

**TOWN OF BOLTON
PLANNING BOARD
MINUTES
DECEMBER 17, 2009**

PRESENT- Herb Koster, Henry Caldwell, John Gaddy, Donald Roessler, Chauncey Mason, Sandi Aldrich, Sue Wilson, Counsel Michael Muller, Zoning Administrator Pamela Kenyon

ABSENT- None

The meeting was called to order at 6:07 pm.

PUBLIC HEARINGS

- 1) **SD06-05 OBERER, ERNEST.** Represented by Scott Miller and Peter Loyola of CLA Site. Seeks to divide into 3 lots that parcel designated as Section 171.00, Block 1, Lot 6 Zone LC25. Final Plat. Minor Subdivision. Subject to SEQR. Property Location: Edgcomb Pond Road. Note: This item was last heard September 2009. Site Plan Review for major stormwater project is required, but has not yet been applied for.

Herb Koster stated that some of the public in attendance have spoken at previous meetings and their comments and concerns are duly noted. He requested that they reserve any comments unless they had any new comments or concerns to raise. He stated that he would also like to limit any and all comments to 3 minutes apiece.

Sue Wilson read a statement regarding her recusal from application SD06-05. She stated that originally she recused herself because her son is an adjoining property owner and a vocal opponent. She stated that although she knew she could be impartial she wanted to avoid the appearance of impartiality and she had no way of knowing how she would vote on that project at that time. She stated that she has visited this site for the project and has been in attendance at the meeting held to review this project and she has had the opportunity to hear the material presented both in favor of and in opposition to this project. She feels that any questions that she would have asked would have been asked by other members of the PB and she has heard the responses. With the recusal of 2 members this Board has not been able to come to a legal decision on this application. The benefit of having a full Board vote on this application now outweighs her concerns for the appearance of impartiality. She requested to withdraw her recusal effective immediately to return to her position as a voting member of the PB. She stated that this is her decision to make and she can assure that any vote by her will be based solely on the merits of the application.

Henry Caldwell requested to withdraw his recusal as well. Herb Koster stated that he did not feel comfortable with either request and would like to proceed without participation

from Sue Wilson and Henry Caldwell. He stated that once a Board member decides to sit out they cannot just change their mind and re-establish themselves when it comes down to the vote. Counsel Muller agreed with Herb Koster's position. Counsel Muller stated that although he understands that both members could feel in good faith that they could vote on the merits and satisfy all of the requirements of the appearance of no impropriety. However, he admits that the area of law about the withdrawal of recusals is slim or non-existent. He recommended that the PB proceed with the recusals and not entertain the withdrawals. He feels that it contaminates the proceedings and it gives the appearance of a possibility of impropriety. Herb Koster stated that he also fears that this could invoke an Article 78 action. Counsel Muller stated that although it could he would rather proceed on the issue. He advised that the 2 recused members should remain that way.

Henry Caldwell stated that he feels that he could make an unbiased decision. He has been on the Board for 20 years and feels that his record speaks for itself. He comes from a family that has been on Lake George for 214 years. They own a lot of property and have a large extended family, but that is part of the being in a small town in the Adirondacks. Herb Koster stated that was his argument to Henry when he chose to recuse himself part way through this, but he decided to recuse himself anyway. Henry Caldwell stated that he understands but he feels that the circumstances have changed and that he feels that he should vote on this application. Sue Wilson agreed with Henry Caldwell. She feels that she can make an impartial decision. She stated that she understands Herb Koster's and Counsel Muller's concern but she thinks that it is her decision to make and she makes it comfortably knowing that she can be impartial. Herb Koster stated that he understands how she feels but does not believe that this decision is up to her. Sue Wilson stated that she did not have to discuss her reasons in the beginning and she didn't have to ask anyone's permission with her original decision. She stated that it is in the best interest of this Town for the full Board to vote on this project. Counsel Muller stated that he never challenges any recusals and does not find that it is necessary for discussion.

Herb Koster stated that he discussed Henry Caldwell's decision for recusal, and at the time Henry said that he had family that bordered on this project and he didn't feel like he could make a proper decision on it. Henry Caldwell stated that he didn't say that he couldn't make a proper decision, but he does have family that borders this property. Herb Koster stated that Henry is now giving him the argument that he gave him not to recuse himself.

Herb Koster asked the other Board members what their feelings were on these requests. Don Roessler stated that he agreed with Herb Koster. John Gaddy stated that he feels that it would be best to maintain the recusals. Chauncey Mason stated that he was unsure how he felt. He stated that when someone recuses themselves it is because they do not feel that they can make an impartial decision. Sandi Aldrich stated that she feels that both Henry Caldwell and Sue Wilson have a right to change their minds if they can make an honest and open decision.

Henry Caldwell asked if there was any case law of this issue. Counsel Muller replied that there is not much with regard to withdrawal of recusals. He feels that it will muddy the whole process. If the issue is forced upon the applicant, they certainly do not have to accept it and it is a point of challenge. He stated that if the Court entertains it, he feels that they would look at the possibility of impropriety. He stated that it will not be judged on the basis on fact, their representations or credibility, it would just be the possibility of the appearance of impropriety, which is a tough standard and he believes that the Court would find favorable to this applicant. Counsel Muller stated that in previous meetings public and otherwise, this applicant has stated that they would not accept the re-seating of these recused members.

Henry Caldwell stated that he has recused himself before but there has never been an issue with having a full Board. Counsel Muller stated that it exacerbates the issue but doesn't clarify it. He stated that it is not a good reason for withdrawal if the only reason is because the PB is deadlocked. Sue Wilson asked if it was their decision to make. Counsel Muller replied that it is their decision to offer but it is the Board's decision to accept or reject by resolution. He again stated that the applicant does not accept this decision. He also stated that this decision should not be made by the Chairman alone and that remaining members of the Board should be part of this decision.

Sue Wilson asked why the Board was not part of the decision for recusal. Counsel explained that recusal is a personal choice, but a withdrawal is procedural and tested by the appearance of the possibility of an impropriety, by whether or not it is acceptable to the applicant and the possibility of this decision being challenged in Court. He stated that if this were to go to Court he would do his very best to defend it but it would be difficult. He stated that a withdrawal of recusal after months of proceedings is rare; however he cannot say that it is non-existent. He stated that he has also not seen it challenged in court, but he feeling is that it would fall favorable to the applicant. Counsel stated that he accepts their honest representation and notably never asked which way they would vote. He also feels that it is possible that they have followed this presentation over many months and the applicants have made a persuasive argument that you could possibly vote in favor. However, the applicant has pointed out that it doesn't necessarily put the issue to rest because any third party could also find that this constitutes a possibility of the appearance of impropriety and they alone can challenge it as an aggrieved party.

Sue Wilson stated that this is a lose-lose situation for Bolton. Counsel Muller agreed but he would rather deal with the vote being 3-2 than deal with the consequences of the withdrawal of the recusals. Herb Koster asked if he could get a resolution. Henry Caldwell asked if this motion would preclude them from voting on stormwater. Counsel Muller stated that it will only deal with the matter at hand. However, he does see that issue as controversial and they will deal with that as it arises.

RESOLUTION:

Motion by Don Roessler to deny the withdrawals of recusal from Henry Caldwell and Sue Wilson for application SD06-05. Seconded by John Gaddy. Sandi Aldrich opposed. All Others in Favor. Motion Carried.

Mark Schachner of Miller, Mannix, Hafner & Schachner stated on behalf of the applicant they objected to the procedure of re-opening, re-convening or conducting of a new public hearing. He stated that their objection is a procedural objection because they do not believe that the application has changed any since a year ago. He stated that they have submitted a letter to Town Counsel and the Zoning Administrator indicating their objection. He stated that if they decide to re-open the hearing they do have representatives that are able to answer any questions from the Board or public but they would not be presenting any new information.

Counsel Muller stated that this Board made their determination to re-open the hearing. He advised that as a matter of procedure and courtesy they accept the rejection but proceed.

Mark Schachner stated that he would like to support the PB decision regarding the recusals and appreciate the Board's consideration that has been afforded to the applicant. He indicated that he would be leaving but the project team and legal colleague Leah Everhart would remain to answer any questions.

Herb Koster invited public comments once again reminding any individuals wishing to speak that they would be limited to 3 minutes.

Chris Navitsky, Lake George Waterkeeper stated that he feels that he has information that could be added to their previous comments. He stated that this is not in compliance with Town Code 200-51c3 regarding clearing regulations. The PB determined in October 2007 that subdivision access would be considered a driveway which would make the clearing limit reference to the section stated. The plan calls for clearing for the proposed driveway up to 165' wide. This point has been raised in 2 previous public hearings regarding the application with no response from this Board. A request for determination has also been sent to the ZA on 3 separate occasions with copies to the Board without a response. He also asked of the proper procedure at TB and Counsel Muller stated that it would be to send a letter to the ZA. He stated that they have requested determination from the Town whether a variance is required for the project due to the excessive clearing.

Chris Navitsky feels that the enforcement mechanisms proposed in covenants of the subdivision will not be effectively enforced. Although the applicant has proposed measures for retaining existing vegetation and restoring vegetation, including substantial fines, these measures are only as strong as the will to enforce. Unfortunately it has not been the will of Bolton to enforce measures that are specified in their own permits. For example the Town of Bolton's standardized stormwater management permit requires a post-construction certification of all major stormwater facilities by a licensed professional and this requirement has not be complied with. Therefore it is unlikely covenants and restrictions placed on the subdivision would be enforced.

With regard to excessive disturbance, Chris Navitsky stated that the clearing proposed for the 3 building lots is excessive and will have a negative impact on the resources of the Town and watershed. He provided the Board with some additional information and comments with regard to some of the comments that they have received from the Board. Chris Navitsky stated that the project proposed to clear approximately 8 acres for the driveway not including the additional clearing for stormwater management. This will permanently scar one of the prominent vistas of the Town which attracts 1,600 registered hikers through the Land Conservancy. Last December the Lake George Waterkeeper presented computer renderings of the vista from Cat Mountain to demonstrate the extent of clearing. The applicant and Board members questioned the renderings by claiming they were “clearly not photo-realistic” and spoke to not ascertain the accuracy. He asked the Board to look at the photograph taken by Carl Helman from Cat Mountain that appeared on the cover Adirondack Explorer which should validate the photo-realism of the renderings and further demonstrate the clearing will have on the view shed. He stated that it is evident that the clearing is excessive and will negatively impact the resources of the Town.

Chris Navitsky stated that they feel that the subdivision clearly violates the following sections of Town Code; 1) 150-12b for Cluster Subdivision, 2)150-16 for tree clearing in excess and not providing the minimum for 3 lots and 3)150-17 for driveway clearing in excess of 16’ as permitted by code. Herb Koster reminded Mr. Navitsky that his time limit had expired and stated that they have all of his comments previously on record.

Chris Navitsky stated that they would like to encourage the Town to take a look at the cluster subdivision. He stated that they feel that this property can be developed with the 3 lots that are located at a lower elevation.

With regard to his comments about the width of clearing for the driveway, Herb Koster stated that the PB has always taken that as their prerogative to vary from the specific numbers that are in the ordinance for roads and driveways. He believes that their original argument for making this a driveway was that this would be less of a clearing. Chris Navitsky stated that he feels that is a zoning code issue and cannot be waived by the PB.

Motion by Don Roessler to close the public hearing for application SD06-05. Seconded by John Gaddy. Sue Wilson and Henry Caldwell were recused. All Others in Favor. Motion Carried.

Counsel Muller stated that he wanted to clarify something. He stated that if he understands Chris Navitsky’s point and Tom Ulassiwicz letter that he received, they specifically draw attention to supplementary regulations section 200-51c3 “Clearing Regulations”. When one goes to the Code book and looks at that section, it pertains to single family home construction. As he understands the process and procedure when someone does come for a single family residence they do follow the limitation. When the applicant is applying to have driveway accessing multiple dwellings the interpretation of the ZA has been that she does not apply the single family home 16’ wide limitation for

the right-of-way. She makes the interpretation that what is offered is different and allows the PB to make the determination of width or latitude that is allowed.

The applicant requested to proceed to the regular meeting to have a decision made before proceeding with the second public hearing. Counsel Muller stated that it is their decision that they should make as a Board. Herb Koster stated that he is not comfortable with this request since they have never been asked to do this before. He asked for the Board's opinion. John Gaddy stated that he would like to stick with their standard procedure. Counsel Muller and the PB agreed.

RESOLUTION:

Motion by John Gaddy to continue to the public hearing for SPR09-20 before they enter into the regular meeting. Seconded by Donald Roessler. Sue Wilson and Henry Caldwell recused themselves. All Others in Favor. Motion Carried.

2) SPR09-20 BELL POINT SHORES HOMEOWNERS ASSOCIATION.

Represented by Atty. Michael O'Connor and Jarrett Martin Engineers. Seeks 1) to modify stormwater damage on lake access road from cul-de-sac to beach lot, 2) modify stormwater management on beach lot, 3) modify conditions of approval for the subdivision, specifically to eliminate the toilet in the support building at the lake and eliminate the requirement that the Old Bell Point Road be maintained as passable. See SD93-04 approved by the PB on May 26, 1994. Section 156.16, Block 1, Lots 1.1 & 3, Zone RCM1.3. Property Location: Bell Point Shores. Default approval by the WCPB. Subject to SEQR. This item was tabled at the November meeting pending a public hearing.

Mike O'Connor stated that they have 3 items that they wish to address. With regard to the modification of the stormwater on the access road to the beach lot, he stated that they do not wish to change the use of that road but they believe that they have engineered an improvement to the design for the stormwater and they are seeking their approval for that design change.

Tom Jarrett explained the proposed improvements to the stormwater for the access road to the beach lot. He stated that they are looking to improve the surface of the driveway, shed run-off to the south into 2 new stormwater basins along the driveway and slope the parking area away from the lake into another basin. He stated that they will have 3 new stormwater devices to stabilize the road and parking area. Mike O'Connor stated that he understands that Tom Nace has reviewed the plans and issued a letter of recommendation for this plan.

Mike O'Connor stated that the second issue is that they re-visit the 1993 subdivision approval conditions. He stated that they are not asking the Board to do anything to anyone's private rights or right-of-ways that individuals have or enjoy. There has been a great deal of litigation with regard to the right-of-ways on this property and they are not asking the Board to change any of the outcomes of that litigation.

Mike O'Connor stated that one condition required that they have a waterless toilet installed in utility building on the common beach lot. He stated that it was not installed by the original sponsor of the subdivision or the second party that became a sponsor of the subdivision. By default, 4 of the lot owners within the subdivision took over the HOA and are now running the HOA. He stated that these new owners have not found it necessary to have a toilet in that building. He feels that it is not a matter of there only being 4 users or 18 users, which is the maximum, the proximity of the houses that are established are such that people have been able to make their accommodations without having a toilet there. He stated that the HOA is also concerned with offsite users taking advantage of this facility. Mike O'Connor stated that they are seeking a change to the condition so that they are able to put in a portable toilet in warm months when they are likely to have more use as opposed to year round.

Mike O'Connor stated that the second condition that they would like to address is the requirement that the HOA maintain Old Bell Point Road in a passable condition. He stated that at one time the PB determined that passable meant snow plowing. He stated that they feel that this is a complete waste of effort and money. They have submitted a letter from the Bolton Fire Department indicating that they see no need or reason for maintaining it. He stated that Tom Jarrett was part of the original development team and much of the discussion at that time was centered on keeping it passable while Norwood Drive was being constructed. He stated that there was concern for access to the lake lots which had already been sold off to individuals and had a right-of-way across that part of Bell Point Road. He feels that the record has established that Norwood Drive is a much better access to those lots as well as the lots within the subdivision. He stated that they would come back with engineering plans that would discontinue their obligation to maintain Old Bell Point Road from approximately 100' in on lot 1 and 100' on lot 11. He stated that they are not taking away anyone's rights to use it or maintain it. However, they are saying that this road does not serve a public purpose. He believes that it is unconstitutional to require one individual to maintain a road for the private benefit of others. Mike O'Connor stated that the Court decision in 1958 and part of the deeds that follow that decision says that everyone that uses Bell Point Road will pay their appropriate share. Therefore this is a private matter and it should remain that way. He stated that they have 3 people that front on that road and those people will be as well as others will be required to share in that expense. With regard to the comments that this change would require going back to revisit SEQR, Mike O'Connor stated that he had no problems with that and he would encourage the PB to do that.

Mike O'Connor stated they have made some minor modifications to the stormwater facilities on Norwood Drive. He stated that they put in some check dams and they would like that to be part of their consideration for approval. He stated that the original developer never sealed the overflow pipe on the bottom sedimentation area and they have accomplished that.

John Gaddy stated that he knows that this area has a lot of rock on it and asked Tom Jarrett if they have completed test pits. Tom Jarrett stated that the lower part of the property along the shoreline has very little soil so they may have to put in a trench to

achieve that standard. He stated that is why they are diverting so much stormwater off the driveway because they do have the soil there. John Gaddy stated that the parking area is an improvement it will be infiltrating underneath which is presently undermining the parking area. Tom Jarrett stated that ledge rock is very close but there are pockets of soil around.

Buck Bryant stated that any of the older letters that were read into previous hearings would be pointed out but not re-read in the essence to save time. He stated that there are some new letters that have been submitted in the last couple of weeks and he understands that the procedure is that Counsel reads these letters into record.

Counsel Muller read the following into the record:

- 1) Email from Joe Russell in opposition to the application
- 2) Letter from Robert Weisenfeld in opposition to the application including a petition from the Weisenfeld family requesting that the Town of Bolton continue to hold the HOA to the original conditions of approval.
- 3) Letter from J. Buckley Bryant, Jr., in opposition to the application
- 4) Letter from Anne Marie & Raymond Bell who are opposed to the application
- 5) Letter from Henry J. Sommer which included a copy of the original letter that was submitted to the PB.
- 6) Letter from Bolton Fire District, Board of Fire Commissioners, who indicate that Bolton Fire Department does not object to the removal of the condition of the road.

Madeline Weisenfeld, property owner in the Bell Point Shores area, stated that many of the property owners have been waiting 15 years for the HOA to begin operating the subdivision in the way that it was approved by the PB in 1994. The HOA rejects the original subdivision plan for 18 lots on 2 maintained roads. They have not presented an alternate access that assures future lot owners that they will be able to access their lots. The original conditions of approval required maintenance on the upper part of the Old Bell Point Road. There is no reason why the upper portion of the road could not be in the same condition of the lower portion of the other than lack of maintenance. The HOA's refusal to perform any significant maintenance has accelerated the deterioration of the roadway surface leaving it impassable. She stated that eliminating the conditions that the HOA has simply refused to comply with would reward non-compliance and would make a mockery of a planning process.

Rolf Ronning stated that he was one of the former developers. He stated that his father sold off many lots to many of the predecessors like Mr. Bryant and the Weisenfelds. He stated that there was a right-of-way along the Old Bell Point Road. At that time there were no dues or HOA and no agreement as to who was to maintain the road. He stated that his father or Buck Bryant used to maintain and plow this road. When his father died he tried to develop this project. At the time the former owners fought because they did not want to be members of the HOA and didn't want to contribute any fees. He stated that the 18 lot subdivision was developed and he sold a few lots before selling the remaining parcels to Northwest Bay Partners. He stated that when they received approval

it was clear that they needed to build a road according to Town standards with a 22' wide driving surface. He stated that this road cost \$500,000 and it is state of the art. These individuals that are living on the lake have a much better access to their properties than they ever had before and they pay no dues. He stated his understanding of the HOA covenants and approvals was that these individuals had a deeded right-of-way and the new lots were developed so not to disturb the road in its character or location. However, never was there an obligation of these people to maintain the road or any obligation on any of the Bell Point Shores homeowners other than to keep it undisturbed. He stated that the HOA are not going to use it and does not feel that they should be responsible for having to maintain it. Herb Koster stated that it was a condition of approval that he agreed to. He stated that it was discussed at the time the year round maintenance would be done. He stated that the original homeowners wanted that road in tact especially since he put a cul-de-sac done through their right-of-way. Rolf Ronning stated that he feels that this road has not been passable for quite some time and he feels that this is an issue of egos than a right of use. He supports the request of the HOA due to the fact that this road hardly even exists anymore and if someone wanted to use the road they would have made this argument a long time ago.

With regard to limits of disturbance in a critical environmental area, Chris Navitsky, Lake George Waterkeeper stated that increase disturbance and impervious surface on steep slopes in close proximity to the lake increases stormwater run-off, resulting in negative impacts to Lake George. The original subdivision was approved with limited disturbance on the waterfront common lot to reduce negative impacts. However, improvements have been made by the applicant and they should be mitigated. The failure of Bell Point Shores HOA to properly managed stormwater to maintain their stormwater system is well documented and has resulted in significant sedimentation problems. They feel that the HOA should be required to install stormwater management specified in their maintenance agreement which was dated April 19, 1994. The Lake George Waterkeeper recommends that the PB deny the proposed waterfront parking, re-vegetate the disturbed areas and require the installation of stormwater management controls to address the existing stormwater run-off, which should include installing grass pavers where there is constant traffic and concentrated run-off, pre-treatment sediment pour base to remove sediment when going into infiltration areas and the installation of vegetation to incorporate rain gardens to improve treatment.

Bob Weisenfeld, on behalf of Madeline Weisenfeld, stated that a lot of prior homeowners have been waiting 15 years to see the mitigation that came out of the SEQR process in 1994 put into effect and they are still waiting. With regard to the comment that Norwood Drive is sufficient enough to handle all of the traffic that might be generated by the subdivision. He stated that this subdivision was looked at comprehensively for over 2 ½ years. The conditions came out of the process after a full SEQR review, environmental impact statements, etc; an 18 lot subdivision was approved. Many of the people that lived in the area felt that the subdivision as proposed was too dense and they urged that it be made smaller but as the process worked out no one got exactly what they wanted but they came away satisfied that it had been a fair process. However, he now feels that it is

objectionable that the HOA, which accepted what Rolf Ronning sold, requests that this condition be revised outside of the original approval process.

Bob Weisenfeld stated that at one point there was another plan. The APA was intent on urging the PB to approve the smaller subdivision. Herb Koster stopped Mr. Weisenfeld. He stated that he was trying to re-design this whole project which is not acceptable. He stated that if he had something else to discuss he would allow it. Bob Weisenfeld stated that he felt as though the HOA was trying to re-design the project. Herb Koster stated that he is trying to re-design the amount of lots in the subdivision and that is not their application. Bob Weisenfeld stated that he feels that the applicant should come in with an application that eliminates any need for them to use the old road if they don't intend to maintain it.

Bob Weisenfeld requested that the PB suspend those parts of the application that pertain to the revision of the conditions of approval until the violation is cured. He suggested that they keep the item on the agenda and leave the public hearing open until the stormwater system that they may approve tonight is constructed and approved to be functioning. He suggested that they set a date for May 30th with review by the PB during its June meeting. If they leave the public hearing open until that time they can continue to address the issues that come up during that process. Given the history of non-compliance, he doesn't feel that anyone can have any faith that this stormwater plan will actually be implemented or that any other commitment that may be made during the HOA's presentation will be kept.

Mike O'Connor stated that at the last meeting he stated that it was time for the free ride to be over. He stated that the black letter law states that a property owner who allows a right-of-way over their property is not obligated to maintain that right-of-way for those who chose to use it. The only reason that the HOA has the obligation was due to the conditions of approval. Mike O'Connor stated that there has been a change in the circumstances. The HOA is up and running and has proven that it is maintaining a better access to the property than even the old road if were maintained. The 1958 and 1991 decisions states that there is a right-of-way that is 10' wide. He stated that they now have Norwood Drive which was built to Town road standards. He stated that once that was in place the right-of-way did not serve any public purpose. He read the decisions from 1952 and 1991, which indicate that the additional homeowners should be paying their equal share of all taxes, construction costs and maintenance of the private roadway. He stated that the PB at the time shifted a private obligation onto the HOA.

Mike O'Connor stated that there were a lot of concessions made at the time of approval. The HOA is not asking that those concessions be given up. He stated that all of these additional homeowners have the right to use Norwood Drive without expense and they will continue to have that access. Herb Koster stated that this right-of-way was negotiated between the existing members that lived down there and Rolf Ronning. He stated that Rolf Ronning wanted to move it and put in a cul-de-sac. He stated that these conditions arose out of serious negotiations between the owner of the land that granted the right-of-way and the people that were using the right-of-way. Mike O'Connor stated

that at the time this may have been an appropriate condition especially if they were unsure if what was being offered wouldn't actually be performed. He stated that they have come to a point that they know that they have an adequate substitute for it and there is no longer any legitimate municipal reason for requiring the continued maintenance of Old Bell Point Road.

With regard to the comment that this should be delayed until they submit a plot plan that displays all improvements, Mike O'Connor stated that they do not plan for any additional improvements other than what have been shown on the plan submitted. With regard to the comment that they should have done better stormwater management on the road from the cul-de-sac down to the beach lot. However, his understanding was that in 1992 or 93 there was no stormwater plan for that road because it was grandfathered nor was there a plan for Old Bell Point Road.

With regard to the some of the comments in the letters that the HOA is in bankruptcy, Mike O'Connor stated that the HOA is not in bankruptcy. However, one of the members of the subdivision had a petition for involuntary bankruptcy filed against that corporation which was denied by the Bankruptcy Court. He stated that they have 4-5 owners that have put money out of pocket. He stated that there are some outstanding dues but the current owners are trying to abide by what is required of them.

Bob Weisenfeld stated that in the Fire Department's letter it states that there are no structures on the upper part of the Old Bell Point Road. However, it does not take into account the build out and there will be structures there. He feels that the Fire Department might have a different opinion if they were looking at the subdivision as it will be built and not as it exists now. He stated that there are only 2 homes that have been constructed and no one is saying that the roadway system is inadequate now, but this was designed as an 18 lot subdivision, not a 2 lot subdivision.

With regard to Mike O'Connor's comment about constitutionality, Bob Weisenfeld stated that the old road does serve as a municipal purpose to those lots both up and down the road to the waterfront and a second access by the lot owners to supplement Norwood Drive. He stated that he raised this issue back in 2001 and Town Counsel, Mark Schachner dismissed it at the time.

RESOLUTION:

Motion by John Gaddy to close the public hearing for application SPR09-20. **Seconded by** Don Roessler. **All in Favor. Motion Carried.**

REGULAR MEETING

Herb Koster asked if there were any changes or corrections to the October 22, 2009 minutes.

Motion by John Gaddy to accept the October 22, 2009 minutes as written. **Seconded by** Don Roessler. Herb Koster abstained. **All Others in Favor. Motion Carried.**

Herb Koster asked if there were any changes or corrections to the November 19, 2009 minutes.

- 1) Sue Wilson, page 11, DiCerbo application, condition #2 should read as follows: “
- 2) Any blasting *or preparation for blasting* that is to occur on the project site is limited to the hours of 8:00am to 5:00pm, Monday through Friday.”

Motion by Don Roessler to accept as the November 19, 2009 minutes as corrected.
Seconded by Sue Wilson. Herb Koster abstained. **All Others in Favor. Motion Carried.**

- 1) **SD06-05 OBERER, ERNEST.** Represented by Scott Miller and Peter Loyola of CLA Site. Seeks to divide into 3 lots that parcel designated as Section 171.00, Block 1, Lot 6 Zone LC25. Final Plat. Minor Subdivision. Subject to SEQR. Property Location: Edgecomb Pond Road. Note: This item was last heard September 2009. Site Plan Review for major stormwater project is required, but has not yet been applied for.

Peter Loyola stated that they have proposed a subdivision that has considered the sensitivity of the location and feel that they have adequately mitigated to the greatest extent possible. He stated that for over 4 years they have provided a reclamation plan, planting plan, provided enforcement and weighted covenants and restrictions to the subdivision, provided a filtered view creation plan.

With regard to cluster subdivisions, John Gaddy stated that at one point he requested to see a slope inventory to see the amount of slopes that were greater than 25% or slopes that were greater than 15%. Peter Loyola replied that he does not believe that they ever looked at the percentage of slopes but they do have steep slopes and they have done whatever they could to mitigate them and look at the profile that came up through. John Gaddy stated that in looking at the representation that this is a cluster development, they are required to have an inventory for the 1) sites exposed from Lake George, 2) sites with 25% slopes occupying 25% of the slope site and 3) slopes greater than 15% occupied more than 50% of the site. He stated that he does not recall that this was ever done. Peter Loyola replied that they do not have a map that shows a slope inventory but they did an extensive view shed analysis from all points around and they felt that was adequate to show what they would see or not see.

RESOLUTION:

Motion by John Gaddy to deny application SD06-05 based on the effects that this project will produce: 1) erosion of a ridge line that is contiguous with other protected areas and 2) the tremendous amount of excavation necessary to be able to create the access to the proposed houses on top of the project. The well thought out and intentioned plan for the vegetative cover puts the Town in a position of which they have to be an enforcer which the Town is not always willing to do. This is also an important visual element in the Lake George Bolton Basin. Although it is private property, Bolton cannot overlook the

regulations that they have for Section 200-31, in which they would have to decide that this project would not have an undue adverse effect on the natural, scenic and aesthetic values of the Town after they take into account the commercial, industrial, educational, residential and recreational benefits that may be derived from this project. This project could still be developed without having the two houses up on the ridge. Although it is the applicant's desire it is not in the best interest of the Town. **Seconded by Sandi Aldrich. Sue Wilson and Henry Caldwell were recused.** Herb Koster, Chauncey Mason, Don Roessler opposed. **No Board Action.**

Motion by Donald Roessler to accept SD06-05 application as complete and having met the criteria set forth in the code, grant a conditional approval for construction of the single family dwellings with the following conditions: 1) the applicant will apply for and obtain approval pursuant to Chapter 125 for the overall minor subdivision stormwater compliance. 2) Site Plan Review will be required for each individual lot. 3) The applicant shall provide a written planting program in an effort to maintain a perpetual vegetative screening allowing filtered views to the satisfaction of the PB with John Gaddy as the designee to review it. **Seconded by** Chauncey Mason. **Sue Wilson and Henry Caldwell were recused. Sandi Aldrich and John Gaddy opposed. No Board Action.**

Counsel Muller stated that they are in a dead lock which basically means that there is no action. He stated that according to the zoning code after no more than 45 days after completion of the public hearing the PB shall, by resolution, conditionally approve, disapprove or grant final approval that authorizes the signing of the minor subdivision plat. Counsel Muller stated that at times, including in this application, that time frame has been extended. He stated that back in December of 2008 the applicant agreed to extend the timeframe by waiver. However, on November 16, 2009 a letter was received from the applicant's counsel advising that they were withdrawing the waiver. Counsel stated that if the PB cannot come up with a vote that is on its merits with a minimum of 4 votes then this has a trajectory that will logically will land 45 days from tonight as no action, arguably the applicants will seek a default approval for the subdivision and they will be in the position to obtain it. What they will obtain is hard to describe, it is an approved subdivision by default but lacking stormwater and erosion control which application still lies ahead. He stated that he does not advise that they emasculate any subdivision approved by default by making the stormwater stringent with unobtainable requirements in the stormwater review.

Herb Koster asked if any of the conditions that the applicant agreed to originally would be applied to the default approval. Counsel replied that he would have to work that out with Mike Hill but that is still an uncertainty. Peter Loyola stated that the applicant understands the conditions and the applicant is willing to comply with the conditions. Leah Everhart, stated that this issue is strictly a legal issue and the applicant does not take a position on that right now. She is not sure if the conditions attached to subdivision approval would necessarily be attached if subdivision approval happened out of default.

Counsel Muller asked if there was any consensus that could be reached based on the merits of the project that could result in majority vote.

The PB took a recess at 8:00pm and reconvened at 8:15pm.

No consensus was reached.

2) SPR09-20 BELL POINT SHORES HOMEOWNERS ASSOCIATION.

Represented by Atty. Michael O'Connor and Jarrett Martin Engineers. Seeks 1) to modify stormwater damage on lake access road from cul-de-sac to beach lot, 2) modify stormwater management on beach lot, 3) modify conditions of approval for the subdivision, specifically to eliminate the toilet in the support building at the lake and eliminate the requirement that the Old Bell Point Road be maintained as passable. See SD93-04 approved by the PB on May 26, 1994. Section 156.16, Block 1, Lots 1.1 & 3, Zone RCM1.3. Property Location: Bell Point Shores. Default approval by the WCPB. Subject to SEQR. This item was tabled at the November meeting pending a public hearing.

Herb Koster stated that he does not have any problem with the stormwater upgrades or the revision of the condition regarding the toilet in the support building to have a portable bathroom in the summer season. However, he does not agree with changing the ROW agreement. Counsel Muller stated that they could not change any structures or covenants set forth in deeds. However, this applicant has sought a change in what was a condition within a prior approval of this PB. This is not impairing any private rights and they are not changing any deed covenants or easements. He stated that the only way to change this condition is by coming before this Board. Herb Koster stated that they cannot take away their ROW to use that road. Counsel Muller replied that the applicant is not asking the PB to tamper with the private right. Mike O'Connor stated that they are requesting a change to the condition imposed by the Town. He is requesting that the HOA not be held responsible for having to maintain the ROW.

Sue Wilson stated that the map says that the conditions of approval were by the ZBA by variance. It states that "The road on the lake access parcel shown on sheets 2 and 3 shall be maintained year round with a minimal passable width of 12', conditions of approval, ZBA variance V93-44." Mike O'Connor stated that he was not aware of that variance. Sue Wilson stated that this was the first time that she had seen this before as well. Counsel Muller stated that they would obtain a copy of that variance. Mike O'Connor stated that he is not sure what the variance would have been for.

After review of the map, Mike O'Connor stated that he believes that they were talking about the lake access road which is not the upper road. He feels that this is the portion of the road going from the cul-de-sac down to the beach. Herb Koster stated that he still argues that this PB did not demand that Rolf Ronning maintain that road, it was an agreement reached between them and Rolf Ronning. He feels that this became part of the ROW since he originally agreed to it. Counsel Muller stated that he understands his position. However, this is the proper place for the applicant to appeal to such change. He stated that if it is done under proper consideration with public notice and public hearing and for good reasons they can change that prior condition. He stated that they have not

undone a covenant or easement. Herb Koster asked if it would become a civil matter at that point. Counsel Muller replied yes and there is a possibility that Bolton would be drawn into it.

Mike O'Connor asked if the PB would be willing to rule on the improvement to the stormwater on the beach lot and the condition for the toilet without prejudice. He stated that they would be willing to provide a written waiver of the 45 day period to the Town on the other issue. He stated that he would like to explore whether or not without prejudice whether or not the present HOA and the homeowners can come up with something that is tenable to both. Counsel Muller stated that is a great offer but they may need to go in a different direction here because they have found the variance approval from 1994.

Counsel read the variance from 1993. Mike O'Connor stated that he feels that this applies to the access road to the beach lot and not the upper roadway. There was further discussion of this variance.

Pam Kenyon requested time to review the 1993 variance before they rule on the Old Bell Point Road maintenance issue.

John Gaddy commented that the applicant has made the presentation that there isn't a need for a permanent toilet since they only have 2 houses there. However, if they look at this subdivision as being eventually built out he feels that it is easy enough to put in a self-contained toilet. Pam Kenyon stated that any unconventional (unusual) system will require a variance from the local BOH. John Gaddy stated that there is existing technology out there that could be used. Mike O'Connor stated that if the PB has strong feelings about using a facility other than a portable toilet he stated that they would have no problem exploring that and coming back. Chauncey Mason stated that he does not feel that a permanent system is necessary and that a portable unit will suit their needs. Sue Wilson stated that the TB has recently approved an incinerating toilet and they seem to look favorably on these types of systems.

RESOLUTION:

Motion by John Gaddy to: 1) table the application as it pertains to the investigation of options for installing a more permanent waterless toilet for the support building. 2) additional information on the old Bell Point Road. **Seconded by** Sandi Aldrich. Chauncey Mason opposed. **All Others in Favor. Motion Carried.**

There was discussion of the approval for the stormwater controls since this subdivision pre-dates the stormwater regulations. Counsel Muller stated that although it is uncomfortable they need to best apply what they can to this project. Tom Jarrett commented that they are reducing the amount of impervious area that is already on site. Sue Wilson suggested that they refer to it as the changes or improvements rather than the project. The Board agreed. Counsel Muller advised that they make the usual motion and only address it only to the minor improvements proposed.

Motion by John Gaddy to accept application SPR09-20 for improvements to the stormwater conditions which repairs the stormwater damage on the beach area; based upon the approval given to the drawings prepared by Tom Jarrett from Nace Engineering, the stormwater control measures seek to improve the present condition of the stormwater and protects the waters of Lake George. **Seconded by Donald Roessler. All in Favor. Motion Carried.**

Herb Koster stated that the applicant will come back with more details for the waterless toilet and ideas to come to some sort of agreement for the Old Bell Point Road. Pam Kenyon stated that she needs to review the resolutions and minutes for this project. Mike O'Connor stated that he has signed a waiver of the 45 days. He asked if they would like to try and meet again in the next month or two. There was some discussion as to the time frame. It was decided that they will attempt to return for the February 2010 PB meeting.

- 3) **SPR09-30 BOLTON FIRE DISTRICT.** Represented by Gunther Roessler. Seeks Type II Site Plan Review for an advertising sign greater than 4 sq. ft. Approximately 67 sq. ft. is proposed. Section 171.15, Block 2, Lot 48, Zone GB5000 and RM 1.3. Property Location: 5003 Lake Shore Drive. Subject to WCPB review. Subject to SEQR.

Donald Roessler stated that he would like to sit in on this application. The Board agreed that it would be okay.

Henry Caldwell asked if they would be interested in doing a smaller sign. Gunther Roessler replied that if they do a smaller sign it is not legible from the road. They want to identify the building properly. This spring they refurbished the outside of the building and found that the old sign, which was over 40' was old, brittle and unsafe.

Donald Roessler asked if the sign will be lit. Gunther Roessler replied no.

RESOLUTION:

Motion by Don Roessler to accept application SPR09-30 as complete, waive a public hearing and grant final approval. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented with the following condition: 1) that no lights will be used for the sign. **Seconded by Chauncey Mason. All in Favor. Motion Carried.**

- 4) **SD09-08 SIMMES, HARRY & KATHLEEN.** Seek to divide into two lots that parcel designated as Section 185.00, Block 1, Lot 1, Zones RR5 and RR10. Property Location: 5 Kathy's Crossing. Minor Subdivision. Sketch Plan Review. Subject to SEQR.

Kathy Simmes explained that they are not selling their house, it will be kept separate from the subdivision. The lot is 12.4 acres. They are in the process of selling the Pooch Palace business and they need to make a subdivision so that they can have the front half of the property and her son has his trailer on the back half. The front parcel will be 4.3 acres and the back parcel will be 8.1 acres. They will be using the existing unnamed stream as the dividing line for the parcel. Wetlands do exist on the parcel and if they get approval they know that they will have to go through the APA for approval.

Don Roessler asked if the wetlands were just on one lot. Kathy Simmes replied no there is a little wetlands area on both properties which is due to using the stream as the dividing line. Herb Koster asked why the APA would be involved with such a small wetland. Pam Kenyon stated that she thinks it is because of the stream as well. Counsel agreed and stated that the APA looks at a factor of continuity because it goes to larger and other bodies of water or wetlands. Kathy Simmes stated that she believes that the APA has a new ruling that if a subdivision is within 200' of a wetland they take jurisdiction. Sandi Aldrich stated that even if she were to move her dividing line, it still wouldn't help.

RESOLUTION:

Motion by Don Roessler to accept application SD09-08 as complete, waive a public hearing and grant final approval for the subdivision. 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) **SD09-07 INDIAN PONDS LLC.** Represented by Atty. Melissa Lescault. Seek to merge those parcels designated as Section 107.00, Block 2, Lots 8 & 9, & Section 108.00, Block 1, Lots 1, 4 & 6.1 and then divide into two lots. Zone: LC45. Property Location: Padanarum and Trout Falls Roads. Minor Subdivision. Sketch Plan Review. Subject to SEQR.

Melissa Lescault stated that they are seeking to merge 5 parcels into only 2 lots one on each side of Padanarum Road.

Sue Wilson stated that when this was approved there were conditions about conveying those other parcels. Melissa Lescault stated that her client purchased property which created an APA violation. They have entered into a settlement agreement with the APA. Her client cured the violation by purchasing all of the properties involved in the foreclosure action. Any of the conditions that were in play at the time are all void because of that APA violation. Sue Wilson stated that none of their concerns are permitted to exist. Counsel Muller replied that the past history is basically a blank slate by virtue of the APA settlement and foreclosure.

Melissa Lescault stated that there are no development plans at this time. Sue Wilson stated that the applicant would have to come anyway.

RESOLUTION:

Motion by Don Roessler to accept application SD09-07 as complete, waive a public hearing and grant final approval for the subdivision as presented on the map entitled Indian Pond Estates, LLC revised on 11/12/09 and received by the Planning office on 11/19/09. 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. **All in Favor. Motion Carried.**

- 6) **RONNING, ROLF.** Requests an informal discussion with regard to the concept of going forward with plans for a ski area. Section 139.00, Block 1, Lot 92, Zones RR10 & LC45. Property Location: Lot 9 of Westwood Forest West.

Rolf Ronning stated that he started to consider this idea when he heard that the Sagamore was closing in the winter. He stated that there was an article in the Lake George Mirror in which someone at the Sagamore said that they might stay open in the winter if there was a ski area in Bolton. He stated that he immediately started considering Westwood Forest West. He stated that he also started to look at the zoning and found that it was vague when it came to ski areas but he did find that it was an acceptable use in 25 acre zones.

Rolf Ronning stated that he has an investor who stated that they would be interested in backing such an idea so long as the Town felt that it was a viable idea. He stated that Andy Beadnell, of Ridin Hy' Ranch also indicated that he would be interested in financially supporting the project. Unfortunately, engineering and surveying fees for ski areas is a couple hundred thousand dollars and it is a substantial development that affects a big property in a substantial way.

Rolf Ronning stated that Westwood Forest West is zoned very differently. He stated that part of the subdivision is in the light industrial zone. Currently, Adirondack Extreme Adventure Park occupies 4 of those lots in the industrial zone. The access road is the separation between the industrial zone from the RR 5 and 10 acre zones and the LC25 zone. He stated that he has had difficulty in selling the residential lots in the RR5 and 10 because most people do not want to build a house across from commercial property.

Rolf Ronning provided a large map that showed what a potential ski area might look like. He stated that Alder Brook which runs through the property would be the water source for snow making. The water from Alder Brook goes into the Schroon River which runs into the Hudson which puts them out of the Lake George Basin. He explained that there would be parking, skating area and lodge.

Rolf Ronning stated that there is a 535-540' vertical drop from the peak on the property. He stated that the trails would vary in slopes from 1,500-3,000 ft in length. The trails would be wide for safety purposes, which means that there would be a lot of trees cut and

change to the topography of the land. He compared the size of the mountain to West or Hickory Hill. He stated that he would like to offer night skiing as well.

Rolf Ronning stated that this area is close to the Northway. It would provide recreation opportunities to the community as well as tourists. It would also provide jobs. This area would not be affecting views because it will not be seen by the road.

Rolf Ronning stated that he has spoken to the Johnson's who own and operate Adirondack Extreme Adventure Park who have indicated that they like the idea. He has also talked to the Gardners who seem to also support the idea. Rolf Ronning stated that if the Board finds this a viable option and he can gain approvals he feels that the other residential lots may turn into something more commercial.

Rolf Ronning provided details as to where the zones lie in the existing parcel. Pam Kenyon stated that part of the parcel falls in the RR10 zone and a ski area is not a permitted use in that zone. Rolf Ronning stated that he is seeking guidance as to what he can do to see if this is a viable option. Herb Koster stated that they cannot design this project for him nor can they give him a yes or no answer. He stated that he will have to do the engineering and go in whatever direction that it needs to go in. Herb Koster stated that he will have to provide all of the engineering to show that this plan will work and that they are not going to contaminate the stream with the snow melt and goes back into the stream, etc. He stated that all of that needs to be done for the PB.

Rolf Ronning stated that the zoning allows for ski areas in the LC25 acre zone. However, in the RR5 and 10 acre zone it doesn't talk about anything commercial. He stated that he is talking about this being a blend of things. He asked if a ski area has a ski lodge with it and can they sell food there.

Counsel Muller stated that he is talking to a Board that cannot help him for procedural reasons. He stated that this parcel has 2 different zones, one that allows a ski area and one that does not. One way to go about this is to seek a use variance which is only granted by the ZBA. He stated that he does not recommend this option because it is difficult approach to the issue. The other option or approach could be discussing a possible zoning change to the district with the TB. This approach would not require a lot of engineering or stormwater. He would not have to go to the ZBA. Considering the magnitude of the project he may have APA review, but he would then properly be before this Board seeking the relief that he wants.

John Gaddy asked if Westwood Forest East property owners are in support of this project. Rolf Ronning replied that he has not spoken with them yet but he doesn't think that they will have a problem with it. He stated that if this ski area does go in, those lots will be worth a lot more money.

Zandy Gabriels asked if Counsel Muller's suggestion of the Town changing the zoning district would require APA review. Herb Koster replied that it could be usually they become involved when there is an increase in population. Zandy Gabriels asked if this

would be considered spot zoning which he thought was not looked at favorably. Counsel Muller stated that it certainly is a discussion relevant to have before the TB because he does not know if the configuration of district would lie to the left and right. He stated what is favorable to a plan like that is that they are expanding LC25 and not spot zoning. Counsel Muller suggested that Rolf Ronning approach the TB and come up with an idea about how the zoning district is appropriately considered for change.

The meeting was adjourned at 9:20pm.