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June 16, 2006

**SAGA Position Statement**  
**The “Sand Pit” SEQR**

Citizens of Saranac Lake have heard many references from previous Village Board members about the process for re-zoning and selling off the 10-acre sand lot on Route 86. We have been told it will be “subject to SEQR”, and “Planning Board review”, that an “economic review” will be prepared.

It is our position that the Village Board and the community deserve better advice and the Board should publicly describe how it intends to implement the SEQR process, as suggested below.

The board met with their special counsel (Daniel Ruzow) and an engineer (Andrew Abdullah) in executive session on February 27 to discuss the “acquisition/lease/sale of Village property”, without further specification. After that private session, and taking no action in public session, they made available Part 1 of the Environmental Assessment Form (EAF) without much public notification.

After reviewing the EAF Part 1, it appears that the EAF is not written to implement the State Environmental Quality Review Act in a fair, open and honest manner consistent with the objectives of that law.

The EAF Part 1 is written in a way which appears to be leading toward a “negative declaration” of environmental significance, i.e., to say that there are no significant environmental impacts. The result would be that there would be no environmental impact statement (EIS) to analyze the potential consequences of rezoning and selling this lot, much less the subsequent phase of commercial development. While many regard an EIS as an unnecessary burden that only planners and lawyers require and respect, it is often the case that an EIS provides a planning board with a set of issues for review, a guideline for looking at big development. If there is no EIS, the Planning Board would be left with the job of analyzing the project without any preliminary guidance on what to look for. In fact, a neg dec, especially if based on a narrow analysis, places an extra burden on the planning board to identify any significant impacts; in reality, the applicant is supposed to have the burden of proof in demonstrating that his project is acceptable.

**The first SEQR steps**

Technical consultants prepared Part 1 of the EAF. The first steps in the SEQR process are to decide what the “action” is, whether it is subject to SEQR and, if so, whether it is a “Type I” or “unlisted” action. A Type I action is presumed to have a significant environmental impact and is more likely to require an environmental impact statement (EIS). Because of the adjacency of historic sites, it appears that the rezoning is a Type I action, although this issue has not been discussed in public session. Open Meetings Law requires public openness on this.

Instead, it appears that the former board made preliminary SEQR determinations in executive session under general motions relating to the sale of the sand-pit. The former mayor also signed the EAF Part

1; we are concerned whether the Board 1) publicly voted on the EAF and 2) authorized the former Mayor to sign it.

### **Misrepresentation of the “action”**

The SEQR process is supposed to be based on an accurate description of the “action” being contemplated. Village Board members have declared repeatedly their intent to re-zone and sell off the sand-pit and the contract with special counsel is explicitly for his advice on both rezoning and sale. But, the “action” described in the EAF Part 1 is simply stated as “rezoning”. This amounts to segmenting the SEQR process by narrowing the scope of review and discussion to “rezoning” and is improper under SEQR. The entire action involves rezoning, sale, and building a project; impacts from these activities are not separate from one another; their impacts add up.

Since the rezoning would not occur in the absence of a contemplated development, they are tied together. The EAF also briefly describes and disposes of ‘alternatives’, and while there is more on this below, suffice it to say that alternatives are required to be assessed in an environmental impact statement, not discarded ahead of time.

### **Misidentification of potential impacts**

The EAF Part 1 is supposed to identify in objective terms the potential environmental impacts of the proposed “action”. Unfortunately, this document contains statements that clearly skew the truth toward a “negative” declaration.

The EAF Part 1 states there are no “unique or unusual land forms” of the site, ignoring the esker which would be destroyed with almost any development

The EAF Part 1 states there are no scenic views important to the community, ignoring the splendor of McKenzie Mountain and its neighbors and the esker with mature pines (which will be destroyed with a large commercial development – There is no reference to the master plan, which provides guidance on identifying and protecting scenic resources. It may be that residential use for this area was in the plan and also zoned residential is that it does have scenic views.

The EAF Part 1 states that the potential action is consistent with recommended uses in the Village’s land use plans, when clearly re-zoning to commercial use is necessary precisely because commercial use on that site is not currently part of the current land use plan.

The EAF Part 1 states there will be no demand for community police and fire services if there is rezoning, clearly ignoring a future potential with a big box store. This results from segmentation, as noted above.

The EAF Part 1 states in one sentence that rezoning would allow a 172,240 square foot retail store, but then inconsistently states that only an 80,000 square foot store would be possible. This hypothetical 80,000 square foot store is described as the largest size possible on the 10.8-acre sand-pit lot under current zoning (taking into account limits on lot coverage and requirements for parking). Of course,

this conclusion completely ignores the potential impacts of re-zoning to Commercial B-4, i.e., the consolidation with other B-4 lots (Stanley's and Carcuzzi) for a "large retail" use. This is "geographic segmentation."

This approach ignores the fact that a major big box retailer has publicly announced its desire to buy the Village lot and has already obtained options on the adjoining land in order to construct a 121,000 square foot store.

The EAF Part 1 states that the proposed action will not result in traffic "significantly" above current levels, a conclusion it arrives at by an overly simple conclusion. Traffic is of great concern on this road, especially the traffic related to service.

### **Flawed traffic analysis**

The base comparison should begin with the current level of traffic along Route 86, including traffic from the sand-pit itself. The source of these figures (the daily average and "peak" flows) is not provided.

While the EAF projects the levels of average daily traffic from two types of hypothetical residential development, it provides only comparisons of current and projected "peak" flows (weekday and Saturday) from the hypothetical 80,000 square foot store. The projected new "trips" from a big box store (and the hypothetical 80,000 square foot store) are not provided. This ignores the statement that a 172,240 square foot store could be built and also ignores the proposed 121,000 square foot store announced by a major retailer.

Even so, the comparison of "peak" hour traffic projects increases of 86 percent for the daily "peak" and 136 percent for the Saturday "peak". Yet, the EAF form, Part I concludes that these traffic comparisons would not "result in the generation of traffic significantly above present levels". (If that were so, no big box store would be interested in this site.)

The discussion prepared by Mr. Abdullah states that increases "of this magnitude would require a detailed traffic study and analysis based on the size and type of commercial usage." Turn lanes and traffic lights "would be likely study outcomes." These statements and the conclusory statement of "no" significant increase may be intended to lead to a "negative declaration" for the Village Board's rezoning action. The EAF essentially leaves traffic analysis to the Planning Board during site plan review

Segmentation is contrary to SEQR's requirement that direct and indirect long-term and cumulative impacts be identified for each "action" and that an EIS be prepared if any one impact "may" have a significant adverse effect on the "environment", including community character.

### **Review of alternatives under current zoning**

The EAF states that under current zoning the "maximum potential development" of the site is "Forty (40) single family homes or multi family housing. . . ." This statement appears to be incorrect as there is no minimum lot size or density limitation on townhouses or apartment buildings.

The cursory treatment of residential options under current zoning may be a prediction of a substantially flawed environmental impact statement, should one ever be prepared. Dwellings on the site are simply dismissed as “uneconomical”, based in part on a \$250,000 sale price for the sand-pit (where did this sales price come from?).

The analysis of alternatives is a crucial part of an environmental impact statement (EIS); alternatives are not to be eliminated in the EAF.

### **Future SEQR procedures**

Even the best SEQR process, focused only on this 10-acre lot, cannot accomplish what good land-use planning, updating our Master Plan, can do.

Assuming the Board may continue with the re-zoning process and sale of the sand-pit, we suggest that the following be considered by the Board to assure a legally defensible SEQR process but perhaps more importantly, to support sound, community-based growth and preservation:

- a. Meet to review issues raised here and other issues the Board feels appropriate. It is important that the community start off on an objective basis for such a crucial action. Objectivity and legal integrity will help avoid public commentary and challenges later in the process. As an example, we suggest that the Board identify the ‘action’ as the rezoning and the sale of the property. The EAF should be amended or corrected to reflect objective changes the Board can support.
- b. A generic environmental impact statement (GEIS) should be prepared for the potential rezoning and sale of the sand-pit with a supplemental EIS anticipated for any planning board action on a specific project proposal.
- c. An open “scoping” session should take place to specify the contents of the draft generic environmental impact statement, allowing input from interested groups and citizens.
- d. A public hearing should be held on the Draft GEIS, combined with a hearing on the re-zoning and sale proposals.
- e. Involvement of either existing and/or additional consultants should be considered and decided in public session, for the purpose of preparing the Draft GEIS and Final EIS.
- f. Time periods for public review and comment and hearing participation may be extended beyond the minimums in SEQR; the Board should consider extending these periods in order to ensure adequate community participation. If prospective development interests have the community’s welfare in mind and intend to have new development be a part of the community, there’s no excuse for rushing the process.

We hope that these comments are useful; it is our intent to respond to the importance of this issue and help provide Saranac Lake with the best opportunity for shaping its future.