



**LAKE • GEORGE
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PO Box 591, Lake George, NY 12845

Tel: (518) 668-5913 Fax: (518)-668-5915

Email: info@lakegeorgewaterkeeper.org

www.lakegeorgewaterkeeper.org

August 3, 2010

Mr. Keith Hanchett, Chairman
Town of Lake George Planning Board
Old Post Road
Lake George, NY 12845

**Re: Brookside Estates (264.11-1-31 & 33)
Site Plan Review 5-2007**

Dear Mr. Hanchett:

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 the initial submission to the Town. It is our opinion there are significant aspects where the Town of Lake George has not properly administered its Zoning Code and failed in the environmental review.

The Lake George Waterkeeper requests the Town of Lake George Planning Board take this opportunity to reconsider the previously granted approval in light of 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 project has not received a permit from the Adirondack Park Agency.** Due to long review by the Adirondack Park Agency, the Town should not grant Final Approval until the APA has issued a permit. A public comment period was held that ended in the beginning of July. The Agency is still reviewing comments and therefore, has not issued a permit for the application. Under the original review by the Planning Board, our office expressed the need for the APA review and this was continually disregarded by actions of the applicant. The Lake George Waterkeeper urges the Planning Board not to be swayed by the applicant and wait until the APA issues a permit.
- 2. The Town of Lake George Planning Board should hold a public hearing on the revised site plan.** It has been two and half years since the Planning Board granted conditional approval on the application and the project has been modified due to review by the APA. In addition, the stormwater management plan has been revised and should be reviewed. The public should have an opportunity to comment on the revised plan.
- 3. 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



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

4. **The SEQR process and the review of the Environmental Assessment Form have been incomplete and not properly coordinated.** The 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 the Assessment Form 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.
5. **The removal of the riparian stream buffer will have impacts to the stream and water quality.** There will be minimal 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 a substantial 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.
6. **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. The “No Cut Zone” is not provided on the plans. Minimal plantings are proposed on only one side of the stream, not both, and do not provide a true buffer. In addition, only the height is provided for the proposed shrubs along the stream corridor and not the quantity or the spacing. Therefore, it is apparent the original conditions of approval have not been met and should be prior to any consideration by the Planning Board.
7. **The clearing limits do not accurately reflect actual disturbance.** There is disturbance outside the proposed clearing limits for the construction of the 12” high berm with proposed landscaping.
8. **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.

- 9. There is no sewage capacity for the project.** 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 and therefore, the condition should remain unless a capacity letter is received from the Village of Lake George.

The Lake George Waterkeeper continues to have concerns about the lack of focus on some of the critical environmental reviews that must occur on a project of this magnitude. Based on the potential impacts from the project, we encourage the Town of Lake George Planning Board 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 recommends the following the Town of Lake George Planning Board: 1) Wait until all outside agency approvals and permits have been received prior to considering approval; 2) Schedule a public hearing on the revised application 3) Density should be determined on actual buildable land on the property; 4) Reopen the SEQR process in light of the revised application and environmental concerns raised since the Negative Declaration; 5) Require a "No Cut Zone" to protect the stream corridor; 6) Require buffering planting along both sides of the stream; 7) Have clearing limits accurately depicted on the plans; 8) Protect the existing wetlands with buffers and greater setbacks on buildings; and 9) Require a sewage capacity letter from the Village of Lake George.

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

Sincerely,



Christopher Navitsky, PE
Lake George Waterkeeper

cc: Tom Saehrig – Adirondack Park Agency
Curt Stiles – Adirondack Park Agency
Terry Martino – Adirondack Park Agency
Michael White – Lake George Park Commission