

TOWN OF DAY COMPREHENSIVE PLAN COMMITTEE MEETING MARCH 17, 2009

Members Present: Dave Cox
Mary Ann Johnson, Supervisor
David Davidson
June Dixon
Ken Metzler
Judy Traeger
Larry DeRubbo
Richard Lamb, Consultant

Members Absent: Ted Mirczak

Others: Brian Grisi, Adirondack Park Agency Representative
Suzanne Denn, Town Board Member

Committee Member Cox opened the meeting at 9:30 p.m. Committee Members Cox and Dixon will be out of town during the April 21st meeting. The meeting to review the survey results will be held on April 2nd and not March 31st.

Minutes Review:

The following changes were made to the minutes: Page 2, Lake Speed Limit Paragraph, line 4, "While the buoys..." change to "Where the buoys..."; Page 3, Response Time Paragraph, line eight, "which emergency squad which responds." change to "which emergency squad responds."; Page 5, first question in italics "the town would follow..." change to "the town follow..."; and, Page 6, last paragraph, last line "commonly licensed and but..." change to "commonly licensed but...".

Motion by Committee Member Dixon, seconded by Committee Member Traeger to accept the minutes of February 17, 2009 with the above referenced corrections. Ayes: Cox, Johnson, Davidson, Dixon, Metzler, Traeger. Carried: 6-0.

Large Landowners – Larry DeRubbo:

Provided a study of the large landowners of 40 acres and above in the Town of Day. It was noted Saratoga County real property records differ from real estate records. Committee Member DeRubbo also received input from Code Enforcement Officer Metzler and Town Assessor Nealon. This is a composite of various records and denotes parcels and not owners.

There are 174 parcels of 40+ acres with a total acreage of 38, 854 and this represents 95% of the total acreage within the town. After studying different categories of acreage (40+, 100+, 200+ and 300+ acres), the most quantitative results were derived from the 200+ acre category with 85% of the 22,652 acres as publicly owned; 9% owned

by private individuals (2,363 acres); and, 6% owned by private clubs (1,616 acres). This category would be comprised of a total of 27 parcels with a total acreage of 26,631 acres.

New York State Controlled Parcels (Over 200 Acres): Lyme Adirondack Timberlands which is controlled by New York State through easements by a third party and is comprised of 12,728 acres. New York State lands are comprised of 1,842 acres. Hudson River Black River Regulating District lands are comprised of 3,337 acres, which is also where the most inaccuracies occur. The true figure of total acreage may be 10,000 acres or more. Palmers Purchase (3,671 acres) and Glen Yates Patent (482 acres) are also State owned. Nature Conservancy consists of 592 acres. A copy of the map which indicates the large parcels is attached along with statistical information.

Lyme Adirondack Timberlands manages and owns the property but it is controlled by DEC. The Lyme Adirondack Timberlands are not restricted from development but there are conservation easements to limit it to planned development or cluster development which are allowed under current zoning law and may increase the tax base. Tom Martin of DEC will be attending the April 21st meeting and will address the Lyme property along with other State controlled properties and their restrictions. Public access will be addressed along with conservation easements definition versus nature conservancy definition.

While hunting clubs were very receptive to speak with Committee Member DeRubbo, they were not receptive to opening club lands to public use. Larger landowners were also reluctant to open their parcels to public use unless there was a tax advantage for them. The large landowners were also not interested in developing their parcels. The Livingston Lake parcel is family owned for generations and has been limited to six or seven specific family members to occupy. Committee Member Davidson stated there was a sufficient response from landowners of vacant land to the survey that a category will be set up during the compilation for this group. The term "Private Forest" is a Real Property classification.

All questions should be emailed to Committee Member DeRubbo by April 8th for Mr. Martin's appearance at the April 21st meeting.

Brian Grisi, Adirondack Park Agency:

Mr. Grisi inquired why the Comprehensive Plan was being updated. Committee Member Cox stated the last update to the Plan was in 1988. That update is very short, broad brushed and still applicable but required additions. Also, the authors of the update were not available and this Committee was formed to review the current edition. Supervisor Johnson stated there has been growth in the town particularly in the lakefront area and there was a desire to know what the people felt needed to be in place in order to control growth. There was a concern that the original and updated comprehensive plans did not cover this growth. Surveys were mailed to all property owners within the town to access their opinions and comments in important areas of improvement and development in the town. This review may result in changes or additions to zoning law and maps.

It is my understanding that the Town of Day local land use program was amended to reduce the width of the Lakefront Residential (LR) zoning district from 1340 feet to 528 feet from the perimeter roads around Great Sacandaga Lake, but that the Adirondack Park Land Use and Development Plan Map was never amended accordingly. My question is: Was this intentional, or does the Agency intend to amend said APA map in the future?

This is the APA official map and there have not been any formal requests from the Town of Day to make any change. The Town of Day has made a change in the local planning ordinance the APA approved (Viewshed Protection). The change affected the local plan and APA approved that change without any parallel request to change APA maps so the APA maps are still in effect. Anyone who would apply for any permit or variance action would have to meet the stricter of the two standards. So while our zoning law will show 528 feet, APA mapping will continue to show 1340 feet. Because the Town of Day is administering the program, the only change will be if the applicant requests a jurisdictional inquiry for a Class A project, APA would use their jurisdictional basis to determine if APA has jurisdiction. What this means is that APA jurisdiction remains the same for the entire red band on their map around the lake and anyone wishing to do a project there, would have to meet the Town of Day's stricter requirements. If APA determined it had jurisdiction on a Class A Regional Project, the Town of Day would do a parallel review and apply the stricter standards. Either way, the Town of Day is controlling what they wish to control. There is no need for the Town of Day to apply for the amendment. This is an area where the Town of Day could make stricter requirements which may not impact any landowners and designate another area more lenient in acreage requirement in a trade off with APA.

In Johnsbury and Minerva's review of their comprehensive plans, a total reconfiguration of the map was done which included changing some areas. The net result was a balancing of increased density in one area and less density in another. This is not guaranteed by APA. The Town of Day would need a comprehensive plan to justify rearranging the densities in the town. Any map amendment would have to be based on the resources and the land to justify the intensity and uses that are presented there. For example, if a septic system could not be located on a parcel due to high water table, steep slopes or wetlands, the Town could not justify a more intense use.

What changes, if any, would you suggest to the existing Town of Day On-Site Sewage Disposal Ordinance to enable the use of alternative systems on steep slopes and/or other limiting conditions? What have other towns done?

The current On-Site Sewage Disposal Ordinance has a provision to allow fill systems but does not mention other alternative engineered systems. Code Enforcement Officer Metzler informed the Committee that it is unnecessary to add the language since it is required by Department of Health. The sanitary code was written in the old terminology before the new DOH Ordinance was codified and uses the old terms for fill systems. What is now applicable is DOH has two types of systems: conventional systems and alternative systems. Conventional have at least 4-6 feet to bedrock and 24 inches to ground water table and the slope is under 15%. The alternative systems are designed for higher ground water, limited conditions or steeper slopes, or issues with

setback distances which also require professional engineering or a waiver from DOH. Town of Day would submit requests to the Glens Falls office of DOH. If a subdivision required all alternative systems due to conditions, DOH would generally not approve those systems if they had jurisdiction due to the number of alternative systems. If it were a single system or two and a case by case analysis, DOH may approve alternative systems in a subdivision and APA would agree with DOH. The trend would be not to approve multiple alternative systems.

A related question pertains to the development of grandfathered, pre-existing, undersized lots, of which there are many in the Town of Day. What types of septic systems are workable for such lots?

If it is a lawful lot which is undersize; or has high ground water; or would be a replacement system for an existing single family dwelling, both DOH and APA would require whatever is necessary to design a system which would work best on that site. It can be an alternative system and be approvable. If the lot is so small to require an alternative system, the dwelling built on that lot should be a minimum size house with only two bedrooms. If the lot is undersized and not amenable to either a conventional or alternative sanitary system, in some limited cases, holding tanks have been allowed for seasonal uses for new dwellings and need DOH approval. An alternative system may be able to be designed which will work within the area provided but there may be some difficulty meeting the setback requirements to the neighbor's well, etc. If this is a problem for either the neighbor or DOH, a waiver will not be issued and no discharge will be allowed.

If a property owner has the older version of the On-Site Sewage Disposal Ordinance, is there any update to that to insure enforcement?

Because the terminology has changed so much, it would be beneficial to make the changes. The Town of Day should change all aspects of the land ordinance at the same time. The sanitary code of Johnsbury while being in Warren County is similar and very up-to-date and could be used as a reference. It may be more appropriate for a town to adopt a local sanitation law which states it requires compliance with DOH and APA standards which may vary from time to time. The Town may not want to set standards will have to eventually change as those standards are tightened over time. However, if the standards should be relaxed, the Town can then institute their own stricter standards. DOH sets the standards throughout the State while APA has a tighter guidance document which is not regulations but allows shallow systems which are limited to 8% slopes compared to DOH 15% standard. The Town could adopt as law what APA has promulgated as advisory. Code Enforcement Officer Metzler stated Town of Day On-Site Sanitary Code refers to complying with DOH Standard 75(a) which has always been his practice. Since 2004 all systems have been designed by professional engineers.

In 1991 when the Ordinance was first adopted by the Town of Day, APA required it include a sewage disposal law. The main emphasis at that time was to set up the Town's zoning standards and the approach to sewage disposal was fairly naïve. At this time, there is not an issue with the sewage standards of the Town because DOH standards are sufficient and do not require a separate layer of regulation. Currently, the Town

enforces what the State standard is rarely using local law. The stricter would apply and universally that would be the State regulations. The DOH standards are currently being revised to include more technologies regarding alternative systems which should be in effect by summer of 2009. Town Attorney Avigdor's advice to this Committee would be that they indicate the development within the Town of Day would have to comply with State law.

APA law requires 8-15% slopes. In the Town of Day, a property owner was building on a flat ledge with a sheer drop and those slope standards would not apply because although the building was on flat land, it was still on ledge rock and would any regulations apply?

DOH has no setback regulations on steep slope and APA guidance documents do refer to steep slope setback of 25 feet. DOH may not have numeric setback requirements but their regulations do refer to other considerations which must be taken into account which include steep slope. It would be fair to consider that while this is not specifically labeled as a setback distance in a table, common sense and this portion of APA regulation indicates that the system should be located a fair distance from this soil that is not suitable. APA guidelines would require 25% slope in bedrock and 48" to 72" above bedrock.

Does, or does not, the Town of Day need formal APA approval of its Comprehensive Plan? Will an informal review and approval suffice? A related question relates to timing. The game plan is to have the Comprehensive Plan approved before moving ahead with preparing detailed regulatory changes to implement the plan, but a lengthy approval process could result in long delays. What is your best estimate of how long APA review of the Comprehensive Plan might take?

APA has a guidance document (copy attached) which basically states the Town of Day has an approved land use program. If zoning law were to be amended to maintain that approval of the land use program, the Town would have to come to the Agency for additional approval of those local laws but not for a comprehensive plan. However, since the comprehensive plan is the driving force of the local land use program, it is advisable to do an informal review. If the Town of Day would request a formal review, the Agency would formally review it. As the staff is limited, there would not be an estimate for how long that review would take (no less than six weeks at a minimum) and the Agency would default to the Town of Day with APA providing guidance. The Agency would submit advisory comments and it would be a cursory review.

Town Attorney Avigdor stated it has been 20 years since the Comprehensive Plan was reviewed and there is not currently a land use function that is failing. Any land use changes must conform to the comprehensive plan and the Committee does not want any inconsistencies between the two. He would recommend the Committee allow APA to do an informal review. Mr. Grisi stated while the comprehensive plan is for guidance and is not a law, if the Committee wished to set directions for the Town which may be inconsistent with current Agency rules, regulations and the statute, it would be acceptable. If the Town wished to dedicate a center of town to include a tighter cluster of buildings to accommodate affordable housing, recognizing it does not meet the density

requirement but is an important need for the community with no map amendments anticipated, this would be an important item to include in the comprehensive plan. This creates documentation to change the map to obtain more density in that particular area or to move APA to reexamine how it deals with affordable housing.

Would the Town of Day have to be a hamlet to accomplish this increase in density?

If an area is within three miles of a hamlet, that area would be favorably considered for an increase in affordable housing density. A hamlet designation would require a map amendment and demonstrate that the area is suitable for such designation. Because a hamlet does not have density requirements (i.e. houses could be located as close as building code would allow) or use restrictions; APA standards would suggest that hamlets work best where there is water and sewage infrastructure which does not occur in the Town of Day. Alternatives would be to consider lakefront residential areas where 1.3 acres are required for each principle building or locating affordable housing within a given mileage of the town center. Any map amendments should be included in the comprehensive plan to identify such density changes to allow for mobile home parks or affordable housing. There are neighborhoods within the Town which currently comprise small parcels which are grandfathered for greater density and the Town would have to determine if they believe these areas would be appropriate for these types of use which would avoid seeking APA approval.

How have other towns controlled, or prohibited, development on steep slopes? The Town of Day has a maximum slope for driveways, but not for buildings.

While APA does not have slope regulations, there are guidelines which deal with issues of erosion, storm water, and unsightliness on hillsides. If this is an important consideration for the Town of Day, there already exists the viewshed protection law which does cover a large portion of land, but it doesn't specifically address development and should be included in your plan. The Committee would need to articulate if there have been problems in the past to require the need for this type of law and how they would propose to deal with this issue.

Are there any other towns which have done something like that?

North Elba is anticipating implementing this type of regulation while they are considering hillside development, scenic patterns and building densities on slopes. However, in the final phases of trying to receive an approval, they have not been able to find a solution. This plan may be available on line.

The Town of Queensbury designates over 15% slope would render the land unusable for subdivisions but allowable for a single family dwelling. Town Attorney Avigdor stated if the Planning Board received an application for a subdivision on a site which the Board considered inappropriate due to steep slopes; the Town could look to the APA guidance documents and deny it on that basis. The Comprehensive Plan Committee could make that position more firm.

If the intent would be to go beyond subdivisions to prohibit building on slopes on existing parcels, there would be issues due to grandfathering. If a property owner who always believed he had a buildable parcel and would no longer be buildable because the entire parcel is sloped, it may not be considered a constitutional taking but is coming very close to it. One solution would be to build on the shallow portion of a lot with steep slopes if there is sufficient area to meet all building requirements. In the viewshed area the concern would be either erosion based or septic based. Septic systems are already covered under DOH regulations. If the concern is erosion based, it would be beneficial to learn more about the applicable soils within the Town. If a property owner wishes to build on a steep piece of exposed bedrock, is there really an erosion issue? Do we know enough technically to approach that and how does this Committee wish to address the grandfathering issue?

Mr. Grisi stated APA has an exemption for any lawful lot existing prior to 1973 and there is an entitlement that a single family dwelling can be constructed on that lot. Town Attorney Avigdor stated that is true for APA and our zoning law and a difficult thing to take away. There may be parcels in the Town which may be entirely steeply sloped and also grandfathered and would this Committee want to take that building credit away? They would be buildable without road frontage if they met APA lawful lot standard for a single family dwelling. He believed it would be proper to limit creation of subdivisions on steeply sloped parcels. The Town of Day requirement for road frontage is a requirement for the creation of a lot, i.e. for subdivisions and is not a building requirement. There are many parcels which do not front on public roads which individuals have purchased expecting to one day build on, which entitlement companies have insured and have access over a private road. The Town of Day is not creating new easements. These exist within the Town and would be very difficult to take away.

Supervisor Johnson inquired if by allowing some of these situations to exist, would there be public health and safety issues if there is no road access to those dwellings? Town Attorney Avigdor stated there would be health and safety issues and while the home did not exist prior to Town of Day zoning laws, the right to build did and there has not been a discussion to take that right away. If there is a circumstance where there are two twenty acre lots which have been in existence for 40 years which do not touch a public road but are served by a common easement, how would the Town change that to prevent building if it has been existing as a building lot for 40 years which has not yet been built on?

Mr. Grisi suggested driveway standards which state access for emergency vehicles must be allowed and must be 12 feet wide and not in excess of 15% grade. Town Attorney Avigdor stated the ordinance has driveway standards which do not address emergency vehicles but do have width, slope and drainage requirements. In law, there are no private roads but easements and paper streets (many of which are located off Horsehill Road where a subdivision map was filed with the County and created subdivision streets which have never been dedicated to the Town and could no longer be because the town road width standards could not be met). For example, if in the Horsehill Road location, there are in excess of 50 lots of which 12 are built and 38 which were purchased with the anticipation of future building, how does the Town prevent them from building? The argument could be: Is that what zoning is? Correcting something

which was not done properly and the Town would now wish to fix it? The intent of the law was to deal with the creation of new lots not for the creation of buildings on existing lots.

Takings are consistent with imminent domains and while a taking does not involve the Town acquiring the land, it does take the building rights away and creates legal issues. Town Attorney Avigdor would caution this could cause litigations for the Town which would be very expensive and in his opinion, unfair. It may not be good planning but planning that exists. Mr. Grisi stated the Horsehill Road area is a problem which the Town will be saddled with for many years. For the people living in that area, there is a certain liability issue which accompanies a road which is not built up to standards in trying to secure insurance.

The following discussions pertain to these questions:

What is the status of the classification of state lands under jurisdiction of the Hudson River Black River Regulating District? How might this impact the Town of Day?

What are the classifications that these lands could be put into (i.e. forever wild, etc.)?

What process will determine how these lands are classified?

Traditionally these lands have been administered by the HRBRRD, but they see themselves as being in the business of regulating the water (reservoir). The whole "permit" system is a separate deal, both administratively, and financially. What will determine who will administer these lands?

Property owners have become complacent about use of the lands of HRBRRD and treat it as though it is their own. The reality is the taking lines represents the boundary line and below that elevation are lands of New York State under the authority of the HRBRRD who has been complacent about what to do with those lands. With issues of shoreline erosion and increased usage of the shoreline, it has moved this issue more to the forefront and very large homes have been built along the shoreline and a greater sophistication of use and regulations have come into conflict. The official map was done in the 70's and those lands below the taking line were not recognized as being state lands. As state lands, they could be classified by the Agency under five or six categories of state land. When this occurs, it will be a public process initiated by DEC because they have controlling interest in state lands, with HRBRRD and APA as lead agencies. A full environmental impact study would be done by APA, would include numerous public hearings, and letters would be sent to all adjacent landowners. It would have no more effect than the recognition of the fact that it is state land under one classification or another.

Supervisor Johnson stated if it were classified "forever wild"; it would have a great effect on the land use. Mr. Grisi stated it would make a tremendous difference but did not believe it is on APA's agenda for consideration. Committee Member Cox stated many property owners have docks, wooden stairs, gazebos, etc. none of which are

permanent but temporary structures have been allowed and many of the five classifications do not allow any type of structures. The concern is if the Agency, DEC or HRBRRD does reclassify, would all these temporary structures have to be removed preventing many access to the water? Town Attorney Avigdor stated it was his belief that if this were to occur, legislation would create another category to allow these structures to exist. Mr. Grisi stated if there was an easy solution, the matter would be resolved. When this is added to APA's agenda, it would be of critical importance for the supervisors from towns around the lake to comment on what would be proposed. This would be an issue to address in the comprehensive plan. Mr. Grisi stated the classification "forever wild" is off the table. It would be difficult to require structures which were lawfully permitted by an agency to be removed.

Town of Day shoreline regulations are consistent with APA shoreline regulations and any construction on the shoreline would have had a site plan review. Town Attorney Avigdor stated the Town can have zoning for state land to the extent those regulations speak to private activity which the State will allow on their land. While the Town can regulate what private parties construct on State land they cannot regulate what the State will allow on their land. However, if State regulations permit a landowner to build a structure not allowable by Town of Day, there would be some recourse for the Town to take. Town Attorney Avigdor stated in his experience the Town of Day is the only entity protecting neighbor interests without challenge.

Any disturbance to a bed or bank of a stream or water body would require an Article 15 permit from DEC. If you have a permit from APA to add a structure near the water which is adjacent to your parcel for a specific use, local zoning laws would apply to it. Preemption occurs when a higher level of government passes a law which is meant to preempt the field and not allow the lower levels of government pass further legislation. For example, regulation of cell towers, the Federation Government may allow cell towers in any location for security reasons but local land use agencies do not allow towers and it creates a real conflict.

Please comment on the recent APA policy change on variance review of residence enlargement or modification.

Mr. Grisi stated the Chairman of APA discussed potential legislative changes which APA is interested in. The Adirondack Park Act is a statutory legislation administering the Park's rules and regulations. The Act is the law and a document which was passed by both Houses of the Legislature and signed by the Governor in 1973 and amended once in the early 80's to deal with industrial use areas. It has been a static document over the years. In order to change the law, it must be sponsored by the Legislature, passed in both Houses and signed by the Governor. It has to have significant backing to move forward. APA is a small agency and there are other pressing issues and whether any other statutory change would receive the necessary backing support is questionable.

Under the regulatory reform, five new changes went into effect on December 31, 2008 and are also complicated. Basically the lead agency submits the changes to the Governor's Office of Regulatory Reform and it goes through an elaborate process, has

public hearings, completes the necessary SEQR documentation, a vote is held on the changes with final adoption to follow. This is how the changes were arrived at last December.

There are three sets or changes being proposed: Existing administration of jurisdiction correcting fundamental problems which have been problematic to APA over time; affordable housing which may allow for increased density (which may be only allowed in APA designated hamlet areas); and transfer of building rights.

For our Town to provide more affordable housing opportunities, the best choice may be a properly designed and well-run mobile home park. Can we do that?

Mr. Grisi stated affordable housing land could be transferred to a land trust such that the land travels with the land trust and the building stays with the landowner which maintains it as being affordable throughout the future. Ways to assess this particular type of land use is maintained through deeds formulated by the Adirondack Land Trust. An onsite well and septic system is very difficult to locate on just a quarter acre site along with driveways and building. He believed it would be attainable on an acre site. To build on a half or three-quarter acre lot would require perfect land and setting. Pipes in the ground to collect sewage which eventually flow into a common area or provide portable drinking water would drive up the initial costs of such a development. If there is well and septic on the existing grandfathered site, it will always exist and could become the Town's affordable housing or mobile home park. It is not to suggest that the comprehensive plan should not include the planning for parks or housing, but realize the limitations and the need for extensive planning of the same. Town Attorney Avigdor stated the cost of septic and water supplies should be determined prior to designating such areas of development. He believed it would be easier to obtain affordable housing in the hamlet of Hadley or villages of Corinth or Northville than in the Town of Day. This would probably this be an area the Town of Day cannot actively promote but could leave the option open in the comprehensive plan and still be economically viable for the reasons Mr. Grisi has stated.

Senior housing is on the Committee's discussion list. A good consultant could determine the upfront costs of such housing of a high number of units. A simpler solution may be 3-4 houses serviced by a single well or septic systems but still requiring a sizable parcel. These types of homes may also appeal to seasonal homeowners rather than the focus group of full time residents the Town is aiming for and a housing trust which focuses on particular income requirements would allow the property to remain as affordable housing for perpetuity. Town Attorney Avigdor stated the zoning ordinance does not allow for common sewage systems but would allow for treatment systems. He stated he would have great concern over the future maintenance of such properties if a trust did not exist. Senior Housing may be eligible for Federal funds for water and sewage and may be an opportunity which this Committee may wish to make available.

Mr. Grisi stated it would be most appropriate to designate or limit the areas where these types of development would be allowed. Accessory apartments of 500 square feet or less would be counted as a second primary structure. The Town of Chester has proposed a change in their program that would allow for small, temporary apartments

attached to the house for a family member or caregiver making use of an existing structure for temporary, year round use. At the end of the use, the apartment would be returned to the original condition. It is done with great intentions to provide for an elderly population and allow them to continue to reside in the Town if caregivers could reside on the same parcel. If it were allowed in the zone under the approved local land use program in addition to the current principle structures, the local land program could be amended and it would not take a map amendment to change it. The Comprehensive Committee would define the use. How long it would be allowed would be determined by APA. The Town of Corinth had a similar allowable use which over time was adding to the density and found it needed to be rescinded. The Town may wish to allow accessory apartments but include a yearly licensing requirement so at the end of its cycle, it is no longer being used or renewed and would no longer be lawful. While this adds another layer of legislation, it would keep it under Town control.

In the recent draft of "Opportunities for Legislative Reform" on page 5 there is mention being more generous in transfer of development rights.

This legislation is not in effect at this time. An example of transfer of building rights would be mountain lands which were not able to be developed or difficult to develop; those building rights could be transferred to an area which would be suitable for development. It may be more desirable to consider transfer of building rights within the residential moderate intensity from residential low intensity and this may provide opportunities for affordable housing.

There is a possibility of changing the Act regarding shoreline restoration. This should be discussed as it might affect numerous lawns, docks, stairs, erosion control, etc. and could be devastating to many shoreline residents.

There are discussions regarding if APA is being effective in regulating shoreline development in areas where there is no approved land use program. APA does not have jurisdiction in many of these areas of development as long as they are outside of the setback area. Shoreline retaining walls of more than 100 square feet under the new regulations (200 square feet under the old regulations) made of natural stone would need a variance from APA. Currently APA issues variances for retaining walls to protect shorelines from erosion. The preferred option is placement of natural stones against the shoreline which would allow vegetation to grow up through the stones.

Supervisor Johnson stated most of the erosion is being caused by the fluctuating water levels which are under the auspices of HRBRRD. This same area would be under the regulation of HRBRRD and stone would be placed there by that agency. Town Attorney Avigdor stated HRBRRD has given permits to private property owners for erosion control measures at the cost of the property owners. Depending on the scope of the project, the property owner may be able to appear before the Planning Board for a site plan review. There are also issues on how to move the stone to the site and if heavy equipment is needed, how it would gain access to the site. Presently APA, DEC and the Town of Day require permits for shoreline restoration. New APA regulations would require a variance and should be referred to APA. A variance to correct shoreline erosion would be routinely granted by APA if it retains a natural element allowing natural

vegetation to grow through. Retaining walls of concrete blocks backed with additional new fill of a more manicured setting are not permitted by APA or DEC. These types of restoration create a hard edge with questionable environmental benefit.

On page 7 the suggestion that shoreline regulations might be administered by APA. That would take away much of the Town's authority that we presently have and would want to keep.

This is a concept which is not being suggested per say. While it suggests that APA will administer shoreline regulations, it is a concept which is not being proposed by any agency or in the current legislation. Legislation which was referred to the Governor was affordable housing, basic time clocks for major and minor projects and the grant funding program. Town Attorney Avigdor stated APA adopted shoreline regulations caused some concern among Adirondack townships to extent they were researching the possibility of potential legal challenges. Mr. Grisi stated any expansion below the taking line would require an APA variance.

Have there been any challenges or has there been any rethinking in term of what the agency has adopted and is there anything that you are aware of at the legislative level to address the same?

The five regulatory changes took effect on December 31, 2008. One of the changes deals with non-conforming structures and that any expansion of non-conforming shoreline structures requires a variance. Prior to December 31, 2008, APA stated if a property owner was expanding a non-conforming structure in lakefront residential district within 50 feet of the shoreline (not taking line) and within 75 feet in residential moderate density would require a variance if expanded in any direction within that setback area. A pre-existing structure which straddles that line could be expanded behind that line without needing a variance. Prior regulations specified no expansion closer to the lake but allowed expansion on the sides and second floors.

APA was sued in an Article 78 action for adoption of those regulations in late January. Mr. Grisi stated he can speak to what the regulations are because they are in effect right now but cannot speak to the lawsuit or the merits of the lawsuit that is brought against APA by several towns and counties in the Park. There has been no decision but APA has been authorized jurisdiction which the regulations provided. For towns with approved local land use programs, APA in every case transferred jurisdiction for authority to issue shoreline variances to those towns.

If a pending area variance which is in the shoreline area is granted, APA would still have 30 days before it becomes effective from its approval date to review it. APA must insure that the record of that area variance adequately documents all Town laws, that all standards are fulfilled (i.e. passes the tests of the five criteria) and has the minimum area variance necessary. The regulations also state if a structure is being altered or enlarged on the shoreline that is non-conforming, the septic system must be adequate and conforming. If a much larger structure is proposed within the shoreline setback area, APA would review those plans and may recommend a smaller structure or locate it out the shoreline setback area or alternatives should be considered. If the Town

makes a good record and demonstrates it has discussed the alternatives and specifics of the application, the Agency may not reverse their decision.

The regulatory changes are:

- 1) Floor space
- 2) Definitions of hunting and fishing cabins
- 3) Subdivision involving wetlands which affect APA jurisdiction
- 4) Subdivisions along right-of-ways which affect APA jurisdiction
- 5) Expansion of non-conforming shoreline structures which has been raising the most concern.

Most of the shoreline lots were configured when the camps were small, drew water out of the lake and had an outhouse. These lots were not intended for large structures of heavy use. In the last decade, many of these small camps are being replaced with larger structures and if they were not constructed any closer to the water, no review by APA was required. Most of these lots have old septic systems which were gravity fed between the house and the water and are no longer adequate to service the larger house. These systems were not being replaced at the time of new construction. This was APA's attempt to protect the water quality and the visual impact on the shoreline. APA has reversed ZBA decisions due to not considering alternatives or not requiring the minimum variance possible.

Would you comment from APA's standpoint on things that might be desirable to incorporate in our comprehensive plan?

While all the basics are being covered by the Committee, additional items to be considered would be:

1. Adult uses.
2. Scenic overlay (most of which is included in the Viewshed Protection), shoreline protection to benefit water quality (is it being adequately protected, does it require tree planting to maintain a more natural look, encourage the growth in the buffer area around the shoreline but discourage grass up to the shoreline due to the fertilizer and pesticide use).
3. Water access (better use or access to the water from a State or County point of view).
4. Roads located on hillsides (roadside corridor overlays where development is pushed back further from the road or a vegetative screen to provide a more natural appearance when traveling the roads).
5. Changes to density in town centers; change to area designated for commercial locations; identify the type of community (seasonal homes or year round residents or more commercial development); and to consider growth not because there has been a significant change but if the AMD plant does come to fruition, there may be greater pressure to purchase second homes. What was slow growth in the past 10-20 years would speed up considerably. Even a ten percent increase in the Town of Day would be a dramatic increase. While there is very limited cell service and

broadband service is not universal, because technology does change, the lack of those services will not be a restriction for those to move in.

6. Multiple family dwellings.
7. Trails to be considered in the open space plan (consider tax impact on large owners if they grant access).
8. Historic structures (complete resource inventory).
9. Reconsider road frontage requirement and flag lots for subdivision lots to allow for flexible design for different configurations of lots and conservation subdivisions which may create a different character to the road.

Supervisor Johnson inquired about recent submission of two new law change proposals which the Town had forwarded to APA for approval. Mr. Grisi stated APA is currently being sued on one of the regulations (subdivision by road) and any new approvals will not be considered until the lawsuit is decided.

The remainder of the agenda was adjourned to the April 21st meeting.

Meeting was adjourned at 12:45 p.m.

Respectfully submitted,

Diane Byrne
Secretary