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February 4, 2009

Kathleen Simmes, Supervisor
Town of Bolton
4949 Lake Shore Drive
Bolton Landing, New York 12814

RE: Town of Bolton Zoning Ordinance Update – 12/16/08 DRAFT

Dear Mrs. Simmes,

The Waterkeeper has reviewed the December 16, 2008 release of the DRAFT Zoning Ordinance and asks that the Zoning Ordinance committee discuss the following which have identified as necessary to strengthen the proposed ordinance, and if not addressed, will continue to negatively impact the water quality of Lake George and its unique natural resources.

The desire to update the Bolton Zoning Ordinance was intended to reduce subjective interpretation due to ambiguous and inconsistent language in the code, and should correlate with the Town of Bolton's approved Comprehensive Plan (NYS law requires that zoning should be "...undertaken in accordance with a comprehensive plan..."). Within the collaborative process to involve the community in the development of the Comprehensive Plan, resident surveys (800 responses were completed and used to create the document) became the basis that reflected the primary goal and 'Vision of the Community' to '**Preserve the natural environment**' and to '**Maintain Bolton's distinct rural character**'. The following selected survey results overwhelming expressed the same intention:

- **Protecting the Environment (82%)** was the most important town priority
- **The Natural Surroundings (84%)** were the reason respondents moved to Bolton
- **Reduce visible development along the hillsides (75%);** existing town regulations should be strengthened

From the resident surveys, it was identified that the defining feature of the town is the **quality of life, scenery and rural settings (trees, unpaved roads, open spaces) and a sense of seclusion**. In addition, residents said that the **lake and water quality, stream corridors, open spaces, forested lands, scenic views and steep slopes should all be protected**.



Talking Points:

ARTICLE VI - A. Multiple Principle Buildings on the same Lot

C. Access

1) *“Such access shall consist of a right-of-way not less than 40 feet wide with a roadway width of 24 feet.”* Requiring roadway widths to increase from 18 feet (previous zoning) to 24 feet will have a negative cumulative impact on the environment. In a region where minimizing land disturbance is the main objective to maintaining and restoring water quality, it is not advantageous to increase limits of clearing and impervious coverage by mandating unnecessary requirements for road widths. Implementation of Low Impact Development minimizes disturbance and supports reduced road widths without affecting community safety.

ARTICLE VI - N. Clearing Regulations

A. Clearing for Timber Harvesting

10) *“No land that has been clear-cut shall be considered for residential development for at least five years after completion of timber harvesting activities on that section of land”* [should read], *“No land that has been timber harvested shall be considered for any development for at least five years after completion of timber harvesting activities.”*

Development has occurred after an approved ‘sustainable timber harvesting’ operation, which greatly limits ability for site plan to selectively screen a building on a hillside.

ARTICLE VI - N. Clearing Regulations

A. Clearing for Timber Harvesting

3) 4) 5) 6) *“No clear-cutting shall be permitted on slopes greater than 25%”* [should read] *“no clear-cutting shall be permitted”*, regardless of the required *“...swaths left perpendicular to the slope...”* and *“the undisturbed buffer between clear-cuts...”*. To permit clear-cutting on slopes greatly reduces the natural ability of the land to infiltrate and treat stormwater, and alters the hydrologic cycle that naturally protects the hillsides surrounding Bolton.

ARTICLE VI - N. Clearing Regulations

C. Clearing for New and Existing Structures

1) *“Cutting on slopes greater than 25% shall be prohibited except for the construction of buildings in accordance with this section”* [should read] *“Cutting on slopes greater than 25% shall be prohibited and cutting on slopes greater than 15% should be avoided whenever practicable...”*, as stated by Randall Arendt, Conservation Planner (which is supported by all development professionals).

2) *“Clearing shall be limited to the minimum area necessary but in no case shall exceed 30 feet outside the area occupied by the foundation or the footprint of any structure...”*

increases the current amount of allowed clearing from 20-feet to 30-feet. Based on the fact that the 20-foot clearing outside the footprint was not enforced in Bolton, there is concern that this increase in clearing limits will allow even greater expanses of clear-cut, which opens larger scars on the hillsides and permits an increase in the amount of acceptable lawn vs. natural wooded lots. This will affect stormwater runoff and have a cumulative impact on the environment. Regulations regarding limits of clearing should be mandated and enforced. Use of bright orange snow fences surrounding the vegetation and trees (placed at the tree canopy’s drip line and the area where tree roots would be impacted by heavy equipment) would designate areas on the lot to remain untouched during construction. This practice should be required to be used on every site under construction and is a common requirement elsewhere.

3) **Increasing limits of clearing for a driveway from a width of 16-feet to 25-feet** permits excessive clearing in an environment where trees and the natural forest cover naturally infiltrate and treat stormwater runoff. Retaining vegetation and minimizing impervious surfaces should be considered a valuable component necessary to maintain water quality.

7) **“Selective clearing for views, solar access and other purposes shall be permitted ...”** allows for subjective interpretation and difficult enforcement of tree cutting, and should be more defined to prevent excessive clearing. The permitted development of a site should be separate and completed prior to any ‘selective clearing’ permit that may be issued.

ARTICLE VI - O. Fences, Walls, Retaining Walls and Sea Walls

E. “Fences in excess of 100 square feet on lakeshore lots within the setback requirements from the lakeshore shall require a variance from the Zoning Board of Appeals...” does not address a constructed wall or sea wall within the setback for lakeshore lots. The identified description **“...in excess of 100 sq ft on lakeshore lots within the setback requirements...”** should be more specifically defined. In the past when using these same criteria, retaining walls within the shoreline setback have been altered or minimally changed to avoid the necessity of a variance, thus negating the objective of this zoning regulation. In addition, sea walls are not addressed here. Due to water quality and wildlife habitat concerns, sea walls should not be approved for construction. This is supported by the NYS Department of Environmental Conservation policy stating that *“...vertical structures such as retaining walls may accelerate erosion of the foreshore and create unsuitable habitat for many species in front of the structure as a result of increased turbulence and scour from reflected waves...and will only be approved under the most unusual circumstances...”*.

ARTICLE XVIII - Definitions

The Waterkeeper would request that the following updated Zoning Ordinance Definitions be reviewed and discussed for content and resulting cumulative impacts, and subsequently evaluated and revised to minimize potential subjective interpretations:

- **CONSTRAINED ACREAGE** – Bolton’s definition of constrained or unbuildable land is similar to that used by many communities, and includes land that contains wetlands, watercourses, water bodies with a 100 foot buffer, 100 year floodplains and slopes in excess of 20% (rock outcroppings are often added to this list). The similarity ends here, in that Bolton defines constrained acreage, but does not deduct constrained or non-buildable land from total acreage to determine the density or ‘base’ number of allowable residential units on a site. Calculating density without subtracting the land that would otherwise not be responsibly developed has potential to permit overdevelopment, all under the proposed guise of a *conservation* or *cluster subdivision*.
- **DISTURBED AREA** – **“An area of land subjected to erosion due to the removal of vegetative cover and/or earthmoving activities, including filling. Tree removal without stump removal shall not create a disturbed area unless it results in a change in the natural cover or topography, by baring soil and rocks that may cause or contribute to sedimentation”**. The negative environmental consequence of vegetation removal, including trees of all sizes, is an action that is not easily mitigated. Stumps remaining when trees have been cut down become disturbance to the land. Disturbance includes everything that involves the disruption of natural infiltration of precipitation and stormwater runoff. Reduced infiltration affects groundwater recharge and the ability to retain all stormwater on site. This new definition for *Disturbed Area*, which includes tree stumps left on the land after the trees have been cut down as ‘no disturbance’, cannot be physiologically supported. When trees and their intact canopy

are removed, the soil/duff and natural vegetation change, usually dramatically. A stump does not provide the critical uptake of precipitation, nutrients and pollutants, and without a canopy that will lessen the impact of heavy rains directly hitting the ground, the soil and its attached nutrients and pollutants will wash into the lake and streams with precipitation and stormwater runoff. The cumulative impact of increased sediment, nutrients and pollution entering the lake and tributaries of Lake George is negatively affecting our Class AA-Special drinking water quality, and has the potential to accelerate a change in water quality classification from oligotrophic to a eutrophic status.

- **DWELLING UNIT** – In order to eliminate unnecessary discussion and confusion, a separate definition for a *Condominium* unit needs to be specifically addressed. This type of dwelling unit differs from a Townhouse and an Apartment Building.
- **LOT COVERAGE** – “*That portion of the lot that is covered by buildings and structures*” should also include gravel or paved walkways and driveways, as they too are impervious, and therefore similar to buildings and structures on the land.
- **NONCONFORMING STRUCTURE and NONCONFORMING USE** - “*Any structure or use which is in existence within a given zoning district on the effective date of this chapter...*” should include a specific date as the ‘*effective date*’ (for future reference).
- **SHORELINE** – *The mean high water mark at which land adjoins the waters of lakes, ponds, rivers and streams within the town* should also include **wetlands** in the definition. This would be consistent with all other proposed zoning regulations regarding shoreline descriptions. This inconsistency would be a source of undefined ambiguity remaining in the new zoning code, not to mention that wetlands are a critical component of Lake George’s water quality.
- **SHORELINE BUILDING SETBACK** – *The shortest distance, measured horizontally, between any point of a building and the shoreline of any lake or pond, or the shoreline of any brook, stream or river within the town*” should also include a building setback to **wetlands**.

In addition to the above comments regarding the updated DRAFT Zoning Ordinance, the Waterkeeper would like the Zoning committee to discuss the following important issues that are currently lacking in the Town of Bolton’s Zoning Ordinance but are present in most other municipal documents:

1. A Shoreland Overlay District should be included in the Zoning Ordinance. This land is sometimes referred to as an Environmental Protection Zone or a Critical Environmental Area (CEA) by the Lake George Park Commission. A CEA is land within 500 ft of Lake George and wetlands and is identified as land requiring site plan review in order to minimize the impact of development on water quality. A required Site Plan Review for all development within 500 ft of the lake, streams and wetlands is not primarily for visual or aesthetic reasons, but to ensure that a thorough review of stormwater management, extent of grading and clearing, shoreline buffering, vegetative plantings, minimization of impervious surfaces, and all construction activities that may impair water quality would be discussed by the Planning Board. This would prevent building permits to be given to shorefront residents without comprehensive review, allowing critical site development components such as stormwater management, clearing and soil disturbance, vegetative buffers and fertilizer use to remain unaddressed.

2. Calculation of the density permitted in a Conservation Subdivision is neither defined, nor included in *ARTICLE XI*, but should be part of the development process.

Conservation subdivisions are supported by many communities as a beneficial alternative to a conventional subdivision layout, and should be required to be evaluated as a part of the subdivision process in the Town of Bolton. The outline from Randall Arendt's many texts on the subject of Conservation Subdivisions state that the first step in the process is the most critical and the basis for developing a conservation subdivision; identifying the LAND to be preserved in conservation (referred to as completing a Conservation Analysis). The identified '*Primary Conservation Area*' includes wetlands, water bodies, floodplains, rock outcroppings and steep slopes (>20%). These areas are subtracted from the total acreage and the remaining buildable land is then divided by the allowed density in that zoning district to determine the maximum number of allowable lots. The '*Secondary Conservation Area*' are identified sites with historical or cultural significance, including mature forests, woodlands, upland buffers around wetlands and water bodies, prime farmland, natural meadows, or critical wildlife habitat. This area is included with the remaining 40% to 70% of buildable land that will be designated as 'Open Space'. This designated open space is combined with the previously identified '*Primary Conservation Area*' (or non-buildable land). The lots are then clustered on the remaining acreage, creating a true conservation subdivision, where environmental fragmentation is minimized, usable open space is preserved (generally 40 to 70% of the land) and sensitive areas are protected. The NYS Department of State supports this density calculation method: "**Total Area of Site minus Undevelopable Areas divided by Minimum Lot Size equals Yield**".

3. Incorporate a Floor Area Ratio (FAR) calculation to properly determine the maximum size building that a specific parcel can reasonably accommodate. This is a planning method where the allowable square footage of a building is based on the supportive infrastructure required, including necessary vegetated areas, on-site wastewater treatment (OWTS) and appropriate stormwater management. This calculation provides a planning tool which preserves the character of the neighborhood and prevents the overdevelopment of properties, impacting the community and the environment.

4. Planting of native vegetation buffers should be required for all shoreline and stream corridor development (and encouraged for all existing sites). *ARTICLE VI – H. Shoreline Regulations* does not address any requirements for shoreline buffering. The degradation of water quality in Lake George is too important to be ignored by development that does not recognize the importance of vegetated shoreline buffers. Although contrary to what was adopted in the Town of Bolton Comprehensive Plan and Guiding Principles, some Bolton lakefront homeowners have taken the liberty to clear-cut and remove all vegetation on the shoreline in order to enjoy a lawn and/or a view (this occurs even though limited cutting restrictions are outlined in the existing zoning, and duplicated in the new zoning *Shoreline Regulations*). Shoreline buffers and planting of native vegetation are not conditioned during site plan review. Removing vegetation on the shoreline contributes to a continuous source of sand and sediment entering the lake, carrying with it nutrients and pollutants. The result of sheet flow off the land creates shallow bays with increased nutrients feeding and accelerating aquatic plant growth that eventually dies and decomposes, creating a mucky lake bottom.

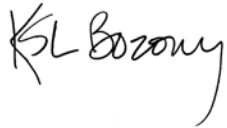
5. Low Impact Development (LID) should be an underlying focus and commitment. Excessive removal of trees and natural ground cover should be avoided and construction should be limited to the constraints of an existing site (the intent is to design the building around the site vs. removing all trees and topsoil, followed by grading or blasting the site level for construction).

6. Ensuring that existing on-site wastewater treatment systems (OWTS) are functioning properly should be addressed in the Updated Zoning Ordinance. In the adopted *Town of Bolton Comprehensive Plan and Hamlet Strategic Plan - Section II GOALS and RECOMMENDATIONS*, it was documented that there was an identified need to inspect and approve on-site wastewater treatment (OWTS) using an *inspection program* at the onset of

construction or site plan approval to ensure that all new systems are compliant and installed properly. The Comprehensive Plan also recognized that there were numerous septic systems that were installed before the septic program began, and that the need to aggressively address the issue of failing septic systems is *imperative*. The recommendation that Bolton proposed would require that when a residential property changes hands, or when the floor area of the principal structure is proposed to be increased, the septic system should be inspected and brought up to compliance with the current New York State Department of Health (NYSDOH) sanitary code. This would include additional bathrooms, an upgraded kitchen or a change of use from 'seasonal' to 'year-round' for a non-conforming home within the shoreline setback of Lake George. Any additional septic usage (regardless that the number of bedrooms is not proposed to increase) should require that the septic system integrity, location and its sizing be identified and evaluated. Including this language in the updated Zoning Ordinance is supported by the NYS Department of State.

The Lake George Waterkeeper would like to thank the committee for time spent on updating Bolton's Zoning Ordinance in order to strengthen the existing code and to more appropriately reflect today's development needs. The Lake George Waterkeeper looks forward to working with the Town of Bolton in defending the natural resources of Lake George and its watershed.

Sincerely,

A handwritten signature in black ink that reads "KSL Bozony". The signature is written in a cursive, flowing style.

Kathleen SL Bozony
Natural Resource Specialist / Lake George Waterkeeper

cc: Town of Bolton Town Board members
Town of Bolton Update Zoning committee members
Pam Kenyon, Zoning Administrator
Mitzi Nittman, Zoning Enforcement Officer
Lisa Nagle, ELAN Planning and Design
Jim Connelly, Executive Director Adirondack Park Agency
John Banta, Esq. Adirondack Park Agency
Brian Grisi, Adirondack Park Agency
Michael White, Lake George Park Commission