

**Town of Bolton
PLANNING BOARD
MINUTES
Thursday December 18, 2008**

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

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

Absent: None

H. Koster opened the public hearing at 6:07 PM.

PUBLIC HEARING

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: The public hearing kept open from the Nov. 2008 meeting.*

Note: Sue Wilson and Henry Caldwell recused themselves.

Peter Loyola stated that they submitted responses to the comments made at the last public hearing. With regard to stormwater, there were a lot of comments and concerns with this issue. He stated that they are mandated by the NYS DEC and NYS Law to provide a full stormwater management plan with notice of intent. They have approximately 10 acres total disturbance with construction to be done in phases in accordance with DEC. He stated that they are mandated not to increase the amount of run-off that will be leaving their property and they will absolutely comply with that. This is a minor subdivision and when they took a look at the overall scale of the watershed area that is contributing to their area, the overall drainage basin is 150 acres. Out of those 150 acres, the disturbance or impervious surface that they are changing is 2.8 acres. They will have 10 acres disturbance for the construction but when all is said and done, they will have only have 2.8 acres which is 2% of the total drainage area that they are going to be impacting. They are well aware that they have to comply with stormwater and they are willing to do that in every phase and they know that any approval given from this Board would be conditional upon a stormwater plan and they feel very comfortable that they will be able to address those stormwater issues. They feel that there will not be flooding on adjacent properties, they have more than ample room to handle any increase that might be a result of the impervious surface and they will be able to mitigate that.

With regard to the comments about visual concerns, such as context of the homes, ridgeline development, effect on tourism, and overall compatibility with the surrounding area Peter Loyola stated that they feel very strongly that they are in complete context with what has happened over the years in development along the western banks of Lake

George. They have prepared view shed analysis maps and visual simulations showing what their project is going to look like. He stated that they are very sensitive to the visual issue and that is why they have gone to such great lengths. They have gone over and above with the filtered view creation plan; they will be very selective with their tree cutting and the context of the houses that they are proposing are very compatible to what is being developed in and around the area. Peter Loyola stated that the zoning ordinance allows 1 house per 25 acres in this zone and they comply with that.

With regard to ridge line development Peter Loyola stated they wanted to be sure that everyone understands that they are going to be 250-350' off of the pinnacle and 50-60' down in elevation from the pinnacle. He stated that they are very understanding to the sensitivity of the views and they were very careful to be off the pinnacle and over to the northeast to comply with that. For a small minor subdivision they have gone above and beyond anything that has ever been required before from the PB in order to create an enforceable action for the Town with deed restrictions that will include color palates for the roof and siding to create earth tones and the filtered view creation plan which will have a complete inventory of what trees exist now and what trees will be allowed to be cut. These measures will allow for an enforceable protection to this sensitive area with severe penalties as a consequence for non-compliance.

With regard to forest fire concerns, lightning strikes, emergency access and safety concerns, Peter Loyola stated that they have been at this process for 3 years. They have met with the fire department to make sure the access is safe. They have done a complete inventory of the turning radiuses and axle radiuses of all of the vehicles and they feel that they are safe and the slope is less than some of the Town roads. So those who commented about forest fire and lightning strikes can rest assured that they have access to these services. All of the homes will be required to have sprinkler systems and the road itself will have water holding tanks that will help in fighting any fire.

Peter Loyola stated that they have worked with the Town in enforcing the restrictions in the deed restrictions and filtered view creation plan and the Town and Town Attorney are in favor of the deed restrictions and filtered view creation plan.

With regard to the comment about the 50 acre lot to be subdivided in the future. He stated that they understand that the requirement now for 75 acres will be 3 homes on 75 acres and the applicant has no intent on subdividing any further and if they have to add any language to the deed restriction to that effect they will be happy to do that.

Peter Loyola stated that there were a number of comments that came up with regard to the right to develop on the property. The fact that people have been using this property historically as an overlook, Peter Loyola stated clearly that this has always been private property. Everything that they are doing is within the code to subdivide and develop. All aspects of the project are in compliance with Town zoning and they feel are consistent with the LC25 zone.

With regard to cluster development, Peter Loyola stated that they can't get much more of a cluster development than they have right now. He stated that they understand the idea to limit the amount of disturbance that they have on the piece of property, but he pointed out that they are looking at 10 acres out of 75 that will be developed upon and overall less than 5 acres of disturbance after the reclamation that they will be doing. He stated that they feel that they have addressed the clustering by minimizing as much as they can.

With regard to the driveway maintenance, Peter Loyola stated that they will have a fully executed maintenance agreement plan with the homeowners sharing in that expense and maintaining the driveway.

David Cummings asked about the salting of the roads and run-off from the roadway and how they intend to deal with that issue. Peter Loyola stated that they have a stormwater system that will have water quality control measures such as basins that can handle sediment build-up. David Cummings asked if that would just leach into the ground. Peter Loyola replied that all areas of Town have to deal with the salt issue and it will leach into the ground in hopes to infiltrate the pollutants before they reach any water source. David Cummings stated that they have zebra mussels in the lake as a result of the salt. Peter Loyola stated that there has been some illusion that the run-off from this property would be going directly into the lake and that is not a true statement. He stated that they are easily a mile and a quarter from the lake. David Cummings stated that they are less than a mile and a quarter away from the tributaries that feed into the lake. Just below the holding tank is a wetland. Peter Loyola stated that is a perfect filtration device any run-off. He stated that they will be handling and treating all of their stormwater that comes off the roadway prior to it discharging to that low basin and they are mandated to do so. David Cummings asked who is going to uphold those mandates. Peter Loyola replied DEC and the Town. David Cummings asked if DEC was going to go up there on a yearly basis to check. Peter Loyola replied that they are in compliance with everything that is required by the State and Town which is no different than anything else in Town.

Chris Navitsky, Lake George Waterkeeper, thanked the PB for keeping the public hearing open. He also wanted to recognize the attempts the applicant has made to mitigate some of the many impacts that this project will have, specifically the suggested measures to prevent excessive clearing. However it appears that despite the effort the project will have detrimental effects on the resources of the Town. The amount of clearing and disturbance for 3 building lots will be excessive. The clearing for nearly one mile long driveway is almost 8 acres and if they are included any additional clearing for stormwater management. This will permanently scar one of the most prominent vistas in the Town.

Chris Navitsky stated that much of the discussion has been focused on the view shed from Lake George, however, when the proposed project is viewed from Cat Mountain, the highest point in the Town of Bolton and the future lands of the State Forest Preserve, the amount of disturbance is overwhelming. He provided visual simulation from Cat Mountain that was done digitally with a computer model utilizing USGS topographic information and National Land Cover Data from 2001. He reviewed the renderings with the PB. These rendering were prepared by a firm called Extra Spatial Productions from

Saratoga who have 20 years of experience with photo simulations, GIS and computer modeling.

Chris Navitsky stated that they have proposed about 616 seedlings to be replaced, but in doing the estimate of the clearing based on a 150 trees/acre just for the road that is over 1,200 trees being removed. Clearly the clearing and disturbance is excessive and it will continue to frame Lake George for generations.

Chris Navitsky stated that the clearing for the shared driveway exceeds the maximum allowed clearing. By the Town Code the Town has not addressed the fact that the clearing exceeds the maximum allowable in the Town Code which is restricted to 16'.

Chris Navitsky stated that the following questions and concerns which have been raised prior but not addressed by the applicant: 1) Submission of a jurisdictional inquiry form to the APA. 2) The PB and Town Attorney are in favor of the deed restrictions, but with all due respect, they are not the entities responsible for enforcement in the Town. 3) The proposal does not conform to the Town's regulations requiring development to comply with the Town's Comprehensive Plan. He stated that they feel that there is insufficient information to act on the application as proposed, does not comply with the comprehensive plan, will permanently scar the resources of the Town and they cannot determine if there is a significant environmental impact with the extensive clearing and disturbance because information has not been submitted yet.

Herb Koster asked if any additional letters had been submitted. Pam Kenyon replied no.

RESOLUTION:

Motion by John Gaddy to close the public hearing for SD06-05. Seconded by Sandi Aldrich. Sue Wilson and Henry Caldwell abstained. All Others in Favor. Motion Carried.

2) SD06-09 RUFFOLO, SAVERIO. Represented by D.L. Dickinson & Assoc. & Peter Sisca. Seeks to divide into 7 lots that parcel designated as Section 185.00, Block 1, Lot 2, Zones RR5, RR10 & LC25. Property Location: South Trout Lake Rd. Preliminary Plat. Major Subdivision. Subject to SEQR. *Note: This item was tabled at the Nov. 2008 meeting pending public hearing and is in conjunction with SPR08-26 for a major stormwater project.*

3) SPR08-26 RUFFOLO, SAVERIO. Represented by D.L. Dickinson & Assoc. & Peter Sisca. Seeks Type II Site Plan Review for a major stormwater project to remove more than 15,000 sq. ft of vegetation, specifically 160,000 sq. ft. is proposed Section 185.00, Block 1, Lot 2, Zones RR5, RR10 & LC25. Property Location: South Trout Lake Rd. Subject to SEQR. *Note: This item was tabled at the Nov. 2008 meeting pending public hearing and is in conjunction with SD06-09 for a 7 lot subdivision.*

Derek Mitchell gave a quick overview of the 7 lot subdivision. He stated that they will have a common driveway and will be taking care of the stormwater run-off by using wet ponds for the main road. He stated that there is an existing camp that will be subdivided into a separate lot with separate septic system. The property will be accessed by South Trout Lake Road. The subdivision road is 1,300' to the cul-de-sac.

Kathy Simmes, neighbor of the property, stated that she is not opposed to the subdivision but she is concerned about stormwater. She stated that access to one of the lots uses an old Town road which is now a shared right-of-way in which they each own 5' and have use of the other 5' as a right-of-way. They are planning on putting the subdivision road close to Jason Saris' house and they will have to cross the stream and some wetlands. She pointed out on the map an area in the spring that floods the driveway and area. She stated that without the subdivision in there their road already is so muddy in the spring that they cannot use it.

Chris Navitsky, Lake George Waterkeeper, stated that there are several areas that they have concerns about regarding the proposed stormwater management plan: 1) all of the infiltration ponds have an under drain which will basically negate any infiltration that will happen. He is concerned that any water that is being infiltrated will be discharged to the surface without any infiltration. 2) In each of the catchments they included all of the development of the site in their calculations however, they assumed that there was only 2,000 sq. ft. of impervious area which would be the 50' x 30' house and a 50' driveway, but as you can see on the plan that every driveway well exceeds the 50' so that has been underestimated so there will be more stormwater run-off that could be corrected if they come back for SPR on all lots. 3) In the lower area where they have the stream crossing they have 2 wet ponds which will not infiltrate. Their calculations show that in pre-development there is about 4,400 cubic feet that come off of these two ponds and after development there will be 8,800 cubic feet of run-off which is doubled in these areas. He stated that they are reducing it overall for the entire site but are doubling it in this critical area which could exasperate the existing problem that was just referenced. 4) Re-evaluation of ponds in general. 5) They asked if the applicant has applied for the stream crossing permit from the DEC and if there has been a permit application submitted to the APA to fill in the wetlands.

Harry Simmes asked once the water infiltrates into the ground where it will be going. He stated that they have lived and walked this property for 45 years and water is running constantly even in the winter with the ground frozen. He is concerned that they will not be able to handle all of the water coming off of that property.

With regard to increased stormwater run-off, Derek Mitchell stated that they are required by the Town of Bolton and DEC to lower that amount and output rate. He further explained the ponds. The drains under the infiltration ponds are strictly as a back up measure and will not have anything to do with the function of the pond. That drain will be closed unless that pond become plugged up and is no longer infiltrating, it can be drained and the pond can be worked on to repair it. The water will be infiltrated in the

ponds and will not be discharged from the ponds. He stated that although the lower ponds will not have infiltration they are making up for it in the upper ponds.

With regard to the wetland crossing, Derek Mitchell stated that they have applied with the APA for the wetland crossing and the stream has been classified as an intermittent stream and will not require a stream crossing permit. Herb Koster asked if DEC has determined it to be an intermittent stream. Derek Mitchell replied no the APA determined that. Kathy Simmes stated that years ago they were logging in this area and they almost got fined because they did not get their permit for crossing the stream because it was considered a Class A stream. Herb Koster stated that is why he is suggesting that they approach DEC about the stream as well.

Kathy Simmes asked if the proposed stormwater will do anything for the stormwater that is already there coming down onto their property. Derek Mitchell stated that they are not proposing any development in the area of concern except for the house on Lot 2 and the rest of the development is on one side of the property which is very consistent in its grade and there are no intermittent streams in this area and the APA walked it with him and they came up with the same determination. Herb Koster stated that according to NYS law the applicant is not allowed to increase the run-off from his property after he is finished with his project, and the applicant has already mentioned that they intend to lessen what is coming off of their property and they don't have to do that.

Herb Koster asked if there were any correspondence pertaining to this matter. Pam Kenyon replied no.

RESOLUTION:

Motion by Sue Wilson to close the public hearing for SD06-09 and SPR08-26.

Seconded by John Gaddy. **All in Favor. Motion Carried.**

REGULAR MEETING

Herb Koster asked if there were any changes or corrections to the November 20, 2008 meeting.

1. Henry Caldwell, page 17, with regard to Saddlebrook, he stated that he voted against the motion. Sandi Aldrich stated that she did as well and John Gaddy recused himself.
2. Sandi Aldrich, page 23, last paragraph should read "Sandi Aldrich stated that there is a power line that runs through there and asked if there is a deeded right-of-way for National Grid"

Motion by Donald Roessler to accept the minutes as corrected. **Seconded by** Sandi Aldrich. **All 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: Edgcomb Pond Road. *Note: The public hearing kept open from the Nov 2008 meeting. Site Plan Review for a major stormwater project is required, but has not yet been applied for.*

Note: Sue Wilson and Henry Caldwell recused themselves.

Don Roessler stated that the applicant has stated that they will be completing the road in phases and asked how many phases are there. Peter Loyola replied that there are 2 phases, not including making provisions for the lots. He stated the first phase would be approximately half of the road. They are allowed to clear up to 5 acres of clearing before they have to start reclaiming and adding vegetation to keep down on erosion and they will be implementing their stormwater basins first. Don Roessler asked when they intend to start the road. Peter Loyola replied that if they receive approval tonight then they would be able start as early as the spring. Don Roessler asked how long the construction will take just for the road. Peter Loyola replied probably two seasons because they would need to wait for some stabilization before they would start the second phase of the road and by fall they should have 75% and could start the second phase the following spring.

John Gaddy asked if there had been a total slope analysis on the entire property. He stated that he has been looking at the code and still feels that they could better address the cluster subdivision issue. He stated that he knows that it is a steep lot but he has not seen any numbers to indicate that the locations chosen are the best according to their regulations. Peter Loyola stated that it is a steep lot and on average they have 50% of 15% slopes but he is not sure how much is 25%. Scott Miller stated that they are trying to use the majority of the existing roadway and the Board is well aware of the slopes on that. He stated that roadway has the easiest slope and everything outside out the roadway was steeper.

John Gaddy stated that he wanted to review some of the summary that the applicant has submitted in response to the last public hearing. With regard to the visual compatibility, he stated that the applicant's view is that this development is in context with what has happened over the last few years. He stated that just because this has happened in the past in times when they were less concerned about this he does not feel that it means that it is still okay to do this kind of house placement. He wonders how much weight the comprehensive plan has in the decision making process of this. He stated that Counsel has assured him that it really doesn't have anything in there to regulate this. However in doing research and talking to previous members of the Comprehensive Plan Committee and they were and are very concerned about this type of development. In their favor, John Gaddy stated that with regard to ridgeline development, no one has come close to what they have done about the presentation and development of the language that would be there to maintain the cover in front of the house. John Gaddy stated that he has asked both the Zoning Enforcement Officer and Zoning Administrator where the Town stands in their willingness to be the tree police. He is concerned about how they maintain the hillside vegetation because they have tried in the past to do something about violations and abuse that has been done to the hillsides in order to get views. He stated that there is

an economic incentive to individual homeowners to try to develop the views. He stated that he knows that it can be done correctly, such as with Barry Kincade and they see it with this proposal. However, it is inevitable that the best intentions never seem to be carried out. He stated that he has discussed this language and other strongly worded clauses in seeing this enacted with Counsel who has indicated that this is not something the Town is willing to do. The Master Plan has been adopted and he has sat on the Comprehensive Implementation Plan and he is dismayed at the fact that they have had in the extensive work that has been done and clause inserted that for hillside development or vegetative clearing it has been reserved. Peter Loyola asked when the poll was taken. John Gaddy replied that it was taken over a number of years with a 5 year implementation plan. He stated that it is not something that they can base their decision on but he cannot see how the work that has been strongly written up as being something the Town really supports. He doesn't believe that the Town would be a strong enforcer of the cutting plan.

With regard to forest fire, John Gaddy stated that he agrees that a lot of people will be in a dangerous situation. He stated that looking at California; they too could be good candidates for fires. However, he is not worried about the fire protection.

With respect to the right to develop private property, John Gaddy stated that he strongly feels that the disturbance to put these houses in is excessive. He believes in development and feels that it is a person's right but in this case balancing the public loss versus the individual's placement of that home he feels the cluster development has been compromised in that idea and it could be done lower. He even believes after looking at the LG Waterkeeper's photo simulations, that if the houses are allowed to be put up there, they should be moved back. In terms of the amount of disturbance on the roadway, John Gaddy stated that he is sure that it can be engineered and he believes the trees and cover will re-vegetate and in 10 years they may not even notice that the trees were taken down. He feels that overall the project has too much disturbance and houses proposed in too sensitive of an area to be able to support this project.

With regard to the LG Waterkeeper's photo renderings, Peter Loyola, stated that it was a worthy attempt at showing something, but it clearly is not photo realistic. He asked if someone went to Cat Mountain to take a picture. Chris Navitsky replied yes and the vegetation is accurately depicted. Peter Loyola stated that they cannot ascertain the accuracy of this other than from the standpoint that they know the vegetation from the simulation is not accurate. Herb Koster stated that anyone can take a helicopter rendering from any project in Town and show the exact same thing that the LG Waterkeeper has just shown. He doesn't feel that just because a property owner is in view sight of Cat Mountain that they should be denied development of that property. John Gaddy stated that what caught his eye was all the cleared areas that are down below that are not the applicants. He stated that Rolf Ronning has also argued that 100 years ago there wasn't a tree in the basin. Herb Koster stated that even less than a 100 years ago.

John Gaddy stated that the applicant has stated that they are in context with the development in this area such as Woodland Ridge. Herb Koster stated that Woodland

Ridge was over 25 years ago, the rules were different, there were no setbacks and it has absolutely nothing to do with this. Peter Loyola stated that they are not proposing to develop like that. Herb Koster agreed and stated that the only way that could be used as a comparison is that they are trying to do the exact opposite of what Woodland Ridge shows from the lake. John Gaddy asked Jane Caldwell if the intent of Tom Donahue and Ted Caldwell was to have those houses concealed. Jane Caldwell replied yes it was part of the HOA Agreement but people have just gone and cut down trees anyway. Peter Loyola stated that they have much more teeth to their agreement. Herb Koster agreed. Peter Loyola stated that he is not asking the Town to be the tree police but they did want to provide a mechanism for them to be able enforce if they need to. John Gaddy stated that his experience with people and human nature has been the quest for developing a better view leads him to believe that in spite of all of the work they have done it is going to be death by a thousand cuts, where little by little what the intent was will end up like Woodland Ridge. Herb Koster stated that applicant has gone above and beyond to set a precedent. For these 3 lots they have done everything that the PB has asked them to do over the last 2 years. John Gaddy stated that looking at the zoning ordinance, in the introduction part it says "The purpose of the chapter is assure that the overall conversion, protection, development of unique scenic, aesthetic and natural resource of the Adirondack Park and to preserve the beauty and character of the Adirondack Park setting to the benefit of the community and to retain the natural vistas of the Adirondack and of Lake George to the benefit of the residents and visitors to the community." He stated that they say that it is not their job to engineer project or to insure the economic viability of project, but it is a sensitive project. Herb Koster stated that they have engineered it so that the vista will still be there and they will not be able to spot this from the lake and John Gaddy's argument continues to be from someone in the past. He stated that they may be able to see the road from Cat Mountain but it will not be seen from any place else. John Gaddy stated that it is a minor visual issue for him from that, but he feels the amount of disturbance is excessive. Peter Loyola asked if the project cannot be seen is it really excessive. He stated that if they were on a flat piece of property with the same amount of disturbance and they cannot see it from anywhere no one would make a big deal about it. John Gaddy stated that he does not see how they can go through and not have an adverse effect on the water flow no matter how well it is engineered because of the amount of disturbance for just 2 homes. He stated that the only benefit the Town sees out of this project is an increase in the tax base. Don Roessler asked what other benefit he would be looking for. Herb Koster stated that this has been a private piece of property forever and there are people that have made profits on buying and selling this piece of property and there have been taxes paid on this property. They are asking for 3 houses which fit in with their ordinance and he feels that if they can prove that they will not impact the vistas from the lake, which is the main concern in the Master Plan, he feels that they should be allowed that right. John Gaddy stated that he does not agree. Herb Koster stated that if they were to move the houses down the hill they will still be seen from Cat Mountain. John Gaddy stated that he is not trying to say no to the development but he does not feel that they should be placed there especially when looking at the LG Waterkeeper's photos. Peter Loyola stated that the photos are misrepresented to a degree because it is virtual reality based on a fly-by photograph, the angles are not accurate and they do not feel that the vegetation is accurate. He stated that these photos show the

houses right on a ridge and that is not the case the slope in front of the houses is much gentler than what is depicted.

Herb Koster stated that this applicant and their engineering firm have educated all of them in a large way for a minor subdivision. There was a lot of work and money put into this project and that is precisely the reason why he has allowed the applicant not to complete the stormwater application. He stated that this is private property and has been that way forever. With regard to comments about people's view being affected, he stated that the applicant pays taxes on this and he will have to view houses on the islands and lake. The point is, this is private property and it deserves to be developed in a proper manner and he feels that the applicant has done an outstanding job in giving them more than what they have asked for.

Peter Loyola stated that he has been coming here for 3 years and has never heard Chauncey Mason say a word about this project. He asked what his opinion was on this. Chauncey Mason stated that he has his concerns but he does feel that this is private land that has the right to be developed. He stated that if the Town gets their act together by including those other things, these regulations may change but the way they are going it is not going to change. He stated that they have 3 houses total with 2 on the lake side and a lot of the disturbance will be occurring on the back side of the mountain.

Peter Loyola stated that he also has not heard much from Sandi Aldrich on this matter other than some of the motions that have been made but he feels that they have never really gotten an opinion from her one way or the other. Sandi Aldrich stated that she thinks they have and her opinion when she first saw it was that they could cluster the 3 houses down lower but they would not have a view of the lake which is what they are after. The amount of disturbance and destruction isn't justified considering they have 75 acres. Peter Loyola stated that they would be re-planting over half of the disturbed area. He stated that they have looked at other locations and there is excessive rock or slopes and they really feel that the locations chosen are the best for the project. He feels that if they were to try to develop in a different location they may be dealing with even more disturbance due to the slopes which could affect the lake. He stated that they are on the back side as far away from the lake and using the pinnacle as a block. Herb Koster stated that if they were to track back 25 years ago to some of these things that are visible now, there could be 2 or 3 houses right on the pinnacle in the burned out area. He stated that these areas proposed are flat and it is the ideal place to put a house without being intrusive or have stormwater problems.

John Gaddy stated that on page 3 of the Filtered View Creation Plan, Section 6, it says "Maintenance of filtered views", not on this project, but if they were trying to sell him this project he would like to see if there would be a crafting a language to change the whole way they look at this. What they have been trying to do in Town is to keep every tree standing up there and they are failing. He stated that it is not their issue but it is his concern of what he sees on different lots around Town. He asked if they could word it to say maintaining a vegetative screen. Peter Loyola stated that they could handle this several ways. In Lake Placid they offer a landscape package that could go along with this

and every homeowner would be required in addition to the Filtered View Creation Plan to spend a certain amount of money to supplement landscaping. This could provide another mechanism to maintain and re-vegetate the area. John Gaddy stated that there is one thing that he will not be convinced of, no matter how upstanding the applicant is, as they go forward into the future once these houses are here they will be here forever and how will they maintain some sort of cover. He has researched and found that there are approximately 200 tree diseases and has found a number of ways that they can kill trees and he feels that if this wording could be modified it might take a lot of anguish that he has off the books. He stated that it would truly be breaking new ground and setting a precedent for the future. He stated that the Filtered View Creation Plan is great but does not feel that it is good enough to protect them. Herb Koster stated that they have stiff penalties set up for violations and asked if the applicant would be willing to add that they would have to replace any trees with the same size because that becomes extremely expensive. Peter Loyola stated that they have dealt with this on large industrial sites where they are proposing to plant on faces and cliffs and the difficulty that they would run with replanting in kind is that the adaptability of the tree to the condition is not always successful and they have found that planting lesser trees have better survivability. However, they could make up for the lack of size in numbers, so instead of plant one tree for \$25,000 they could require 5 acres re-vegetated for \$25,000 which is better in the long run for overall volume and for survivability. Herb Koster stated that they could require 10-15' Maples which have greater survivability and are rather expensive. He stated that he hopes that this would add to someone's thought process before they go and cut down any trees. Peter Loyola stated that they can beef up the language a bit more. John Gaddy stated that this still may not protect them and what he is suggesting is for in the event that they have some natural catastrophe or disease and trees go down they could require re-planting. He feels that there should be some sort of performance standard set here and he feels that they could insure that with a maintenance of a vegetative screen. Peter Loyola stated that they could work out the language to their liking. Peter Loyola described further what could be done with a required landscape package and how it can be enforced. John Gaddy stated that there have been 2 instances in the past few years in which violations have taken place and the Town has gotten involved but nothing has been done about it by the developer or landowner.

Counsel stated that in fairness to this applicant comparing those previous projects and the restrictions placed upon them even in settlement there is no comparison to what is being presented. He stated that if this applicant failed as well the Town is aggrieved and the Town can take action even if others in the 3 lot subdivision choose not to. The Town would collect the damages on each violation. The document is also well defined in fines/penalties and outlines that this can be for each tree or violation which gives the Court some latitude as far as the penalty. He stated that currently the Courts are already moving in this direction and recognizing the modern expanded limits of imposing monetary damage. Counsel stated that these requirements would ultimately be best in the Code but in the meantime he would suggest that they are in the form of a deed covenant. A deed covenant is better than the Code because that is a private contractual right. John Gaddy stated that they have heard Kam Hoopes say that they do not deal with deed restrictions at this level. Counsel stated that Kam Hoopes has stated that they do not

enforce them except when the Town has been given the status of an aggrieved party. He stated that any fines assessed would go to the Town. If the property owner did not pay the fine, it would be attached as a judgment on the property which will create quite a bit of action.

Herb Koster stated that he likes the idea of a planting or landscape plan because it could be something specific. Peter Loyola stated that they would be happy to also add a list of substitute plants and trees for this landscape plan. Each planting will serve a purpose such as screening, framing or blocking out a mass. He stated that it will provide options but will still specify size. He stated that trees ebb and flow, this area was almost barren 50-100 years ago and in 20 years the pinnacle is going to go a lot different. Peter Loyola stated that they are willing to re-vegetate the pinnacle as part of this approval so that it is back to what it was.

Counsel stated the resolution either has to be a complete denial or a conditional approval because stormwater has not been completed. Herb Koster asked if the conditional approval will fall under the 45 day time frame. Counsel replied that looking at the section of granting a conditional approval of the plat it says "The PB should designate a duly designated officer to sign the plat upon completion of the conditions and requirements as made and stated in the resolution of conditional approval." Counsel stated that a stormwater management application is going to be well beyond the 45 days. Herb Koster stated that he would like Counsel to assist in making the resolution so that they are not to create any loopholes. Herb Koster asked if the applicant would be willing to sign a waiver of the 45 days. Peter Loyola replied that they would be most willing to give a written consent waiving the 45 days. Counsel stated with that in hand they will have absolute insurance that nothing can go wrong.

Counsel stated that they also have the condition of the planting plan which will also need to be approved by a specific designee. Don Roessler stated that they could look at the planting plan in the site plan review for each house. John Gaddy stated that he would like to review it now especially since they have already done a top notch job. Herb Koster asked if the applicant would be agreeable to adding a planting plan for each house that will be reviewed by John Gaddy. Peter Loyola replied yes.

RESOLUTION:

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 abstained. Sandi Aldrich and John Gaddy opposed. No Board Action.**

Counsel asked if there was anything that would change a vote, such as another requirement. John Gaddy stated that he is happy with the applicant's interest in being able to and having the confidence in the crafting language that would be able to screen the houses, but he is still of the opinion that the development could be done at a lower level. He stated that the applicant has been taxed for a property that has a view but he does not believe that the development is in the best interest of the long term scenic value of the Town to have the development on the top of the hill. Sandi Aldrich agreed. Counsel stated that there is no Board action and there is no approval whatsoever. Herb Koster asked if this basically constitutes a denial. Counsel replied yes, but usually a denial is based upon reasoning which allows the applicant to either challenge or change their application.

John Gaddy stated that Scott Miller and Peter Loyola had showed concern because they thought in the initial application because the PB entertained the application they were under the impression that the PB was moving forward with this. He stated at that point he was skeptical of the project and thought he projected that to them then as well as in the beginning but he was willing to entertain the expertise of the team to develop the idea. He understands that there has been tremendous time and expense put into this project even up to this point but he still feels that it is a tremendous amount of effort to put 2 houses up on that one spot.

Peter Loyola stated that every single motion that has been made as part of moving this forward has been a unanimous decision and he has been part of that. The record shows clearly that that they have been doing everything they possibly can to make sure they are meeting that. He stated that the sketch plan a year ago was also unanimously approved. He stated that for 3 years they have been willing to work with them to mitigate a temporary disturbance and he is finding it hard to believe that after 3 years there is the potential to get a denial. He understands the skepticism that was before the Board and if they didn't think it was possible they would not have gone to great lengths and expense. He stated that they are meeting every requirement that they possibly can within the law for a minor subdivision. With regard to the Comprehensive Plan, if the polls were taken 5 years ago, why isn't it law now? He stated that he was surprised that John Gaddy opposed the project, specifically because he felt that they were making every effort to mitigate a temporary disturbance.

John Gaddy stated that at each and every phase there was question in his mind as to whether or not the PB was in support of this. He stated that each time he voted in favor of this it was a vote in confidence of their professional expertise. He stated that looking at previous minutes he agreed with Herb Koster that "they are hoping that this was going to be the most appropriate use of this property" and again he would not have as much reservation about this if there was a place to build below the pinnacle. He believes in their right to develop but he does not believe the top of the hill is the most appropriate spot to have this development. Peter Loyola stated that he doesn't understand how they can go from a sketch plan approval to a denial because the same concept was laid out and it has not changed a great deal.

Counsel stated that they cannot take action with 3 votes. Peter Loyola asked if they could have further discussion. Counsel stated that there is something on the agenda tonight that may change their outcome but he has not had the opportunity to discuss it further with the PB. He stated that the TB has requested that the ZBA and PB give consideration to adding alternates to their Boards which would help tremendously in this case since they are short with 2 recusals. He stated that this is in the premature phases of discussion only and if the Board agrees to it then he would be working to enact it into local law. He stated that in order for an alternate to vote they would have to be completely knowledgeable by reading the entire record and would have to be present for a presentation in which they could participate and vote. Peter Loyola asked if it could be done in the next 2 months. Counsel replied that if the PB approves it, a public hearing would need to be held probably in February in which it could be enacted and then the TB would have to select the candidates to fill the positions. Peter Loyola asked what the likelihood of approving alternates would be. Counsel stated that it will be his recommendation that they do so because of situations like this and he does not feel that they would be opposed to it. Counsel stated that if they have faith that it will pass, then they could return in a few months to present again with hopefully a full voting Board. Counsel stated that this concept has not come about just because of this application but rather they have been discussing this for several months because they realize they are losing members due to conflict and by absence.

Peter Loyola asked if it would be possible to table their application. Counsel asked if the PB would be willing to offer that they table the application so that the applicant may renew their application which would rescind the no action so that the applicant may continue. He continued that when the application does happen to continue he would recommend that they re-open the public hearing so people could be heard. Mike Hill asked for further explanation of the 45 day waiver. Counsel stated that the Code states that upon completion of the public hearing a decision needs to be made and they are requesting that since they have closed the public hearing that they provide a waiver stating that no action will be taken with regard to the subdivision. Mike Hill stated that on behalf of his clients he would like to execute the waiver and allow the process to move forward.

RESOLUTION:

Motion by Donald Roessler to allow SD06-05 to continue the application process. Seconded by John Gaddy. Sue Wilson and Henry Caldwell abstained. Sandi Aldrich opposed. All others in Favor. Motion Carried.

2) SD06-09 RUFFOLO, SAVERIO. Represented by D.L. Dickinson & Assoc. & Peter Sisca. Seeks to divide into 7 lots that parcel designated as Section 185.00, Block 1, Lot 2, Zones RR5, RR10 & LC25. Property Location: South Trout Lake Rd. Sketch Plan Review. Major Subdivision. Subject to SEQR. *Note: This item was tabled at the Nov. 2008 meeting pending public hearing and is in conjunction with SPR08-26 for a major stormwater project.*

3) SPR08-26 RUFFOLO, SAVERIO. Represented by D.L. Dickinson & Assoc. & Peter Sisca. Seeks Type II Site Plan Review for a major stormwater project to remove more than 15,000 sq. ft of vegetation, specifically 160,000 sq. ft. is proposed. Section 185.00, Block 1, Lot 2, Zones RR5, RR10 & LC25. Property Location: South Trout Lake Rd. Subject to SEQR. *Note: Note: This item was tabled at the Nov. 2008 meeting pending public hearing and is in conjunction with SD06-09 for a 7 lot subdivision.*

Derek Mitchell stated that at the last meeting the Board requested that he show the right-of-way which he has done.

Sue Wilson stated that they have indicated that there will be no improvement to Kathy's Crossing. Derek Mitchell stated that they will only be doing some re-grading in certain areas. Sue Wilson stated that she has heard tonight that the road is impassable at certain times during the year. Derek Mitchell stated that could be taken care of if the road were to be re-surfaced with gravel. Herb Koster asked if the applicant would be willing to widen their side of the right-of-way and do some stormwater management there since they are accessing Lot 2 this way. Derek Mitchell stated that he would have to speak to his clients. He stated that he is not sure that they could put in an adequate stormwater management device in this area because it is the low point of this lot and there really is nowhere to put the water once it runs off the road. Sandi Aldrich stated that she doesn't think he could widen it because it would be in the brook. Derek Mitchell stated that a section of the right-of-way is also part of the wetlands.

John Gaddy stated that he has spoken with the neighbor on the north side and she mentioned a stone wall that serves as boundary line between the properties and she was concerned about maintaining the stone wall. Derek Mitchell stated that they would disturb the stone wall. John Gaddy stated that he would like to add that as a condition. Derek Mitchell agreed.

Herb Koster stated that even with the wetland designation they still have an area where they can widen approximately 5 feet and asked if there has been any discussion of widening the roadway with the neighbor to the south. He Derek Mitchell stated no. Herb Koster stated that it would be very difficult for the PB to approve access to Lot 2 through that road as it exists now. Derek Mitchell stated that things could be done to improve the road and it is only accessing one lot. Sandi Aldrich stated that they will not be able to access the lot in the spring. Don Roessler asked Kathy Simmes if she accesses her home from the right-of-way. Kathy Simmes replied no but they do access the Pooch Palace and her son's house.

Sandi Aldrich asked if there was enough room for 2 rows of planting on the corner to buffer the headlights for the neighbor's house. Derek Mitchell replied that they could and initially he staggered them but realized there wasn't much of a benefit in that because of the angle the headlights would be coming in. Sandi Aldrich stated that they could put in a second row and offset them to provide a solid barrier. Derek Mitchell replied that

they could do that. He also stated that there is a 100 feet of forest in between where those trees will be planted and the house.

Don Roessler asked if there was a particular reason for the location of the house for lot 2. Derek Mitchell replied yes because there are a few intermittent streams with an old logging road in between them which limited the area in which they could place the house. John Gaddy stated that since there seems to be an issue with stormwater and accessing lot 2 he asked if there was a way to reconfigure the lots so that there was another lot coming off of the cul-de-sac. Derek Mitchell replied that they are concerned with setbacks for stormwater and well and there are 2 other possible locations but there has been no soil testing in those areas to prove that. John Gaddy stated that they could also look at reconfiguring the lot lines at the end of the cul-de-sac because they would not be crossing any wetlands.

Herb Koster stated 10' of a right-of-way is just not adequate access to Lot 2. He stated that it would be different if they have 20'. Derek Mitchell stated that 20' sounds a little excessive for a driveway for a single home. Herb Koster stated that they are now talking about accessing a home site where previously it was just used to access land. They are upgrading the land and they are looking to upgrade the road. Herb Koster stated that the applicant will either need to create a different access to Lot 2 or enhance the current roadway. Derek Mitchell stated that a normal driveway is 10' wide and if they plan to re-grade this and put down an item 4 it should be sufficient to access just one lot. Herb Koster stated that if he can show them something engineered that can improve it and prove that it won't be flooded in the spring they could be satisfied. Derek Mitchell stated that he will look into it.

Herb Koster stated that they will need to make a decision, one way or another, on this application next month. He stated that he does not have a problem with the overall project and Tom Nace has signed off on their stormwater management but he does feel that driveway is not adequate. Derek Mitchell asked if the PB would like to have the engineered driveway plan reviewed by Tom Nace. Herb Koster replied yes that he would like Tom Nace to say that the driveway will not be flooded at any time of year. Sue Wilson asked if they would be willing to waive the 45 days. Derek Mitchell stated that he didn't feel that there was any need to at this time. Herb Koster stated that if there is a need to next month he can do so.

RESOLUTION:

Motion by Donald Roessler to table application SD06-09 and SPR08-26 pending further information regarding access to Lot 2. **Seconded by** Henry Caldwell. **All in Favor.**
Motion Carried.

4) SPR08-29 BOTTO, JIM & MONICA. Represented by John Van Oort. Seek Type II Site Plan Review for an accessory structure greater than 1,500 sq. ft. of floor space. Specifically, 2,064 sq. ft. is proposed. Section 185.20, Block 1, Lots 4, Zone RCL3. Property Location: 34 Acorn Drive. Subject to SEQR.

John Van Oort stated that they are seeking to convert the garage into a garage with a guest quarter above. Currently this area is unfinished and they are seeking to put two bedrooms and a bath up there. He stated that the main house was completed just recently and they were under the impression in the original approval that this had been approved since the septic was designed to handle these additional bedrooms.

RESOLUTION:

Motion by Donald Roessler to accept SPR08-29 application as complete, waive a public hearing and having met the criteria set forth in the code, grant approval for construction of the accessory structure with the following conditions: 1) that there be no cooking capability above the garage. 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.**

5) SPR08-30 SAGBOLT, LLC. Represented by Attys. Benjamin Pratt and Jonathan Lapper. Seeks Type II Site Plan Review for a major stormwater project, to remove more than 15,000 sq. ft of vegetation, 27,348 sq. ft. is proposed. Section 171.16, Block 1, Lot 16, Zone PUD. Property Location: 110 Sagamore Road. Subject to WCPB review. Subject to SEQR.

6)V08-55 SAGBOLT, LLC. Represented by Attys. Benjamin Pratt and Jonathan Lapper. In accordance with Section 200-93A (other regulation applicable to Planned Unit Developments), seeks area variance to convert the Trillium into guest rooms, alter the Trillium terrace and construct a swimming pool. Section 171.16, Block 1, Lot 16, Zone PUD. Property Location: 110 Sagamore Road. Subject to WCPB & APA review.

Ben Pratt explained that they are doing the process slightly out of order for this PUD amendment but they were hoping to act quickly in order to start the process of renovation if it were to be approved. He stated that normally the applicant would come to the PB first for SPR and then go to the ZBA for approval or denial. He stated that they tried to get as much done as they could this month so they could start some of their work to be ready by Memorial Day. He stated that they had discussed with all necessary parties and everyone was agreeable to do it this way and they very much appreciate it.

Ben Pratt explained that there are 2 PUD amendments 1) they are planning to convert the Trillium wing and the Administrative offices into 32 additional guest rooms, and 2) they want to install a pool on the front lawn near the indoor pool. Due to the disturbance around the pool area they have submitted a major stormwater application.

Ben Pratt stated that they have also been in contact with the APA, State Office of Parks, Recreation and Historic Preservation, DOH and the LG Waterkeeper. To date they have draft permits from the APA in hand approving both projects as minor permit amendments to a couple of already existing APA permits with no unusual conditions. The Office of

Parks, Recreation and Historic Preservation has approved the project having found no adverse historical impact. They have worked with the DOH with regard to the pool's size, location and set-up/maintenance and so far they have been very positive about the information they have given them. They have met with the LG Waterkeeper and so far they have not submitted any negative comments. They have met with Tom Nace who has also signed off on the stormwater.

Ben Pratt stated that the reason for both projects is because the Walsh family believes that in order to make this hotel successful, especially in these hard economic times, in addition to working on the expense side, they also have to invest in capital improvements to create a better guest experience and create more space in which to have that experience for the hotel. He stated that there is not another hotel of the stature of the Sagamore that the Walsh family knows that does not have an outdoor pool. Ben Pratt stated that originally there was an outdoor pool approved in the PUD but Green Island Associates never did build it.

With regard to the rooms, Ben Pratt stated that one of the major complaints that guests make is that they had hoped to stay in a national register hotel and they were put in a basement condo a quarter of a mile away from the main hotel building. He stated that they feel the whole guest experience will be very enhanced from a revenue point of view with both of these improvements.

Ben Pratt explained that the exterior of the hotel will not be changed with the exception that the patios which were included as extra interior space will be returned to patios and there will also be doorways cut in the rooms that border the Trillium Terrace.

Ben Pratt stated that the LA Group has done their usual good work with respect to evaluating parking, water and sewer and as they can see from their information provided they believe none of those issues will have a negative impact on the Town as a result of this expansion of the hotel.

Sandi Aldrich asked if the sewage output for the guest rooms will be more or less than the restaurant. Jeff Anthony replied that essentially it will be a wash. They provided a letter which explains the water usage at the hotel and it has been reviewed by Tom Nace. He stated that since the last water calculation was done the Sagamore has re-built roughly 100 rooms with water saving devices, decreasing the units from 4.3 to 1.6 type units in terms of the toilets. That difference there coupled with other water savings approaches such as asking their guests not to throw their towel into the basket everyday and that saves roughly just under 100,000 gallons of water/year. Since the Sagamore is implementing these and other programs it actually comes out to be a wash and Tom Nace has agreed with that. With no increase of water usage then technically there is no increase in sewage. Ben Pratt stated that although they feel that there will be a savings because they are combining their kitchen and dining rooms they did not use it in their calculations to justify the neutrality. Sandi Aldrich asked if the Trillium will be moving elsewhere in the hotel. Ben Pratt stated that there will be another fine dining area in the

hotel but it will not be in the same scope of the Trillium and it will not have an independent kitchen.

John Gaddy asked if the rooms proposed were bigger or smaller than the current rooms. Ben Pratt replied that he thinks they are fairly similar and some of them are connected as suites. Jeff Anthony stated that the architects indicate that they looked at the existing hotel rooms in the hotel and they are similar but they are designed with a shared door in order to have the ability to create suites.

Henry Caldwell asked if they have purchased the John Bolton Simpson house. Ben Pratt not yet but they are in discussions. Henry Caldwell stated that he thinks that it is a great idea to in fill the existing historic hotel. He asked how the density of the PUD is affected by this addition considering the approval of the 51 spa units a few years back which also addressed the parking situation. Ben Pratt stated that this is still a permit they have with the Town and APA and at the present time something they are looking at but they have not made the decision to build it or not. He stated that PUD amendment would have dealt primarily with the parking from that unit and any current overflow. He continued that they have looked at the parking on the island and the parking for the original APA permit and PUD requirement is this will not over exceed the current parking. Henry Caldwell stated that they may have satisfied the parking requirement but it does not mean that they do not have a parking problem. Ben Pratt agreed stating that if there are several events on top of a full house parking can become an issue. Henry Caldwell asked how long ago the permit was issued for the spa units. Ben Pratt replied over 5 years ago and those permits have been renewed and is good until November 28, 2010. By that date they will need to be under construction to the point of framing according to the APA. Henry Caldwell asked what happens if they are not at that point. Ben Pratt replied that they would ask the APA to extend that permission or decide to not build the units at all.

Henry Caldwell asked how many gallons the pool would hold. Ben Pratt stated that the pool is 30' x 90' which is 2,700 sq. ft and the depth is no more than 5' at the deepest part. Henry Caldwell stated that he is concerned with the amount of gallons the pool will hold and the amount of backwash that they will be doing every 10 days. He asked if they have talked to the Town Sewage Treatment Plant about this. Ben Pratt stated that they already have and it has been discussed that the backwash of 1,200 gallons will be done every 10 days or so and will be done at night. Henry Caldwell stated that is they were to ask people that live down river from the sewage treatment plant you don't think the system works very well. He stated that the plant is rated at 300,000 gallons, but last summer they got 700,000 gallons and the Sagamore does not need to be pumping in an additional 1,200 gallons in those cases and he is hoping that they will work with the Town on this. Ben Pratt stated that he is sure that they will. Bill ? stated that they have already talked extensively with the Sewer Treatment Plant and they have already invested a lot of money to make improvements last winter with regard to the grease traps, the separation of the kitchens and the Town has already commended them on that effort. Henry Caldwell asked how they would handle servicing the pool if they were needing to pump it out completely. Ben Pratt stated that would be a rare occasion they would need to have tankers come and do it. Henry Caldwell stated that they wouldn't be able to find enough

tankers to empty this large of a pool. Ben Pratt stated that they would be in communication with the Sewage Treatment Plant with regard to any backwashes and if there were in need of emptying the pool.

Henry Caldwell stated that he feels that what they are doing does make sense and he thinks it is a good project.

Ben Pratt provided some information about the Walsh family and their properties that they own and operate in the U.S. and Canada. He stated that the Wentworth by the Sea in Portsmouth is an old historic hotel that had been empty for 15 years when the Walsh family bought it from neighborhood group who were trying to save it. He stated that they conducted a very expensive and historic renovation of that property. The family is very hands-on with their projects. They are very concerned with historical renovations and have won several awards with this particular renovation from the National Historic Trust as well as local historic entities. He stated that the Wentworth is now run under a Marriot banner and a few years ago it was voted the number one Marriot hotel in the entire Marriot system. He stated that they run 125 hotels in the U.S. and Canada and they hope that they can make an economic success of the Sagamore. Ben Pratt stated that the Walshes intend for the Sagamore to become part of their premier group of hotels.

Ben Pratt stated that in addition to historic preservation the Walsh family is very environmentally conscious and their hotels have won a variety of different environmental awards. They have cut down the use of chemicals and water and have made their hotels environmentally sound, safe and beneficial. He stated that the Samoset in Maine is a certified green hotel and they intend to use a lot of those policies at the Sagamore, such as using a more relaxed laundry system by not collecting towels and linens on a daily basis, which show an average 70,000-80,000 gallon/year in savings. They also intend to use other energy saving policies as well.

Ben Pratt stated that the stormwater is designed to take 9 times greater than what it would take to just take care of the stormwater from the pool. He stated that presently the water run-off from the main part of the is not being handled and has caused run-off and ruts in the front lawn area. He stated that 90% of this stormwater design is to pick up the stormwater from the roof of the hotel and to dispose of it and only 10% is for the pool. He stated that they are making a concerted effort to improve the whole premises rather than just to install a pool. Ben Pratt stated that the pool meets all the APA setbacks and any stormwater setbacks.

Henry Caldwell asked about the lighting that will be used. Ben Pratt stated that the APA permit has a condition that the lighting is to be low wattage, downward facing as they can get. He stated that the pool will not be open at night and will be used from Memorial Day to sometime in September. He stated that they knew what the lighting had to be before they met tonight and that is how it is proposed to be.

John Gaddy stated that since they were on the topic of lighting he asked if there was anyway that they could address the lighting on other parts of the property. He stated that

the lights on the bridge make it very difficult to go under the bridge and see where the support guards are without getting right under it. Henry Caldwell agreed and stated that not only would it be helpful for boaters but the Sagamore would save a ton of money by changing them. John Gaddy asked if they also look into shielding or redirecting the lights on the Morgan dock and the dock on the southeast corner. Ben Pratt stated that he would take these concerns back to his client for discussion.

Ben Pratt stated that the intention of the Walshes is to go around and renovate every building on the island to do the things necessary to modernize and develop the property properly. He stated that this is just the beginning for the Walsh family. He stated that they feel that these PUD amendments will be good for the community and the longevity of the hotel.

Herb Koster asked how they should be handling the approval of item #6. Counsel explained that the section in the code for the purpose of regulating development and the use of property after initial construction and occupancy, any changes to the PUD require a variance request by the ZBA and the PB shall review it as well and both Boards need to make a finding favorable to that section and that these requests for amendments of the PUD are in keeping with the original intent and function of the PUD. Counsel stated that this recommendation will be going before the TB on January 6th and if they are to add any conditions it should be done here. He stated that he feels that the public hearing can be waived.

RESOLUTION:

Motion by John Gaddy to accept SPR08-30 application as complete, waive a public hearing and having met the criteria set forth in the code, grant approval of the major stormwater management permit. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. **Seconded by** Donald Roessler. **All in Favor. Motion Carried.**

RESOLUTION:

Motion by Donald Roessler to waive a public hearing and favorably recommend application V08-55 to the Town Board pursuant to Section 200-93A having found that these amendments as proposed to the original PUD are reasonable in keeping with the intent and function of the Planned Unit Development as originally approved. **Seconded by** Sue Wilson. **All in Favor. Motion Carried.**

7) 2009 PB Meeting Schedule

Pam Kenyon asked if the PB had any concerns about the upcoming meeting schedule. Motion by John Gaddy to approve the 2009 Planning Board Meeting Schedule. Seconded by Sue Wilson. All in Favor. Motion Carried.

8) Ed English- APA Issue

Henry Caldwell stated that he has a letter from the APA to Lapinski when they bought the property which laid it all out. He stated that it seems to him that Ed English should be allowed to buy all of that property on the east side of Padanarum Road without any kind of review. Counsel replied that is one of the theories. He stated that Dennis Phillips was attempting to explain that the APA considers that a natural subdivision. However in January 2005, they sought and found an interpretation. Counsel stated that Dennis Phillips told the ZBA that they need not tamper with that interpretation but rather except the unique factual circumstances which he proposed. He proposed was that by virtue of the fact that there are superseding APA regulations defining this as a natural subdivision as it exists on the day he was talking about it, and not how it will exist in a week and a half, it jurisdictionally takes the entire issue away from the Town of Bolton. He stated that he did not feel very comfortable with that. He stated that Dennis Phillips asked that they not tamper with the interpretation but only provide what he needs which would allow the roads to act as a natural subdivision as far as the APA is concerned and they are permitted to create a larger deed and it is not a subdivision of lands. Counsel stated that Dennis Phillips could not persuade the ZBA and their interpretation stands. Henry asked if after January 1st the APA will have the same interpretation as the ZBA. Counsel replied yes. However also since 1973 the APA has taken the position that any large land holdings of multiple contiguous tax parcels in Resource Management areas constitute a unified parcel for the purpose of APA regulations and should an owner transfer one of those parcels, that constitutes an APA jurisdictional issue and is considered a Class A Regional Project and they alone have jurisdiction and the municipalities do not.

Henry Caldwell asked why Ed English couldn't just buy all of those parcels on the east side of the road. Counsel replied that there are remnants of tax parcels on the other side of the road. Henry Caldwell stated that the APA does not recognize tax parcels. Counsel replied but they Town does. Dennis Phillips wanted the Town to tax that position because the Town did not have jurisdiction but if they concede that then they wouldn't have any jurisdiction on subdivisions.

Counsel stated that the Town has an approved land use ordinance that was reviewed by the APA before it was enacted and it says that they can subdivide these parcels but it also says that one tax map parcel conveyed from owner A to owner B does not constitute a subdivision.

Henry Caldwell asked if the APA has formally taken jurisdiction over this project. Counsel replied that they have noted that it is an APA violation. He argued with Dennis Phillips to accept the violation and see where it takes them because the natural of the regulation that has allegedly violated is a minor violation, one which is easily remedied by a \$200 penalty.

Sue Wilson asked where the subdivision stands now. Counsel replied that he accepts Dennis Phillips explanation that the APA will say that Bolton had no jurisdiction over that subdivision because they have exclusive jurisdiction, it is a Class A Project based on the fact that they are all adjacent parcels and under the APA regulations they do not want them subdividing them. Henry Caldwell asked what happens after January 1st. Counsel

stated that the APA has further confused the issue because they are now saying that they no longer allow roads to act as a natural subdivision. Counsel stated at this point they cannot worry about it because they did the right thing. Henry Caldwell stated that he is thinking of Ed English and what Dennis Phillips was proposing sounded like a good solution to the problem. Counsel agreed but stated that he needs to go through the process.

Counsel explained that this is not the first time they have dealt with inconsistencies with the APA regulations and conflicts with the Town of Bolton regulations. He explained the situation with the reversals of approval granted by the ZBA. He stated that the ZBA follows criteria and tests in order to grant approval and every time the APA has overruled the decision. Counsel stated that upon asking for an explanation the APA has explained that they do this because the State legislature has not changed their test and until then they will continue to do the same. Counsel stated that someone has to challenge the APA and hopefully someday it will be challenged and eventually changed. So far to date when the APA has been challenged they have only lost twice, one of which was for Simonson in Bolton.

Pam Kenyon asked if the APA is stating that they have full jurisdiction over any lands that involve wetlands. Counsel replied that is the APA's argument. Pam Kenyon replied that the town would be reviewing very few subdivisions.

Henry Caldwell asked what happens to Ed English. Counsel stated that it is not considered a subdivision and he is facing a minor technical APA violation which could be easily solved by reconfiguring lines if possible or a small monetary fine. Henry Caldwell asked if Rolf Ronning could come in for a subdivision of that side of the road. Counsel replied that he cannot because APA is saying that they have exclusive jurisdiction and he will have to go before them. Herb Koster asked why the APA hasn't done this in other projects involving wetlands. Counsel stated that he does not know but after 36 years they've got energy.

The meeting was adjourned to Executive Session at 10:00 p.m.

Minutes submitted by Kristen MacEwan