

In the Matter of the Application of

PROTECT THE ADIRONDACKS! INC., SIERRA
CLUB, PHYLLIS THOMPSON, ROBERT HARRISON,
and LESLIE HARRISON,

**AFFIDAVIT OF
ELLEN EGAN GEORGE**

Petitioners,

for a Judgment Pursuant to
CPLR Article 78

INDEX NO. 1682-12

-against-

ADIRONDACK PARK AGENCY, NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION,
PRESERVE ASSOCIATES, LLC, BIG TUPPER, LLC,
TUPPER LAKE BOAT CLUB, LLC, OVAL WOOD DISH
LIQUIDATING TRUST and NANCY HULL GODSHALL,
as Trustee of OVAL WOOD DISH LIQUIDATING
TRUST,

Respondents.

STATE OF NEW YORK)
)SS.:
COUNTY OF FRANKLIN)

Ellen Egan George, being duly sworn, deposes and says that:

1. I am an attorney licensed to practice in the State of New York. I was previously employed by respondent Adirondack Park Agency ("APA" or "Agency"), from 1992 to 2009, and am now retired from that Agency.

2. I make this affidavit in support of the Petition asking the Court to annul the January 20, 2012 decision by the APA which approved a permit application by Preserve Associates, LLC ("Applicant") for the construction of the "Adirondack Club &

Resort" ("ACR") project in the Town of Tupper Lake, Franklin County, New York (the "Project") pursuant to the Adirondack Park Agency Act, Executive Law Article 27, §§ 800, et seq. (the "APA Act") and other applicable laws.

3. I have been advised by Caffry & Flower, the lead attorneys for the Petitioners herein, that the APA and the Attorney General's Office have refused to produce transcripts of the three meetings of the APA board Members, held over 8 days in November and December 2011, and January 2012, at which the APA board discussed and approved the Project. However, I am further advised by Petitioners' lead counsel that the attorneys for the parties to this proceeding have agreed that the Petitioners may submit written excerpts from these webcasts for the record.

4. I have painstakingly reviewed the archived webcasts of said meetings. A computer disc containing copies of these webcasts is part of the Return herein, at Appendix A, Item F, R021658.

5. The following are quotations, summaries and excerpts of pertinent statements made by APA Members and staff at the APA's said meetings. Said quotations, summaries and excerpts are true and accurate, to the best of my knowledge and ability. In making these quotations, summaries and excerpts, I followed the following rules:

a. The quotations, summaries and excerpts are arranged by topic, with quotation marks indicating direct quotations. The name of the individual speaking is identified to the best of my ability, and the citation to the comment by the individual is indicated by the date and the hour:minute from the start of the comment on that date.

b. Where a sentence begins with brackets ([]), I deleted a beginning word or two, such as "So", or "But", which made sense only if the previous sentences were also provided.

c. Where I deleted in the middle of a sentence (. . .), I eliminated "uhhs" or "ughs", stuttering, repeated words or phrases, and parenthetical phrases that did not relate to the main thought.

d. Where a sentence is shown as incomplete (. . . .), I deleted words at the end which were not necessary to understand the main thought or the words of another speaker.

e. In no case did I delete any words in a manner that changed the speaker's meaning. I also avoided selecting any sentences out of context so as change or shade the meaning.

WILDLIFE AND WETLANDS

6. MEMBER:¹ What class wetland was that? November 17, 2011; 01:40.

7. WEBER:² "I don't have that detail but I think they encountered multiple classes of wetlands." November 17, 2011; 01:40.

8. MEMBER: Wants to know class of wetland is being filled; class of new wetland. November 17, 2011; 01:40.

9. WEBER: Look at wetland map; there are various wetland classes. November 17, 2011; 01:40.

10. MEMBER: A tremendous amount of testimony in the record. "How did you boil it down?" November 17, 2011; 04:20.

11. SNIZEK:³ I followed the Hearing Staff closing brief . . . in how I organized this. "I pretty much followed their closing brief. . . ." November 17, 2011; 04:20.

12. BOOTH:⁴ "Before you leave that slide, are you going to talk to us at some point as to why this was a complete application, if the last two bullets are accurate?" November 17, 2011; 04:27.

¹ Member speaking was unidentifiable.

² Agency Staff Richard Weber

³ Agency Staff Edward Snizek.

⁴ Agency Member Richard Booth.

13. ULRICH:⁵ "We've got another one of those questions, Mary." [At this point, in hearing, Members have been instructed to phrase their concerns as questions, to be compiled by a secretary, Mary, for further study and answers from executive team at a later point.] November 17, 2011; 04:27.

14. SNIZEK: "Very good question." November 17, 2011; 04:27.

15. ULRICH: "Got it?" [Overlapping - probably, to Mary.] November 17, 2011; 04:27.

16. SNIZEK: "OK - continuing on." November 17, 2011; 04:27.

17. BOOTH: "Let me add to that. It's not just that there was a notice of completion, but what's the state of the record now? I'm also interested in that. Obviously, more information's come in since the . . . notice of completion went out, so I'm also interested in your assessment of what's the state of the wildlife record - if I can call it that - now." November 17, 2011; 04:27.

18. SNIZEK: "OK . . . concerning . . . biological surveys - the other parties - again, several witnesses testified that a complete biological inventory and/or wildlife habitat assessment were not - not conducted. And I refer you again to the testimony of Dr. Glennon, Dr. Kretser, Dr. Klemens and Dr. Thompson for

⁵ Agency Chairwoman Leilani Ulrich.

additional information. In fact, Dr. Klemens . . . testifies in his supplemental pre-filed that he recorded 11 species of amphibians in the course of an eight and a half-hour day and night field work. That is more than two-thirds of the species anticipated to occur on the property. In the application itself, note that no amphibian species were recorded or reported by the project sponsor - in any of the application materials submitted to the Agency." November 17, 2011; 04:27.

19. SNIZEK: "The Project Sponsor testified that the forest and habitat are already fragmented due to the following reasons - mainly pre-existing conditions. Forest management has been occurring on the site for the past 90 years. There's 275 acres of clearing which exists on the site already. Existing clearing consists of Lake Simond Road and . . . associated logging roads which accounts for over 10 miles in length and is estimated to be nearly seven acres." "And I do have one exhibit here. [Shows on screen slide/ map titled "Existing Roads and Logging Roads" described as from Applicant's brief 9/23/11, p. 29] . . . The blue is actually the public roads. Any red here is an existing road or logging road on the project site. So their testimony is that there's been a lot of fragmentation already because of the existing roads and logging roads that are on the site." [Member asks about site visit location; other Members and staff discuss where the site visit was.] November 17, 2011; 04:30.

20. BANTA: Says that "fragmentation" has to be related to the development considerations. November 17, 2011; 04:34.

21. BOOTH: Notes there's "oodles of testimony", and Members will need executive team help in assessing testimony from many expert witnesses. November 17, 2011; 04:34.

22. SNIZEK: "Agency hearing staff's testimony, in relation to habitat fragmentation goes as follows: They disagreed with the project sponsor's assertion that the property is highly fragmented by existing and continuing logging activity and that the proposed project will actually decrease fragmentation. Again, that's what the project sponsor was saying and our staff is disagreeing with that." November 17, 2011; 04:37.

23. SNIZEK: Letters from government are based on historical data, not new site surveys. December 15, 2011; 01:29.

24. SNIZEK: "No comprehensive biological survey was ever done." December 15, 2011; 01:29.

25. SNIZEK: "Most of everyone who read the record would agree there was really no wildlife survey done . . ." December 15, 2011; 01:31.

26. SNIZEK: ". . . I think the science and research concerning functional assessments specifically as it relates to habitat fragmentation, the edge effect, ecological influence zones . . . a lot of testimony was provided by Kretser and Glennon and others - was really relatively new concepts. It wasn't new

for the United States, it was relatively new for the Adirondack landscape . . . these are issues that were just beginning to be discussed in 2005. We have always looked at wildlife impacts because of our DAP . . . So to a certain extent we have been doing wildlife impact assessments, probably not to the extent that we were looking for this project because of the scale of the project. . . . Dan Spada testified . . .that the state of knowledge is different now in 2011 than what we saw in 2005 and 2006. A lot of testimony was provided by Dr. Glennon and Dr. Kretser; [it] was very valuable; it's very pertinent; these are concepts that are very important in protection of wildlife species. . . in the Park. . . . I think that the information that came out in the testimony never really came out in the review process and as a result, the Project Sponsor really struggled with providing a functional assessment or getting to the point where staff really felt they had information enough . . . [for] justification for approving this project. . . ." The information didn't come early enough and unfortunately we're at this stage now with the project. December 15, 2011; 01:34.

27. MEMBER: From hearing, the period to do this would have involved a number of years. December 15, 2011; 01:34.

28. SNIZEK: Certain portions could have been done in a year or seasonal. You're correct. December 15, 2011; 01:34.

29. BOOTH: What "new" techniques? December 15, 2011; 01:45.

30. SNIZEK: "I wouldn't really say they were new techniques. They're concepts or principles that were . . . well known. I think the concepts [were in] the literature; there's a lot of research that's been done out in Yellowstone, some of the national parks out West. . . . [T]o the Adirondack landscape, we hadn't really applied [these concepts]." December 15, 2011; 01:46.

31. MEMBER: What has not been applied in the Adirondacks? December 15, 2011; 01:46.

32. SNIZEK: Perforation, ecological influence zones (how homes are clustered). Habitat fragmentation to a certain extent. The edge effect (how animals react to development). December 15, 2011; 01:46.

33. Same MEMBER: Fragmentation is not a new concept nor are edges; those have been widely discussed for at least 30 years, conservatively. December 15, 2011; 01:47.

34. SNIZEK: "That's correct." December 15, 2011; 01:48.

35. DRABICKI:⁶ Question regarding hearing staff conclusion that project sponsor has designed project to avoid and/or minimize many potential impacts to wildlife on resource management lands (p 25); that's a big statement when first part

⁶ Agency Member Designee from the Department of Environmental Conservation, Judy Drabicki.

of your statement is that no adequate functional wildlife assessment. December 15, 2011; 01:49.

36. SNIZEK: Because of the 100-foot buffer around wetland, no development along River shoreline. Driveways were shortened. PS⁷ said this was how wildlife was protected "and to a certain extent staff agreed with that." Compelling item was deed-restricted open space. December 15, 2011; 01:50.

37. BOOTH: "If the first sentence is accurate [in] 117 - I assume it is, from everything I have read - how does the second sentence follow? . . . Really, my question is - I'm not asking a question about undue impact, I'm asking a question how can we make that statement if the first sentence is accurate?" December 16, 2011; 01:05.

38. SNIZEK: "Well - what hearing staff is saying is that the survey was not conducted, so you can't take the second step of doing a proper assessment of the impact on the wildlife, essentially. Because, what you need at that point, if you did do a functional assessment, you'd be able to prioritize those areas of concern as this sentence continues 'that should be prioritized for protection.' You can't reach that spot in the analysis because you didn't do the comprehensive biological survey." December 16, 2011; 01:05.

⁷ Project Sponsor is referred to as "PS".

39. BOOTH: Notes that that's only the first sentence. "But I'm asking: how can the second sentence be stated if the first sentence is accurate?" December 16, 2011; 01:05.

40. SNIZEK: "OK - I understand what you're saying now." December 16, 2011; 01:05.

41. BOOTH: "Don't try to answer it further, but I'm just putting that out there - " December 16, 2011; 01:05.

42. SNIZEK: "Well, it all goes back to what I think I was trying to say yesterday because of the project design, the hundred-foot setback from the wetlands, the deed restrictions on the type 1, type 2 open space lands and some of the other design aspects of the project, that's a conclusion that hearing staff came to - that there would be adequate protection - at least on the Resource Management lands based on those other variables that the project design takes into account." December 16, 2011; 01:05.

43. BOOTH: Thank you. [Simultaneously, someone says "makes sense."] December 16, 2011; 01:05.

44. ULRICH: ". . . So we have that question and that finding bookmarked, that we're coming back to But I would . . . for the board, again, go back to yesterday's conversation - we do have the power point material that was very specific about that yesterday when we were talking about the habitat and

wildlife. . . .” Notes that Booth had asked about the functional wildlife assessment in the NIPAs. December 16, 2011; 01:05.

45. SNIZEK: Condition 89 would require biological survey of amphibians only within the building envelopes, unfortunately does not pick up the migration patterns. It’s too narrow a condition as written now. December 16, 2011; 01:32.

46. BOOTH: Asks for confirmation whether the focus on amphibians is the result of testimony from parties other than staff. December 16, 2011; 01:46.

47. SNIZEK: Confirms these are related to testimony of Dr. Klemens. December 16, 2011; 01:46.

48. BOOTH: My understanding from watching the hearing. . . . “All of this seems to me to be an after-the-fact result of not having done a comprehensive biological survey across this entire site before this got started. . . . This has been bothering me for quite a while. . . . I have a strong sense that these conditions are trying to make the best of, or at least to ameliorate the fact that some of the basics that one would expect in a project of this size weren’t undertaken when they should have been undertaken.” December 16, 2011; 01:46.

49. ULRICH: “Or when they could have been at several different points along the way. I am interested in . . .the learning moments in this process as we go forward versus what can be conditioned now given the information that has been learned.

That's an interesting process for me of . . . which place does that information and does that potential for. . .future better practices get inserted." December 16, 2011; 01:47.

50. WRAY:⁸ Was any thought given to limiting the daily withdrawal? [from Cranberry Pond] December 16, 2011; 01:50.

51. BENDALL:⁹ Not before the studies are done. December 16, 2011; 01:50.

52. CRAIG:¹⁰ I just found out that we actually have guidelines for a biological survey and I didn't know that, so I'm looking forward to getting a copy of it. January 18, 2012; 02:08.

53. BANTA:¹¹ From 1993 along with our Special Information Requests.

54. WRAY: A lot of these things we've talked about. I personally have huge faith in our staff dealing with these things. "As we come down to the crunch time, I had a list of about 10 - going back to about November - 10 issues that concerned me. And I think I've narrowed that list down. . . But there's still. . . three issues that are major items of concern to me." "I am still bothered by the absence of [a comprehensive

⁸ Agency Member Cecil Wray.

⁹ Agency Staff Greg Bendall.

¹⁰ Agency Member Sherman Craig.

¹¹ Agency General Counsel John Banta.

wildlife assessment] and by what it might or might not do to our responsibility for making the ultimate judgment on no adverse impact." January 18, 2012; 02:08.

55. WRAY: "Am I convinced there is no undue adverse impact?" "[A]s I read the language, it is clear that the burden is on the applicant to show no or to convince us there is no undue adverse impact. It doesn't say that we have to grant a permit unless there's undue adverse impact." Asks Banta if that is correct. January 18, 2012; 02:13.

56. BANTA: "I think that's fair." January 18, 2012; 02:14.

57. BOOTH: "There was nothing approaching what is understood to be a wildlife assessment by the applicant. Apparently from what we read between the lines the staff asked for that in a variety of ways. It was not done. You go back and look at the original form the Agency sent out for big project sponsors. It asks for an inventory of wildlife. That was not done by the applicant. It wasn't done in succeeding years when the staff asked for it at various times. . . . It may very well be that a full assessment of wildlife could have been done and the project sponsor might have come up with exactly the same proposal. But we don't know that. And I don't think, ultimately, that that's a problem that can be fixed by conditions. The idea of conditioning a certain portion of this

project on the basis of doing an assessment and then making kind of small changes - I don't think is going to . . . fill in what is a big hole." January 18, 2012; 02:21.

58. BOOTH: Anywhere else in NYS, a project of this size would have had a complete resource assessment as part of the application. January 18, 2012; 02:22.

59. THOMAS:¹² What class of wetlands would they be using? How does mitigating wetlands and replacing wetlands somehow take care of our required finding on project approval? January 18, 2012; 02:36.

60. SNIZEK: Wetlands are rated 2 and 3. "All of those impacts are accounted for in the mitigation plan that we approved." January 18, 2012; 02:37.

61. THOMAS: "A mitigation plan does take care of the project finding to some degree? . . ." January 18, 2012; 02:37

62. SNIZEK: The condition requiring mitigation does account for that finding. January 18, 2012; 02:37.

63. THOMAS: I don't know that I'm comfortable with waiting 3-4 years to see if that works. How will you monitor the use? January 18, 2012; 02:37.

64. SNIZEK: It's part of the plan that they're required to submit in terms of biological impacts. They need baseline data before they start pumping. The PS will monitor drawdown levels;

¹² Agency Member William Thomas.

we'll review on an annual basis if not more. January 18, 2012;
02:38.

65. THOMAS: This can make a big difference in the viability of the project if they can't use Cranberry Pond.
January 18, 2012; 02:40.

66. BANTA: Question how you organize your approach with respect to the record on wildlife. "There are standard practices of the Agency for large-scale projects . . . and then through the NIPA of the additional information process, there is an effort to go beyond some of those standard practices . . ." Standard practice is conduct a "visual assessment," what you see as an environmental generalist. In ACR, staff and ACR visited all development sites. Then, qualitative assessment - measurements on the ground for specifically protected resources, e.g. wetlands. If rare and endangered species, there would need to be a specific quantitative evaluation of those locations; qualitative evaluation consisting of consultations with experts about recorded information. January 19, 2012; 00:15.

67. BANTA: "In addition, in this project record you have both the exchanges with respect to the functional assessment that took place in the application process and you have expert advice that is essentially qualitative advice about the nature of potential impacts to issues like habitat fragmentation which reveals to you potential impacts that are still significant in

your weighing of the different . . . development considerations. That is still consistent with the standard practice of the Agency. The quantitative wildlife survey on the entire project site simply has not been standard practice for the Agency nor is it defined in our standard guidance. . . . That said, there have also been references to past practices of the Agency. . . ."

January 19, 2012; 00:17. (Turns to SNIZEK)

68. SNIZEK: Part of the issue is the way the original finding (sic) was written, "kind of focused more on what the project sponsor didn't do. And I think that we need to switch the focus back to what the project sponsor did do in terms of the biological evaluation. And I refer to . . . what our guidelines for biological survey actually do say and how that relates to what the project sponsor has done to date." January 19, 2012; 00:18.

69. SNIZEK: Believe you all received the biological survey guidelines. September 10, 1993. First step normally undertaken by PS to identify different cover-types, different habitats, issues that may need further investigation - "That's basically the qualitative part of the survey. Essentially, we feel that the project sponsor did undertake that qualitative survey. They did do the desktop survey. They identified wetlands. . . the deer wintering yards. . . one of the key wildlife areas on the project site. If at any time there had been an issue of

protected species or even another key wildlife habitat area that needed further investigation, that would have kicked it up to the next level, which is quantitative survey. We actually get into trapping mammals, quantitative surveys for birds, amphibians, what have you. So, and at the point there's no new information that really came out concerning, from the desk-top surveys that the project sponsor had undertaken or what Agency staff had been reviewing so - ough - there was no need at that point to go to the next step for a more detailed quantitative survey other than what came out of the hearing itself was the potential impact to amphibians in some of the neighborhoods and that's why we kicked up that to the next level for the quantitative surveys and that's why we have conditions in the draft order - draft permits to require those additional surveys. It's now we're looking at quantitative assessments for amphibians. And the other one is Cranberry Pond. . . . So those are two key areas that came out of the hearing that we feel needed additional attention in terms of additional studies and the quantitative survey with conditions that may protect the habitat in those key areas." January 19, 2012; 00:19.

70. SNIZEK: "The biological survey guidelines really summarize the necessary steps and that's why the new finding of fact . . . really focuses more on what was completed on the project site in terms of wildlife assessment." [bottom of page.

21, finding 117] Reads from conditions. Repeats 00:23 "If a protected species was observed or some key wildlife as defined in our DAP were discovered, then that would have kicked it into the next level, maybe a more in depth qualitative or probably a quantitative biological assessment." Continues reading finding. January 19, 2012; 00:22.

71. SNIZEK: Snizek picked three permits to discuss to show Agency practice, chosen because they were the subject of letters to the editor in the past few weeks. Butler Lake: 30 lot subdivision of 532 acres in LIU, NYS Natural Heritage Program report that no threatened or endangered plants or animals were known, deer wintering yard IDed, a nutrient budget of lake to ID phosphorous loading because it was identified as pristine resource. No further indepth wildlife survey. Whitney Park: 4-lot subdivision of 5,000 acres of RM land. Natural Heritage Program IDed two threatened species; no additional wildlife surveys were required. Snizek admits this was a very different project from ACR. January 19, 2012; 00:24.

72. MEZZANO:¹³ "My understanding that it's staff's opinion that what the applicant has provided with respect to wildlife or biological information is adequate for our consideration of this project." January 19, 2012; 00:30.

¹³ Agency Member Frank Mezzano.

73. ULRICH: Adequate was met, but staff was requesting additional and we got more than we usually get. January 19, 2012; 00:31.

74. BANTA: "That would be correct. I'm not sure I'm comfortable with the word adequate. I would just simply say that it comports with what our standard practice is and includes significant additional information that was important to our hearing staff - not all of the additional information that our hearing staff sought, obviously." January 19, 2012; 00:31.

75. LUSSI:¹⁴ When we went to hearing, wasn't one of the issues that this board requested was a more comprehensive study? January 19, 2012; 00:32.

76. BANTA: Hearing order did not specifically require a particular outcome with respect to wildlife. But, don't have the order before me. This was clarified by ALJ. January 19, 2012; 00:32.

77. BOOTH: Not comfortable. Application form for large projects/projects in sections says (on p. 25) under Flora and Fauna "inventory and assessment . . . That has to be read in the context of how big a project is" Project sponsor's inventory covers less than half-page. People who spent very little time on the site, or on the periphery of the site, identified multiple times the species. January 19, 2012; 00:35.

¹⁴ Agency Member Arthur Lussi.

78. BOOTH: "[I] don't see any rational way of concluding this is an inventory of wildlife in the context of what inventory of wildlife is in an era when environmental impact statements are a typical part of the decision-making process. This was not an inventory in any sense that meets the barest rationale of what that term is meant to indicate. . . . You had people that came into the hearing, offered multiple times as much information on wildlife as the applicant did. . . . The inventory isn't the point. The point is [you] inventory wildlife and then plan on the basis of that. . . . The inventory is supposed to inform the decision-making both of the applicant and then of the Agency. I don't think that was done. I think that's been a problem from the beginning. I don't know why it was done in a project of this scale given the amount of money that has been forked out over the amount of time that has been spent." "I don't think this is an issue that can be dealt with now by conditions. . . . I think there's a hole - a big hole - that the applicant left in this application" January 19, 2012; 00:35.

79. ULRICH: "I think there are other holes What I struggle with - and there's all kinds of things in hindsight that I wish had occurred over the last many years - but I'm trying to get very very clear on what did we ask for, what do we base our decision on - is there critical environmental dangers afoot or not? January 19, 2012; 00:38.

80. DRABICKI: What other amphibian surveys have to be done by permit conditions? January 19, 2012; 00:38.

81. SNIZEK: In all neighborhoods west of Lake Simond in RM within 800 feet of vernal pools, Great Camp lots within 800 feet of roads. January 19, 2012; 00:38.

82. DRABICKI: Questions about amphibian studies, aftermath. Permit conditions (e.g., best management practices), and the result of the amphibian study "leaves a lot of room for argument and discussion What happens if it's not approvable. The whole enforceability issue and what do you do with it after-the-fact. And I'm not sure you can cure that here." January 19, 2012; 00:43.

83. DRABICKI: Regarding proposed text on Natural Heritage information. "All Natural Heritage does is take what people submit. It's not dispositive, it's not final, it's just our accounting of what has been submitted to indicate there's an endangered species." Notes that since those letters were issued, DEC has adopted section 182 which requires an assessment and potentially work related to endangered species. Being done with APA concerns about endangered species may not resolve DEC's concerns about same. January 19, 2012; 00:45.

84. BANTA: Regarding wildlife quantitative wildlife inventory for this site. (1) Hearing order 2007: issue #1 focused on natural resource protection. Statement regarding

Natural Heritage Program. (2) ALJ direction of hearing issues: #1 identical to Agency's order. (3) We provided an answer in December to question from Member re why application was deemed completed if staff believed not enough information was provided on wildlife habitat. With regard to the specific question as to whether a quantitative survey was provided. There is a quote from Sengenberger - a long sequence - reads a portion of the response on page 21 (senior staff's response to Member questions??). "Potentially, if it's significant enough information . . . applicant always had the opportunity to provide additional information. . . . Sengenberger also noted that board didn't explicitly require that they do a functional assessment on the whole project or even on the RM lands." That's from the April 29 transcript. January 19, 2012; 00:49.

85. SNIZEK: If you look at the biological survey guidelines also, last page, Table 2, it's the criteria for requesting biological survey. If you look at an historic or new record of a rare element on the site, require a full-scale, quantitative assessment. January 19, 2012; 00:52.

86. DRABICKI: Is there a requirement in the permits that the wildlife plans have to be done before construction begins? January 19, 2012; 00:54.

87. SNIZEK: No. January 19, 2012; 00:54.

88. DRABICKI: Could that be added? Let's make it meaningful. January 19, 2012; 00:54.

89. BANTA: There are sequencing issues for different permits. It may be possible to be much clearer. January 19, 2012; 00:54.

CLUSTERS/SUBSTANTIAL ACRES

90. REYNOLDS:¹⁵ Describes the phrase 'substantial acreages on carefully and well designed sites' as the Board's issue posed in 2007 in its Order to hearing. November 17, 2011; 05:01.

91. MEMBER(female): Since the question posed by the Board (in its 2007 Order to hearing) is limited, can we look at the bigger picture, which was clearly testified to? November 17, 2011; 05:01.

92. BANTA: "Your obligation is to consider the whole statutory phrase. That's the finding you need to address in the end." November 17, 2011; 05:01.

93. REYNOLDS: "More background from Mark Sengenberger. This is his description of his experience approving Resource Management subdivisions. He says 180 subdivision permits were approved involving Resource Management when he was Director of Regulatory Programs. 125 of those were for minor 2-lot

¹⁵ Agency Associate Counsel Sarah Reynolds.

subdivisions. 55 were major subdivisions which is three or more lots. And 10 of those involved five or more lots and he says he took all of those larger subdivisions to the board for review and permit decisions. And that lots in these subdivisions varied significantly in size from less than one acre to over 6,000 acres. So this is just a little bit more off setting out background of Agency practice related to Resource Management subdivisions." November 17, 2011; 05:13.

94. REYNOLDS: "And the testimony comes out - comes up really often, but it was hard to pinpoint actual quotations to lift out as opposed to peripheral references, so that's what I tried to do here. First, talking just about the Western and small Eastern Great Camp lots, the only quotations I could find on those - those were the smaller lots - . . . 20 to 30 acres in size - the only quotations I could find came from Agency staff - specific to just those lots. So staff say . . . in the closing statement - the proposed Great Camp lots that contain less than the 42.7 acre average lot size do not comprise substantial acreage. And then, Mr. Sengenberger in testimony, when asked would he consider those lots to be substantial acreage, he says, my personal opinion is no. So, that's Agency staff . . . speaking about the smaller Great Camp lots. There's much more testimony on the large Great Camp lots." November 17, 2011; 05:14.

95. REYNOLDS: "To present this I'm essentially going to follow the staff closing brief which - I would say - took this as an opportunity to fill in some holes that weren't being covered under other portions of hearing issue responses. So, if you look at pages 31 to 35 of the Agency's hearing staff's closing statement, it's suggested that carefully and well designed sites includes issues such as wastewater treatment, water supply, access and natural resources. . . . And these are obviously very broad issues and I think especially natural resources can be read very, very broadly and . . . could or would include things like habitat, visual impacts - those sorts of things that would all be considered in the question of whether something is - whether a lot is a well designed site. I'm not going to speak to all of those issues that are going to be covered in other portions of today and tomorrow's presentations. I'm just going to do what the hearing staff did - which is fill in the holes where - which essentially means pinpointing the lots where they found that there were problems . . . that aren't getting addressed anywhere else Greg [Bendall] was saying in his last presentation - most of this is based on Agency staff implementing either our regulations, which . . . would be Appendix Q-4 for wastewater treatment systems, or DEC regulations, Department of Health regulations, our DAP Development in the Adirondack Park guidelines or also any Village

concerns. So, this is hearing staff going through all of these proposed lots and checking whether those lots meet all of those criteria and pinpointing a few places where they don't. And I have this quote from Mark Sengenberger here because he actually says this several times in the record and on the bottom of the slide I offer up a couple other places where he makes similar statements but he says in my experience the most important element in Resource Management residential subdivisions - which, of course, this is both Moderate and Resource - he says, is not lot sizes but finding suitable locations for on-site wastewater treatment systems. So, obviously, they are important criteria." November 17, 2011; 05:24.

96. REYNOLDS: "So, again, this is just . . . hearing staff going through the record - there wasn't really - there was testimony from hearing staff on this - there wasn't really any - . . . staff comparing the proposal in an almost factual way to the standardized requirements of those various regulatory agencies. So, it's information coming from Mark Sengenberger, from Shaun LaLonde and from Dan Spada. So, again, this is probably something more just to - hopefully it will be helpful for you to have for later use - again, just pinpointing issues. Project sponsor didn't provide engineered plans for some of the Great Camp lots . . . but staff was concerned that groundwater can't be considered adequately protected in the absence of

engineered wastewater treatment designs on those particular sites. So they felt that that was necessary " November 17, 2011; 05:26.

97. WRAY: The large Great Camp lots are on substantial acreages. "The smaller Great Camp lots I have real trouble concluding . . . these are on substantial acreages or small clusters on carefully selected and well designed sites." January 18, 2012; 02:12.

98. BOOTH: "My biggest concern is that a project sponsor has taken thousands of acres of Resource Management and spread a project across it. . . . I'm having a very difficult time thinking that that's what this statute was designed either to encourage or to allow. I know there's not specific language in the statute that says that you can't do this. But, I think, if we understand the purpose of Resource Management areas, which was to maintain the integrity of . . . Resource Management areas, and particularly the large properties. . . , I think that's a basic part of what this statute is about." "There are many ways that the project sponsor could have designed this project. . . ." January 18, 2012; 02:22.

99. MCCORMICK:¹⁶ I want to think about clustering for Great Camp lots. If you include lands that are not owned by the

¹⁶ Agency Member Designee from the Department of Economic Development, Jennifer McCormick.

applicant, "it's very clustered." We see only a small piece of it and we draw the line around what's before us in this project. January 18, 2012; 02:45.

100. REYNOLDS: Part of issue #1. Agency's long-standing practice in interpreting that provision is that substantial acreage/small clusters is a factor to be considered, but not a determinative factor. It never has been in any decision of the Agency. Has been taken into account. January 19, 2012; 00:58.

101. BANTA: It's something to weigh, but not prescriptive. January 19, 2012; 00:59.

102. BOOTH: Notes there is a difference of opinion regarding whether there are small clusters in Resource Management within this project. He does not think so, but wants to talk about the essential RM issue. "I think the big question is . . . where you have a very large property, is it appropriate under the statute essentially to turn all of it into a residential development? And I think that was not the purpose of the Resource Management areas. . . . I think the big question has always been - or at least should have been - is a project spread out over many thousands of acres an appropriate use of a large parcel? . . . when someone has thousands of acres, they have an opportunity to plan for the reasonable use of that property in a way that both accomplishes economic benefits and also protects the resource base. And I think that's what Resource Management

areas are really about. . . . [T]his project sponsor has chosen a pattern of development that I think was not what the statute was intended to promote." January 19, 2012; 01:03.

103. BOOTH: A decision to allow a residential subdivision spreading across thousands of acres of Resource Management lands is not a helpful precedent. And it's a very different statement from allowing individual parcels as we have allowed - and I think, correctly allowed. . . . This is not comparable to the many small subdivisions; this is generically different. Everybody's known from day one that this is generically different. January 19, 2012; 01:05.

104. BOOTH: "This use is an inappropriate use of Resource Management lands across the Park. And this project is so big that there's no way that this will not be read as a significant signal." January 19, 2012; 01:06.

105. THOMAS: A lot of open space around development won't be developed. January 19, 2012; 01:08.

106. BOOTH: Real clustering would mean fewer miles of roads, utilities. He's chosen to spread out 25-30 acre lots over hundreds of acres. January 19, 2012; 01:08.

107. THOMAS: Economically, it may be appropriate. January 19, 2012; 01:08.

108. BOOTH: Had PS put into record some info on Franklin County, we would have some basis to evaluate. Even with that

info, we have to evaluate whether a reasonable use. January 19, 2012; 01:08.

FOREST MANAGEMENT

109. SNIZEK: "The project sponsor has proposed the development of a forest management plan for Great Camp lots A through H. The forest management plan will only apply to 2600 acres depicted as Type I open space. [Shows 'Open Space Ex 83 R-1' slide] The remaining Resource Management land will not have a forest management plan per the current permit application. The forest management plan, obviously, is important to maintain local forestry jobs." November 17, 2011; 04:13.

110. SNIZEK: "There was some testimony . . . that the forest management plan is not enough to sustain a working forest or would not be effective." Reads Russell quote from slide. November 17, 2011; 04:13.

111. SNIZEK: Says he did not get into specifics on the forest management plan because Weber had touched on the topic earlier. November 17, 2011; 04:13.

112. DRABICKI: The sponsor has proposed a plan to be implemented by a forester. But, the condition regarding forest management plans for Great Camp Lots A-H would require

preparation of a plan, but not require implementation. Is that intentional? December 15, 2011; 05:54.

113. BANTA: "It's intentional. . . . [T]he Sponsor develops the plan. Purchasers will decide whether and how to use the plan." "That's the way it's framed and . . . that also is supported by the record." December 15, 2011; 05:55.

114. BOOTH: The term "forest management plan" is being used in two very different ways in the findings and in the condition. December 15, 2011; 05:56.

115. BOOTH: Looming behind this is the question of whether this is a reasonable use of RM land. Wants a discussion of this point. December 15, 2011; 05:57.

BOAT LAUNCH

116. ULRICH: Some mention of DEC permit. January 19, 2012; 02:50.

117. DRABICKI: "The funny thing here is. . . we don't have a permit here. This is not a jurisdictional issue. This is an issue of just the use of the boat launch. . . . In fact, the only question becomes: is this a commercial activity and that, we're not even going to touch that here. That's why I felt the need to bring it up here because there really isn't a separate DEC permit

for it. It's an issue I'm concerned with." January 19, 2012;
02:50.

118. BANTA: And this Agency does not engage in project
exaction with respect to use of State lands. January 19, 2012;
02:50.

119. BANTA: Regarding State boat launch (par. 101) "[T]his
is simply a flag to recognize that . . .this is in the impacts
section of the findings to recognize that there may be future
demands on the boat launch and that communities in the
Adirondacks do, through a variety of relationships with DEC and
private entities organize access to navigable waters. That is ..
. simply a place holder for that potential future." January 20,
2012; 00:42.

FICTIONAL PREDICTED FINANCIAL BENEFITS

120. BOOTH: Sponsor clearly thinks there are economic
benefits from the project, and the hearing staff says we can't
rely on the PS projections. One of the biggest differences.
December 16, 2011; 05:10.

121. ULRICH: Invites economic consultant presentation from
Dan Kelleher, APA staff special assistant for economics. January
18, 2012; 00:53.

122. KELLEHER: I'll be taking you through the financial and economic benefits analysis; all our information is found in the record. January 18, 2012; 00:53.

123. KELLEHER: "[W]e can actually work the numbers and see what type of sales are necessary to cover the debt service. . . . So to cover the first phase of the bond issuance . . . all you need [is] an average sales price of about \$308,000 per home." January 18, 2012; 00:55.

124. WRAY: Doesn't know what the mix of homes is. January 18, 2012; 00:57.

125. KELLEHER: Could go back and look at projections. Says the average price during that phase "is proposed to be a million dollars with a range of prices from \$233,000 for small workforce housing to five million dollars for the Great Camp lots." January 18, 2012; 00:53.

126. LUSSE: Refers to the Fiscal and Economic Analysis. "In phase I it does a pretty good breakdown. . . ." Their plan was to get almost a million [per home] in that phase. January 18, 2012; 00:58.

127. KELLEHER: "It's a look at what the margins are - how low those prices could drop until the FCIDA could no longer cover the bond service. So the . . . average price - the total sales - could drop 70% and still be able to cover the bond service." Municipal Expenses: "Total maximum costs" to taxing entities if

PILOT payments do not cover both debt service and costs form phase I are \$137,000 or .7% of their combined budgets. January 18, 2012; 00:59.

128. KELLEHER: Confirms that is cost per year. January 18, 2012; 01:03.

129. BANTA: PILOT is a pool of money that is generated, with different claims on it managed by IDA. First, to repay the debt; second, in a proportion to be negotiated by the taxing jurisdictions, sharing the excess revenue over debt payment and expenses. "That is not directly correlated to the expenses of the municipalities." "The total assessment would need to exceed \$25,688,137 . . ." January 18, 2012; 01:04.

130. BOOTH: One would think that part of that analysis is the likelihood that homes would sell at \$300,000. January 18, 2012; 01:09.

131. ULRICH: Often in these situations applicants have already found interested parties even prior to project approval, before they even step foot into an approval process. That's an assumption that shouldn't be on the table, but could be. January 18, 2012; 01:10.

132. KELLEHER: \$31,000 wage is from sponsor's Fiscal Analysis, average construction wage in Franklin County. There's nothing in the record saying what a "construction worker" was. Whether the \$31,000 was for 9 months or 6 months, I don't know.

Discusses multipliers. The multiplier number that was provided was a Department of Labor number which was cited in their newsletter. January 18, 2012; 01:13.

133. ULRICH: Some of multipliers cited were state-wide. Is that applicable to rural areas? Applicable to the Park? January 18, 2012; 01:16.

134. SCOZZAFAVA:¹⁷ Doesn't remember her thoughts on the secondary impacts from this study. Typically at ESD we have a model that models the economy in each region. 307 new jobs in NYS, not much impact. 307 jobs in the North Country "is a big impact." Impacts on supplies - Lowe's and Home Depot - workers spending money at Hannaford. Read Ex 85 and was "fairly satisfied" with their methodology. January 18, 2012; 01:16.

135. KELLEHER: Kelleher does not mention any testimony by other witnesses. In response to Member question about impacts from construction (i.e., purchases of supplies): "There was no information in the record relating to the impacts of supply purchase related to the project." January 18, 2012; 01:23.

136. ULRICH: Dan is trying to help us get to a realistic prediction of benefits. January 18, 2012; 01:24.

¹⁷ Agency Member Designee from the Department of State, Dierdre Scozzafava.

137. DRABICKI: Could there be other costs to communities related to this project - roads, expanding sewer? January 18, 2012; 01:24.

138. KELLEHER: "There was nothing in the record that gave a finite number expense to that." January 18, 2012; 01:25.

139. ULRICH: There are changes, corrections in the works, may incorporate thoughts from today. January 18, 2012; 01:42.

140. LUSSI: Questions on details. Questions for Kelleher. P. 34 of Fiscal Impact Analysis EX 85. Trying to figure what developer could make in Phase I. Why do you need a PILOT with \$60 million profit? If no PILOT, full taxes to municipalities would be a benefit. January 18, 2012; 01:43.

141. VALENTINO:¹⁸ So much is predicated on volumes of sales and sale prices that I don't think were justified. The numbers are antiquated and based on very rosy projections. And will affect the long-term viability of the ski hill. Dan's presentation helped with the long-term impacts on the community. From talking with the lawyers, financials are on the periphery of our jurisdiction. January 18, 2012; 02:49.

142. SCOZZAFAVA: Questions Kelleher's analysis, whether based on sales, takes into account municipal expenditures. January 19, 2012; 02:44.

¹⁸ Agency Member William Valentino.

143. KELLEHER: Takes into account expenditures; it's based on the way the project was proposed. To what point the Town, three entities are seeing a net benefit. If they don't do the PILOT and bond agreement, all taxes above \$130,000 in incurred costs are benefits to the Town. January 19, 2012; 02:44.

144. WRAY: Curious about sentence in middle of 151 (deleted) that sales projections are overly optimistic. Does that sentence appear in revised draft? January 19, 2012; 02:44.

145. KELLEHER: No. Because rate of sales is a function of price. Not sure it is accurate to say both rate of sales and sales prices are overly optimistic when one is a function of the other. January 19, 2012; 02:44.

146. WRAY: Not sure I'm satisfied with that response. January 19, 2012; 02:44.

147. McCORMICK: I can't agree it is overly optimistic. January 19, 2012; 02:44.

FUNDING

148. WRAY: Is there a place where the legal mechanics of the bond financing are laid out? I have some experience in industrial bond financing and I don't understand all this. November 18, 2011; 01:11.

149. MARTINO: There are exhibits in the record and testimony of Kurtz that explain this. November 18, 2011; 01:11.

150. MEMBER(female): Can you define 'controlling interest'? November 18, 2011; 01:11.

151. BANTA: "The suggestion is to think of it as a mortgage." November 18, 2011; 01:11.

152. MARTINO: "By lease or deed in terms of that relationship." November 18, 2011; 01:11.

153. MEMBER(female): This is most critical issue: chicken and egg, selling vs. infrastructure vs. repayment. Need concise format. November 18, 2011; 01:11.

154. BOOTH: Seems to me each individual lot owner must be responsible for PILOT payment for shared infrastructure in addition to his own lot. November 18, 2011; 01:11.

155. ULRICH: Discussed in draft Order. November 18, 2011; 01:11.

156. BANTA: Banta tells Board, the IDA issue is not fully resolved right now and that it would be inappropriate "for this Agency to speculate." December 15, 2012; 00:40.

157. VALENTINO(?): Don't we have a role to question whether PILOT could adversely impact the community? December 15, 2012; 00:53.

158. BANTA: Yes. December 15, 2012; 00:53.

159. VALENTINO(?): I can see situations where the PILOT would jeopardize local governments. December 15, 2012; 00:53.

160. VALENTINO(?): Some talk about community waiving finances, which is troubling. There have to be conditions in there that protect the community. December 15, 2012; 00:55.

161. BANTA: "[W]ith respect to revenues to the municipalities from the PILOT, that is, the excess above the payment of the debt, the hearing staff concluded that that was uncertain for a variety of reasons - different parties in the record approached that differently. That said, I am comfortable with the assertion of the applicant that they don't expect to get the PILOT unless they can plausibly cover the debt service and something more with a cushion. And that something more is more than this community receives from this property today in tax payments." December 15, 2012; 00:57.

162. VALENTINO(?): All the IDA cares about is repayment of the bonds. How do we assure that the community is protected in future? December 15, 2012; 00:57.

163. BANTA: We have authority to address the question of infrastructure. "And if we do it properly, we'll do it in a way that is in cooperation with municipalities" December 15, 2012; 01:01.

164. Member(female): My question is about ongoing maintenance of roads, infrastructure in case of default. December 15, 2012; 01:01.

165. BANTA: Will discuss later; there are differences among infrastructure components. "Some are secured; some are only secured by a promise that would have to be translated into enforceable agreements." December 15, 2012; 01:05.

166. MEMBER: This project seems to involve a lot of bonding. December 16, 2011; 02:54.

167. BANTA: "It's our strong preference to have a system that in general insures construction prior to sale of lots rather than a complex system of financial bonds." December 16, 2011; 02:54.

168. DRABICKI: Understands that cost-sharing agreements do not yet exist. Can we suggest that APA's approval is contingent on having those agreements in place "so that we don't leave the Town high and dry by approving it without that guarantee being there?" December 16, 2011; 04:52.

169. BANTA: "It's certainly within reach of discussion. . . The answer's yes." An intent of the hearing staff draft is to provide an opportunity for the Town to weigh in on these costs. December 16, 2011; 04:53.

170. MEZZANO(?): Questions need for cost-sharing requirement. December 16, 2011; 04:54.

171. BANTA: "There are issues of cost-sharing that are just uncertain for the out years of the project." Mentions Village water system expansion in future. "So it is fair to contemplate cost-sharing. The question is how does the Agency assert itself as a condition into addressing [this]." December 16, 2011; 04:56.

172. MEZZANO(?): "Should we really be a party to that? Is that any of our business, I guess?" December 16, 2011; 04:56.

173. BANTA: "It is . . . if you look at the statute, it is your business, potentially your business. The question is: is it a necessary part of our business." December 16, 2011; 04:56.

174. DRABICKI: Concerned about after building, chasing people to make sure it's maintained. "If there isn't an agreement, and everybody runs, and the municipality can't afford it, and the developer disappears, somebody's going to end up holding the bag. . . . It was more about a protection for the environment." December 16, 2011; 04:57.

175. MEZZANO(?): "Well, I have no problem with bonding in certain segments of this project because it's so large, but I would want to see it be done in terms of environmental protection, not so much economic protection of the village, the town or other entities who ought to be able to take care of their own economic affairs." December 16, 2011; 04:58.

176. BANTA: There is a promise to have the HOA assist with public road maintenance, but that is to be negotiated. January 19, 2012; 02:27.

177. BANTA: There had been back and forth about how infrastructure maintenance costs would be managed. "In closely reading the record, there are not firm commitments. There are firm commitments with respect to construction of infrastructure. And we thought the best way to express the future process that will take place here" is to take text from the hearing staff October draft findings and text from the Town's brief that "simply reflects a statement that the Town understands and anticipates negotiating agreements for infrastructure costs relating to maintenance. So it's not a condition, it's not a commitment, it's simply a statement of fact as to the current state of affairs relating to that relationship." January 20, 2012; 00:40.

IMPROPER WEIGHING AND BALANCING OF ALLEGED ECONOMIC BENEFITS

178. BOOTH: Economic viability of the project is relevant to our determination, because we take into account benefits, which flow from a project which is successful. December 15, 2012; 01:08.

179. BANTA: "In the permit context, in considering undue adverse impact, you are allowed to take your own view of what the record says about benefits. That would include financial benefits" December 15, 2012; 01:08.

180. BOOTH: PS has made projections of sales prices. In 2011 those numbers "are at least optimistic and may be wildly optimistic." If eventually this project is approved, and all or most of the residential properties get sold for much lower prices than was projected, am I correct in assuming. . . that we should conclude the benefits to the community would go down significantly?" Goes to the "benefits" . . . "That's something we need to have generally in mind." December 16, 2011; 05:19.

181. BOOTH: A project of this size is going to have a significant amount of impact. Our job is to weigh the benefits against the impacts. December 16, 2011; 05:24.

182. BANTA: That's "one of the core questions. . . . You're not just voting on the record now as we've explored it, but also the record as we've captured it in the proposed, or what might become a proposed decision document." December 16, 2011; 05:24.

183. DRABICKI: 14 permits a good approach; doing by neighborhoods will be beneficial. We have an obligation to protect the environment, the sponsor, APA so these are enforceable. APA permits should not be inconsistent with DEC.

Looking to see the latest drafts tomorrow. January 18, 2012;
01:39.

184. BOOTH: Projection of sales. What's in the record "is very very sketchy about these comparable sales figures and what's happening in real life in Franklin County in terms of selling property. What's there suggests to me that the sales projections are highly inflated. They are not realistic. And they cause me to worry, if those are unrealistic, then are the calculations of benefits at all realistic? I buy the notion there are mechanisms here that can reasonably protect the local entities. . . . But I'm not sure there's any real basis for being very optimistic about the benefits to the general economy It's important because the benefits from a project . . . are a big part of whether there's undue adverse impact." Not an equation, but "the amount of benefits is important" in considering undue adverse impact. January 18, 2012; 02:18.

185. MCCORMICK: "[M]y focus right now really is on trying to maximize the economic benefit, getting good impact from this project by doing what we can as a public body to help encourage and provide a venue for private investment to create economic activity in New York. And I was listening to Governor Cuomo's budget address yesterday . . . one of the things that he focuses on his executive budget for this coming years is the idea of public-private partnerships. So, first, we want to leverage as

much private dollar as we can for our public dollar and, second, we want to spend as few public dollars as we can to encourage that private investment. And if you look at this project from that perspective, what we have done to encourage this project is really provide the technical assistance that the applicant needs to make a good project that is in compliance with lawAnd just looking at what has been done by staff and by this board over the past several years, there's been an extraordinary amount of effort on the public side" Worst case scenario, it's still not all that bad. "The potential for benefit is so great that I'm willing - and it appears that the local governments that will be shouldering the risk are willing - to bet that there will be more value than loss." January 18, 2012; 02:42.

186. MCCORMICK: "There are extraordinary . . . tremendous economic benefits that may accrue to our region from this" Looked up 'undue' - it's excessive or unjustifiable. There are adverse impacts. But, the creation of jobs, effect on TL and Adks is "fantastic." It's what we want to see, what I want to see, what the commissioner wants to see. Seven years of process has resulted in a project that doesn't just balance economic benefits against environmental benefits. It really does play one off the other and maximizes both. 4600 acres of open space is protected; that happens day one. "This is the essence of what Governor Cuomo was talking about in his economic agenda for our

state. It's a public-private partnership. We the public in terms of government agencies are helping private investors and private money do what they do best, which is invest in and grow the economy. And the other piece of public. . . is the work everybody has done in this hearing. . . ." YES. January 20, 2012; 01:51.

FINDINGS/CONDITIONS/CHANGES/EX PARTE NEGOTIATIONS

187. BANTA: SAPA actually imposes a burden on decision-makers "to be aware" of proposed findings that come from the different parties. November 18, 2011; 3:58.

188. MEZZANO(?): In our permits we typically have Findings of Fact and Conclusions of Law. The terminology here has bothered me. These are not necessarily findings. December 16, 2011; 00:18.

189. BENDALL: Discrepancy is the way the project has changed throughout the hearing process. December 16, 2011; 00:18.

190. MEZZANO: "We're saying the applicant proposes this, proposes that and yet it's not really a finding of fact." December 16, 2011; 00:19.

191. BANTA: We've had conversation about this regarding the findings "they seem somewhat ambiguous." December 16, 2011; 00:19.

192. REYNOLDS: "There were a lot of findings deleted that were specific to hearing issues but weren't really necessarily part of what would need to be in a decision document." January 19, 2012; 01:35.

193. WRAY: Questions role of hearing staff and negotiations with applicant. December 15, 2012; 00:24.

194. BANTA: Hearing staff circulated a draft order to parties, received comments, and the revised staff draft is what we are addressing today. "That's appropriate. That dialogue can continue among the parties just not with you. . . ." December 15, 2012; 00:25.

195. BOOTH: Because the project has gone through this series of transitions, the project now is different from when . . . hearing staff drafted this order, is what we look at next month going to be updated versions. . . . December 16, 2011; 00:20.

196. BANTA: Revised staff draft order reflects the project as proposed today with the qualifications of the applicant's reply brief. "The problem is its documentation isn't found in any single document. There is the overall update from June 2010, and then through the hearing in either testimony or prefiled testimony or in some communications, there have been adjustments.

And that's where it gets a little complicated and we will try and tighten that up. . . . What you get next month will be the project as proposed today and if there is a deviation from what we understand to be the applicant's position, we'll also find a mechanism of being clear about that." December 16, 2011; 00:21.

197. BANTA: Some of the findings from the draft order that say "should" are not clear on why. December 16, 2011; 00:23.

198. MEMBER(female): What about fire suppression where there are wells? If there is none, there needs to be. December 16, 2011; 00:24.

199. BENDALL: Didn't see any dry hydrants proposed. Village said it does not want to supply water to Great Camp lots. December 16, 2011; 00:24.

200. BANTA: And the condition reflects that. That's something that isn't fully worked into the proposal by the applicant at this point. December 16, 2011; 00:29.

201. BOOTH: Documents indicate that Village can supply water to phase I. Does that indicate a concern about future phases? December 16, 2011; 00:31.

202. BENDALL: The Village wants to work with the sponsor on future phases. December 16, 2011; 00:31.

203. DRABICKI: Not aware of whether any application to DEC for new or expansion of Village water district. December 16, 2011; 00:35.

204. SNIZEK: "Can we verify that with the hearing staff and come back with an answer?" December 16, 2011; 00:35.

205. ULRICH: In the interest of efficiency, I would welcome that kind of input on any of the topics. . . should updated information be available for the board to have. . . . I think that would be a great idea. December 16, 2011; 00:35.

206. BOOTH: "How is that working. The Sponsor is still talking to hearing staff, John." December 16, 2011; 00:36.

207. BANTA: "The communication is between Paul Van Cott and myself primarily. There is . . . ough it is entirely appropriate for the hearing staff to remain in communication with the project sponsor and any other party that they may communicate with. With respect to truly factual . . . questions in the record, it's appropriate for the hearing staff to point to where something is in the record, although we've tried to do that essentially under supervision of Counsel." December 16, 2011; 00:36.

208. BOOTH: "But, like this question, if the hearing staff has in fact talked to the sponsor about adding" December 16, 2011; 00:36.

209. BANTA: (interrupts) "That isn't an appropriate communication. What's appropriate is communication that points to information in the record. . . And the record is complicated on this stuff so it's important to know if it was hearing

testimony, if it was a communication that was attached to one of the arguments . . . We want to be absolutely accurate . . . "

December 16, 2011; 00:36.

210. DRABICKI: How does APA approval subject to conditions work, authorizing a permit upon compliance with specified conditions? December 16, 2011; 02:55.

211. REYNOLDS: "I think it can work however it is set up to work. . . . There's not one answer to that question. I think it could be structured such that there are these findings [in the laws] that need to be made, all of that information in an order. And then, perhaps . . . one neighborhood . . . would then automatically get a permit for the go-ahead upon certain conditions happening." December 16, 2011; 02:55.

212. DRABICKI: Are we too far down the road to do this? December 16, 2011; 02:55.

213. REYNOLDS: A "little nervous" because we are working off the staff draft. "There aren't many places to fit this specific discussion in." December 16, 2011; 02:57.

214. BANTA: An order is not recorded. In Front Street Development we issued an order of approval subject to conditions and broke the site up into permits. December 16, 2011; 02:57.

215. REYNOLDS: In Front Street, there were different project sponsors, different from here with only one project sponsor. December 16, 2011; 02:58.

216. REYNOLDS: Regarding member question about permit amendment process, whether it involves decision by the board or by staff. Larger project means more amendment requests. "And that is part, a very important part of this whole implementation discussion because . . . even at this moment, we don't have the clearest final set of documents showing what this project is, if it's to be approved. And then as soon as those amendment requests start coming in, it becomes - and we've seen this in other projects - it very quickly becomes difficult for anyone, Agency staff, the project sponsor, the Town, any landowner who might be thinking about buying into the project, any contractor who's working on the project - it becomes very difficult to follow what the final approval for any given portion of the project is." December 16, 2011; 03:10.

217. DRABICKI: Agrees with concern that there are no final plans. Is there something being contemplated? Suggests that those requirements not be imposed until all permits have been issued by all agencies because those could change what the final drawing looks like. "Is there a plan or is there some requirement that I really haven't focused on that will get the Agency everything it needs to know what the project is ultimately going to look like from day one? . . . Is there a point or is there some requirement being imposed that would get the Agency and all other state agencies the documents they need and the

drawings they need so that as soon as the modifications start coming in you can go back and reference those final total set of plans and documents?" December 16, 2011; 03:15.

218. REYNOLDS: Can we flag that question? We are thinking about doing, want your input. December 16, 2011; 03:15.

219. WRAY: Noted that various briefs argued for different phasing, building first around ski center. Did staff not see this as important to raise? December 16, 2011; 03:23.

220. REYNOLDS: "I haven't seen anything that hearing staff put into the draft order and as far as executive staff. . . ." December 16, 2011; 03:23.

221. BANTA: (interrupts) "It . . . seems clear that that's not acceptable to the sponsor. That's the short answer." December 16, 2011; 03:23.

222. DRABICKI: Regarding provision on project must be "in existence" within 10 years. Understands the whole thing has to get started within 10 years. Wonders whether there should be something that says, if no work is done after starting the project, for 5-10 years, you don't have this total abandonment without knowledge by the Village, the Agency, other agencies. December 16, 2011; 03:41.

223. REYNOLDS: "[A]ny time there's an amendment, a new document will need to be filed and it's a long document. . . . So one thing that we are doing . . . to . . . avoid having . . . a

constant stream of new documents being filed is issue letters of permit compliance that require updating to the maps and plans that are attached to the permit in the county clerk's office"

December 16, 2011; 04:30.

224. REYNOLDS: "I think what's in the draft order would have to be amended. There's no phasing plan attached to the draft order, there's no chart listing all the maps and plans that have been approved. So any amendment to the revised draft order would have to follow our standard amendment procedure which works well until there are too many of them and they can't be tracked."

December 16, 2011; 04:31.

225. BANTA: Discusses spread sheets earlier distributed with additional findings. It would be useful to look at the findings the Agency needs to make and see where we are on that. Three statutes are all relevant. APA Act, with five findings, two of interest for additional discussion: compatibility with the character description, purposes, policies and objectives of the LUA and no undue adverse impact. This is an opportunity to discuss compatibility, "carefully selected and well designed sites."

December 16, 2011; 04:44. No questions or comments in response.

226. REYNOLDS: This is presentation in response to question about an alternative approach to implementation. Exec staff has been thinking about it. We've been thinking about

approvals of large projects in past, things that have worked well, and not. We want clarity, efficiency and predictability for PS, Agency, others. A set of conditions turned into a template. These have only been implemented once (Front Street development in Johnsburg) working with the PS and the Town. Front Street is a different project from ACR, but some elements that could be useful. This is useful approach for large projects, to avoid issues with large numbers of amendments that change little things but can't be followed by Agency staff as time goes on because so many little things get changed. Sort of a conceptual approach. December 16, 2011; 04:03.

227. ULRICH: "For us to be able to use . . . this approach in our thinking over the next month, as we're looking at possible ways to rewrite and edit - not rewrite, edit and streamline going forward, this may be an answer to some of our concerns . . . about some of the details and a lot of the multiple players and a lot of - how to follow through with all of this in a more streamlined manner." December 16, 2011; 04:05.

228. REYNOLDS: Taken straight from Front Street latest amendment. "[T]here really needs to be one final document at all times. There can't be just a stack of amendments to be sorted through. . . . So we came up with the novel idea of having attachments that can be updated without changing the core document." December 16, 2011; 04:10.

229. REYNOLDS: We can't get the answer because we can't talk to hearing staff about conversations they may have had with the PS. There may have been phone conversations, but that's not in the record. December 16, 2011; 05:09.

230. MARTINO: Under SAPA, the work of the executive team remains separate from the work of the hearing staff. The order on conditions discussed in December is presented today in a final determination with 14 permits, assembled using the revised hearing staff draft, taking into account issues over the last two months. The substance of the draft is the same as the October staff draft order. Ultimately, the decision to weigh all the facts in the record rests with the board. January 18, 2012; 00:21.

231. CRAIG: "But my point is, we will probably vote on these permits in the next two days and the plans will be developed well after that" He is concerned about cutting restrictions on Great Camp Lots - has the proposal been changed? - January 18, 2012; 02:05.

232. REYNOLDS: We discussed last month that the staff draft order and conditions was actually a draft permit with conditions which would be filed in the county clerk's office, the type of approval we tend to issue for smaller projects. Second type of approval - order on conditions - is what you have before you now. Order contains findings of fact and authorizes issuance

of permits on compliance with specified conditions. January 18, 2012; 03:01.

233. REYNOLDS: Before permit is issued: PS has to submit to APA "updated" plans (or the "portion") reflecting the 2010 application materials plus anything that was changed during 16 months of hearing after that. ". . . If anything has changed, we need to be able to point to a place in the hearing record where that change was documented. . . ." Second step is us confirming that final plans do follow the final record for this project. Within 10 days, permit would issue in the format it is now, with fill-ins like the date of issuance. Next step, PS has to submit other plans in any order. 4 columns: subdivision plats, water supply; wastewater; stormwater. "[W]e've given a 10-year period of time for these individual permits to take place so - for the build-out to take place on individual project sites after issuance of the order. So five years might go by before anything happens on this project site." January 18, 2012; 03:04.

234. BOOTH: "The problem now is that none of these [maps/plans] are final. None of these are now referenced. What we had in the draft order were references to lots of specific [maps/plans]. The executive staff has now taken out a lot of these references because all of these maps are going to change or at least many of them will change...." January 19, 2012; 01:45.

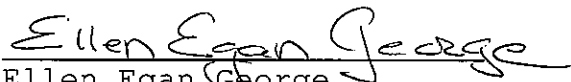
235. REYNOLDS: Banta wrote this added paragraph. Reads: "This project may not be undertaken or continued unless the project authorized herein is in existence within 10 years from the date of issuance of Agency Order 2005-100. The Agency will consider this project in existence when the first lot authorized herein has been conveyed." January 19, 2012; 02:15.

236. ULRICH: And it will only be conveyed after the list of items on your flow chart. January 19, 2012; 02:16.

237. REYNOLDS: Nothing can be conveyed under this order. It would have to be conveyed pursuant to a permit under the order and so all those steps would have to be followed first. "Ten years are given for the first lot to be conveyed following those steps. This paragraph was not in the draft order, in the versions that came to you last week, but was in the front of every permit." Banta thought it makes a lot more sense to just have it in the order and not in the permits. "So, rather than having 14 individual 10 year time periods for those individual projects to become in existence, there's now one. The first lot conveyance after the date of issuance of the order . . . the entire project is in existence." Explains the statute gives a 2-year time frame to be in existence, but allows us to extend that time frame. So it's extended to 10 years here. January 19, 2012; 02:16.

238. DRABICKI: Very quickly after getting this order and the beginnings of the permits, the Great Camps can be sold. They don't have nearly as many substantive requirements. "I'm a little troubled because of the legal requirement that says two years. It's already 10 years. This essentially says, if one Great Camp lot is sold, the whole time restriction here [two years] goes out the window. And . . . with a project of this magnitude, I think that we should consider very carefully if that's what you want. . . I think we need to be very aware of what the significance of this is." January 19, 2012; 02:17.

239. REYNOLDS: Before any Great Camp lot, the deed restrictions on all Type 2 and 3 have to be filed. January 19, 2012; 02:17..


Ellen Egan George

Sworn to before me this 7th
day of June, 2012.


NOTARY PUBLIC

PATRICIA B. MEAGHER
01ME6063676
Franklin County Notary Public
Term Exp. September 4, 2013