

**Town of Bolton
PLANNING BOARD
MINUTES
Thursday, May 18, 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, John Gaddy, Chauncey Mason, Don Roessler, Susan Wilson, Town Counsel Michael Muller, Zoning Administrator Pam Kenyon

Absent: Henry Caldwell

PUBLIC HEARING: None

REGULAR MEETING:

H. Koster opened the regular meeting at 6:05 pm by asking for corrections to the April 27, 2006 minutes.

Motion by Susan Wilson to approve the April 27, 2006 minutes as presented. **Seconded by** Donald Roessler. **Five in favor. One abstained (John Gaddy). Motion carried.**

1) **SD06-04 JEHM HOLDING CORPORATION.** Represented by the LA Group. Seeks to divide into 3 lots that parcel designated as Section 186.14, Block 1, Lot 20, Zone RL3. Property Location: Trout Lake Road. Minor Subdivision. Sketch Plan Review. Subject to SEQR. This item was tabled at the April 27th meeting pending additional information.

Jeff Anthony of the LA Group, representing JEHM Holding Corporation, gave an overview and said they addressed the Lake George Watekeeper's and the PB's concerns discussed at the April 27, 2006 PB meeting.

H. Koster asked for the radius measurement of the cul-de-sac and Jeff Anthony said he believes it is what the PB requested. H. Koster asked if a 50 ft. radius would be sufficient and D. Roessler answered by saying that (1) he thinks a 25 ft. turn radius is what the PB requested and (2) the applicant has a 50 ft. radius, so it should be sufficient—especially since it is only for three lots.

S. Aldrich asked if Counsel approved the Homeowner's Agreement presented and Counsel said yes.

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 final approval as presented. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. **Seconded by** Sue Wilson. **All in favor. Motion Carried.**

2) **SPR06-19 JEHM HOLDING CORPORATION.** Represented by the LA Group. 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. 42,969 sq. ft. is proposed. Section 186.14, Block 1, Lot 20, Zone RL3. Property Location: Trout Lake Rd. Subject to WCPB REVIEW. Subject to SEQR. Note: This application is in conjunction with SD06-04 tabled at the April 27th meeting pending additional information.

Jeff Anthony of the LA Group, representing JEHM Holding Corporation, gave an overview and said that they revised the calculations in the stormwater report as requested by the PB.

J. Gaddy asked if the application was sent to Town Engineer Tom Nace for review and H. Koster said no, the PB decided at the April 27, 2006 meeting that it didn't need to go to Tom Nace.

John Gaddy said 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.

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 for the major stormwater project 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 Donald Roessler. All in favor. Motion Carried.**

- 3) **SPR05-49 SALMON, RICHARD & JOHANNAH.** Represented by Jeanie and/or Greg Russell. Seek to discuss condition of approval set forth by the Planning Board on 12/15/05, when granting approval for a major stormwater project. Specifically the condition reads as follows: The stormwater controls are to be initiated in the spring of 06 and in place by June 1, 2006. The applicants would like to extend the date to July 1, 2006. Section 156.00, Block 1, Lot 45.32, Zones RL3 & LC25. Property Location: Valley Woods Rd. and being lot 3 of Valley Ridge Subdivision.

Greg Russell, representing Richard and Johannah Salmon said that (1) the applicants are anticipating the arrival of their first child in the next couple of days, which will restrict their travel to the area for at least three weeks and (2) are requesting an extension on the project deadline until they can get up to the area for the summer to oversee the project to make sure it is done properly.

J. Gaddy asked if the applicants need more time than three weeks for an extension and Greg Russell replied by saying no, the applicants said that would be sufficient.

Motion by John Gaddy to extend the deadline date for which the stormwater controls are to be implemented until August 1, 2006. Seconded by Donald Roessler. All in favor. Motion Carried.

- 4) **SPR06-06 FEDERAL HILL DEVELOPMENT, LLC.** Represented by Bill Peterson. As a condition of approval when approving the Christmas Tree Subdivision (SD00-10) on 11/16/00, seeks Type II Site Plan Review for vegetative cutting and a single-family dwelling on lot 7. Section 156.00, Block 1, Lot 20.7, Zone RM1.3. Property Location: Federal Hill Rd. The WCPB determined no county impact. Subject to SEQR. This item was tabled at the March 23, 2006 meeting pending deep test hole information and stormwater approvals from Town Engineer, Tom Nace.

Bill Peterson, representing Federal Hill Development, LLC, gave an overview and said that Town Engineer Tom Nace reviewed and approved the revised stormwater plan.

J. Gaddy asked in general how endangered and protected plants on properties are supposed to be handled and Counsel replied by saying that any one member of the PB could raise this issue and then the PB would ask the applicant to go through the SEQR Self-Assessment Form, (2) if the findings are that endangered or protected plants are present a public hearing would have to be held on how they would be protected and (3) if it was a favored species as opposed to endangered or protected, then it would be a judgment call in terms of individual PB members in terms of what they want to do about it. J. Gaddy asked if the PB makes that determination or if it needs to be cataloged by the state prior to and Counsel said (1) no, it doesn't have to be cataloged by the state prior to and (2) once the PB tells him what they think is the required protected vegetation, he will

encourage the applicant to take the Self-Assessment Form and fill it out to be reviewed by the PB.

J. Gaddy said (1) he is concerned with the clearing limits and (2) the applicant must stay within 20 ft. of the house. Bill Peterson replied by saying that (1) they don't intend to go outside the clearing limits and (2) the clearing limits are presently staked out on the property.

S. Aldrich asked if any blasting would take place and Bill Peterson said (1) no, they will not be doing any blasting and (2) they are planning on putting in a crawl space, so there will be no full basement. S. Aldrich said she would like a condition of no blasting put in the motion and Bill Peterson agreed to that condition.

D. Roessler asked if the application was sent to Town Engineer Tom Nace for review and P. Kenyon said yes, Tom Nace approved it with the revisions made.

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 Donald Roessler to accept the application as complete, waive a public hearing and grant approval as presented with the following conditions: 1) Exterior lighting must be downward facing and shielded with low wattage bulbs used. 2) No blasting at all is to be undertaken. 3) Clearing around the perimeter of the foundation is limited to 20 ft. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. **Seconded by Sandi Aldrich. All in favor. Motion Carried.**

5) SPR06-14 FEDERAL HILL DEVELOPMENT, LLC. Represented by Bill Peterson. As a condition of approval when approving the Christmas Tree Subdivision (SD00-10) on 11/16/00, seeks Type II Site Plan Review for vegetative cutting and a single-family dwelling on lot 8. Section 156.00, Block 1, Lot 20.8, Zone RM1.3. Property Location: Federal Hill Rd. Subject to WCPB REVIEW. Subject to SEQR

Bill Peterson, representing Federal Hill Development, LLC, gave an overview and said (1) they did the deep test pits and (2) Town Engineer Tom Nace reviewed and approved the stormwater plan.

S. Aldrich asked if there would be any blasting on this site and Bill Peterson said no.

S. Aldrich said (1) there are species of protective vegetation on the property—Pink Ladyslippers and (2) she hasn't been able to contact NYSDEC on this matter to date. H. Koster said that he thinks that Pink Ladyslippers are not on the endangered species list—they are quite common in this area. Counsel said he believes this is a species that you can buy in the area. S. Aldrich said that according to the NYSDEC website Protective

Native Plant Program, the picture it shows is a Pink Ladyslipper, but it doesn't go further in providing a list of protected plants. Counsel (1) said that he doesn't know the magnitude of the problem and (2) asked if Pink Ladyslippers can be relocated. S. Aldrich said the plants are approximately 15-20 ft. in circumference—it is a sizable area. Counsel said that not being able to say with any certainty that this is a protected species, on the hypothetical that it is a concern of S. Aldrich's and she would like to see some remediation, perhaps it can be proposed to the applicant that there is a possibility of an agreement here of what is to become of the Pink Ladyslippers on this site. Bill Peterson said he would relocate them and Counsel said they would need to stay on the same lot. S. Aldrich said that she doesn't know what NYSDEC's regulations are regarding this particular plant species. Counsel replied by saying that (1) if the PB would like the Pink Ladyslippers to be preserved, the PB can work with this applicant and reach a plan and (2) the PB doesn't need to wait for NYSDEC to weigh in on this. H. Koster said that unless it is an endangered species, the PB doesn't have to wait on this. J. Gaddy said that the applicant should be able to move the Pink Ladyslippers to a different location and Bill Peterson said that he is willing to attempt relocating the existing Pink Ladyslipper plants and if they are unsuccessful the applicants will buy and plant new ones. S. Aldrich was satisfied with this agreement.

J. Gaddy asked about the engineering design. Bill Peterson said (1) it would be the same as Lot #7 in that the water table is down two feet in that area and they are starting the detention area on top of that so they meet the separation requirement and (2) the changes they made were based upon the Town Engineer's assessments. J. Gaddy said he would like any external lighting to be shielded and Bill Peterson agreed.

S. Aldrich asked for the distance from the well to the neighboring property and P. Kenyon said that general rule is that there separation from the well to the neighboring property line needs to be 10 ft. Counsel said the same separation occurs between off-lot septic and well. H. Koster said the separation from the neighbors well to this septic is the same separation as it is for his own lot—it is 100 ft. Counsel agreed. S. Aldrich asked if the applicants meet those and Bill Peterson said that he is sure they do. P. Kenyon said the Reilly's won't be affected and neither would the Coons. H. Koster said that (1) the only problem the applicant has on the drawing is the arc that is swung at 100 ft. that goes into the septic area and (2) the applicant could probably move the well. Bill Peterson said it is possible to shift the well and stay within the clearing limits.

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 Donald Roessler to accept the application as complete, waive a public hearing and grant approval as presented with the following conditions: 1) Exterior lighting must be downward facing and shielded with low wattage bulbs used. 2) No blasting at all is to be undertaken. 3) Clearing around the perimeter of the foundation is limited to 20 ft. 4) The protected Pink Ladyslippers must be relocated elsewhere on the parcel. 5) A revised

map is to submitted showing a 100 ft. separation between the well and proposed leach field. 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.**

6) **SPR06-25 KREUTZER, DAVID.** Represented by Kevin Kershaw. As a condition of approval when approving the Christmas Tree Subdivision (SD00-10) on 11/16/00, seeks Type II Site Plan Review for vegetative cutting and a single-family-dwelling on lot 2. Section 156.00, Block 1, Lot 20.2, Zone RM1.3. Property Location: Federal Hill Rd. Subject to WCPB REVIEW. Subject to SEQR.

Kevin Kershaw, representing David Kreutzer, gave an overview, referenced the details on the stormwater plan and on the map, and said (1) they did a test pit on March 30, 2006 and the percolation rate is 9.25 minutes, (2) the well is 100 ft. back from the septic system and (3) the proposed house is 26 ft. high.

P. Kenyon said that Town Engineer Tom Nace has approved the stormwater plans.

S. Aldrich asked if there would be any blasting and Kevin Kershaw said no and added that the siding would be earth tone colors.

J. Gaddy said the PB is looking to keep clearing limits to 20 ft. around the perimeter of the foundation and Kevin Kershaw replied by saying that actually the side of the house clearing is only 10 ft., which is what they are going to try to keep with.

No County impact.

J. Gaddy said that (1) he is concerned with the Pink Ladyslippers and (2) if there are any endangered wildflowers on the property they need to be relocated. Kevin Kershaw asked if the PB is aware that species exists on this lot and J. Gaddy said no, he does not, but he is just bringing it up as a point of public knowledge. H. Koster said that (1) Pink Ladyslippers are not an endangered species but are on the protected list of ENCON and (2) if the Pink Ladyslippers were endangered, the PB would have to deal with ENCON on it.

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 with the following conditions: 1) Exterior lighting must be downward facing and shielded with low wattage bulbs used. 2) No blasting at all is to be undertaken. 3) Clearing around the perimeter of the foundation is limited to 20 ft. 4) If there are any protected plants on the parcel they must be relocated elsewhere on the parcel. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. **Seconded by Donald Roessler. All in favor. Motion Carried.**

- 7) **SPR06-24 THE MICHAELS GROUP.** Represented by Matt Steves of VanDusen & Steves Land Surveyors. As part of subdivision (SD03-23) and Stormwater (SPR04-03) approval granted for the Bluebird Cottages Subdivision on March 18, 2004, Seeks Type II Site Plan Review for a major stormwater project on lot 8. Section 186.14, Block 1, Lot 83, Zone RCH5000. Property Location: Bluebird Way. Subject to WCPB REVIEW. Subject to SEQR. Note: This is an amendment to SPR06-13 approved by the Planning Board on March 23, 2006.

Tony Locasio of Van Dusen & Steves, representing The Michaels Group, gave an overview of the project.

No County impact.

There were no PB questions or comments.

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

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

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

Motion by John Gaddy to accept the application as complete, waive the public hearing and grant approval as presented to amend SPR06-13 with the following conditions; 1) Construction times are from 8:00 am to dusk Monday – Saturdays from July 4th to Labor Day. 2) Exterior lighting must be downward facing and 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** Sandi Aldrich. **All in favor. Motion Carried**

- 8) **SPR06-26 CURRI, THETA J.** In accordance with Section 200.47G2 of the zoning ordinance, seeks Type II Site Plan Review to temporarily place a transient mobile home on that parcel designated as Section 171.06, Block 1, Lot 18, Zone RL3.

Property Location: 162 Valley Woods Rd. Subject to WCPB REVIEW. Subject to SEQR.

Theta J. Curri gave an overview and said that they are seeking approval to store a trailer on her property and for permission for it to be occupied no more than 10 days per year seasonally.

P. Kenyon said they don't need permission to store it there. J. Gaddy asked how long it would be occupied and Theta J. Curri said that (1) it would vary summer to summer and (2) her in-laws are relocating, they own the camper and her in-laws who would be visiting them in the summer for no more than 10 days at a stretch—not for the duration of the whole summer. S. Wilson asked if the PB has done something like this in the past and reviews it each year and Counsel said yes.

S. Aldrich asked if the mobile home has power, water and septic and Theta J. Curri answered by saying that (1) the electric and water are from the main home and (2) they would like to install a separate small septic, but if that is not possible, they camper has a self-contained septic. J. Gaddy said he thinks that brings up a whole new issue and Counsel said (1) yes, it does, (2) if the PB looks at Section 200.47G2, it reads "...no occupied dependent transient mobile home or other mobile home shall be parked or placed outside a licensed mobile home court, transient mobile home court or campground for more than 48 hours except upon a site plan review permit...", (3) that is the reason the applicant would be here pursuant to the provisions of Article V of this chapter, (4) the restriction and the limitation of Section 200.47G2 reads "...such a site plan review permit may be issued for a period not to exceed 10 days and shall not be renewable within the same calendar year. Such a site plan review shall not be issued for any land restricted by deed or other covenants against placement of mobile homes or temporary structures...", (5) the PB is shifting with some facts and that is that the applicant is suggesting that temporary would really be seasonal/permanent, which is not transient and is also over 10 days.

H. Koster said that theoretically, the applicant is looking for a variance and Counsel said that is correct. H. Koster said that the PB does not review variances and Counsel responded by saying (1) that is correct, (2) a use variance would be a hard variance to prove, (3) it is very difficult because the primary parcel, he is sure, is already developed for the principal use for which it is zoned and to ask for more you would have to satisfy the challenge of that you cannot use if for how it is properly zoned and (4) in this site plan review all the relief the PB can give if it is appropriate is temporary and temporal is 10 days. H. Koster added that it cannot be renewed in the same calendar year and Counsel agreed.

H. Koster asked if the applicant would be satisfied with a 10-day application for now with the understanding if the applicant wants it longer she would need to go to the ZBA to apply for a variance and Theta J. Curri said yes, they are seeking the 10 days. H. Koster said if the applicants are looking for more than 10 days, he would suggest the applicant apply for a variance from the ZBA, because the PB is not allowed to review it.

P. Kenyon said it is a use variance, which would be reviewed by the ZBA and asked if the PB can make a recommendation the applicant get a use variance. Counsel said that the only way the PB makes a recommendation is by a request for a recommendation. P. Kenyon said that it is in the ordinance that it starts with the PB.

J. Gaddy said that regarding the septic, looking for a septic hook-up becomes a complication. H. Koster said the applicant retracted that and said it is a self-contained unit. Theta J. Curri said that it's a self-contained unit—it has a holding tank. Counsel (1) referenced the Zoning Ordinance regarding the use variance procedure, read part of it into the record and said that it starts with the ZBA—not the PB, (2) said if this applicant sought more than what the PB can grant with site plan review, then the applicant would have to have use variance application that then gets referred to the PB, (3) said it would be premature to do it now and come up with a recommendation because the applicants need to submit an application for a use permit, (4) in the context of why the applicant is here, the PB can grant a 10-day permit to occupy a transient mobile home on the applicant's property and it can be stored there without site plan review or a use variance, because that is a legitimate accessory use, plus it is also a motor vehicle and (5) it is just an issue of can it be inhabited and the answer is that by site plan review yes, for 10 days. H. Koster (1) asked if the applicant would be interested in having this for 10 days and Theta J. Curri said yes. H. Koster said the site plan review would be good from 06/15/06 through 06/24/06. S. Wilson asked if it would be premature to discuss the use variance at this point and Counsel said yes, because there is no application pending.

No County impact with the condition that the application is in compliance with the local ordinance regarding water, sewer and electric hook-up.

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. The transient mobile home can be occupied from June 15 –24, 2006. 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.**

9) SPR06-27 BRAND, JOHN & DONNA. Represented by Dennis Dickinson. As part of subdivision (SD03-01) and stormwater (SPR03-31) approvals granted for the Wrights Farm Subdivision on 2/26/04, seek Type II Site Plan Review for a major stormwater project and the construction of a proposed single-family dwelling in the LC25 zone on lot "14". Section 140.00, Block 3, Lot 7, Zone LC25. Property Location: West side of Federal Hill Rd. Subject to WCPB REVIEW. Subject to SEQR.

John Brand, homeowner, introduced himself and said that he would try to answer any questions from the PB on this proposal.

H. Koster asked if Town Engineer Tom Nace looked at the stormwater and P. Kenyon said no.

J. Gaddy said he is concerned with the clearing that took place prior to the applicants purchasing the property, (2) he wants the clearing limits to stay within 20 ft. of the perimeter house, (3) he would like to see the applicants keep as many trees as possible in the towards the northeast of the lot, (4) since the applicants are so close to County Route 11 he would like them to keep as much vegetation as possible there and (5) the light design shown by the applicants will not work—he would like all exterior lighting to be shielded and down-facing so the light element is covered up and it is facing downward. John Brand said they have another set of lights that are dark sky approved.

Correspondence: Counsel acknowledged receipt of the following correspondence.

- Letter from Lake George Waterkeeper, Chris Navitsky—raised three issues.

Counsel said the PB either feels comfortable that the issues raised by the LGWK were properly presented by the applicant, or easily resolvable by discussion or appropriate to table it until it requires further discussion. H. Koster said that the PB will be tabling this item for stormwater review by Tom Nace. Counsel said okay, he just wants to make sure the applicant gets a copy of the letter from the LGWK so he is not in the dark as to the issues raised.

J. Gaddy (1) said he is concerned with the discrepancies in that the original motion said the stormwater would be dealt with on the whole project and he doesn't know how it has been done, (2) he is concerned about the 1000 ft. of driveway where 600 ft. was originally proposed and he stepped off 900 ft. and (2) asked if Town Engineer Tom Nace would be addressing this matter in his review and Counsel said yes, Tom Nace would be addressing it. H. Koster said he doesn't believe the stormwater was addressed for the individual lots. J. Gaddy said he reviewed prior meeting minutes with Mitzi Nittmann and he believes it is on the Mylar. Counsel said he thinks Tom Nace will have the ability to take what has been done and work from that platform can and then consider the cumulative impacts and whatever Dennis Dickinson has proposed is either satisfactory or Tom Nace will come up with recommendations. H. Koster said these are two separate applications: (1) site plan review of stormwater and (2) site plan review for the house. Counsel said that is correct.

S. Aldrich said the house is laid out and asked if the trees with the pink ribbon are the ones to be removed. John Brand responded by saying that is the 20 ft. circumference showing the maximum that could be removed. S. Aldrich asked what the square shown on the map between the house and the septic is and John Brand said it is the turn-around for the driveway.

No County impact.

John Brand said there are three design changes to the plan: (1) there are going to be gutters on the rear of the building, (2) taking out the whirlpool, and (3) there is a culvert shown at the top. H. Koster asked how many bedrooms are proposed and John Brand said three.

S. Aldrich asked if the applicants anticipate having to do any blasting and John Brand said no.

D. Roessler asked if the site plan review is for major stormwater and H. Koster said that it is part of a major subdivision project so each house that gets reviewed in a major project has to have major stormwater review. D. Roessler asked if the PB is reviewing the stormwater tonight and H. Koster answered by saying no, the PB has not been reviewing any stormwater until Town Engineer Tom Nace has reviewed it. Counsel agreed.

S. Aldrich said the PB has been doing site plan and stormwater together and Counsel responded by saying yes, when both are ready at the same time, but the PB can vote on one and table the other.

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 and approve the single-family dwelling portion of the application as presented with the following conditions: 1) Clearing around the perimeter of the foundation is limited to 20 ft. 2) Exterior lighting must be downward facing and shielded with low wattage bulbs used. The stormwater portion was tabled pending Town Engineer, Tom Nace's approval at the applicants expense. **Seconded by** Sue Wilson. **All in favor. Motion Carried.**

10) 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 in the RCM1.3 Zone. Section 213.13, Block 1, Lot 51, Zone RCM1.3. Property Location 3932 Lake Shore Drive. Subject to WCPB REVIEW. Subject to SEQR.

Motion by Donald Roessler to table the application as no one was present, to present the application. **Seconded by** Sandi Aldrich. **All in favor. Motion Carried.**

11) SPR06-28 RUSSELL, LESLIE & SPRAGUE, MARY & MCNULTY, CHARLES. Represented by Donald Russell. Seek Type II Site Plan Review for a marina in the RCH5000 zone. Section 186.07, Block 1, Lot 9, Zone RCH5000. Property Location: 4802 Lake Shore Drive, known as "The Point". Subject to WCPB REVIEW. Subject to SEQR. Note: SPR05-51 approved 12/15/05 has been withdrawn.

Don Russell, representing Leslie Russell, Mary Sprague and Charles McNulty, gave an overview and said that they are proposing to add two E-shaped docks, to move two docks and for four moorings.

D. Roessler asked if the four moorings are allowed in that zone and D. Russell answered by saying (1) yes, they are allowed by the LGPC and (2) he is not sure he would ever put four moorings out there, but he is just asking for the maximum allowed. D. Roessler said that he is concerned with the traffic in the bay area. S. Wilson asked who grants moorings and Counsel said (1) the LGPC and (2) this has a LGPC aspect to it and if he is correctly informed by Atty. Matt Fuller's (representing the interests of Twin Bay) letter, he says that there is apparently going to be no coordinated review which means that the PB will do its thing and the LGPC is going to do their thing. P. Kenyon said she spoke with Molly Gallagher of the Lake George Park Commission today and was told that this item is going to be Type 1 and it has to be coordinated with LGPC. Counsel said that he is not suggesting the PB must, but it has a chance to consider this application under coordinated review and that the PB declares itself lead agency. H. Koster said that the PB already sent a letter to the LGPC regarding stating that the PB is being lead agency on this project. Counsel said (1) the PB probably needs to reinforce that and (2) if it is the PB's preference, it needs to declare itself lead agency and give the LGPC notice all over again. P. Kenyon said that (1) the reason it has to be Type 1 is because of the proximity to the Sembrich Museum in proximity and (2) she asked the LGPC for a letter to that effect and she did not receive one. Counsel said that positions are being taken and the PB has to take a position.

S. Aldrich asked if the PB would have to table this and declare that the PB is lead agency and Counsel replied by saying (1) no, the PB is going to proceed in listening to the applicant, (2) if the PB wishes to be lead agency, it needs to declare itself lead agency and give specific notice to the LGPC through P. Kenyon and (3) the whole point seemed to be through litigation that they wanted the PB to give consideration to the public comment in a public hearing, which may be something else the PB would like to discuss and decide tonight. H. Koster said that if the PB coordinates with the LGPC, then the LGPC should be invited to the meeting. Counsel agreed and said (1) there certainly needs to be a coordinated review because the applicant has aspects of dock (under Bolton Code), marina (under Bolton Code), and moorings (off Bolton Code, but included if considered part of a marina) and (2) both agencies ought to be involved, but somebody has to be in charge, which would be the lead agency. Counsel asked if the PB is comfortable in declaring to be lead agency on this matter and H. Koster said yes. Counsel suggested the PB make a motion to that effect. H. Koster said they claimed it before on the original application and Counsel said this is a new application.

Counsel said (1) now is the time for if the PB has any questions of the applicant, (2) he would encourage the PB that given consideration to the complete application to redeem himself and if the PB has enough answers, he suggests the PB make a motion for a public hearing because it would be very useful in this proceeding.

H. Koster (1) said that riparian rights either go along the property line going out or perpendicular to the shoreline—whichever condition is more severe, (2) that property line goes straight out through those docks and (3) asked if this is something the PB has options on. Counsel said (1) the applicant has options on it more than the PB and more than the LGPC, (2) these applicants also have available to them, the riparian rights as they have been defined by common law regardless of what the regulations are saying and they may be substantially different, which is what would need to be researched and argued by the applicant, (3) the applicant is correct in his rendition of the regulations as they are applied—you have lines crossing lines and (4) as an applicant and a riparian owner the applicant has common law rights that may be different than the regulatory definition of riparian rights. H. Koster said (1) he thinks the Town's are more severe than the LGPC's and (2) this is why the LGPC should be here. Counsel asked if the PB would like to invite the LGPC before it even determines a public hearing and H. Koster said yes, absolutely—the PB shouldn't have a public hearing until the application is complete. Counsel said that the application won't be complete until they find out what the LGPC wants, so they should be invited. D. Roessler asked if the item should be tabled upon invitation to the LGPC and H. Koster said that he thinks the PB is being advised that this item should be coordinated together with the PB and the LGPC. Counsel agreed. Don Russell said that (1) he is on the docket for the May 23, 2006 LGPC meeting and (2) for everybody's sake, he would welcome a public hearing on this matter.

H. Koster asked why this would be considered Type 1 and Counsel replied by saying that (1) it sounds like it would still be discretionary, (2) the feedback he is getting is that the Sembrich Museum is on the National Registry, which is what is kicking this project into a higher level of SEQR concern and (3) he suggests the PB table this item to the June 2006 PB meeting.

Motion by Donald Roessler to direct Pamela Kenyon to send a letter to the LGPC stating that the Town of Bolton Planning Board shall reserve the right to remain lead agency for the McNulty Marina project and advise them that the Planning Board is seeking a coordinated review with the LGPC. The matter will be placed on the June 22, 2006 agenda, at which time the LGPC is invited to attend and address any concerns they may have. **Seconded by** Sandi Aldrich. **All in favor. Motion Carried.**

12) JOHN GADDY. To discuss, imposing a moratorium on ledge development.

John Gaddy (1) said he is asking for a favorable recommendation to return to the Town Board a moratorium for ridge top development in the Town of Bolton, (2) said he submitted letters to the PB that he had also submitted to the Town Board regarding this item, (3) since 2003 there has been an increased concern with the Comprehensive Plan, an Enforcement Officer installed to bring the Town's Zoning Compliance rate up, a committee made up of various members of the ZBA, PB and TB has been established to bring the Comprehensive Plan forward and the Town has also had a schedule made up for the phasing in of the Comprehensive Plan, (4) referenced the Comprehensive Plan by reading parts of it into the record, (5) said that the degree of development in the recent years since he first proposed this has only accelerated, which he doesn't believe is a

benefit to anybody in town or a healthy condition for the Town, (7) said he doesn't know who the houses are being built for other than for a second home market and real estate developers—these houses are good to increase the tax base, but that is it, (8) referenced page 41 of the Comprehensive Plan regarding avoiding adverse impact, (9) said he feels the Town needs this immediate moratorium on ridge top development, (10) he guesses it will take at least a year before the new regulation would be coming to a point where they will be able to be voted on through a public hearing, which would be too late, (11) said the present stage of development at ridge top would really affect a lot of the scenic beauty of the Town, (12) he said that more and more marginal lands are being used in these developments and marginal lands create engineering challenges and erosion problems, (13) he takes offense that lots of people who take time and work to serve the Town and to protect its the beauty are being exploited by development that takes the beauty that is there, put a house up, sells the house (which is everyone's right) but then the community is left looking at houses, (14) the Town should be able to create guidelines that would make development essentially invisible, (15) he knows the Zoning Office has been dealing with people taking part in renegade clearing where people feel they have the right to clear as much as possible as quickly as possible to get the biggest view possible, (16) he thought local contractors could be a force in relaying what the Town is looking for and while some are making an effort, the contractors assured him that if they don't do what is being asked the people will hire another contractor without a community connection to do whatever they want, (17) the \$1,000 civil penalty that is being imposed is not a deterrent, (18) he is not trying to stop development, but to modify it, (19) he thinks the Town is moving in that direction and the Town is doing everything it can to try to move in that direction in trying to make development happen in a controlled fashion, (20) he is asking the PB for a motion to ask the Town Board to have a public hearing regarding ridge top development in the Town of Bolton, (21) there are many references in the Town's own Comprehensive Plan that ask for this type of thing—they ask for a scenic overlay, (22) when he presented to the Town Board, Councilman Saris said that these are the Town's own words that say the Town needs better regulations and needs to look at and improve zoning and vegetative clearing and (23) the Town has a tremendous asset already here in the hillsides of Bolton Landing that are pristine now and don't need to be ruined.

H. Koster said (1) he takes a little bit of offense on this because John Gaddy is also on the PB, (2) he feels this PB does a hell of a good job with regulating hillsides and the PB does not allow sky lining on tops of mountains and (3) nothing really gets accomplished with moratoriums.

H. Koster asked if the average moratorium time frame is six months and Counsel said (1) six months is standard, but there have been court cases that have approved moratoriums to go upwards of eight years as long as the municipality is working on a revision, but he doesn't recommend that, (2) a moratorium doesn't require a SEQR process, but it does require a public hearing, (3) the moratorium process starts with the PB making a recommendation to the Town Board then the Town Board votes on a having a public hearing, (4) if the PB wishes to move forward, it needs to determine parameters for ridge top development regarding slope, grades, etc., (5) he took this as a presumption, but he

thought if it is something that was enacted, it would be Town-wide through all zones, (6) applications presently before the PB that seeks some approval would need to be addressed—the PB needs to be specific about it because a moratorium can basically stay things that are in progress but the PB has to clearly intend to say that or to say that it will not affect those things presently in progress, (7) there is a need for an escape mechanism or process that allows exemption or a way to seek relief from the moratorium, (8) there would need to be PB guidance about developments sought in a previously approved subdivision on a previously approved subdivision lot, (9) the duration and direction of the moratorium needs to be decided, (10) once the PB decides all of the details of the moratorium, it goes to the TB to decide if the item goes to a public hearing, (11) if the Town decided to enact the moratorium, he would want this Town to then have some momentum to do something about it, (12) you just can't enact a moratorium then do nothing—there needs to be a plan and (13) he would encourage that if a moratorium is appropriate that it be specific.

John Gaddy said (1) he understands what Counsel is saying, (2) he agrees with H. Koster's right in taking offense, (3) in looking at the 2001 survey in the Comprehensive Plan regarding Town priorities, people are saying they want to maintain the rural character of the Town and regulate development along the lake, major roads and ridge lines, (4) he doesn't feel the Town has ever had a strong advocate of the environment in this Town—every time he has come to argue before the Town Board he has made it from an economic sense, (5) he referenced Section 200-3B of the Zoning Ordinance and read a section into the record, (6) the Town is getting hammered even though it is working toward change, (7) this is not a community encouraging families to come to Town unless they are millionaires and (8) he thinks more time is needed to figure out how this Town is going to look 10-20 years from now.

H. Koster (1) said that is being worked on by a committee right now and (2) asked John Gaddy how he feels putting a moratorium into effect would change the situation or speed up the process that is currently being worked on and John Gaddy replied by saying that he would like to see where the public stands on it. H. Koster said (1) the PB meeting is a business meeting—not a public hearing, (2) the ZBA and Town Board meetings are in essence public hearings and (3) he doesn't see what a moratorium will accomplish in addition to what all three boards are currently working on together with the consultants the Town has hired.

From the public, Cindy Ackerle said maybe the moratorium would slow things down and would give these committees time to implement and get their act together so they come as a unified front to the people so the lay people have an opportunity to see these rules and regulations as a complete package, because right now it comes in dribs and drabs.

John Gaddy said that (1) he thinks the Town Board has been very good in looking for the enforcement and in bringing a Code Enforcement Officer to the Town and (2) he would like to see what the public has to say about it. H. Koster said (1) he is against a moratorium—he finds it offensive to him and the work the PB does to say they cannot control, because he thinks the PB does a hell of a job controlling and (2) the Town should

impose civil penalties on people and stop people from doing this by increasing the amounts of civil penalties. John Gaddy said that he sees the Town Board that sits there still doesn't have a groundswell of people that are there to support them—even coming up with a \$1,000 civil penalty, sometimes the Town Board is squirming about this. H. Koster (1) said that his understanding is that civil penalties are all-encompassing as they are set up now and (2) asked if civil penalties can be segmented. Counsel (1) said yes civil penalties can be segmented characterized as a number of counts and (2) gave an example of segmented civil penalties by referencing the Keith Van Buskirk case in Lake George. H. Koster asked if that will hold up and Counsel said (1) yes, (2) John Gaddy made a good point in that it is the truth that the Bolton Town Board members do squirm when they are in a tight situation when they have to look someone square in the eye and say “You did a bad thing and we are going to require that you bring it into compliance and we are going to charge you money...” which is because the Town Board members are sitting there as judge and jury and (3) the civil penalty process is really kind of well-suited for the courts. H. Koster asked if civil penalties can be set up to be handled by the courts and Counsel said (1) yes, the ordinance clearly has it in there and you can get injunctive relief and punitive damages but the Town of Bolton has endeavored to try to do it on a basis of an “alternative remedy”, meaning that it is as an alternative to going to court, to fining people and to having a trial the Town will administratively charge the person a fee and require it is brought into compliance, (2) Bolton Town Board members have a hard time because they want to do the right thing but they are out in a venue that is really not their venue, whereas judges are ready to hammer people when they see a violation. H. Koster asked if the PB can be empowered to impose civil penalties and Counsel said no.

John Gaddy referenced the Checci case and asked how long it took to wrap it up. Counsel said that case took about a year and a half. S. Wilson said (1) she agrees with H. Koster in that she thinks this PB does a fine job with the parameters it has to work with and (2) she doesn't take offense to John Gaddy's presentation, because she thinks what John Gaddy is trying to do is take it a step further and give the community an opportunity to address this situation by having a public hearing. John Gaddy said that is the hope.

From the public, Don King said (1) Bolton residents should be lobbying for non-development on the east side of the lake because that is what all Bolton residents see and (2) the PB does a wonderful job now in controlling colors and lighting that allow properties to be permitted and constructed, yet blend in with the natural surroundings.

H. Koster said he thinks what John Gaddy is presenting is that he doesn't want Bolton to look like the other side of the lake. John Gaddy (1) said that if you go on the lake and look at Bolton, it is pretty tough and (2) gave an example of Woodland Ridge regarding lack of screening. H. Koster said (1) that was also a development that was approved with no setback requirements which is why that clearing is taking place, because there are no setback requirements in that location, (2) you can't go back 20-25 years, which is when that particular item took place and (3) asked what projects in the last five years have offended John Gaddy. John Gaddy answered by saying (1) Apple Hill and Woodland Ridge are two examples and (2) the PB's best intentions are interpreted by people in a

very different sense than the way the regulations were written and it's legal. H. Koster said he would like to get the whole clustering section taken out of the ordinance.

John Gaddy said (1) the reason he wants the moratorium is because it puts the Town on a timeline that it has already started and found as it has been put in part of the Comprehensive Plan and (2) a moratorium would enable the Town to get a scenic overlay district installed. H. Koster (1) said that it is already in the Master Plan, which is currently being worked on and (2) asked what a moratorium would do to speed up that process. C. Mason said a moratorium would build a few fires under people and it would give a deadline and sense of urgency. S. Aldrich asked what the process is if the PB were to favorably send a recommendation to the TB on a moratorium and Counsel said the TB would then hold a public hearing based on the resolution proposing the moratorium based on the PB's recommendation. S. Aldrich asked if there is any guarantee there would ever be a moratorium if the PB sent a recommendation to the TB and Counsel said no, the PB makes the recommendation to the Town Board and the Town Board decides if it goes to a public hearing.

D. Roessler asked if anyone had any idea of restrictions and John Gaddy answered by saying (1) he can see beautiful houses that are screened and well-done and seem to take a sense of pride in making them fit in and other houses that came in and made it something that was going to be something very open and exposed and (2) people cut down trees to get beautiful views regardless of the effect it has. H. Koster said (1) John Gaddy is talking about individuals that are willing to break the law, (2) no matter what ordinance changes are made, the Town is still going to have those same individuals doing the same thing they are doing now, (3) those who break laws need to be punished for not following the Town's rules by having to pay higher civil penalties--\$1,000 is too little and \$5,000 is even too little, (4) 15 years ago as a PB member he fought against punishing people because at that time the majority of the Town were local people who didn't do these things, so he felt local people made legitimate mistakes and couldn't afford the penalties, (5) right now everyone knows this is a regulated Town and it is no more an excuse—it has been a regulated Town for 30 years now and (6) the Town has to start imposing civil penalties that are a lot of money on people and the Town has to find a way to impose civil penalties so the Town Board doesn't have to be the one responsible for imposing them. John Gaddy said he's not looking to re-invent the wheel, but he believes the residents are trustees of this beautiful setting that shouldn't be destroyed through visible development and H. Koster replied by saying new regulation is not going to change that. John Gaddy said that he wants to see the firing up of the troops and see what kind of public turnout there is for that—if it falls flat on its face, so be it.

C. Mason (1) said that imposing stringent civil penalties would have an effect and (2) gave an example of what a town did in Florida on clear cutting. H. Koster said his argument is that the ordinance in effect right now is having the Master Plan added to it already, which is more than adequate for the PB to regulate what it and what John Gaddy is looking for, but to just have a public hearing to have a public hearing is not going to solve the problem of the people who are going to violate the law anyway, unless you punish them in their pocketbook. John Gaddy said (1) he would have preferred the Town

Board to have made the decision to put it on its agenda and to move it to the public hearing stage, but the Town Board kicked it to the PB and (2) the Town is changing and he would like the public to step up and try to look at this from an environmental standpoint.

H. Koster (1) asked how changing the ordinance will change people, (2) said if you want to put a moratorium on until a decent fine for violations comes about—then he is all for it, but if John Gaddy is looking for a moratorium to rewrite the ordinance—that is kind of silly because all the ammunition the Town needs is here now and (3) said his recommendation to the Town Board would be to severely increase civil penalties. John Gaddy said he thinks he's getting somewhere. H. Koster said that (1) he doesn't think the Town is lacking in ammunition and (2) he thinks the Town is wasting a lot of time and a lot of consultant money.

S. Wilson asked how much ammunition the Town has with the Comprehensive Plan when making decisions before the Zoning Ordinance has been updated and Counsel replied by saying that (1) it is a very substantial basis—a guide, however it is not law, but the PB can certainly use it comprehensively as criteria to make its decisions, but the PB cannot say “The Comprehensive Plan requires...” the PB would have to say “The Comprehensive Plan suggests or advises or indicates...”—these are factors, not gospel, (2) the PB is uniquely situated where it can consider many, many factors and can draw in the solid stuff in the Comprehensive Plan and (3) he believes John Gaddy will say that it is a disappointment that the Town has not reacted favorably to implement what is in the Comprehensive Plan as its law. John Gaddy said (1) that is true, (2) he is looking for a favorable recommendation from the PB to bring this to the Town Board and (3) he would like to see what type of public response this gets. H. Koster said (1) the number one item on his agenda is to get change the civil penalty and (2) the PB has the latitude as a board to enforce exactly what John Gaddy is looking for, but right now, the only solution is heavier penalties. Counsel said he recommends that the courts are where the Town can get big relief—not only money, but injunctive relief too.

John Gaddy said he thinks this matter was sent to the PB because he thinks the Town Board needs more feedback on this and Counsel said he thinks that the Town Board looks for a recommendation from the PB because the PB is very close to this issue and deals with these complex issues every month. H. Koster said the Town Board would have to have public hearing on increasing civil penalties as well. Counsel said that (1) Town Law is pretty archaic and it has provisions in Town Law that talks about the mandate of maximum fines that can be imposed and it does entitle the accused to all of their rights as if they were being prosecuted under the penal law and it is per count and (2) part of the process is that you go to the Supreme Court and seek injunctive relief—that is “stop that and put it back”. S. Wilson asked if injunctive relief needs to be put into Town Law and Counsel answered by saying that (1) it is already there—it is just not used, (2) it does cost money to go to court, (3) the two forceful venues are injunctive relief and maximum monetary damages for each day or week it constitutes a violation, (4) Bolton has administratively chosen the path of alternative remedies which is a bit administrative and a lot faster, so there may be some logic in going this route and (5) he gave the example of

the Greenmeier Hubble that was in litigation for eight years before he even got the case. H. Koster asked who collects the money if the Town puts a fine on somebody and Counsel said (1) the Town keeps it and (2) it is already in the ordinance.

John Gaddy said (1) regarding the Comprehensive Plan, it questions the adequacy of the existing zoning and read excerpts into the record and (2) he looking for better review. H. Koster asked what John Gaddy is referring to regarding better review in what aspect and John Gaddy said better review in vegetation, color, etc. H. Koster asked if John Gaddy doesn't think the PB does a good job on that now and John Gaddy replied by saying that once the PB makes a decision, he doesn't know how accurately the applicants follow what the PB has decided and the Town's enforcement is just not strong enough. S. Wilson asked if once the code reflects the Comprehensive Plan if that will suffice what John Gaddy is looking for said he doesn't know, but the fires need to be started and the process taken from there.

Further discussion ensued on this topic re-visiting items previously discussed.

From the public, Cindy Ackerle asked if requiring bonds for contractors could be a way to hold people accountable and Counsel said yes.

From the public, Bob Weisenfeld said (1) he supports a moratorium because he doesn't see where more enforcement is possible, (2) referenced a stormwater ordinance violation he had brought to the Town Board's attention, and (3) said that merely to suggest an increase doesn't necessarily mean any of these fines will be utilized as a mechanism for gaining enforcement. H. Koster said the Town is in a transitional phase as far as enforcement goes, but it is going in the right direction.

From the public, Don King said that (1) bonds allow the good and responsible contractors to perform at the level they are expected to perform at and sorts out those who aren't responsible, (2) a moratorium penalizes the good contractors—it is not fair, because there are people who would develop their homes taking the environmental concerns into consideration and (3) enforcing enforcement of the existing Town regulations is the way to go—not to stop everything with a moratorium.

H. Koster said that contractors that have a good reputation get their bonds for a lot cheaper than those with a bad reputation. Counsel said (1) the PB should look at code and the enforcement sections because there are things in there that can be done with the existing framework of law that are not presently being considered and (2) the Code Enforcement Officer should be encouraged and instructed to take that path and find out from Town Counsel what is enforceable, prohibited, replanted, etc. John Gaddy said (1) the PB is forced to deal with things it may or may not approve, (2) if the PB will support this and he can go back to the Town Board with that it may help and (3) the Town Board has backed the PB very well, but he thinks the PB needs a more concerted effort that way. H. Koster said that (1) the same things don't need to be enforced by more than one agency. John Gaddy said the PB is dealing with more and more environmentally

sensitive properties and H. Koster agreed and said the Town has rules to cover that and those rules can be changed and be made stricter.

Motion by Susan Wilson that the Town of Bolton Planning Board requests that the Town Board review their procedures regarding civil penalties, enforcement, prosecution, and in appropriate cases enforcement in the court, that can award injunctive relief. **Seconded by** Donald Roessler. **Five in favor. One recused (J. Gaddy). Motion Carried.**

Meeting adjourned at 9:24 pm.

Respectfully submitted by
Jennifer Torebka
Recording Secretary
05/31/06