

Planning Board- Minutes December 20, 2007

State of New York

Warren County

Town of Bolton

Present: Chairman Herb Koster, Sandi Aldrich, John Gaddy, Sue Wilson, Chauncey Mason, Henry Caldwell, Donald Roessler, Town Counsel Michael Muller and Zoning Administrator Pamela Kenyon.

Absent: None

H. Koster began the meeting at 6:06 PM with the Public Hearing.

**Public Hearing:**

- 1) **SD06-20 Padanarum Park. Rolf Ronning.** Seeks to merge those parcels designated as 107.00-2-8 & 9 and 108.00-1-1, 4 & 6 and then divide into 15 lots. Zoning LC45. Property Location: Padanarum Road. Preliminary Plat. Subject to SEQR. Note: This item was tabled at the November 2007 meeting pending a public hearing.

Dennis Dickinson, Surveyor/Engineer, began his presentation with an overview of the project. He stated that the project involves approximately 1000 acres, with extensive wetlands and that they have three significant phases or levels to the development. First, he stated that 108.00-1-4 was purchased on three different separate tax map parcels and 108.00-1-4 has been sold to Indian Pond Estates, LLC. He stated that last month they talked about doing a property line adjustment and that has been done. Second, this project involves a contract with the Lake George Land Conservancy to purchase almost all of the property located on the west side of Padanarum Road. He stated that in order to fulfill the contract they have to assess a value to the land. He stated that there are six lots, with at least one test pit on each parcel. The smallest lot is just less than 30 acres and the largest is 95 acres. The third and final phase of the development are the lots that R. Ronning is going to retain and sell, the smallest of which is 16 acres and the largest is 50 acres. He stated that they have shown topography and at least one test pit on each lot.

H. Koster asked if there were any comments or questions regarding this project.

Counsel read a letter from Kathleen S. Lindberg Bozony, Land Use Management Coordinator, Lake George Association to Herb Koster, Chairman, regarding Padanarum Park in to the record which urged the PB to use caution while granting approval of this project.

Chris Navitsky, Lake George Water keeper, thanked the PB for allowing the public to comment. He stated that he wanted to recognize the developer's proposal to preserve a large portion of the property. He stated that the protection of the wetlands and headwaters will be instrumental in watershed protection. He stated that they hoped that this level of sensitive development will be incorporated into future projects in the Town. He asked D. Dickinson what level lots are being taken out of the density and how many lots they could have had based on zoning. D. Dickinson stated that they could have had 20 lots and that there will be about 12 lots not to be developed.

C. Navitsky had three comments: 1) that he hopes that there would be consideration for preservation of riparian buffers along the stream corridors. None of the water courses appear to be delineated on the drawings and should be provided as per the ordinance. He further stated that it would be strange to

preserve the wetlands and ponds but not protect the water courses that feed those natural resources. 2) He stated that it does not appear that the wetlands have been delineated by the APA and should be prior to the subdivision to determine jurisdiction. 3) He believes that these lots will fall under Major Stormwater Plan and would like to see a note on the plan stating that, so there is no confusion in the future.

R. Ronning stated he wanted to respond to some of the comments brought up: 1) With regard to the LGA letter, the culverts were installed by the Bolton Highway Department and have nothing to do with him or his project. 2) With regard to intermittent streams running the property, he stated that the properties are so large that the zoning ordinance already has setbacks from streams, so there is plenty of room on each property to protect the streams with our current ordinance. 3) He stated that he intends to have a deed restriction that includes either a 100 or 200 foot setback from the centerline of Padanarum Road for cutting, other than the driveway and that no house can be built within 200 feet of the centerline of the road. He stated that he wants to put these deed restrictions in because he does not want to change the personality of the road. 4) With regard to Chris Navitsky's comment on Major Stormwater, he stated that he fully intends to put that Major Stormwater will be required for every lot owner on the mylar. 5) He stated that he intends on requiring earth tone colors for all homes.

Nancy Williams, Director of the Lake George Land Conservancy, stated that this project is going well and appreciates the efforts by R. Ronning. She stated that they did receive the requested \$500,000 grant from the Office of Parks, Recreation and Historic Preservation. They are proceeding with the contract in order to apply for the money and make this into the next preserve.

R. Ronning stated that APA might have jurisdiction on this project so they sent them the JIF form asking for non-jurisdiction. He stated that it was true that APA has not been out to flag the wetlands, but he feels that D. Dickinson has been quite conservative and deliberately created the lots so that there would be no division or subdivision of any wetlands. He stated that he and Nancy Williams have talked and he is prepared that if the APA determines something different about the wetlands, he will come back to the PB for a lot line adjustment because he does not want to subdivide or own a wetland. He stated that based on their topography and walking of the land, they have best determined the wetlands and created the property lines. He further stated that there was only one place that could have the potential of a mistake and that the rest are clearly inside of the lots.

N. Williams stated that they have been discussing this matter, but have not come to any agreement as of yet. She stated that it is not a major issue, but she would like to meet with the APA, which may not happen until the spring because of the winter conditions, which is too long as per their contract. However, she stated that she wants to wait so that she is sure that they know exactly what the APA will require if the line needs to be changed. R. Ronning stated that his resolution is to sign the agreement saying that, if for some reason we made any mistake, we will move the line so that the line in all places is 100 feet from the wetlands.

D. Dickinson stated the wetlands that are of concern are in lot 7, based on aerial photography and other information they had, there are two pocket wetlands. He stated that they show up on the aerial photography and they are hoping with their setbacks that they have satisfied the ordinance.

N. Williams asked D. Dickinson if they could have the wetlands done by aerial Corp of Engineers, as they have in Massachusetts. D. Dickinson stated that it may be available, but he does not have it and the GIS stuff that they have is really loose and they don't rely on it at all. He stated that they have had this flown by low level flying prior to the tree leafing.

H. Koster stated that the APA wetlands map is not accurate by their own admission.

D. Dickinson stated that they have put in a JIF application to the APA. He further stated that they have had a meeting with the APA prior to the JIF application and explained what they want to do and they gave them some input. R. Ronning stated that what the APA gave them is reflected on this map.

J. Gaddy asked if the APA meeting was a helpful process. D. Dickinson stated that it was a very helpful process. He stated that it is easier to sit down and tell them face to face what the plan is rather than to submit a plan and application cold. He continued that the APA has returned the original JIF requesting further information, they have resubmitted the JIF and are awaiting a response.

H. Koster stated that they should mention, for the record, the Petition that was from the first application. Counsel stated that there was a Petition with regard to keeping Trout Falls and Padanarum wild, which was delivered to Herb Koster, Chairman, on June 22, 2007, by Supervisor Gabriels, indicating that he has delivered to the PB an original 30 page Petition signed by 228 individuals. Counsel read the Petition as follows: We the undersigned wish to make our views clear on the forthcoming development on Trout Falls Road and Padanarum Road. While we all support property rights, we feel that irreparably changing the character of a treasured park in Town in pursuit of personal gain is something fundamentally different. A cohesive wild area such as we have with its multitude of habitats and recreational opportunities is something that should be preserved for posterity. In order to maintain the natural character of this area we ask that the following conditions be set for development: 1) no road upgrades to be done by the Town. The taxpayers are not to be responsible for maximizing lot prices. Purchasers of these lots should be advised that the roads are difficult at times and not to expect improvements. 2) No power line extensions. Any camps/homes built in the future should be a self-sufficient nature as are those presently there. This is to lower the scale of new construction to prevent dramatic increases in tax assessments which could be unmanageable for residents and property owners in the vicinity.

H. Koster asked if there were any further comments.

Motion by H. Caldwell to close the public hearing. Seconded by C. Mason. All in Favor. Motion Carried.

#### **Regular Meeting:**

H. Koster asked if they could postpone the minutes until January since he has not had time to review them.

Motion by H. Caldwell to table the review/acceptance of the November 2007 minutes until the January 2008 meeting. Seconded by S. Wilson. All in Favor. Motion Carried.

- 2) **SD06-20 Padanarum Park. Rolf Ronning.** Seeks to merge those parcels designated as 107.00-2-8 & 9 and 108.00-1-1, 4 & 6 and then divide into 15 lots. Zoning LC45. Property Location: Padanarum Road. Preliminary Plat. Subject to SEQ. Note: This item was tabled at the November 2007 meeting pending a public hearing.

D. Roessler asked P. Kenyon that on the subdivision application it has Stonybrook Land, LLC Indian Pond and now it says the development is Padanarum Park. R. Ronning stated that he purchased the land from Stonybrook and he assumed their application. D. Roessler asked P. Kenyon if that was okay. She stated yes. D. Roessler asked if any changes need to be made to the application. P. Kenyon asked how many lots were on the application. D. Roessler stated that there were 21. R. Ronning stated that the lots changed to 15 and that he should receive a refund. D. Roessler asked if the application should be changed. P. Kenyon stated that during the process the application changes frequently and the applicant is not required to change the original application.

R. Ronning stated that both he and D. Dickinson were there to answer any questions that they might have. He stated that D. Dickinson has already provided an excellent overview of what they want to do.

H. Caldwell stated that at the last meeting R. Ronning stated he would put in a stipulation that there would be no further subdivision. R. Ronning stated that he would. H. Caldwell asked how he will set that up. R. Ronning stated that they would put it on the mylar as a condition of approval so that it is on notice to everybody.

H. Caldwell asked N. Williams is the Lake George Land Conservancy would be agreeable to that. N. Williams stated that it could affect the value. She stated that R. Ronning has provided a good plan and they have agreed to 6 lots. She stated that originally the project had 21 lots and two of those lots have been merged and purchased by Indian Pond, which leaves the possibility of 19 lots. She stated that there are 9 lots on the east side of Padanarum Road for sale with one on the east side and that there are remaining lots above their 6. She stated that theoretically that those additional lots that are not being developed have a value. She stated that essentially it is a cluster type plan, transfer development type plan, where he is taking development rights in one part of the property and moving them to another part of the property. So that means if he has 6 lots on their side but has 4 lots that he is not developing, theoretically their appraiser could take those 4 lots and put them on the Conservancy side, which would add additional value to the property. She is concerned with the restriction of no further subdivision it would restrict them to the value of only the 6 lots. She stated that she would like the credit for those additional lots if it is possible. H. Caldwell asked if they could do this as a condition, that the LGLC would not have the no further subdivision and the 200 foot setback, but if the LGLC does not purchase those lots, then they would put the restriction of no further subdivision and 200 foot setback. R. Ronning stated that he is happy not to subdivide his lots any further and he is willing to donate the lots to the LGLC for their assessment if they buy the property. He further stated that if they don't buy the property, he is willing to stick with just 6 lots and put that as a condition.

H. Caldwell stated that the property has to appraise at a certain level for the LGLC to get the grant. N. Williams stated yes. R. Ronning asked for appraisal purposes, could they do an approval where it is agreed that there are at least 4 more lots that he did not put in there, that can be accommodated by the zoning density, that he agrees not to use those 4 lots, he agrees to transfer the ability of those 4 or more lots to the LGLC if they buy the 6 lots for them alone. R. Ronning asked N. Williams if that would solve their problem. N. Williams stated yes.

S. Wilson stated that she was confused in that the LGLC had already received approval of the grant and that they were ready to close the sale in January. N. Williams responded that the grant process is cumbersome. She stated that the first step was to get an opinion of value for the property they are going to purchase, based on the opinion they submitted the application to the State. She stated that they have been waiting a long time since and just last week the Governor announced that this project would receive \$500,000, but that does not mean that they have it. She stated that next they have to go through the New York State contract process and she has not yet received the formal notification of a contract process, but when she does will be contacting R. Ronning to start the formal process, which will include getting a formal appraisal done, submitting a survey and other stipulations. She stated that unfortunately for the LGLC, this is a reimbursement program, so they will still need to find the money up front to purchase the property.

S. Wilson stated that they are being asked to approve this application based on the fact that the LGLC is purchasing the property and how do they protect themselves if they do not purchase the land. Counsel stated that they are going to rely on it as fundamental representation, that should there be any requirements to amend that, such as the LGLC does not purchase, then this is a plan that cannot be implemented and the applicant would have to come back. P. Kenyon stated that this is the same thing that they did with Westwood Forest and BCS. R. Ronning asked if that would apply to the 6 lots, but not for the rest of the lots. Counsel stated that he was correct. R. Ronning stated that he was agreeable to that.

Counsel stated that they need to clarify their promises and outline the Town's expectations and from a housekeeping perspective, it needs to be in any resolution, so that it is enforceable. R. Ronning agreed. Counsel stated that all should be spelled out in deed covenants so that all owners in the future have a clear understanding as to what was decided here. Counsel gave an example, if R. Ronning is going to be transferring development rights to the LGLC parcel. R. Ronning stated that if that is everyone's wish, he is agreeable. Counsel stated that this is essential to be manifested in instruments as well as on the mylar and part of this resolution. R. Ronning agreed. Counsel stated that in the future, the Zoning Administrator will have nothing to rely on other than minutes, which is not acceptable.

H. Koster stated that he would like to see a restriction that if the LGLC does not purchase this land that he cannot increase those 6 lots that are intended for this conservancy. R. Ronning agreed.

H. Koster asked if he would agree to not sell lot 7 until they get the wetland resolved, because that may involve a lot line adjustment of something that is already sold. R. Ronning stated that he was hoping to agree that if there is a mistake that he or the person purchasing lot 7 agrees to convey any land that is within 100 feet of that wetland back to lot 6 and that would be put in the deed. H. Koster stated that he didn't think they could do that. Counsel stated that they could do that, but he advises that they should be cautious in allowing it. H. Koster stated that if the land is not going to be flagged until the spring that he would rather wait for the sale until then. R. Ronning stated that he would agree to ask the APA to come in the spring to flag the property, but if they don't come down voluntarily by August 1<sup>st</sup>, that he can sell it. H. Koster stated that was reasonable and asked that even in August that he would put a stipulation on there that the property line has to be 100 feet from the wetlands. D. Dickinson stated that they could have the wetlands flagged privately if there is a delay, however if they are in APA jurisdiction they are going to want to come down and check the flagging. Counsel agreed with D. Dickinson's proposal. He stated that they did have a meeting with APA representatives and they acknowledged that they cannot be at all places at all times and that they are limited on their staff and that they can use their private wetlands delineation. He also stated that as a layman you can determine wetlands and that it can be very subjective. H. Caldwell asked when the property could be flagged. R. Ronning stated not until spring, end of April or May so that they can see the vegetation. H. Koster stated that August 1<sup>st</sup> is a reasonable amount of time and that if it is not done, they will have it done by a legitimate wetlands expert. R. Ronning stated that if they don't have someone from the APA by July 1<sup>st</sup> he will have a private expert flag the wetlands, and if any changes need to be made he will do so in order to comply with the 100 foot setback so that he can sell the land.

J. Gaddy asked about the lights that will be used and the recreational opportunities or recreational fee proposals. R. Ronning stated that they have 400-500 acres of recreation area that is being conveyed to the LGLC and feels that the \$400 fee should be waived. H. Caldwell stated that the fee would be waived as long as the LGLC purchased the property, otherwise the fee would be in effect. R. Ronning agreed.

J. Gaddy stated in response to the discussion that was done a couple of months ago as to what they want on the plat maps, going to 150-25 it does state that they are looking for the location of the permanent and intermittent water courses and wetlands. He stated obviously they have the wetlands, but while it is still under his control it would be a benefit to future development if they could see the permanent water courses. R. Ronning stated that he has been up there and there are a lot of little intermittent streams. He stated that there is so much room on each lot to build a home and there are so many places to put a driveway away from a little stream. D. Dickinson asked if J. Gaddy if he was looking for permanent streams. J. Gaddy stated that he agreed that this property is large enough and there may be intermittent streams that they could see in April may not be intermittent streams seen in September, but he would like to see the major streams. D. Dickinson stated that they have most, if not all of this in their aerial photography and asked how many of them need to be put on the map. H. Koster stated that the intention is to show that there aren't any major wetlands on any of the lots they intend to sell. D. Dickinson stated that he was correct. He continued stating that as you drive up, there are maybe 2 or 3 drainage areas that are draining actively and he can put those on the map. J. Gaddy stated that if they have them, to please put them on the mylar. R. Ronning agreed to put major intermittent water courses on the mylar. H. Koster asked if they could plot the Town culverts. R. Ronning agreed.

J. Gaddy asked if there were any deed restrictions on the property when they purchased. R. Ronning stated that there was one right-of-way between Ed English's and a lot that he has extinguished.

H. Caldwell asked Counsel if they need to do the SEQR form. Counsel stated yes.

J. Gaddy wanted to clarify that it was agreed that since this was a line subdivision on property without any work being done that each owner would be responsible for a Major Stormwater Plan. R. Ronning stated that any subsequent owner will be responsible for putting their own driveways in and before that will be

responsible for applying for Major Stormwater application. H. Caldwell stated and Site Plan Review on each lot. R. Ronning stated that was correct.

H. Koster asked Counsel if they need a motion for the full SEQR form. Counsel stated yes.

Counsel asked if they were going to accept this application as a preliminary and give instructions. H. Koster stated yes and that they also wanted to request the long SEQR form. D. Dickinson asked if there was a specific reason for the long form. H. Koster stated that it was because of the amount of wetlands that are involved.

Motion by J. Gaddy to have the process of the long SEQR form be submitted by the applicant. Seconded by D. Roessler. All in Favor. Motion Carried.

Counsel stated that with regard to the restrictions and conditions that the PB wants to see, the applicant will need to detail them in deed covenants. R. Ronning stated that they will review the minutes and get them a copy of the proposed deed with the covenants to be put in every deed, give them a copy of the proposed language that will be put on the mylar, show the major intermittent streams, and fill out the long SEQR form.

H. Koster asked for a motion to approve the preliminary plat. He asked Counsel if he wrote everything down that the applicant has agreed to. Counsel stated yes. H. Koster asked if they have to list them individually in the motion. P. Kenyon asked if they could for the record.

P. Kenyon stated that she has, major intermittent water courses on the mylar, culvert to be plotted on the mylar, major stormwater project for each lot, site plan review for each, full environmental assessment form to be filled out, deed covenants and restrictions on the lots on the west side that Board was going to be interested in seeing. Counsel continued stating provisions for the transfer and development rights shifted over to the side of the road for the LGLC for their exclusive use, consideration if the LGLC does not purchase the applicant will stand with the 6 lots, but will have to come back here to the PB for any further project. P. Kenyon stated that they will waive the \$400 recreation fee provided the LGLC purchases the land, lot 7 will not be sold until APA or private wetlands expert can flag the property with a deadline of August 1<sup>st</sup>. H. Caldwell stated the 200 foot setback. R. Ronning asked if they could make part of the motion that when the APA flags and they are off a little bit in the setback, does he have to come back for a lot line adjustment or is it agreed that the description between lot 6 and 7 will be a line at least 100 feet away. Counsel stated that under the proper set of facts the ZA can approve a lot line adjustment without returning to the Board, the question is, will it be simple enough for her to make that decision, if not it will need to return to the Board. P. Kenyon asked H. Koster if he was okay with that. H. Koster stated he was fine with it.

H. Caldwell stated another condition was no further subdivision. R. Ronning stated that there would be no further subdivision except that he is going to transfer the remaining density to the LGLC for their purposes solely. N. Williams asked if there is no further subdivision on the west side than those 4 lots are not usable. R. Ronning stated that he agreed. D. Dickinson stated that N. Williams's concern is that if she wants to use those lots for the appraisal, would she need to come back to you in order to get her assessment up. N. Williams stated that she does not need a map showing four additional lots, the appraisal will recognize that there are 4 potential lots that could be placed there and will value them accordingly. H. Koster stated that they could say that anything not sold to the LGLC cannot be further divided. Counsel agreed. S. Wilson asked if the LGLC does not buy those lots would they be 6 separate lots. H. Koster stated yes, but they would be covered by no further subdivision if the LGLC does not buy and the applicant would have to come before the PB again. Counsel agreed because of the additional conditions and considerations if it does not go to the LGLC.

H. Koster asked N. Williams if that language would cover their grants. N. Williams stated yes.

J. Gaddy stated that there should be shielded downward lighting. R. Ronning agreed.

H. Caldwell stated that R. Ronning agreed to 200 foot setback for the placement of houses. R. Ronning stated that he had not decided between 100 or 200 feet. H. Caldwell stated that he said 200. R. Ronning stated that he would agree to 150 feet from the centerline. H. Caldwell stated that he did say 200. R. Ronning stated that there was only one lot that he wanted to maybe go to 150 feet but he doesn't care and agreed to 200 feet from the centerline of Padanarum Road before any structure is to be built, not necessarily before a septic system, driveway or gate. N. Williams asked if this setback would affect their property. R. Ronning stated that on lot 6 they could build a structure 200 feet away. D. Dickinson stated that lot 6 could not comply with a 200 foot setback. R. Ronning stated that this setback is going to devalue lot 7 and asked if he could do a 100 foot setback for any structures on the west side and 200 foot on the east side Padanarum Road. H. Koster agreed stating that if it does not go to the LGLC it will come back to the PB anyway for further review. D. Dickinson stated that they could draw the setbacks on the map.

P. Kenyon asked what the setback was from the wetlands. R. Ronning stated between lot 6 and 7 is 100 feet where the property line is going to be.

N. Williams asked if structure includes a small dock or shed, but not a habitable unit. H. Koster stated that if it is a dock, it is a structure. N. Williams stated that they are looking at providing public access, but they have not looked at it yet to see where the placement would be. R. Ronning stated that the dock wouldn't be within 100 feet of Padanarum Road anyway since it is off Trout Falls.

J. Gaddy asked if they could get a resolution on the spelling of the road with this project. R. Ronning agreed and stated that the map would be changed.

Counsel stated that the motion should incorporate the ZA list by reference to be supplied by R. Ronning by December 21<sup>st</sup>.

**RESOLUTION:**

**Motion by Henry Caldwell**, with a public hearing having been held, to approve the preliminary plat with the following conditions:

- 1) A full environmental assessment form is to be submitted.
- 2) All major intermittent water courses are to be plotted on the map.
- 3) Culverts are to be plotted on the map.
- 4) The major stormwater regulations will be applied to each lot when developed.
- 5) Site Plan Review is required for the construction of a single family dwelling on each lot.
- 6) The proposed deed covenants are to be submitted for Town Counsel's review.
- 7) A \$400.00 recreation fee will be applied to each lot at the time a certificate of compliance is applied for should the Land Conservancy not purchase the parcels agreed upon.

- 8) There shall be no further subdivision of any parcel not purchased by the Land Conservancy.
- 9) Exterior lighting is to be downward facing and shielded with low wattage bulbs used.
- 10) Earth tone colors are to be used on all structures.
- 11) All structures on the east side of Padanarum Road are to be set back 200 feet from the centerline of the roadway.
- 12) All structures on the west side of Padanarum Road will be set back 100 feet from the centerline of the roadway.
- 13) Development rights on the east side can be transferred to the Land Conservancy only.
- 14) If the A.P.A. does not flag the wetland on lot 7 before August 1, 2008, the Developer will flag them. A 200 foot setback must be maintained from the flagged wetlands.

**Seconded by Donald Roessler. All in favor. Motion Carried.**

- 3) **SPR07-35 Harry Wolking Trust (Linda Queen).** Represented by Chris Gabriels. In accordance with Section 200-52, seeks Type II Site Plan Review for a privacy fence greater than 6' in height from natural grade to be placed on an existing dock. 7.3 ft. is proposed from the mean high water mark. Section 213.17, Block 1, Lot 34, Zone RCM1.3 Property Location: 3832 Lakeshore Drive. Subject to WCPB & APA Review.

**RESOLUTION:**

This item was tabled at the applicant's request.

- 4) **SPR07-42 LJDJ Enterprises.** Represented by Holly Wheeler of K.D. Wheeler Custom Signs. Seeks Type II Site Plan Review for an advertising sign greater than 4 square feet. 15.11 feet is proposed. The sign will be placed within the County Rout 11 right-of-way and is associated with Section 139.00, Block 1, Lots 83, 83 & 85, Zone RIL3. Property Location: Intersection of Hendricks Road and County Rout 11. Subject to WCPB Review. Subject to SEQR.

Holly Wheeler of K.D. Wheeler Custom Signs, stated that she is proposing to place a sign 20 feet back from the guardrail at the corner of Hendricks Road and County Route 11. She stated that she understands that County Route 11 is designated as a scenic corridor, so she designed the sign smaller. She stated that the sign is approximately 3 feet by 5 feet. She stated that she has obtained a Department of Public Works County Right-of-Way Permit. She stated that the Department of Public Works said it was subject to PB approval and that the sign should be placed to obtain safe sight distance with a minimum 740 feet. She stated that she believed sight distance was when you were traveling down the road and you are 740 feet away that you can see it. H. Koster stated that sight distance is when you are coming out of the road it

cannot obstruct your sight distance up and down County Route 11. She stated that it should not be a problem since it will be set back 20 feet from the guardrail and cars will be able to come to the intersection and look beyond it to see up and down the road. She stated that she picked the spot because it is level area, with no trees or vegetation that needs to be cut down. She stated that the sign would be natural colors, brown background with yellow letters and the artwork has a blue sky and green trees.

D. Roessler asked if the sign was to be two sided. H. Wheeler stated yes.

H. Caldwell asked if it was going to be lit. H. Wheeler stated no. She stated that purpose of the sign is so tourists and residents using the business have time to see where they need to turn.

S. Wilson asked if the arrow in the depiction was an additional sign or part of the sign. H. Wheeler stated that it was part of the sign. She further stated that the applicant wanted Treego on the sign. D. Johnson, of LJDJ Enterprises, stated that Treego is the Canadian Company that built their facility. S. Wilson if the arrow was going to hang beneath the sign. H. Wheeler stated yes that it is small and will hang beneath the sign. S. Wilson asked for the size of the arrow. H. Wheeler stated that is was approximately 2 feet left to right. S. Wilson asked if the arrow was included in their square footage. H. Wheeler stated no, it was an afterthought and would add approximately half a foot, which would increase the square footage to 16 square feet. She stated that she could scale back the main sign so that it does get included in the square footage.

D. Roessler asked if they planned on putting any additional signs on Hendricks showing where to turn up the driveway. D. Johnson stated that they have one upon turning on Westwood Forest Lane, there is a bridge going over Alder Brook, R. Ronning has a sign for Westwood Forest on one side and they have a little decorative sign in the stone that shows Adirondack Extreme. S. Wilson asked how big that sign was. D. Johnson stated that it was approximately 3 feet long by 1 foot wide and it is within the stone frame of the bridge. D. Johnson stated that the problem they had all summer is that Hendricks Road and Westwood Forest is not able to be map requested or GPS and people were driving past several times looking for the location.

S. Wilson asked if the sign was an exact depiction of the sign and the font size will not be enlarged. H. Wheeler stated no, it was proportioned to their logo. S. Wilson stated that the colors in their packets differed than what H. Wheeler was presenting. H. Wheeler stated that they had some problems with their printer colors and she wrote in the correct colors.

D. Roessler asked if there was any County Impact. P. Kenyon stated no and that as H. Wheeler has mentioned they already have the DPW Permit from Warren County.

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

#### **RESOLUTION:**

**Motion by** Donald Roessler to accept the application as complete, waive a public hearing and grant approval as presented with the following condition: 1) No lighting is allowed. 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) **SPR07-43 Branch, Fred.** Seeks Type II Site Plan Review for an automobile repair shop, fully enclosed, up to 750 square feet with outside storage of vehicles not visible from the public right-of-way or water body. Section 199.00, Block 1, Lot 22, Zone RR5. Property Location: 858 Wall Street. Subject to SEQR.

Fred Branch stated that he has had this proposed Wall Street Garage through the Town and County and name of the business since 1969. He stated that he used to repair cars and then he got into another line of profession and stopped the business. He stated that he wants to get back into repairing cars. He has checked and they still have the business name and he knows that he has to conform to the new zoning regulations presently to do this line of work.

J. Gaddy asked if they would be doing dismantling or just repairs. F. Branch asked what he meant by dismantling. J. Gaddy stated that he is concerned about the old fluids, but see that he has addressed it in the packet, that the used oil would be used as the waste oil and the antifreeze would be picked up by a jobber. F. Branch stated that all of the used fluids would be picked up by recyclers.

J. Gaddy asked if they have spoken to the neighbors. F. Branch stated that his neighbors aren't all that close in proximity to the proposed garage, but he has spoken to two or three of them and they seem to be in favor of it.

J. Gaddy stated that he sees that the lighting will be low profile and what they have been talking about is shielded downward facing lighting. F. Branch stated that they have that as well as what is required by insurance.

H. Koster asked what the maximum amount of cars they would be parking outside. F. Branch stated 6 cars, he doesn't expect that to be needed very often, most jobs would be oil changes and day work. He stated that the lot will be enclosed based on the fence requirements which will be out of sight from the road next to the building. S. Aldrich asked if they were putting up a privacy fence so the parking lot is not visible from the road. F. Branch stated yes, it would be a board fence approximately 6 feet tall, however the lot is not visible now with the shrubbery currently there, but the cars and things would not be seen and there would be a gate set up for security overnight. He stated that the lot will not be enclosed on all four sides because the back side is the mountains. He further stated that he didn't want to put up a fence until he knew if it was feasible or not.

J. Gaddy asked P. Kenyon if a fence were to be put up, would the applicant need a permit. P. Kenyon stated yes and the applicant was aware of that.

D. Roessler asked if the applicant was planning on putting up any signs. F. Branch stated that there will be sign up as a New York State repair shop, which will be posted on the building, the inspection station sign, and he may have a small sign on the front side facing Wall Street saying Wall Street Garage, but nothing beside the road.

The PB found no concern with Section 200-31A-D of the Zoning Ordinance and C1-C7 on the SEQR Form.

#### **RESOLUTION:**

**Motion by** Donald Roessler 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. **All in favor. Motion Carried.**

#### **6) SPR07-37 Sheppard Machinery Inc. (Lakeside at Nirvana).** Represented by

David Mazzeo and Boswell Engineering. Seeks Type II Site Plan Review for a 9 unit condominium project. Section 171.15, Block 3, Lot 60, Zone GB5000. Property Location: 18 Sagamore Road known as Nirvana. Subject to WCPB review. Subject to SEQR. This application is in conjunction with V07-73 & SD07-22.

**RESOLUTION:**

This item was tabled at the applicant’s request.

**7) SD07-22 Sheppard Machinery. (Lakeside at Nirvana).** Represented by David Mazzeo and Boswell Engineering. Seeks Subdivision approval for a 9 unit condominium project. Section 171.15, Block 3, Lot 60, Zone GB5000. Property Location: 18 Sagamore Road known as Nirvana. Subject to SEQR. Major Subdivision. Sketch Plan Review. This application is in conjunction with V07-73 and SPR07-37.

**RESOLUTION:**

This item was tabled at the applicant’s request.

**8) SD07-23 Keilb, Joe.** Represented by Jesse Pepper. Seeks to divide into two lots that parcel designated as Section 186.18 Block 1, Lot 27, Zone RM1.3. Sketch Plan Review. Minor subdivision. Property Location: East of 428 Lake Shore Drive and being part of the John R. Loomis Jr. Subdivision. Subject to SEQR. Note: This application is in conjunction with V07-78 for deficient density.

**RESOLUTION:**

This item was tabled at the applicant’s request.

**9) SD07-23 Alder Brook Subdivision. Jeff Tennent.** Seek to merge those parcels designated as Section 139.00, Block 1, Lot 9 and Section 123.00, Block 2, Lot 15 and then subdivide into 12 lots. Zones RR5, RR10 and LC25. Sketch Plan Review. Major Subdivision. Property Location: New Vermont Road and County Route 11. Subject to SEQR.

*(Note: This item was heard as Item # 11 on the agenda)*

J. Tennent, stated that he is seeking to subdivide land between New Vermont Road and Hendricks Road. He stated that he was looking to get any and all comments and questions from the PB. He stated that he has met with most of his neighbors and discussed what he was proposing and to get their thoughts and feelings to incorporate their concerns in what he was going to do.

S. Aldrich stated that on his application he was requesting exception to the minimal curve radius and asked where the curve was and why he was requesting this. J. Tennent stated that it was on the Hendricks Road side and some of the radii on the road don’t meet the requirement as per the subdivision standards and that some of them are much larger. He stated that the standards are there for navigation and for sight. S. Aldrich asked if the topography played a factor in the request. J. Tennent stated yes which would affect the length of the road. H. Koster asked how steep the road was. J. Tennent stated that he and Tom Jarrett, Project Engineer, have met and are doing a road section now and will try to meet all the required grades.

J. Tennent stated that this project is APA jurisdictional and he is working on that to. H. Koster stated that he felt that it was going to be steep and curvy on Hendricks Road. J. Tennent stated that he felt that it was doable.

S. Aldrich stated that he indicated a large wet area on Lot 8 and asked if that was the only one that he was aware of. J. Tennent stated that no, there are other small ones and he is working with the APA on that because they have to make the ultimate determination as to what they declare as wetlands, but he has had wetlands flagged on the whole parcel. He stated once the APA has reviewed the area and determined what is wetlands, he will present that back to them on a map.

J. Tennent stated that there are a substantial amount of roads on the property and that you can pretty much drive up over the mountain. H. Koster stated that he is concerned that if they are not meeting the curves then he doubts they will meet the grade and they will have to come into Hendricks Road at a right angle. He state that he would prefer cul de sac in here and just have lot 12 access by Hendricks so that the whole subdivision does not use that entrance. J. Tennent stated that he would fall into the other requirement...H. Koster stated that he is not interested in redesigning his project, but they have waived that requirement before. J. Tennent stated that originally he had drawn two cul de sacs, one from Hendricks and one from New Vermont Road, but when all said and done, you put the circle, he really wasn't saving that much, so physically walking the property he saw that it could work the other way. He stated that not everyone is going to be using the Hendricks Road access and the load would be split in half. He felt that if they had a cul de sac from New Vermont Road for 11 properties, then the traffic would increase on New Vermont Road and the quality of the roads will be the same once Hendricks Road is paved. H. Koster stated that even with two cul de sacs that they are still getting half of the people using it and it looks like it could be dangerous. J. Tennent stated that his main concern was the grade and not the curves. H. Koster stated that the curves don't bother him as much if the grade is okay, but he also has a problem coming out on Hendricks Road, with not enough distance coming at a right angle. D. Roessler asked how long the road would be. J. Tennent stated approximately 7,000 feet. He stated that the parcels are large and is similar to the length of the Diamond Ridge Road between the two roads, and he envisions much less here, he plans to go with the minimum as to what they would allow for safe passage.

D. Roessler asked if the wetlands on Lot 8 were deep. J. Tennent stated no but it is defined clearly.

J. Tennent stated that the topography was done and it is accurate.

J. Tennent stated that Chris Navitsky said that he would like to sit down and discuss his project with him and he agreed that he would like to have C. Navitsky's input.

S. Aldrich asked what the dotted line on Lot 4 was. J. Tennent stated that it was an intermittent stream which leads from an upper wetland. S. Aldrich stated that there was another one on Lot 11. J. Tennent stated she was correct. He stated that he didn't want to have too much wetland information until the APA had come in to make their determination.

H. Koster asked if T. Jarrett was going to do a profile with cuts and flows cross sections. J. Tennent stated yes and that what he is asking for tonight is to get acceptance of the Sketch Plan Review as complete and his next step would be to produce a road profile that meets the requirements of the subdivision regulations.

H. Koster asked P. Kenyon if a Sketch Plan puts them on a timetable. P. Kenyon stated that she was unsure, but thought that it was after the public hearing.

J. Tennent stated that the subdivision was actually a 13 lot subdivision, with one lot being the road and he will separate that out as a separate parcel. S. Wilson asked who will own it. J. Tennent stated it would be owned by the Homeowner's Association which would have to be formed and that would be the only way to do it properly, unless the Town was to take the road over in the future and if they did the road is a separate deeded parcel which can then be easily transferred to the Town.

H. Koster asked if anyone else had any comments on this.

S. Wilson asked P. Kenyon if it was within 62 days of receipt of a complete application. Counsel stated it was 62 days after closure of a public hearing.

H. Koster asked the PB if they have seen enough information to move forward to a preliminary plat could they have a motion. J. Gaddy asked if they want to see a different proposal made for Lot 12. H. Koster stated no, that J. Tennent has been working on it longer than he has been looking at it and that he would like to see what T. Jarrett draws up and they can make a decision at that point.

**RESOLUTION:**

**Motion by John Gaddy to accept the application as completed sketch plan. Seconded by Donald Roessler. All in favor. Motion Carried.**

**10) Mitzi Nittmann- Code Enforcement Officer.** To discuss policy for major stormwater projects.

Mitzi Nittmann provided the PB with a packet of information regarding a subdivision that the PB approved in which she is having stormwater control issues with. She stated that she there is erosion and concerned that the retention pond was not properly constructed to some type of specifications. She stated that the pond holds water all of the time and is concern it will break. She stated that she had T. Nace go to the site and has a list of his concerns, which they are trying to address.

She continued that she is concerned because these plans were approved by the PB and that the plans were specifically labeled “Not For Construction” yet the site was constructed from them. She stated that the contractor was not given the minute criteria sheet that came with the plan, so he basically built the project from the picture.

H. Koster stated that he a Counsel had discussed that they do not need detailed plans, but from reading T. Nace’s letter, there are accepted construction methods for these projects and this was not done by excepted construction methods and that maybe they need to be more specific and have construction plans in front of them. Counsel stated that his understanding upon speaking to J. Anthony of the LA Group, is that the LA Group did take it in a preliminary fashion provided what would be a final rendition, but not stamped or indicated it was “For Construction” and that had a little bit to do with the relationship was between the LA Group and the applicant and that he was done spending money. Counsel stated that understandably the LA Group would not stamp the plans or reciting the specifics as to how is was to be constructed, that given it came here and this PB has every right to exercise its discretion to feel comfortable that it is a simple plan, a workable plan and an improvable plan and that has been done. Counsel stated that now with 20/20 hindsight, Mitzi is out there trying to enforce it and there are no specific requirements to back her. He stated T. Nace stepped into the picture for the first time at Mitzi’s request, but somehow they missed the boat and didn’t refer it to him in the first place. Notably, he stated that he is not insisting that they refer everything to T. Nace. Counsel stated that T. Nace has come back an opinion that this is not as per accepted applications and standards and it puts Mitzi in a tough spot as to what she is enforcing. Counsel stated that in an effort to remediate this that they have had to fall under the stipulation as how we are going act, which is under discussion and not fundamentally opposed by JEHM or JEHM’s attorney and included remedial action, and he asked Mitzi if any of it has been done. M. Nittmann replied that they cannot get in there now. Counsel stated that his proposal and what JEHM has agreed to is that they will not be selling lots. M. Nittmann stated that there is a conflict with signing that agreement. P. Kenyon agreed and stated that they did not agree to not selling the lots, but did agree to no certificate of compliance being issued until the issue is resolved.

Counsel stated that he was interested in the consumer end of this because if someone comes along and buys one of these lots the next step is to put a plan in at the Zoning Office and ask for a certificate of compliance. He stated that he would want to be honest with them ahead of time that they are not going to get a certificate of compliance.

M. Nittmann stated that if they look in 125-13C 1 it says that the major stormwater report will be done by an engineer, architect or land surveyor licensed to practice in the New York State, who shall be employed by the applicant or developer to design and supervise the installation, and this didn’t happen here, they got their approvals and there was no one inspecting that site during the construction phase. H. Koster stated that architects are not allowed to design stormwater management, engineers and some land surveyors that have their license before 1972 can design stormwater management plans. M. Nittmann stated that her point is that there needed to be supervision and they never went that far

because they didn't feel they had to because they got their plans approved as they were. Counsel stated that they didn't need to. Counsel asked what M. Nittmann was asking from the PB in terms of policy. M. Nittmann stated that she would prefer that all the construction details be on the plan. So that P. Kenyon who would be within her rights to issue a permit on plans that are approved by this Board, but if they do not have design criteria that is essential it puts her in the spot that she is in now. P. Kenyon stated that with other similar situations like this, they were having problems with WC getting the same plans as were brought to the Zoning Office, WC was getting different plans. She stated that she didn't care if the plans said "For Construction" or not because they met their zoning, so it ended up that she would sign all the plans that went to Waite Cowles, that way they knew they were getting the same construction drawings. She continued that they had a situation with T. Nace, that they were getting different drawings than what he was getting, so now everything that T. Nace is getting has to have her signature on it. P. Kenyon stated that people want the drawings to say preliminary or not have construction drawings. H. Koster stated that obviously people are out there looking for loopholes and that the only way to really solve it, which will complicate things, would be to have construction drawings in front of them. P. Kenyon stated that her suggestion would be that before a stormwater permit it issued the plans actually say "For Construction" and she signs those plans.

P. Kenyon stated that the other issue that was brought up was that they make sure that the contractor or developer are given the plans and she does not want to get into that. H. Koster stated that stormwater has to be designed by an engineer or land surveyor so there is no reason why a land surveyor or engineer can't put his stamp on it in order to get a permit issued. Counsel stated that in terms of the policy, the PB could have acted upon those non-construction plans, and it is subject to the specifications to be submitted for the issuance of the stormwater permit. H. Koster stated that before P. Kenyon signs the plans that they need to be stamped by an engineer or land surveyor. P. Kenyon stated that it should say, just like with the building permits, "For Construction".

Counsel stated that he had one other issue, and as many times as it comes up, nothing has been done about it, which is fine. He stated that they have the opportunity within the existing regulations to also impose a reasonable requirement that there be a sign-off certification by the design engineer that the project was completed as approved. Counsel stated that it is his observation that they only hear about project completion when there is a violation or problem. H. Koster asked if they could have the Town engineer sign off on the project. Counsel stated yes, but the licensed professional hired is just that, licensed and would be putting that license on the line in certifying it.

P. Kenyon stated that she has been requiring this already on about half of the stuff that goes out of the office now, for example a engineered septic system. H. Koster asked why they can't have the stormwater project observed by the person who designed it. Counsel stated that this needs to be the policy.

C. Navitsky stated that he thinks under the stormwater management permit, that post construction certification on a major project, it may not have been enforced, but that is one of their terms of settlement. P. Kenyon asked if that was actually in their ordinance or if that was something that they all agreed on. Counsel stated that they designed a permit. H. Koster stated that it was in their ordinance. Counsel stated that they should do and they will do a better job of it in 2008.

M. Nittmann asked that when they review the plans that they need to have an engineer inspect it and sign-off. Counsel stated that they are going to start enforcing the elements of the permits. H. Koster stated that P. Kenyon was going to be getting a signed stamped copy of Construction drawings which she will sign and that will need to be observed on major subdivision during construction.

**11) John Gaddy-** To discuss policy for exterior lighting and earth tone colors.

J. Gaddy provided packets to the PB regarding lighting and colors. He stated that he wanted to discuss the memo from Counsel, in which he felt that the PB may want to give consideration to

implementing a written PB policy of specifications as standards that were expected to be bound by the requirements of downward low facing exterior lighting and what we mean by earth tone colors. J. Gaddy stated with regard to the lighting, it is to protect the nature resource and help the neighborliness. He stated that he was hoping, with the advice of Counsel that they get into some sort of a policy. Counsel stated that the existing code allows them to make guideline specifications and it is only appropriate to do so, so that they know what specifications in lighting and samples and urged them to have that as a written policy. He stated currently they have a lot of cooperation, but they cannot expect enforcement without specifications or guidelines. P. Kenyon stated that they have guidelines in the new ordinance. J. Gaddy stated that he didn't know if the shalls and shoulds are the same as what they are saying. He stated that when they put conditions on and he is interpreting that as a shall, but with the new ordinance it looks to be a should, almost as a suggestion and not a requirement. Counsel stated that he needs to keep bringing that up in the public forum. H. Koster stated that they cannot go too deep into the specifications because they limit people to a certain product. Counsel stated that the element that the Court would be concerned with is a reasonable ascertainable tangible standard, and to help him, they need to show him what it is they are requiring. H. Koster stated that he felt J. Gaddy's verbiage is reasonable. J. Gaddy stated that in his research and in what he has supplied, in every single category there is easily available supply. He stated that he has tried to defend this policy because it is not any more expense as long as it is thought of ahead of time. He stated that he has provided the Zoning office with supplies and he can update them if necessary. He further stated that currently there are about 50 manufacturers out there that produce this lighting and they provide stamps that go with them. H. Koster stated that Counsel is asking for specific specifications which can narrow down the product line. Counsel stated that he did not mean too specific, but the type, such as downward lighting, shielded lighting, or specification of wattage would be helpful to have in a policy. Counsel stated that he knows that they may say it as a condition, but he feels as though it ought to be in writing so that even the ZA can say to the applicant what the expectation is going to be. P. Kenyon stated that they already provide applicants with specifications based on the information that J. Gaddy has given them. Counsel stated that he was unaware that they were doing that and that they should adopt it as a policy. Counsel asked how J. Gaddy felt about someone who wanted to put lights on their dock or shoreline. J. Gaddy stated that he is fine and understands that they need lights for safety but does require them to be downward and shielded. Counsel asked the PB if it was their policy to use the information supplied by J. Gaddy as lighting requirements. All members agreed. J. Gaddy stated that he will give a supply of manufacturers as well as websites. Counsel stated that the policy of the PB is that each of the applicants on these site plans will be supplied with these guidelines. F. McDonald (public in attendance) stated that they have to be careful with what J. Gaddy is saying by supplying manufacturers because that becomes proprietary and you cannot do that. He further stated that he hopes that it is different in the new zoning ordinance, because he has had a problem with this since day one, that every time an applicant gets up to do their presentation, to embarrass them at the last minute, J. Gaddy says will you put downward, shielded lighting in, especially if the applicant feels that they have a good chance of being approved, and if he says no, he might not get approved, so he says yes and might put up whatever he wants to. J. Gaddy stated that it has become a running joke, because applicants are now coming in and specifying models that incorporate this and that if they are just one of the places around here that are making an effort to try to maintain the beauty around here, he doesn't feel wrong about doing it. F. McDonald did not say he was wrong in doing it, he said he was wrong in the way that he does it, because he waits to the very end, right before the vote and you force him to say yes. D. Roessler stated that they could just talk about lighting earlier in the presentation. P. Kenyon stated that she is including in the approval letters when the motion is downward facing, shielded lighting in addition to putting it on the application that they are going to need. P. Kenyon asked the PB what they would like her to do. H. Koster stated that when anyone comes in for a building permit on a project that they have approved with downward lighting, or any site plan review that they have approved with downward lighting, provide them the information about the requirements and let them know that they will be checking. J. Tennent (public in attendance) stated that he remembers receiving one of those packets from the Zoning Office where it lists the specific manufacturers, and they could just take out the manufacturers names. J. Gaddy stated that on those sheets they do not list the specific manufacturers. J. Tennent stated that applicants will look at that and try to match that picture or that specific light and that is the only kind of light that they can get and there may be 100 or 500 different types to choose from. J.

Tennent asked if these are certified as energy compliant, energy star rated, etc. J. Gaddy stated yes. J. Tennent stated that all they need to do is address the certification level and not the manufacturer. J. Gaddy stated that J. Tennent is further qualifying the issue that the industry does have standards that they submit their models to and they get a stamp stating that this is a downward light, etc. and that he will get the Zoning office that information. Counsel stated that it was an excellent recommendation.

J. Gaddy stated that with regard to earth tone colors, he showed a couple of pictures showing the different colors used in the LG basin. He stated that some colors show up a bit more from miles away, where earth tone colors will blend in to nature background. He stated that they have dealt with some of these issues along the way and looking towards the public information phase of implementation committee, he just wanted to submit a couple examples of how the right colors within the basin could be leading them to restricting more than the colors were being supplied Lisa Nagel and the Elan Group. He stated that he would prefer to see darker, earth tone colors used. H. Caldwell stated that a lot of the time they say earth tones to the applicants, and he thinks that maybe they should be saying darker earth tones.

Counsel stated that where he is hoping the PB would be in the future is 200-53 in the Code says that the PB ...of the requirements of the architectural review section is empowered to enact and adopt by resolution as well as amend, adopt or supplement written rules and regulations that constitutes specific criteria for consideration under the architectural review powers. He stated that discussion tonight and the recommendation from J. Tennent about the industry standard is excellent and avoids the whole proprietary representation. He encourages the PB by resolution to have a standard, criteria and guidelines. Counsel also stated that J. Gaddy brought up a good point with regard to the language of the new code in which it should be worded to require the lighting and colors reasonably.

#### **Addendum to Planning Board Agenda**

**December 20, 2007**

**12) Town Board:** To discuss proposed amendment to be added to Chapter 125-5D Stormwater and Erosion Control, Chapter 150-3C Subdivision of Land and Chapter 200-8C Zoning. Specifically, the amendment is as follows: The general applications of the New York State Uniform Fire Prevention and Building Code and Energy Conservation Construction Code are to be read in conformity with the provisions of this chapter unless local law, town code or town ordinance in effect specifically authorizes or provides a stricter requirement or specification.

Counsel stated that he would like to propose to bring the particulars in terms of definitions that are found within the Uniform Code as one of the tools that would allow interpretation and application in the Bolton Code. However, in the Bolton Code Subdivision Regulations or Stormwater Regulations, there is indeed a specific requirement or stricter requirement it would always prevail. He stated that where the gap, uncertainty or where an interpretation is needed if this where enacted the general applications of the State Code would be persuasive in the interpretation. He gave the example of the guest house project and whether or not to include the basement. He stated that the Town Code does not specify how to measure the square footage, but he has advised using a book from the American Institute of Architecture and they said not to count the basement if the ceiling height is within certain limitations, and the rules and regulations that the Assessor uses are basically following the Code and if he doesn't assess the basement as inhabitable space or interior space if it's a true basement. He stated rather than go in big circle to try and figure it out. He stated that he would be the first to admit that the Town of Bolton of any Town has a procedure by where the Zoning Administrator can give an interpretation, and the interpretation that came from the ZA in this instance, which was supported by the ZBA, was that the basement in question counts. He stated that the applicant stood here and told them that he had a NYS Statute and this multiple zoning law and the Assessor all say that the basement doesn't count. He stated that the applicant would be right and dead wrong, because the interpretation of Bolton is as indicated. He stated that out of 2,600 towns in the State of New York and 2,599 are going that way and Bolton is going this way, which he said is okay procedurally if they were comfortable with it. He stated that it changes nothing currently in the code other than it will be

part of their Code as an additional guide. He further stated that currently M. Nittmann refers to the Housing Code currently and P. Kenyon uses the AIA booklet and that there already is a split in the office. He stated that he made this pitch to the ZBA and got a 3-2 vote not in favor of this.

P. Kenyon asked if she uses the State Code to help her make decisions and the applicant doesn't like her decision can they go to the ZBA to appeal. Counsel stated that they will always be able to go to the ZBA to appeal. P. Kenyon asked even if the ZBA doesn't even deal with the Uniform Building Code. Counsel stated that the ZBA deals only with her interpretations and all she could say, if she likes using the code, to state that her answer was backed by both the AIA and the Uniform Building Code. Counsel stated that he didn't care what she used as long as there was some rational basis for interpretation then there would be no question.

J. Gaddy asked P. Kenyon what are the difficulties in using the Uniform Code. P. Kenyon stated that she wanted to make sure that anything that they do doesn't negate what they have worked for with the Zoning Board with regard to accessory structures. She stated that she is also concerned about bringing another code into the Town of Bolton because there are so many people that want to stop projects. H. Koster stated that was his concern too and also keeping local law local. He further stated that some of these code books conflict with one another and is afraid it will make it more confusing.

P. Kenyon stated that they are not building inspectors to even be administering that code or enforcing that code. Counsel stated that was not the application and that the application doesn't require enforcement or administration, it just requires definition. P. Kenyon stated it requires interpretation. Counsel stated that yes but interpretation is not being done locally and he admits that if it is a statewide interpretation, yes we did not make that interpretation. P. Kenyon stated that is why she asked if someone wanted to appeal her decision do they go to the ZBA who only deal with our zoning ordinance or will they go to the Building Code.

H. Koster stated that he and P. Kenyon have discussed this project and they have differing opinions however he still backs her on her making the decision and that it should not be made on the NYS Code, it should be made on our Code.

Counsel stated that K. Hoopes brought up a good question, when there is a hole how do we propose to fill it, and P. Kenyon should have the ability to make these interpretations from all available sources. He stated that if P. Kenyon decides not to use the Uniform Code, so be it, it won't be used. He further stated that they have definitive discussion on the minutes so that we can point to it and say we don't use it. But it will be applied in force and shouldn't be applied by the ZBA if we are not using it because it is not part of the Code. He stated that this does not change anything that P. Kenyon will interpret and someone wishes to challenge to the ZBA, the ZBA has full latitude to back her 100% or dump her 100%. S. Wilson stated even if the TB decides to use this tool. Counsel stated that was correct, but he senses that there is support on the current TB, but there is not support by the ZBA. He stated that their vote is important but is not sure to where this goes, because it then gets presented to the 2008 TB and he doesn't know how they feel about it.

P. Kenyon stated that every time they have had a problem, they have always amended the Code and never brought in someone else's code. J. Tennent (public in attendance) stated that they could always read that reference and if it makes sense incorporate that, even if it is unofficially a source to refer to. Counsel stated that J. Tennent was correct and that would be the best argument if it is not adopted. He stated that it could be persuasive but it is not an obligation.

H. Koster stated that once they institute the NYS Building Code, it is going to open up a whole can of worms. H. Caldwell asked if they were already following it. Counsel stated no, the County does. P. Kenyon stated that they do not apply, administer, enforce the State Code. J. Tennent stated that the County is using it and has completely changed in the last year and they are scrutinizing much more than they have in the past.

J. Gaddy asked if this discussion was an ease to have a better mesh between administrative decision and enforcement. Counsel stated that it was one goal but not the primary goal, which is to try and get some solid basis in interpretations. Counsel stated that J. Tennent brings up the next step which is don't enact, but use it, read it and be knowledgeable about it.

H. Koster stated that the law is set up so that the ZBA makes the decision on a dispute. S. Wilson stated that it might be a good tool to use in a Court of law, it may not be a great tool to use at this level. Counsel stated that was possible. J. Tennent stated that P. Kenyon could use it as a tool to help form her interpretation. Counsel stated yes she could, and that their code says that it an use plain means, such as a dictionary. P. Kenyon stated that she is not going to go to the Building Code when she knows it is something that will totally affect everything that the Town is working on.

Counsel stated that he made no decision in the guest cottage project, but the applicant made valid points. He stated that the time in which he may appeal has expired. P. Kenyon stated that he is applying for a variance to have two single family dwellings on that lot. She stated that in that situation, it was not so much that the ZBA agreed with her interpretation, but it was the fact she had always been interpreting it that, so for that application they didn't think it was fair to change. P. Kenyon stated that she feels they are covering that in their positions. Counsel stated if the primary concern of the Uniform Code, is that if uniformity doesn't come this, then it better come from interpretation.

J. Gaddy asked if there was a legal obligation for the administrators interpretations to have some history of logic with it. He asked if the ZA has been interpreting something for 15 years one way, is she obligated to keep interpreting that way. Counsel stated that no, each interpretation stands on its own, but it has to have a rational basis, so that it can be upheld in a Court of law, and it better be based in fact. P. Kenyon stated that every appeal that goes before the ZBA she documents right from the book where she gets it from, why she did it, this is how it is done.

J. Gaddy asked when they are acting with Bolton as the home rule lead agency for their own determinations can they defend their own decisions. Counsel state he was correct and that was what he had in mind. He stated that some things that would help are consistency, rational and hard hitting reasons, and asked what source they would go to. He stated the J. Tennent has made an argument in which they could say that although it is not part of the local Code, they have applied what is in the AIA, plain meaning out of the dictionary, they have a long standing standard that they have previously applied and they consulted with the Uniform Building Code. He stated that this will have to be in writing, which they are not doing right now. J. Gaddy asked P. Kenyon if she makes interpretations in writing. P. Kenyon stated that she makes interpretations every time she opens this book. Counsel stated that they met with an applicant asking for three interpretations. He stated that they have to be able to challenge them, they have to be able to use them as a road map on their application and they have to be understood for the next similar applicant and they better be in the book. J. Gaddy asked if there will be a history of how a decision has been upheld over a course of time by whoever the ZA would be. P. Kenyon stated that she keeps a log in which she spells out the reasons and logic behind her decision, she writes applicable sections of the Code and what her determination was. J. Tennent stated that he feels a smarter way to deal with this is that whatever is going to be built, the County is requiring that it meets the Uniform Building Code, so in that presentation if you needed to, you could actually on the County level reverse say that building as defined on your drawing is incorrect per the County requirements to get your permit and there in turn it will come back to your benefit at that time the other way because you have to be accurate in what you are presenting to the County that the use and the building is as per the Code. J. Gaddy stated that they wouldn't have to change any of their code. J. Tennent stated that they already have the power of the County and then they are going to go from this Board to the County next. H. Koster stated that he doesn't want the County or State helping them make decisions.

P. Kenyon stated that she is not a building inspector and that under the old building code, she was a building inspector. She stated that she had to go through training and tests to become an inspector. She stated that honestly she will not be administering this Uniform Code.

H. Caldwell asked if they vote against this are they voting for home rule law. H. Koster stated that it was his opinion and does not want to sway anyone. Counsel stated that it was a good summary.

**RESOLUTION:**

Motion by Henry Caldwell to recommend to the TB not to pass this legislation.

Seconded by C. Mason. S. Wilson opposed. All Others in Favor. Motion Carried.

Meeting was adjourned at 8:49 PM.

Minutes submitted by Kristen MacEwan