

Issue #12

“How many principal buildings are proposed to be located on Moderate Intensity and Resource Management land use areas?”

The fact question may be resolved with a stipulation. There is a legal issue about the transfer of principal building rights across Read Road.”

Issue #12

Statutory background

APA Act § 809(10)(c): The project must be consistent with the overall intensity guideline for the land use area(s) involved

| | |
|-------------------------|------------------------------------------------------------------------|
| Moderate Intensity Use: | 500 principal buildings per square mile (1.3-acre average lot size) |
| Resource Management: | 15 principal buildings per square mile (42.7-acre average lot size) |

- APA Act § 805(3)

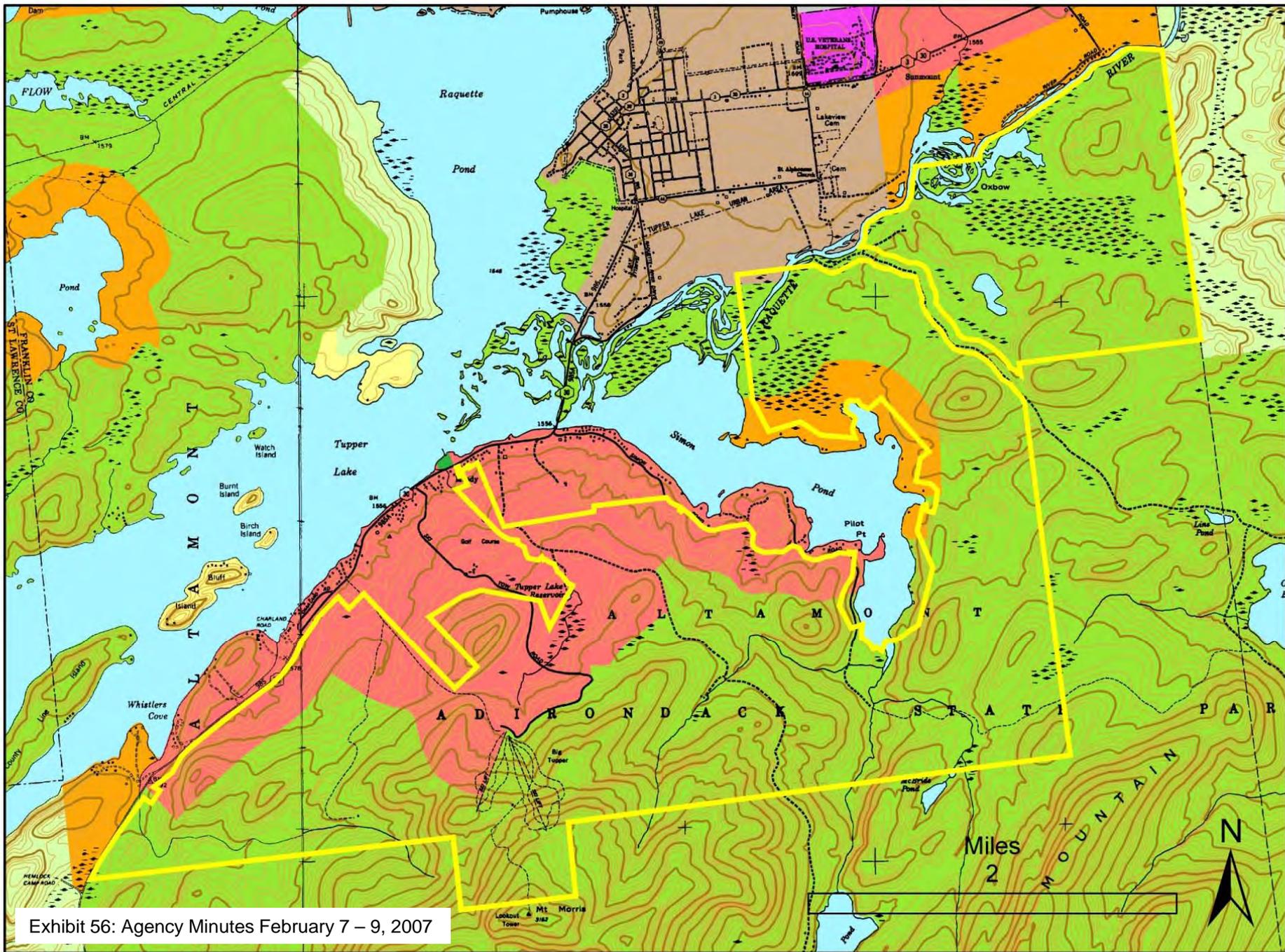


Exhibit 56: Agency Minutes February 7 – 9, 2007

Issue #12

- “It is anticipated that verifying acreages and the number of proposed principal buildings on the various land use areas would not require adjudication.”
- “I conclude there is a legal issue about the transfer of principal building rights across Read Road.”
 - “At the conclusion of the hearing, the parties may brief this issue.”
- ALJ Ruling, Nov. 16, 2010, p. 27

Issue #12 – Factual question

- **Factual Issue Concerning Mathematical Calculation of OIGs** – resolved by stipulation (two reservations)

| Land Use Area | Acreage* | Potential | Proposed | Remaining |
|---------------|----------|-----------|----------|-----------|
| RM | 4739.5 | 111 | 83 | 28 |
| MIU | 1228.2 | 942 | 606 | 336 |
| LIU | 180.3 | N/A | 0 | 56.4 |
| Hamlet | 10.7 | N/A | 0 | N/A |

*This does not include open water

- Stipulation for Issue No.12 as modified by June 21, 2011 Transcript, Attachment A, Supplemental Pre-filed Testimony, p.7, lines 18-20 and confirmed by APA hearing staff in June 24, 2011 Transcript, pp. 4274-4286.

Issue #12 – Legal question

- *Legal Issue*

- Is “Read Road” relevant when determining where principal buildings may be allocated on the RM lands?

Issue #12 – Legal question

Statute:

“In determining the land use area upon which the intensity guideline is calculated and which is included within a project, ***the landowner*** shall only include land under his ownership and ***may include all adjacent land which he owns within that land use area irrespective of such dividing lines as lot lines, roads, rights of way, or streams...***”

– APA Act § 809(10)(c)

Issue #12 – Legal question

Legal Response

- Agency staff
 - “The [project] sponsors can allocate principal building rights throughout the proposed ownership within the same land use areas.”
 - Exhibit 6 (Regulatory Programs Committee memorandum, Feb. 2, 2005), p. 5
 - “Based on the language of § 809(10)(c), the presence of Read Road does not prevent the Project Sponsor from including the acreage on both sides of the road.”
 - APA Hearing Staff Closing Brief, Sept. 23, 2011, p. 117

Issue #12 – Legal question

Legal Response

- Protect the Adirondacks! Inc.
 - “...Lot lines, roads, rights of way, or streams” are examples of internal divisions of a single property that is under the same ownership... Agency staff cannot ‘deem’ separate lots, including the lots of the ACR property, to be a single piece of property, when in reality they are divided by intervening land ownerships.”
- The Adirondack Council, Inc.
 - “Read as a whole, § 809(10)(c) requires an adjoining landowner’s consent before a combination of development rights may accrue...”
- Reply Brief and Closing Statement of Protect the Adirondacks! Inc., Oct. 24, 2011, p. 45
- The Adirondack Council, Inc. Closing statement – Adjudicatory Hearing, Sept. 22, 2011, p. 54