

Draft Regulatory  
Committee Minutes -  
March 2014- Revised  
for mailing 4/2/2014



Regulatory Programs Committee  
March 13, 2014 Agency  
Meeting; REW:mlr

**Regulatory Programs Committee  
March 13, 2014**

Committee Members present: Sherman Craig, Chair, Richard Booth, Arthur Lussi, and Dede Scozzafava (Department of State), and Chairwoman Ulrich.

Other Agency Members and Designees present: Daniel Wilt, Robert Stegemann (Department of Environmental Conservation), Bradley Austin, (NYS Department of Economic Development), and William Thomas and Karen Feldman.

Agency Staff present: Terry Martino, Executive Director and James Townsend, Counsel.

Local Government Review Board Representative: Jerry Delaney, Chairman

The Committee convened at 11:30 am.

1. Approval of February Draft Regulatory Programs Committee Minutes

On motion of Member Scozzafava and seconded by Member Lussi, the Committee unanimously adopted the Draft Regulatory Committee Minutes of the February 2014 Agency meeting.

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

Mr. Weber reviewed the Active Status and High Profile reports and applications received and permits issued.

Mr. Weber briefly discussed project 2014-7, a proposal for a group camp to be operated year round in the Town of Brighton. He noted a joint site visit took place on February 25, 2014 with the Departments of Health, DEC, OGS and APA staff. The applicant's representative was on the site and discussed several issues with staff regarding the proposed application.

Mr. Weber stated that when the proposed property is bought by the applicants, Agency staff will present to the Board a technical map amendment for the reclassification of the property from State Administrative to Moderate Intensity; the action would return the property to the classification in place prior to state ownership, and will likely happen prior to the Agency's consideration of the group camp project.

Mr. Weber stated staff has agreed to suspend the clock to allow the applicant to gather information necessary for staff to review the project. Mr. Booth asked if staff have considered that "group camp" is a seasonal term; Mr. Weber stated no, that that discussion has not taken place with the applicant.

Mr. Weber briefly discussed several other projects on the high profile report and welcomed questions at the members convenience.

#### 4. Project

2013-257	Janet Yuckel
(S. McSherry)	Town of Fine: St. Lawrence County Resource Management

Ms. McSherry introduced Christopher Westbrook, Adk Compliance, Authorized Representative, and Agency staff Greg Bendell, RASS and Steve Brewer, Senior Attorney, who were part of the review team.

Ms. McSherry described the proposed project site located on the shoreline of two navigable bodies of water; the Oswegatchie River and "The Setback," a pond on the north side of Ranger School Road.

She explained the variance as proposed: 1) a 266-square foot addition on the east side of the dwelling to provide new universally-accessible living quarters on the first floor; 2) a 45-square foot elevated wooden ramp on the north side of the dwelling to provide wheelchair accessibility to the dwelling; and 3) A 30-square foot covered staircase "entryway" on the north side of the dwelling facing Ranger School Road.

Ms. McSherry explained the site plan of the proposed project. She stated the dwelling is currently 42± feet from the mean high water mark (MHWM) of the Oswegatchie River and 94± feet from the MHWM Of "The Setback." She stated that most of the property site is located within the 100 foot shoreline setback area from both bodies of water. Only a small area in the northeast corner is more than 100

feet from both bodies of water; the applicant has designated this location for a replacement wastewater treatment system at such time as the current system needs replacing.

Ms. McSherry described the three shoreline setback variance requests. She stated the 266 sq. ft. addition will not bring the dwelling closer to either shoreline, but requires a variance from the required setback from the Oswegatchie River.

She explained the 45 sq. ft. elevated wooden ramp will require a variance from the required shoreline setback from "The Setback" and the Oswegatchie River.

The last element, a 30 sq. ft. covered staircase "entryway," requires a variance from the required shoreline setback from "The Setback", and the Oswegatchie River.

Ms. McSherry stated that the size and configuration of project site does not allow any type of expansion without a variance. She stated the applicant had considered tearing the house down and rebuilding it in the location that had been designated for the replacement wastewater treatment system. Staff agreed that reserving the designated location on the project site for the replacement wastewater treatment system when needed was the best use for that area.

Ms. McSherry discussed the site plan and noted that staff requested tree plantings between the house and the driveway to screen the expansion from "The Setback." She also noted that the new addition would not be visible from the Oswegatchie River due to the densely wooded shoreline.

Ms. Feldman noted that a bathroom was to be constructed and she questioned if the utility room included a washer. Ms. McSherry answered that staff did not ask about a washer because a wastewater treatment system capacity is based on the number of bedrooms by New York State Department of Health Regulation.

Ms. McSherry explained the applicant believes the current septic system is located between the driveway and the entryway and if the septic system was to fail it would be replaced meeting NYS Dept. of Health Regulations in the designated area shown on the plans.

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Ms. Feldman asked if staff were comfortable with the proposal for replacement. Ms. McSherry referred to the staff engineer Greg Bendell.

Mr. Bendell answered that in his view the Agency lacked authority to require the installation of a new septic system to replace a lawful pre-existing system.

In response to a question from Mr. Booth, Mr. Bendell stated the proposed project does not increase the present water flow as calculated by the number of bedrooms.

Mr. Booth commented that the applicant is applying for a variance, and asked whether the Agency could add a condition in the Variance Order requiring a wastewater treatment system that meets NYS Dept. of Health Regulations. Mr. Booth asked if the Agency would have jurisdiction to require replacement if the applicants decided to make this a two-family house or added a new bedroom.

Mr. Bendell stated that if such changes were made the flow to the septic system would be increased and the Agency would require the applicants to upgrade their system and relocate to the designated replacement area. Ms. McSherry referred Mr. Booth to Condition 7 in the draft Variance Order.

Ms. Feldman questioned the office upstairs as being a bedroom prior to this application. Ms. McSherry confirmed that the space had been a bedroom but the office will be an open hallway with no closet.

In response to a question from Mr. Delaney, Mr. Brewer stated the house contained 1225 square feet.

Mr. Wilt asked if the Agency is able to request or require the applicants to upgrade their present wastewater treatment system bringing the system into compliance. Mr. Brewer responded and repeated staff's position that without an increase in bedrooms, staff did not recommend an upgrade to the present system.

Mr. Delaney stated this is a unique parcel of land fronting on "The Setback" the Oswegatchie River, and he is concerned with the basis of jurisdiction. He said it is the Local Government Review Board's position that if there is no increase in occupancy then there should be no condition to replace the system. It would appear that up to the change in the 2008 Agency's Regulation change that this property would not be requiring a variance for the expansion of the structure.

Counsel Townsend explained that this is a two lateral expansion from two directions and would have required a variance.

Mr. Delaney commented that upgrading the present wastewater treatment system would not have required a variance. He agreed with Counsel that the ramp and stairway do indeed require a variance.

Chairwoman Ulrich noted again for the Board members to review Conditions 6 and 7 which address these questions.

Mr. Booth asked if staff could revise the language in the draft Order to explain "The Setback" as a body of water. He also asked where is the current septic system located from the water and Mr. Bendell answered that it is clearly within the 100 foot setback.

Mr. Wilt asked if a condition can be stated in the variance requiring the septic system to be brought into compliance.

Ms. McSherry stated that there is a condition which states if there is any increase in the number of bedrooms then the Agency is requesting a written evaluation of the existing on-site wastewater treatment system. Mr. Brewer stated he believed the Board could put a condition in requiring the septic system be brought into compliance, but that staff did not think it was necessary. It is a variance request and within the Board's discretion whether the variance is granted, and the Board can put conditions on that approval if they are reasonable and necessary.

Ms. Feldman stated if the wastewater treatment system is working now the Agency should not require the applicants to install a new septic system until it is necessary.

Mr. Booth asked if staff knows that the system is working properly and not leaking into the two bodies of water and Mr. Bendell and Ms. McSherry answered that staff does not know for sure.

Mr. Stegeman asked if staff can conduct a test to see if the system is working properly and Mr. Bendell answered that unless it was a major failure the test would not identify any leakage in the current system. Mr. Bendell agreed that the system is not in an ideal location.

Mr. Booth suggested making a motion to move the draft Order forward to Full Agency for approval subject to the wastewater treatment system being replaced in compliance with the current NYS Dept. of Health Regulations.

Mr. Wilt commented that at the very least it should be brought into compliance.

Mr. Booth stated he would like the wastewater treatment system built in the designated area depicted on the site plan.

Mr. Craig asked for the motion to be seconded by the Regulatory Committee. Mr. Lussi seconded the motion to move the draft Order to Full Agency for approval with the condition that the wastewater treatment system will be replaced in the designated area on the site plan.

Mr. Stegemann asked if the present system is a septic system and dry well or a leach field. Ms. McSherry answered staff does not know.

Chairwoman asked why staff does not know what is actually there for a septic system when it is a variance request. Mr. Bendell answered that he believed that staff did not have the legal authority to ask those questions of the applicant in that the variance request is not altering the number of bedrooms.

Mr. Stegemann suggested a time period being placed on the condition to allow the applicant's time to plan on the upgrade to the septic system. Ms. McSherry asked the Board for guidance with the language referring to length of time for the applicant.

Chairwoman Ulrich suggested a two-year time frame unless the system fails prior to the two-year time period. Mr. Wilt commented that if the time arises that there is a way to bring septic systems into compliance then it should be done especially when it is not clear if the system is working properly.

Ms. Scozzafava asked if the potential replacement of a septic system was discussed with the applicant. Ms. McSherry answered that the questions were asked in a Notice of Incomplete Application (NIPA) and the applicant replied there are no immediate plans to replace the current septic system.

In response to another question regarding alternatives, Ms. McSherry added that based on the direction from the legal division, staff did not pursue the discussion of alternatives..

Mr. Craig asked for the Committee to vote on the request to add a Condition to the draft Order requiring the replacement of the septic system in the designated location on the site plan within a stated time frame.

Ms. Scozzafava asked if the Board is suggesting that the variance will be approved if they agree to revise the septic system and the variance will be denied if the applicant's refuse to revise the septic system.

Counsel Townsend stated the Board will be approving by this motion to add a condition that the septic system will be brought into compliance with NYS Dept. of Health Regulations within a two year period.

Ms. Scozzafava asked what if the applicants build but do not replace the septic system as conditioned.

Executive Director Martino stated this action would fall into the permit compliance division within the Agency. Mr. Weber agreed this is an activity that can be tracked within the compliance program. Counsel Townsend explained the process within the Agency that tracks permit and non-jurisdictional conditions has improved allowing staff to monitor compliance more efficiently.

Mr. Craig asked for a Committee vote to move the variance to Full Agency with new language regarding the replacement of the septic system within a designated time frame.

Mr. Delaney noted his concern to the revision to the draft Order.

Counsel Townsend restated the motion to clarify that language will be added that the septic system needs to be brought into compliance. He explained that it may mean installing a new system but the applicants may discover the system is already in compliance with NYS Dept. of Health Regulations.

Mr. Booth objected and restated that his motion is for the septic system to be placed in the designated area on the site plan within a reasonable time period.

Mr. Craig asked for a motion to approve the variance order with the additional conditions requiring replacement of the septic system and move it to the Full Agency for approval. Mr. Booth made the motion and it was seconded by Mr. Lussi.

In response to Mr. Stegeman, Counsel stated the motion voted on by the committee did include a reasonable time frame of two years for the replacement of the septic system. On the motion, Booth, Wilt and Lussi voted in favor; Scozzafava voted against and Craig abstained.

2012-185  
(S. McSherry)

Bear Pond Ranch, LLC/Macchio  
Warren County: Lake George and  
Queensbury- Moderate Intensity Use

Mr. Craig referenced documents that Board members should have received from staff for this project.

Mr. Weber gave a general presentation to familiarize the Board Members with the surrounding setting of the proposed project as seen from the Northway.

Ms. McSherry introduced the Project Sponsors and Landowners of the propose project, Mr. and Mrs. Ralph Macchio along with their authorized representative, Mr. Michael O'Connor, Esq., and Mr. Keven Franke from the LA Group.

Ms. McSherry also thanked staff for their support in the review of the proposed project.

She then reviewed the project location and stated the proposal would be a new commercial tourist attraction at the Wild West Ranch and Western Town. Ms. McSherry discussed Agency jurisdiction and referenced several prior Agency permits associated with the proposed project site. She described the proposal as a 3,450 ft. long 4-rider Zip-Flyer®, expanded parking area, expanded wastewater treatment system, stormwater management facilities, and a year-round operation.

Ms. McSherry showed a video of a 4-rider Zip-Flyer®, located at the Bromley Mountain Ski area in Vermont. She reminded the Board that the proposed project will have rubber wheels on the trolley while the zip-flyer in the video does not.

She described the proposed project location in the Towns of Lake George and Queensbury and land use areas. She also pointed out the location of the neighboring RV Park and hiking trail. She stated there are no plans to upgrade the existing access road.

Ms. McSherry showed several detailed plans and photographs that showed simulations of the proposed project and existing vegetation in November.

Ms. McSherry discussed in detail the area that will be cleared at the upper tower location to facilitate construction of the tower and take off platform.



She explained there will be a silt fence installed and maintained during construction. She stated that trees that exceed specified heights will be selectively cut from an area 900± ft. long and from 36± ft. to 50± ft. in width. She referenced Finding of Fact number 21 in the draft permit which discussed tree cutting, limbing and planting for the proposed project site; this Finding is designed to prevent damage to vegetation.

Ms. McSherry discussed the noise assessment report dated August 2013 regarding potential noise impacts from the zip line operation. She stated the potential noise generated by four simultaneous screaming riders has the highest potential impact on the surrounding community.

She stated Agency staff's opinion that proposed project will not create noise impacts to the surrounding community.

Ms. McSherry showed a site plan depicting locations of noise-sensitive receptors and monitoring locations.

Ms. Feldman asked if a simulation of noise impacts was done and if so how was it accomplished?

Mr. Bendell replied that because of distance, topography and vegetation between the source and the receptors no additional mitigation was required.

Ms. Feldman asked if the noise study was based on a certain number of riders expected to ride the zipline at one time; Mr. Bendell answered it was based on 4 people riding at one time.

Chairwoman asked if staff was comfortable with the expected traffic on the access road along with the muffled generator noise as expressed in comment letters. Mr. Bendell answered the noise study is taken with the worst possible scenario and staff agreed that the traffic using the access road and generator would have little impact on the surrounding community. He stated it would be the human screaming that would be problem if any.

Ms. McSherry explained that the proposed project is located in two towns which both operate under an approved local land use program. She noted that the Town Queensbury in Rural Use will review the proposal on March 18, 2014 Planning Board meeting and has classified this proposal as an "Outdoor Recreational" use. She noted that in the Town of Lake George all the activities are located in Moderate Intensity use land use area and the proposed project was approved with conditions on February 5, 2013 following a public hearing.

Mr. Booth asked whether the proposed project was consistent with the Queensbury's zoning code; Ms. McSherry answered there was a concern raised in a comment letter from the adjoining landowner whether the classification of the project was correct. She stated Mr. Weber contacted the local zoning administrator after receiving the letter and the zoning administrator reaffirmed that his determination of an "Outdoor Recreation" is correct.

Mr. Craig commented that the determination comes from the Town with an approved local land use program and Agency staff does not make that determination.

Agency Counsel stated the local planning board processed the site plan review and determined that this is an "Outdoor Recreational" use but the determination is being challenged by another comment letter received at the Agency; however, as it stands now, the Town has determined that this proposal complies with the Town's local zoning ordinance.

Ms. McSherry reviewed other comment letters, discussed the economical findings in the draft permit and highlighted several permit conditions.

In response to a question, Ms. McSherry said there will be no lighting on the tower platform.

A brief discussion ensued regarding alternatives considered by the applicant to the proposed zip line.

Mr. Wilt asked the purpose for the generator on the upper platform and Ms. McSherry answered that a small amount of electricity is needed to operate the gates.

Chairwoman questioned safety conditions for the proposed zipline.

Mr. Booth questioned the language on page 17 of the draft permit relating to possible adverse impacts to the visual resources of the Adirondack Park as seen from viewpoints along the Northway.

Mr. Weber explained that staff's role is to assist the Board with understanding the visual aspects of proposed projects and the Agency's role with Towns with Approved Land Use Programs. He further discussed the visual impacts of the project which staff reviewed as critical considerations that needed to be addressed. Staff believes that the visual impacts are adverse but not undue because of the mitigating effects that the applicant is proposing.

Mr. Craig made a motion to recommend the proposed permit to Full Agency for approval and Designee Scozzafava seconded the motion.

Mr. Lussi asked if staff reviewed past and present technology of ziplines and Ms. McSherry answered that staff relied on the applicant's choice to use rubber wheels to lessen the noise.

In response to a question about alternative locations for the zipline where cutting would not be necessary, the staff said the sponsors property is evenly forested in all areas.

Mr. Thomas noted that the surrounding area of the proposed zipline the areas within and outside the Park contain many tourism activities.

In response to a question about the Agency's authorization of a permit before the Town completed their review Agency Counsel stated that the Agency made similar determinations in other projects prior to a Town's final review.

Mr. Stegemann asked if the access road will create any storm water control issues in the future and if there is a possibility that visual impacts could be reviewed in a time frame as in the noise issue.

Chairwoman Ulrich asked staff to review the Board's concerns and if appropriate add language to the draft permit.

Mr. Bendell stated staff will discuss the issues for the Full Agency meeting.

Mr. Delaney suggested using language associated with best practices for forestry roads and to have the applicants have a forester review their site for trees that may or may not need to be removed for safety reasons relieving the Agency from tracking that.

Ms. McSherry stated the condition requires a forester or landscape architect to report to the Agency if and when there are trees proposed to be removed. This would ensure that the structures will remain properly screened with remaining vegetation.

Mr. Booth questioned "tourist attraction" not being on the compatible use list for Rural Use. Mr. Weber answered that the compatibility finding in an approved town is part of the Town's review process.

Agency Counsel stated the compatible use list is not the compatible use list that applies to this proposed project. Agency defers jurisdiction to The Town of Queensbury and they have determined and stated to staff that this is a compatible use. Mr. Booth asked if there are any state registered historic areas near the proposed project and Ms. McSherry answered there were none in the immediate vicinity of the proposed project. She noted that staff did not perform their own inventory of such sites and that staff relies on the Historical Preservation Office review.

Mr. Booth asked if there was any other public use area of significance that the Board has not seen that will cause any future comments from the public if the Agency decides to approve this project and Ms. McSherry replied no.

Chairwoman Ulrich stated the photographs on the disc in the mailing package were very extensive and she agreed with staff that there was nothing that rose to the level of concern.

Mr. Craig commented that the Regulatory Committee is being asked to review a project with visual and noise impacts that have been identified and reviewed by staff. Upon a motion by Craig, seconded by Scozzafava, the Committee recommended the proposed permit with minor changes as discussed to the Agency for approval. (Craig, Lussi, Scozzafava, Ulrich in favor, Booth opposed.)

5. Old Business: No

6. New Business: No

**Adjournment:** The Regulatory Committee meeting adjourned at 4:00 pm.

Note: The power point presentations referred to herein are on file at the Agency. Copies are also available for inspection on request and can be viewed at [http://nysapa.granicus.com/ViewPublisher.php?view\\_id=2](http://nysapa.granicus.com/ViewPublisher.php?view_id=2) of this meeting: