

Draft



Regulatory Programs Committee  
August 16, 2012  
Agency Meeting  
REW:mlr

**Regulatory Programs Committee  
August 16, 2012**

**AGENCY MEMBERS, DESIGNEES AND EXECUTIVE STAFF PRESENT**

Leilani Crafts Ulrich, Chairwoman  
Richard Booth, Member  
Cecil Wray, Member  
Sherman Craig, Member  
Arthur Lussi, Member  
Frank Mezzano, Member  
William Thomas, Member  
William Valentino, Member  
Dierdre Scozzafava, Designee, NYS Department of State  
Robert Stegemann, Designee, NYS Department of Environmental  
Conservation  
Terry Martino, Executive Director  
Acting Counsel Sarah Reynolds  
Fred Monroe, Local Government Review Board

Jen McCormick, Designee, NYS Department of Economic Development was  
not present

The Committee convened at 9:35 am.

1. Approval of July Draft Regulatory Programs Committee Minutes

On motion of Mr. Lussi seconded by Mr. Valentino the Agency  
unanimously adopted the Draft Agency Minutes of the July 16, 2012  
Agency meeting.

2. Deputy Director (Regulatory Programs) Report (R. Weber)

Mr. Weber discussed the number of preapplication files opened during  
2012 and reiterated the importance of the preapplication process to  
staff and applicants.

Mr. Weber highlighted projects on the High Profile Report and the  
Workload Summary Report.

Mr. Weber mentioned P2011-157, Keith Harris, an after-the-fact expansion of an existing commercial sand and gravel mine and stated staff would review this project with the Board in the future if requested.

Mr. Weber discussed P2012-128, Essex County and New York State Police Emergency telecommunications system with 14 locations primarily in Essex County. He noted staff has been working continuously with the applicant in the preapplication process; and on July 26 information was received and is being reviewed by staff for completion. Mr. Weber stated this project may be reviewed by the Board as early as October.

Mr. Weber briefly discussed A2012-119, National Lead, the proposal to remove and use of mine tailings from the Tahawus Mine. He noted it is in the preliminary stage of discussion with the applicant and the operator of the railroad. He noted the railroad activity will likely be exempt from Agency review due to federal jurisdiction.

A brief discussion on several other projects listed on the High Profile Report ensued. P2012-82 McCauley Mountain, the proposal to remove 3 existing omni antennas at 74ft. with 9 four foot tall panel antennas on 8 foot booms at 70ft. It was noted the purpose of this project is to upgrade technology, enhance coverage in the area and address several interference issues at the site. A discussion followed and a request was made by the Chairwoman for staff to bring this project back to the Board to review when the panel antennas are in place.

Mr. Wray asked Mr. Weber if P2012-60, Mountain Forest Products, sand and gravel mine will be brought to the Board for review. Mr. Weber stated he believes the project is a relatively small operation and would likely not come to the Board for their review.

A discussion regarding the Champlain Hudson Power Express powerline ensued and Executive Director, Terry Martino stated the Agency was a party signing onto the project only with no regulatory jurisdiction.

Mr. Booth asked if the Essex County Communications project was deemed complete on July 26. Mr. Weber explained the final materials were received at the Agency on July 26 and now staff is reviewing as a project file and not a preapplication file. Mr. Weber stated he could not see any significant issues delaying the completion of the project. It was agreed that this is a very important project for Essex County.

Mr. Monroe asked if the Verizon tower in the Town of Minerva has been abandoned by Verizon. Mr. Weber replied that the project remains incomplete by the applicant and does not know what the applicant's intentions are for the proposed project at this time.

3. 2012-58 (A. Lynch)  
Constance and Michael Cunningham  
Town of Schroon, Essex County  
Moderate Intensity

Ms. Lynch welcomed the project applicants who were present in the audience.

She noted that this is a variance request pursuant to New York State Executive Law Section 806 but not in a river area as stated previously. She summarized the applicant's proposal to authorize a lateral expansion for the construction of a 76 sq. ft. master bathroom 22 feet from the mean high water mark of Schroon Lake.

Ms. Lynch presented a power point presentation describing the proposed project, project site and location. She discussed Agency jurisdiction and existing environment and prior history of the proposed project site and discussed the two alternatives that were deemed not feasible by the applicant.

Ms. Lynch discussed the public hearing held July 26 at the Town of Schroon Town Hall. She noted no comment letters were received.

Ms. Lynch discussed the variance factors set forth in (NYCRR Section 576.1)

The staff recommendation is to grant the variance with conditions.

Mr. Lussi commented that he did not entirely agree with staffs view that there is no adverse effect on the water quality associated with the proposed project. An impervious surface (roof) is being added to the project site.

A brief discussion ensued with Board members discussing the fact that the addition will be built on piers where there will be no foundation, allowing the rain to soak into the ground. Ms. Lynch agreed and stated staff discussed language regarding this situation. Mr. Lussi discussed adding the word "minimal adverse effect" instead of "no adverse effect".

It was noted the applicants have owned the house for 10 years.

Mr. Booth stated he will vote yes for the project but asked staff to use caution in the future for variance projects of this nature. He commented on the variance criteria and stated that this proposal to add a master bathroom to a house that has a bathroom is not what the variance criteria was intended for. He stated this variance is approveable because the impacts are negligible but noted his concern that this project starts a path for variance requests that are not "practical difficulties". He stated this is not what the variance process was intended for.

Mr. Lussi stated he commends the applicants for installing a new septic system before proposing use of the this project. He also agreed with Mr. Booth's comments regarding the variance process.

Mr. Booth made a motion to move the project to Full Agency with two revisions: 1) to add the word "minimal" in place of "no adverse effects" and 2) adding the language on page 3 of the memorandum to the Order describing the "rearward alternative" as a possible adverse environmental impact.

Mr. Valentino seconded the motion.

Mr. Monroe stated between 1973 and 2008 this lateral expansion would have been non-jurisdictional.

The Regulatory Committee vote was unanimous in favor of the motion to move the project to Full Agency for approval.

2010-269 (C. Parker)  
Highlands Farmers, LP  
Town of Keene, Essex County  
Resource Management

Colleen Parker welcomed Jim and Lynne Detmer, representing Highlands Farmers, LP to the Agency meeting.

She stated staff's recommendation is to approve this permit with conditions. Ms. Parker mentioned that a revised draft permit subsequent to the version received in the mailing had been provided to the Agency and extra copies available to the public.

She noted a comment letter was received August 15, 2012 from Adirondack Wild and distributed to Agency members this morning with extra copies available to the public.

Ms. Parker presented a power point presentation describing the project site and location and each lot as proposed. She discussed Agency jurisdiction, the existing environment and prior history of the project site.

Ms. Parker showed several slides describing the existing site conditions, proximity to state land wilderness areas, (CEA's) topography, single family dwellings and proposed locations of each of the lots and the allocation building rights on certain proposed lots.

Ms. Parker mentioned that the currently proposed building lots were well designed and would not result in adverse impacts. She further explained that as a part of the review process, staff asked questions regarding the long term plan for the property and requested a master plan. The applicant's responded with draft deeds to each of the above lots where potential development could occur in the future and where no development would occur as well.

She explained staff's position on requesting an "open space" plan for lots 10 and 12 that would outline implementation measures for the permanent protection of open space resources as appropriate.

Ms. Parker introduced Mark Rooks of the Agency RASS Division.

Mark Rooks, Associate Adirondack Park Project Analyst, Biological Resources gave a brief overview of the methodologies used for Ecological Impact Zone (EIZ) Analysis and presented his findings for this project. Based on his EIZ analysis, he saw no decrease in habitat connectivity and minimal impact to wildlife habitat.

Mr. Booth suggested that language be added to draft permit recognizing that each lot has road access from Styles Brooks Road, and that the language describing Lot 11 be treated separately from the language describing lots 1,2,3,4,7 and 8.

Mr. Van Cott, from the Agency's Legal Division was introduced.

He stated his presentation will focus on staff's recommendation to include a condition requiring an "open space" plan for lots 10 and 12. He noted that the project applicants have stated their objection to staff's recommendation for the "open space" condition in the draft permit.

He stated that lots 10 and 12 comprise approximately 59% (788 acres) of the project site. Along with steep slopes the lots contain small streams and significant wetland complexes. He described the topography of lots 10 and 12 as well as the proximity to state lands and scenic qualities of both lots. He noted these factors led staff to the recommendation for the condition in the draft permit.

He stated that Condition 17 will ensure that open space on lots 10 and 12 will be adequately protected if in the event of a future proposal for development or subdivision of those lands. Mr. Van Cott indicated that staff believed assurance of such protection is critical to a finding that the project is compatible in Resource Management.

Mr. Mezzano asked Mr. Van Cott what impact would Condition 17 have, if any, with the 8 principal building rights on lot 12 and the 5 on lot 10. Mr. Van Cott answered there would be no impact. The applicant's have determined as part of the project that the principal buildings should be allocated to those lots. An "open space" plan for Lot 10 may set up buffers surrounding certain areas where a principal building should not be constructed to permanently protect certain areas, however they will not lose any potential building rights.

It was noted there are no building envelopes proposed for either Lot 10 or Lot 12 at this time and no further land use or development may ever be contemplated for these lots.

Mr. Van Cott noted the applicant's have already addressed some "open space" issues by deed restricting lots 11 and 13.

Comment was made that a future applicant would be required to return to the Agency for a permit for any new development on either lot due to the fact that they are Resource Management, but that with Condition 17 they would also be required to develop an "open space" plan.

Mr. Van Cott and Ms. Parker agreed.

Comment was made commending the applicant on its existing planning for the project site. Staff understand why the applicants would prefer not to prepare an "open space" plan for the lots simply because they do not know at this time what their long term plans are. It was mentioned that it is unfair and unreasonable to request an "open space" plan for lot 10 and 12.

Mr. Van Cott replied Condition 17 does not require them to design a plan until the applicant returns to the Agency for a permit.

Comments commending the applicant on their well thought out plan for the project site were discussed.

Mr. Booth asked why Condition 17 does not apply to all the proposed lots, as in the July draft permit it applied to lots 5, 6, 10 and 12. Mr. Van Cott answered that the focus is on the large tracts where aesthetic resources, steep slopes, streams, high elevations, and proximity to state land exist.

Ms. Parker stated should the applicants come back to the Agency with a proposal to construct or subdivide Lot 5, a significant review of the applicant's proposal will occur. There are historic resources on Lot 5, and the Agency could not complete an application until staff have heard from the New York State Preservation Office about any potential impacts to historic resources on Lot 5.

Mr. Booth noted the building density could potentially be transferred to any of the proposed lots. He suggested revising the language on page 13 Finding 14 to reflect that language. Both Mr. Van Cott and Ms. Parker agreed.

Mr. Booth suggested one "open space" plan for Lots 10 and 12, not two. A brief discussion ensued regarding having one "open space" plan as opposed to two separate "open space" plans as proposed in the draft permit.

Chairwoman Ulrich asked Mr. Van Cott to discuss the applicants comment to the Agency that Condition 17 would be an "onerous expectation." Mr. Van Cott responded that the comment stemmed in part from the applicant's review of 3 previously authorized permits by the Agency comparing projects.

Mr. Van Cott stated the applicants were concerned the Agency did not require the applicant's of those permits to have an "open space" plan. Mr. Van Cott discussed staff's response to the applicants concerns, noting that the details and the resources on each of the authorized permits were different and Agency actions were appropriate on a site specific case-by-case basis.

Ms. Parker briefly discussed the applicant's objection to Condition 17 and noted that even as revised in the current draft, the applicants still strongly object to the open space plan condition.

Chairwoman Ulrich stated that by keeping Condition 17 in the draft permit, staff is not directing the applicant as to how to utilize their property, as it is the applicant's choice as to what mechanism to use on their property to protect the open space.

A brief discussion ensued on how the allocation of building rights for the proposed project site occurred. It was reiterated that any new land use or development proposal would need to come back to the Agency for review. It was noted that staff can request an "open space" plan condition under the Adirondack Park Agency Act.

Acting Counsel Sarah Reynolds stated staff is required to review various resources of the Park specifically in this instance "open space," visual, wildlife habitat, etc. This review is completed on every project at the Agency. Ms. Reynolds stated that typically when the Agency receives an application for a large subdivision in Resource Management, staff will either request a preliminary "open space" plan or the applicant will provide a plan when submitting their application. The Agency did not receive one for this project and that is why this discussion is taking place today.

A brief discussion on what could occur if only one "open space" plan is authorized as opposed to having two "open space" plans, one for Lot 10 and one for Lot 12.

Member Booth made a first motion to move the proposed project to Full Agency for approval with a revision to include an open space plan and implementation measures for the permanent protection of open space resources for lots 5,6,10 and 12 combined. He stated in the case this motion is defeated he moves a second motion to include any new permit application for further subdivisions or new development on lots 10 or 12 should include an open space plan and implementation measures for the permanent protection of open space resources for those two lots combined as appropriate.

There was no second for the first motion requested by Mr. Booth.

Mr. Booth's second motion was seconded by Mr. Valentino.

Mr. Monroe stated that "open space" has been an issue to the Local Government Review Board. Ownership involves a bundle of rights and that the LGRBs position is that one of the landowner's rights is to not have an "open space" plan for your land until you are proposing to do something with it. Mr. Monroe stated the review board would be opposed to the amendment requested by Mr. Booth.

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Acting Counsel Reynolds stated that if any form of Condition 17 remains in the permit then any future permit application received at the Agency would remain incomplete until an "open space" plan that complies with the language is received at the Agency. If the condition is not in the permit then the Agency could be forced to review the project with no "open space" plan and either approve or deny the permit.

Mr. Mezzano called for a Committee vote on Mr. Booth's second motion, which was seconded by Mr. Valentino. The motion failed to pass by a Committee vote of 3 to 2.

Mr. Mezzano asked for a Committee vote to move the draft permit to Full Agency for approval without any revision. Mr. Valentino seconded the motion. The motion was passed by a Committee vote of 4 to 1.

4. Old Business: NO

5. New Business: NO

**Adjournment:** The Regulatory Committee meeting adjourned at 12:30 pm.  
REW:mlr

Note: The power point presentations referred to herein are on file at the Agency. Copies are also available for inspection on request.