

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, December 15, 2008
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, Co-Chairman William Pfau, Tony DePace, Kam Hoopes, Meredith McComb, Jeff Anthony, Zoning Administrator Pamela Kenyon and Counsel Michael Muller.

Absent: John Michaels

Meeting was called to order at 6:34 p.m.

Greg Smith asked if there were any changes or corrections to the November 17, 2008 minutes:

1. Meredith McComb, page 7, with regard to Riedinger and Avedisian (V08-47), 1st line should read “Meredith McComb stated that she would argue that changing the orientation away from the west side entrance of the house and removing those stairs, they are improving the situation *of* being too close to the property line.”

Motion by Jeff Anthony to approve the minutes as corrected. Seconded by Tony DePace. Greg Smith abstained. **All Others in Favor. Motion Carried.**

1) V08-53 STEIDINGER, WALTER. To construct a 26’ x 28’ garage with storage, seeks area variance for a deficient front yard setback: 50’ is required, 27’ is proposed, Section 185.00, Block 3, Lot 33, Zone RCL3. Property Location: 51 Rainbow Drive. Subject to WCPB review.

Walter Steidinger stated that he wanted to erect a 2 car garage which would store his boat and truck. He stated that although there is a setback requirement of 50’ the most ideal spot for building the garage is at 27’ because it is the most level and would require the least amount of disturbance.

Meredith McComb asked how this location compares to the existing parking pad and boat storage now. Walter Steidinger replied that it is in the exact location of the proposed garage. He stated that he has left a buffer zone of trees between the proposed structure and cul-de-sac. Greg Smith asked if he needed approval from the HOA. Walter Steidinger stated that there is nothing in writing but he has verbal approval from all of the neighbors and they do not have any problems with it. Pam Kenyon stated that there was no correspondence or Warren County Impact.

Meredith McComb stated that she couldn’t imagine that they would want the applicant to cut down a bunch of trees to be more compliant with the setback. Walter Steidinger stated that he has several nice maple and oak trees there and it would be a shame to have to take them down. Greg Smith stated that he is improving the lot and building away from the lake which are

pluses. Meredith McComb stated that the size of the proposed structure is not substantial and it is placed in a much better site than meeting the setbacks in this case.

There were no comments from the public in attendance. Pam Kenyon stated that there was no WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from Walter Steidinger (V08-53) for an area variance as described above.

And, due to 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 be achieved by any other means feasible to the applicant besides an area variance; however other locations would require more disturbance and tree removal and not really grant much benefit.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, would be minimal if any, a buffer screen has been left between the structure and the cul-de-sac and the site is basically already prepared.
- 3) The request is not substantial; given the topography and character of the lot and size of the structure proposed.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; in fact, it could be argued that this is the least intrusive option available to the applicant.
- 5) The alleged difficulty could be considered self-created, but the benefit to the applicant is much greater than any negative impact of that.

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

Now, upon motion duly made by Meredith McComb and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

2) V08-54 SALAMONE, KENNETH. Represented by Bruce Mowery. To demolish and rebuild boathouse 39' in width, seeks area variance for deficient shore frontage. 200' is required, 155' exists. Section 213.05, Block 1, Lot 6.1, Zone RM1.3. Property Location: 4124 Lakeshore Drive. Subject to WCPB and APA review.

Bruce Mowery stated that this request pertains to what is now an existing location of the boathouse. They have had some surveys done of the existing house before it was taken down recently and it shows the boathouse, docks and cribbing as they still exist. The existing boathouse is 23'7" wide without overhangs and it is 40'7" long and there is 10.5' dock beyond on the north side of the boathouse. Bruce Mowery stated that they are proposing to take the existing boathouse down and create a 2 slip boathouse. The total building itself would be increase to 33', however, the whole width of the dock area or footprint would remain the same except the cribbing would be new and the boathouse would be widened. He stated that it has been suggested that 12' wide base for the boathouse is the norm today and by keeping everything to a minimum, each of the dock areas or fingers are 3' wide. The purpose of the deck is because Mr. Salamone has a 42' boat and this will allow them to have some walk area on the inside and to be able to close the overhead doors. He stated that they are not enlarging the structure by that much significance. The boathouse is not projecting 50' off of a shoreline in front of someone's house, it is protected in a bay area and is out of plain view so there is very little visual impact of the old or new boathouse. Meredith McComb agreed and stated that this area along the shore is very steep and the neighbors' houses sit way up and this will not impact them.

Meredith McComb asked if the cribs would be staying. Bruce Mowery replied that the old cribs near the shoreline will not be altered but the others will be removed and new ones will be put in because they have to widen the dock.

William Pfau stated that the applicant has 155' of lakefront but the plan is showing a different number. Bruce Mowery stated that they have an existing permit from the LGPC for this project. He stated that the measurement from the tie lines is 182'. However, Bolton determines shoreline differently which explains the difference in numbers on the plan. He continued that the actual lake frontage by the LGPC standards is measured in 10' increments along the shoreline as it winds and turns which is 262' of lake front. Kam Hoopes stated that the variance being sought is strictly for the deficient shoreline but the LGPC has no problem with it and has already issued a permit. He stated that he doesn't see this as a big problem. Greg Smith stated that the boathouse will match the design of the new garage. Bruce Mowery stated that it will also eventually match the main house when they get around to planning it. He stated that he wanted to keep the same architectural design for all of the buildings on this lot.

There were no comments from the public in attendance. Pam Kenyon stated that there was no WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from Kenneth Salamone (V08-54) for an area variance as described above.

And, due to 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# 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 an area variance; it is a dimensional consideration. Taking into account the LG Park Commission's issuance of a permit and the particular way that the Town of Bolton measures the shoreline, it makes a litigating case for creating the variance.

2) There will be no undesirable change in the neighborhood character or to nearby properties, in fact it will be an improvement because the boathouse is long past its age of usefulness or attraction.

3) The request is not substantial; considering the size and location of the property.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; over what is there already.

5) The alleged difficulty has some self-created aspects to it, however it is not self-created in any way that affects the way this Board looks at it.

The benefit to the applicant is not outweighed by the potential detriment to 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. **All in Favor. Motion Carried.**

3)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.

Note: Jeff Anthony recused himself.

Pam Kenyon stated that this is before them because any changes made to a PUD must be reviewed by the ZBA and PB. Kam Hoopes asked if they would be dealing with any other issues with density or setbacks. Pam Kenyon replied no. Meredith McComb asked how they would construct a motion to approve this. Pam Kenyon replied that it is an amendment to the PUD which is done through the variance process. Meredith McComb asked if they would use

the same criteria. Pam Kenyon referred to Counsel. Ben Pratt stated that Bolton's zoning ordinance is unusual in the sense that most PUD amendments are done by Town Boards and not by Zoning Board of Appeals. However, Bolton gives the ZBA the ability to amend a PUD. He stated that they would not use the same criteria because they are not seeking a variance. If they look at this as purely a PUD amendment, there is no criteria in the ordinance for that. If they look at this as a variance, the requirements in terms of the balancing benefits do not technically apply to their PUD amendment. William Pfau asked if the PB would be considering the same thing on Thursday. Ben Pratt replied no, they will be doing a site Plan Review with respect to the stormwater and Site Plan Review for the whole project. He stated that the ZBA was to technically just deal with the PUD amendment and not with Site Plan Review type questions and comments. Counsel Muller agreed. He stated that they are considering the proposal and giving an advisory recommendation to the TB. He stated that if they find the proposal reasonable they make the recommendation to the TB that it is in conformity of the past plan and they vote favorably to recommend that the TB approves it. He stated that this is a legislative act that must be done by the TB and they will look at this and their recommendation and enact the PUD amendment. Ben Pratt stated that they have done amendments to the PUD in the past and all have been looked at in the same manner.

Kam Hoopes stated that the PUD is a blank slate, when it is formed they create a matrix of how they want to do business, what it is going to like, etc. and that matrix is fixed. Any changes are going to be subject to review by all of the Boards. His main consideration is seeing if the applicant is still trying to operate in the same fashion with improvements in achieving those goals set forth originally. Greg Smith stated that they will just be giving a recommendation to the TB. Counsel asked Ben Pratt if that would be satisfactory. Ben Pratt replied that his only concern is that they are trying to get all of this done this month because they would like to have a building permit and begin the work. Counsel stated that they will have to go through the process of approval from the TB and they cannot just get a building permit after approval from the ZBA and PB. Ben Pratt asked when they would go to the TB. Pam Kenyon replied that if both Boards approve they could go before the TB on January 6th.

Counsel stated that the resolution should include the word variance in terms of being consistent with past approval and criteria, the current presentation will allow the PUD to be varied. Greg Smith stated that if it is a variance request they should try to push through with the balancing act. Pam Kenyon stated that she thinks they have to grant a variance from the PUD as originally outlined. William Pfau asked if the applicant will have to worry about the APA forcing their own criteria on the variance request. Counsel replied not in this instance, they have jurisdiction but the applicant has stated that they have that already covered. Kam Hoopes stated that he feels that it would be a far stretch to use the balancing act. Meredith McComb stated that it is a tough fit because going from 100 to 132 units seems substantial and they may not want to go down that road. Counsel stated that the test of being substantial may not be a comparison to how many units they have to how many they want, but rather is this substantial to the overall concept. Counsel continued that with regard to the test about undesirable changes to the neighborhood character or nearby properties, the answer would be no because this is consistent to what they are already doing. Kam Hoopes stated that the application states that more people have a desire to stay in the main building. He stated that he does not know what the financial situation is but it seems that this business is trying to take a shot at something and he is not opposed to that. The number one impact environmentally would be the construction of a pool in essentially the same area of the old outdoor pool, it terraces the

lawn, it is attractive looking project, and this is the hotel trying to continue in the same vein that it is in now with a slightly different emphasis on the physical plant. Neighbors will not be impacted, there are no set back or density issues and if the PB sees it the same way he doesn't see this being the least bit controversial. Meredith McComb suggested that they hear the proposal before continuing on with the criteria.

Ben Pratt stated that the Sagamore was originally approved for 100 units for the PUD and APA approval. He stated that they are adding 32 additional units to the hotel to make 132 rooms in the hotel. The APA has classified this as a minor permit amendment and has received a draft permit from them. The APA have added the usual conditions subject to what the ZBA says. He stated that the PUD does not just pertain to the main hotel, however they are just dealing with that section of the PUD. In reality there are 180 condominiums, 100 rooms in the hotel, the hermitage area and the approval that they already have for the 51 additional units for the spa. Therefore the substantiality of this in proportion to what is already there is 32 over the total which is 300-400 rooms.

Ben Pratt gave an overview of the Walsh family and what they have done in other Ocean Properties projects. 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 a 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. 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 on 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. The statistics on that show a 70,000-80,000 gallon/year in savings. Meredith McComb stated that the use of the space and looking at the development of Wentworth seems that it would be very positive for the Sagamore and the Town. Greg Smith agreed.

Ben Pratt stated that the Office of Parks, Recreation and Historic Preservation have inspected the hotel and reviewed proposed plans. The Office of Parks has provided a letter stating their finding of no adverse historic impact with respect to the proposed development. He stated that they have also spoken to the APA and have an application submitted. The APA at this point advises them that they have a draft permit with respect to the rooms that doesn't have any tricky conditions in it, and if they gain approval from the ZBA they will be signing the permit. The APA has advised them verbally that they are prepared to approve the pool as well, but they had some stormwater concerns about the pool and the Board should have that letter addressing this concern. The APA was concerned that the test pits were dug were a couple of feet above the eventual level that they hope to place the lobster traps under the stormwater drainage materials. The APA thought that it might be wise to go back and dig down to the actual depth so that they could be absolutely sure that there was no problem. He stated that since that letter

their team has been in contact with the APA and gone over the types of soil in that area and have satisfied the APA with respect to this issue. They have received a verbal approval and hope to have something in hand within the next few days. He stated that the LG Waterkeeper seems to be okay with the project and they have not submitted any negative comments. The Town Engineer Tom Nace has also reviewed and signed off on the plans.

Ben Pratt stated that they are converting the Trillium and Administrative wings into 32 units for guest rooms. He stated that they have done water and parking analysis as well as provided the drawings. He stated that they feel this will create a significant economic benefit to the hotel. With regard to water, they think there will be a savings or at worst neutral, for the sewer output. The parking can be handled under the existing parking. He stated that the only physical change on the exterior will be that they will be returning the patios in the Trillium area that were once included as the interior space.

Meredith McComb asked if the restaurant will be relocated somewhere else in the hotel complex. Ben Pratt replied no, but a previous PUD amendment to the Shelving Rock wing of the hotel will allow the enclosure of the tent area which will be run out of the Sagamore Dining Room kitchen. The Sagamore Dining room will remain the main dining room for the hotel guests and there will be other dining functions in the new area that will be enclosed. Meredith McComb stated that there will be more people in the hotel and they will be eating. She asked if they should be concerned about the sewer output from the expansion. She stated that she thought that the Town may want to consider using some of the money the Town received for repayment of the Sagamore loan for commercial development, to see if there are needs for the Town sewer system because it would be benefiting a commercial project. Kam Hoopes stated that this is way off the path and thought that she would be better talking to the TB about that.

Ben Pratt described the proposal for the pool as shown on the plans. The pool area is terraced into the slope with a sufficient setback from the lake. They are installing a stormwater system that is designed to handle all of the water off of the roof of the hotel which has not been handled in a stormwater sense. He stated that 90% of the stormwater management is designed to handle the flow off the roof and 10% is designed to handle the water generated from the decking around the pool. They feel that the stormwater system is a huge improvement over what they had before. Ben Pratt stated that the Walshes intend for the Sagamore to become one of their premier hotels and out of those few premier resorts the Sagamore is the only one without an outdoor pool. He stated that original PUD of the Sagamore had a combination indoor/outdoor pool but for various reasons Green Island Associates never created the outdoor aspect of that pool. Ben Pratt stated that most of the customers that come to the Sagamore do not swim in the lake. Meredith McComb stated that it is not surprising since it is a busy area. Kam Hoopes stated that it is not a surprise because most of the hotels/motels up and down the lake have their own pools and it is a more civilized way to swim.

William Pfau asked how they will handle the pool with regard to emptying the pool. Ben Pratt replied that they have already run this generically by the DOH and some of the individuals from the Town Water Treatment Plant. He stated that they intend to backwash the pool every 10 days which will create about 1,200 gallons of water that the Town believes can be put into the sewage treatment plant at night so that it will have a lesser effect. They will only take out about 1-2' at the end of the season and any splash from the pool will be handled by the pool itself. They have also made every effort possible to contain anything that has to do with

chemicals coming out of the pool. William Pfau asked if the smaller hot pool will be open in the winter. Ben Pratt replied no and they will not be open at night either. Tony DePace asked the size of the pool. Ben Pratt replied 2,700 sq. ft. William Pfau asked if the pool will be ready by the summer. Ben Pratt replied that they are hoping to be and that is why they are here tonight. William Pfau asked if they will have the rooms ready as well. Ben Pratt replied that the plan is to try and do both but he does not feel that the rooms are on as fast of a track because they are still in the process of final design and construction drawings.

William Pfau stated if they are going to use the criteria for an area variance he does not see any of the listed criteria as a problem with this project. Greg Smith agreed. Meredith McComb stated that she is pleased with the inflow of capital and the thought that is going into the project should be good for the Town.

There were no comments from the public in attendance. Pam Kenyon stated that there is no WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from Sagbolt, LLC (V08-55) for an area variance as described above.

And, due to 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# 3 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 variance of the PUD agreement;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the hotel will remain virtually unchanged from the outside.
- 3) The request is not substantial; The difference between restaurants and administrative offices converting to hotel rooms is significant but not substantial change as far as the ZBA should be concerned.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; The applicant seems to be taking into account all of the various possibilities of that and has taken steps to creating less affect to the environment.
- 5) The alleged difficulty is not self-created, it is a hotel, with an ever evolving concept on how to make the hotel successful.

The benefit to the applicant is not outweighed by the potential detriment to 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. Jeff Anthony recused himself. **All Others in Favor. Motion Carried.**

4) PADANARUM PARK, ROLF RONNING. Represented by Atty. Melissa Lescault. To discuss resolution set forth by the ZBA on January 24, 2005. Specifically the resolution reads as follows: **Motion by M. McComb** to make a determination that a parcel of land with a single tax map number (i.e. unified tax parcel) remains a single parcel, regardless of whether it is bisected by a public road (State, County, or Town). If a property owner of such a parcel wishes to convey a portion of that parcel separated by said roadway to a different ownership, it would require formal subdivision review and approval by the Planning Board. Seconded by M. Murray. **All in favor. Motion carried.**

Dennis Phillips stated that he is representing Edward English who has purchased property from Rolf Ronning under the name Indian Pond Estates, LLC. He described the entire subdivision which comprises 962 acres. The subdivision has two roads that run through it: 1) Padanarum Road with 440 acres on the east and 483 acres to the west; and 2) Trout Falls Road which has 39 acres to the west of it. They are trying to solve a problem because when this went before the PB, the PB made the mistake of believing this was a single tax map parcel in an APA Resource Management zone. The proposal was to convey to Ed English Lot A which is consisting of 158 acres which was considered 1 tax map parcel. But also on the East of Padanarum Road was another full tax map parcel consisting of 163.13 acres and 2 other partial tax map parcels on each side of Padanarum Road which were split by the road. However, there was a hidden APA rule, “APA Merger By Operation of Law Rule” which collapsed all tax map parcels on one side of a road, regardless of number and treated them as one. Pursuant to Section 811(1)(a) of the Adirondack park Agency Act, the provisions of the land use and development plan, all land on one side of a road is considered a vacant lot effective May 22, 1973. In 1979, APA Regulation 573.4(b) implements the above law and expressly applies it to property on different sides of a road, which states that a sale of a landowner’s entire ownership on one side of a public road will not be considered a subdivision. Dennis Phillips stated, to their knowledge, this regulation was never mentioned and never disclosed to the ZBA or the Town Attorney prior to this application.

Dennis Phillips stated that this mistake has already cost his client, Ed English, \$750,000 of purchase price, unanticipated legal expenses, and a great deal of distress with the possibility of facing an APA Act violation. He stated that under these special and unique facts of the case, and in accordance with statutory and regulatory law, they are requesting the ZBA to make a fact of specific determination that the land East of Padanarum Road qualifies as a “Natural Subdivision” so as to help Ed English and, at the same time, reverse the mistake of the PB by presenting an alternative solution. Dennis Phillips stated that they request that the ZBA recognize the APA’s natural subdivision exemption as it pertains to Ed English’s property for the following 3 reasons:

- 1) The matter can be distinguished from the 2005 ZBA determination that focused on the situation where one tax map parcel straddled a road, in that the property to the East of Padanarum Road is identified by 2 entire tax map parcels and 2 partial tax map parcels. The ZBA's 2005 determination made that ruling based on a single tax map parcel on one side of the road, but in their case is totally different, even to the point where the PB mistakenly considered one tax map parcel East of the road as a free standing subdivision lot, which created the violation of the "Merger By Operation of Law Rule".
- 2) The total acreage of the property on the East side of Padanarum Road is 440+/- acres, which greatly exceeds the overall intensity guidelines and satisfies the density requirements of the APA/Bolton Approved Plan.
- 3) The PB, as an APA/Bolton Approved Plan gatekeeper, erroneously treated on tax map parcel as a pre-existing subdivision to the detriment of Ed English. In fact, the original conveyance to English was a Class A Regional Project under the APA Act, which triggered primary APA jurisdiction and wrested the subdivision authority from the Town of Bolton.

Dennis Phillips stated that Rolf Ronning has agreed to convey the entire property located on the east of Padanarum Road to Ed English for a consideration so there will be no violation of the APA Act which evolved from the action of the PB in Bolton, not fully understanding that "Merger By Operation of Law Rule", which is a very hard to follow and what he would consider a trap for the unwary.

Kam Hoopes asked how they can merge everything on one side of the road and negate the subdivision that was approved by the PB. Dennis Phillips replied that the merger document was effective 1973 and it does not recognize tax map parcels and all it does recognize is large masses of land on each side of the road. Kam Hoopes asked how this wouldn't merge all lands everywhere. Dennis Phillips stated for legal and subdivision purposes, the APA Act considers this all one tract of land in a resource management zone and any subdivision of that would be an APA subdivision and not a Town of Bolton subdivision and the PB would not have had jurisdiction. Kam Hoopes stated that this subdivision has taken place and the APA has not overturned or challenged it and they are operating under home rule here and asked why they can't meet his client's needs in another way. Dennis Phillips stated that the APA has said that this is a violation. Kam Hoopes stated that the APA has 30 days to challenge their decisions and he feels that the statute of limitations is over.

Counsel stated that a lot of what they are discussing is true but a better question would be does it apply in this instance. He stated that it took quite a bit of time to come to a determination because there was a lot of confusion when it came to land divided by Town Roads. As he understands Bolton's position and determination, a road does not qualify as a natural subdivision. He stated that this was precipitated by the affirmative steps taken by the APA at a time when Kam Hoopes, Brian Grisi from the APA and himself met to discuss other matters and Counsel raised the question of what the APA would recommend that the Town do with respect to the issue of roads going through tax parcels. He stated that he raised the question because he accepted the notion that they had an approved land use ordinance and the APA had some insight on this. He stated that their answer at that time was the APA rule was that there was no such thing as a natural subdivision, however, they know now that is not true. Counsel

stated that in fairness to this applicant and what is being judged on the issue they were given a false representation on the issue by the APA. The Town then made its determination that a road does not constitute a natural subdivision. Counsel stated that Rolf Ronning asked the question a few months ago that before any transfer any property to Ed English, was there any requirement or PB review to convey a whole tax parcel, did that require subdivision if that particular owner also owned adjacent separate, independent tax parcels. Counsel stated that the answer then was no and remains that way today. However, as Dennis Phillips has stated the APA has taken a different position on this. Counsel stated that they did not misinform Rolf Ronning or misinterpret anything. He stated that he understands that Mr. English is in a jam but the present position of the Town of Bolton is that there is no such thing as a natural subdivision. With regard to, did they set Rolf Ronning up in making a conveyance which actually constitutes and APA subdivision. In part yes, but in part no because they did not in anyway misinform him based on the knowledge of the approved land use ordinance and previous interpretation.

Dennis Phillips stated that the Resource Management zone is a 45 acre zone and it is considered the most precious and important lands as far as environmental sensitivity is concerned in the APA and falls solely under their jurisdiction. Kam Hoopes stated that was why he was confused because he felt that this should be argued in front of the APA and not the ZBA. He stated that the applicant is not seeking a variance but rather seeking a new interpretation. Dennis Phillips stated that they are not asking for them to change their interpretation, but they are asking for the ZBA to make a specific interpretation under these facts. Dennis Phillips read from the January 42, 2005 ZBA minutes in which they made the initial interpretation. He stated that they do not have the same situation because they do not just have 1 parcel, they have 2 huge parcels and 2 partial huge parcels. However, having a natural subdivision would follow exactly the purpose and intent of the APA rule itself passed in 1973. Kam Hoopes stated that they do not concern themselves with the APA and their intricacies and all they ruled on was does a road or right-of-way constitute a natural subdivision. Dennis Phillips stated that he thought that just applied to one tax map parcel because in many instances that parcel may not have the acreage in order to subdivide and support a building lot. Kam Hoopes stated that Dennis Phillips is adding to the argument that they have to comply with the APA merger but they have an approved land use plan.

Counsel stated that the applicant is asking to specifically apply the APA merger rule to this property specifically and not change their overall interpretation. Dennis Phillips agreed and stated that they are asking for the ZBA to determine that there is one lot to the East of Padanarum road consisting of 440 acres, another subdivision lot to the West of Padanarum Road of 483 acres and a third lot to the West of Trout Falls Road of 39 acres. Kam Hoopes stated that they would be willing to consider that and the only one that would require a variance would be the third lot because it would only have 39 acres. However, they are not being presented with that because these are already subdivided parcels in their eyes. He stated that they do not have the authority to recombine them with their zoning regulations but he feels the APA can or they can go back to the PB and ask for those parcels to be reconfigured. Counsel stated that if the APA is considering this to be an APA Class A Regional Subdivision Bolton will have nothing to do with this and it is strictly under APA jurisdiction. Dennis Phillips stated that if they allow the merger of lands this would be considered a Bolton lot and they would have the authority subject to Bolton Class B jurisdiction and the PB has already approved the construction of a single family dwelling on this property. Kam Hoopes stated

that they are all Bolton lots under the subdivision approval and they all have tax map numbers. Dennis Phillips stated that he wishes that they could erase the tax map numbers from their brains. He stated that tax map parcels came into existence in 1977 for the purpose of assessing land and collecting money. However the tax map parcels are not legal land titles.

Jeff Anthony stated that dates and times are concerning him with regard to what has been happening with the APA in the last few months. He stated that they have a new interpretation on this from the APA because those roads do not constitute a natural subdivision effective December 31, 2008. He stated that the APA has also required that applicants have had their application submitted or action pending before a certain date in November 2008. He stated that right now the APA considers this one big lot and the approved subdivision does not exist. Counsel stated that there is great controversy there and it is being challenged.

Counsel asked how the PB caused this problem. Dennis Phillips replied that they did not have jurisdiction of the subdivision to begin with because of the Merger document. Counsel stated that he thought he was the responsible party because he is the one who told Rolf Ronning that he does not need subdivision approval for that particular lot. Dennis Phillips stated that he understood the point that Counsel made and it was based upon Counsel's letter that the PB approved the project.

Pam Kenyon stated that Rolf Ronning should have submitted a jurisdictional inquiry to the APA in the beginning and they would have known. Dennis Phillips stated that he did not disagree with that but he was not representing Rolf Ronning at that time. Pam Kenyon stated that with regard to the letter submitted by Counsel to the PB at the time of subdivision approval only dealt with a single parcel and was a separate issue from the entire subdivision. Counsel agreed.

Dennis Phillips stated that although he is saying that a mistake was made he feels as though it is a neutral mistake. Rolf Ronning made the mistake of not filing an RJI with the APA. The PB did not see the underlying regulation of natural subdivision. Ed English's lawyer at the time also made a mistake at the time. However, tonight he feels that they can solve the problem and fix the mistake in such a way that there is a happy ending for everyone. He feels that it is a simple solution to a complex problem and likes that if these lots are divided as he has proposed they fall under Bolton jurisdiction. Kam Hoopes stated that he does not follow that line of thinking and feels that the applicant is asking them to observe the APA regulation in order to reconvene this lot and erase everything the PB did and he is not interested in setting that kind of precedent. Counsel stated that he is interested in Bolton having some sort of consistency and they did do that with their interpretation and the PB abides by that. However, Dennis Phillips is asking not for them to change that interpretation but to find under this set of facts to move forward in a different interpretation.

Jeff Anthony asked Counsel for his interpretation of the APA's new legislation. Counsel read the following dated December 10, 2008 "Publication of Transition Guidance 2008 Rule Making", sub-paragraph 4, entitled "Remove Existing Rule Regarding Lands Divided by Roads or Rights-of-Way Owned in Fee": "A. Subdivision Plat lawfully filed at the County prior to December 31, 2008 will be honored by the Agency provided that the proposed subdivision project does not require an Agency permit or variance under the laws in effect on December 30, 2008. B. If the landowner has received a non-jurisdictional determination for a

request prior to November 14, 2008 from the Agency the subdivision may be undertaken according to the terms of the determination without regard to the regulation for subdivision involving wetlands or other predicates of Agency jurisdiction.” Counsel stated that this is a saving clause for those matters that are in progress with the APA. Jeff Anthony stated he is concerned that even if they did decide to make a specific determination for the applicant this could be reversed by the APA because it did not meet the November 14th cut-off date. Pam Kenyon stated that they received their interpretation request on November 28th. Counsel stated that the November 14th date pertains to the submission of the RJI and that has not been done. Jeff Anthony stated that now after January 1st the APA is going to consider this 1 big lot and not 3. Dennis Phillips stated that there are 7 Counties litigating that issue right now.

Kam Hoopes stated that he feels that they are presenting this in the wrong place. Counsel stated that Pam Kenyon would agree and he wonders how the Town ended up with an approved land use ordinance that the APA can make exception to.

Meredith McComb asked if the applicant Kenneth Salamone would be affected by something like this because he owns property on both sides of Route 9N. Counsel stated that it would only be if the property is located in the Resource Management zone. Dennis Phillips added that if there was common ownership in 1973 everything owned by the same person it would be merged together as one lot. He stated that if they had a thousand tax map parcels and they all were next to each other on 50,000 acres of land they would be treated as one lot.

Greg Smith stated that he does not know how the ZBA is going to allow them to do this. Dennis Phillips stated that all he is asking them to do is to follow the APA regulation so that if everything on one side of the road is sold to one person it would not be a subdivision that would trigger PB jurisdiction under the Town of Bolton regulations. For arguments sake Counsel stated that they could however it would turn the Zoning Office upside down.

Willie Bea McDonald asked if the APA has overturned the subdivision. Dennis Phillips replied that they have been issued a violation. Counsel asked if it is a technical violation because this subdivision followed and abided by everything that Bolton guided it on and Bolton did not mean any intentional harm here and tried to uphold its ordinance. He asked if it would be possible if that APA violation could be remedied because it has more than the minimum area per lot and have them just pay a nominal fee. Dennis Phillips stated that the better outcome would be that this is determined as a natural subdivision because they could convey that 1 lot to Ed English and the Town would have jurisdiction over that lot.

Kam Hoopes suggested that they come before the ZBA requesting a variance to use Padanarum as a natural subdivision line. Jeff Anthony stated that nothing they do here tonight will help with the pending violation especially with the upcoming changes. Dennis Phillips stated that if they have a favorable interpretation tonight this new rule will not affect them because they could convey that entire piece to the East of Padanarum Road to Ed English and that would be in accord with the current APA regulation. Jeff Anthony stated that wouldn't matter because the APA is stating that they needed to have filed an APA Jurisdictional inquiry form by November 14, 2008 and all of that is null and void if not. Greg Smith agreed. Counsel stated that whatever they do, it will need to be in the form of a motion. Meredith McComb stated that they have nothing to go by. Pam Kenyon stated that they would make a resolution to uphold their previous decision.

Willie Bea McDonald stated that she thought the subdivision approved had 12-15 lots but none of them crossed the road. She stated that they could go forward without having to change the subdivision because they can put all of the parcels on the East in Ed English's name and he has not violated the APA and it makes all parties happy because they had a subdivision on one side of the road anyway. Kam Hoopes stated that they are looking at the subdivision map and it has 2 lots that are divided by the road.

Henry Caldwell stated that the APA created this large lot to begin with and they have someone who wants to buy it. This individual has lived in Bolton for quite some time and has been paying taxes and helping his kids' education. He stated that he doesn't even feel that this needs to come before the ZBA because this lot was created years ago by the APA. Pam Kenyon stated that it goes against their interpretation. Henry Caldwell stated that there is no interpretation because it is an APA subdivision. He stated that Rolf Ronning sold the lot to Ed English before the subdivision came to the PB and he never filed his RJI. Kam Hoopes stated that the lots cross over the road. Henry Caldwell explained that the subdivision has no lots crossing the road but the tax map parcels do. Kam Hoopes stated that he has made a great case in which they could overrule the APA, however he feels that it is not their place to make this determination.

Dennis Phillips stated that his client has purchased this one lot for \$750,000 and all he has gotten out of this is an APA violation. He stated that it is very frustrating for his client to find that through a combination of mistakes he is in that position. He stated that it is a lot easier to workout a headache like this at the local level then to have to deal with the APA. He stated that this will take on a life of its own and at the end it may be determined that nothing can be done on that property. He stated that this will cost additional money and lost time for his client and he was seeking a simple solution to this problem to keep everything local. Dennis Phillips stated that he was not trying to disturb the rule but he felt that he had a different set of facts. He had a situation that grew by mutual mistakes, he had huge acreages and 4 tax map parcels. He thought that they could help solve this problem by interpreting his set of facts as opposed to the other set of facts in which they were dealing with just one tax map parcel.

Tony DePace stated that Henry solved the issue because none of the lots cross the road. Pam Kenyon stated that none of the lots cross the road but the 15 lot subdivision has lots on both sides of the road. She stated that they are looking at an older map that does not have all of the lots on it and this is probably what the lots looked like before they were subdivided. Dennis Phillips stated that the 15 lot subdivision does not exist because the PB had no authority or jurisdiction to approve that subdivision. Kam Hoopes stated that they did have the authority and the APA did not overturn it. Dennis Phillips stated that the approved subdivision map was never filed either because the APA said that this would be another violation. Dennis Phillips stated that he was presenting the map with 962 acres as it was originally delineated by the various tax map parcels. Kam Hoopes stated that he just doesn't see where they can help them. Greg Smith agreed.

Counsel stated that they could explore the option of a variance. Meredith McComb stated that she didn't think that they could seek a variance from an interpretation. She thought that a variance was only from the provisions of a law. Counsel replied that they interpret the

provisions of code. Jeff Anthony stated that he feels that the applicant should go to the APA and play the game. He stated that they have not been denied a subdivision here, they just need to go through the proper steps to get a subdivision. Counsel agreed and stated that this may be the APA's way of saying correct your mistakes.

RESOLUTION

Motion by Kam Hoopes and seconded by Meredith McComb, it is resolved that the ZBA does hereby uphold the determination set forth on January 24, 2005 that states that a parcel of land with a single tax map number (i.e. unified tax parcel) remains a single parcel, regardless of whether it is bisected by a public road (State, County, or Town). If a property owner of such a parcel wishes to convey a portion of that parcel separated by said roadway to a different ownership, it would require formal subdivision review and approval by the Planning Board **All in Favor. Motion Carried.**

5) 2009 ZBA Meeting Schedule-

Pam Kenyon provided a meeting schedule to all ZBA members. She stated that one meeting will be on a Tuesday because of a holiday, she stated that in the past they have always done the following Monday, but thought that if it does not interfere with anyone's schedule it could be on that Tuesday. Kam Hoopes asked the Board if it would be okay to have all of the meetings on Tuesdays because meeting so fast after the weekend is tough especially with some members running busy businesses. There was some discussion of the new meeting day. All Board members agreed to have all 2009 ZBA meetings on Tuesdays at 6:30pm.

6) Alternate members for the ZBA-

Counsel stated that the TB proposed that consideration be given to adding 2 alternate members to the Board. He explained that an alternate member is one who sits through the whole process but does not vote if the primary members are seated and have not recused themselves or are not absent. However, should there be a recusal on an application or absence of a Board member then the alternate would vote. Counsel asked if that was acceptable. Meredith McComb asked if they sat in the audience or on the panel. Counsel replied on the panel. Tony DePace asked why this was raised. Counsel replied that Deanne Rehm brought it up due to the concern that there are some instances where there have been some close calls and the pressure is on for the applicant to get approval. Kam Hoopes stated that the applicant always has the option to table their application in those situations. He asked if the alternates would be able to speak on each matter. Counsel replied that they would be allowed to ask questions and be part of the discussion but they would not be allowed to vote. All Board Members agreed that they do not want to add any alternates to their Board. Counsel stated that this is also being presented to the PB and they may opt to go the other way on this.

Meeting was adjourned at 8:51 p.m.

Minutes submitted by K. MacEwan