

**Town of Bolton
PLANNING BOARD
MINUTES
December 21, 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, Don Roessler, Susan Wilson,
Town Counsel Michael Muller, Zoning Administrator Pam Kenyon

Absent: None

PUBLIC HEARING

- 1) **SD04-08 BRANDOW, EDWARD. Trout Lake West.** Represented by Rolf Ronning. Seeks to divide into 5 lots that parcel designated as Section 185.00. Block 1, Lot 31, Zone RCL3. Property Location: Trout Lake Road. Major Subdivision. Preliminary Plat. Subject to SEQR. *Note: The public hearing was kept open from the November meeting pending additional information.*
- 2) **SPR06-21 BRANDOW, EDWARD. Trout Lake West.** Represented by 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. 35,750 sq. ft. is proposed. Section 185.00. Block 1, Lot 31, Zone RCL3. Property Location: Trout Lake Road. *Note: The public hearing was kept open from the November meeting pending additional information.*

H. Koster opened the public hearings for SD04-08 and SPR06-21 Edward Brandow, Trout Lake West at 6:07 pm.

Dennis Dickinson, project engineer, representing Edward Brandow, gave an overview and said (1) they have two parcels that they subdivided into four lots, (2) each lot is 3+ acres with individual septic systems, (3) the roads have been enlarged to provide access for emergency vehicles to each of the houses, (4) there are six stormwater basins designed for the capacity of all the increase of stormwater, (5) the stormwater report has been reviewed and approved by Town Engineer Tom Nace, (6) the APA has signed off on the wetlands located on the north, (7) part of the stormwater plan is that silt fences be put up prior to construction for stabilization, (8) the property across the road from the lake parcel is 9 acres and they have done all of the same procedures for that property—this parcel does have 75 feet of Trout Lake access and (9) the PB requested additional soil testing which has been done and provided.

H. Koster asked what the difference is between the submitted map and the map received today and Dennis Dickinson said the only change is the map received today shows four test pits labeled Test Pits 1 through 4 '06.

From the public, Chris Navitsky, Lake George Waterkeeper, (1) said that he hopes the PB will not just rely on the letter from the Town Engineer but will review all of the information contained in the application and realize that there is information required by the ordinance that has not been provided (deep test pits) and (2) asked the reason for the chosen septic locations. Chris Navitsky then said that (1) the stormwater calculations did not account for all cleared areas of the houses, lawns and roads, (2) according to the calculations, the area which is not paved and impervious will remain woods, (3) calculations are based on the fact that the ponds will be empty, when the plans state there will actually be water in the ponds, which would lead to a system that would fail, (4) there are no pre-treatment devices to protect the basins and remove sediment as required by the ordinance, (5) there is no stormwater management information for Lot 5—he doesn't understand how the Town Engineer can approve this without that information on the lot, (6) the application is still considered incomplete by the APA and (7) he encourages the PB to review the entire file before making a decision.

Dennis Dickinson said (1) they have done a lot of soil testing—the test pits shown are the ones he can authenticate, (2) there are deep sandy soils and the water table is down 6 or 8 feet, (3) they are doing septic system designs—where they will have to pump, but in this day and age it is not a problem, (4) the stormwater basins are designed to comply with the Town of Bolton's stormwater requirements and the satisfaction of the Town Engineer and (5) the APA has been part of this project since the beginning and the last issue they have with the APA are cutting restrictions, which they have a proposal for—that is the final outstanding request from the agency which they will have done shortly.

Correspondence: Counsel read the following correspondence into the record.

- Letter from Kathy Bozony of the Lake George Association dated 12/18/06 - opposed.
- Letter from Julie Denison dated 12/21/06 - opposed.

Dennis Dickinson said (1) they have mitigated all of the LGA's concerns, so he is not going to comment any further, (2) the Denison letter is an ongoing problem—they have set up restrictions on cutting and structures, he doesn't believe the agreement says anything about no access to the lake, (3) Julie Denison's agreement has restrictions of no cutting and no building, but she didn't have any restrictions about no roads, no parking, or no paths and (4) they don't have any structures on her property.

H. Koster said that according to the Denison letter, she hasn't sold or given the property to the applicants yet. Rolf Ronning said that (1) actually she has, (2) they agreed to a no cutting zone and there will be no cutting, (3) they moved the parking area onto Lot 1 so there would be no cutting at all and then people would walk through the woods down to their dock and that would be the end of it, (4) Julie Denison signed an agreement that she wouldn't do this, so her attorney and Dr. Brandow's attorney are going to resolve this somehow, (5) what was agreed to and what is reflected on this map is that besides the 1.8 acres that she demanded, they gave another 75 feet on the shorefront with the idea that there would be no structures

and no cutting—they intend to do that, (6) that does not preclude it from being used as a right-of-way, otherwise Julie Denison might as well own the land and (7) the dock being in the lake is not a structure on the land—their intent has always been to use the land to provide some lake access for Lot 5.

Dennis Dickinson said that the parties have actually signed the transfer of the land with these conditions and have filed it at the Clerk's office—it is a done deal, it has been a done deal for a long time, (2) the agencies came back and questioned that transaction on a couple of minor points and Julie Denison has taken that opportunity to go further with her interests and (3) they have signed documents filed at the Clerk's office that this is their land, these are their restrictions and these are the restricted areas—that is the end of conversation.

H. Koster asked about the County and Dennis Dickinson said (1) the County is fine, (2) the only one that is not happy is Julie Denison, (3) the APA has a question as to why they filed more than one map—they are in the process of resolving that issue and (4) as far as Julie Denison goes, they have signed deeds and filed maps. H. Koster said that it didn't sound like that from Julie Denison's letter that Counsel read into the record. Counsel said that (1) he read the letter correctly and it doesn't sound like it is over in Julie Denison's mind, (2) he has done a lot of reading on this matter and he thought the APA at a minimum made it a requirement that the applicants had to solve that boundary line adjustment to give Denison some more property—as an absolute requirement—before Bolton could put it's teeth into this and say yes or no.

Dennis Dickinson said (1) that is basically true, (2) what happened is that Julie Denison had some interest in the property and they negotiated with her to satisfy her interest with this transaction and get her out of the chain of title for the remainder of the property, (3) Julie Denison agreed to it, the APA agreed to it then they filed two maps (the preliminary and then one based on the actual subdivision survey—they are slightly different), (4) the APA has come back asking why the maps are different and they tried to explain that the original map was a map of the contract agreement (a conceptual map) and the second map was an actual survey, which is where they are with the APA, and (5) Denison is out of the picture at this point other than writing to the PB telling them she is displeased.

H. Koster said that he doesn't want the PB judging some legalities of this project, because there seems to be a question here. Dennis Dickinson said that he believes Zoning Administrator P. Kenyon has executed deeds for Julie Denison. Counsel said (1) he does not know that, (2) he has an uncomfortable feeling followed by there is an unresolved issue, (3) most recently in the file there is correspondence to Dennis Dickinson from Atty. John Ray saying that there is a requirement of the APA that Ellen George, Counsel to the APA, has given an indication that there must be this proper boundary line depiction of the 1.02 acre lot and that it has to be correct and that it is not as of November in the Warren County Clerk's Office correct as a match to the applicant's subdivision map, (4) there is another piece of correspondence from Ellen George, Sr. Atty. for the APA, saying that the lot line depicted on the subdivision plat submitted to the APA is still not in compliance with the settlement agreement—that agreement requires that the boundary line between the Denison property (1.02 acre lot) and the Brandow property must be consistently and accurately depicted on the

minor subdivision/boundary line adjustment map and the five-lot subdivision plat, as the map of a proposed boundary line adjustment for Julie Denison has been approved PB and filed with the County, the boundary line on the subdivision plat must be revised to be consistent with the map before the APA will commence formal review of the project, (4) it is entirely possible that Dennis Dickinson and Rolf Ronning have complied with what Ellen George wants, what the APA is looking for and what Atty. John Ray is saying is needed—but the applicants need to know that Julie Denison’s written letter says that they are not done and she has not signed anything and it is not complete—this is where they are confronted with a factual dispute, (4) he would never feel comfortable saying to the PB that it sounds pretty good and they know it will get resolved—he thinks they are blocked until that gets resolved.

Dennis Dickinson said that (1) they are trying at this point to reassure the APA that the second filed map at the Clerk’s Office is exactly the same as the subdivision map and (2) once they satisfy Ellen George to that fact, then they have a filed deed, filed maps and now have Ellen George convinced that they have done it properly, (3) what Ellen George is doing is looking at the two different filed maps and saying they don’t match—he agrees that the maps don’t match, but that is because one is their intent and one is their intent put to facts of the survey (he then pointed out the differences on the maps to clarify), so he believes this issue will be resolved and resolved soon and (4) once the matter is resolved, they have filed deeds and filed maps that are reflected in the subdivision—Julie Denison has signed off on it.

Counsel said that (1) he does not feel the PB can go forward on this project until the discrepancy is resolved and (2) he would stick with the Denison letter where she attests the matter is not over. Dennis Dickinson said that they have filed documents and Julie Denison is giving her opinion—that is the difference—one is fact and one is opinion. Rolf Ronning said that (1) Julie Denison learned that there is going to be a right-of-way on the 75 feet for the guy on Lot 5 to go to the lake to get to his boat and she didn’t expect that because she said no cutting and no structures and now she is trying to force them not to use that as a right-of-way and (2) they feel they are entitled to use that as a right-of-way, which has been their intent since the beginning.

H. Koster said he feels the PB should extend this PH and Counsel said the PB should.

J. Gaddy asked if the dock is a land or a water structure and Counsel said he doesn't think it is a land structure. Rolf Ronning said it would be a stake dock on Lot 5.

D. Roessler asked if the lake access for Lot 5 is depicted on the new map and asked for location clarification. J. Gaddy asked for the parking area locations to be clarified as well. Dennis Dickinson approached the PB bench to clarify then went back to clarify those areas and the easement area on the map. Further discussion ensued on map clarifications.

J. Gaddy asked if there would be any additional cutting done on the easement lot to obtain vehicle access to the parking area and Dennis Dickinson said no.

Motion by Don Roessler to extend the public hearings on SD04-08 and SPR06-21 Edward Brandow, Trout Lake West to the January 2007 PB meeting pending additional information. **Seconded by** S. Aldrich. **All in favor. Motion carried.**

REGULAR MEETING:

H. Koster opened the regular meeting at 6:52 p.m. by asking for corrections to the November 16, 2006 minutes.

Motion by Don Roessler to approve the November 16, 2006 minutes as presented. **Seconded by** Sandi Aldrich. **Five in favor. Two abstained (H. Koster and H. Caldwell, as they were not at that meeting.) Motion carried.**

- 1) **SD04-08 BRANDOW, EDWARD. Trout Lake West.** Represented by Rolf Ronning. Seeks to divide into 5 lots that parcel designated as Section 185.00. Block 1, Lot 31, Zone RCL3. Property Location: Trout Lake Road. Major Subdivision. Preliminary Plat. Subject to SEQ. *Note: The public hearing was kept open from the November meeting pending additional information.*

Motion by Donald Roessler to keep the public hearing open and table the application pending an agreement between Julie Denison & Dr. Brandow. **Seconded by** Chauncey Mason. **All in favor. Motion Carried.**

- 2) **SPR06-21 BRANDOW, EDWARD. Trout Lake West.** Represented by 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. 35,750 sq. ft. is proposed. Section 185.00. Block 1, Lot 31, Zone RCL3. Property Location: Trout Lake Road. *Note: The public hearing was kept open from the November meeting pending additional information.*

Motion by Donald Roessler to keep the public hearing open and table the application pending an agreement between Julie Denison & Dr. Brandow. **Seconded by** Chauncey Mason. **All in favor. Motion Carried.**

- 3) **SD06-19 WESTWOOD FOREST WEST-** Rolf Ronning. Seeks to amend previously approved plats (SD05-24 & SD06-16) approved by the Planning Board on August 24, 2006 and September 21, 2006. Specifically to create a lot line adjustment between lots 1 & 2. Section 139.00, Block 1, Lot 8.1, Zones LC25, RR10 and RIL3. Property Location: West side Hendricks Road, off County Route 11. Sketch Plan Review. Subject to SEQ.

Rolf Ronning gave an overview and said (1) there is a contract with David Johnson and his corporation for a tree-top challenge course—an environmentally friendly facility, (2) these projects have been successfully done in Canada and Europe and to his understanding this will be the first in the United States, (3) there is a small wetland on Lot 1—they have reconfigured Lot 1 to be 1 acre, Lot 2 will be 5 acres and Lots 2, 3, & 4 will be conveyed to

David Johnson for his tree-top activity center, (5) at the end when he sells the other lots, he will convey Lot 1 to David Johnson so he will have the whole thing, and (4) they have a non-jurisdictional letter from the APA if they go with this current configuration.

H. Caldwell asked if the transaction is acceptable to Counsel and Counsel said yes, he doesn't see any impediment in it if the PB approves of it as it is presented.

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

Motion by Donald Roessler to accept the application as a completed sketch plan, convert the sketch plan to final plat, 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** Sandi Aldrich. **All in favor.**
Motion Carried.

Mike O'Connor of Little and O'Connor, representing LLC JDJ Enterprises (David Johnson), asked if the Town of Bolton has determined if this project would be a major or minor stormwater and Counsel said he believes in fairness to what Bolton has agreed to in a consent order in previous litigation, where you take a major then subdivide it into lesser lots, the Town of Bolton still agreed and have consented that each of the lesser lots would still constitute another major, so this would be a major subdivision. P. Kenyon asked if this involves Lot 1 as well and Mike O'Connor said no, not for the configuration that was just approved by the APA. H. Koster said that if Lot 1 is transferred in the future it will still be a major stormwater and Rolf Ronning and Mike O'Connor said they understand.

Rolf Ronning said that in reference to the National Grid letters, the power company is now saying the only way they can bring the power in is to go above ground from East Schroom River Road then up County Route 11 to Hendricks Road. J. Gaddy said that when the application was originally submitted the power would be coming from the north as opposed to County Route 11. Rolf Ronning replied by saying that there is more power access to County Route 11 with future development that is planned as opposed to the area to the north and that is why coming from the south is National Grid's preference. J. Gaddy said that regarding County Route 11, Section 200-20 Section D Section 4 says "...electric and communication distribution wires should be installed underground rather than overhead..." and (2) the Town of Bolton has learned that with Trinket's project despite the Town's request for them to go underground, Niagara Mohawk was able to go overhead, much to his dismay. Rolf Ronning said that everyone is anxious to get power and National Grid is ready to go on County Route 11 right away, as long as the project wouldn't get stopped because of power lines above ground being that the area is within the scenic corridor.

Counsel replied by saying that (1) the answer is don't ask the Supervisor Gabriels and don't ask the Bolton PB—if Rolf Ronning needs some relief from that requirement any other development within the buffer shall require an area variance from the ZBA, (2) if the development is subject to PB review, the PB will review it, (3) this is development in this sense, that is if you read 200-20 it talks about what you can do on electrical and

communication distribution—the preference is underground rather than overhead wherever possible to minimize the risk to public health, safety and enhance public and private use, (4) Rolf Ronning might be absolutely correct that he needs relief from Section 200-20 and the ZBA is the board to go to in order to get the needed relief.

Rolf Ronning said that he doesn't have the authority to go for underground power on County Route 11 and Counsel said he does as a property owner and Bolton's position is that if it is in the scenic corridor then it is not permitted. Rolf Ronning said that National Grid said it is impossible to go underground with power on County Route 11.

H. Koster asked if this is part of the application in front of the PB tonight and Counsel said no, he doesn't believe it is. H. Koster said that the concern National Grid shows is a step forward and encouraging. Counsel agreed and said that his position is that the intent of the scenic corridor was to prohibit any of the development that might destroy the vegetative scenic cover.

Counsel then said that for the time being the Town of Bolton will take the position that it does want to enforce the scenic corridor conditions as referenced in the Section 200-20 D-4 pertains perhaps not to the private ownership, but to the utility where the utility is being told that "...electric and communication distribution wires should be installed underground rather than overhead wherever possible to minimize the risk of public health and safety and to enhance public and private views...", (2) he believes the best interest is for the applicant to seek relief from the ZBA on the power issue and (3) Rolf Ronning would have to get a variance from the ZBA first then it would only have to come back to the PB if a project still needs to come back to the PB for review.

H. Koster said the PB pushed for the scenic corridor and he doesn't know why this is being discussed tonight since it is not in the agenda and there are other alternatives. Counsel said he agrees that there are other alternatives, but then it comes down to feasibility of those alternatives. P. Kenyon said that she is still not convinced that the applicant would need a variance—she and Counsel need to speak further on the matter, as they are not in agreement.

4) FOY SR., EDWARD. Seeks to discuss condition of approval set forth by the Planning Board on June 22, 2000, when approving the Indian Summit Subdivision SD99-08. The condition reads as follows "No further subdivision of any parcel shall occur." Section 140.00, Block 2, Lot 3, Zone RL3. Property Location: Padanarum Road. *Note: This item was tabled at the November 2006 meeting.*

Edward Foy, Sr., gave an overview and said (1) he missed last week's PH on the project, (2) one point brought up is that Mr. Ronning may sue the Town because he wasn't able to get more than 9 lots—Mr. Ronning has written a letter stating he is in favor of this project and that he will not sue the Town on this matter, (3) years ago family could give acres back to family, (4) he feels they are being brow-beaten by certain people and takes offense to the letter submitted saying shame on him for not giving his other son an acre of land—he takes offense to that—he tries to take care of all his kids, (5) all surrounding 9 lot owners have given their approval of this project, (6) Dr. Keating is concerned with opening Pandora's Box

and in having the granting of this setting precedent, (7) this project was always put in for 9 lots, (8) Counsel said at the last meeting that if the PB does approve this it will not set a precedent—it would only be lifting a no further subdivision on this lot—not the entire subdivision, (9) in his December 15, 2006 phone conversation with Dr. Keating, he (Keating) said he does not have a problem doing this for Jesse Foy if Edward Foy could get a restrictive covenant from the other lot owners, so he (Keating) would know this wouldn't happen to any other lots up there, (10) in the past there was so much clear cutting going on that things got so much stricter—years ago he would have been able to give this land to his son without having to be here for approval and (11) Dr. Keating does have concern with additional lots being able to do this as well, but this is and Lot 1 is the only one with enough room to do this—the others don't have the room.

H. Koster asked what the maximum number of lots were that could have been done up there and P. Kenyon said that it was 16. H. Koster asked if a past PB condition or restriction is binding and Counsel said (1) the PB has the authority and jurisdiction to lift the restriction and (2) under the proper circumstances, if Mr. Foy proves his application to the PB's satisfaction then the PB has the right to do it, but the PB would only be lifting the restriction on this particular lot. H. Koster asked if it is true that it would not set a precedent and Counsel replied by saying yes, it sets no precedent.

J. Gaddy asked what kind of authority the covenant restrictions Dr. Keating is requesting would have if the PB were to lift the restriction on this particular lot and Counsel said that (1) it is a private covenant, it is a contract, it runs with the land and it would be binding upon all of the lot owners that sign it, it must be recorded in the Clerk's Office and, truthfully, it would be binding to the fullest extent actionable by anybody that thought that some other lot owner had violated it, however, then all 10 lots would be 10 people who could also privately agree to undo it—a private right and (2) the Town of Bolton has no interest in enforcing or requiring such covenants. H. Koster said that even if someone got relief from those covenants, they'd still need to be back before the PB to present their case to subdivide another lot and Counsel agreed.

Correspondence: Counsel read the following correspondence into the record.

- Letter from Meredith McComb, PB member dated 12/21/06 - opposed.

J. Gaddy asked if this is even an application yet and P. Kenyon said the PB is still at the discussion stage as to whether it should even be something that can go to an application stage.

J. Gaddy said that (1) his original feeling is that he is reluctant to lift a restriction that the majority of this PB was on when the restriction was put on and (2) it is interesting that the neighbors are so willing to go along with the project and he would like to see the neighbors' thoughts on restrictions. Edward Foy, Sr. said that (1) he would be willing to go with whatever lighting restrictions the PB imposes, (2) he thinks it would be selfish to ask the neighbors to put themselves out beyond a reasonable heart—this is important to him, but other people's rights and privacies are also important and (3) Dr. Keating has reservations

and asked for him to approach all other neighbors to get the land covenants done—he feels that would be unfair to ask his neighbors to do this just for him.

H. Koster said the applicant needs to come back with a plan including septic, design, etc., so it would need to be presented.

J. Gaddy said that most of the lower areas of the lots have been used for the septic systems—they have already been dedicated for that. Edward Foy, Sr. said that (1) Lots 7 and 8 came up with a better system than what is proposed on the subdivision map and (2) he needs to know if the PB would lift the condition of no further subdivision if he meets all of the other criteria. H. Koster said he doesn't have a problem with it as long as the argument is a valid argument and all engineering is approved. H. Caldwell said that it concerns him that a restriction that the PB puts on a subdivision could be lifted so easily, (2) this subdivision took Rolf Ronning two years to get approved and (3) busting up the restrictions then trying to put more restrictions on is pointless.

Edward Foy, Sr. said it has not been an easy process in contacting all neighbors. H. Caldwell said that the PB has received a letter from Dr. Keating saying that he does not approve of it and if he has changed his mind he (Caldwell) would like to see something in writing stating that change. Edward Foy, Sr. said that in his two phone conversations with Dr. Keating, his understanding is that Dr. Keating was going to be at this meeting tonight or would have submitted a letter stating his position.

D. Roessler said that (1) he was on the PB when this originally went through, (2) the PB does make changes to deals it has made in the past and (3) if the applicant can prove he can have everything up to code in addition to Dr. Keating's approval then he doesn't see a problem with removing a condition on this subdivision for this particular lot—it would not set precedent for the entire subdivision and would not lift the condition on the rest of the lots in the subdivision.

Counsel said the next step is for the applicant to go through the application process.

Edward Foy, Sr. said they want to know that if it works on paper then would the PB be willing to lift the condition on this lot and Counsel said that what the applicant is coming away with tonight is not a no, but a possible maybe, so he should put in an application.

NO MOTION

5) SPR06-53 LAKE GEORGE LAND CONSERVANCY. In accordance with Section 200-22 of the zoning ordinance, seeks Type II Site Plan Review for an advertising sign greater than 4 sq. ft. Specifically 16 sq. ft. is proposed. Section 171.19, Block 1, Lot 54, Zones GB5000 & RM1.3. Property Location: 4905 Lake Shore Drive. Subject to WCPB review. Subject to SEQR.

Note: H. Caldwell recused himself, as he is a member of the LGLC.

Cornelia Wells of the LGLC gave an overview and said (1) that they are looking to keep a 2-foot by 8-foot banner up on the site to identify the building until they move in in May or June 2007 and (2) they will be looking to put a permanent sign on the site when it is complete.

J. Gaddy asked if there would be lighting on the banner and Cornelia Wells said no.

WCPB did not have a quorum, so it was a default approval.

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

Motion by Sue Wilson 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** John Gaddy. Henry Caldwell recused himself **All others in favor. Motion Carried.**

- 6) **SPR06-51 BUDNER, STEVEN & JUDY.** Seek Type II Site Plan Review for an agricultural use. Specifically to have 2 horses. Section 139.00, Block 1, Lot 47, Zone RL3. Property Location: 29 High Meadow Farm off of New Vermont Rd. Subject to SEQR.

Steve Budner gave an overview and said that they are here to be in compliance to bring home 2 horses to their house on High Meadow Farm Road—the barn is already built—all they need it PB approval.

S. Aldrich asked for the location of the manure storage and Steve Budner said they would be about 275 feet from Indian Brook and well over 75 feet from the property line. S. Aldrich asked how often the manure would be removed and Steve Budner said that he has already had interested parties approach him on getting the manure. S. Aldrich said she is concerned with the swale in the corner of the pasture that will funnel things toward Indian Brook and Steve Budner said that there is an existing long rock wall that would stop that.

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

Motion by Donald Roessler to accept the application as complete, waive a public hearing and having found that section 200-42 (Animal Husbandry) has been complied with, 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** Sandi Aldrich. **All in favor. Motion Carried.**

- 7) **SD06-17 WARD, ROBERT.** Represented by Atty. Mark Rehm. Seeks to divide into 2 lots that parcel designated as 199.07, Block 1, Lot 8, Zones RL3 & RR5. Property Location: 999 Wall St. Minor Subdivision. Sketch Plan Review. Subject to SEQR.

Atty. Mark Rehm, representing Robert Ward, gave an overview and said (1) they are seeking to subdivide the 33.37-acre parcel into two smaller parcels, (2) proposed Lot 2 is located in RL3 Zone which allows a minimum lot size of 1 acre, (3) this entire property is actually in 3 zones, (4) test pits were completed, (5) development of the lot would have to be up to Bolton codes and the responsibility of the purchased of the lot, and (6) there is non-jurisdictional determination by the APA.

J. Gaddy said he is concerned that the applicant would only be looking at a 1.3 acre lot when there is much more acreage available. Atty. Rehm said that it is just the applicant's preference. J. Gaddy and H. Caldwell said they'd like to see the lot size larger. Counsel said that it is in RL3 and the minimum acreage the owner is allowed is 1 acre, so what is being sought is permitted in this zone.

S. Wilson asked how much of the back lot runs down South Trout Lake Road and Atty. Rehm said it is 115.38 feet. S. Aldrich asked if there is practical access back there and Atty. Rehm said he does not know.

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

Motion by Donald Roessler to accept the application as a completed sketch plan, convert the sketch plan to final plat, 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. John Gaddy **Opposed**. **All others in favor**.
Motion Carried.

8) SPR06-50 SKYE FARM CAMP. Represented by Carl Schoder of Schoder River Associates. In accordance with Section 125.13C1 of the stormwater regulations seeks Type II Site Plan Review for a major stormwater project to remove more than 15,000 sq. ft. of vegetation; 2.8 acres is proposed. Section 138.02, Block 2, Lot 3, Zone RR10. Property Location: 1884 East Schroon River Rd. Subject to WCPB & APA approval. Subject to SEQR. *Note: This application is in conjunction with SPR06-40 for a guest residence building approved by the Planning Board on 9/21/86.*

Carl Schoder of Schoder River Associates, representing Skye Farm Camp, gave an overview and said that they have completed the requested stormwater design, then gave details of the stormwater design by referencing the maps.

J. Gaddy asked what type of plantings would be used and Carl Schoder said there is a plant list on the last page detailing the plants to be used.

S. Wilson asked if this has been to Town Engineer Tom Nace and Carl Schoder said yes, Tom Nace's letter shows that all of his comments were favorably addressed. P. Kenyon said the Town did receive the letter from Tom Nace dated 12/04/06 stating that all concerns were addressed and there are no further comments.

S. Wilson asked if the APA has approved the project and Carl Schoder said (1) the APA is still in the process of review and their determination will be based upon the PB's action tonight, (2) they are still working with the NYSDOH relative to the water and (3) they will be working with NYSDEC, as this project will go in for a GP0201 SPEDES permit for stormwater management—the practices they are proposing are consistent practices with the stormwater management design manual.

H. Caldwell asked if the road up there is being upgraded and Carl Schoder said yes, it is currently being upgraded by regrading and paving to the parking lot, they will gravel top the existing road. D. Roessler asked if the island would be open or raised and Carl Schoder said he would rather reserve that area for a turn-around if needed, it will not be a raised island.

WCPB did not have a quorum, so it was a default approval.

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.**

- 9) SPR06-54 JUMBO REALTY INC. (Mark Bernstein)** Represented by Jonas Ing. Seeks Type II Site Plan Review for an accessory structure greater than 1,500 sq. ft. of floor space. Specifically an expansion to the existing dining hall is proposed for an approximate total of 7458 sq. ft. Section 185.00, Block 1, Lot 32, Zones RCL3, LC25 & LC45. Property Location: 429 Trout Lake Rd. known as Camp Walden. Subject to WCPB REVIEW. Subject to SEQR.

Jonas Ing, representing Jumbo Realty Inc. (Marc Bernstein), gave an overview and said that they are proposing a 1,494 square foot addition to expand the Camp Walden dining hall.

S. Wilson asked how close the addition would bring it to the propane tank and Jonas Ing said that the propane tank is located behind the building so it would be approximately 250-300 feet from the propane. S. Aldrich asked the distance to the stream and Jonas Ing said it would be 82 feet after new construction—it is about 100 feet now.

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

Motion by Donald Roessler to accept the application as complete, waive a public hearing and grant approval as presented with the following condition. Exterior lighting must be downward facing & shielded with low wattage bulbs used. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. Seconded by John Gaddy. All in favor. Motion Carried.

10) SPR06-3 SIMONSON, RICHARD & VIVIAN. Represented by D.L. Dickinson Associates. For the construction of a proposed single-family dwelling, seeks 1) Type II Site Plan Review for a) a single-family dwelling in the LC45 zone; and b) a major stormwater project to remove more than 15,000 sq. ft. of vegetation; 15,000 sq. ft. ± is proposed. 2) Type I Site Plan Review is also sought for development within 100' of a wetland. Section 186.18, Block 1, Lot 31, Zones RCH5000 & LC45. Property Location: Off Shallow Beach Road. Subject to SEQR. The WCPB determined no county impact with the stipulation that all paperwork be filed. NOTE: This application is in conjunction with V06-50.

Derrick Mitchell of D.L. Dickinson Associates, representing Richard and Vivian Simonson, gave an overview and said (1) they are proposing a single-family home on a little more than 50 acres and (2) the stormwater has been approved by Town Engineer Tom Nace.

J. Gaddy asked where the septic would be and Derrick Mitchell said that they would be pumping it to an area behind the cemetery.

S. Aldrich asked what the blue stakes are by the garage and Derrick Mitchell said that Dennis Dickinson put them in as permanent markers of the wetlands.

J. Gaddy asked if there have been any test borings in the area and Richard Simonson said yes, all of the test borings have been done and all of the engineering has been done.

P. Kenyon said that the ZBA is requesting the PB's recommendation on the setback between the stormwater controls to the wetland. D. Roessler asked how far it is from the proposed house to the lake and Derrick Mitchell said it is 109 feet from the wetlands and about 300 feet from the beach. S. Aldrich asked how far the capped rods are from the house and Derrick Mitchell said it is about 25 feet from the house to the wetlands.

S. Aldrich asked how many people the easement for access to the lake affects and Richard Simonson said all of the people on Shallow Beach Road.

H. Caldwell asked about the stormwater. Richard Simonson said that (1) all of the stormwater devices have been designed and supposedly there will be no impact on the wetlands from the stormwater per the engineers, (2) he clarified the stormwater plan saying that it is a 24-inch pipe, which will be about 3 feet above the grade that is there right now and (3) at the driveway it will go into a pond as run-off. Derrick Mitchell said that basically it is a berm built up around the driveway and there will also be bedded fill around the house as infiltrators. S. Aldrich asked if they will have to fill and Derrick Mitchell said (1) yes, around the base of the house and (2) they are basically building the house on grade and filling up to insulate the footings across. D. Roessler asked if it would be a year-round house and Richard Simonson said yes.

J. Gaddy said that in looking at 200-37B, in the case of the shoreline, "...all lakes, ponds, swamps or wetlands..." and "...for the shoreline of Schroon River the following restrictions shall apply: (1) cutting restrictions and (2) shoreline setbacks...", this section also says that "...shoreline setbacks shall be 100 feet...". Counsel said that he and P. Kenyon have to look at this again.

Richard Simonson said (1) he was never told he had to have a 100-foot setback from the wetlands—if that was a requirement he would have never begun the project and (2) engineering wise the project is feasible and it is not going to affect the wetlands.

Counsel said that (1) the ZBA is looking for a recommendation from the PB for setbacks from the stormwater control devices from the wetlands regarding if the stormwater device could be put within 25 feet of the wetlands and (2) regarding a shoreline, that entails a mean high water mark in which land joins waters of lakes, ponds, rivers and streams within the town, but J. Gaddy is right that there is a section that deals with wetlands and swamps and (3) in the supplemental regulations Section 200-37A that in its purposes paragraph says that "...the purpose of the shoreline regulation is to protect the public health, welfare and safety and to protect economic property values, aesthetic and recreational values, and other natural resource values associated with all lakes, ponds, streams, swamps and wetlands..."—it is purposes or a credo, but in Section 200-37B it does specifically mention wetlands and the regulations of cutting restrictions, shoreline setbacks, etc. P. Kenyon said that if it ever comes within 100 feet from the wetlands then it comes to the PB and Counsel agreed adding that in the section of the LC45 if you want to put something within 100 feet of the wetland you need site plan review, so that section would permit something within 100 feet of the wetland—it is the PB's discretion. H. Koster asked if this is strictly the PB's discretion or the ZBA's interpretation and Counsel said that if someone comes up with an interpretation that they also challenge, then the interpretation starts with the Zoning Administrator who takes a stand—whatever that happens to be—then if all are happy with that interpretation then it is done, but if there is a dispute as to what the Zoning Administrator has interpreted then the ZBA will come up with the final answer, which is able to be appealed to a court of law or it stands as a final interpretation. H. Koster asked if the PB is being asked to make a determination on P. Kenyon's interpretation and Counsel said no, absolutely not—P. Kenyon's interpretation that the shoreline definition does not mention the word swamp or wetland has not been challenged. P. Kenyon said her interpretation still stands based on past practice. Counsel said that (1) J. Gaddy brings up a great question with supplementary

regulations, but in fairness to this applicant, all of the words that start to pertain to the wetlands are preamble, (2) when you get out of the preamble into specific regulations, it again mentions wetlands and the regulations are cutting restrictions and shoreline setbacks and (3) the definition of shoreline happens to be a whole bunch of setbacks from bodies of water, but not mentioning wetlands or swamps.

Counsel said that (1) one would argue that it is in the PB's discretion of yes, yes with conditions, or no, and (2) there is a letter in the file from the APA that they are quite pleased with what has been proposed and it does not run afoul with any APA regulations and no flag went up because it is within 100 feet of wetlands. J. Gaddy asked if the APA ever makes a mistake and Counsel said he thought this determination letter was a mistake. J. Gaddy agreed.

J. Gaddy asked if the applicant has a lot invested in this and Richard Simonson said yes, originally before he began, P. Kenyon told him that there would be a run-off problem then Dennis Dickinson told him it was solved.

Counsel said that (1) at some point a position has to be taken by the Town of Bolton—that position has been taken by the Zoning Administrator—it is unchallenged and consistent to what she has previously done prior to this application, (2) he stands by it procedurally—he is not the person who decides it—he is not going to persuade the PB otherwise, (3) now it is also consistent with the APA—therein lies the procedural correctness of why it is before the PB, coupled with the fact that in LC45 you may put a structure within 100 feet of the wetland if by site plan review this board (PB) approves it because it is appropriate or this board denies it if it is inappropriate or this board approves it with conditions.

H. Koster said his biggest concern is stormwater and if Tom Nace has signed off on this design, then that is fine as far as he is concerned. Counsel said he just thinks the ZBA wanted to hear from the PB that it was consistent with the same criteria the PB evaluates, because they don't have any experience at all with stormwater.

From the public, Jim Splonskowski asked if the house could be put on the south end to take care of all of the stormwater and Richard Simonson said that the proposed location is the best one.

Jim Splonskowski said that (1) if the applicant has 55 acres and has an area that is more suitable for a structure then it really shouldn't be a zoning issue, (2) the fight over the wetlands on this property has been going on for years, (3) there is another section of this land that he believes is able to be built on and he thinks it should be looked into, (4) he doesn't think it is the PB's or ZBA's responsibility, the issue with the variances are that they are not necessary and (5) granted, you can't tell someone where to build their house, but as a board, the PB has some responsibility to take the more preferable avenue that is available. H. Koster said that this is a matter that will be going back to the ZBA and Mr. Splonskowski can make his feelings known at that meeting which is a Public Hearing.

Richard Simonson said that he chose the proposed house location because the other one was behind the cemetery and there is a steep hill that goes up there—it's not a real desirable site. Derrick Mitchell said there are also wetlands in the area by the cemetery as well.

Counsel said that the PB has some big issues to look at—(1) this is a Type II site plan review for a single-family dwelling in an LC45 Zone, (2) the PB has a major stormwater, (3) the PB has a Type I site plan review for the development within 100 feet of the wetlands and (4) the PB has the recommendation to the ZBA.

H. Caldwell said he thinks it comes down to if a house in LC45 should be allowed to be built so close to the wetlands—he doesn't think it should. J. Gaddy agreed.

D. Roessler asked how the soils are at Test Pit #1 and Derrick Mitchell said page 2 of 2 shows Test Pit #1 at 65 inches. H. Koster asked if Test Pit #1 was authenticated in 1990 and Derrick Mitchell said yes.

J. Gaddy asked if a wetland is or is not being interpreted as a body of water. D. Roessler asked why the septic needs to be 100 feet from the wetlands but the house does not and P. Kenyon said that the septic is a whole different set of regulations. Counsel said (1) that it clearly states specifically in an LC45 there is a provision that says you may build within 100 feet of the wetland, (2) the rest of the code shows that to whatever extent the supplementary regulations may apply seems to be in the preamble in the interest of wetlands and swamps, followed by specific regulations to the change of code, (3) if there is any confusion and the confusion is construed favorably to the applicant, know that in the definition of "shoreline" you will find no mention of "wetland" or "swamp", (4) taking that as a whole, he goes back to the specific that LC45 would allow what is proposed by site plan review if it is within 100 feet of the wetland and (5) he wants to emphasize that it may be approved because it is appropriate, approved with conditions because it requires conditions or it may be denied—if it is denied, please don't do that until the PB first gives consideration to all possibilities including that there must be a PH.

J. Gaddy said that "shoreline" should be added to the list of definitions to be revised. Counsel agreed and said that supplementary shoreline regulations should also be tightened up.

J. Gaddy asked if the PB should have a public hearing on the matter and H. Koster said that given some of the negative vibes here, there should be a PH. Counsel said that there were other interested parties on this matter at the ZBA meeting.

Motion by John Gaddy to schedule a public hearing for January 25, 2007 to be heard as item #2. Seconded by John Gaddy. All in favor. Motion Carried.

11) SD06-18 EAGLE RIDGE SUBDIVISION. Richard & Elizabeth Kranz.

Represented by Tom Jarrett of Jarrett Martin Engineers. Seek to divide into 3 lots that parcel designated as Section 140.00, Block 1, Lot 40.6, Zone RL3. Property Location: New Vermont Road, formerly known as the Observatory & Rugg Hill Subdivision.

Minor Subdivision. Sketch Plan Review. Subject to SEQR. *NOTE: This item is in conjunction with SPR06-31.*

Tom Jarrett of Jarrett Martin Engineers, representing Richard and Elizabeth Kranz (Eagle Ridge Subdivision), agreed to have SD06-18 and SPR-06-18 heard together.

Tom Jarrett gave an overview and said (1) when he was here in July he started to present a stormwater plan for the existing travel way and the PB indicated to him that driveway was not an approved driveway, (2) he is here tonight with the revised stormwater plan as requested, (3) the sketch plan consists of dividing the 18-acre parcel into three lots approximately six acres each and accessed by that common driveway to each lot and (4) the Kranz's have not modified that driveway other than what they recommended and Zoning Administrator P. Kenyon approved last winter when they stabilized it.

P. Kenyon asked if a decision was made in July as to whether this was a road or a drive and S. Aldrich said that the PB never made a determination on if it is a road or a driveway. Tom Jarrett said that (1) he is proposing it be treated as a common driveway for the three lots, where the Town standards recommend or require a 15% maximum grade, (2) the average grade on that driveway right now up to the bend is approximately 14% average, about 80% of it is below 15% and about 20% of it is above 15% and (3) they are proposing to modify the roadway so the overall average stays at 14%, they will soften the steep section from 18-19% to about 16%, and the lower section would be lowered to 12% grade. D. Roessler asked if the entrances to the properties go right back and asked if there are any general slopes where the applicants could get 100-200 feet. Tom Jarrett said he could possibly extend it a little bit and leave the existing northbound entry as is, but soften the southbound entry.

H. Caldwell said that (1) an Article 78 was issued against the PB on this property and the PB won and (2) the PB is looking at this as if the road doesn't exist. Tom Jarrett made several suggestions for modifications he could make. H. Caldwell said the project should get emergency department approval, because he thinks they may have a problem with three homes in the area at that grade. H. Koster said the PB has great concerns with this driveway. Tom Jarrett said it is a reasonable road, but it is a tough site and they are willing to soften the grades as they have proposed.

H. Caldwell said that he can imagine the Fire Dept. would like to have the entrance and the turn softened. Tom Jarrett said he could work with that, but is hesitant to soften the entire grade. S. Aldrich asked if the existing pull-off would be close to the hammerhead the Fire Dept. usually looks for and Tom Jarrett said yes, he believes that one would be wide enough for a fire truck to turn around.

J. Gaddy said asked how solid the house placements are, because in looking at Lots 2 and 3 the proposal is to come up about 20 or 30 feet above the roadway. Tom Jarrett said that there is a little gut there that would enable you to get up there and the houses could be closer to the road. J. Gaddy said he would advise the houses be closer to the road.

D. Roessler asked the proposed width of the driving surface and Tom Jarrett said they have shown it as a 12-foot driving surface, which is wider than what is currently there.

S. Wilson asked who contacts the Fire Dept. for project review and P. Kenyon said she does.

D. Roessler said that he is concerned with getting water up there given the grade, because once one truck is up there the room is not sufficient to have another truck get up there. J. Gaddy said that the existing passageway is a tremendous drop-off all along the west side of the road, which was the original concern when the former owners had looked for a roadway up there. Tom Jarrett said that they have proposed a guardrail system. J. Gaddy said that he thinks it should be a wider roadway. D. Roessler asked for surface plan and Tom Jarrett said it would remain dirt. D. Roessler asked if it gets much sun and Tom Jarrett said it does in spots.

J. Gaddy said that he would like to get feedback from the Fire Company in a timely manner—it is not fair or professional to the applicants to keep their projects waiting.

Motion by Donald Roessler to table the application pending additional information as discussed. The Zoning office is to forward the application to the Fire Department for their input as it pertains to the road. **Seconded by** John Gaddy. **All in favor. Motion Carried.**

12) SPR06-31 EAGLE RIDGE SUBDIVISION. Richard & Elizabeth Kranz.

Represented by Jarrett, Martin Engineers, PLLC. In accordance with Section 125.13C1 of the stormwater regulations, seek Type II Site Plan Review for a major project to remove more than 15,000 sq. ft. of vegetation. 1.9 acres is proposed. Section 140.00, Block 1, Lot 40.6, Zone RL3. Property Location: New Vermont Rd., formerly known as the Rugg Hill & Observatory Subdivisions. Subject to SEQR. *NOTES: This item was tabled at the July 2006 meeting pending a subdivision application and is in conjunction with SD06-18 Eagle Ridge Subdivision.*

Motion by Donald Roessler to table the application pending additional information as discussed. The Zoning office is to forward the application to the Fire Department for their input as it pertains to the road. **Seconded by** John Gaddy. **All in favor. Motion Carried.**

Meeting adjourned at 10:06 pm.

Respectfully submitted by
Jennifer Torebka
Recording Secretary
12/29/06