddy said he would like to have the applicant eliminate Lot 16 because it is still on a hillside, still steep, and it is contributing to the amount of disturbance leading to the drainage area. Rolf Ronning said (1) he is willing to pave the drives if that is what the PB wants and (2) all of the stormwater is based on that driveway on those two lots—it is not a problem—there are good soils up there as shown by the test pits. J. Gaddy said that on Lot 16 the test pit and house locations are entirely different areas. Rolf Ronning said that he doesn't want to give up the lots and J. Gaddy said he understands. Rolf Ronning said that is a hard wood forest up there and hard wood suggests deep soils—the soils are good up there.

PB members asked several questions for clarification of map markings and labeling. H. Caldwell said that he would like to have Indian Brook marked. Rolf Ronning approached the PB bench, where individual, inaudible discussions ensued.

Motion by John Gaddy to table application SD04-16 pending additional information, specifically (1) to have the definition of Indian Brook detailed on the map so it is more apparent, (2) to have the center line of the roadway as a break from the existing driveway by Mowery's to be staked off so it could be looked at, (3) submission of a proposal for an alternate house sites on Lot 16 and Lot 23, (4) elimination on the map of the lot line on Budner's, and (5) the elimination on the map of the ATV trails around the old riding stable. Seconded by Susan Wilson. All in favor. Motion carried.

Counsel asked if the applicant submitted a jurisdictional inquiry from the APA for this application and Rolf Ronning said yes, but he is not sure when.

9) SPR05-11 SADDLEBROOK SUBDIVISION. Rolf Ronning. In accordance with Section 125.13C1 of the stormwater regulations, seeks Type II Site Plan Review for a major project, specifically to remove more than 15,000 sq ft of vegetation. 30 acres proposed: total build out is 30 acres, road alone is 12 acres. Section 139.00, Block 1, Lot 28.1, 36.1 & 48.1, Zone RL3. Property location: High Meadow Farm Road. Subject to WCPB review. Subject to SEQR. *Note: This application is in conjunction with SD04-16 and was tabled August 18, 2005 pending review and approval by Town Engineer Tom Nace and has not yet been heard by WCPB.*

H. Koster asked that all retention basins and fire ponds be located by the surveyors on site and Rolf Ronning agreed. H. Koster asked how fire trucks are supposed to access the fire pond and Rolf Ronning responded by saying that there is a hammerhead. H. Koster said the hammerhead is still 200 feet away from the fire pond, which is a problem because the hose the Fire Dept. uses a short hose that doesn't have extensions. H. Koster suggested that the applicant extend the hammerhead as per Fire Dept. recommendations. S. Aldrich asked if a dry hydrant is an alternative and H. Koster said yes. Rolf Ronning agreed to put in a dry hydrant, which would not require a meeting with the Fire Dept.

S. Aldrich asked if another Environmental Assessment is needed since the subdivision has changed so much, for example, on page 2 of 21 it shows the subdivision road being two miles where it is shown on current plans as being one mile and Counsel said no, the PB does not need to require the applicant to submit another Environmental Assessment—the PB can just have that fact conform to the applicant’s finally approved plan, then the PB acts upon it and sees if there is impact.

H. Koster asked if Town Engineer Tom Nace approved the latest plan and P. Kenyon said yes, she spoke with him today. Rolf Ronning said that the stormwater is right now and asked if the stormwater is to be recalculated given the PB’s request for alternate house sites on Lots 16 and 23. J. Gaddy said no, he is just looking for a proposal for alternative house site locations on Lots 16 and 23 without the need of going to Town Engineer Tom Nace. H. Koster said it would still have the same area of impervious or less with a shorter driveway.

H. Koster asked if this has been to the WCPB and P. Kenyon said no.

Motion by John Gaddy to table the application pending WCPB Review. A copy of the APA jurisdictional inquiry must be submitted to the Planning Office. Seconded by Sue Wilson. All in favor. Motion Carried.

10) JOHN GADDY & HENRY CALDWELL. To discuss the Alfredo parcel, specifically the size of the roadway and tree clearing. Section 213.09, Block 1, Lot 4, Zone RL3 & LC25. Property Location: 157 Southview Drive.

Note: John Gaddy stepped down from the PB bench to present this item as a public citizen then resumed his position as a PB member for the rest of the discussion as noted later in the minutes.

From the public, John Gaddy gave an overview and said (1) he is concerned with the erosion of the ridge line tree cover, (2) the Master Plan had a number of concerns about the erosion of the hillside clearing, (3) he is concerned with hillside clearing in general and (3) regarding the (Thomas) Alfredo property, it was a long drawn-out process of losing tree coverage. John Gaddy then read the original motion by Mitzi Nittmann from the November 20, 2003 PB meeting minutes into the record about trees being verified before any cutting being done or trees removed and said (1) while the Alfredo house cannot be seen from the lake, the cutting can be seen, (2) there is a decrease in tree coverage in that area, and (3) in accordance with what the Master Plan is asking for and in the effort to have the trees numbered, he thinks the trees should be replaced as they are taken down—out of the approximately 100 trees numbered he believes about 25 have been taken down.

Note: John Gaddy resumed his position as a PB member for the rest of the discussion.

H. Caldwell asked if Thomas Alfredo is completely finished with the project on this piece of property. Thomas Alfredo replied by saying (1) yes he's done with project, but he may add some more trees to dress up the house, which would be pure landscaping, (2) he is confused because he thought he was here to talk about the widening of the road, (3) Tom Jarrett, his engineer, said he had no issue with the road—it was done as proposed, (4) if you drive up the driveway you can see there is no erosion, which speaks for itself, (5) every tree that has been taken down has been either dead from the change in environment and it is very common in a row of trees that if you take out an area adjacent to it you may lose a few because they haven't been as protected as they were before—that is a common fact, (6) his property manager, John Webster, has confirmed that it is about 21 trees that have gone, (7) the picture he submitted of his property shows that his house cannot be seen from the lake, which was the primary agenda of the PB in the seven months he presented the application to the PB and (8) regarding replanting, while he understands and respects John Gaddy's commentary, since it wasn't in his approval process, he doesn't think it is fair to try to force him to do that now or you would have to go back over the last 20 years to every house you can see from the lake from a boat and have them do the same.

J. Gaddy said (1) he firmly believes that although the PB has done business in the past where things have been able to be cleared out so we are looking at these houses, he wanted to be able to have this PB be able to start to get a handle on that because it has been a large concern of the residents of the Town of Bolton and it is documented with the regulations the Town of Bolton has in zoning, subdivision and the Master Plan and (2) he noticed when he went there that additional clearing had been done on other people's property—trees were trimmed—and the adjacent landowner said the trees that were trimmed were not his doing—nobody knows who did it, (3) with the number of trees that are down, he would like to have the trees that were originally part of the condition to remain and be replaced. Thomas Alfredo said the fact that the house is invisible from the lake, which was primarily the concern of the PB and the public at the time, he would not want to agree to that at this point, because he wouldn't want to be in the position if a storm comes through and wipes out 20 trees that he would now be responsible for replacing them.

J. Gaddy said the PB is now asking people to replace trees taken out in the development of roads and Thomas Alfredo responded by saying that (1) that has nothing to do with him—he is over and done and (2) he and the PB made a deal, he stuck to his part of the deal and if the PB wants to add something to it now—he doesn't agree with it. H. Koster said that he thinks J. Gaddy is getting into dangerous territory asking people to do something that nature has done—to replace trees that either die of old age or from iron in the soil—when they fall down you can't expect somebody to replace them. J. Gaddy said that (1) he feels that if that is the way the PB is going to go on that one, then he would like to go with the ground cover where the PB takes a look at the removal of the undergrowth along the way, (2) he would say that the native cover has been altered a bit, but again, he thinks it is hard to enforce that way and (3) he does believe as you look at the kind of development that has happened on that ridge, there is a noticeable difference that is dependent on the development and the tree removal.

H. Caldwell said (1) that the house is not visible from the lake, but it is exposed to the southwest, (2) he would like to see Thomas Alfredo do some ground cover or some tree planting to the southwest, and (3) while Thomas Alfredo has done a good job with the road and it looks good now that it is completed, there were a lot of problems with the road during construction, which is what the PB's problem is—a lot of the stormwater problems are done during the construction phase.

Thomas Alfredo replied by saying (1) with the amount of swales and additional drainage they put in, that property handles every bit of water—there is no erosion now and was very little erosion during the construction process, (2) he thought that project was a model for the stormwater regulations and that they did a good job, and (3) it looks like a quiet county driveway today. H. Caldwell said it does look good today. Thomas Alfredo said (1) you will have some erosion during construction, (2) regarding the comment on tree planting, he feels that the PB is trying to implement something here that was not part of the original deal, and (3) he would probably be a little more flexible if he didn't feel there was a little agenda based on a few neighbors, (4) they have had some trees fall in both directions and he felt he was doing the right thing in cleaning up the property and getting rid of rotted branches or trees that have fallen, (5) they get groups of hikers from Canoe Island Lodge on his property each day—in fact the Canoe Island Lodge brochure invites hikers to picnic at the ledge, so people are walking up there on a daily basis from Canoe Island Lodge and walk through, (6) this is not a piece of property that isn't traversed on a regular basis, so you can't point fingers as to who cut branches, etc., and (7) when people hike up they don't want to go back the same hiking trail, so they wind up walking down his property across his driveway, which is a viability to him—there is a lot of activity happening on that ledge that the PB may not be aware of. J. Gaddy said that (1) he would like Thomas Alfredo and his property manager to be alert to tall people that are cutting tree limbs between his house and the lake up around 10 or 12 feet high and (2) he took pictures today that show the trees have been limbed out along that way and it is funny that is just happens to be on the lake side and (3) he thought it would be a good effort for Thomas Alfredo to show his conviction to replace these trees as the original condition said that the trees remain. Thomas Alfredo said that when a tree falls down next to an adjacent tree and breaks four or five limbs coming down they will clean it up. J. Gaddy asked if they would clean up what fell on a neighbor's property and Thomas Alfredo responded by saying (1) he thought he was doing the right thing—he didn't do all that work, (2) in the one or two cases where the tree fell down and they were cutting the tree that was lying all the way across the ledge, they would cut up anything that was broken within two or three days of where the trees fell—the trees were lying in all different directions. And (3) he thought they were here to discuss the driveway. J. Gaddy said the agenda item lists the driveway and tree cutting.

S. Wilson asked if this is something being addressed at the deliberations of the committee working on implementing the Comprehensive Plan and J. Gaddy said (1) they will get around to it—it will take over a year to get worked on and (2) with the original condition of the trees to remain and the fact that the Town of Bolton went through the effort to number these trees was an effort to go out and keep development allowed, but minimize

visual impact, (3) his contention is still that this project has a visual impact on the ridge line and is the first one in the Town of Bolton area that there was a lot of discussion on and (4) Thomas Alfredo is absolutely right that there is a lot more visual impact from other people and he (J. Gaddy) will be making a motion toward that. Thomas Alfredo said that it was not in the original plan for zoning approval and it is not there now—they conformed to everything the Town of Bolton wanted in every way.

J. Gaddy asked how Counsel interprets the covenant that all trees remain and Counsel answered by saying that it is going to come down to an issue of fact—if Mr. Alfredo is correct with his facts and has abided by the requirement, his recollection is that every tree remain that had a number on it, then clearly the Town of Bolton has the benefit of the covenant and the PB can enforce it. J. Gaddy said that he believes the Town of Bolton has an arguable position that the trees be replaced. Counsel agreed and said the PB has an arguable position that the trees should be replaced, (2) the covenant says, “...all trees 100 feet north or south of the house perimeter in the 50 foot building setback be carefully numbered and not removed...”, (3) the argument is that some of the trees have been removed, but Mr. Alfredo’s point is that they naturally blew over or were dead or rotted, so if the Town of Bolton takes the position that it is entitled to enforce the covenant and are entitled to have trees replaced, that is something a court can decide—the argument being that the Town of Bolton has the benefit of the covenant, and (4) the PB has to be very specific and very direct on this particular project and enforcement of the covenant—probably there are two things working here: there is an alleged violation of the site plan approval and an alleged violation of the covenant.

Thomas Alfredo said that (1) when he went to the final meeting with the PB, he suggested numbering the trees and he specifically asked what would happen if a tree dies or falls over and the PB agreed at that time that a building inspector or assistant would come out, look at he numbered tree, approve it before it was touched and then they could do that and (2) the point is that if the Town of Bolton comes out and says a fallen tree is dead or is a hazard and he has permission, the Town of Bolton has now given him approval to remove it. Counsel said that he recalls something like that, but the best recollection is evidenced within the minutes. Thomas Alfredo said that these trees are in the proximity of landing on the house, so in the case where there is a dead or half fallen over tree, before they get permission, some of these trees are hazardous. Counsel said that (1) a homeowner or landowner always has the right to take down those trees—always and (2) the covenant never intended for Mr. Alfredo to maintain something dangerous.

Thomas Alfredo said he doesn’t really see what the issue is. J. Gaddy said he wants to see how many PB members want to see the trees that came down replaced. Thomas Alfredo said (1) he thinks J. Gaddy has a wonderful idea and he respects it 100%, but it is a shame it wasn’t implemented 20 years ago because as he drives down the lake he can see in people’s windows, (2) if the PB wants to set that precedent they should start with the 2006 applications and (3) the bottom line is that this house is done, was signed-off on, and has a CO—you can’t start here. J. Gaddy said his opinion is that the bottom line is that this is the case that started it—trees were never numbered in the Town of Bolton

before this project. Thomas Alfredo said he can't control windstorms or dead trees and J. Gaddy said he could replace the 24 trees that have gone down. Thomas Alfredo said he could, but he is not obliged to.

Counsel said (1) Mr. Alfredo has answered the call so to speak—he is present and has spoken and (2) the PB has to do something in terms of whether it wants to move forward or don't if it is satisfied with Mr. Alfredo's position. H. Koster said (1) he feels there were a lot of innuendos being thrown by J. Gaddy, (2) he thinks if it was handled differently then Mr. Alfredo would have accommodated J. Gaddy in some way, (3) he thinks by handling the matter in public like this that J. Gaddy burned his bridges and (4) he thinks that the replanting of trees when it wasn't in Mr. Alfredo's site plan review is ridiculous. J. Gaddy said that there have been many issues where the PB has tried to get trees re-planted when there has been damage along the way and he thought his was going to be a step in preventative maintenance.

Motion by John Gaddy to require Mr. Alfredo to replace all tagged trees that were removed. Seconded by Henry Caldwell. Two in Favor (J. Gaddy and H. Caldwell). All Others Opposed. Motion Denied.

11) JOHN GADDY. To discuss the appropriate options for alternative remedy measures when violations occur concerning tree cutting.

J. Gaddy said (1) in reference to alternative remedy, the TB is faced with dealing with civil penalties, (2) some people have been fined \$500 and others \$1,000, and (3) he suggests the PB make a recommendation to the TB regarding alternative remedies—specifically on how to react to the type of clearing in the Timothy Harrington situation. H. Caldwell said (1) he thinks it is a case-by-case situation and (2) penalties should be increased, because people are not discouraged by the current penalties. H. Koster said (1) the TB is limited by what is on the books and (2) he thinks the maximum penalty and replanting should be instituted.

S. Aldrich asked if the TB could compound penalties on a tree-by-tree, daily or weekly basis where the civil penalty would be incrementally multiplied and Counsel said yes, that is true. S. Aldrich asked if the TB would feel any more comfortable doing that if there was a positive recommendation from the PB in that direction and Counsel responded by saying (1) it is hard for him to anticipate how the TB members would individually feel about the PB's recommendation—he senses they would be persuaded, (2) whoever is accused of whatever the transgression is before the TB stands accused of a violation for which they face a civil penalty which the PB can rightfully say is not much, and that even by multiples those are the civil penalties on alternative remedies, (3) if the PB looked at this comprehensively and Bolton wanted to be done and done right, the PB can say to the TB for example that the PB recommends that in lieu of or in addition to a civil penalty they want this re-planted or want the equitable relief or want the Town Board to join the Timothy Harrington in litigation and that the code provides within a proper court order he will be instructed to re-plant those properties and restore them, (4) he would argue that the number of and height of replacement trees would need to be

adequate to replace that which was taken away, (5) that type of approach is that the first thing you do is file a notice of pendency against the property which will lock it up—it can't be sold, financed, nothing can be done with it until a determination is made in a court of law and once the determination is made it is fixed on there as a judgment—there are a lot of remedies, and (6) the cons are that it takes a lot of time. Counsel then referenced the Greenmeier/Hubble case.

H. Koster asked if the property was shut down when this was going on and Counsel said (1) no, they didn't put that notice in, but he would always put the notice in and (2) putting that notice in would certainly turn up the heat because that person can't get financing and is basically in violation in lots of things if they already had financing and (3) he doesn't encourage bringing lawsuits, but he feels that if the PB recommended to the TB that Timothy Harrington re-plant they would ship it back to the PB asking what they want for a replanting plan. H. Koster asked if in the meantime they would up the property. Counsel said (1) yes, (2) he's not saying it's the goal here, but sometimes people abandon the property and then it becomes the property of the town, (3) there are many shortcomings in the existing law for enforcement, (4) there are many different directions they can go in, (5) he would love to have the sections in the code that talks about the big numbers that the PB and the TB would like to see, but he has not found it anywhere in Town of Bolton law and (6) there must be due diligence in the proceedings.

Motion by Henry Caldwell to recommend to the Town Board that they; 1) impose the maximum civil penalties. 2) A replanting plan is to be approved by the Planning Board. 3) Mr. Harrington is to enter into an agreement with the Town, stating that any legal fees incurred by the Town of Bolton are to be paid by him. This must be a deed covenant. **Seconded by Sue Wilson. All in favor. Motion Carried.**

12) WAYNE SMITH. To discuss raising livestock on his property as he has been doing for the last 14 years. Section 123.00, Block 2, Lot 59, Zone RL3. Property Location: See SPR95-13 for an agricultural use, specifically to maintain Scottish Highland Beef.

Note: This item was for discussion only, so no resolution was needed or made.

Wayne Smith gave an overview and said (1) he got approval to have cattle on his farm in 1995 and at the time he was raising other animals on the farm, (2) over the years he has raised several animals for food consumption, (3) he currently has cows, chicken and hogs and has now been told he needs individual site plan review for each type of animal, (4) there are not many farm laws, but there is a NYS Agricultural Law that does not apply to Warren or Hamilton counties, but can be used by townships as a reference point since there are not very many farm laws in existence, (5) in subsequent years he was before the Town of Bolton for a storage addition and the animals were there and the issue was never brought up—he was never told having them there was a problem and (6) there were some complaints about the chickens on the property and when Code Enforcement Officer Mitzi Nittmann checked out the farm she said there was no problem with having the chickens there.

H. Koster asked if the applicant needs site plan review on every type of animal on this property and Counsel replied by saying (1) that is a loaded question in terms of how the facts are now presented and (2) in 1995 only cows were discussed. Counsel then read from the 1995 PB meeting minutes and said (1) yes, site plan review is necessary animal by animal, (2) there is an Agricultural Markets Law in the State of New York that does specify agricultural districts that are called by “Layman Right to Farm Laws”—that does not exist in the Town of Bolton, but what you do have in the Town of Bolton is Wayne Smith’s particular zone which permits agricultural pursuits if he has site plan review, and (3) the applicant has the right to petition the PB to amend the 1995 resolution.

H. Koster asked the applicant which specific animals the applicant is seeking site plan review on and Wayne Smith answered by saying currently he has chickens and hogs on the farm. H. Koster asked where the animals are kept and if they are fenced in and Wayne Smith gave the locations and said yes, the animals are fenced in, however he has had a chicken or two get out last year, but has had no problems this year. J. Gaddy asked if the hog manure is away from the stream and Wayne Smith said yes, he had Warren County Water and Soil at the property and while they didn’t do an official inspection they reviewed the farm and said there weren’t any problems with the silt pond or the run-off stream.

H. Caldwell asked what the maximum number of chickens, hogs, cattle, and sheep the applicant would want on the property at any one time and Wayne Smith said (1) 50 chickens, (2) he has had up to 10 hogs, but plans on having an average of 4 or 5 on the property at a time, (3) he has had up to 32 cattle, but plans on having an average of 6 to 8 on the property and (4) he has had a few sheep in the past, but doesn’t have any currently—he may want to have 1 or 2.

Wayne Smith said that (1) the animals were always there, (2) he spoke with Mitzi Nittmann numerous times about it and she said he was in accordance to the agricultural requirements, and (3) his understanding is that Bolton Landing doesn’t have too many agricultural laws—the town does have the site plan laws, but in speaking to several agencies, they all said the same thing—normally if a town doesn’t have a law, then the town will adopt the county or state law.

S. Wilson asked if the PB can legally do anything on this matter tonight without an application and Counsel said (1) no, to add things other than what was given approval in 1995, Wayne Smith must put an application in to seek amendment of that site plan and give notice so the public can be heard on this matter and (2) ultimately, the PB will be the board to decide if Wayne Smith’s argument factually that he has been maintaining these animals here for 14 years.

Wayne Smith said that the county and the Town of Bolton don’t have any agricultural laws and read from page four of the NYS Agricultural Law into the record. Counsel said (1) the Town of Bolton does not have an agricultural district and it is not regulated under the section Wayne Smith read into the record, (2) page 3 of the same brochure discusses

the right of the PB or other designated body to grant special use permits as set forth in the Zoning Ordinance or Local Law, which the Town of Bolton has as shown on page 20109 under Zoning District RL3, and (3) it is true that Type II use permitted by special use permit is agricultural use, so procedurally, he (Counsel) has no problem with the fact that Wayne Smith ought to be allowed to present facts and the PB can determine if it is an appropriate site, if it is an appropriate agricultural use and how he is going to do it—the public has a right to be heard, and (4) under no circumstances is he (Counsel) suggesting to the PB that what Wayne Smith wishes to do there is prohibited—not at all—it is permitted if the PB says so, permitted with conditions if the PB says so, or it is prohibited after the PB gives Wayne Smith a public hearing if the PB feels the site is somehow inappropriate or the animals selected are inappropriate, but it can't be done informally tonight.

Wayne Smith said the Farm Bureau said that because he is zoned agricultural the NYS Agricultural Law will apply and H. Koster said Wayne Smith wasn't zoned agricultural, but had site plan review to have cattle. Wayne Smith said he understands and he is already working on his application with Zoning Administrator P. Kenyon.

13) To amend Section 200-46(10). Fills shall not endanger adjoining property nor divert water onto the property of others. Maximum cut or fills shall be in conformity with any requirements imposed by the New York State Uniform Fire Prevention and Building Code for all construction.

S. Wilson asked if this item is to just add the verbiage.

Note: From the public, Andrew Holding approached the PB bench and handed out documentation to all PB members.

Counsel said (1) that particular section of the code (200-46 sub 10) currently says, "Fills shall not endanger adjoining property nor divert water onto the property of others. Maximum cut or fills shall be six feet for all construction." (2) he has no problem with it as it is stated, until he asked Zoning Administrator P. Kenyon and Code Enforcement Officer Mitzi Nittmann if it is enforced and applied and the answer was "no", (3) his position was that if the offices are not enforcing it or requiring it of applicants then it can't be part of the code, (4) after additional discussion of what they want to achieve, they came up with the answer that where Kenyon and Nittmann were concerned was that practically every project they have merely seeking a building permit from the county, first the COC from the Town of Bolton, where it involves a basement it probably involves a cut and fill that does exceed six feet which is why they weren't enforcing it, (5) he (Counsel) said they need new language then, (6) other alternative language is available and (7) from a law standpoint, he's concerned that if the Town of Bolton has something in its code then they should be enforcing it—if not, then it should be taken out of the code.

H. Koster said he thinks the proposed verbiage is fine and asked if the recommended language is acceptable and Counsel said that if it doesn't pertain to something the section

should say what it doesn't pertain to. H. Caldwell asked why the requirements of the New York State Fire Uniform Fire Prevention and Building Code and Counsel answered by saying (1) they are the ones doing the inspections regarding how high, deep and wide it ought to be and (2) the PB is concerned with the fill, lay of the land, how it affects adjoining properties, etc. and (3) encourages the PB to do something because he doesn't like working in the Zoning Administrator's Office or Code Enforcement Office, learning from time to time that there are sections they don't enforce.

Motion by Sue Wilson to recommend to the Town Board that they amend Section 200-46(10) to read as follows: Fills shall not endanger adjoining property nor divert water onto the property of others. Maximum cut or fills shall be in conformity with any requirements imposed by the New York State Uniform Fire Prevention and Building Code for all construction. **Seconded by** Sandi Aldrich. **All in favor. Motion Carried.**

Meeting adjourned at 11:02 pm.

Respectfully submitted by
Jennifer Torebka
Recording Secretary
08/29/06