

Draft January 15,
2015



Regulatory Programs Committee
January 15, 2015 Agency
Meeting: REW:mlr

**Regulatory Programs Committee
January 15, 2015**

Committee Members present: Sherman Craig, Chair, Designee Dede Scozzafava (Department of State), Art Lussi and Karen Feldman voting.

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

Agency Staff present: Terry Martino, Executive Director and Sarah Reynolds, Associate Counsel.

Local Government Review Board Representative: Jerry Delaney, Chairman

Richard Booth wsd not present at the January Agency meeting.

Chairwoman Ulrich voted in the Regulatory Committee in Mr. Booth's absence.

The Committee convened at 9:30 am.

1. Approval of November 2014 Draft Regulatory Programs Committee Minutes

Motion was made by Member Mr. Lussi and seconded by Ms. Feldman to approve the November minutes. The Committee vote was unanimous in favor of the motion.

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

Mr. Weber reviewed the monthly statistics of applications received and permits issued. He discussed projects from the High Profile Report and welcomed questions from the Board.

Mr. Weber briefly discussed project 2014-48, New York Land & Lakes Development, LLC and Boy Scouts of America, Twin Rivers Council, being presented by Ariel Lynch at today's Agency meeting.

Mr. Weber stated the Agency should be very confident in the thorough and thoughtful work the project review team, led by Ms. Lynch with the Agency's RASS and Legal staff.

Mr. Weber stated that Agency staff understood the role of Resource Management lands in relation to the overall park plan, the sensitivity and the importance of open space; along with the compatibility findings under Section 805 that must be made when reviewing a residential subdivision in a Resource Management land use area.

He noted the project review began mid-June 2013 with extensive pre-application discussions including field visits. Alternative approaches were evaluated and the concept of concentrating the proposed development close to the existing road network and areas of existing development was established.

Mr. Weber also stated the project sponsor does not plan to maximize building density or shoreline development. A 100 foot buffer is proposed on all shoreline lots and similar buffers are proposed to protect wetlands.

In general Mr. Weber stated staff believes the configuration of the lot lines do not create adverse impacts to park resources on the ground, particularly if the proposed plan addresses the protection to open space. In all cases, the proposed building sites were carefully selected and well designed.

(3) <u>Project</u> : (A. Lynch) 2014-48	New York Land & Lakes Development, LLC and Boy Scouts of America, Twin Rivers Council, Towns of Bleecker and Johnstown Resource Management
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Ms. Lynch introduced Mr. Alan Lord, representing the applicant as a managing member of New York Land and Lakes Development, LLC, Bobbi Trudel, authorized representative for the applicant and an engineer with Steven E. Smith Civil & Architectural Engineering, and Richard Stockton and Rick Weerst, representing the current landowner-the Boy Scouts of America, Twin Rivers Council, Inc.

Ms. Lynch presented a power point which described the project, location and land use area. She discussed Agency Jurisdiction and she listed the conclusions of law that the Agency needs to reach in order to approve this project. She stated the proposed project if approved will authorize a 29-lot subdivision in an area classified as

Low Intensity and Resource Management land use areas with the construction of single family dwellings in the area classified as Resource Management.

Associate Counsel clarified the legal requirements for approval in light of recent court decisions.

Ms. Lynch described the proposed site location, a mix of state and private land, existing development, town boundaries, and nearby communities. She described the site access, two water bodies wholly within the project site and existing resources and limitations across the site. Ms. Lynch also stated the vast majority of the project site was forested with wood roads and skid trails visible from past logging activity.

Ms. Lynch stated as part of the project review, the applicants looked at existing resources and limitations across the site - both in the field and with available mapping. Ms. Lynch stated that Agency staff reviewed the maps and reports and conducted multiple site visits to observe the project site. She discussed the wetland delineation and biological survey report which were reviewed and accepted by Agency staff. During the pre-application review, staff encouraged the applicant to keep proposed development near the areas of existing development, the existing road and utilities. The applicants agreed.

Ms. Lynch stated the lots are numbered 1 through 26, but lots 3 and 21 were omitted during the review of the project, so the proposal is for 24 building lots, not 26. She noted there were 5 common areas, 2 for each water body, two for access to each water body, and 1 for the private portion of the road.

Ms. Lynch discussed the overall intensity guidelines. She stated there are 49 principal buildings mathematically allowed on the proposed project site but noted the potential for 24 additional principal buildings was being extinguished by the applicant; four in Resource Management and 20 in Low Intensity Use.

Ms. Lynch also discussed that the lot owners will form a Property Owners' Association, (POA) which will own and be responsible for managing, improving, and maintaining the common areas. The POA will also be responsible for enforcing its own Protective Covenants.

Ms. Lynch showed slides describing the proposed development. She stated that Agency staff walked and visited every driveway and building envelope during their site visits in 2014. She described the site design for each of the proposed lots and stated both the

applicant and Agency staff spent a great deal of time considering each individual the site design. She stated that 18 of the 24 building lot envelopes were moved or modified, re-configured or adjusted-during the course of the review. She continued to discuss the lot designs, steep slopes, use of shared driveways and the fact that 21 of the 24 building lots either had driveways that followed an existing route or was located within 25 feet of the road.

Ms. Lynch discussed the remaining lands outside the building envelopes. Staff had discussed with the applicant an alternative where remaining lands could be commonly owned and managed. The applicant determined that arrangement did not meet their goals, past experience, or suit their intended market. Staff concluded that the applicant's proposal would satisfy Agency guidance for open space protection - specifically wildlife habitat, forestry use, and recreation. She explained that even though the remaining lands outside the building envelopes will be individually owned, they will be managed according to an Agency-approved Forest and Habitat Management Plan and with the supervision of a professional forester.

Ms. Lynch stated the applicant provided an overall Forest and Habitat Management Plan for the entire property. The Plan reported that most of the stands were commercially thinned in 2005-2006 and that the property has a very usable forest road system. She noted a draft condition requires a Forest and Habitat Management Plan be prepared for each lot, approved by the Agency, and given to the lot owner when the lot is purchased.

Ms. Lynch noted that 24 people attended a public information meeting held November 4, 2014 in the Town of Bleecker. She stated staff received 15 written comments from 14 parties representing 7 households and 7 groups. All expressed concern or opposition to project. She discussed the areas of concern in the comment letters and stated all concerns and topics were carefully considered during Agency staff review.

Ms. Lynch discussed that the project is located in two towns. The Town of Bleecker has no town land use controls and the project was not prohibited by any local law or ordinance, but will require building permits. The Town of Johnstown Board Planning Board reviewed the project, performed SEQRA rebew and held a public hearing. The planning board approved the subdivision in December 2014.

She stated in conclusion that after detailed review and with appropriate conditions Agency staff believe the subdivision and development authorized in the draft permit complies with all of the required Conclusions of Law.

Chairman Ulrich complimented staff on their detailed review of this proposed project. She also noted that the receipt of public comment letters helps Agency staff to review a proposal by researching the areas of concerns in relation to the proposal.

Chairman Ulrich asked Ms. Lynch to review the two lots with building envelopes closest to state lands, lots 10 and 17. Ms. Lynch stated the driveway on Lot 17 follows an existing wood road that leads up to a grassy parking area. The building envelop was modified to avoid two vernal pools.

Mr. Steggmann asked if staff had reviewed any other alternatives on Lot 17 to avoid the vernal pools located to the west and south on the building envelope. Ms. Lynch answered there was an existing parking area and shooting range so it seemed appropriate to develop in an area that had already been disturbed.

Ms. Feldman asked if the gate will remain in place preventing public access to the common areas and Ms. Lynch answered that the POA will be responsible for controlling public access. Mr. Weber added that the applicant did agree that the gate will remain in place and will be used to control access to the private road section.

Ms. Feldman and Mr. Thomas both asked Ms. Lynch to confirm that emergency vehicles would be able to access the property. Ms. Lynch stated Fire Department staff had walked the project site with the applicant and provided a letter stating that emergency access was adequate.

Staff noted that other than Farwell's Water-milfoil, there are no other rare or state-listed plants, animals, or significant natural communities on the project site or in its immediate vicinity, as confirmed by consultation with The Department of Environmental Conservation. At full build-out, the undeveloped portion of the 1,119±-acre project site, over 95 percent, will remain as available wildlife habitat. Mr. Rooks stated staff determined the habitat was unremarkable and there was little adverse impact to the habitat so the time and cost for a more detailed survey was considered unwarranted. If staff had identified potentially more significant impacts, they would have requested more comprehensive surveys.

Ms. Feldman recommended a condition for the monitoring of invasive species and to modify the draft permit before coming to Full Agency.

Chairwoman Ulrich commented that suggestions by the Board to staff must be ones that can be enforced by Agency staff.

Mr. Lussi reminded the Board that this is private property and the Agency cannot mandate the project sponsor to maintain an aggressive invasive species program. Language could be added to encourage a program, but it is not something the Agency can enforce.

Mr. Thomas asked Ms. Lynch to explain how the common areas are to be managed. Ms. Lynch stated the five common areas will be owned and managed by the POA. The common areas include Hines Pond, Hines Pond access, Woodworth Lake, Woodworth Lake access and the private road, Woodworth Lake Trail.

All proposed structures are required to be located in the designated building envelopes with the exception of docks on the shoreline and a less than 100 sq. ft. of boardwalk if needed to access the docks. Any proposed boathouse on Woodworth Lake would be subject to further review and approval by the Agency.

Mr. Lussi asked why owners need to return to the Agency for approval of a guest cottage. Ms. Lynch answered to ensure the septic system is adequately sized to serve both the home and the guest cottage and if not, to be sure the soils are able to sustain a new system.

Mr. Craig asked if staff considered the comments regarding the widening of Woodworth Road as suggested in a comment letter. Ms. Lynch answered the road is town owned and the Agency does not have authority to request the town to widen it.

Mr. Delaney commented that education on invasive species is the key and he believes that providing the necessary information when the lots are sold would help educate the owners without infringing on their rights. He also stated that whatever fire company will be involved in this project site will have a key to the gate.

Mr. Snizek suggested the POA work with APIPP to set up a surveillance program for invasive species. APIPP training is offered a couple times a year and is free of charge. The work of a surveillance program could be performed by volunteers of the POA.

Ms. Feldman noted her concern whether the private road was adequate for construction equipment. Ms. Lynch and Mr. LaLonde both stated that the road is sufficient to handle future build-out and construction vehicles.

Mr. Delaney asked Ms. Lynch if the restrictions in the draft permit follow the land and Ms. Lynch answered yes. The property could be sold and resold and the permit would apply to each successive owner. The permit is required to be referenced in the deeds.

Mr. Craig asked if the Agency has ever limited the use of pesticides on property. Mr. Rooks stated that herbicides and pesticides are heavily regulated by the Department of Conservation and within 100 feet of wetlands by the Agency. The project design includes significant buffers between building lots and water bodies so he suggested that no condition regarding herbicides or pesticides would be necessary.

Mr. Craig asked if the Board could request future homeowners to plant only native species on their property and Associate Counsel Reynolds answered yes we could but would caution the Board to remember that we would only like to add conditions in any permit that the Agency can enforce. Mr. Ziemann stated that in this case staff did not see the need to require a planting or landscaping plan or see any potential impact that would require such plans.

Terry Martino asked if staff could comment on the alternatives that staff and applicant reviewed on the 18 sites. Mr. LaLonde stated alternatives were evaluated for the longer driveways as well as alternative stormwater management practices and alternatives to avoid wetlands and steep slopes.

Ms. Feldman asked if staff is comfortable that the public has had enough time to express their concerns. Ms. Lynch answered that this project has been listed and mentioned regularly in the Agency's monthly high profile report, the official comment period ran for the usual length of time and was extended to allow staff to bring the project before the January Agency meeting rather than December.

Senior Attorney Brewer stated Section 582(a) of the Regulations contains the criteria for the Agency to consider whether to send the project to an adjudicatory hearing and the criteria in staffs' opinion has not been met. An adjudicatory hearing is held to obtain additional factual information needed to make a required finding.

Chairwoman Ulrich made a motion to move the proposed project to Full Agency for approval with edits on invasive species and Mr. Lussi seconded the motion.

Mr. Delaney commented that the Agency has done a remarkable job in reviewing this project. He agreed with Mr. Lussi's comment regarding the project being on private land and would caution the Board about applying too many restrictions. Both towns and the Local Government Review Board support this permit.

The Regulatory Committee was unanimous in favor of the motion.

(6) Old Business: None

(7) New Business: None

Adjournment: The Regulatory Committee meeting adjourned at 11:16 am.

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 of this meeting: