



THE FUND *for* LAKE GEORGE



NEWS RELEASE

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Waterkeeper Sues Town of Bolton over Failure to Adhere to Its Local Laws for Development

Lawsuit involves permit for subdivision of land that contains popular and scenic “Pinnacle” overlooking Lake George in the Town of Bolton.

Lawsuit follows numerous unsuccessful attempts to get clarification from various town officials and town boards about town regulations for driveway construction and appeals to town to comply with its local laws.

Lake George – The FUND for Lake George and Lake George Waterkeeper submitted a lawsuit against the Town of Bolton (Planning Board, Zoning Board, and Zoning Administrator) over the approval of a controversial subdivision involving the popular and scenic Pinnacle outcrop in the uplands over Lake George. In the lawsuit, the Waterkeeper argues that the application should have received a variance from the Zoning Board in order for it to be approved in its present form by the Planning Board. The Waterkeeper contends that the approval granted by the Planning Board violates the Town Code for driveway width as well as violated the Town of Bolton Zoning Law because the applicant never obtained a variance to exceed allowable clearing limits for road/driveway construction.

In December 2009, the Planning Board approved by default (no motion for or against the project could muster a majority after a number of recusals) a 3-lot subdivision of the 75-acre Pinnacle tract, which involves a nearly 1 mile long access route to the top of the Pinnacle ridge. The Planning Board described this access route as a “shared driveway.” Town Planning Code sets road standards of a 24-foot width and requires that roads not be built on slopes of over 12%. Under the Bolton Zoning and Planning codes, a “driveway” should only be 16 feet in width, but faces no slope standards. The Planning Board issued a waiver, exempting the applicant’s access road from the Town’s Planning code restrictions of a 16-foot width

The Planning Board's approval authorized a "shared driveway" of 20 feet in width with two 2-foot shoulders, totaling 24 feet. The Waterkeeper's review of the application found the applicant designed for cleared areas for the shared driveway of over 150 feet in several areas and that it will traverse slopes of 15%, 25% and 40% in several different areas in clear violation of the Planning Board's authorization. "What the Planning Board is calling a shared driveway is a road in every way. We're challenging the Planning Board's authorization because what it authorized is not what's been designed. The applicant is planning a road that is eight times as wide as the 24 foot width approved by the Planning Board" said Chris Navitsky, the Lake George Waterkeeper. "This is a clear case where rules and standards exist for a reason. Roads should not involve acres of clear cuts and traverse steep slopes. The extent of disturbance and excessive clearing involved in this proposal will scar the Pinnacle for generations."

The second major allegation in the lawsuit is that the Town Zoning Board must issue a variance to permit the excessive clearing. Town Zoning Law states that clearing for driveways shall not exceed 16 feet. "The Zoning Administrator should have recognized the need for a variance once she reviewed the plans and referred the matter to the Zoning Board" said Navitsky.

"We asked the Town Boards and Town officials numerous times for an explanation of how a shared driveway that's supposed to be 24 feet wide was approved given that it involves eight acres of clearcutting, widths of over 150 feet, and will be built on grades of over 25%? We never received a response" said Navitsky. "We feel like we attempted every means practical to work with the Town, but they refused to answer these basic questions. Now we'll let the courts settle the matter."

"This is an important legal issue because it seeks to clarify the Bolton code and establish an important precedent for placement and design of these shared driveways and roads to upland developments. As more development continues in the uplands of Bolton, many accessed by long driveways or roads over steep terrain, the issues of clearing widths and construction on steep slopes are very important" said Peter Bauer, Executive Director of the FUND for Lake George. "In this instance it appears to us that the Town is violating its own local laws."

The Pinnacle was once a popular hiking destination in the Town of Bolton, though it's been recently posted. It is clearly visible from Cat Mountain, another popular hiking area, and from the surface of Lake George. The subdivision application seeks to place three houses on or near the summit of the Pinnacle.

The lawsuit is being litigated by Thomas Ulasewicz of Saratoga Springs. The FUND and Waterkeeper have been joined in this legal action by neighboring landowners. See copy of lawsuit at www.fundforlakegeorge.org or www.lakegeorgewaterkeeper.org.

Chronology of Events

March 2006: Initial application made for subdivision of Pinnacle property.

October 2007: Town of Bolton Planning Board approves sketch plan and grants a waiver to allow roadway to be considered a shared driveway with a clearing width of 24 feet.

November 2008: Waterkeeper submits first comment letter and provided public comment to Town of Bolton Planning Board seeking clarification on how project “shared driveway” could exceed the allowable clearing permitted in the Bolton code, given the cleared areas and slopes involved. No response.

December 2008: Waterkeeper submits second comment letter and again provided public comment to Town of Bolton Planning Board seeking clarification on how project “shared driveway” could exceed the allowable clearing permitted in the Bolton Code, given the cleared areas and slopes involved. No response.

January 2009: Waterkeeper submits first request letter to Town of Bolton Zoning Administrator seeking a determination on how project “shared driveway” could exceed the allowable clearing permitted in the Bolton Code, given the cleared areas and slopes involved. No response.

February 2009: Waterkeeper inquires to the Bolton Town Board and Council at a Town Board meeting verifying the process to request a determination from the Town Zoning Administrator on application of the Zoning Code. Town Council confirmed the process with the Waterkeeper.

March 2009: Waterkeeper submits second request letter to Town of Bolton Zoning Administrator seeking a determination on how project “shared driveway” could exceed the allowable clearing permitted in the Bolton Code, given the cleared areas and slopes involved. No response.

August 2009: Waterkeeper submits third request letter to Town of Bolton Zoning Administrator seeking a determination on how project “shared driveway” could exceed the allowable clearing permitted in the Bolton Code, given the cleared areas and slopes involved. No response.

December 2009: Attorney representing the Waterkeeper submits a fourth request letter to the Town of Bolton Zoning Administrator seeking a determination on how project “shared driveway” could exceed the allowable clearing permitted in the Bolton Code, given the cleared areas and slopes involved. No response. Waterkeeper submits third comment letter and again provided public comment to Town of Bolton Planning Board seeking clarification on how project “shared driveway” could exceed the allowable clearing permitted in the Bolton code, given the cleared areas and slopes involved. The Town Counsel stated it is the determination of the Town Zoning Administrator the Town Code for clearing for driveways does not apply to “shared driveways.” Planning Board approves subdivision.

January 2010: Waterkeeper files Petition for Appeal to seek clarification for determination that the “shared driveway” exceeds allowable clearing widths and requires a variance and that the Planning Board cannot issue a waiver to clearing standards in the Zoning Code.

February 2010: Waterkeeper files Supplemental Petition for Appeal seeking redress of Zoning Administrator’s determination that Town Code for clearing for driveways does not apply to “shared driveways” and that the Planning Board can issue a waiver to clearing standards in the Zoning Code. The Town Zoning Administrator claims there has been no determination made. Waterkeeper and Attorney have meeting with Town Zoning Administrator and Counsel to clarify Petition for Appeal and submit clarification letter to Town of Bolton Zoning Board of Appeals.

March 2010: Town of Bolton places Waterkeeper Appeal on April Zoning Board agenda “for discussion.”

May 2010: Waterkeeper addresses Zoning Board on merits of its Appeal. Zoning Board denied the appeal, stating that no determination between a shared driveway or road was ever made. Bolton Zoning Administrator sent Waterkeeper a letter notifying it about the Zoning Board’s decision.

June 2010: Waterkeeper, FUND for Lake George, and neighboring landowners file lawsuit.

The FUND for Lake George

The FUND for Lake George is a not-for-profit, privately funded organization dedicated to the protection of Lake George. Formed in 1980, the FUND takes a science-based approach to the protection of Lake George water quality and the overall health of the Lake George watershed. The FUND pursues this mission through support for long-term scientific research on the lake, launching new initiatives, advocacy for new protections, and partnerships with other organizations and local governments. The FUND is the sponsor of the Lake George Waterkeeper, among other programs on Lake George. The FUND for Lake George is managed by a Board of Trustees and maintains an office in Lake George. See www.fundforlakegeorge.org.

The Lake George Waterkeeper

The Lake George Waterkeeper was launched in 2002 with a mission to defend the natural trust public resources of Lake George and its basin, which provides for the common good of the community and the watershed. The Lake George Waterkeeper is a resource for concerned citizens in the Lake George Basin who are concerned about land use and water quality. The Waterkeeper responds to all public inquiries and acts as an ombudsman with respect to issues having an environmental impact on Lake George and its watershed. The Waterkeeper monitors and intervenes in development proposals around Lake George and provides professional analysis by a licensed engineer to local and state regulatory agencies. The Lake George Waterkeeper (www.lakegeorgewaterkeeper.org) is a program of the FUND for Lake George. The Lake George Waterkeeper is a member of the Waterkeeper Alliance, which represents over 190 water bodies nationally and internationally.

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