

Town of Bolton
ZONING BOARD OF APPEALS
Special Meeting Minutes
Monday, July 2, 2007
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, Jeff Anthony, Tony DePace, Kam Hoopes,
Tom McGurl, Jr., Bill Pfau,
Town Counsel Michael Muller, Zoning Administrator Pam Kenyon

Absent: Meredith McComb

Chairman Greg Smith opened the meeting at 6:30pm.

- 1) V07-31 SADDLEBROOK SUBDIVISION (Rolf Ronning).** 1) In accordance with Section 125-10B(2)(d) of the Stormwater and Erosion Control Regulations for major stormwater projects, seeks area variance for deficient shoreline setbacks. 100 ft. is required between an infiltration device and wetland, 70 ft. is proposed for Pond P4I, and 2) In accordance with Section 125-10B(2)(c), seeks area variance for deficient vertical separation. 2 ft. minimum above seasonal high groundwater is required for infiltration devices, a) 1 ft is proposed on Pond P4I; and b) 1 ft is proposed on Pond P5I. Section 139.00, Block 1, Lot 48.11, Zone RL3. Property Location: 83 High Meadow Farm. Subject to WCPB Review.

Rolf Ronning thanked the ZBA for having the special meeting, gave an overview and said that (1) the PB gave approvals for Saddlebrook with the understanding they didn't require any variances, then the morning after that they realized there are two variances they need that they weren't aware of and (2) before anything else happens they want to straighten this out, go back to the PB and correct everything.

Dennis Dickinson, project surveyor/engineer, gave an overview and said that (1) they are looking for three variances: one horizontal separation and two vertical separations, (2) the project is Saddlebrook, which is a residential subdivision whereby 23 residential homes are proposed, (3) they are looking at complexes P4 and P5 because they have infiltration, (4) they have a multi-basin pond for stormwater treatment as per NYSDEC and Town of Bolton regulations, part of which is an infiltration pond that used to be attached, (5) the ponds are treating devices that have no direct outlet other than discharge after treatment, so their separation distances are a moot point, (6) ponds that are going to discharge need to comply with the two basic separation distances—100 ft. to water horizontally and vertically you should have 2 ft. to high seasonal ground water, (7) they have moved one of the ponds, so it is squeezed between the road and the wetland, as far away as they can possibly get it, (8) he then referenced the map to clarify the horizontal separation distance from the pond to water and the wetland flags set by the APA, (9) from the wetland to the closest point of fill is 70 ft., which is worst case scenario, (10) the banks are fairly shallow, so they can be maintained, (11) the pond itself is at 100 ft. or more, but the fill comes closer to 70 ft., (12) he doesn't want to turn the infiltration off, (13) for Pond 5

complex, they have well over 100 ft. for this pond and there is no filling on that side, so he doesn't need a variance for the horizontal on this pond, (14) he does need a variance for the vertical separation on both Ponds 4 and 5, (15) the average across the bottom of the Pond 5I basin is 2.6 ft., because they have a slope to deal with and (16) for Pond 4I, they have 2.6 ft. at the center and 3.3 ft. at the far side.

B. Pfau said the applicant stated that the other ponds are large enough where they don't need the infiltration system. Dennis Dickinson said (1) no, that is not correct, in that they are dealing with two ordinances here: the NYDEC has a stormwater regulation that are adopted from the federal stormwater regulations as well as the Town of Bolton regulations that were adopted from the regulations promulgated by the LGPC—the ordinances don't match and are looking for two different things, (2) what you see in these situations are hybrids—all three basins shown comply with the NYSDEC regulations, but the LGPC is more interested in infiltration and putting the water back in the ground, (3) there is some concern about capacity during the winter when the ponds are frozen and according to the NYDEC regulations, they have additional freeboard in their ponds for their storm events that would accommodate at least 1 ft. of additional water, which is considered what would be taken up by ice and (4) he could shut all the infiltration off and would be good to go with the NYSDEC, but he doesn't want to do that because they need to do some infiltration.

G. Smith asked where the water would go if the ponds overflow and Dennis Dickinson said that (1) these ponds are designed to hold a 100-year storm event capacity, (2) theoretically you won't see another 100-year storm for awhile—the chances are slim. G. Smith said that (1) they all saw what happened up there in the last 100-year storm event and (2) he would hate to see that happen again twice as bad with having such an overload of capacity uphill from that. Dennis Dickinson said that (1) all of the ponds are equipped with weirs and (2) once you go over 100-year storm, it will go down the stabilized discharge and into the pond, so you are talking about excess.

J. Anthony asked if the Town Engineer has signed-off on the stormwater plan and Dennis Dickinson said (1) no, but Town Engineer Tom Nace has looked at this situation and is happy with that, (2) they have a few issues with the stormwater plan, which they have discussed and are working to resolve—he has to put the numbers together to go together with the conversation he had with Tom Nace and (3) they have discussed this and Tom Nace is good with this. P. Kenyon said that (1) Tom Nace is re-reviewing the plans right now, (2) the PB had a meeting scheduled for tomorrow for 6:00pm, but because Tom Nace has not signed-off, that meeting has been cancelled and (3) the applicant is working with Tom Nace. J. Anthony asked if this particular issue is resolved and P. Kenyon said that she doesn't have anything in writing to that effect, but it won't get by the PB until all issues are resolved. B. Pfau said that he assumes that Tom Nace won't care whether the ZBA gives the variance and determines whether this section works or not. P. Kenyon agreed and said that Tom Nace will make his decision and if he decides that it is not going to work then the PB is not going to approve the application. Dennis Dickinson said that he has spoken with Tom Nace directly and Tom Nace has no problems with this.

K. Hoopes asked if (1) the 2 ft. minimum above seasonal high ground water is in place so that if the ground water rises it overfills the pond or (2) if it is because the applicant doesn't want the pond that close to the ground water so it infiltrates into it. Dennis Dickinson said that the second is correct, in that what you are trying to do here is actually screening the water and treating it by filtering. K. Hoopes said that it would then be filtered through the soil into the ground and Dennis Dickinson said (1) yes, (2) for a short period of time in the spring, you will have this situation and the 2 ft. is supposed to be the amount of vertical elevation you need to treat the water before you actually put it in the water table and (3) it has been determined 1 ft. of good soil is more than enough to do that and the 2 ft. is factor safety. K. Hoopes asked if that also allows the applicant to take into account the 4-foot separation on Pond 5 and Dennis Dickinson said yes.

K. Hoopes asked for an explanation of the sequence of Pond 4 complex, so they know how it works. Dennis Dickinson said that (1) upstream of Pond 4 is a drainage area and they will delineate the drainage area to the pond and redirect it so theoretically any water that falls inside that line will come down the drainage pattern (shown on the map) and enter into the pond system, (2) one of the requirements in all stormwater is no pumping, (3) the water will come into the fore-bay, which is meant to slow the water down, it rids the water of some of the suspended solids and when it reaches a certain height it will start to overflow into the primary basin, (3) as it overflows there is a wet pool that is supposed to be wet all the time, enable the swamp reeds and cattails to grow and draw the birds and bees in, (4) as it rises up you have a multi-outletted riser where there is a stand pipe that will rise as the water rises up then there is a back pipe that will keep debris from plugging the stand pipe hole, then the water starts flowing out. K. Hoopes asked if that is like a spillway on a dam that maintains the water level and Dennis Dickinson said (1) yes, (2) during a 25, 30, 100-year storm water will be coming in faster than it is going out, so it will continue to rise and at some point in time you will have another outlet and (3) the outlets are set—elevations and size—to meet the NYSDEC requirements. Dennis Dickinson continued referencing the maps to show the ZBA members how the pond works.

K. Hoopes asked where the overflow water would be going and Dennis Dickinson said that it would go into the stabilized discharge area, which would then go into wetlands. K. Hoopes asked if that under normal circumstances this would essentially be an emergency measure and Dennis Dickinson replied by saying that he keeps it at 100 ft. plus then again, he referenced the map to explain. T. DePace asked what happens after the first 100-year storm when the second one comes through and asked if the pond would need to be cleaned out before that. Dennis Dickinson said that (1) the water will quickly drop then you have a slow retained discharge and (2) they want you to try to make that last 24 hours, after which it will drop to the 3-foot height. T. DePace asked what happens to the fore-bay after the sediment gets in there and if it would need to be cleaned out after the storm. Dennis Dickinson said that (1) the stormwater maintenance plan tells you what you need to do for every part of the stormwater plan, (2) lots of times they'll set an elevation stake in the fore-bay and have it marked off so you can see how high the sediment is—when you get above one-third to one-half you need to clean it out by

physically going in there to muck it out and (3) a lot of times with these, they harden the bottom, so when you come in with a backhoe, you have something to scrape against.

K. Hoopes asked about the water getting into the infiltration pond and Dennis Dickinson referenced the maps to clarify. K. Hoopes asked if the infiltration ponds are dry in normal weather and Dennis Dickinson said yes. K. Hoopes asked if they would be holding ponds to hopefully leach into the ground and evaporate off and Dennis Dickinson said that if it is working it should be dry. K. Hoopes (1) said that the number one emergency outlet is going to be the riser pipe, which will take the real 100-year stuff and (2) asked if it is correct that, on a regular basis, as you rise up the weir at the end of the infiltration pond is lower than the first hole in the riser pipe. Dennis Dickinson referenced the map and said that the weir is around a 25-year storm. K. Hoopes asked if the riser pipe and infiltration pond are working simultaneously and Dennis Dickinson said yes.

From the public, Chris Navitsky, Lake George Waterkeeper, handed out items to the ZBA members and said that (1) he thinks Dennis Dickinson gave a good explanation as to what happens in stormwater management, but he thinks a lot of things need to be clarified on this plan, (2) the application misrepresents the number of variances required for the proposed project and should be reconsidered, (3) the applicants request a single variance for horizontal setbacks to wetlands for infiltration devices, however that is also to watercourses and in each one of these basins (3, 4, 5, and 6), they consider infiltration into each one of them, (3) Dennis Dickinson stated that the micro-pools or the wet ponds are specifically treating water with no infiltration, however, Pond 3 is set back 40 ft. to the toe of the bank and 60 ft. to the actual basin, (4) in Attachment B (approved engineering report) the second page states that "...for Pond 3 they are using infiltration to reduce the stormwater to come into basin 3...", so they are clearly using infiltration basin 3, therefore it needs a setback, (5) this is the same thing for Pond 4, as shown in the report on page 65 where it states "...discarding with exfiltration into Pond 4..", so therefore again, each one of these ponds are using infiltration besides the infiltration basin—they are using that in the micro-pools, (6) for Pond 5, there is a 20 ft. setback to the toe of the slope and 63 ft. to the basin—the micro-pool, (7) on page 67, again it says that "...using exfiltration to get rid of the increase of stormwater...", (8) it is the same scenario for Pond 6, as to the micro-pool there is a 20 ft. setback to the toe of the slope, a 60 ft. setback to the micro-pool and there is 0 setback to the infiltration basin there—page 68 of the engineering report indicates that infiltration is used, (9) each one of these structures, even though the applicants are claiming they are just simply wet ponds and micro-pools, they are actually utilizing infiltration to reduce the stormwater, (10) the reason for the infiltration is because the Town of Bolton requires that there is no increased discharge after construction as before, so the question is what you do with the increased volume of run-off from an event, so you need infiltration to reduce the volume—each one of these ponds is utilizing infiltration and should meet the 100-ft. setback, (11) it can't be determined if the variance request is the minimum due to incomplete information on the design, (12) the stormwater ordinance requires that there be test pits for each one of the infiltration basins—there has not been one deep test pit done on any of the infiltration or wet ponds, so they don't know if there is the right information and if

the soils are actually up to ground water, (13) based on the information, the variance requested for the proposed design is not based on field condition in the vicinity of Ponds 3, 4, 5, 6, and 6I—in fact, the applicants did 26 test pits for the septic system and 14 of those indicated seasonal high ground water at 40 inches or less, (14) the depth of cut of the infiltration areas for the various ponds are as follows: Pond 3 = 6 ft., Pond 4 = 7 ft. Pond 5 = 7 ft., Pond 6 = 4 ft. and Pond 6I = 5 ft., (14) the actual location may not be suitable for stormwater treatment—if you are assuming the particular ground water level of 3 ft. and you are cutting below that, that water is going to flow into the basin, which may be fine for the micro-pools, but they don't know because the micro-pools are utilizing infiltration and it is not simply holding water, therefore the ZBA doesn't have all of the information required and the soil evaluations should be performed before a variance is considered for the application determining if the minimum setback the ZBA is going to grant or consider will provide stormwater treatment, (15) the plan has been modified since the approval of the Town Engineer and these modifications will reduce the level of stormwater treatment, (16) since the PB approval, the Town Engineer issued a letter which supported the concerns he (Navitsky) raised during the review, subsequently there have been design changes to the approved plan which will result in the system no properly treating stormwater from the increased run-off from the site, on Attachment A, on Pond 4 there has been a pipe added from the fore-bay directly to the infiltration basin which will result in bypassing the main pond, which the applicants said would provide treatment, therefore this system will be short-circuiting and not function properly, (18) from the approved design, the applicants have taken Pond 4I and flipped it with the Fire Pond, so now there is a 375 ft. section of road that now drains into the Fire Pond—not the stormwater basin and (19) he doesn't think the ZBA should consider the application until it has been determined that it meets the requirements of the ordinance.

K. Hoopes said that (1) the ZBA's agenda is very simple tonight in that the ZBA only has three variances before it that deal specifically with Ponds 4 and 5, (2) Chris Navitsky's concerns were presented to the ZBA at the 11th hour and it is more suitable for the PB and (3) P. Kenyon has stated that if anything with this whole stormwater management plan is awry, then it won't get past the PB, so anything the ZBA does here tonight is not a guarantee for failure in the future—it still has to go before the PB. P. Kenyon agreed to the last point.

Chris Navitsky said that he believes he is dealing with what the ZBA is being asked to vote on tonight. K. Hoopes said that Chris Navitsky is commenting on things like Ponds 3 and 6, which are not before the ZBA tonight. Chris Navitsky asked if he could continue. K. Hoopes and G. Smith said yes, if he stays on point of what is in front of the ZBA tonight. Chris Navitsky said that (1) there are alternative locations for the stormwater management facility which will provide better treatment, (2) the separation required for stormwater management from wetlands and surface waters is necessary for treatment of pollutants and nutrients, (3) each basin could be constructed to meet the required setbacks without decreasing the number of lots, as shown in Attachment A, (4) the level of treatment from post-development run-off can be significantly decreased when the contact time with soils is decreased, (5) the depth proposed is 1 ft., where the NYSDEC requirement for ground water separation is 3 ft. and the Town of Bolton's

requirement is 2 ft.—this doesn't meet either requirement—you need that level of depth to have the interchange of air and the bacteria which uses the air, you can't create anaerobic conditions, because you do not get the level of stormwater treatment underneath groundwater where you do not have air exchange, (6) when you get close to ground water you get “modeling” which is what happens is silty and loamy conditions and according to the engineer's report the depth of the ground water is 1.5-2.5 ft., 0-1.5 ft., you have a loamy soil which is very fine which adheres to the watermark and you create a condition such as “mounding” which reduces the depth to the groundwater level and actually raises it up underneath your pond, so as you put more water in there you have finer soils and you create a higher groundwater table in loamy conditions (shown in Attachment D), (7) the granting of the variance will have an adverse impact on the environment in conditions through significant removal of the buffers along wetlands—all along here you are taking out about 600 ft. of buffers along the wetlands which will increase the impact of Indian Brook, so the buffer needs to stay there to protect what happens downstream and (8) based on the omission and misinformation in the application, the non-compliance with the Town Code, the failure to justify the criteria, the failure to present an approved plan and the impact of the resources, he feels the variance should not be approved and should be denied until the ZBA gets enough information that will show there will not be impacts to Indian Brook and the corridor.

K. Hoopes asked what Chris Navitsky is looking at in the stormwater that he would find hazardous and asked what sort of materials Chris Navitsky is trying to have attached to soil to have aeration and aerobic activity. Chris Navitsky replied by saying that (1) nutrients from atmospheric deposition are very important, which happens naturally, (2) this is a development where you may or may not have people applying fertilizers to the yards, but simply, it is proven that as you change the ground cover, reduce the natural coverage, and increase the run-off, the infiltration capabilities are reduced and the water flows out quicker getting into the streams, tributary and lake quicker, (3) it has been proven in the southern portions of Lake George that the level of algae increases, (6) where there is development there is an increase in algae growth and an increase in phosphorus and (7) you also get the run-off pollutants from the road. K. Hoopes said that before the proposed devices of this subdivision, there was nothing there, (2) at the last 100-year storm, there was flooding on the high-grounds and water pouring over the guardrail on County Route 11, so the natural terrain didn't work well. Chris Navitsky said that the natural terrain has been completely changed on Cat Mountain, so he doesn't think K. Hoopes can say that is “natural terrain.” K. Hoopes said that (1) you can blame that, but it cannot be established, (2) what the ZBA has to look at is Pond 4 and Pond 5—it can't be established that there is a threat, (3) in his position here as a ZBA member, he (Hoopes) is questioning the water quality in that if the water will be infiltrated and contaminated in some way and then therefore contaminate the water sources near it and (4) the Town Engineer, in theory, thinks this is a workable solution for Pond 5 and Pond 4. P. Kenyon said that she doesn't have anything in writing from Tom Nace, but if Tom Nace doesn't think it is workable then he won't give a favorable recommendation to the PB. K. Hoopes said that the ZBA can issue variances all over the place, but it won't fly if it doesn't the Town Engineer's approval and P. Kenyon agreed. T. DePace asked if the ZBA should have an answer from the Town Engineer first before granting the variance,

because he isn't an engineer. J. Anthony said that (1) the ZBA is being asked to approve something that may be denied by somebody else, (2) like with the APA, the past few months the ZBA has had cases of misrepresentations or misinformation has found its way to the APA and the APA is dealing on one set of facts and the ZBA is dealing with another set of facts, then the ZBA is granting variances that could go up in smoke tomorrow and (3) he would feel more comfortable with the Town Engineer signing off on the project before granting the variances. K. Hoopes said that the applicant would need a variance at some point anyway. G. Smith said the ZBA could grant the variance pending the Town Engineer's approval. J. Anthony said that his concern is that based on Chris Navitsky's letter, the applicant may need more variances than the three they are asking for. K. Hoopes said they'd have to come back before the ZBA if that is the case. T. McGurl said that (1) he is not an engineer and (2) he thinks it would be better to get the Town Engineer's approval on the project first—then he'd be comfortable voting on a variance. B. Pfau said that (1) if the ZBA denied the application or failed to vote on it now, guarantees that the Town Engineer will not take up this particular design and (2) he thinks what the ZBA is voting for is to pass this design onto the Town Engineer to see if it will work. T. McGurl said that this is why the ZBA does things on a monthly and not bi-monthly basis, so the Town Engineer has enough time to review things like this. K. Hoopes said that (1) the Town Engineer has had a chance to look at this and (2) from the position of the ZBA, (2) the ZBA just grants variances from the regulations in theory and (3) the ZBA members step beyond their limits when they start trying to act like engineers or septic experts or bridge builders, etc. Chris Navitsky said that (1) lots of times if the ZBA grants a variance, PBs tend to think that things can be allowed to proceed and (2) he thinks granting the variance is not that simple of a vote.

From the public, Atty. Sam Greenwood, said asked if this project could be re-designed to comply with the code and Chris Navitsky said yes. Atty. Greenwood said that (1) in making the determination, the ZBA has to take into consideration the benefit to the applicant of the variances granted weighed against the detriment to the health of the community—the benefit of the applicant is to just get to avoid doing a re-write—that's not a big benefit, as if the applicant can do a re-write and comply with the code, the ZBA should hold the applicant to that, (2) if the stormwater management plan fails, there will be a detriment to the nearby property owners, (3) the stormwater requirements will cause direct impacts to properties downstream of the project due to reduction in water quality treatment, as Saddlebrook itself is on the NYSDEC's list of impaired water bodies already—there are road washouts associated with this, (4) the ZBA has to look at if the benefit sought by the applicant could be achieved by some other feasible method other than an area variance and if Chris Navitsky in theory says that you can redesign this project to comply with the program, he doesn't see how the ZBA as a board can find that the applicant doesn't have another way around this issue, (5) regarding if the request is substantial, the applicant is asked for three different area variances that are on the scale of 30% to the wetland setback and 50% for each of the vertical separation requirements—variances of this scale are substantial, (6) according to the Waterkeeper's notes the applicant needs variances greater than what is proposed, as there seem to be three other ponds that don't comply to the setback requirements, so if that is the case, then the ZBA doesn't know if this variance is substantial or not because it hasn't looked at all of the

variances that are out there in a cumulative fashion, (7) regarding if the proposed variance will have an adverse affect on the impact of the physical or environmental conditions of the neighborhood, the ZBA has to determine whether or not there is going to be an environmental problem caused by granting this variance and if the ZBA doesn't have that in mind, it is pretty easy to have it overturned by a judge, because the ZBA used the wrong criteria and (8) whether or not the alleged difficulty was self-created, the need for a variance is self-created if the applicant can redesign this project to solve these issues. K. Hoopes said that (1) the ZBA is not ignoring its duties in looking at the environmental effects—they are looking at these things, (2) the Waterkeeper coming in at the 11th hour with a bunch of papers, then saying that not only are these variances the tip of the iceberg, but that everything can be moved and it can be done differently, the ZBA only has to this application in front of them and it seems to be very thorough and (3) the information Chris Navitsky just handed out has to be looked at as new information that the ZBA didn't have a chance to look at, which is unsubstantiated at this point. Atty. Greenwood said that this is a special meeting and the Waterkeeper had a limited amount of time to review the project. G. Smith said that (1) it is the Waterkeeper against the applicant and the applicant against the Waterkeeper—each saying different things and (2) the ZBA will let Dennis Dickinson explain that to them. Atty. Greenwood said that the Town Engineer's letter, which is included in what Chris Navitsky submitted substantiates a lot of what the Waterkeeper is saying. G. Smith said that it is a lot of paperwork to look through from Chris Navitsky in two minute's time.

Dennis Dickinson said that (1) what he is showing here is what they want to do specific to the two ponds and infiltration portions of those ponds as shown, which are the three variances they have asked for, (2) he can assure the ZBA that he has talked to Tom Nace and Tom Nace has no objection to what they have proposed here, (3) Tom Nace does have some issues with the other report that Dennis Dickinson is responding to, but that report is irrelevant to what they are doing here tonight, (4) if he could redesign the ponds with no variances he wouldn't be here—the variance is a last ditch effort to resolve issues that an applicant has, which is why he is here, (5) for these ponds to work they have to be at the lowest point and collect all the water, so there is a balancing act in getting far enough down to pick up the water and treat it, but still not affect the water you're trying to save, (6) he is satisfied with what they have done and with their variance requests, (7) they have over 2 dozen test pits that have been logged by a soil scientist and they also supplemented them with auger borings and (9) they have pretty much covered the territory, which is pretty regular and consistent.

From the public, John Gaddy, PB member and neighboring property owner, said that (1) he questions the size of the three ponds being discussed tonight, which are about the size of a football fields, and he asked how many test borings have been done and (2) if taking look at Saddlebrook, it is 150 acres with 24 test pits done. Dennis Dickinson showed all of the test pits, auger holes and perc. tests they did on the site. T. McGurl asked where they are in relation to Ponds 4 and 5. Dennis Dickinson said that there are 12 within the general vicinity of Pond 4. John Gaddy said that (1) his concern is in not having information back from Tom Nace without even having accurate test pit information where the applicant will be building, (2) this project has been going on for three years

and there still isn't a report back for the soils in the particular area where these things as large as a football field are proposed and (3) the soils are very variable in the area and he'd be interested in finding out in specific what the test results of the soils were in the particular areas of those ponds. Dennis Dickinson said that (1) in some of the information the ZBA has available to it is Chris Navitsky's letter complaining about the test pits in addition to a response letter from Tom Nace, where he responded in kind supporting their testing and (3) Tom Nace is the one that on top of all the soil testing made them put a note on there saying that before any ponds are built test holes need to be dug exactly where they are and verify that they can do it. J. Anthony said that it is comment number 1 in Tom Nace's letter.

Rolf Ronning said that (1) this is the 41st month since he made the initial application and Tom Nace has been reviewing this for at least 29 months, (2) they have made changes according to Tom Nace's recommendations, (3) there is no way to put the basins anywhere other than where they are and still have gravity fed water without using pumps or not putting them someplace where they don't capture the water they are supposed to, (4) Chris Navitsky has seen these basins basically in the same location for probably over a year and he is now, at his meeting, handing in his comments, (5) Chris Navitsky's tactic is to delay, and, frustrate, (6) Chris Navitsky works for a group that wants to stop development and (7) four engineers have worked on this project and the Town Engineer is good with it.

Elsa Peterman, New Vermont Road resident, handed out a topographical map of her property and said that (1) she would like to know how the project impacts her property, (2) her property is downhill from the pond, so she is concerned about run-off, (3) she also has an old logging road, which is an expressway for floods, coming down her property as some length and (4) the area is wet as it is and full of springs, so she is worried on the impact the project will have. K. Hoopes said that the ZBA is very concerned that the project does not affect neighboring properties at all. Elsa Peterman said that (1) she is about 1,200 ft. away from the corner that was destroyed by water in 100-year storm, (2) she has never had and doesn't expect to have a problem with the applicant and (3) her concern is purely on the water that will come downhill in a storm. Dennis Dickinson referenced the map to show Elsa Peterman's location in relation to their project and said that she is not really downhill from where they are—they aren't really discharging toward her location. K. Hoopes said that the applicants have an uphill section before Elsa Peterman's property, so she has a built-in dam. Elsa Peterman said that is not correct, in that where her property ends, it is still uphill from there, so they have no way of channeling. Dennis Dickinson showed how the ponds would be discharged on the maps. Elsa Peterman said that she wanted to walk the property but it was marked as no trespassing. Dennis Dickinson said that all she has to do is call him and she can go up there—he's willing to walk the site with her. Elsa Peterman said that there is already water running down along Farm Meadow Road and her concern is what would happen in a storm, because in a storm it is going to swell.

Counsel said that (1) the applicant basically presents for the ZBA three, what appear to be simple requests for variance, (2) if the ZBA took one path to delay it until the ZBA hears

from the Town Engineer, then certainly the ZBA would have more facts, (3) if the ZBA chose to say that the ZBA can act upon it, because they are simple and they are still subject to the Town Engineer's approval—that remains true, (4) with respect to the statement that if the ZBA approves the variance requests tonight then the PB will think the ZBA endorse it, that is not so—the PB is not unsophisticated in that they are going to look at this plan overall and quite comprehensively and with an eye to making sure that the Town Engineer has approved it, (5) his concern is if this is the complete inventory of what the applicant needs for variances, (6) if Chris Navitsky's argument is correct then it would seem that the variance inventory would be abundant and on the other hand, if Chris Navitsky is correct as an engineer in saying that this whole project can be satisfactorily completed without any variances whatsoever—the challenge is laid at the feet of this applicant, (7) he has seen the report which is very technical, so to try to simply put the task ahead tonight as to what the ZBA should do, the ZBA decides if they need some input from the engineer and as a matter of discretion, the ZBA would table it, or the ZBA decides they don't need to hear from the engineer because the applicant in a manner of speaking controls this application—they say all they need is the three minimal variances, there are no feasible alternatives, (8) the PB is sophisticated, knowledgeable and experienced enough to know that this is not an endorsement of the overall plan, which is the applicant's challenge, not the Town of Bolton's and (9) if the Town of Bolton finds itself in a court of law arguing about if there were feasible alternatives, that is going to be engineer against engineer. G. Smith said that he doesn't think the applicant would be here for a variance if he could do it without any variances. Counsel agreed and said that it is hard to believe the applicant would invite this controversy. G. Smith said that if the applicant needs more variances, that is between that engineer and the Town engineer—it is out of the ZBA's hands, they are only here for these three variances and Counsel agreed. G. Smith said that he doesn't see why the ZBA shouldn't move forward with this based on the facts tonight. K. Hoopes said that (1) he doesn't want to be acting as a stumbling block in the process itself—the process is set up properly and will work if the ZBA gives it a chance, (2) they are not engineers and what he has seen is that the infiltration basins are the last line of defense against grate water that may or may not be contaminated and the wetlands, (3) the substantiality is in whether or not the system will work and he doesn't think that it is 50% or 30% against it working properly and (4) he thinks it is the very last end when that infiltration basin is taking the water that has been handled by the first two ponds. G. Smith that said it would be an extra precaution over what the applicant needs. T. McGurl asked if the ZBA usually has official word from Town Engineer Tom Nace in most cases before the ZBA votes on these things and P. Kenyon said that for major stormwater projects the PB does not hear the item until the Town Engineer signs off on the project. T. McGurl said that (1) engineer versus engineer, he is going to believe the one employed by the town and (2) he feels uncomfortable voting on something that he would prefer the Town Engineer weigh in on rather than his (McGurl) voting on it. Counsel said that is a discussion for the ZBA then it is incumbent upon T. McGurl to persuade other ZBA members so that comes out as a majority. B. Pfau said that since the applicant has been in contact with the Town Engineer for 41 months on this, he feels the ZBA should move forward and vote on this also.

Frank McDonald said that (1) he's been at most of the meetings for this project—he doesn't think the applicant deserves any sympathy or pity for most of the times he (Ronning) stubbed his own toe, (2) he thinks it is totally outrageous for Chris Navitsky to give the comments he made tonight and suggest the applicant wipe the slate clean and start all over again and redesign this project, (3) chances are if they did have the project redesigned as Chris Navitsky suggests, he (Navitsky) would still have comments and (4) he is not talking on Rolf Ronning's behalf, but as a public citizen—he doesn't know why they should even listen to Chris Navitsky.

G. Smith said that he thinks the ZBA should move forward on this.

RESOLUTION

The Zoning Board of Appeals received an application from Saddlebrook Subdivision (Rolf Ronning) (V07-31) for area variances 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 determined that there was no County impact;

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item #1 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, these are dimensional issues;
- 2) There will be no undesirable change in neighborhood character or to nearby properties that have been established, the infiltration basins are the last bit of water being treated and there should be no change to the neighborhood from what has been presented here;
- 3) The request is not substantial, it is 50% from the ground water and if you take the average it is enough as it is over two feet and it is the last line;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, this is a treatment of stormwater done in good faith;

- 5) The alleged difficulty is not self-created, for the reasons Dennis Dickinson pointed out—to do stormwater measures you have to search out the low ground collection point and in this case you don't pick your terrain, the terrain picks you.

The benefit to the applicant is not outweighed by the potential detriment to the health, safety and welfare of the community.

Now, upon motion duly made by Kam Hoopes and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. Meredith McComb absent. Jeff Anthony and Tom McGurl opposed. **All others in favor. Motion Carried.**

- 2) **V07-23 PERRY, MARK & LINDA.** Seek use variance for an agricultural use. Specifically to convert a personal greenhouse into a commercial nursery. Section 156.00, Block1, Lot 13, Zones RM1.3 & RL3. Property Location: 121 Federal Hill Road. Subject to WCPB Review. Subject to SEQ. *Favorable recommendation by the Planning Board. The WCPB determined no county impact with stipulation.*

Mark Perry gave an overview and said that they are back to discuss the issue of collecting money from people who come to the site to buy something.

G. Smith said that ZBA member J. Anthony did some research on the applicant's property. J. Anthony gave an overview and said that (1) at first he tried to justify a use variance and he came to the conclusion he couldn't, (2) he found a loophole in the zoning law that the applicant could do a special use permit then go to site plan review but then you'd have to go to the APA, (3) the property map with the development around it shows houses surrounding the applicant's house and he (Anthony) questioned the vacant area regarding why it wasn't built on, (4) he found out in his research that a AA special stream runs through the applicant's property, there are slopes that bisect the property in four bay ends through the middle of the property, which didn't bother him so much, (5) when he looked at the second map, which is a soils map, it shows the entire RL3 section of the applicant's property as WOE (Woodstock Rock Outcrop Complex Steep), (6) knowing what the applicant would have to go through to develop this property, with soils being so thin and shallow, the applicant would have a hard time getting an approval from the NYSDOH for sewage disposal systems and any construction would be costly in requiring rock excavation or excessive grading and (7) the applicant is entitled to three principle buildings in the RM1 zone of the property and 11 in the RL3 zone.

J. Anthony said that over the weekend he drafted up a justification for a use variance titled "Resolution of the Town of Bolton Zoning board of Appeals Perry Use Variance 121 Federal Hill Road Town of Bolton, NY Parcel 156.00-1-13" for this applicant's situation, which he entered into the record, in addition to giving a copy to each ZBA member, Town Counsel and Zoning Administrator P. Kenyon. J. Anthony gave extensive in-depth reasoning for the use variance and cited the following reasons for use variance justification from his submission: (1) no reasonable return (hardship)—(A)

regarding detached single family residence, even if permits could be approved for the development of an 11 lot subdivision the overriding costs of site development would make this venture not economically feasible and it is also questionable that a permit would be approved for 8 lots in the RL3 Zone area of the site due to existing natural resource characteristics and (B) regarding hunting/fishing camps under 300 SF, use of the site for hunting/fishing cabins is not economically feasible, concluding that the use of the site for any of the permitted uses by the Town of Bolton Zoning Law are not economically feasible and no reasonable return can be achieved by these uses, therefore a hardship exists and some other use of the site is warranted and since the current activity was previously approved by the ZBA and a considerable investment made in this lawful enterprise, the requested use appears appropriate, (2) unique circumstances—including physical features, historic/archaeological features, and/or adjacent uses, so the site is not economically practical to develop because of its unique physical and natural resource characteristics, (3) no self-created hardship—the applicant did not create the unique natural resource conditions present on the site, they were created by mother nature, so use of the property for the permitted uses is severely restricted by the site's natural resource characteristics and related regulatory agency requirements, which are out of the control of the applicant, therefore the hardship is not self-created and (4) not alter the essential character of the neighborhoods—(A) the lands have been historically used for some sort of agricultural use and old barns exist that are currently being used as a part of the greenhouse operation, (B) the existing greenhouse is not visible from Federal Hill Road, (C) parking exists in the vicinity of the applicant's residence and is already developed, since the use variance request includes no proposed new construction and all facilities to accommodate the requested use exist, there will be no new visual intrusions in the environment nor no new visual impacts to neighbors, (D) there is already traffic from nursery clients visiting the site to pick their plants—the only activity that does not happen on the site today is the payment for the plants, (E) the requested variance will allow only for the retail sale of plants—there will be no physical change or modification to the site to allow for this activity to occur and (F) air quality and stormwater issues have been raised and in rebuttal, as has been stated by the Perry's and has been observed by ZBA members, the Perry operation of their greenhouse does not use any pesticides, herbicides, or fertilizers—it is a totally organic operation, therefore there is no affect of this activity on air quality or water, so for all these reasons, the proposed use variance will not affect the essential character of the neighborhood.

K. Hoopes said that one of the toughest things in a use variance is that competent financial evidence and J. Anthony has gone above and beyond the need for that. Counsel said that J. Anthony has substantiated that and while it appears to be excessive, that is exactly what the law expects, in order to withstand an appeal if there was an appeal or for any other applicant they sought a use variance and they were challenged by the same steps and same elements, this is what you'd want to see—it's way over the top and that is exactly what is required.

From the public, Joe Delorenzo, adjoining property owner, said that (1) the applicants did a beautiful job tearing the old barn down and remodeling it, (2) the greenhouse was put up that doesn't affect anybody, (3) the greenhouse will not bring anymore traffic to the

road than the Sagamore Golf Course does, (4) the greenhouse runs strictly in the spring, summer and fall months and (5) he doesn't see any reason at all that the applicants can't try this in their locality and (6) they are fully in favor of the project.

From the public, Trinket Mason neighbor, said that (1) what the applicants have done is a great asset to the neighborhood, (2) the greenhouse does not take away from anything, (3) it won't affect traffic there and (4) they are in favor of the project.

From the public, Rick Kudlack, said that (1) he is in favor of the project, (2) for as far as he can remember there have always been family farms where you can buy items, (3) he is surprised the applicant has to ask permission to do this type of activity as it is an old farm—he thinks this activity should be encouraged rather than discouraged—it is a great old Adirondack tradition.

RESOLUTION

The Zoning Board of Appeals received an application from Mark and Linda Perry (V07-23) for a use 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 determined that there was no County impact with the stipulation that there is an evaluation of the competent financial information requirement per the use variance application, evaluate the change in neighborhood character in regards to the proposed project, and referral to site plan review if determined required;

and, after reviewing the application and supporting documents of the same, and public comment being heard 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 could not be achieved by any other means feasible to the applicant besides a use variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties;
- 3) The request is not substantial;

- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created.

The benefit to the applicant is not outweighed by the potential detriment to the health, safety and welfare of the community.

Now, upon motion duly made by Jeff Anthony and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented. This approval is based on the written "Resolution of the Town of Bolton Zoning Board of Appeals Perry Use Variance", received July 2, 2007. Prepared by Jeff Anthony, wherein the criteria for granting a use variance has been met. Meredith McComb absent. **All others in favor. Motion Carried.**

Meeting adjourned at 8:13pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
07/09/07