

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, January 24, 2005
6:30 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 = Dept of Environmental Conservation

Present: Chairman Greg Smith, Tony DePace, Kam Hoopes, Tom McGurl, Meredith McComb, Michael Murray, Bill Pfau, Zoning Administrator Pam Kenyon, Town Counsel Michael Muller

G. Smith opened the meeting at 6:31 pm by welcoming new member Tom McGurl, whose family owns and operates Twin Pines Resort on Trout Lake. Mr. McGurl is also a history teacher at Bolton Central School. He replaces Fred Ross, who served on the ZBA for 24 years. Mr. Ross was thanked for his many years of service.

G. Smith asked if there were any corrections to the December 2004 minutes. K. Hoopes referred to page 2, para 2, regarding V04-29a BAER, in Mr. Anthony's response to Mr. Navitsky. K. Hoopes believes Mr. Anthony also stated that there would be no increase in the density allowance on the property. Also, on pg 3, para 2, K. Hoopes wanted to add that with regard to the Board's consideration to environmental impact when reviewing V04-39 RONNING 10/18/04, he believes he stated that other agencies that would review the bridge are vastly more qualified to build bridges than the ZBA is. He feels that the ZBA only decides whether or not a bridge is possible in theory, not in fact. Motion by K. Hoopes to approve the December 13, 2004 minutes as amended. Seconded by McComb. 2 abstained (DePace and McGurl, as they did not attend the December meeting). Motion carried.

At the applicant's request due to a scheduling conflict, #4 was heard at this point.

1) V04-29a BAER, GEORGE & MARY. (MAYFAIR RESORT) Represented by David Barnes of the LA Group. For a proposed 8-lot subdivision (7 building lots and the remainder being common area), seek area variance for 1) deficient lot size. 20,000 square feet is required for each lot: 16,000 square feet is proposed for lot 6; and 2) deficient shoreline frontage (Section 200-37B4 Minimum shoreline) 180' is required; approximately 50' exists. Section 186.14, Block 1, Lot 60, Zone RCH5000. Property Location: 4618 Lake Shore Drive. The WCPB determined no County impact. This item was tabled last month pending a recommendation by the Planning Board.

Dave Barnes referred to the draft minutes of the PB meeting the previous Thursday (January 20), specifically the recommendation by the Board to approve the variance with the following conditions: *to eliminate Lot 5 (reducing the number of lots from 7 to 6), which would allow for more common area and eliminate the variance (for deficient lot*

size) for Lot 6, as well as eliminate the stormwater issues on Lot 5. The Board recommends that there be deed restrictions similar to those of Bluebird Cottages Subdivision project with regard to building site envelopes and that tree-cutting be restricted along the southerly property line as proposed. The Board recommends that there be no tree removal for groundwork to be done between the cul-de-sac and the Lake, which includes replacing the impervious concrete walkway with a pervious surface. The Board recommends approval of the deficient shoreline variance. The Board does not object to the applicants' request to reconfigure the cul-de-sac, lots dimensions and building envelopes of those lots affected by the removal of Lot 5 in order to make Lot 6 compliant. Mr. Barnes noted that the only variance they will require after these changes are made is the shoreline variance. M. McComb asked if Lot 5 would be eliminated as a building lot, to which Mr. Barnes indicated it would, reducing the number of building lots from 7 to 6. She supported the plan.

K. Hoopes felt that the ZBA would likely have requested the elimination of Lot 6, which is non-compliant, instead of Lot 5. Mr. Barnes stated that under the new configuration, part of Lot 5 would go to Lot 6 in order for Lot 6 to become compliant, and the rest of Lot 5 would go to the common property. When asked, Mr. Barnes indicated that they have not had time to draw up a new configuration for the lots since the PB's recommendation last Thursday. He also noted that they also plan to reconfigure the cul-de-sac in the process, adding that the Baers are out of town, so the LA Group would like to reserve the option of refusing the Board's recommendation after they are able to consult the Baers.

The Board felt it was best to table the application until the Baers were consulted about the revised plan, as they may wish to eliminate Lot 6 and keep Lot 5 for their future home. K. Hoopes felt that Lot 5 did not really pose visibility issues (as viewed from the Lake), and he was not convinced that there would be a problem managing stormwater there.

Counsel advised that the ZBA either table the application to see the revised plan or just vote on the shoreline variance, as such a variance would still be required under the new plan. Mr. Barnes indicated that they would prefer the Board do the latter, as the PB will address the main concepts of the plan. M. McComb felt that the PB was not concerned as much with visibility issues as they were with stormwater on Lot 5. She would be in favor of the plan if it adopted all of the PB's recommendations. G. Smith was not comfortable voting on the plan until such time the Baers were consulted, as they may not agree with the PB's recommendations.

Motion by K. Hoopes to table the application and keep the public hearing open so that the applicants can be consulted as to whether they agree to a revised lot configuration as per the PB's recommendation, and, if so, for the presentation of a new plan. Seconded by M. Murray. All in favor. Motion carried.

2) V04-54 ZAGER, JACK & ELLEN. Represented by Curtis Dybas. To alter existing single-family dwelling, seek area variance for a deficient front yard setback. 50' is

required; -1' is proposed. An area variance is also sought from Section 200-56A of the zoning ordinance "Continuation of Nonconforming Uses and Structures", to alter a non-conforming structure. Section 186.19, Block 1, Lot 25, Zone RM1.3. Property Location: 17 Opera Lane off of Homer Point.

Mr. Dybas explained that this parcel was part of the original Homer Estate, and was part of a subdivision done in 1978, which included some lakefront lots and non-lakefront lots that had lake access through common property. From the time of the subdivision, the rear property line was 10' from the back of the existing cottage, which is believed to have been opera singer Madame Homer's studio, built in the 1920's. Based on the cottage's excellent construction and detail, including the slate roof, Mr. Dybas believes an architect was involved when it was built. He referred to a 20' wide right-of-way running along the property that is deeded specifically to this lot. After Mr. Dybas originally submitted the application, P. Kenyon brought to his attention that because this is a right-of-way, a 50' setback distance is required from it.

Mr. Dybas noted that in doing the layout for the addition, the owners, who purchased the property in October, decided to leave the existing cottage, which is unheated, as is. They wish to remove the kitchen addition that was put on years ago and, in its footprint, put on a kitchen/dining area with a full basement for year round use. The plan includes a 2-bedroom, 2-bath addition with a full basement, also for year round use. A future garage is shown on the plan, but is not proposed at this time. Mr. Dybas referred to the drawings, illustrating the owners' desire to match the construction of the existing structure, which includes wood shingles. The existing structure is serviced by a community well, but the owners wish to drill their own well. A completely new septic is proposed for the structure, which is going from 1 bedroom to 3 bedrooms.

K. Hoopes felt that the plan was feasible, noting that the new construction did not encroach upon setbacks and the 20' right-of-way is apparently not used, as there is a large pile of dirt in the center of it (on the southwest end). Mr. Dybas agreed, saying that it doesn't appear to have been used in years. B. Pfau asked P. Kenyon if the right-of-way was still an issue if the owners themselves were the only ones who had rights to it. P. Kenyon believes it still has to be treated as a right-of-way. B. Pfau noted that if the right-of-way did not exist, there would only be a need for a 10' setback variance.

There was no one from the public to speak on the application.

RESOLUTION

The Zoning Board of Appeals received an application from Jack & Ellen Zager for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #2 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by other means feasible to the applicant. It's an extension of pre-existing, non-conforming building;
- 2) There will not be undesirable change in the neighborhood character to nearby properties. The current location seems to be the most harmonious situation for the neighbors as well;
- 3) The requested variance is not substantial. It's quite a modest proposal;
- 4) The request will not have adverse physical or environmental impacts. In fact there's an improvement of the septic system in the project;
- 5) The alleged difficulty is not self-created. It's a very specific lot with an odd easement that only applies to this specific property, and so granting a 51' variance is not excessive.

Now, upon **motion duly made** by M. McComb and seconded by K. Hoopes, it is resolved that the ZBA does hereby grant approval for said project as presented. **All in favor. Motion carried.**

3) V04-55 CASTRO, SAMUEL & JACQUELYN. Represented by Eugene Baker, Contractor. For the construction of a proposed single-family dwelling, seeks area variance for 1) A deficient front yard setback from County Route 11. 75' is required from the edge of the right-of-way: 30' is proposed; 2) a deficient front yard setback from South Farm Road. 50' is required from the edge of the right-of-way: 25' is proposed. An area variance is also sought from Section 200-20D1: Supplemental County Route 11 regulations. Section 156.00, Block 2, Lot 22, Zones RM1.3 & RL3. Property Location: Lot "3" of the South Farm Subdivision: South Farm Road off of County Route 11. Subject to WCPB review.

Mr. Baker explained that the plan is to situate the structure on the lower (easterly) portion of the property where it is already cleared instead of a compliant location on the upper (westerly) portion of the property. (The subject parcel is separated into 'lower' and 'upper' portions by South Farm Road.) As proposed, no additional tree-clearing will be necessary.

G. Smith noted that there was a Notice of Violation issued for the clearing that was done on the westerly portion of the property within the CR11 scenic corridor setback. Mr. Baker explained that Mr. Castro cut down some sumac and brook alders, which began as a project to clean out a ditch there. Mr. Baker stated that Mr. Castro was unaware of the scenic corridor setback that was in effect. G. Smith noted that the PB recommended that the applicant propose a re-planting plan next month to address the violation. Mr. Baker noted that the house location was marked out by blue flags. Deep test holes were dug in the fall, showing that a septic system could be placed there.

G. Smith asked P. Kenyon if the Board could move forward with voting on the application, since the applicant is in the process of addressing the cutting violation with the PB. P. Kenyon indicated the Board could move forward this evening unless they chose to send the applicant to the Town Board for alternative remedy. The Board chose to move forward. There was a discussion as to the size of the vegetation that was cut. T. DePace and Mr. Baker indicated that it was primarily brush, and nothing really that was over 6" in diameter. P. Kenyon concurred. T. DePace noted that the vegetation was cut in October or November and he wondered why no one from the Town addressed it before just recently. P. Kenyon explained that shortly after Code Enforcement Officer M. Nittmann was hired in November, someone made her aware of the cutting, and she responded promptly.

B. Pfau felt that ZBA should move forward on the application, assured that the PB would address the clearing concerns adequately. K. Hoopes had a problem with the proposal, as he felt it was essentially a barn/storage facility to which living quarters were being added in an effort to avoid a use variance. He felt that it needed to be owner-occupied. Mr. Baker stated that the structure would be used as a mother-in-law apartment and to store the vehicles that currently are stored outside Mr. Castro's home.

B. Pfau agreed with K. Hoopes in that this is a scenic corridor and the structure does appear to be more of a barn than a single-family dwelling, which the Board may want to consider, since it involves a fairly large variance. G. Smith asked Mr. Baker if there was an alternate location on the property where this could be placed. Mr. Baker pointed to an area uphill, but noted that it would require much more land disturbance, involving big cuts and more tree clearing. K. Hoopes felt that the Board's concerns could instead be addressed through revised architecture. Mr. Baker noted that the structure would be sided in board and batten. T. McGurl agreed with the visual impact concerns, not only from the scenic corridor but also from the Lake, noting that the structure would not be screened until the small trees on the lot matured. Mr. Baker stated that Mr. Castro also plans to plant pine trees to screen the building from CR11, adding that the structure won't be that visible from the Lake.

K. Hoopes asked about the total number of (garage) bays, as he believed there was a limit of 3 allowed. P. Kenyon explained that only 3 bays for cars are allowed, but the PB ruled 6 or 7 years ago that a couple more bays would be allowed for boats.

T. DePace asked Mr. Baker if the applicants would consider proposing a horizontal siding as opposed to the vertical board and batten. He felt that doing so would make the building not seem so tall, noting that if the structure were moved to a compliant location, the Board would have no say on aesthetics. Mr. Baker indicated that Mr. Castro chose this type of siding because it was cost-effective. When asked about the large size of the center door, Mr. Baker explained that the applicant wants to be able to put his RV inside the structure. T. DePace suggested the siding be changed and windows and dormers be added to make it look more like a home. It was determined that the elevation drawings were mislabeled as far as direction (north should be south, east should be west, etc).

From the public, John Gaddy of the PB spoke, agreeing with the argument that if the structure were moved to a compliant location uphill, it would be much more visible. He supports the idea of locating it in an area where it is least visible and has least environmental impact. He felt that the replanting plan would address the vegetation that was removed. Again, Mr. Baker noted that Mr. Castro intends to plant pine trees to screen the structure from CR11. M. Murray felt this was a good choice of tree type to replant.

Also from the public, George Hollister of South Farm Road, agreed that if the structure were moved to a complaint location it would be more visible.

T. McGurl suggested that the large center door on the side of the structure facing the Lake be removed to make the structure look less like a barn, and perhaps eliminate the possibility of interfering with the septic system when maneuvering the RV in and out of the structure. T. DePace did not feel the Board should design the structure's doors, but could recommend a horizontal siding that perhaps matched that of the Castros' existing house. G. Smith agreed. Mr. Baker referred to color samples for the roof and siding that he had provided.

RESOLUTION

The Zoning Board of Appeals received an application from Samuel & Jacquelyn Castro for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Board;

and, whereas the Warren County Planning Board took no action, as its meeting was cancelled due to inclement weather;

and, after reviewing the application and supporting documents of the same, and public comment regarding the application having been heard;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #3 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit can be achieved by moving the house further up the hill where the general consensus is that it will be more visible and create additional stormwater problems. This is the best place for the placement of the building;
- 2) There won't be an undesirable change produced in the character of the neighborhood, nor a detriment to nearby properties. Neighbors aren't involved nor do they have any objections to this project;
- 3) The area variance is substantial, but it will be well screened, which will reduce that;
- 4) The proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood. It will be screened from County Rote 11 from the scenic corridor, so it will be minimized from CR11;
- 5) The alleged difficulty was not self-created, and therefore the benefit outweighs any detriment to the neighborhood.

Now, upon **motion duly made** by B. Pfau and seconded by M. Murray, it is resolved that the ZBA does hereby grant approval for said project as presented with the following conditions: 1) the vertical siding is replaced with earth tone horizontal siding; 2) there be additional planting of white pines between the building and CR11, which will blend well with (the existing vegetation along) CR11 and help screen the lower part of this building; and 3) the applicant will provide a planting plan to the PB for the upper lot, as agreed upon. 5 in favor. 2 (McComb & McGurl) opposed. **Motion carried.**

During the motion, realtor Frank McDonald addressed the Board, stating that the structure as proposed could be detrimental to the sale of the homes/lots in the neighborhood behind it. T. DePace noted that Mr. Castro owns quite a bit of land behind the structure and his existing house could possible be marketed for \$1M as well.

4) V04-56 GOLUB, LEWIS & COLLEEN. Represented by Chris Gabriels, Contractor. To enclose a 43'6"x 15'6" portion of existing deck to create a covered porch, seek area variance for a deficient shoreline setback. 75' is required: 41' is proposed. An area variance is also sought from Section 200-56A of the zoning ordinance "Continuation of Nonconforming Uses and Structures", to alter a non-conforming structure. Section 200.06, Block 1, Lot 17, Zone RM1.3. Property Location: 20 Loomis Lane. Subject to APA and WCPB review. NOTE: The two story addition shown on the south elevation drawing is not proposed as this time.

Mr. Gabriels indicated that the proposal involves a fairly substantial pre-existing deck with stone pillars. The owners wish only to place a roof over the deck, not to enclose it as indicated on the agenda. B. Pfau wondered if there was any reason for the Board to distinguish between 'enclosing' and 'covering'. P. Kenyon did not feel there was, in this particular case. M. McComb felt that this was an example of structures 'walking' toward the Lake, such when a deck is enclosed and becomes living area and then a deck is added onto it, etc. She noted that the existing enclosed porch section appeared to have at one time been just a porch. K. Hoopes believes that the section M. McComb was referring to had been enclosed since the 1920's, as he had seen old photographs. B. Pfau felt that if and when the applicant has a proposal in front of the Board to add on a deck beyond what is being enclosed, it may fit the example of structures 'walking' toward the Lake. K. Hoopes pointed out that the existing footprint of the structure is not being increased. It was noted that on the south elevation a small addition (between the fireplace and the foreground) is shown, but it is not being proposed at this time.

K. Hoopes felt that the porch does lend itself to the proposal to enclose it, as the pillars are already in place and there is no covered outdoor space there now. He added that the architecture matches that of the house, the proposal doesn't increase the footprint and no views would be obscured. It was also noted that if the applicants chose to enclose what is there now, they would have to come back to the ZBA.

B. Pfau felt the request was reasonable since it did not involve an increase in the amount of structure as viewed from the Lake. Mr. Gabriels indicated that the proposal is not for a screen porch, but to be open on the sides. It will have a metal roof that would closely match the roof of the house, using earth tone colors. McComb felt that although it involved a fairly good-sized porch, the request was not substantial as they were only adding a roof over it.

There was no one from the public to speak on the application. P. Kenyon noted that the WCPB meeting was cancelled, so there was no action taken. She noted that the WCPB would only rehear applications if the local Boards so chose.

RESOLUTION

The Zoning Board of Appeals received an application from Lewis & Colleen Golub for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Board;

and, whereas the Warren County Planning Board took no action, as its meeting was cancelled due to inclement weather;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #4 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit of having a covered porch can't be achieved by any other means;
- 2) There will not be undesirable change in the neighborhood character to nearby properties. It does not interfere with anyone's view and will be only minimally visible from the Lake;
- 3) The requested variance is not substantial because it's just covering part of the porch and not creating new construction interior space;
- 4) It will not have adverse physical or environmental effects;
- 5) While the alleged difficulty is self-created, the benefit to the applicant outweighs any negative impact.

Now, upon **motion duly made** by M. McComb and seconded by M. Murray, it is resolved that the ZBA does hereby grant approval for said project as presented. **All in favor. Motion carried.**

5) V04-57 WHITAKER, HELEN. Represented by D.J. Mabb. To alter existing single-family dwelling, seeks area variance for a deficient front yard setback. 50' is required from the edge of the right-of-way; 36' is proposed. Section 200.00, Block 1, Lot 2, Zone LC25. Property Location: 91 Lake Winds Road off of Coolidge Hill Road. NOTE: This is an amendment to V04-36.

Mr. Mabb explained that the proposal is for an extension of the new addition she recently got approvals for from the ZBA. He stated that basically Mrs. Whitaker is asking for 4 more feet' to cover the foundation. There was some confusion among the Board as to what exactly the proposal involved. P. Kenyon explained that the proposal is to extend the house out (beyond the portion that Mrs. Whitaker recently got a variance for) to the edge of the foundation, beyond which she would like to add a 4' deck.

G. Smith explained that this is an amendment to the variance (V04-36) previously granted, as there is no further encroachment on setbacks than was requested before. He felt that the design of the original addition to the single-family dwelling was perhaps a mistake, in that it was not extended out to be flush with the foundation.

There was no one from the public to speak on the application.

RESOLUTION

The Zoning Board of Appeals received an application from Helen Whitaker for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #5 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by any other means feasible to the applicant besides an area variance;
- 2) (Regarding the) undesirable change in the neighborhood character to nearby property: it doesn't seem to have been increased to any substantial amount;
- 3) Whether the request is substantial, (this) also doesn't seem to be the case;
- 4) The request doesn't seem to have any adverse physical or environmental effects;
- 5) The alleged difficulty is self-created in as much as (the applicant) brought the wrong plan to (the Board) in the first place, but we're amending that now.

Now, upon **motion duly made** by K. Hoopes and seconded by T. DePace, it is resolved that the ZBA does hereby grant approval to amend variance V04-36 (granted on 09/13/04) via variance application V04-57, as presented. **All in favor. Motion carried.**

6) The Planning Board is seeking an interpretation as follows: Does a parcel of land bisected by a public road (State, County, or Town) and owned by a common grantor with the same tax map number constitute a subdivision should the grantor choose to convey the property on one side of the road? In short, does the division of property by a State, County, or Town road create separate parcels.

P. Kenyon explained that it was both the former Zoning Administrator Joe Deppe's and her practice to consider a road as a natural subdivision of a parcel it separates. She noted that this position was supported by former Town Counsel Dave Krogmann, who agreed with the ZBA in 1982 when they determined that a road through a parcel creates a natural

subdivision, in that if a property owner wished to sell one side of the road and maintain the other, they could. Based on this, P. Kenyon has advised many people accordingly over the years.

K. Hoopes and G. Smith felt that if a parcel is under one tax map number and by selling one side of the road requires creating a second tax map number, than it should be considered a separate parcel subdivided off.

Counsel noted that parcels with roads going through them have historically been described as one unified piece, and known as one tax map parcel. He noted that the zoning code does not define what the impact is of bisecting these parcels with a road. In an effort to get a concrete answer, the next step would be to consult the APA, as Counsel did, and the Agency came up with several approaches, ultimately finding that since there was no regulation, they leaned toward it being a natural subdivision, as the Town has historically practiced. However, the Agency on the other hand feels that allowing it to be considered a natural subdivision misleads property owners into believing that they have correctly and properly subdivided the parcel. However, this raises a density issue, as density cannot be increased. He used the example of a 20-acre parcel in the LC25 zone having a road going through it, with 2 acres on one side, 8 on the other. Under the 1982 interpretation of the ZBA, there would be a natural subdivision resulting in an undersized lot. However, the APA likely would point out that the minimum lot size in the LC25 zone is 5 acres, and therefore the 2-acre lot would not be able to have a principal building on it. Furthermore, Counsel noted that the stormwater regulations, which came into effect after the ZBA's 1982 ruling, clearly indicate that the PB must take into consideration the entire parcel when assessing the impacts of a project.

In cases such as Counsel raised, K. Hoopes felt that property owners should be able to transfer density from one side of the road to the other if needed, for one reason so that the Board could review those cases, adding that the Board has always encouraged overall density compliance.

M. McComb agreed with K. Hoopes. She brought up another point, in that the Town may in the future decide to take over subdivision roads, such as Lake Winds, where all the houses along the ridge required setback variances, and because the subdivision roadway goes through all those lots, the westerly portion of the lot may now be considered a separate lot. She did not feel that creating extra substandard lots was something the Comprehensive Plan encouraged.

M. Murray was of the opinion that in this Town, roads have been created, changed, moved, and the property owner always loses. He noted that in the Town of Bolton, there are miles of roads in which the County does not actually own a right-of-way, where roads were created on a handshake. Several times the County has looked into moving these roads, which they don't even own. He felt that anytime a road is added or deleted, or the Town considers parcels bisected by a road to create a natural subdivision, the property owner is going to lose out. He felt that in this Town, there has to be some flexibility, because there are several parcels that were changed and modified without the property

owner having any say in it. He was hesitant to make a cut-and-dry determination such as what the APA suggested, resulting in a parcel being designated as undersized and unbuildable. K. Hoopes felt that this was a good reason to have the ZBA review such situations.

B. Pfau wondered if Dave Krogmann offered his opinion based on just the determination by the ZBA, and if it would be beneficial to review the Board's discussion at the time. P. Kenyon stated that she tried to research the matter but could not find anything. B. Pfau wondered how other towns in the (Adirondack) Park handled the situation. Counsel indicated that some towns do not recognize such parcels as being subdivided, while others do. B. Pfau felt that if the APA could not clarify the issue, the property owners should get the benefit of the doubt. M. McComb felt that such property owners should not as a result be entitled to substandard lots, such as in the example Counsel gave.

Counsel noted that the APA was created on May 22, 1973, and he felt that it was important to know what existed prior to that date. He felt that this is a real problem, as it has come up several times in the past, and will likely continue to. He requested a definitive determination from the ZBA as to whether or not to continue the past practice of a road subdividing a parcel, or instead consider such unified tax parcels as not being subdivided by a road, in order to prevent an increase in density.

M. McComb indicated support for the latter, noting that it did not mean an owner of such a parcel could not apply for such a subdivision, it merely means that the owner doesn't get an automatic, unreviewed subdivision. Counsel agreed. B. Pfau wondered how Counsel would defend this approach, based on the determination by the ZBA in 1982 and the past practice of the Town. Counsel saw no difficulties in defending the position. B. Pfau asked if the Board tonight was clearing the situation up or instead changing it. Counsel indicated the Board was clearing it up, but P. Kenyon felt they were changing the practice of the office and the Town since 1982. M. McComb felt it was okay to modify the practices of a Town if such practices are discovered not to work.

Willie Bea McDonald, public in attendance, spoke saying that she has been sitting through these Town meetings since the early 1980's, and has witnessed certain people abuse the matter (of a road subdividing a parcel), including one individual who used both sides of the argument to achieve what he wanted. So, it is clear that although there was a ruling by the ZBA in 1982, it has not been adhered to.

Counsel indicated that there has never been a formal interpretation, and he encouraged the Board to make an interpretation now, when there is no specific application in front of them. P. Kenyon felt that it's really the decision of the applicant as to how they want to treat their parcel in such a circumstance, as she has never automatically told a parcel owner that they have separate parcels if a road cuts through a particular parcel. She noted that the issue has only been raised when the property owner has asked to have it viewed as being separate parcels.

M. McComb felt that it would be a clarification for the ZBA to make a determination that if a property owner of one tax parcel wants to make it into 2 (or more) tax parcels, and convey part of it, as separated by a road(s), it would require a formal subdivision, and perhaps a variance if needed for density.

B. Pfau asked P. Kenyon if there was anything wrong with such a determination, other than that it is changing a past practice. P. Kenyon stated that she did not object to the Board changing it. She referred to a recent applicant who wished to convey one side of his parcel separated by a road, and she was very concerned about segmentation with regard to stormwater and density calculations. Counsel referred to the stormwater regulations adopted in 1995 or 1996, wherein there is a definition of 'subdivision' as follows: *A division of any land into two or more lots, parcels or sites, whether the new lots are adjoining or not, for the purpose of sale, lease, license or any form of separate ownership or occupancy by any person, including the conveyance of lands in common ownership which are divided only by a road or utility right-of-way. ...* In light of this additional definition of 'subdivision', Counsel felt it was necessary to have an interpretation on the issue.

M. McComb asked if the Board's interpretation would be as simple as: "A parcel of land with a single tax map number remains a single parcel regardless of whether it's bisected by a road". Counsel and the Board indicated it would be that simple. M. Murray suggested the words "or power line" be added to the end of the statement, while K. Hoopes suggested that "right-of-way" also be added there. After further discussion, it was determined that only the word "road" would be included for clarity.

Motion by M. McComb to make a determination that a parcel of land with a single tax map number (i.e. unified tax parcel) remains a single parcel, regardless of whether it is bisected by a public road (State, County, or Town). If a property owner of such a parcel wishes to convey a portion of that parcel separated by said roadway to a different ownership, it would require formal subdivision review and approval by the Planning Board. Seconded by M. Murray. **All in favor. Motion carried.**

Meeting adjourned at 8:29 pm.

Respectfully submitted by,

Melanie Quigan
Recording Secretary
02/23/04