

**Town of Bolton
PLANNING BOARD
MINUTES
Thursday, June 21, 2007
6:00 p.m.**

SEQR = State Environmental Quality Review
PB = (Town of Bolton) Planning Board
WCPB = Warren County Planning Board
APA = Adirondack Park Agency
LGPC = Lake George Park Commission
DEC = Department of Environmental Conservation

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

Absent: None

PUBLIC HEARING:

- 1) **SPR06-43 SIMONSON, RICHARD & VIVIAN.** Represented by Atty. Melissa Lescault of McPhillips, Fitzgerald & Cullum LLP & D.L. Dickinson Associates. For the construction of a proposed single-family dwelling, seek 1) Type II Site Plan Review for a) a single-family dwelling in the LC45 zone; and b) a major stormwater project to remove more than 15,000 sq. ft. of vegetation; Approximately 15,000 is proposed. 2) Type I Site Plan Review is also sought for development within 100' of a wetland. Section 186.18, Block 1, Lot 31, Zones RCH5000 & LC45. Property Location: Off Shallow Beach Road. Subject to SEQR. The WCPB determined no county impact with the stipulation that all paperwork be filed. NOTE: This application is in conjunction with V06-50. *The public hearing was kept open from the April 2007 meeting pending additional information. This item remains tabled at the Applicants' request.*

Motion by Donald Roessler to extend the public hearing on SPR06-43 Vivian & Richard Simonson, until the July 2007 Planning Board meeting pending additional information. Seconded by John Gaddy. All in favor. Motion Carried.

REGULAR MEETING:

H. Koster began the regular meeting at 6:12 pm by asking for corrections to the May 17, 2007 minutes.

- 1) J. Gaddy said the minutes list Tom McGurl Jr. as being absent and noted that Tom McGurl is not a PB member. The minutes should read as follows: "Absent: **None**".
- 2) J. Gaddy said that on page 9, paragraph 3, sentence 2 should read as follows: "Dennis Dickinson said (1) yes, generally what you do is you **rough** them out when you start so that you have some stormwater controls in place that will assist you when you first start construction..."
- 3) S. Aldrich said that on page 27, the motion for SPR07-18 should read as follows:

“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) If any changes are proposed the applicant must submit a new Site Plan Review application for the Planning Boards Review.
- 3) A permit must be obtained from Department of Transportation to erect a sign in the State right-of-way.

This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. **Seconded by Chauncey Mason. Sandi Aldrich opposed. All others in favor. Motion Carried.”**

- 4) S. Aldrich said that on, page 40, in the first paragraph after the motion, sentence 5 should read as follows: “Counsel said that (1) in Section 200-42(C)(1) it is awkwardly worded to say that, “...horse and cattle would require *tie* stalls 12 ft. by 5 ft...””

Motion by Donald Roessler to accept the May 17, 2007 minutes as amended. Seconded by John Gaddy. All in favor. Motion carried.

Other Business:

J. Gaddy said that at the May 2007 meeting referring to the Keissling property, H. Caldwell had asked about the variance and his (Gaddy’s) question is if a negative finding by the PB removes a variance that a piece of property receives from the ZBA and if once the ZBA passes a variance, does the variance stay with the land? Counsel said yes, the variance stays with the land. J. Gaddy said that a variance is not something for the ZBA to pass lightly hoping that it can be modified by the PB. Counsel agreed and said that the right is vested in whatever the terms and conditions of the variance are. J. Gaddy said that the process is a catch 22 in that once the ZBA grants a variance it is a done deal and questioned why it comes to the PB. Counsel said (1) that whatever the project is that doesn’t completely conform to the zoning ordinance, you have to have an escape hatch within the legislation, which is called “variance”, (2) K. Hoopes (of the ZBA) often describes it as the ZBA has the right to break the law” which is a characterization, (3) what is really happening is a variance so that the code wherever it can not actually be completely conformed to will now have a special fit that is carried for that lot now and forever more, unless somehow they come back to the ZBA and seek recantment of that variance, because variances do not have a sunset—they used to, but they don’t anymore, it runs with the land and (4) variance runs with the land and if the variance is granted on a piece of property that also has to come to the PB for some other purpose, then the PB is not at liberty to change that variance. H. Koster said that the PB has the right to turn down a project if there is site plan review for example and Counsel agreed saying that is

absolutely true in that the PB still has three options: (1) approval, (2) approval with conditions and (3) denial. Counsel added that the PB should never entertain an application for whatever it is doing before the PB that still requires a variance, because a variance needs to be in place before it comes to the PB.

J. Gaddy asked if Wayne Smith has received his LGPC approval for the 35 boats, which he has received from the Town of Bolton and Counsel said that is a great question to ask Wayne Smith when they get to Agenda Item #5.

Note: Agenda Items were heard in the following order: 2, 1, 5-9, and 3.

1) SPR07-22 THOMSON, SUSAN. Represented by Chris Gabriels. Seeks Type II Site Plan Review for a new land use within 250 ft. of the Lake George shoreline. Specifically to construct a 39 ft. x 6 ft. dock. Section 141.17, Block 1, Lot 13, Zone RCL3. Property Location: 14 Windsong Lane. Subject to WCPB Review. Subject to SEQR.

Chris Gabriels, representing Susan Thomson, gave an overview and said that (1) the dock proposed is 42 ft. x 6 ft., (2) the 39 ft. measurement is from the approximate low water mark which is required by the LGPC, (3) this dock already has the LGPC permit, (4) this dock has already gone through a 30-day comment period and (5) this proposed plan has already been sent to all applicable agencies including the Town of Bolton and (6) the dock proposal has been sent to the both adjoining neighbors and no comment has been received.

J. Gaddy asked if there will be any dock lighting and Chris Gabriels said that he is sure the applicants can put lighting on the dock at any time if they wish, but they have not given him any indication of lighting at this point.

The WCPB determined no County impact.

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

No correspondence.

No comments of public in attendance.

Motion by Donald Roessler to accept the application as complete, waive a public hearing and grant approval as presented with the following condition: 1) 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 John Gaddy. All in favor. Motion Carried.**

- 2) **SPR07-23 FEDERAL HILL TRUST.** Represented by Heather Shoudy Brechko of Caffry & Flower Law Firm. Seeks Type II Site Plan Review to timber harvest an area greater than 1 acre in the RL3 zone. Section 140.00, Block 1, Lots 8 & 9, Zones RL3 & LC25. Property Location: 575 Federal Hill Road. Subject to WCPB Review. Subject to SEQR. *Note: After the fact.*

H. Koster asked if the applicants need site plan review for LC25 logging and P. Kenyon said no, they only need it for logging in the RL3 zone.

John Caffry of Caffry & Flower Law Firm, representing Federal Hill Trust and the Evan and Frances Herman, said that Heather Shoudy Brechko worked on the application, but she is a paralegal in their office, so technically she doesn't represent anybody. John Caffry gave an overview and said that (1) he and his partner Chris Flower are also co-trustees of Federal Hill Trust which owns the property the Hermans reside upon, (2) they provided an environmental assessment form, even though it was not requested, in case it is needed, (3) the Hermans have lived on this property since the 1950s and are now in their 80s—in 1975 they put the property into a trust and it has been through several trustees, (4) in 1990 the trust donated a conservation easement on the property to the LGLC, (5) they (Caffry and Flower) became the trustees in January 2006 and didn't realize the third timber harvest was going to be done until they found out the Hermans ran into a zoning/enforcement problem with the Town of Bolton, which was because part of the area logged was in the RL3 Zone and the Hermans didn't apply for site plan review in advance, because they said they didn't realize they needed to and (7) on October 10, 2006 the TB found there was a violation of the zoning code and while the TB waived the payment of any fine or penalty, they required an application for after-the fact approval of the timber harvest be filed.

Heather Shoudy Brechko said that (1) there was a 30-acre area selectively timber harvested, where six acres were in the RL3 Zone, (2) the rest of the selective harvesting occurred in the LC25 Zone, (3) the good timber was sold to the lumber market and the dying and diseased trees sold to the pulp market, (4) no clear cuts occurred on the property, (5) there are no stream crossings in the RL3 portion of the property, but there are some in the LC25 Zone, for which all of the appropriate permits were received, (6) the harvesting was done while the site was dry and the ground was frozen and snow covered by using the existing logging skid trail network for the harvest—no new roads were built, (7) the operation complies with the Best Management Practices for the Timber Harvest and follows the Water, Soil & Conservation District's recommendations and (8) no harvesting was done in the front of the front zone setbacks.

John Caffry said that (1) the Hermans have told him they have no plans of logging right away, (2) he and the Hermans have an agreement that this won't be done again without talking to the trustees first, who will apply for site plan review if there is going to be any logging that requires site plan review, (3) the land is under a conservation easement and cannot be subdivided, but does allow for one additional single-family house, although there are no plans to do that at this time, (4) this wasn't done as any sort of precursor for

development, (5) they feel the application complies with the ordinance for the site plan review requirements and (6) they request PB approval of the site plan.

The WCPB determined no County impact.

No PB member comments.

No correspondence.

No comments of public in attendance.

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. 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.**

H. Koster asked if a landowner were to get building and septic permits to build a house on a lot and there is real good timber on that lot that is sold, if somebody can come to the Town of Bolton saying it constitutes logging and Counsel said no, probably not, because the primary purpose for the clearing was for the construction of the septic or the dwelling, but it would be dependent on the magnitude of the clearing.

3) SPR07-24 BOLTON LANDING MARINA. Represented by Atty. Robert Sweeny. Seeks Type II Site Plan Review to amend previously approved site plan review (SPR86-03) for a dry stack facility. Section 171.19, Block 2, Lots 3, 10 & 11, Zone GB5000. Property Location: 4932 Lakeshore Drive. Subject to WCPB Review. Subject to SEQR.

Dan Behan, representing Bolton Landing Marina, gave an overview and said that (1) in May 2007 they submitted a plan to the PB to amend and update their site plan, a result of which is also amending and updating their SEQR findings established in 1986, when Bolton Landing Marina was first built and still a very new concept in the northeast and (2) their application was approved by the Warren County Planning Board.

H. Koster said that this should go to a public hearing before any changes are made and Counsel said agreed.

H. Caldwell asked if the PB is using today's code on this and Counsel said yes. H. Caldwell asked about stormwater and Counsel said that (1) it is a site that pre-exists the enactment of stormwater and (2) it is a question of magnitude, but if the PB feels the changes might require stormwater compliance, then the PB has to tell the applicant that. Dan Behan said that (1) they do have dry wells on-site that they clean and maintain them regularly as part of operations and property maintenance.

J. Gaddy said that he would like to see screening on the lights on the south side of the storage shed by shielding the direct light element in order to still provide safety and security without having to have the glare. Dan Behan said that (1) they would be happy to do that and (2) they actually though the Town of Bolton liked the lights to help with any nuisance at night. J. Gaddy said that's true and he would provide the applicant with information on lighting.

J. Gaddy said there seems to be a lot of discussion about the changing in the amount of parking spaces. Dan Behan said that (1) originally the whole site required 130 parking spaces, (2) they feel 100 spaces are sufficient for how they operate the marina, but they did put together an ambitious parking plan with a worst case scenario of 139 parking spaces, (3) they have overflow parking secured in the lot behind them and there is public parking available and (4) they discourage their members from bringing up guests in second cars—there is one car per member limit. J. Gaddy said that he would be interested to here how this has worked with the neighbors along the way. Dan Behan said that operationally it has worked fine.

J. Gaddy asked what the extent of the maintenance done at the storage area of the marina is and Dan Behan said that (1) they are in the boat handling business and they are very good at it, (2) any incidental prep work that can be done to save time on the other end of the busy season is done—setting plugs, letting engines drain, etc.—minor incidental stuff.

J. Gaddy asked if the best management technology has changed in the time this facility has been in existence in terms of the handling of fluids and spills. Dan Behan said yes. J. Gaddy asked if the applicant has kept up with the times and Dan Behan said (1) yes, the products available to them today are terrific and (2) they do comply with all the regulations and with recycling.

J. Gaddy asked for clarification of conditions 43 ("...Any conditions imposed on the lease of the boat dealership shall be conveyed with the deed if the boat dealership building is sold...") and 44 ("...The condition of the findings statement will be conveyed to all future owners of the facility...") of the SEQR findings, as the applicants are not the original owners. Dan Behan said that (1) they are not the original owners, (2) he believes the spirit of it was that if portions of the property were sold or subdivided that this agreement would also be passed onto different owners, as it has and (3) they are very conscious of the rules and abide by them.

H. Koster (1) said that in item 26 they state that the applicants should have a 275-gallon tank to accommodate septic pump-out and (2) asked at what point the applicant received permission from the Town of Bolton to pump sewage into the Town sewer line. Dan Behan said that (1) he doesn't have that answer, but would be happy to research it and (2) that was done before Mr. Parillo bought the property and it was in existence once they were up and going. H. Koster said that the Town does have an overloaded system and he was wondering when/how the applicant got permission to pump into it.

Regarding item 32 discussing wet space, J. Gaddy said that it appears the applicants are requesting to allow the rental of wet slips and asked if that is increasing the capacity or if it is a dry dock operation. Dan Behan said that (1) they are within the same amount of boats (191), (2) they are not renting slips to the general public—they call their customers “members” because they are on annual contracts, (3) their clients are not transient—they have membership rights to the clubhouse, (4) they would like to rent out some slips in the water without hindering their requirements for operating the forklifts—they need a staging area for the boats, (5) when this was approved in 1986, it was such an unknown that the Town of Bolton wanted to keep space for the overflow of boats as possible--after 20 years of operation you know what they need, so they feel a few in-water slips would be fine and not hurt their operations. J. Gaddy asked if congestion has been a problem and Dan Behan said no.

J. Gaddy asked the average boat size today and Dan Behan said that (1) it is probably 25 feet, but each of the manufacturers measure their boats differently, so there is no real consistent way to measure a boat in this industry unless you have your own policy, which is why they put in that finding is outdated and impossible for them to abide by and (2) they know what their equipment capacities are and what their racks can handle and they know what fits in the rack.

J. Gaddy said regarding finding 4 that says "...elimination of non-complying boats...limit the servicing of boats on-site..." he asked if there have been any issues about what kind of service should not be allowed. Dan Behan said that there has not been any to his knowledge there were never any questions, problems or issues. H. Koster said he was on the PB for the first year's review and it was really intense and complete—he was surprised at how thorough it was.

S. Aldrich asked if one of the things the applicant is looking for is outdoor on-trailer storage and Dan Behan said yes, up to 20 to be kept in the north parking lot, which is where they are proposing the new tree plantings for the shielding.

No correspondence.

Motion by Donald Roessler to schedule a public hearing for July 19th at 6:00 pm.

Seconded by Sandi Aldrich. **All in favor. Motion Carried.**

From the public, Kathy Spahn, neighboring property owner, said that (1) rather than the number of boats being stated, it should have stated the number of square feet of boats, because if the boats get bigger people ask for more space, which is what is happening here, (2) her understanding is that the 30 boats that don't fit into the building anymore are going to come back where she lives and (3) she questioned if they will be quick launched from that area, because her neighbors can't talk on their deck on Saturday morning or evenings when the forklift is operating. Frank Parillo said that they are asking for 20 boats on trailers that will be quick launched with a pick-up truck—not a forklift. Kathy Spahn said that (1) using a pick-up truck would make a big difference in limiting the noise and (2) the back-up noise is loud and it seems the beeper is louder this year. Frank

Parillo said that it is the same beeper as last year, which is required by OSHA. Dan Behan said that (1) it is quieter than what was originally used in 1986 and (2) as the industry has made improvements, while it is quieter, it has to get louder as forklift gets louder, so it is called a “smart beeper.” Kathy Spahn said that (1) the beeper doesn’t get to her, it is the noise of the forklift and (2) she is back far enough that the problem as far as she was concerned is in the front of the building now. H. Koster asked if there are beeper systems now that don't go off unless the vehicle detects somebody behind it and Dan Behan said that to his knowledge this is the OSHA requirement for heavy equipment like that. H. Koster said that OSHA might not allow the item he’s speaking about. Frank Parillo said that (1) the beeper is only going off when they are backing up and (2) 90% of the miles on the forklift are going forward. H. Koster said that the beepers are annoying sounds.

From the public, Barbara Drake, neighboring property owner, (1) said that she is happy to know there will be a public hearing on this matter and (2) asked for clarification of SEQR. H. Koster said that (1) the marina was a totally different operation than before—they were selling boats in that building originally and (2) the marina operation was a totally different operation. Barbara Drake (1) said that when Performance Marine recently got permission to rent slips out they had to go before the LGPC and (2) asked what the difference is in altering a marina permit. Jason Saris said that (1) that has nothing to do with SEQR—SEQR is a town-instituted policy that means nothing to the LGPC, (2) all marinas have permits from the LGPC to allow them to do some things and not do some things and (3) it depends upon the terms of the permit with the LGPC whether an amendment at that level would be needed also, but the SEQR is strictly a Town of Bolton PB item.

Barbara Drake said that (1) she would like information as to how noise outside the normal hours will be handled—it is noisy and unpredictable, (2) regarding enforcement, she doesn’t think the marina should be using the regular slips and she believes they allow club members to spend the night, (3) she would like parking down by the waterfront addressed and (4) she would like stormwater management addressed also, as she feels there is a serious stormwater problem on the road that goes with the steep pitch.

- 4) SPR07-25 ALFREDO, ROBERT.** Represented by Tom Jarrett of Jarrett Martin Engineers. Seeks Type II Site Plan Review for 1) the construction of a single family dwelling in the LC25 zone. 2) A major stormwater project to remove more than 15,000 sq. ft. of vegetation in accordance with Section 125.13C1 of the stormwater regulations; 36,100 sq. ft. is proposed. 3) As a condition of subdivision approval set forth by the Planning Board on June 17, 2004 (SD03-29), for the removal of vegetation for future house location. Section 185.00, Block 2, Lot 35.2, Zone LC25. Subject to SEQR.

This item is tabled at the applicants' request.

- 5) SD07-15 KADEN COMPANY, LLC & HARVEY, JENNIFER.** Represented by Jeffrey Tennent. Seek multi-lot line adjustments between those parcels designated as

Section 140.00, Block 1, Lots 53 & 54.1. Zones LC25, RL3 and RCL3. Property Location: North Bolton Road. Sketch Plan Review. Subject to SEQR.

Jeffrey Tennent, representing himself and Jennifer Harvey gave an overview and said that they are seeking a lot line adjustment.

D. Roessler asked if the land being swapped is of equal size. Jeffrey Tennent said no, one is a bit larger and showed it on the map.

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

No correspondence.

No comments of public in attendance.

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

6) SD07-16 KADEN COMPANY, LLC. Seeks to divide into 3 lots that parcel designated as 140.00, Block 1, Lots 54.1. Zone LC25 & RL3. Property Location: North Bolton Road. Sketch Plan Review. Minor Subdivision. Subject to SEQR.

Jeffrey Tennent, representing himself, said that he is seeking a minor two-lot subdivision on a parcel off of North Bolton Road.

S. Aldrich asked how Lots 2 and 3 would be accessed because it would be pretty steep to go off of North Bolton Road there. Jeffrey Tennent said that he would prefer a common drive for both parcels. S. Aldrich asked if that would require a fair amount of fill and Jeffrey Tennent said that (1) no, there are some areas where the fill required would be small, (2) he'd prefer to stay where it is shallow, (3) he knows he'd have to get a permit from Warren County to put in a driveway and (4) he would have to open the guard rail section up.

H. Koster asked if the applicant has plans to further develop this property and Jeffrey Tennent said (1) no, not at the present time—he'd like to retain this for himself, (2) he lives across from this property—when he bought the property it was to ensure he'd be able to address his concerns if warranted and (3) for any future development there he will follow the proper procedures and it will be done very well.

J. Gaddy said that there is so much land available here and asked if Lots 2 and 3 are smaller in order to get access to the flat area in the back, because he would prefer to see the lots a bit larger. Jeffrey Tennent said that both lots are above the minimum one-acre

lot size. J. Gaddy added that he understands it is a three-acre zone and the density has to work out. Jeffrey Tennent replied by saying that (1) he was trying to keep as much privacy as possible on the lots, while making the lots acceptable and (2) he'd be willing to put restrictions on sizing for the future. J. Gaddy said that he would prefer to see Lots 2 and 3 a bit bigger, even though they do meet the required minimum lot size for that zone. H. Koster asked if the applicant could still access the upper property if the applicant makes the lots bigger. Jeffrey Tennent said yes, he doesn't have a problem making Lots 2 and 3 at least 1.75 acres each.

H. Koster asked if the common driveway would be right on the property line between the two properties and Jeffrey Tennent said yes, to split the two and if it happens that he has to move it a little bit to make the access better to get over to the property or a better location then he will do that. H. Koster said that is what he would like to see, because then the applicant's giving complete right-of-way over somebody else's lot. Jeffrey Tennent said that (1) no, he would split it on two parcels, so the access would be right on the line and (2) he'd be granting an easement on just half of the width (which he showed on the map). P. Kenyon said that the PB could require site plan review before anything is built there, so the PB could review it again. H. Koster agreed. Jeffrey Tennent said that would be fine.

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

No correspondence.

No comments of public in attendance.

P. Kenyon asked if it is accurate that the entrance won't be put in until somebody buys the lot and Jeffrey Tennent said that (1) he will not physically do any work, because you can't do anything since it has to come back for site plan review for each parcel and (2) he has no buyers currently and has no plans to do anything at the present time—he's just planning ahead.

Motion by Donald Roessler to accept the application as a completed sketch plan, convert sketch plan to final plat, waive a public hearing and grant final approval as presented with the following conditions: 1) Lots 2 & 3 can be no less than 1.75 acres each. 2) A detailed map is to be submitted to the Zoning Administrator showing 2 ft. contours, pre and post contour lines and location of the shared driveway on lots 2 & 3. 3) Site Plan Review is required for the construction of a single-family dwelling on lots 2 & 3. 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.**

Other business:

J. Gaddy asked what the plans are for the cut bank on what was called “Moonlight Management” and Jeffrey Tennent said that he is right now in the process of working with Tom Jarrett on that project. J. Gaddy said that he thinks there were a couple of hundred trees put up there and Jeffrey Tennent replied by saying that (1) the trees were put up there and (2) it was vegetated quite well and is staying quite stable. J. Gaddy said that it has been 2-3 years and Jeffrey Tennent said that (1) he hopes to be back in there shortly, (2) they are working on design issues and trying to finish up the project to present to Town Engineer as required, (3) there are two issues there—that was part of the state and not the Town of Bolton requirement and (4) he is addressing the road concerns now, (5) he is addressing the issues with Town Engineer Tom Nace and will be working with him along with Zoning Administrator P. Kenyon to get the road finished and (6) at the time they are working there, he will then finish the planting along with other obligations. J. Gaddy asked if it would be done within a year and Jeffrey Tennent said that he hopes that it would be done this summer.

H. Koster asked if the above was to be included in the minutes since it is not part of the agenda item and Counsel said yes, it is officially on these minutes—relevancy is not the point, it has been spoken and should be part of the minutes. Jeffrey Tennent said he has no problem with that.

7) **SPR06-41 SMITH, WAYNE.** Represented by Atty. Susan Millington. Seeks 1) Type II Site Plan Review for commercial boat storage. 2) To discuss/amend conditions of approval set forth on January 22, 2004 when approving (SPR03-43) for commercial boat storage and indoor boat maintenance facility. Minimal maintenance was allowed as part of the approval. Section 123.00, Block 2, Lot 59, Zone RL3. Property Location: 502 New Vermont Road, approximately 1 mile east of Alder Brook Road. Subject to SEQR. *Note: This application is in conjunction with V06-38. This item was tabled at the May 2007 meeting pending a ZBA decision.*

Wayne Smith gave an overview and said that (1) he received his approvals from the ZBA earlier this week, (2) the only stipulation the ZBA made was taking away running the engines on site, but invited him back when he can produce plans for a tank to muffle the noise and (3) the ZBA agreed with all of the PB's stipulations.

J. Gaddy asked if the applicant received the approval for the 35 boats from the LGPC and Wayne Smith said (1) no, he's working on that now, so when he gets the final approvals from the Town of Bolton, the LGPC is going to upgrade the application to 85 boats and (2) the LGPC is hammering him on the stormwater issue. J. Gaddy asked the location of the boat wash and Wayne Smith said that he didn't put it on the map, because the LGPC will pick and choose it and he then referenced the map to clarify.

H. Koster said that the PB is being superseded on partial review of this application and he's now sure what the PB is reviewing anymore, (2) the LGPC seems to have taken over this project and he doesn't know how to proceed with this. Counsel said that (1) part of the applicant's project is certainly all-encompassing with respect to his operation at the lake, which of course is not this, (2) then again, by virtue of the fact that the LGPC is

interested and claims jurisdiction for all lakefront marina operations, it is probably legitimate, but where the LGPC has clearly overstepped their bounds is when they made requirements upon this applicant or on any piece of property or any matter which pertains to stormwater regulations and (4) Bolton has exclusive jurisdiction on stormwater—exclusive, which means that the LGPC has none. Counsel then gave the history of how that came about. H. Koster asked how the PB deals with the fact that the LGPC is requiring the applicant to put stormwater management in without having it reviewed by the Bolton PB, before the LGPC will even accept the applicant's application. Counsel said that (1) the Town of Bolton should, which he has been instructed to by Supervisor Gabriels, submit a letter to the LGPC telling them politely but assertively that they have to back-off 100% with regards to stormwater regulations, (2) in addition to claiming jurisdiction where there is none, the LGPC is actually creating jurisdiction where there isn't anything in the Bolton code, (3) the threshold the applicant had on his project did not meet the criteria or threshold for Bolton to get involved with stormwater—it is less than what Bolton would consider a trigger for needing stormwater, (4) the polite way is to let the LGPC know that they are asserting jurisdiction where they don't have jurisdiction and (6) it is not entirely fair to the applicant, but it is fair to Bolton, in that if the LGPC feels that some sort of stormwater management controls are imperative on whatever it is on any piece of property in the Town of Bolton, then the LGPC concede and let Bolton do it and (7) he thought it was a pretty slip shot method by which the LGPC decided that they are ought to have plans for stormwater devices.

Wayne Smith said that (1) he spoke with Mike White of the LGPC again who told him that "...he (White) didn't care what the Town had to say in the matter and didn't care about any political pressure the Town is going to put on them..." and (2) he would love the Town of Bolton to follow-up and get involved in this and protect its citizens against this monster down there. Atty. Millington said that it was more than just the Warren County Soil and Conservation—there was a whole laundry list from the LGPC. Wayne Smith said that (1) he did over \$6,000 worth of work just to get on the LGPC agenda, (2) at the last meeting they asked him to pull out trees they already asked him to put in and to pup bigger ones in, (3) he's trying to deal with one board at a time, (4) he's gotten his variance and (5) compared to any other project in the area, he believes his is the least visible than any other recently approved boat storage from the LGPC.

J. Gaddy said that with the boat storage going from 35 to 85 and the applicant's interest in doing boat wash, acids and bleaches are used for that and he is concerned with the washing methods and materials given the wetlands. Wayne Smith said that (1) he had to put a boat washing station in at the marina, which the LGPC will be requiring and enforcing for every marina on the lake, (2) he can't wash his boats unless he is in this area, (3) any marina with pavement cannot wash boats—that has to be done on a grass area, (4) the leach field will hold about 2,000 gallons of water, (5) it is a spring wash that will be about 20 gallons per boat, if that, (6) the winter stuff will still be done at the marina on the lake and (7) it would basically be for spring—basically they'd put the plugs in the boats, give them a quick wash and away they go. H. Koster asked if there will be any oil changing there and Wayne Smith said no, he doesn't want to have a full-maintenance facility at this location. H. Koster said that he believes the PB asked for an

oil/water separator if he was going to do oil changes up there. Wayne Smith agreed and said that (1) at the last meeting the PB made a condition of no oil changes, which he is fine with, (2) some ZBA members are concerned with sound, which will be muffled if he provides a tank there, (3) he's working with the LGPC on the boat washing, because the LGPC has to approve the boat washing areas of all marina facilities, (4) the LGPC has approved this plan for his lakeside marina and the LGPC has tentatively approved it for this location, (5) there will be no environmental impact because it is in a sandy area with two feet of stone and (6) there won't be 85 boats there for years until they fill. J. Gaddy asked what types of materials the applicant plans to use. Wayne Smith said that (1) most are biodegradable like Spry 9 and Slimy Grimy, (2) the LGPC and the State of NY spray chemicals right over the lake, which seems to be a double standard, (3) he doesn't think the State of New York is even allowed there, as from what he could find, the State of New York doesn't even have an active marina permit and (4) he's stuck in the middle. H. Koster said that it isn't fair to the applicant or to the Town of Bolton. Wayne Smith said that (1) the Town of Bolton should write a lawsuit—he'd love to try to get his \$6,000 back, (2) he's been working with every agency and has every agency possible at the site, (3) he's here with APA approval, (4) the LGPC indicated that they would rather him wash the boats away from the lake, which makes more sense and (5) right now he is doing the winterization at the lakefront—he has no intention to run power at this site right away—his main thing is boat storage. Wayne Smith referenced the map to further clarify his plans.

Wayne Smith said that (1) it is basically going to be a field, (2) asked if the PB could approve him running boats up there with a tank, which the PB did last month and said that (3) the ZBA said that he could run boats back there, but they wouldn't give it to him now because he wasn't prepared with a tank, however they did invite him back when he does that. H. Koster said that no running of boats is a condition of the variance. Wayne Smith said that he is not going to run boats up there now, but he was under the impression that the PB gave him a referral to be able to wash and run the boats back behind the barn. J. Gaddy asked for a definition of "minimal indoor boat maintenance." Wayne Smith said that (1) basically just being able to put the plugs back in and getting the boat prepared and ready and (2) he can't start them, so he can't tune them up.

Wayne Smith asked if the Town of Bolton has the authority to go after the LGPC since the LGPC is going after him and Counsel said that the Town of Bolton has the authority to protect its own jurisdiction. Wayne Smith said that Mike White said that "... he (White) doesn't care and if he (Smith) doesn't give them this information then he doesn't get his permit (from the LGPC)...".

H. Koster asked if it is correct that the applicant will only be washing boats and not changing oil or pumping grease in the out-drive. Wayne Smith said that is correct.

S. Wilson asked why the ZBA resolution included that the noise ordinance be adhered to and Counsel said that (1) had to do with the hours of operation and (2) there is a general ordinance in Bolton that talks about no earlier than 9am on Sundays, no earlier than 7am other days and no longer than 9pm, which is already town-wide and (3) that is generally

what the Town of Bolton talks about when contractors use air guns, compressors, etc. when the sun comes up and you're not supposed to do that in Bolton—Wayne Smith is bound by the same rule.

H. Koster asked if it is correct that the 85 boats will fit into the areas marked off (100 ft. x 40 ft., 35 ft. x 95 ft., 153 ft. x 60 ft. and 132 ft. x 35 ft.) and Wayne Smith said yes. H. Koster asked if the barn is going to be used also and Wayne Smith said yes. H. Koster said that (1) his point is if the average boat size goes from 23 ft. to 30 ft. then the applicant won't be able to fit 85 boats in these square areas and (2) what the PB would like to approve is the square area shown on the map with a maximum of 85 boats. Wayne Smith said that (1) he would like the number of boats put in because they change and (2) you can't see the boats on the marked-off areas. Again, Wayne Smith referenced the maps to clarify the potential visibility including details on the plantings he has completed.

Wayne Smith asked what the original PB recommendations to the ZBA were and P. Kenyon said they were "the storage of boats was limited to 85, the boat wash area is to be located behind the existing building, minimal and/or boat maintenance only is allowed and no major repairs or oil changes." Wayne Smith said that is what he is asking for.

S. Aldrich said she is concerned with C1, specifically with noise levels and traffic problems. Counsel asked what the concern is with noise levels and S. Aldrich said that she is concerned about the noise that will be generated by the traffic back and forth. Wayne Smith said that (1) spring and fall is their busiest time, (2) on an average he makes 3 to 4 trips a day 3 to 4 times per week in the springtime—it is sporadic where he will come and do 4 or 5 boats then he'll go somewhere else—it is not a constant all day every day situation—it is low impact. S. Aldrich said okay. J. Gaddy said that it is not a lot and even 8 a day over the course of a month the applicant would be done with it. Wayne Smith said that (1) 8 a day is a lot and (2) they average 4 to 5 boats a day. H. Koster asked if it is correct that the applicant is not going into the dry storage business. Wayne Smith said that they are not in the dry storage business and they do not quick launch boats. D. Roessler asked how many days it would be 4 to 5 boats and Wayne Smith said it would be 7 days—he works 7 days. Counsel said that S. Aldrich pointed out concerns and she needs to tell the applicant if he has adequately addressed those concerns and given a sufficient explanation with respect on how the applicant plans to remediate or lessen that impact. Counsel added that either the applicant has or he hasn't. S. Aldrich said that (1) she understands it better, but no, (2) if the applicant has 85 boats, there is not a real lot he can do about it, (3) she is concerned about the traffic and what she personally thinks may be an overuse of this piece of property. Counsel asked if S. Aldrich is concerned with multiple uses on site—the agricultural use as well as the boat storage and S. Aldrich said yes, she is looking at the cumulative effect. Wayne Smith said that (1) it is 10 acres of land with two uses, (2) he could subdivide and have two lots with two uses or three lots with three uses, (3) as it stands now it is a single lot, but he has three potential lots with three primary uses, (4) it is not a three acre lot in three acre zoning with two uses and (5) he understands the concern with the 85 boats, but right now it is 28 boats—it is going to increase over time, but how fast, he can't tell the PB. S.

Aldrich said that she understands. Atty. Millington said that (1) with the exception of the trailers coming in and out, this will be a quiet piece of property with a bunch of quiet boats sitting on trailers, (2) ZBA member Kam Hoopes said that it is the quietest neighbor to a cemetery and (3) the applicant is not going to tune or run the boats, but just transport them. S. Aldrich said that is satisfied with the details given by the applicant.

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

No correspondence.

No comments of public in attendance.

Motion by Donald Roessler to accept the application as complete, waive a public hearing and grant approval as presented with the following conditions: 1) Boat motors are not to be started on site. 2) The Town of Bolton noise ordinance must be adhered to. 3) No quick launching is permitted. 4) The storage of boats is limited to 85 and must be placed in the square area depicted on the map dated 8/20/06, and received 8/25/06. 5) The boat wash area is to be located behind the existing building. 6) Minimal indoor boat maintenance only, is allowed this includes but is not limited to shrink wrapping and covering of boats, swapping out of batteries, installing engine plugs or installing tune up parts. 7) No major repairs, winterization or oil or grease changes are allowed. 8) 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** John Gaddy. Sandi Aldrich opposed. **All others in favor. Motion Carried.**

Note: Applicant agreed to have SD04-16 and SPR05-11 heard together.

Note: J. Gaddy recused himself from SD04-16 and SPR05-11.

8) SD04-16 SADDLEBROOK SUBDIVISION. Rolf Ronning. Seeks to amend previously approved plats (SD03-19 & SD04-05 formerly known as Mowery/High Meadow Farm), specifically to divide into 23 lots that parcel designated as Section 139.00, Block 1, Lot 48.1, Zone RL3. Access to be gained through Section 139.00, Block 1, Lot 28.1(Reed) see SD07-04. Property Location: High Meadow Farm Road. Major Subdivision. Preliminary plat. Subject to SEQR. *Note: This application is in conjunction with SPR05-11 and was approved at the May 2007 meeting. Changes have been made to the stormwater controls. See V07-31 for a deficient setback between the infiltration device #6 and a wetland to be heard by the ZBA on June 18, 2007.*

Rolf Ronning gave an overview and said that (1) last month when the PB gave him final approvals, Dennis Dickinson spoke assuring the PB that there were no variances were required, (2) Dennis Dickinson had some of the stormwater work done by another engineer and the following morning, he researched it and found there were two

infiltration ponds where the toe was within 100 ft. of the wetlands, so they did need a variance, but there were map discrepancies, (3) he asked the ZBA for a special meeting, to which they agreed to have on 07/02/07 at 6:30pm, (4) he is requesting the PB have a special meeting on this matter on 07/02/07 at 7:30pm and (5) his attorney and Town Counsel and others have discussed on how to proceed from now to then—Town Counsel has drawn up a stipulation, which he (Ronning) is willing to sign tonight, basically saying everything is in place, but he won't do any work, start the road, convey title or anything until this is finished.

Counsel said that is a fair statement and presented the proposed stipulation to the PB that this all encompasses everything that was considered Saddlebrook subdivision so that there is no misunderstanding in that Rolf Ronning will not sell any portion of the piece and the pre-existing lot—nothing—so he is no park, (2) it is an acknowledgement by the applicant as well as a willingness of this PB to accept the proposition that what was actually completed on May 17, 2007 and was not a final determination is not final determination and so the applicant promises that he will not proceed or advance further, he doesn't really have the Mylar that can be presented for signature, and he understands and the code and stormwater erosion control regulations permit he may apply for a variance, (3) the applicant does need to come back and needs to be very specific in what they need—the applicant understands that and it is clearly stated in the stipulation, (4) the applicant must make the presentation for variances from stormwater and erosion control requirements and if indeed they can substantiate them to the ZBA's satisfaction, then they made one important step in the direction that does not give them the final determination, because the PB holds the final say on this matter and (5) if the PB does accept the variances as may be granted by the ZBA, then it is imperative for the PB to take the continuing hard look at the project—not the complete process—but in a cumulative sense, understand what was achieved and add to it that which has been most recently achieved and if it meets the PB's satisfaction and criteria and satisfies what the PB believes is the spirit and the letter of the stormwater and erosion control regulations, then the PB can approve it, (6) this stipulation says that, it parks it and he believes it is important so a lot of time is not wasted in the wrong venue, like a court, trying to figure out what was the meaning of what occurred on May 17, 2007—he thinks the meaning is that it didn't fulfill the full requirements of the Town of Bolton code and stormwater regulations and Rolf Ronning acknowledges that, (7) if that is acceptable to the PB, he highly recommends the PB review and sign the stipulation—then it becomes a public record and (8) the PB would then need to deal with the last part of the issue, which is if the PB wants to grant the applicant a special meeting.

S. Wilson asked if Town Engineer Tom Nace's concerns will be addressed by the 07/02/07 meeting and Rolf Ronning said yes. Counsel agreed and said that he told the applicant and his attorney that he can't re-emphasize this more to the point that when the applicant steps up on 07/02/07, he has to know what they are talking about and what they are asking for and leave no stone untouched.

Counsel said that the stipulation does not and cannot preclude the applicant from advertising the sale, but the applicant will not be able to close on the properties.

No correspondence.

Motion by Sue Wilson to authorize Planning Board Chairperson Herb Koster to sign the stipulation pertaining to Saddlebrook Subdivision and Major Stormwater Project.

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

9) **SPR05-11 SADDLEBROOK SUBDIVISION. Rolf Ronning.** In accordance with Section 125.13C1 of the stormwater regulations, seeks Type II Site Plan Review for a major project, specifically to remove more than 15,000 sq. ft. of vegetation. 30 acres proposed: total build out is 30 acres, road alone is 12 acres. Section 139.00, Block 1, Lot 28.1, 36.1 & 48.1, Zone RL3. Property location: High Meadow Farm Road. The WCPB determined no county impact with the condition each individual lot be reviewed for stormwater and erosion control measures, lot clearing and lot access. Subject to SEQR. *Note: This application is in conjunction with SD04-16 and was approved at the May 2007 meeting. Changes have been made to the stormwater controls. See V07-31 for a deficient setback between the infiltration device #6 and a wetland to be heard by the ZBA on June 18, 2007.*

Motion by Donald Roessler to schedule a special meeting on July 3, 2007 at 6:00 pm to discuss Saddlebrook Subdivision (SD04-16) and Major Stormwater Project (SPR05-11).

Seconded by Sue Wilson. **All in favor. Motion Carried.**

H. Koster asked if this had been talked about with Town Engineer Tom Nace and Counsel said (1) no, not to his satisfaction, (2) at Monday's ZBA meeting, Dennis Dickinson was focusing in on variance requirements when the application that was presented was discussing the possibility that there is a deficient setback between the infiltration device at number 6 and the wetland, then on that premise that those were the facts they were dealing with, Tom Nace was looking at that and P. Kenyon asked Tom Nace to look at the whole thing—Tom Nace came back with a letter that was available Monday night, which in his (Counsel's) opinion was shifting here on what are the issues and (3) what Dennis Dickinson said did not match with anything the ZBA members had or the application and said that he (Counsel) doesn't think it has ever been reviewed by Tom Nace—he (Counsel) has no communication that it has.

H. Koster asked if there is enough time to advertise this and P. Kenyon said that (1) she doesn't think they need to re-advertise. Counsel asked if customarily the Town of Bolton doesn't advertise on a continuing application and P. Kenyon said no, what they will do is notify The Post Star of a special PB meeting and they will put notices on the doors of the Town Hall. J. Gaddy asked how much lead-time the PB will have to review the new maps and P. Kenyon said that the PB has them. Rolf Ronning said that (1) the ZBA already has the maps and (2) the whole packets are in the Zoning Office. P. Kenyon said that she believed the maps submitted included all the changes that have been made and include the changes for the variances. Rolf Ronning said that (1) they do, except for Tom Nace wanted an 18-inch culvert instead of a 30-inch culvert, which has not been changed and (2) it's just little, little crappy stuff. H. Koster said that the point is, when it comes to

the beginning of July, the PB is not going to listen to anything about little crappy stuff—if that is the case, the applicant is out. Counsel agreed. Rolf Ronning said that it is all there, but they just need to change that one culvert issue. Counsel said that (1) the task ahead is that the applicant has to satisfy the ZBA on some variance requests, (2) the PB's task is slightly different that is that those variance requests that are hypothetically approved by the ZBA is only part of the task for the PB, (3) Dennis Dickinson said that "...he moved an infiltration pond in another direction because they had room to do that and it works better in this better location and notably he needs no variance..."—that should be the key for the PB to say that Dennis Dickinson has also changed something in the plan that didn't involve a variance—the PB has to be looking for that. Rolf Ronning said that there are two or three ponds in play where Dennis Dickinson could move one, wasn't able to move another and one he was able to solve by turning the infiltration bed into a retention pond. Counsel said that it is critical that Tom Nace has seen it all and he has had the opportunity to write to the PB and tell them what he thinks. P. Kenyon asked how long the PB needs for review. Counsel said that the PB members should be given five days. Rolf Ronning asked if they would need the letter from Tom Nace by next Tuesday and Counsel said yes.

Chris Navitsky, Lake George Waterkeeper, asked if the plans will be available to the public and Counsel said yes. Chris Navitsky asked if the public would be able to be present and public comment be made at the special meetings and Counsel said yes, at the ZBA meeting it is an absolute and it will be a discretionary matter at the PB meeting. H. Koster said that he has to see what information the PB gets.

Other Business:

J. Gaddy said that he has a letter in his packet from ZBA member Kam Hoopes (he doesn't know who it is addressed to) and (1) said that at the ZBA meeting, ZBA Chairman Greg Smith asked if anyone had any questions/comments on a particular item, to which he (Gaddy) was bringing up the fact that since there was going to be lighting on the particular neighbor's home, he asked why the ZBA couldn't ask for exterior lighting downward facing and shielded, (2) he (Gaddy) asked at the ZBA meeting if it is proper that the ZBA can ask for conditions as a form of horse-trading when hearing an application. J. Gaddy then referenced and quoted the letter from Kam Hoopes. Counsel said that (1) the ZBA can ask for conditions—conditions are basically permitted and those conditions have to be as a matter of degree and expression, reasonable to the variance sought and granted, (2) in fairness to Kam Hoopes, he can perhaps be described as a strict constructionist and everything Kam Hoopes said is correct that is if somebody steps up to the plate and says they have a setback issue seeking 12 ft. where 20 ft. is required, it would probably is unreasonable to then say that a person who is just adding onto their house in a small direction, to change all the lights to be downward, (3) the code certainly does permit within a proper case on a proper variance, that there are certain conditions and specifications that are permitted—it is a balancing test, (4) the PB does have more latitude in that department than the ZBA and (5) he hopes that the new code does have some criteria in that when a project is judged for lighting, color and design,

because you will find that you will are not going to succeed in a court of law unless you can show limits and specifications and that it wasn't just made up.

S. Wilson asked the status of the new code and Counsel said that (1) he, P. Kenyon and M. Nittmann have gone over that with the consultant from ELAN, (2) they are now at he point that ELAN is substituting it and (3) if everybody in Bolton is happy with what they now see in the new code, it then goes to the APA to approve it before it goes to public informational sessions and public hearings—it's a long way off.

Meeting adjourned at 8:51 pm.

Respectfully submitted by
Jennifer Torebka
Recording Secretary
07/02/07