



LAKE • GEORGE
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July 8, 2010

Mr. Thomas Saehrig
Adirondack Park Agency
P.O. Box 99
Ray Brook, NY 12977

**Re: Brookside Estates Townhouse Development
APA Project 2009-186**

Dear Mr. Saehrig:

The above referenced application was personally reviewed in my capacity as a licensed professional engineer and the Lake George Waterkeeper. The Lake George Waterkeeper has expressed concerns regarding the above referenced proposal over the past four years since its initial submission to the Town of Lake George. In fact, it was through comments at public hearings that questions on the involvement and jurisdiction by the Adirondack Park Agency (APA) were raised. We are pleased the APA determined it had jurisdiction and undertook an active review of this proposal. It is our opinion that there are significant aspects where the Town of Lake George did not properly administer its Zoning Code and failed in the environmental review.

The Lake George Waterkeeper requests the APA consider the impacts to the wetlands from this high density project as well as other environmental considerations during your deliberations regarding the above referenced application.

- 1. The density of the development utilizes “lands under water” which should be excluded based on Town of Lake George Code and Adirondack Park Agency Act.** The applicant and the Town continue to permit “lands under water open and accessible to others” to be included in the density calculations, despite the language of §175-17.E of the Town of Lake George Code. Photographs were submitted to demonstrate the navigability, which were copied to the APA. Furthermore, the *Public Right to Navigation*, a document prepared by the New York State Department of Environmental Conservation discussing the legal decisions by the State of New York Courts regarding navigation, was submitted into the record. Navigable-in-fact can include waters which are not continuous during all seasons due to periodical fluctuations in the volume and height of its water. In addition, the Adirondack Park Agency Act §809.10.c states “The area upon which an intensity guideline is calculated shall not include (a) bodies of water, such as lakes and ponds ...” Based on this, the APA should not include areas under water connected to lakes. Therefore, it appears the “lands under water open and accessible to others” should not be included in the density calculations. The developer proposed a total of 20 lots for the property (19 building lots and



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one common lot). It is our opinion the area available for development cannot support this density.

2. **The SEQR process and the review of the Environmental Assessment Form have been incomplete and not properly coordinated.** The Town of Lake George Planning Board reviewed the Long Environmental Assessment Form and adopted a resolution of a Finding of Negative Impact at its December 18, 2007 meeting. However this document contained inaccurate information such as the failure to note the need for a permit from the APA and potential environmental impacts that could have raised concern from Board members. In addition, this Negative Declaration was made without any coordination with APA. It is our opinion the SEQR process was not properly done and should be reevaluated.
3. **The removal of the riparian stream buffer will have impacts to the stream and water quality.** There will be little, if any, existing vegetation remaining along the stream corridor. The applicant also stated infiltration rates were less than one minute per inch, which indicates the infiltrated runoff will have almost no contact time with the soils for pollutant and nutrient removal and treatment. This is an additional justification for the riparian stream buffer to remain: woody vegetation provides a greater net production of biomass with a corresponding greater uptake of pollutants; woody vegetation removes pollutants and nutrients from the soil at greater depths than afforded by grasses; and woody vegetation is not cropped. In addition, the Town of Lake George Comprehensive Plan “require(s) adequate stream protection in the land development process to protect the environmental quality and natural resources of the Town.” Data collected on the stream by the Lake George Waterkeeper Stream Assessment Project indicates the level of in-stream pollution as one of the highest recorded in the Lake George basin, which results from upstream impact. The proposed project will only increase the pollutant levels with the removal of the riparian buffer.
4. **The recent plans do not comply with the Conditions of Approval required by the Town of Lake George Planning Board.** In the Conditions of Approval by the Town of Lake George Planning Board on December 18, 2007, the applicant was required to place a no-cut zone along the stream, provide natural plantings from the Warren County Soil & Soil Conservation District on the stream corridors and provide a planting plan along the stream corridor. None of this information appears on the recent project plans. None of this information appears to be included in the most recent plans, and must be incorporated prior to any approval.
5. **The clearing limits do not seem accurate under the field conditions.** The project proposes to construct retaining walls in close proximity to wetlands and propose 10'-12' of clearing required for the construction of 3-story units on 20% grades along the stream corridor/wetlands. It appears the level of buffer is much less than indicated.
6. **There will be significant impact to the wetlands from the proposed development activities on the site.** The extensive grouping of townhouses with basements and minimal undisturbed land between them will alter groundwater supply to the wetlands and stream. The proposed underdrain/cutoff drain west of the proposed stormwater management facility will also impact the wetlands. The shear level and density of disturbance and development will impact the natural resources in this critical environmental area in close proximity to only remaining sustainable wetland ecosystem on the south end of Lake George. The APA needs to properly evaluate and balance the potential impacts to these and adjoining wetlands and determine if the density of disturbance and development proposed is worthy of the impacts that would occur to this vital resource.
7. **There is no sewage capacity for the project.** Under §805.4 of the Adirondack Park Agency Act, it states “Any burden on the public in providing facilities and services made necessary by such land use and development or subdivision of land shall also be taken into account ...” Later in that section it states a consideration should be the “Ability of government to provide facilities and services. There has been a question of

available sewage capacity for the project since the initial submission. This is evident by the Condition of Approval placed by the Town of Lake George Planning Board on December 18, 2007 which states "Shall be granted 5 sewer credits until such time as the sewer plant has been upgraded." There have been no recent upgrades to the plant. During the project review, a March 13, 2007 letter from the Village of Lake George states that recent improvements at the plant were for the efficiency of treatment, not capacity. The applicant submitted a subsequent letter (May 2007) stating future plans for the Village. However, the system is currently operating at maximum capacity. This issue needs to be clarified, especially in light of the failures to the collection systems tributary to the plant.

The Lake George Waterkeeper has commented extensively on this proposal since 2006 and all comments have been copied to Brian Grisi of the APA. We will forward copies of these comments for the record. We are concerned about the lack of focus on some of the critical environmental reviews that must occur on a project of this magnitude. In addition, there seems to be a disconnect between the review and conditions of approval that were required at the local level and the APA. Based on the potential impacts from the project, we encourage the APA to require the applicant to modify the design to reduce the density which would limit the irreversible effects of the proposal. The site is 20% wetlands (1.8 acres), contains an impaired stream and 22% is considered steep slopes. The development proposes to remove nearly 60% of the existing vegetation, which is too much for this environmentally sensitive property to handle.

The Lake George Waterkeeper Program looks forward to working with the Adirondack Park Agency to defend the natural resources of Lake George and its watershed. Thank you for your consideration.

Sincerely,

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

Christopher Navitsky, PE
Lake George Waterkeeper

cc: Curt Stiles – Adirondack Park Agency
Terry Martino – Adirondack Park Agency
Keith Hanchett – Town of Lake George Planning Board Chairman
Town of Lake George Planning Board