



NOTE: The attachments referred to herein are on file at the Agency and are on the Agency's website. Copies are also available for inspection on request.

DRAFT AGENCY MINUTES

JANUARY 14, 2010

AGENCY MEMBERS, DESIGNEES AND EXECUTIVE STAFF PRESENT

Curt Stiles, Chair
Richard Booth, Member
Arthur Lussi, Member
Frank Mezzano, Member
William Thomas, Member
James Townsend, Member
Leilani Ulrich, Member
Cecil Wray, Member
James Fayle, Designee, Department of Economic Development
Judy Drabicki, Designee, Department of Environmental Conservation
Riele Morgiewicz, Designee, Department of State
Terry Martino, Executive Director
John Banta, Counsel

LOCAL GOVERNMENT REVIEW BOARD PRESENT

Frederick Monroe, Executive Director

AGENCY STAFF PRESENT

Holly Kneeshaw, Assistant Director, Regulatory Programs
James Connolly, Deputy Director, Planning
Stephen Erman, Special Assistant for Economic Affairs
Keith McKeever, Public Information Director
Kathy Regan, Associate Natural Resources Planner
Ariel Diggory, Environmental Program Specialist 1
Barbara Rottier, Associate Counsel
Richard Weber, Assistant Director, Planning
Beth Phillips, Senior Attorney
Brian Grisi, Local Planning Assistance Specialist
Rita Quinn, Environmental Program Specialist 2
John Quinn, Environmental Program Specialist 3
George Outcalt, Environmental Program Specialist 2
Colleen Parker, Environmental Program Specialist 2
Deborah Lester, Secretary to Executive Director
Mary Reardon, Secretary 1

Chairman Stiles called the meeting to order at 9:03 a.m. He called for a moment of silence to observe the passing of Clarence Petty on November 30. He described Mr. Petty as an Adirondack legend who touched the Adirondack Park Agency and other agencies as well as the Adirondacks in general. To commemorate Mr. Petty's life, the Agency will plant a tree in his memory at Arbor Day in the spring.

At the Chairman's invitation, Agency Members and staff shared stories about their personal and work experiences with Mr. Petty.

1. Public Comment

James McCulley of the Lake Placid Snowmobile Club and Susan Allen of APA Reporter made public comment. Public comments are part of the Agency's web cast at http://nysapa.granicus.com/ViewPublisher.php?view_id=2.

2. Minutes

Mr. Townsend moved and Mr. Booth seconded the approval of the draft November 2009 Agency Minutes.

Prior to voting, Mr. Banta noted corrections to the November 13 Lows Lake resolution and attachments to accurately reflect the acreages involved. The corrected version is attached to the draft November minutes which are posted on the website as part of the December and January mailings.

Mr. Booth noted two other minor word changes in relation to the snowmobile guidance.

Chairman Stiles called the question as amended, which passed unanimously.

3. Executive Director's Report

Mrs. Martino referred to the year-end program reports that were included as part of the mailing and asked Agency Members to retain their copies for more detailed discussions in February.

She then noted highlights since the Agency's November meeting. Among them was the demolition of the Lake Champlain Bridge on December 28. The designer of the new bridge, Ted Zoli, is being considered as a guest speaker at the Adirondack Park Local Government Day on March 23-24.

Mrs. Martino reported substantial press outreach during the past month involving herself, Chairman Stiles and Public Information Director Keith McKeever.

Mrs. Martino also reported on staffing changes at the Agency. Recent re-assignments in the Legal Division are part of Agency restructuring in anticipation of significant turnover in the coming years. A new senior attorney was added to the legal staff. Elizabeth Phillips spent more than a decade working in Anchorage, Alaska, where she represented municipalities and native Alaskan corporations on various issues including land use planning. The process of recruiting for Deputy Director of Regulatory Programs is ongoing.

Mrs. Martino called attention to the recent AATV meeting held in Lake George on December 6, where she spoke about APRAP and its foundation of important regional data about the Adirondack Park. She noted the importance of tying in the APRAP data with the Tug Hill Commission's research as well as the Northern Forest Center's work, both of which are scheduled agency presentations.

4. Motion for Executive Session

On motion of Mr. Booth, seconded by Mr. Wray, the Agency voted unanimously to convene in executive session to receive advice of counsel on pending litigation involving Matter of Spiegel and Matter of Zelanis.

5. Adjourn into Committees

On motion of Mr. Townsend, seconded by Mr. Booth, the Agency unanimously adjourned into committees at 9:32 a.m.

6. Community Spotlight: Town of Moriah

Town of Moriah Supervisor Tom Scozzafava gave an overview of the Town of Moriah from a historical perspective as well as past and present issues.

First elected as Town Supervisor in 1985, Supervisor Scozzafava served through the spring of 1998, when he resigned to pursue his electrical business and work at the DOCS Moriah Shock facility. He returned to office as Town Supervisor in 2004. Supervisor Scozzafava is a lifetime resident of the village of Port Henry, as were his father and grandfather.

The Town of Moriah's existence is due primarily to the mining industry. Established in 1808, it is located on the shores of Lake Champlain, comprises 71 square miles with 4,000 acres in the Adirondack Forest Preserve. The Town once boasted a population of 10,000. Its population today is almost half, but is still the third most populated town of the 18 towns in Essex County. The Town has miles of public shoreline and has two municipal campsites and

beaches, one operated by the Town and the other operated by the Village of Port Henry. Both the Town and Village budgets and the local businesses are very dependent on the two campsites as well as fishing, particularly the smelt fishing and fishing tournaments held on Lake Champlain. Port Henry is recognized as the ice fishing capital of the world.

The Town is comprised of five hamlets - Moriah, Moriah Center, Mineville, Witherbee and the village of Port Henry. There is also a populated area known as Grover Hills that was built during World War II to house the miners. The school district has a student enrollment of approximately 750, down from 1,500 in 1974. The Town has a police department, three fire departments and an ambulance squad. Major employers located within the community include Mountain Lake Services; Moriah Shock Incarceration Facility; Pre-Tech Plastics, a company based in Vermont that located in the industrial park; and local government. The Town also has a new health center and contracts with Hudson Headwaters to operate it.

The Town has an extensive infrastructure that is in good condition for a town of Moriah's size. A new municipal wastewater treatment plant was recently completed which services about 60 percent of the homes located within the community. The plant is a shared service with the Village of Port Henry. A new water treatment plant was also completed, servicing three water districts and over 1,300 homes. The Village of Port Henry also has a new water treatment plant that services most of the village. A primary reason for the extensive infrastructure is because of Witherbee-Sherman & Co. and Republic Steel Corporation during the mining days. Also, through the years the Town and Village have been successful in securing federal and state funding for upgrades to both the existing water and sewer facilities and a number of extensions in the wastewater area.

Moriah was once a major employment center in the Adirondacks. Thousands came to work the mines and businesses flourished. Republic Steel was the last company to operate the mines and they paid 65 percent of the school tax. They also provided the water system, waste water system and fire protection. The mines were shut down in 1971, resulting in a loss of about 500 good-paying jobs. The company started dismantling the mine infrastructure in the early 1980's and sold off their land. Over a five-year period, the Town lost about 50 percent of its tax base. The community never fully recovered from this severe economic impact. Surprisingly, there has not been a significant decline in the population since 1971. It has transitioned from primarily a blue collar community to primarily a bedroom community. Although there has not been a substantial decline in the population, the community continues to see many of its young people leave the area. As the recent APRAP report states,

the exodus of young people is a problem experienced throughout the Park.

Overall the Town has had a stable relationship with the Agency. Agency staff Mary O'Dell, Brian Ford and Steve Erman in particular work very well with elected officials as well as Park residents. At the same time, there is still a need for improvement in staff's approach to working with the people. The Town has worked extensively with the Agency on a number of projects including the conversion of the Fisher Hill mines into a shock incarceration camp; the water and waste water districts; the water and waste water treatment plants; and the industrial park in Mineville. The industrial park is a prime example that industry can fit into the Park without any impacts, he noted. There are other instances, however, where the Agency's permitting process has been discouraging and costly to applicants. The process needs to be simplified.

The community has a large amount of Hamlet-classified lands primarily in the population centers as well as a large amount of land zoned Industrial and as such has never applied to the Agency for a map amendment.

Supervisor Scozzafava urged the Agency to not cave in to pressure from special interest groups such as in the recently approved snowmobile trail maintenance guidance. He noted that the snowmobile trail system through the Adirondacks is critical to the Park's tourism industry, and connector trails could create new business and help retain existing businesses.

The tax base continues to be a problem for small communities throughout the state. In the Town of Moriah the tax roll is sixty percent residential. Therefore, any increase in the tax levy hits homeowners the hardest. Supervisor Scozzafava stated he believes a major reason why the Town does not experience a significant increase in taxable value is in part due to the land use regulations of the Park Agency. There are many areas in the community that could accommodate more homes with no negative impact on the environment. A prime example of such a project involved the Agency's review of a subdivision proposal for eight houses on the Pelfisher Road which resulted in numerous requirements and conditions. He reported the cost to the applicant escalated to almost \$100,000. Communication at the beginning of the process is critical.

Supervisor Scozzafava acknowledged the Agency's quick response after the emergency closure of the Lake Champlain Bridge which displaced 1,800 people who travel daily to Vermont to work. However, he questioned the reason why so many people that live in the Adirondacks must travel to Vermont to find employment. He suggested the Agency's reputation has much to do with the limited ability of

Adirondack communities to attract decent paying jobs. He also noted that the Agency's first loyalty should be to work towards improving the quality of life for the year-round residents of the Park.

Supervisor Scozzafava pointed out the small number of communities which have approved local land use programs, which comprises only 18 of 103 towns and villages since the creation of the Agency. He also questioned the Agency's proposal to revise the boathouse definition to eliminate flat roofs which in his opinion are innocuous. He suggested the proposed revision was in response to special interests.

Supervisor Scozzafava described the 5,000 residents of Moriah and 38,000 residents of Essex County as being some of the best stewards of the land. He quoted former Major League Baseball player Johnny Podres, born and raised in Witherbee, who described the people there as "the best people in the world."

Supervisor Scozzafava stated that as an elected official he would continue to work with the Agency and within the framework of the law, and in return he would ask the Agency to try to work towards the betterment of the people it represents, and to do it with the respect, understanding and dignity that they deserve.

Supervisor Scozzafava then referred to issues raised by constituents. The first issue relates to Section 809(2)(b) of the APA Act which contains a provision for deeming an application complete for a minor project upon receipt of the application, although this seldom occurs. More often than not, staff requests additional information, which results in re-starting the 15-day time clock and creates delays in the review process. The Agency should consider amending its regulations to provide for conceptual review of all projects before the applicant submits the application to avoid unnecessarily dragging out application completion.

The second issue relates to the collocation of telecommunications towers. Although the Agency's current Towers Policy encourages collocation, at the same time it requires substantial invisibility of the tower. The requirement in effect precludes collocation in that the height of the tower is not sufficient as to allow the second user a clear line of sight through the trees. The Agency should revise its policy to allow towers to be constructed at a height sufficient to allow a clear line of sight by more than one user on a tower.

Responding to questions by Board members, Supervisor Scozzafava advised that the people who are commuting daily to Vermont are from Moriah, Ticonderoga, Crown Point, Schroon Lake and Westport. They are commuting to jobs at BF Goodrich in Vergennes, IBM in

Burlington, Cabot Cheese, Agri-Mart in Middlebury and Porter Medical Center, among others. He added that Middlebury has an industrial park with many businesses, while communities in the Park are missing out. Businesses refuse to consider locating in the Adirondack Park due to their negative perception of the Agency. They would be more receptive to locating in the Park if they were assured of a reasonable permit review process without unexpected obstacles. He stated he has four shovel-ready sites at his industrial park.

Local Government Review Board Executive Director Fred Monroe noted that some businesses are willing to spend money to be environmentally sensitive, but at the same time they want some level of certainty as well as timely answers when dealing with the Agency.

Mr. Thomas pointed out the advantages of an approved local land use program for the town.

Supervisor Scozzafava responded that the people would have to be convinced of the benefits of an approved program, which is unlikely until the Agency improves its reputation. The people of the Adirondack Park continue to believe that the Agency listens primarily to the special interest groups and not those who live in the Park.

The Agency adjourned at 3:05 into State Land Committee, and then reconvened at 4:25 p.m. to hear committee reports and act on committee recommendations.

7. Report on Executive Session

Chairman Stiles reported on the executive session which was held to receive advice of counsel regarding litigation also involving Protect the Adirondacks v APA and Adirondack Council v APA. No formal action was taken by the Agency.

8. Committee Reports

a. Regulatory Programs Committee

(1) 2009-175, City of Glens Falls

Mrs. Ulrich described the project as a request by the City of Glens Falls for a shoreline structure setback variance to construct a spillway dam in the Town of Lake Luzerne, Warren County. She referred to minor changes to the draft order reflecting the concerns expressed by the Committee. She moved approval of the variance request in accordance with the draft order as revised. Mr. Booth seconded the motion, which passed unanimously. A copy of the order as approved by the Agency is attached.

- (2) 2009-173, T-Mobile Northeast, LLC and The Society for Strings, Inc.

Mrs. Ulrich described the project as a permit for a 90-foot-tall telecommunications tower with a 5-foot-tall lightning rod, for a total of 95 feet, in the Town of Lewis, Essex County. She moved approval of the project in accordance with the draft permit. Mr. Townsend seconded the motion, which passed unanimously. A copy of the permit as approved by the Agency is attached.

- (3) Resolution 2010-2 With Respect to Deputy Director-Regulatory Programs Authority to Issue Permits for Telecommunication Towers

Mrs. Ulrich referred to Resolution 2010-2 proposed for Agency adoption. The resolution would continue the Agency's delegation of authority to the Deputy Director of Regulatory Programs to issue permits for telecommunications towers. She moved adoption of the resolution and Mr. Mezzano seconded the motion.

Prior to voting, Mr. Wray requested clarification of the intent of the motion.

Mr. Townsend reviewed the recommendation, which authorizes the indefinite extension of the current system with the addition of projects involving a simulated tree. The Delegation Resolution will continue to provide an opportunity for the Chairman, members of the Board and Executive Director to request any major project be brought to the Board for final determination notwithstanding the delegated authority to the Deputy Director of Regulatory Programs.

Counsel explained his concern with regard to special delegations that are not recorded in the framework of the Delegation Resolution or in the regulations. In this particular case, the Agency's review of simulated tree proposals is the issue, and the Agency's adoption of the resolution would remove any special delegation for the towers policy.

Mr. Lussi noted inconsistent use of the term "artificial" in the third "WHEREAS" clause of the draft resolution, and Counsel recommended its substitution with the word "simulated."

Chairman Stiles called the question, which passed by a 9 to 2 vote. (R. Booth and C. Wray voted against.) A copy of the resolution as adopted by the Agency is attached.

(4) Year-end Telecommunications Report

Mrs. Ulrich commended Ariel Diggory's presentation to the Committee on cell tower permits.

b. Local Governments Services

(1) Town of Westport Zoning Amendments

Mr. Thomas moved Agency approval of a resolution approving amendment of the Town of Westport's local land use program which incorporates revisions addressing existing intensity and pre-existing development provisions and a gift provision; guest cottages; self-storage facilities; industrial well water extraction; water bottling facilities; hunting and fishing camps and accessory apartments. Mr. Mezzano seconded the motion, which passed unanimously. A copy of the resolution as approved by the Agency is attached.

c. Economic Affairs/Park Policy and Planning

Mr. Lussi reported that the joint committee meeting featured presentations by members of the Northern Forest Center and the Tug Hill Commission.

d. State Land

Mr. Townsend noted there were no action items to report.

9. Interim Reports

a. Legal Affairs Committee

(1) Approval of Draft Legal Affairs Committee Minutes for the November 2009 Agency Meeting

On motion of Mr. Booth, seconded by Ms. Morgiewicz, the Committee unanimously approved the draft minutes.

(2) Update on Regulatory Hearings

Counsel John Banta reported on the hearings recently held regarding the proposed regulatory revisions pursuant to 5-year review of the boathouse and dock definitions. The boathouse definition is proposed to be changed from a single story to a more dimensional description. The dock definition addresses articulated docks.

Mr. Banta noted a good level of participation in the hearings, with the Lake George hearing attracting the greatest number of people. While the originally published deadline for comment was January 17,

public comments will be accepted through Tuesday, January 19. Correspondence postmarked, dated or received by fax at the Agency through January 19 will be considered timely comment. Additionally, public comment on these two proposed regulation revisions will be accepted by e-mail at aparule@gw.dec.state.ny.us through January 19. A written summary of the comment received at the public hearings will be prepared. Information pertaining to the regulations is available on the Agency's website at http://www.apa.state.ny.us/Regulations/reg_reform.htm. Also available on the Agency's website is a web cast of the first hearing held in Ray Brook on January 5 which provides a sense of the issues (http://nysapa.granicus.com/ViewPublisher.php?view_id=2).

Mr. Townsend noted public comments are part of the public record and will be considered in the Agency's decision making process. Any further changes to the proposed regulations would be as a result of the process and not outside of the process.

Mrs. Ulrich inquired as to visual analysis based on the public comment; for example, the aesthetic impacts of clutter or boats along the shoreline without boathouses for storage.

Mr. Townsend responded that staff will review the commentary and prepare a response, and in some cases identify alternatives. Other comments might raise issues outside of SAPA, he noted.

Mr. Booth inquired as to whether there are boundaries by which the Agency can change the regulatory proposals.

Counsel advised that there are boundaries established in SAPA within which the Agency can choose alternatives.

Agency Members will receive copies of all written comment as well as a summary of all oral comment received at the public hearings.

b. Park Ecology Committee

On motion of Mr. Townsend, seconded by Mr. Fayle, the Committee unanimously approved the draft minutes of its November 2009 meeting.

c. Enforcement Committee

Mr. Wray referred to the draft minutes of the Committee's November 12, 2009 meeting, and noted a correction to Oathout on page 2. Mr. Wray also requested that in future copies of attachments to the minutes be provided to Board members.

On motion of Mr. Wray, seconded by Mr. Mezzano, the Committee unanimously approved the draft minutes, as corrected.

10. Old Business

Mr. Townsend inquired as to whether the Agency action extending delegation authority for telecommunications tower permits required an update to Delegation Resolution. Updates to the local government official list, the Agency organizational chart, and contact information for Agency Members were also requested.

Counsel advised that the extension of delegation authority did not require the Delegation Resolution to be updated, although he noted some proposed administrative changes would be presented for the Agency's consideration in the coming months.

Mrs. Martino acknowledged the request for updates of the organizational chart and Agency Member contact information. She noted that Local Government Service staff are in the process of updating the local government contact information.

11. Local Government Review Board Comment

Mr. Monroe referred to the proposed change to the boathouse regulation and noted an overwhelming opposition to the prohibition of flat roofs.

Referring to the Tug Hill Commission presentation, Mr. Monroe compared the relationship between the Commission and local governments in the Tug Hill area to the relationship between the Agency and local governments in the Park. He acknowledged there were differences between the agencies in terms of regulatory authority, but suggested certain aspects of the Commission's work might be considered as a model for some statutory changes in the APA Act. He pointed to the Commission's survey of local leaders to determine needs and goals for the region, as well as councils of governments which provide a regional perspective. As a result, the Commission has broad-based support and a mutually respectful relationship.

Mr. Monroe reported that the Town of Saranac is taking a very strong position in favor of a Wild Forest classification for Lyon Mountain, and expects to pass a resolution to that effect.

12. Member Comment

Mr. Thomas commended the work of the Town of Westport on their program amendments. He noted that the work was completed in-house with the assistance of Agency staff, which resulted in minimal cost to the Town. Mr. Thomas also reiterated his support for the Community Spotlight presentations.

Ms. Morgiewicz noted her attendance at the Agency's regulatory revision public hearing in Albany. She also called attention to local government efficiency grants and a new round of grants coming out in February. Information regarding grant opportunities is available on the Department of State website (<http://www.dos.state.ny.us/>).

Mr. Mezzano expressed his concern regarding the status of infrastructure within the Park, particularly dams and bridges. He requested a staff update on the status of infrastructure in the Park, noting much of the data is readily available from DEC and DOT.

Ms. Drabicki suggested a presentation by DEC on the status of its dams and the impact of its new and stricter regulations. Also, she echoed Mr. Monroe's comments regarding the Tug Hill Commission. She acknowledged the regulatory differences between the two agencies, but suggested that Agency staff could benefit from consultation with Commission staff.

Mr. Lussi referred to the public hearings on the proposed regulatory changes and commended the quality of the public comment, particularly at the Ray Brook hearing. He urged the Agency to reflect on the historical significance of Adirondack boathouses in its deliberation. Mr. Lussi referred to the Rails-to-Trails Conservancy and an opportunity for increased biking and walking trail access throughout the Park. He pointed out the current Adirondack scenic rail service in the Park costs millions of dollars and has created only a handful of part-time jobs. Mr. Lussi applauded the hard work of many people in the re-opening of Big Tupper. The ski center has seen ten skiing days since it re-opened on December 30. Mr. Lussi then referred to Town of Moriah Supervisor Scozzafava's "Community Spotlight" presentation and praised the Supervisor for his candidness. Mr. Lussi suggested that raising the issues helps to create awareness at the Agency that it must do a better job in terms of making it easier and more affordable for applicants wanting to do business in the Adirondacks. Finally, Mr. Lussi complimented the staff at the Adirondack Explorer magazine for their educational portrayal of the divergent interests on sensitive issues.

Mrs. Ulrich concurred with Mr. Lussi's comments regarding Supervisor Scozzafava's presentation, adding that "Community Spotlight" opens lines of communication between local government and the Agency. Referring to the Tug Hill Commission, Mrs. Ulrich advocated the Agency doing what it can to facilitate more circuit rider services in the Park. She suggested the Cape Cod Commission would be a valuable resource for the Agency. Also, Mrs. Ulrich recollected a Cape Cod Commission representative who was once in the Old Forge area cautioned against tearing up the rails in the Adirondacks. The

representative expressed regret in the tearing up rails in Cape Cod given the present congestion in that area. Finally, Mrs. Ulrich commended Mrs. Martino's media outreach efforts this past month.

Mr. Booth referred to the issue of historical significance and noted that Cape Cod settlements established in 1640 have traditions older than the Adirondacks. Mr. Booth expressed his fascination with the report on the Northern Forests, and he reiterated his suggestion that the data be roughed out for Adirondack counties, possibly excepting Oneida County, most of which is outside the Park. Mr. Booth commended the Town of Westport amendments and noted the local program planning process is one that can be built on in terms of affordability.

Mrs. Martino thanked Agency Members and staff for their cooperation in completing a one-day agenda. She referred to the 2009 year-end reports that were included in the mailing, and requested that Board members retain their copies for a more detailed discussion of annual activity at the February meeting. Mrs. Martino applauded the work of the Northern Forest Center. She noted the importance of the data collection as well as the potential for federal investment in this region. Mrs. Martino also commended the Tug Hill Commission for its engagement with local government, councils of government and circuit riders. She agreed that the Agency can learn from the Commission's model. Mrs. Martino applauded Supervisor Scozzafava's presentation. She referred to her participation in an AATV meeting in early December at which Supervisor Wilt made a presentation that was the same as his "Community Spotlight" presentation to the Agency in October 2009. Supervisor Wilt encouraged other towns to take advantage of the Agency's "Community Spotlight" opportunity.

Chairman Stiles referred to the public hearings on the boathouse and dock regulations. He noted that while attending three of the four hearings, he observed one of the most misunderstood components of the Act, which is the right to repair, rebuild or replace in kind any existing structure within the Park. He pointed out that the old quintessential Adirondack boathouses are not in jeopardy in terms of being replaced, unless the APA Act changes. Chairman Stiles noted the importance of that consideration in terms of the Agency's future deliberation on the boathouse regulation proposal.

13. Adjournment

The Agency unanimously adjourned at 5:18 p.m.

CFS:dal

Attachments: Permit and Order 2009-175, City of Glens Falls
Permit 2009-173, T-Mobile Northeast, LLC and The
Society for Strings, Inc.
Resolution 20010-2 With Respect to Deputy Director-
Regulatory Programs Authority to Issue Permits for
Telecommunication Towers
Resolution 2010-1 Approving Town of Westport Zoning
Amendments

Curtis F. Stiles, Chairman



P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050

**APA Order Granting
Variance
2009-175**

Date Issued: January 15, 2010

In the Matter of the Application of
CITY OF GLENS FALLS

for a variance pursuant to §806
of the Adirondack Park Agency Act

To the County Clerk: This order
must be recorded on or before
March 15, 2010 . Please index this
Order in the grantor index under the
following names.

1. City of Glens Falls

SUMMARY AND AUTHORIZATION

The City of Glens Falls is granted a 75 foot variance, on conditions, from the applicable 75 foot shoreline structure setback restriction pursuant to sections 806(1)(a)(2) and 806(3) of the APA Act, authorizing replacement of a concrete overflow dam within the mean high water mark of Keenan Reservoir, in an area classified Rural Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Lake Luzerne, Warren County.

This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the order is recorded. The Agency will consider the project in existence when construction of the new dam is completed.

Nothing contained in this order shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

AGENCY JURISDICTION

The variance application seeks Agency approval for a variance of 75 feet from the applicable 75 foot shoreline structure setback restriction pursuant to §806(1)(a)(2) and §806(3) of the Adirondack Park Agency Act (Executive Law, Article 27) to authorize construction of a concrete dam (greater than 100 square feet in size) within the mean high water mark of Keenan Reservoir. Section 806(1)(a)(2) and 9 NYCRR Part 575 requires a minimum shoreline setback of 75 feet measured from the mean high water mark for structures greater-than-100 square foot in size. Section 806(3) and 9 NYCRR Part 576 authorize procedures whereby an applicant may apply for a variance from that restriction provided certain criteria cited in the statute and regulations are complied with, as further described below.

PROJECT LOCATION AND SITE DESCRIPTION

The variance site is located on Keenan Reservoir on a 14+-acre parcel of land located off Beartown Road in the Town of Lake Luzerne, Warren County, in an area classified Rural Use by the Adirondack Park Land Use and Development Plan Map. It is identified on Town of Lake Luzerne Tax Map Section 300, Block 2 as Parcel 31. The project site is described in a deed from Justin and Elizabeth Fielding to The City of Glens Falls dated March 21, 1925 which was recorded in the Warren County Clerk's Office in Liber 65 of Deeds at Page 564. The City Of Glens Falls owns all of Keenan Reservoir and all of the lands surrounding the Reservoir; those lands are located in both the Towns of Lake Luzerne and Queensbury and include the additional Tax designations referenced in the findings below.

VARIANCE DESCRIPTION AS PROPOSED

The variance as proposed and conditionally approved herein is summarized as follows: replacement of an existing concrete overflow dam with a new concrete overflow dam located 100 feet upstream from the existing dam. The existing overflow dam, located on the southern end of Keenan Reservoir, was originally constructed in 1892 and is currently in disrepair and considered hazardous.

As further explained in the Findings herein, Keenan Reservoir is a man-made water body and a component of the water supply source for the City of Glens Falls. Pursuant to a September 2008 NYS Department of Environmental Conservation (NYSDEC) Consent Order, the Keenan Dam (which impounds Keenan Reservoir) is considered a high hazard dam and must be repaired and/or replaced in accordance with NYSDEC Dam Safety requirements. The Keenan Dam consists of the "Main Dam" located on the northeast end of the reservoir in the Town of Queensbury and the "Overflow Dam" located on the south end of the reservoir in the Town of Lake Luzerne; both components of the dam are in disrepair. Agency

jurisdictional determination J2009-168, dated June 12, 2009 determined the proposed repairs and rehabilitation of the Main Dam do not require Agency approval (permit or variance). Determination letter J2009-168 further explained that the proposed replacement Overflow Dam (as described herein) requires a variance from the Agency's shoreline setback regulations. The proposed replacement overflow dam in the Town of Lake Luzerne is the subject of this variance and the nonjurisdictional repairs at the main dam are not part of this variance application.

The existing overflow dam is approximately 120 feet long by 24 feet wide and it is constructed at an elevation of 1199.5 feet above mean sea level (amsl). The replacement overflow dam will be an ogee weir design approximately 90 feet long by 60 feet wide and constructed at an elevation of 1198.5 feet amsl, with adjacent retaining walls at an elevation of 1202 feet amsl. The new overflow dam will be located approximately 100 feet upstream from the existing overflow dam, in an area where the channel narrows and the bedrock is less fractured. The new dam will also include approximately 9,400 square feet of stone rip rap for channel stabilization. Most of the rip rap will be laid in the channel downstream of the new dam, with a small amount of rip rap laid at the inlet pipe upstream. Locating the replacement overflow dam 100 feet upstream from the existing site will allow for the necessary stone rip rap to be installed in the area already disturbed by removal of the old dam and avoid additional shoreline and channel disturbance.

As shown on the project plans referenced below, a new gravel access road approximately $\frac{1}{4}$ mile long will be constructed, extending from the existing gravel road to the new dam site. There is not currently a road to the overflow dam site which could accommodate the necessary construction vehicles and equipment. Portions of the new road and the construction staging area will be located on property in the Town of Queensbury, as shown on the project plans. Waste material generated from removal of the existing overflow dam will include soil, rock and concrete. Soil which is free of debris and organics will be used for back fill at the main dam buttress. Concrete will be brought to a plant in Glens Falls for recycling and other waste materials will be disposed of at an authorized location. No waste disposal areas are proposed on the project site.

The project is shown on 29 sheets of drawings entitled "Rehabilitation Of Keenan Reservoir Dam (NYS Dam No 205-0402) City Of Glens Falls, Warren County, State Of New York", prepared by CHA, and last revised 12/11/09 ["Project Plans"]. These 29 sheets of drawings include the rehabilitation plans proposed for the main dam, which are not part of this variance project. The plan sheets which show the replacement overflow dam subject to this variance include plan sheets: K-C-3 ["Proposed Modifications Overflow Spillway"]; K-C-4A ["Overflow Spillway Access Road Improvements"]; K-C-5 ["Construction Sequence

Plan"]; and K-C-8 [Overflow Spillway Final Grading Plan"] and reduced-scale copies of these four sheets are attached as a part of this order for easy reference. The original, full-scale maps and plans referenced in this order are the official plans for the project.

Proposed stormwater management and erosion controls are detailed on the project plans and the "Rehabilitation of Keenan Reservoir Dam, Stormwater Pollution Prevention Plan" prepared by CHA and dated April 2009.

CONDITIONS

BASED UPON THE FINDINGS BELOW AND INFORMATION CONTAINED IN THE PROJECT FILE, THE VARIANCE IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The project shall be undertaken as described in the completed application, the Variance Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the order is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the order.
2. This project may not be undertaken, until this order is recorded in the Warren County Clerk's Office. This Order shall be recorded on or before March 15, 2010 in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the project site on the recordation date.
3. This order is binding on the applicant(s), all present and future owners of the project site and all contractors undertaking all or a portion of the project. Copies of this order and all the approved maps and plans referred to herein shall be furnished by the applicant(s) to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this order shall contain references to this order as follows: "The lands conveyed are subject to Adirondack Park Agency Order 2009-175 issued January 15, 2010, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
4. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

Authorized Activities

5. This Order authorizes the construction of the replacement overflow dam as described herein and as shown on the project plans referenced herein. Any changes to the project will require prior Agency approval in the form of a letter of compliance, or a new or amended order.
6. Reconstruction of the overflow dam shall be supervised by a licensed professional engineer, or other licensed design professional who has sufficient skill and construction experience to be able to evaluate the quality of construction in comparison to the approved plans. At least one month prior to undertaking the project, the applicant or its authorized representative shall notify the Agency of the engineer (or design professional) name, address, phone number and qualifications. At least two weeks prior to undertaking the project, the applicant or authorized representative shall provide the Agency's Director of Regulatory Programs written notification of the date the work on the dam will commence. Within two weeks after completion of the project, the applicant or authorized representative shall notify the Agency's Deputy Director of Regulatory Programs that the work at the site has been completed.

Sedimentation and Erosion Control

7. All sedimentation and erosion controls shall be undertaken in accordance with the project plans and Stormwater Pollution Prevention Plan referenced herein. The work area around the dam shall be isolated by the cofferdam and silt fences as shown on the plans. All sedimentation and erosion controls shall be installed and maintained during construction activities and until all disturbed areas have been permanently stabilized.

Waste Disposal

8. No new waste disposal areas shall be created on the project site without a new or amended Agency order or permit. All solid waste material (e.g. concrete, steel, soil, rock, wood, etc.) removed from the project site shall be disposed of in an authorized waste disposal area which is approved by the NYS Department of Environmental Conservation.

Shoreline Cutting

9. No shoreline cutting beyond that shown on the approved project plans shall be undertaken without prior Agency review and approval. This condition shall not be deemed to prevent the removal of dead or diseased vegetation or of other vegetation that presents a safety or health hazard.

Wetlands

10. No "regulated activity" as defined in the Agency's Freshwater Wetland Regulations (9 NYCRR Part 578) shall occur on the project site without prior Agency approval. Such activities include, but are not limited to, new land use or development in, subdivision of, clearcutting more than three acres within, or dredging or filling of a wetland, or any other activity, whether or not occurring within the wetland, which pollutes it or substantially impairs its functions, benefits or values.

Lighting

11. All lighting on the project site will employ full cut-off fixtures, and be fully shielded to direct light downward and not into the sky. The fixtures shall be oriented so as to not cast light towards any adjoining property or into the sky. The intent is to reduce nighttime light pollution (glare, light trespass and sky glow).

Shoreline Setbacks

12. Except for the structure approved by this variance, all structures 100 square feet in size or greater, shall be set back a minimum of 75 feet, and measured horizontally from the closest point of the mean high water mark of Keenan Reservoir.

Review of Future Development

13. No other land use and development or subdivision shall occur on the project site without first obtaining a jurisdictional determination and, if necessary, a permit or order from the Agency.

FINDINGS OF FACT
Background/Prior History

1. The applicant has owned the project site and adjoining lands surrounding Keenan Reservoir since prior to 1973 and the existing dams date from 1892. The other adjoining property includes lands in both the Towns of Lake Luzerne and Queensbury and is identified as: Tax designations 300-2-29 and 32 (Lake Luzerne) and 300-1-8 (Queensbury). For the purposes of Agency jurisdiction, adjoining lands under the same ownership as of the May 22, 1973 enactment date of the Adirondack Park Land use and Development Plan are deemed to have merged into one undivided lot as of the date. The applicant's total merged property encompasses approximately 321.37± acres, which includes all lands surrounding Keenan Reservoir and the Reservoir itself which is approximately 42.84± acres in size with approximately 8,000 total feet of shoreline.
2. Agency jurisdictional determination J2009-168 determined that proposed repairs and rehabilitation of the Main Dam on Keenan Reservoir, located in the Town of Queensbury, do not require an Agency permit. That determination letter further explained that the proposed replacement of the overflow dam as described and authorized herein requires a variance from the Agency's shoreline setback regulations.

Existing Environmental Setting

3. The project site and all property surrounding Keenan Reservoir is classified Rural Use land use area on the Adirondack Park Land Use and Development Plan Map. Agency staff has determined by site inspection that there are no wetlands in the location of the proposed replacement overflow dam and that the project as authorized herein will not involve wetlands. There are otherwise no statutory "critical environmental areas" or designated river areas on the project site. As confirmed by NYSDEC (letter dated October 16, 2008), "there is no record of known occurrences of rare or state-listed animals or plants, significant natural communities, or other significant habitats on or in the immediate vicinity of the project site."
4. For many decades, the City of Glens Falls has owned and maintained five dams as part of its watershed to provide water supply for its residents. Keenan Reservoir is the largest of the five impoundments. Keenan Reservoir is a man-made waterbody dating from 1892 and the Keenan Dam impounds water from the upper watershed of Clendon Brook. The existing dam is in disrepair and does not comply with NYSDEC Dam Safety Requirements; pursuant to NYSDEC guidelines it is considered "Class C", which means dam

failure could cause loss of life, and serious damage to homes, industrial or commercial buildings. The Project Engineer has indicated that should dam failure occur, predicted water levels and resulting velocities could potentially result in damage to homes and property within the Clendon Brook corridor and could also potentially result in loss of life. In September 2008, the City entered into a Consent Order with DEC (covering five separate dams, including Keenan Dam; RS-20060609-627), which as amended provides that all remedial work for Keenan Reservoir be completed by June 30, 2011.

5. The mean high water mark of Keenan Reservoir is 1200.0 feet amsl. The normal pool elevation of Keenan Reservoir is generally at an elevation of 1198.5 feet amsl. Water levels in the reservoir are regulated and controlled by the City of Glens Falls. Water elevations fluctuate based on weather conditions and water usage; the water demand is typically higher in summer and lower in winter. According to the Engineering Design Report, significant spillway capacity must be added to the Keenan Reservoir Dam to pass a design storm equivalent to 50% of the probable maximum flood (PMF), and to accommodate this flow volume, the overflow dam must be widened. The existing overflow dam is in poor condition with collapsed masonry walls and deteriorating concrete, and the bedrock below the existing dam structure is generally of poor quality and would not meet the design requirements for a new overflow dam. Consequently, the Engineer's recommendation was to construct a new concrete ogee weir overflow dam located about 100 feet upstream of the existing spillway.
6. The existing overflow dam, originally constructed circa 1892, is located at the south end of the Reservoir. The existing overflow dam is approximately 120 feet long by 24 feet wide and it is constructed at an elevation of 1199.5 feet amsl. The replacement overflow dam will be an ogee weir design approximately 90 feet long by 60 feet wide and constructed at an elevation of 1198.5 feet amsl, with adjacent retaining walls at an elevation of 1202.
7. The shoreline in the location where the new overflow dam is proposed (approximately 100 feet upstream from the existing overflow dam) is comprised of exposed bedrock at and above the water level and upland area of coniferous forest, dominated by mature hemlock and pine. As shown on the project plans, most of the shoreline vegetation within the immediate shoreline area of the new overflow dam will be removed to undertake the project (see Impact finding 22 below).

8. The City of Glens Falls owns Keenan Reservoir and all surrounding shoreline. There is no public access to Keenan Reservoir as the applicant owns all lands surrounding the reservoir and all roads accessing the site. Other than the existing dams and infrastructure related thereto there are no other structures or development on the project site.

Engineering Design

9. The Adirondack Park Agency did not evaluate safety aspects of the proposed replacement overflow dam. The Agency has relied upon the design of the New York State licensed professional engineer, and reviewed by NYSDEC, to address dam safety concerns. In addition, for the purposes of granting the variance, the licensed engineer has stated the design is the minimum relief necessary as required in the Agency's regulations. The State of New York and the Agency will in no case be liable for any failure or damage to the structure caused by or resulting from construction activities, operation or maintenance of the dam.

Public Notice and Comment

10. The Agency notified all adjoining landowners and those parties as statutorily required by §809 of the Adirondack Park Agency Act and published a Notice of Complete Permit Application in the Environmental Notice Bulletin. No comment letters were received.

Public Hearing

11. Pursuant to 9 NYCRR 576.6, Agency staff conducted a public hearing on November 18, 2009 at the Town of Lake Luzerne Offices. Other than the applicant and their representative, no one else attended the hearing or submitted comments.

Other Regulatory Permits and Approvals

12. The applicant has filed a Joint Application for Permit to New York State Department of Environmental Conservation (DEC) and US Army Corps of Engineers (ACOE) for repairs and rehabilitation at both the Main Dam and the Overflow Dam. By letter dated December 1, 2009 the applicant responded to NYSDEC's June 1, 2009 letter requesting additional information regarding the joint application. Approvals have not yet been issued by NYSDEC or ACOE.
13. The Agency has been advised by the Town of Lake Luzerne and the Town of Queensbury in completed Local Government Notice Forms that no approval is required from either municipality for the overflow dam replacement project as authorized herein.

VARIANCE CRITERIA

14. Whether adverse consequences from denial outweigh the public purpose of statutory shoreline restriction:
Denial of the variance would result in the applicant's inability to comply with the NYSDEC Dam Safety Requirements and NYDEC Order on Consent R5-20060609. Further denial of the variance would potentially result in the need for the City of Glens Falls to identify and develop a replacement component for this part of their potable water supply. Moreover, denial of the variance could potentially result in property damage and loss of life from failure of the existing dam. These adverse consequences outweigh the public purpose of the statutory shoreline setback restriction, especially since there is no public access to Keenan Reservoir. In this circumstance, the public safety and water supply issues resolved by rehabilitating Keenan Dam and replacing the deteriorating overflow dam, outweigh the public purpose of the shoreline setback restriction.

15. Whether the application requests the minimum relief necessary
The proposed replacement overflow dam has been designed and located so as to limit its size to the smallest area possible while still complying with all State and Federal requirements. By constructing the new overflow dam 100 feet upstream from the existing location, in an area where the channel narrows, the length of the new overflow dam can be 90 feet across, instead of 120 feet. Further, bedrock in the proposed new location is less fractured and more stable than bedrock in the existing location. Finally, locating the new overflow dam 100 feet upstream will allow for the needed stone rip rap channel stabilization to be installed in the area that will be disturbed by removal of the old dam. Whereas if the overflow dam were reconstructed in the existing location, then stone rip rap stabilization would be installed in a currently undisturbed channel bed and result in additional shoreline disturbance and removal of more shoreline vegetation.

16. Whether granting the variance will create a substantial detriment to adjoining or nearby landowners -
Neither the existing or proposed overflow dam is visible from adjacent properties or public areas. The applicant owns all lands surrounding Keenan Reservoir and the overflow dam replacement will not pose any detrimental impacts to adjoining landowners. Minimal off-site impacts to adjacent landowners may result from the increased traffic of construction vehicles and worker vehicles during construction of the project, but these

impacts will be minor and temporary. Upon completion of the project, there will no adverse impacts to adjoining landowners. Further, there will be benefits to adjoining landowners in that the "high hazard" dam will be replaced, thereby lessening the threat of dam failure.

17. Whether the difficulty can be obviated by a feasible method other than a variance -

There is no non-jurisdictional alternative to the proposed project. A dam has to be constructed within the mean high water and cannot comply with the shoreline set back requirements. It is not possible for the overflow dam to be smaller than 100 square feet size, given the width the channel and the minimum size needed to comply with NYSDEC Dam Safety Requirements. Further, there is no option to replace the existing overflow dam in the same location, with a new dam of the same size and dimensions, as such would not comply with NYSDEC Dam Safety Requirements. A new overflow dam constructed in the existing location would have to be larger than the size of the existing dam, in order to comply with NYSDEC Dam Safety Requirements. Any expansion to the size of the lawfully existing non-conforming structure would require a variance. Thus, non-jurisdictional replacement in kind is not an option.

Further, as explained above, bedrock in the proposed location for the new overflow dam is less fractured and more stable than bedrock in the existing location. Also there will be less disturbance from installation of the stone-rip-rap channel stabilization in the proposed location than there would be if the replacement overflow dam were constructed elsewhere.

18. The manner in which the difficulty arose -

The need for a replacement overflow dam has resulted from deterioration of the over 100 year old existing overflow dam, the structure's noncompliance with current NYSDEC Dam Safety Requirements and the potential threat to life and property resulting from the condition of the existing "High hazard" dam. This project is not a proposal to increase the capacity of Keenan Reservoir, and it is not an issue of personal convenience of a private landowner. It is an issue of public safety.

19. Whether granting the variance will adversely affect existing resources:

The new overflow dam will replace and improve a existing deteriorating overflow dam and thus will not result in any adverse impacts to existing resources. In fact, resources and adjacent properties, as well as the City water supply, will all be better protected as a result of replacing and improving the deteriorating overflow dam.

20. Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects noted above
Compliance with the conditions herein will avoid any potential adverse impacts resulting from construction and operation of the new overflow dam.

PROJECT IMPACTS

Water Resources/ Navigable Shorelines

21. Proper installation and maintenance of the cofferdam and all erosion control measures will adequately protect the water quality of Keenan Reservoir during construction of the dam.
22. The total amount of vegetation that will be removed within 35 feet of the mean high water mark of Keenan Reservoir is approximately 0.2 acres, which is approximately 2.5 percent of all vegetation within 35 feet of the mean high water mark of the entire shoreline.

Operational Issues Affecting Nearby Land Uses

23. The applicant owns Keenan Reservoir and all lands surrounding the shoreline of the reservoir. There is no public access to Keenan reservoir and there are locked gates on the private roads which access the site. Further, the site is posted with "No Trespassing" signs and City personnel conduct routine inspections of the property to prevent trespassing. Activities on the reservoir and along the shoreline will not impact any public users. During construction of the new dam there will be a minor increase in traffic resulting from construction vehicles and worker vehicles entering and leaving the project site. The estimated construction schedule is anticipated to begin in March 2010 with completion in October 2010. Upon completion of the project there will be no adverse impacts to adjacent land uses or public roads. Also, requiring that any new site lighting be shielded and angled downward will further insure no impacts to adjacent land uses.

As explained herein, replacement of the deteriorating overflow dam will reduce the threat of potential adverse impacts to nearby downstream land uses which would result from failure of the existing deteriorating dam.

Economic

24. The cost to rehabilitate the dam as required is estimated to be \$3.5 million. The Keenan Reservoir is used to supply drinking water to an estimated 14,500 people in the City of Glens Falls and portions of the Town of Queensbury. In addition, the reservoir provides water for fire protection in both the City of Glens Falls and portions of the Town of Queensbury, and process water for industrial and commercial customers in the City. The Keenan Reservoir and its associated structures and equipment therefore represent critical infrastructure for the City of Glens Falls and its environs. The projected costs of having to identify and develop a new water source and associated infrastructure have not been fully evaluated, but the project engineers expect that it would exceed the cost of the proposed dam rehabilitation.

Wetlands

25. The proposed project will not involve wetlands, nor result in any loss of wetland acreage, function or the benefits derived therefrom.

Recordation

26. A variance of the terms of the APA Act is not personal and runs with the land. Recording of the variance order ensures notice to subsequent owners of the land.

Historic Sites or Structures

27. The New York State Office of Parks, Recreation and Historic Preservation (OPRHP) issued a letter dated February 20, 2009 which determined the proposed project would have "No Impact" upon cultural resources in or eligible for inclusion in the National Registers of Historic Places. Thus, the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Section 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

CONCLUSIONS OF LAW

1. There are practical difficulties in the way of carrying out the strict letter of the shoreline setback restriction set forth in §806 of the Adirondack Park Agency Act and 9 NYCRR Part 575, in that:
 - a. the application requests the minimum relief necessary;
 - b. there will be no substantial detriment to adjacent or nearby landowners;
 - c. the difficulty cannot be obviated by a feasible method other than the variance;
 - d. the difficulty arose due to the aging and deterioration of the existing Keenan Dam;
 - e. the granting of the variance will not adversely affect the natural and scenic resources of the shoreline and adjoining waterbody due to erosion, surface runoff, subsurface sewage effluent, detrimental change in aesthetic character, or other impacts which would not otherwise occur;
 - f. the imposition of appropriate conditions will ameliorate any adverse effects; and,
 - g. the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restrictions.
2. The variance, pursuant to §806 of the Adirondack Park Agency Act, 9 NYCRR Part 576, observes the spirit of the Act, secures public safety and welfare, and does substantial justice.



P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050

**APA Project Permit
2009-173**

Date Issued: January 15, 2010

**In the Matter of the Application of T-MOBILE
NORTHEAST, LLC AND THE SOCIETY FOR
STRINGS, INC.**

for a permit pursuant to **§809 of the Adirondack Park
Agency Act**

To the County Clerk: This permit
must be recorded on or before
March 15, 2010. Please index this
permit in the grantor index under
the following names:

- 1. T-Mobile Northeast, LLC**
- 2. Society for Strings, Inc.**

SUMMARY AND AUTHORIZATION

T-Mobile Northeast, LLC and the Society for Strings, Inc. are granted a permit on conditions authorizing a two-lot subdivision by lease, the installation of a structure over 40 feet in height and a major public utility use (i.e., telecommunications tower), in an area classified Resource Management by the Official Adirondack Park Land Use and Development Plan Map in the Town of Lewis, Essex County.

This project may not be undertaken until this permit is recorded at the Essex County Clerk's Office. This permit shall expire unless so recorded on or before March 15, 2010 in the names of all owners of record of any portion of the project site on the recordation date.

This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the permit is recorded. The Agency will consider the project in existence when the new tower, equipment cabinets and other appurtenant facilities have been constructed on the project site.

Nothing contained in this permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

AGENCY JURISDICTION

The project is a subdivision by lease, a new structure in excess of 40 feet in height and a major public utility use, all Class A regional projects requiring an Agency permit pursuant to §810(1)(e)(3),(8) and (16) of the Adirondack Park Agency Act.

PROJECT LOCATION

The project site is a 137±-acre parcel, located on the west side of County Route 10, in the Town of Lewis, Essex County in an area classified Resource Management by the Adirondack Park Land Use and Development Plan Map. It is situated west of Interstate Route 87 (Adirondack Northway) between Exits 31 and 32. The site is designated Tax Map No's. 47.4-1-31, 32, 33 and 36.

PROJECT DESCRIPTION AS PROPOSED

The project as proposed and conditionally approved herein involves the construction of a new 90-foot tall telecommunications tower (i.e., monopole) with three flush mounted 5-foot panel antennas centered at 87-feet on the tower. The tower will be located on a 50 ft. x 50 ft. leased parcel. The overall height of the proposed tower with a 5-foot lightning rod will be 95-feet. The applicant also proposes three equipment cabinets on a concrete pad at the base of the tower and a backup power generator all covered by a 10 ft. x 16 ft. canopy. An ice bridge to protect the cables connecting the tower to the equipment cabinets and a chain link fence around the 28 ft. x 32 ft. equipment compound are also proposed. Access to the proposed tower location will be over an existing gravel road built for access to a previously authorized tower. There will be space on the tower and within the equipment compound for co-location by another telecommunications carrier. The proposed tower is 120± feet from a previously authorized 79-foot telecommunications tower constructed by another cellular carrier. Utilities to the site are installed underground.

Two trees will be removed from the 50 ft. x 50 ft. leased area. Numerous other trees within and around the leased area will be retained. Except for the vegetative clearing described above, as shown on the plans, a no-vegetative cutting easement, which is part of the lease agreement between T-Mobile Northeast and the landowner, will protect the remaining vegetation within 200-feet of the tower. The proposed tower is part of T-Mobile's proposal to provide cellular telephone coverage to the Adirondack Northway corridor.

The project is shown on a set of plans (15 sheets) labeled: "T-Mobile Northeast LLC Site Number 3ESA474E Site Name Lewis Construction Drawings." The plans were prepared by C & S Engineers of Syracuse, New York and dated Final Drawing November 5, 2009. The individual sheets are titled:

Sheet 01 - Title Sheet
Sheet 02 - Overall Site Plan
Sheet 03 - Site Plan
Sheet 04 - Equipment Layout Plan and Tower Elevation
Sheet 05 - Grounding Plan
Sheet 06 - Construction Notes
Sheet 07 - Details
Sheet 08 - Details
Sheet 09 - Antenna Support Details
Sheet 10 - Electrical Notes and Details
Sheet 11 - Grounding Notes and Schematics
Sheet 12 - Grounding Details
Sheet 13 - Antenna and Cable Schedule
Sheet 14 - Site Details
Sheet 15 - Ice Canopy Details

A reduced scale copy of Sheets 02, 03 and 04 are attached as a part of this permit for easy reference. The original, full-scale plans referenced above are the official plans for the project.

CONDITIONS

BASED UPON THE FINDINGS BELOW AND INFORMATION CONTAINED IN THE PROJECT FILE, THE PROJECT IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The project shall be undertaken as described in the completed application, the Project Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the permit is a violation and may subject T-Mobile Northeast, LLC, the landowners, and their successors and assigns, to civil penalties and other legal proceedings, including modification, suspension or revocation of the permit.
2. This permit is binding on T-Mobile Northeast, LLC, and the landowners, and their successors and assigns, and all contractors undertaking all or a portion of the project. Copies of this permit and all the approved maps and plans referred to herein shall be furnished by T-Mobile Northeast, LLC to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows: "The lands

conveyed are subject to Adirondack Park Agency Permit 2009-173 issued January 15, 2010 the terms and conditions of which are binding upon the heirs, successors and assigns.

3. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

Review of Future Development

4. Any future new land use and development by T-Mobile Northeast, LLC, its successors and assigns, or any communications carrier on the 138±-acre project site, including the construction of any new towers or the addition of any new antennas, parabolic dishes or other equipment to the authorized tower shall require prior Agency review and approval in the form of a new or amended permit. Maintenance and/or "in kind" replacement of the tower, antennas, equipment building and other appurtenant facilities authorized herein is allowed without a new or amended permit.

Visual/Open Space Impacts

5. The tower and antennas (not including the 5 ft. lightning rod) shall not exceed 90 feet in height and the antennas shall be located on the tower as shown on the plans referenced herein. In order to minimize the visual appearance of the authorized tower, antennas and support structures, they shall be a dark grey or black color with a non-reflective flat or matt finish.
6. Other than the cutting shown on the plans and as conditioned herein, no existing trees within 200 feet of the tower shall be cut, culled, trimmed, pruned or otherwise removed from the project site without prior Agency review and approval in the form of a new or amended permit or a letter of permit compliance. This condition shall not be deemed to prevent the removal of dead or downed trees within the 50 ft. x 50 ft. parcel leased by T-Mobile Northeast, LLC, provided there is two weeks prior written notice to the Agency of the proposed cutting, that includes verification of the condition of the tree or trees to be removed.
7. Should natural causes such as blow-downs, ice storms, fire, disease or other events result in the complete or partial loss of the vegetation that provides the screening and/or backdrop for the tower/antenna array, then T-Mobile Northeast, LLC, its successors and assigns, shall within 6 months, prepare a plan for Agency review and approval that, within two years of its implementation, screens the tower/antenna array from off-site locations or otherwise brings the development into compliance

with the "substantial invisibility" provisions of the Agency's "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park". Development of the plan must consider all alternatives, such as lowering the tower, relocating the tower, replacing the tower with a simulated tree tower and planting new trees. Approval may be in the form of a letter of permit compliance or a new or amended permit. The landowners, their successors and assigns shall negotiate in good faith to allow for development and implementation of the plan approved by the Agency.

8. The tower shall not be lighted without prior Agency review and approval in the form of a new or amended permit. Any new free-standing and building mounted outdoor lights installed on the equipment shelter or within the equipment compound shall be no higher than 12-feet and employ full cut-off fixtures, that is, they shall be fully shielded to direct light downward and not into the sky.

Co-Location

9. T-Mobile Northeast, LLC, its successors and assigns, shall make space available within their leasehold to other FCC-licensed carriers for their use in creating cellular telephone "cells" and to other entities to the extent that space is available at the then-current market rate customarily charged for such leases. However, such further use shall require prior review and approval from the Adirondack Park Agency, and will be subject to the environmental impact analysis required by law and the Agency's "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park". Should the carriers and/or owners be unable to agree on the terms of the lease for such co-location; they shall submit the dispute to mediation or arbitration pursuant to the guidelines of a nationally recognized dispute resolution organization.

Discontinuance of Use

10. If the use of the tower for the authorized cellular telephone, voice, data or other forms of wireless communications is discontinued for more than one year, T-Mobile Northeast, LLC, its successors and assigns, shall remove the tower from the site within the following year. If the use of the herein authorized antennas for cellular telephone, voice, data or other forms of wireless communications is discontinued for more than six months, then T-Mobile Northeast, LLC, its successors and assigns, shall remove the antennas from the tower within the following six months. Once the time frames for removal have occurred according to this condition, placement of a new tower on the project site

or replacement of antennas on the tower for cellular telephone, voice, data or other forms of wireless communications shall be subject to review and approval by the Agency in the form of a new or amended permit. The landowners, their successors and assigns shall allow timely removal of the tower or antenna array pursuant to this condition.

FINDINGS OF FACT

Applicant/Deed Reference

1. T-Mobile Northeast, LLC is a public utility and wireless telecommunications company licensed by the Federal Communications Commission (FCC) and authorized to do business in Essex County, New York.
2. The project site is described in a deed from Ivan Galamian and Judith J. Galamian to the Society for Strings, Inc, dated May 9, 1953 and recorded May 14, 1953 at the Essex County Clerk's Office in Liber 305 of Deeds at page 518.

Background/Prior History

3. A portion of the project site was the subject Adirondack Park Agency Project 76-296 (Permits P76-225, 225A and 225B), Jurisdictional Determination J2007-650 and Permit 2007-225. Agency Permits P76-225, 225A and 225B authorized the subdivision of property in Low Intensity Use and Resource Management land use areas a portion of which was conveyed to the Society for Strings, Inc. and is now part of the property owned by them. Jurisdictional Determination J2007-650 found that the construction of a single family dwelling on the Low Intensity Use portion of the Society of String's property would require a permit from the Agency pursuant to a condition of Agency Permits P76-225, 225A and 225B. Permit 2007-225 authorized the construction of 79-foot tall telecommunications tower, equipment building and appurtenant facilities on the project site adjacent to the location of the T-Mobile Tower authorized herein.

Existing Environmental Setting

4. The project site is a 138±-acre parcel. It includes all of the Society for String's property located on the west side of County Route 10 in the Town of Lewis, Essex County. The site is in a Resource Management land use area on the Adirondack Park Land Use and Development Plan Map. The Society of Strings also owns 52±

acres on the east side of Route 10, in a Low Intensity Land Use Area. The site is irregularly shaped parcel with 5,387± feet of frontage on County Route 10. It extends, at its widest point, about 2,200± feet from the road.

5. There is an existing group camp (Meadowmount School of Music) on the project site that pre-existed the May 22, 1973 enactment date of the Adirondack Park Agency Act. There are numerous existing structures on the site, associated with the existing group camp operation. There are several entrances into the site from County Route 10 that provide access to the existing camp structures. There is also an existing telecommunications tower on the site with an existing access road to the tower.
6. Slopes on the project site are generally in the 3 to 15 percent range. The west central portion of the site extends to the lower elevation of Mount Discovery and the southern portion of the site includes the northeast side of Little Mount Discovery. Soils on the site are generally fine sandy loam to loamy sand with some areas of gravel and boulders. There are no wetlands or other water features on the project site. The site is mostly forested with a variety of deciduous and coniferous trees that have an average tree height of 75± feet, except for clearings associated with the existing group camp development.

Character of the Area

7. The area around the project site can be generally characterized as rural residential, with scattered farms and forest lands. The site itself is substantially developed by the Meadowmount School of Music a group camp that pre-existed the Adirondack Park Agency Act. The Adirondack Northway is located about 3,000± feet east of the project site.

Public Notice and Comment

8. The Agency notified all adjoining landowners and those parties as statutorily required by §809 of the Adirondack Park Agency Act and published a Notice of Complete Permit Application in the Environmental Notice Bulletin. The Agency received one letter from the Adirondack Council raising concerns about whether a second tower at the project site is in compliance with the co-location principles of the permit for the first tower on the site and with the Agency's "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park" (Towers Policy).

9. The applicant during the design of the project and Agency staff in its review of the project considered the alternatives, including raising the height of the existing tower on the site to accommodate a second carrier. In this case, Agency staff determined during the visual analysis that raising the height of the existing tower would have more visual impact than locating a second tower at the site with flush mounted antennas. The second tower location will not involve significant additional vegetative clearing. Also, the existing access road and utility lines can be used to service the second tower, so no new impacts will occur from new roads or utility lines.

Other Regulatory Permits and Approvals

10. Other than the Federal Communications Commission (FCC) licensing requirement, the Agency is not aware of any other permits or approvals required for the proposed project.

PROJECT IMPACTS

Visual Analysis

11. A visual analysis of the proposed tower was prepared by the applicant. It included computerized mapping of areas of potential visibility based on topography and with a vegetation overlay, a balloon test to identify in the field the tower location and height and photographic simulations of the tower from viewing points identified during the balloon test. Agency staff was present during the balloon test. The proposed tower will not be visible from most public viewing points within five miles of the project site, including US Route 9, most of County Route 10, County Route 12, the Bouquet River, the Steele Woods Road, the Ray Woods Road, and the Wells Hill Road.
12. The tower will be somewhat visible from a few locations within one to two miles of the project site (County Route 10, the Stowerville Road and Interstate Route 87). However, the tower will be located among existing trees and is situated such that it is back-dropped by the hillside behind it and will not be "sky-lighted" above the tree-line. The view of the tower will be limited because of the traveling speed of vehicles, the tower's orientation to the roads, its distance from the roads, the fact that T-Mobile only proposes three flush mounted antennas on the tower and because the existing trees within 200-feet of the tower will be protected by a no-vegetative cutting easement. Because of the above, and provided the tower is dark grey or black, it will be "substantially invisible".

Towers Policy

13. On February 15, 2002, the Agency adopted a policy entitled: "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park" (Towers Policy). This policy is intended to protect the aesthetic, open space and other resources of the Adirondack Park, while providing for telecommunication's systems consistent with federal law. The proposed project is consistent with the Agency's "Towers Policy" because it is located where existing telephone and electric power is already available and because the tower will be "substantially invisible" from off-site locations.

Development Considerations

14. Based on the pertinent development considerations set forth in §805(4) of the Adirondack Park Agency Act and applicable regulations, the Agency has determined that the project will not result in any undue adverse impacts on the Park's visual and open space resources.

Historic Preservation

15. By letter dated November 14, 2007, the NYS Office of Parks, Recreation and Historic Preservation determined that Project 2007-225 (i.e., the tower previously constructed on the project site) would not adversely affect the national Register of Historic Places eligible Meadowmount Music School complex (nomination pending) or other historic resources". Therefore, the proposed tower, which is immediately adjacent to the existing one, will also not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Section 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

CONCLUSIONS OF LAW

The Agency has considered all statutory and regulatory criteria for project approval as set forth in §809(10) of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Part 574. The Agency hereby finds that the project is approvable and complies with the above criteria, provided it is undertaken in compliance with the conditions herein.



RESOLUTION 2010-2

ADOPTED BY THE ADIRONDACK PARK AGENCY
WITH RESPECT TO DEPUTY DIRECTOR-REGULATORY PROGRAMS AUTHORITY TO
ISSUE PERMITS FOR TELECOMMUNICATION TOWERS

January 14, 2010

WHEREAS, the Adirondack Park Agency adopted a "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park" on February 15, 2002; and

WHEREAS, at that time, the Agency directed that projects subject to the Policy come before the Agency Board for permit review, notwithstanding 9 NYCRR 572.11; and

WHEREAS, in December, 2008, the Agency authorized the Deputy Director-Regulatory Programs (DDRP) to issue such permits for a period of one year, except for projects involving significant controversy, camouflage using a simulated tree, or non-compliance with the Towers Policy; and

WHEREAS, staff have reported on this trial period indicating that the broadened delegation reduces costs to applicants and the Agency while assuring full compliance with Agency Policy and Regulations,

NOW, THEREFORE, BE IT RESOLVED, the DDRP is authorized to approve telecommunication tower projects that are consistent with the Agency Towers Policy as provided in 9 NYCRR 572.11 and the Agency "Resolution of the Adirondack Park Agency on Delegating Certain Powers and Responsibilities," Section V. - Authority of the Deputy Director Regulatory Programs, subsection F, as amended May 9, 2008. These assure an opportunity for the Executive Director, Chairman or members of the Board to request that any major project be brought to the Board for final determination, notwithstanding the delegated authority to the DDRP.

APA Resolution 2010-2

January 14, 2010

Page 2

Resolution adopted on this date, January 14, 2010.

AYES: A. Lussi, F. Mezzano, C. Stiles, W. Thomas, J. Townsend,
L. Ulrich, J. Drabicki (DEC), R. Fayle (DED),
R. Morgiewicz (DOS)

NAYS: R. Booth, C. Wray

ABSTENTIONS: None

ABSENCES: None

CFS:mlr



RESOLUTION 2010-1

Amendments to the Town of Westport Local Land Use Program

January 14, 2010

WHEREAS, the Town of Westport administers a local land use program conditionally approved by the Agency pursuant to Section 807 of the Adirondack Park Agency Act, the Agency having approved said program on February 9, 1996; and

WHEREAS, the proposed amendments were submitted to the Agency for approval by Town Board Resolution #240 dated December 8, 2009, attached; and

WHEREAS, the Town of Westport proposed amendments will revise the Land Use Law of the Town of Westport, Essex County, New York to address existing intensity and pre-existing development provisions and gift provision; guest cottages; self-storage facilities; industrial well water extraction; water bottling facilities; hunting and fishing camps; and accessory apartments, as set forth in the attached documents; and

WHEREAS, the proposed amendments satisfy the approval criteria set forth in Section 807(1) of the Adirondack Park Agency Act and 9 NYCRR Part 582; and

WHEREAS, the Town, as lead agency, has on December 8, 2009, issued a negative SEQR declaration on the proposed amendments set forth in the attached Town Board Resolution #240 and SEQR form; and

NOW, THEREFORE, BE IT RESOLVED, that the amendments are hereby approved by the Adirondack Park Agency.

BE IT FURTHER RESOLVED, that upon filing the local law with NYS Department of State, the Town shall provide a copy of the final version of the document to the Agency's Local Government Services unit so that the Agency may update its copies of the Town's zoning regulations.

APA Resolution 2010-1

January 14, 2010

Page 2

Resolution adopted on this date, January 14, 2010.

AYES: R. Booth, A. Lussi, F. Mezzano, C. Stiles, W. Thomas,
J. Townsend, L. Ulrich, C. Wray, J. Drabicki (DEC),
R. Fayle (DED), R. Morgiewicz (DOS)

NAYS: None

ABSTENTIONS: None

ABSENCES: None

CFS:dal

Attachments: Town Board Resolution #240
Proposed Amendments to the Town Land Use Law of
the Town of Westport (Revised December 9, 2009)

TOWN OF WESTPORT

ON LAKE CHAMPLAIN

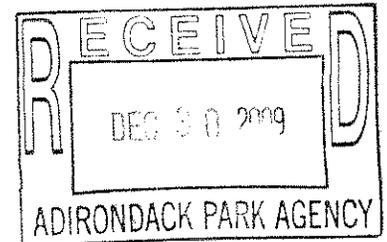
22 CHAMPLAIN AVENUE

P.O. BOX 465

WESTPORT, N.Y. 12993-0465

(518) 962-4419

Fax (518) 962-2098



Daniel W. Connell, Supervisor
Michael K. Tyler, Deputy Supervisor
Jerrold A. Sherman, DPW Superintendent

Russell L. Paquette, Councilman
Timothy Sherman, Councilman
Edward E. Smith, Councilman

The following resolution was brought before the Westport Town Board at the December 8, 2009 Regular Town Board Meeting.

RESOLUTION #240 NEGATIVE DECLARATION

On a motion by Councilman Tyler seconded by Councilman Paquette and approved on a roll call vote.

3 Ayes Paquette, Tyler, Connell
0 Nays

RESOLVED to adopt a Negative Declaration on the Proposed Amendments to the Land Use Law of the Town of Westport.

WHEREAS, the Town Board of the Town of Westport has declared itself the Lead Agency for the proposed amendments to Land Use Law of the Town of Westport, and

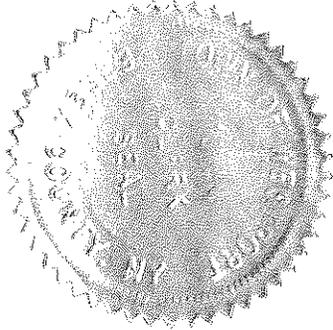
WHEREAS, the Town Board has reviewed the SEQRA Environmental Assessment Form and determined that adoption of the proposed zoning amendments to the Land Use Law will have no significant adverse environmental impacts, and

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Westport does hereby determine that adoption of the proposed amendments to the Town Zoning Codes will not result in any significant adverse environmental impacts and therefore authorizes issuance of the SEQRA Negative Declaration, and

BE IT FURTHER RESOLVED, that the Town Supervisor and the Town Clerk are hereby authorized and directed to submit the proposed zoning amendment together with the SEQRA documents and copy of this Resolution to the Adirondack Park Agency for formal APA review and approval.

I, Sheila Borden, Clerk of the Town of Westport NY, do hereby certify that I have compared the foregoing copy with the original filed in this office on the 9th day of December, 2009, and that it is a correct and true copy thereof.

IN TESTIMONY THEREOF, I have hereunto set my hand and affixed my seal the 9th day of December 2009.



Sheila A. Borden
SHEILA A. BORDEN
Town Clerk of Westport NY

Proposed Amendments
to the
LAND USE LAW of the TOWN OF WESTPORT
Revised December 9, 2009

The following text is exempted from the current LAND USE LAW of the TOWN OF WESTPORT with proposed revisions shown with added text in underline format and deleted text in ~~strikeout~~ format.

PART ONE: GENERAL AND PROCEDURAL SECTIONS FOR ALL LAND USE DISTRICTS

2.060 Land Use Intensity, Subdivision Calculation, and Recording

2.062 Intensity Designations

Intensity designations for each district are established in Section 21 for the Village Districts and in Section 31 for the Town Districts. The total number of principal buildings or dwelling units shall not exceed the number allowed by the intensity designation. No lot shall be smaller than the minimum lot size in the district.

- a. Hunting and fishing cabins and accessory apartments are exempt from intensity designation.

2.063 Subdivision Calculation and Recording

All subdivisions shall be in accordance with the intensity designations and minimum lot sizes specified in Sections 21 and 31 hereof. The term "unit" as used in this Section 2.063 shall mean "dwelling unit" for the Village Districts and "principal building" for the Town Districts.

- a. ~~If a parcel of land is improved with one or more existing units, it shall be subdivided so that each unit is placed on a lot which satisfies the applicable minimum lot size requirement, provided that the applicable intensity requirements are also satisfied. Within the Town Districts, frontage and setback requirements may be reduced as provided in Section 32.150.~~

- a. If a parcel is improved with one or more existing units as of August 1, 1973, a lot may be created around the unit and related land or buildings to that unit, such that at a minimum, the created lot satisfies the minimum lot size requirements for the land use district. Such lot and the unit thereon shall not be considered for purposes of the density calculation, which shall apply only to the remaining unimproved land on the parcel.

Where a purely mathematical application of the Town district density requirement to the parcel, minus the land area necessary to create a lot around the preexisting unit(s), results in a fractional number of permissible units, that number shall be rounded to the nearest whole number, which shall be the arithmetically permissible number of units on the parcel.

- b. ~~After the land required to remain with existing buildings has been reserved pursuant to (a) above, the remainder of the parcel~~ For a parcel not improved with one or more existing units as of August 1, 1973, it may be subdivided into additional lots, provided that (i) each new lot ~~complies with~~ unit is placed on a lot which satisfies the applicable minimum lot size requirement, and (ii) the total number of lots does not exceed the number of units allowable

with respect to the parcel to be subdivided. The number of units allowable shall be calculated using applicable intensity designations.

Where a purely mathematical application of the Town district density requirement to the parcel, minus the land area necessary to create a lot around the preexisting unit(s), results in a fractional number of permissible units, that number shall be rounded to the nearest whole number, which shall be the arithmetically permissible number of units on the parcel.

- ~~e.~~ ~~If there are no existing units on the parcel, it shall be subdivided according to Subsection (b) above.~~
- ~~d.~~ c. The allowable units, as calculated above, shall be allocated among the lots, and as a condition of the approval by the Planning Board of a subdivision plat, each lot thereon shall bear a notation stating the number of units assigned to it.
- ~~d.~~ Within the Town Districts, frontage and setback requirements may be reduced as provided in Section 32.150. [note: inserted from deleted (a) above]
- e. For purposes of calculating minimum lot size ~~and residential density compliance~~, no state-designated wetlands or land located within the road bed of a public highway or a street which is to be maintained by or ceded to the Town shall be counted. However, land located within a V-OSP overlay district may be counted in determining the number of dwelling units which may be developed on adjacent land outside the V-OSP overlay district.
- ~~f.~~ For purposes of intensity designation, no land located within the road bed of a public highway or a street which is to be maintained by or ceded to the Town shall be counted. However, land located within a V-OSP overlay district may be counted in determining the number of dwelling units which may be developed on adjacent land outside the V-OSP overlay district.
- ~~f.~~ g. The allowable number of units may be increased through the application of the density transfer procedure in Section 32.120.

2.064 Gifts, Devises and Inheritances

The mere division of land resulting from bona fide gift, devise or inheritance by and from natural persons shall not be subject to review by the Town.

- a. A subdivision map shall be presented to the Chairman of the Planning Board without Planning Board review for his signature to facilitate record keeping of all subdivisions.
- b. In no case shall the use of this regulation create any lot with a substandard minimum lot size.
- c. New land use or development on lots, parcels or sites conveyed by individuals, who on May 22, 1973, owned such land, to members of their immediate families by bona fide gift, devise or inheritance, shall be exempt from the density criteria specified in Section 21 for Village Districts and the intensity criteria specified in Section 31 for Town Districts, for the purpose of constructing one single family dwelling or one mobile home on any such lot, parcel or site, providing the construction of said use is permissible in the district within which it is located. All other permit requirements and restrictions of this local law shall apply, and no exemption from the Town On-Site Wastewater Treatment Local Law is granted.

PART TWO: WESTPORT VILLAGE DISTRICT REGULATIONS

20.020 Definitions

Accessory Apartment: An accessory apartment is a short-term accessory use to a single family dwelling. It is a separate living space within a single family dwelling to be occupied by family members or caregivers. An accessory apartment shall constitute a principal building however it does not need to comply with the intensity or minimum lot size requirements of the district.

Guest Cottage: Not more than one residential structure which is associated with an accessory use to a single family dwelling located on a lot that meets the minimum lot size for the district where proposed and which: (a) is used only on an occasional basis; (b) is used only by guests of the resident(s) of the associated single family dwelling; (c) is not for rent or hire separately from the associated single family dwelling; and (d) contains one-half (1/2) or less of the enclosed floor space of the associated single family dwelling or 1,500 square feet, whichever is less.

Home Occupation: A business or profession which (a) is conducted entirely within a dwelling or its accessory buildings, (b) is carried on only by the inhabitants of the dwelling and may involve the employment at one time of not more than two persons not residing on the premises, (c) is clearly incidental to the use of the dwelling as a place of residence, occupying floor area equal to not more than 50% that of the dwelling, (d) except in the case of a garden stand, presents no exterior indication of its existence other than a sign as permitted, and (e) produces no significant noise, vibration, smoke, dust, odor, heat, or glare. A home occupation may, for example, include the office of a physician, dentist, lawyer, real estate broker, architect, or similar professional; a craftsman's, artist's, or photographer's studio or shop; a dressmaker's or seamstress's shop; a barber or beauty shop or an outside garden stand. A home occupation may not include a funeral home, veterinary hospital, or kennel.

Industrial Spring/Well: A spring or well, its accessory structures, intended to supply a large quantity of water to supply an industrial use.

Self-Storage Facility: A commercial self storage structure open to the public.

Water Bottling Facility: A structure and accessory structures used in packaging water into containers for wholesale sales. Industrial business.

SECTION 21 VILLAGE DISTRICT REGULATIONS

21.010 District V-RES I

- a. Permitted uses: single-family dwelling, garden, home occupation, accessory use, accessory apartment, guest cottage
- b. Uses allowable by special permit: two-family dwelling, guest house, group home, public utility, major public utility

21.020 District V-RES II, including V-RES II(t) and V-RES II(t)(a)

- a. Permitted uses: single-family dwelling, public park, church, library, gardens, home occupation, accessory apartment; In districts designated V-RES II(t)(a), agriculture

- b. Uses allowable by special permit: two-family dwelling, guest house, nursing home, group home; In districts designated V-RES II(t), and V-RES II(t)(a), transient accommodations, guest cottage, public utility, major public utility

21.030 Districts V-RES II-PD(cc) and V-RES II-PD(a)

- a. Permitted uses: single-family dwelling, public park, garden, home occupation, accessory use, accessory apartment, guest cottage; with respect to V-RES II-PD(cc) only, golf course and agriculture; with respect to V-RES II-PD(a) only, agriculture
- b. Uses allowed by special permit: two-family dwelling, group home, nursing home, transient accommodations, industrial spring/well, public utility, major public utility; with respect to V-RES II-PD (cc) only: multi-family dwelling, commercial recreation facility, restaurant/bar with respect to V-RES II-PD(a) only, self storage facility

21.040 District V-RES III

- a. Permitted uses: single-family dwelling, two-family dwelling, public park, church, gardens, home occupation, accessory use, accessory apartment, guest cottage
- b. Uses allowable by special permit: group home, nursing home, guest home, public utility, major public utility; the following additional uses within the LM/C Subdistrict only: light commercial, light manufacturing, water bottling facility

21.050 District V-BUS

- a. Permitted uses: single-family dwelling, two-family dwelling, multi-family dwelling, light commercial use, transient accommodation, library, public park, government office, fire station, marine base, gardens, accessory use, home occupation, accessory apartment
- b. Uses allowable by special permit: group home, public utility, major public utility

21.060 District V-IND

- a. Permitted uses: heavy commercial use, manufacturing, heavy equipment facility, individual mobile home, railroad station
- b. Uses allowed by special permit: self storage facility, water bottling facility, industrial spring/well, public utility, major public utility, light commercial.
- ~~b.~~ c. No building shall exceed 35 feet in height, measured from the first floor above the building's basement to the top portion of the roof.
- ~~e.~~ d. No building or any portion thereof shall be closer than 25 feet from any lot line, nor closer than 50 feet from the near edge of the road bed of a public highway.
- ~~d.~~ e. Each project shall provide off-street parking spaces at the rate of not less than (1) one space per 1,000 square feet of non-residential building space, and (2) two spaces per dwelling unit.

- e. f. Each project application shall demonstrate adequate provision for loading and docking, exterior storage areas, and exterior waste disposal areas, taking into account the particular needs of the project.

21.070 District V-MGT

- a. Permitted uses: agriculture, single-family dwelling, accessory use, home occupation, accessory apartment
- b. Uses allowed by special permit: public utility, major public utility.
- b. c. Residential density shall not exceed one dwelling unit for each 42 acres. The minimum lot size shall be 7,500 square feet.
- e. d. No building or any portion thereof shall be closer than 25 feet from any lot line, nor closer than 50 feet from the near edge of the road bed of a public highway.

21.080 District V-FAC

- a. Permitted uses: school public park, fairground, playground, or sewage treatment plant, cemetery, athletic field, Village Center Park (only within the Special Village Center District).
- b. Uses allowed by special permit: public utility, major public utility.

SECTION 24 MISCELLANEOUS REGULATIONS

24.100 Accessory Apartments

24.101 The intent of this section is to allow separate living space within an existing single family dwelling to be occupied by family members or caregivers and to ensure that this use is conducted in a manner that protects and preserves neighborhood character and property values.

24.102 Notwithstanding the maximum intensity of development and the minimum lot size specified for the particular zoning district, an accessory apartment shall be allowed in a single family dwelling in all Village districts except for V-IND and V-FAC, provided that the following conditions are found to be satisfied in Site Plan Review by the Planning Board.

- a. The Town will maintain a list of all accessory use apartments in current use.
- b. The landowner, or their agent, is required annually to renew the permission to continue the accessory apartment and provide documentation that all provisions of this section are in compliance. Failure to renew the use will result in the termination of the approval for the accessory apartment and require the removal of the kitchen facilities stated in Section (c).
- c. When the purpose or the authorization for the accessory apartment expires or is invalidated, the kitchen facilities of the apartment, including any refrigerator, stovetop or range, dishwasher, and microwave, shall be removed within 60 days.

24.103 Standards and Requirements

- a. The owner(s) of the property shall occupy at least one of the dwelling units on the premises as a principal residence.
- b. No more than one accessory apartment is permitted on a lot.
- c. Modification to an existing building to accommodate an accessory apartment shall comply with all provisions contain in this zoning law except for the density allowance provided in accordance with this section.
- d. An accessory apartment shall not exceed 750 square feet in size of the floor space.
- e. If the total habitable floor space of all dwelling structures on the lot exceeds 3500 square feet, no new habitable space may be constructed on the lot.
- f. Off-street parking shall be available for the occupant(s) of the accessory apartment and the primary single family dwelling.
- g. Sites within the wastewater district will be connected to the district wastewater system.
- h. Site served by existing on-site wastewater treatment system shall meet all applicable State and Town standards for wastewater systems.
- i. The building containing the accessory apartment shall meet all applicable Standards of the State Building Code and Local Law.
- j. The property may be served by only one meter for each water and electric utility supplied.
- k. No more than two (2) people may reside in the accessory apartment.
- l. No money may be received by the property owner in exchange for occupancy of the accessory apartment.

24.104 Procedures for Approval of Accessory Apartments

Approval by the Planning Board of a proposed accessory apartment shall require notice to the public and a public hearing conducted under the Site Plan Review procedures and requirements described in this Local Law. ~~The Planning Board shall mail a copy of the decision to the Adirondack Park Agency within 14 days of granting approval for any accessory apartments.~~

24.110 Standards for Industrial Spring/Well

The following specific standards apply in connection with the review and approval of an industrial spring/well

- a. Precipitation recharge to the aquifer system being tapped must safely exceed the proposed maximum quantity of groundwater (or spring water) to be extracted. In addition, the daily withdrawal of water from the site shall not be allowed to have an undue adverse environmental impact on nearby wells, surface water or the storage capacity of the aquifer. It shall be the responsibility of the project sponsor to retain the services of a qualified geologist or hydrogeologist to certify that this condition has been satisfied based on results of the site specific studies and/or investigations.

PART THREE: WESTPORT TOWN DISTRICT REGULATIONS

30.030 Definitions

Accessory Apartment: An accessory apartment is a short-term accessory use to a single family dwelling. It is a separate living space within a single family dwelling to be occupied by family members or caregivers. An accessory apartment shall constitute a principal building however it does not need to comply with the density or minimum lot size requirements of the district.

Guest Cottage: Not more than one residential structure which is associated with an accessory use to a single family dwelling located on a lot that meets the minimum lot size for the district where proposed and which: (a) is used only on an occasional basis; (b) is used only by guests of the resident(s) of the associated single family dwelling; (c) is not for rent or hire separately from the associated single family dwelling; and (d) contains one-half (1/2) or less of the enclosed floor space of the associated single family dwelling or 1,250 square feet, whichever is less.

Hunting and Fishing Cabin: A cabin, camp, lean-to or other similar structure designed and used only for occasional occupancy and primarily for hunting, fishing and similar purposes that (a) is a one-story structure but may include a sleeping loft; (b) is built on posts or piers and does not have a permanent foundation; (c) is served by a sanitary pit privy or chemical toilet and does not have a conventional, on-site waste water treatment system; (d) does not have pressurized or indoor plumbing except for a kitchen sink with appropriate graywater leach pit; (e) is not connected to any public utilities such as electric, phone, cable television, water or sewer systems; (f) is less than 500 square feet in size (g) not more than one (1) is allowed per 20 acres; and (h) meets a 150 foot shoreline building setback.

Industrial Spring/Well: A spring or well, its accessory structures, intended to supply a large quantity of water to supply an industrial use.

Self Storage Facility: A commercial self storage structure open to the public.

Water Bottling Facility: A structure and accessory structures used in packaging water into containers for wholesale sales. Industrial business.

SECTION 31 TOWN DISTRICT REGULATIONS

31.010 Hamlet Districts (H)

31.011 Wadhams Commercial/Public Center District

a. Permitted uses:

- < single-family dwelling
- < home occupation
- < community facility

b. Uses allowable by special permit:

- < multi-family dwelling
- < tourist accommodation

- < industrial use
- < wood using facility
- < agricultural service use
- < industrial spring/well
- < water bottling facility
- < public utility
- < bed & breakfast
- < restaurant
- < commercial use
- < self-storage facility
- < accessory apartment
- < major public utility

31.012 Wadhams Residential District

a. Permitted uses:

- < single-family dwelling
- < home occupation

b. Uses allowable by special permit:

- < multi-family dwelling
- < agricultural use & structure
- < bed & breakfast
- < public utility
- < self-storage facility except in lands classified as Resource Management
- < industrial spring/well as a Class A Regional project except in lands classified as Hamlet
- < water bottling facility as a Class A Regional project except in lands classified as Hamlet
- < major public utility as a Class A Regional project except in lands classified as Hamlet
- < community facility
- < commercial use
- < accessory apartment
- < guest cottage

31.020 Agricultural Lands District (AL)

31.021 Agricultural Lands District

a. Permitted uses:

- < single-family dwelling
- < agricultural use & structure
- < forestry use & structure
- < private resource extraction
- < home occupation

b. Uses allowable by special permit:

- < multi-family dwelling
- < mobile home
- < wood-using facility
- < outdoor recreation
- < agricultural service use
- < bed & breakfast

- < hunting and fishing cabin
- < accessory apartment
- < public utility
- < guest cottage
- < industrial spring/well as a Class A Regional project
- < water bottling facility as a Class A Regional project
- < major public utility as a Class A Regional project

31.030 Forest Lands District (FL)

31.031 Forest Lands District

a. Permitted uses:

- < agricultural use & structure
- < private resource extraction
- < forestry use & structure
- < home occupation

b. Uses allowable by special permit:

- < single-family dwelling
- < commercial resource extraction
- < mobile home
- < outdoor recreation
- < wood-using facility
- < bed & breakfast
- < campground
- < group camp
- < accessory apartment
- < hunting and fishing cabin
- < public utility
- < guest cottage
- < industrial spring/well as a Class A Regional project
- < water bottling facility as a Class A Regional project
- < major public utility as a Class A Regional project

31.040 Rural Residential Districts (RR)

31.041 Rural Residential - 3.2 District

a. Permitted uses:

- < single-family dwelling
- < forestry use & structure
- < mobile home
- < private resource extraction
- < agricultural use & structure
- < home occupation
- < guest cottage

b. Uses allowable by special permit:

- < multi-family dwelling
- < mobile home court
- < campground
- < commercial resource extraction
- < outdoor recreation
- < accessory apartment
- < public utility
- < industrial spring/well as a Class A Regional project
- < major public utility as a Class A Regional project
- < agricultural service use
- < tourist accommodation
- < bed & breakfast
- < restaurant
- < group camp
- < hunting and fishing cabin
- < self-storage facility

31.042 Rural Residential - 5 District

a. Permitted uses:

- < single-family dwelling
- < agricultural use & structure
- < forestry use & structure
- < private resource extraction
- < home occupation
- < guest cottage

b. Uses allowable by special permit:

- < multi-family dwelling
- < mobile home
- < outdoor recreation
- < hunting and fishing cabin
- < industrial spring/well as a Class A Regional project
- < major public utility as a Class A Regional project
- < agricultural service use
- < bed & breakfast
- < accessory apartment
- < public utility

31.043 Rural Residential - 8.5 North District

a. Permitted uses:

- < single-family dwelling
- < agricultural use & structure
- < forestry use & structure
- < private resource extraction
- < home occupation
- < guest cottage

b. Uses allowable by special permit:

- < multi-family dwelling
- < mobile home
- < wood using facility
- < campground
- < commercial resource extraction
- < hunting and fishing cabin
- < industrial spring/well as a Class A Regional project
- < water bottling facility as a Class A Regional project
- < major public utility as a Class A Regional project
- < outdoor recreation
- < agricultural service use
- < bed & breakfast
- < group camp
- < accessory apartment
- < public utility

31.044 Rural Residential - 8.5 South District

a. Permitted uses:

- < single-family dwelling
- < mobile home
- < agricultural use & structure
- < guest cottage
- < forestry use & structure
- < private resource extraction
- < home occupation

b. Uses allowable by special permit:

- < multi-family dwelling
- < mobile home court
- < wood use facility
- < campground
- < commercial resource extraction
- < hunting and fishing cabin
- < industrial spring/well as a Class A Regional project
- < water bottling facility as a Class A Regional project
- < major public utility as a Class A Regional project
- < outdoor recreation
- < agricultural service use
- < bed & breakfast
- < group camp
- < accessory apartment
- < public utility

31.045 Lakeshore Residential - 8.5 District

a. Permitted uses:

- < single-family dwelling
- < agricultural use & structure
- < private resource extraction
- < home occupation

b. Uses allowable by special permit:

- < multi-family dwelling
- < forestry use & structure
- < campground
- < outdoor recreation
- < agricultural service use
- < hunting and fishing cabin
- < guest cottage
- < major public utility as a Class A Regional project
- < tourist accommodation
- < bed & breakfast
- < restaurant
- < group camp
- < accessory apartment
- < public utility

31.050 Village Growth - Residential District (VG-R)

31.051 Village Growth - Residential District

a. Permitted uses:

- < single-family dwelling
- < home occupation

b. Uses allowable by special permit:

- < multi-family dwelling
- < agricultural use & structure
- < forestry use & structure
- < tourist accommodation
- < bed & breakfast
- < guest cottage
- < public utility
- < industrial spring/well as a Class A Regional project
- < water bottling facility as a Class A Regional project
- < major public utility as a Class A Regional project
- < restaurant
- < group camp
- < community facility
- < commercial use
- < accessory apartment

31.060 Highway Commercial District (HC)

31.061 Highway Commercial District

a. Permitted uses:

- < single-family dwelling
- < home occupation

b. Uses allowable by special permit:

- < multi-family dwelling
- < outdoor recreation
- < agricultural service use
- < tourist accommodation
- < accessory apartment
- < self-storage facility
- < industrial spring/well as a Class A Regional project
- < water bottling facility as a Class A Regional project
- < major public utility as a Class A Regional project
- < bed & breakfast
- < restaurant
- < community facility
- < commercial use
- < public utility

31.070 Preservation District (PRES)

31.071 Preservation District

a. Permitted uses:

- < agricultural use & structure
- < forestry use & structure

b. Uses allowable by special permit:

- < outdoor recreation
- < public utility
- < major public utility as a Class A Regional project

31.080 Village Growth - Recreation District (VG-REC)

31.081 Agricultural Lands - Village Growth Recreation District

a. Permitted uses:

- < single-family dwelling
- < agricultural use & structure
- < private resource extraction
- < home occupation

b. Uses allowable by special permit:

- < multi-family dwelling
- < forestry use & structure
- < accessory apartment
- < outdoor recreation
- < bed & breakfast
- < public utility

- < major public utility as a Class A Regional project except in lands classified as Hamlet

31.090 Agricultural Lands-Airport/Commercial, Industrial District

31.091 Agricultural Lands - Airport/Commercial Industrial District

a. Permitted uses:

- < agricultural use & structure
- < forestry use & structure
- < private resource extraction

b. Uses allowable by special permit:

- < industrial use*
- < wood using facility*
- < airport
- < outdoor recreation
- < public utility
- < industrial spring/well as a Class A Regional project
- < water bottling facility as a Class A Regional project
- < major public utility as a Class A Regional project
- < agricultural service use
- < restaurant*
- < community facility*
- < commercial use*
- < self-storage facility

* *limited to area within 200 foot setback from Route (9N/22)*

31.110 Industrial District (I)

31.111 Rural Residential-5-Commercial, Industrial District

a. Permitted uses:

- < agricultural use & structure
- < forestry use & structure
- < private resource extraction
- < home occupation

b. Uses allowable by special permit:

- < industrial use
- < wood using facility
- < agricultural service use
- < self-storage facility
- < community facility
- < commercial use
- < public utility

- < industrial spring/well as a Class A Regional project
- < water bottling facility as a Class A Regional project
- < major public utility as a Class A Regional project

SECTION 32 MISCELLANEOUS REGULATIONS

32.160 Accessory Apartments

32.161 The intent of this section is to allow separate living space within an existing single family dwelling to be occupied by family members or caregivers and to ensure that this use is conducted in a manner that protects and preserves neighborhood character and property values.

32.162 Notwithstanding the maximum density of development and the minimum lot size specified for the particular zoning district, an accessory apartment shall be allowed in a single family dwelling in all Town districts except PRES, A1-AIR/COMM,IND & RR-5-COMM, IND districts provided that the following conditions are found to be satisfied in Site Plan Review by the Planning Board.

- a. The Town will maintain a list of all accessory use apartments in current use and not allow greater than 43 accessory apartments at any one time within the Town.
- b. The landowner, or their agent, is required annually to renew the permission to continue the accessory apartment and provide documentation that all provisions of this section are in compliance. Failure to renew the use will result in the termination of the approval for the accessory apartment and require the removal of the kitchen facilities stated in Section (c).
- c. When the purpose or the authorization for the accessory apartment expires or is invalidated, the kitchen facilities of the apartment, including any refrigerator, stovetop or range, dishwasher, and microwave, shall be removed within 60 days.

32.163 Standards and Requirements

- a. The owner(s) of the property shall occupy at least one of the dwelling units on the premises as a principal residence.
- b. No more than one accessory apartment is permitted on a lot.
- c. Modification to an existing building to accommodate an accessory apartment shall comply with all provisions contain in this zoning law except for the density allowance provided in accordance with this section.
- d. An accessory apartment shall not exceed 750 square feet in size of the floor space.
- e. If the total habitable floor space of all dwelling structures on the lot exceeds 3500 square feet, no new habitable space may be constructed on the lot.
- f. Off-street parking shall be available for the occupant(s) of the accessory apartment and the primary single family dwelling.
- g. Sites within the wastewater district will be connected to the district wastewater system.

- h. Site served by existing on-site wastewater treatment system shall meet all applicable State and Town standards for wastewater systems.
- i. The building containing the accessory apartment shall meet all applicable Standards of the State Building Code and Local Law.
- j. The property may be served by only one meter for each water and electric utility supplied.
- k. No more than two (2) people may reside in the accessory apartment.
- l. No money may be received by the property owner in exchange for occupancy of the accessory apartment.

32.164 Procedures for Approval of Accessory Apartments

Approval by the Planning Board of a proposed accessory apartment shall require notice to the public and a public hearing conducted under the Site Plan Review procedures and requirements described in this Local Law. The Planning Board shall mail a copy of the decision to the Adirondack Park Agency within 14 days

32.170 Standards for Industrial Spring/Well

The following specific standards apply in connection with the review and approval of an industrial spring/well

- a. Precipitation recharge to the aquifer system being tapped must safely exceed the proposed maximum quantity of groundwater (or spring water) to be extracted. In addition, the daily withdrawal of water from the site shall not be allowed to have an undue adverse environmental impact on nearby wells, surface water or the storage capacity of the aquifer. It shall be the responsibility of the project sponsor to retain the services of a qualified geologist or hydrogeologist to certify that this condition has been satisfied based on results of the site specific studies and/or investigations.

APPENDIX A
Class A Regional Projects

B. Moderate Intensity Use Areas

15. Industrial Uses including water bottling facility and industrial spring/well

C. Low Intensity Use Areas

17. Industrial Uses including water bottling facility and industrial spring/well

D. Rural Use Areas

18. Industrial Uses including water bottling facility and industrial spring/well

E. Resource Management Areas

16. Industrial Uses including Water bottling facility & industrial spring/well

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