



January 17, 2010

Mr. John Banta
NYS APA
PO Box 99
Ray Brook, NY 12977

RE: Public Comments on Proposed Rule Making 2009; GORR #0905080

Dear Mr. Banta,

On behalf of the Board of Trustees of The FUND for Lake George, please let express our appreciation for the opportunity to provide public comments on the newly proposed boathouse and dock draft regulations by the Adirondack Park Agency (APA). Please find our comments organized below.

Introduction

We sympathize with the efforts of the APA over many years to write full-proof regulations that will stop the residential uses of boathouses in the top floor storage room area. The APA has attempted mightily over the years to halt this use. We sympathize with the APA's position that residential uses in boat houses creates a slippery slope for further, bigger residential uses, which leads to a negative impact on water quality.

We also note that the attempts to regulate various public and private uses in order to protect water quality on Lake George go beyond the APA. The APA Act, unfortunately, contains many loopholes in its ability to protect shorelines and the water quality in the Adirondack Park. Indeed, when it comes to water quality protections, the APA Act has been described as a feeble instrument. I submit that the loopholes and limitations of the APA Act manifested nowhere else as severely as on Lake George.

Consider these facts:

- Lake George has more area zoned and in a greater concentration zoned "Hamlet" than anywhere else in the Adirondack Park. Perhaps no other watershed has as large a percentage of Hamlet area as Lake George. The APA has virtually no authority to regulate land uses within Hamlet areas. Land uses in Hamlet areas around Lake George continue to be expanded regularly with inadequate review and oversight by area local governments.

- The APA Act actually channels development onto the lakeshores of the Adirondack Park, the most sensitive and fragile lands. Much of the shoreline of Lake George is zoned either “Hamlet” or “Moderate Intensity,” the latter needing just 100 feet of shoreline required for a building lot. Until recently, the APA had asserted no jurisdiction over small, non-conforming lots in Moderate Intensity Use areas.
- The APA’s shoreline cutting law, which allows cutting of 1/3 of trees in any 10-year period, has been a complete failure. This law is inadequate for creating shoreline buffers, is near impossible to enforce, and is widely abused. Because of the failure of the APA Act to limit shoreline tree cutting, the ability of the APA to maintain or encourage the development of vegetated shoreline buffers – which have been shown as the cheapest and most effective way to protect water quality – has been a complete failure.
- The APA’s effort to regulate seawalls and the hardening of Adirondack shorelines has proved a similar failure. Due to this the hardening of the shoreline around Lake George continues unabated.
- The APA Act provides for no enhanced standards for regulation of septic systems. The APA largely relies upon NYS Department of Health standards that have been shown to be one of the weakest regulatory programs in the U.S. when it comes to water quality protections.
- The APA Act was written in an era before public awareness of the negative impacts of stormwater on water quality was understood and stormwater widely regulated. Stormwater is the major long-term threat to the water quality of Lake George. The sad reality is that when it comes to regulating stormwater, the APA is not even in the game. The APA has no standards for regulating the size of a structure in relation to the size of the lot, no standards for the amount pervious and impervious surface that should be retained on a site, no standards for the infiltration of stormwater, no standards for building on steep slopes.
- The APA’s shoreline setback rules are largely outdated. For most of the area on Lake George where development is occurring, shoreline setbacks are only 50 feet.
- APA approved local land use plans result in the transfer of significant regulatory authority from the APA to local governments. Around Lake George, local governments are very permissive with issuing variances for expansions of shoreline activities. In areas outside of Hamlet, the APA will sometimes intervene and overturn the most egregious and unnecessary variances. Unfortunately, the APA does not undertake this practice in Hamlet areas – the area where most variances are issued. This has resulted in lack of practical oversight in areas where development on shorelines is the most intensive, which has taken the APA completely out of the game.

The deficiencies of the APA Act have been acutely experienced on Lake George for decades. The weakness of the APA Act to provide adequate water quality protections is one of a number of factors that has contributed to the steady decline in the water quality of Lake George.

Due to the fact that the APA Act is a feeble instrument to protect Adirondack shorelines and due to the fact that development around Lake George has always been the highest in the Adirondack Park, the State of New York in 1988 reconstituted the NYS Lake George Park Commission (LGPC) to help improve water quality protections for Lake George. The LGPC law is not a feeble instrument to protect water quality; rather it gives the LGPC broad authority to regulate protections in six important areas. Importantly, the state directed in its statute that the LGPC make rules in six specific areas: 1) boat operation; 2) dock use; 3) stormwater; 4) shoreline and upland tree cutting; 5) septic systems; and, 6) stream corridors. The LGPC relatively quickly completed boat use and dock regulations, as annual fees from these activities are what largely fund the LGPC, and it has developed stormwater regulations. The great tragedy that has befallen Lake George is that over the past 22 years, the LGPC has failed to complete rules and regulations to govern septic systems, stream buffers, and for shoreline and upland tree cutting. It's unfortunate that the LGPC, which was created to close the gaps in the APA Act, has failed to fulfill its requirement to provide the water quality protections. If the LGPC enacts rules at its present rate, it will be 2032 before rules for all six areas mandated by the State of New York will be completed.

The Adirondack Park is often held up as a landscape of international significance. Lake George is often held up as one of the most beautiful lakes in the world. Sadly, this unparalleled natural resource is not receiving adequate water quality protections from either the APA or the LGPC, or from most of the area's local governments; we note the exception of the Town of Queensbury, which has taken serious and bold actions in its new zoning ordinance to protect water quality.

Public Comments on Specific APA Draft Rules

Shoreline Setback, Pitched Roof Boathouse, Roof Decks: The FUND for Lake George opposes the draft regulations for mandating a pitched roof boathouse that prohibits a roof deck for five principal reasons:

1. First and foremost we see no water quality benefit to this regulation. If this regulation passed, we believe it will actually be counterproductive around Lake George. Decks on roofed docks will be transferred to the shoreline, which will frustrate efforts to encourage robust shoreline vegetated buffers, smaller lawn and impervious areas, decreases in the use of seawalls, and improved stormwater management. A deck over a roofed dock now enables the opportunity for a landowner to improve land use practices that protect water quality. The elimination of the roof deck dock or creation of a variance process, for this type of boathouse/dock creates an impediment to improving shoreline water quality protection practices.

If, for instance, the LGPC adopted stream buffer regulations, which are currently in draft form, we envision a perceptible positive water quality impact in 20 years. Similarly, if the LGPC enacted long delayed septic system regulations, or shoreline buffer regulations, or upland tree cutting regulations, we envision a perceptible positive water quality impact in 20 years. If the LGPC revised and strengthened its current stormwater regulations we envision a perceptible positive water quality impact in 20 years. If the APA Act was strengthened by the Legislature for shoreline buffers and stormwater controls, among

others issues, there would likely be a perceptible positive water quality impact in 20 years. If, the other eight local governments around Lake George all adopted the same Waterfront Residential Zoning District within 500 feet of the lake that the Town of Queensbury recently adopted, we envision a perceptible positive water quality impact in 20 years. Unfortunately, we do not envision a perceptible positive water quality impact in 20 years on Lake George from enactment of the draft new boathouse regulations.

Given all the deficiencies noted in the APA Act above when it comes to the protection of water quality, it's unfortunate that the impact of the proposed draft rules and regulations (if enacted) on the water quality of Lake George over the next few decades will be negligible.

2. There is a basic conflict between the LGPC and APA that needs to be resolved. In its wisdom, the State of New York created the LGPC to provide enhanced regulations necessary to protect the water quality of Lake George. This was designed, in part, to plug the loopholes and statutory weaknesses of the APA Act in the area of shoreline regulations and water quality protections. What the LGPC regulates as a “dock” the APA will regulate as a “boathouse.” As a principle in good government, this discrepancy must be resolved.

The open sided roofed dock with a deck on top has become the dominant dock/boathouse on Lake George over the past 20 years largely because it has been the regulatory preference of the LGPC. This is a structure that has been found to conform with the LGPC’s regulations (though the failure of the LGPC to include the roof deck square footage in its regulatory calculus has been a mystery). The APA must resolve with the LGPC a coherent regulatory approach where the two state agencies reconcile a common approach. This can be done either through a subset of rules for Lake George, a formal policy for Lake George by the APA, or better yet through a Memorandum of Understanding between the LGPC and APA.

3. Enactment of these regulations on Lake George creates overlapping and conflicting regulations between the area local governments, LGPC, and APA. This will require a landowner to secure three permits (in addition to potential permits from the NYS Office of General Services and Department of Environmental Conservation as well as the U.S. Army Corp. of Engineers). I’m not sure the roofed dock/boathouse that survives this process will be a structure that any of us is enthused about.
4. A very real issue around Lake George is the topography of the lake’s watershed. Lake George is defined by steep slopes that in many places fall at a steady grade to the shoreline. These rules risk having an impact of transferring decks to the shoreline, which in many areas will require significant alterations of the shoreline that the APA, LGPC and area local governments are all poorly equipped to regulate against.
5. While we sympathize with the APA’s efforts to prevent residential use of boathouses across the Adirondacks, and are aware of the many abuses and legal entanglements that the APA has been involved in due to inadequate existing shoreline regulations, and the

attendant negative water quality impacts that result from this, we submit that the open sided roofed dock with a roof deck by its very design prevents these types of residential uses as they are open and transparent.

Size and Usage: We agree that some restrictions and limits on size and usage of boathouses are needed. Note though that the size of Lake George and boating history of Lake George has made use of many large boats standard practice. The APA may want to revisit this issue as part of some kind of administrative agreement with the LGPC.

Potential Legal Morass: Undoubtedly in this day and age these draft regulations will be challenged in court. We're concerned about the Kafkaesque legal defense by the APA to defending its new rules, which seek to regulate use outside the shoreline setback zone, with statutory authority to regulate a shoreline setback zone. Simply put, we ask: How does it make sense to apply setback rules outside the shoreline setback zone? As mentioned above we strongly encourage shoreline protection rules or changes to the APA Act within the shoreline area that will create shoreline buffers, reduce impervious area, reduce lawn area, greater setbacks for houses and septic systems, and better stormwater management, among other items.

Docks Hoisted or Operated Mechanically: On this issue we agree that some system of regulation is necessary. These "docks" are clearly uses within the shoreline area and have the impact of degrading shoreline areas for cleared areas and storage. Standards need to be adopted. This may be an area where an administrative agreement between the LGPC and APA is appropriate.

The FUND for Lake George supports the purpose and continued administration of the APA. On behalf of the Board of Trustees, please let me express our appreciation for the opportunity to provide our position on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Bauer". The signature is fluid and cursive, with a large initial "P" and "B".

Peter Bauer
Executive Director