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March 18, 2014

Planning Board  
Town of Queensbury  
742 Bay Road  
Queensbury, NY 12804

Re: Bear Pond Ranch, LLC/ French Mountain Bear Pond, LLC  
Site Plan Review of Proposed Zip-Flyer (# 77-2011)

Dear Board Members:

This firm represents Lake George R.V. Park, Inc. ("LGRV Park"), an adjoining landowner that opposes the proposed Zip-Flyer due to the incongruous nature of the project for this particular location, and because the project would have undue adverse impacts on our client's property and on the community.

The incongruous nature of the project is demonstrated by the fact that it is not a permitted use in the district in which it would be located. As discussed below, we have filed an appeal to the Zoning Board of Appeals ("ZBA") to obtain its determination on this issue. The Planning Board should table the application until the ZBA decides the pending appeal. The Planning Board should also table the application until it receives all of the necessary information that it needs to adequately review the proposed Zip-Flyer's access road.

## THE ZIP-FLYER APPLICATION MUST BE DENIED

The Zip-Flyer application must be denied because the project does not meet the criteria for site plan approval:

1. The Zip-Flyer is Not a Permitted Use;
2. The Zip-Flyer is Inconsistent with the District in which it Would be Located;
3. The Zip-Flyer Fails to Meet the Design Standards;
4. The Zip-Flyer Would Cause Undue Adverse Impacts; and
5. The Zip-Flyer's Access Road Has Not Been Adequately Reviewed.

In addition, the Zip-Flyer application must be denied because the project is not compatible with the goals of the Town's Comprehensive Plan:

1. The Zip-Flyer Does Not Protect Important Natural Areas and Viewsheds in the Town; and
2. The Zip-Flyer Does Not Support the Town's Economic Goals.

"Notwithstanding the fact that Class A Regional Project approval may have been granted by the Adirondack Park Agency" ("APA"), the Planning Board "may disapprove the project" if it is "not approvable" under the Town of Queensbury Zoning Code. Zoning Code § 179-18-020(D).

POINT I  
THE PROPOSED ZIP-FLYER WOULD  
DISRUPT FRENCH MOUNTAIN

The Zip-Flyer would disturb the natural setting and disrupt the peaceful, scenic qualities of French Mountain. The upper portion of the Zip-Flyer is proposed to be located within the Town of Queensbury's Land Conservation LC-10A zoning district. The remainder of the Zip-Flyer would be located in the Town of Lake George, and the entire project would be located within the Adirondack Park.

The infrastructure required to support the Zip-Flyer includes a 34-foot tower and a launch platform at the top of French Mountain in the Town of Queensbury, another 34-foot tower and a landing area at the base of French Mountain in the Town of Lake George, and multiple 3/4-inch cables running from the top of the mountain to the bottom of the mountain, spanning both towns.

The Zip-Flyer's mechanical retrieval system for the seat/harness is powered by a motor located at the bottom of the zip-line.<sup>1</sup> There would also be a generator located at the launch platform at the top, in the Town of Queensbury.

In addition to these structural elements, a swath of trees near the top of French Mountain would be cleared to facilitate the path of the cables and the riders' descent. This swath of trees would be 35 to 50 feet wide for a distance of 900 feet down the side of French Mountain.

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<sup>1</sup> See Bear Pond Zip-Flyer, Glynn Geotechnical Engineering, Sheet-11 "Retrieval System" (laying out plans for "Capstan Motor").

The Zip-Flyer's riders would be transported by motorized vehicles (AWD vehicles in the summer and tracked vehicles in the winter) to the top of French Mountain on a logging road that was constructed without site plan approval from the Planning Board.

LGRV Park has operated for over 45 years and has preserved its portion of French Mountain to maintain the aesthetic values and recreational opportunities that the mountain provides. LGRV Park, its guests, and the public<sup>2</sup>, enjoy using the hiking trail on the LGRV Park land to hike to the top of French Mountain.<sup>3</sup> The hikers' enjoyment of the hiking trail would be adversely impacted by the view of the Zip-Flyer's structures, and by the noise and activities associated with the Zip-Flyer (e.g., trucks, crowds, degradation of the sense of wilderness).

POINT II  
THE PROPOSED ZIP-FLYER DOES NOT MEET  
THE CRITERIA FOR SITE PLAN APPROVAL

In addition to failing to meet the goals of the Town's Comprehensive Plan (see Point III, below), the Zip-Flyer fails to satisfy the necessary criteria for site plan approval. The project is not a permitted use, is not "in harmony" with the "description and purposes" for the district in which it is proposed, does not conform to the design standards, and it would have an "undue adverse impact" on the resources of the Town and the Adirondack Park<sup>4</sup>. Zoning Code § 179-9-080(B), (E), (H), (O).

1. The Zip-Flyer is Not a Permitted Use

In its initial application (submitted to the Planning Board Chairman by cover letter dated October 17, 2011), the applicant defined the Zip-Flyer as a "year-round tourist attraction". However, according to the table of uses for the Town's Residential Districts, which includes the LC-10A zoning district, "tourist attractions" are "not a permissible use by right, site

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<sup>2</sup> Accounts of hikes on this trail may be found at:  
<http://akeepersjackpot.blogspot.com/2009/05/bike-and-hike-warren-county-bike-trail.html>  
and [http://www.everytrail.com/view\\_trip.php?trip\\_id=1368784](http://www.everytrail.com/view_trip.php?trip_id=1368784)

<sup>3</sup> See <http://lodging.lakegeorgervpark.com/Hiking.cfm>

<sup>4</sup> The Planning Board is required to consider whether the project will have an undue adverse impact upon the Adirondack Park, in addition to considering the impacts upon the Town. Zoning Code § 179-9-080(H).

plan review, or special use permit".<sup>5</sup> Therefore, the Zip-Flyer is a "nonpermissible use" in the LC-10A zoning district because a "tourist attraction" is "deemed prohibited in that zoning district". Zoning Code § 179-4-010(C)(4).

Apparently, the Zoning Administrator, Craig Brown, determined that the Zip-Flyer would be an "outdoor recreation"<sup>6</sup> use. We have filed an appeal with the Zoning Board of Appeals ("ZBA") to challenge the Zoning Administrator's determination. A copy of the letter dated March 12, 2014 explaining the grounds for the appeal was submitted to the Planning Board for its file.

The Planning Board should not approve the Zip-Flyer project in the current proposed location because it would violate the Zoning Code. See Zoning Code § 179-9-080(B).<sup>7</sup> The Zip-Flyer would violate the Zoning Code because a "tourist attraction" is not a permitted use in the LC-10A zoning district.<sup>8</sup>

A. The Zip-Flyer is a "Tourist Attraction"

The Zip-Flyer is a "tourist attraction" because it would be a "man-made . . . place of interest open to the general public". Zoning Code § 179-2-010. As acknowledged by the applicant in its application materials<sup>9</sup>, the Zip-Flyer falls within the Town's definition of a "tourist attraction"<sup>10</sup>. Zoning Code § 179-2-010.

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<sup>5</sup> Zoning Code § 179-4-010(C)(4); see Town of Queensbury Zoning Code Table 2 (Summary of Allowed Uses in Residential Districts).

<sup>6</sup> A bona fide "outdoor recreation" use is permitted in the LC-10A zoning district. See Town of Queensbury Zoning Code Table 2 (Summary of Allowed Uses in Residential Districts).

<sup>7</sup> See also Zoning Code § 179-9-010(C) (stating that the "Planning Board is empowered to apply all of the requirements" of the Zoning Code).

<sup>8</sup> See Town of Queensbury Zoning Code Table 2 (Summary of Allowed Uses in Residential Districts).

<sup>9</sup> Letter dated October 17, 2011 from Jonathan C. Lapper, Esq. to Town of Queensbury Planning Board Chairman Christopher Hunsinger, p. 1 (see also Site Plan Review Application pp. 2, 5), attached hereto as Exhibit A.

<sup>10</sup> "Any man-made or natural place of interest open to the general public, including but not limited to animal farms, amusement parks, replicas of real or fictional places, things or

Additionally, the applicant's representatives told the Planning Board that the Zip-Flyer would be a "tourist attraction"<sup>11</sup>.

As you may know, APA and the Town of Lake George both consider the Zip-Flyer to be a "tourist attraction". APA Act § 802(65); Town of Lake George Zoning Code § 175-6. The Town of Queensbury's definition of a "tourist attraction" is essentially identical to APA's definition and both include such things as "amusement parks"<sup>12</sup>. Zoning Code § 179-2-010; APA Act § 802(65). The applicant never appealed APA's jurisdictional determination dated December 12, 2011 (copy attached hereto as Exhibit C) that the Zip-Flyer was a "tourist attraction" that required a permit from APA because the Town of Queensbury Zoning Code "designates tourist attractions as a Class A project".

Neither a "tourist attraction", or an "amusement center"<sup>13</sup>, is a permitted use in the Town's LC-10A zoning district. Therefore, the Zip-Flyer may not be permitted by the Planning Board without a use variance first being granted. See Zoning Code § 179-9-080(B); see also Zoning Code § 179-9-010(c).

B. The Zip-Flyer is Not Nonmotorized "Outdoor Recreation"

The Zip-Flyer does not meet the Zoning Code's definition of an "outdoor recreation" use. Zoning Code § 179-2-010. "Outdoor recreation" uses include "recreation" activities. Zoning Code

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people and natural geological formations".

<sup>11</sup> Queensbury Planning Board Minutes dated November 17, 2011, p. 29. Attached hereto as Exhibit B.

<sup>12</sup> The Zoning Code does not define an "amusement park", but it does define an "amusement center" as "[a]n indoor or outdoor facility, which may include structures and buildings, where there are various devices for entertainment, including rides and booths for the conduct of games and buildings for shows and entertainment. The definition includes amusement uses, but is not limited to, miniature golf, go-karts (or riding areas for dirt bikes or ATVs), skating facilities, arcades and batting cages." Zoning Code § 179-2-010.

<sup>13</sup> While an "amusement center" is specifically permitted in the Town's Commercial Districts, such a use is not permitted in the Town's LC-10A zoning district. See Town of Queensbury Zoning Code Table 2 (Summary of Allowed Uses in Residential Districts); Table 3 (Summary of Allowed Uses in Commercial Districts).

§ 179-2-010. "Recreation", either active or passive, includes only "nonmotorized leisure activities". Zoning Code § 179-2-010.

The Zip-Flyer includes motorized mechanisms (i.e., the mechanical retrieval system for the seat/harness<sup>14</sup>, and a generator at the launch pad in the Town of Queensbury) and motorized transportation to the top of the mountain (e.g., truck, jeep, ATV, snowmobile, etc.). Therefore, the Zip-Flyer is not an "outdoor recreation" use as defined by the Zoning Code.

2. The Zip-Flyer is Inconsistent with the  
District in Which It Would be Located

Regardless of whether it is categorized as a "tourist attraction" or an "amusement center", or even an "outdoor recreation" use, the proposed Zip-Flyer is a use that would be inconsistent with the district in which it would be located.

The upper tower, launch platform and clearing for the Zip-Flyer would be located within the Town's LC-10A zoning district and within the "Rural Residential Planning Area". Town of Queensbury Comprehensive Plan, p. 19. "This portion of the community is highly valued for its rural character" (Town of Queensbury Comprehensive Plan, p. 19), and "should also be protected as such". Zoning Code § 179-3-040(A)(1).

A commercial enterprise, unrelated to residential, agricultural, or similar uses, is not consistent with the purpose of protecting the "rural character" (Zoning Code § 179-3-040(A)(1)) of this residential land area. See Zoning Code § 179-9-080(E).<sup>15</sup>

The proposed Zip-Flyer would be much different than any of the uses on the list of allowed uses in the LC-10A district. The only two "permitted uses" in the LC-10A district inside the Adirondack Park are "home occupation" and "produce stand less than 100 square feet". Some of the uses inside the Adirondack Park that are permitted by site plan review include "agricultural

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<sup>14</sup> See Bear Pond Zip-Flyer, Glynn Geotechnical Engineering, Sheet-11 "Retrieval System" (laying out plans for "Capstan Motor").

<sup>15</sup> See also Brock v. Zoning Bd. of Appeals of the Town of Queensbury, 237 A.D.2d 670, 670 (3d Dept. 1997) (noting that a commercial marina in a residential zone was a "nonconforming use").

use", "cemetery", and "place of worship". These are all uses consistent with maintaining the Town's "rural character".<sup>16</sup>

The Zip-Flyer would be more similar to the uses that are not permitted in the LC-10A zoning district. Land uses such as "commercial boat sales/service/storage", "golf course and/or country club", and "golf driving range" are explicitly not permitted in the LC-10A zoning district (even a "playground" is not permitted).<sup>17</sup>

Additionally, the proposed Zip-Flyer facility is more like a "ski center" or a ride at an "amusement center" where the rider is elevated via motorized transportation and then descends primarily by gravity (e.g., a downhill ski facility with lifts, or a roller coaster ride). "Ski center[s]" and "amusement center[s]" are permitted uses in some zones within the Town's Commercial Districts, but they are not permitted anywhere within the Town's Residential Districts.<sup>18</sup>

As shown by the above comparison of uses in the Town of Queensbury, the proposed Zip-Flyer is similar to the uses that are not permitted in the LC-10A zoning district. Therefore, the Planning Board should deny the application for the proposed Zip-Flyer because a commercial enterprise of its nature is inconsistent with the purpose of protecting the "rural character" (Zoning Code § 179-3-040(A)(1)) of the LC-10A zoning district. See Zoning Code § 179-9-080(E).

### 3. The Zip-Flyer Fails to Meet the Design Standards

Construction design in this area of the Town of Queensbury should preserve the landscapes in this area, "conserve existing land forms and features", "protect views from public roads", "preserve mature trees", "restrict building on steep slopes", and "avoid locating structures that create a silhouette against the sky when viewed from public ways". Comprehensive Plan pp. 20, 22. Structures should be sited so that existing vegetation and

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<sup>16</sup> See Town of Queensbury Zoning Code Table 2 (Summary of Allowed Uses in Residential Districts).

<sup>17</sup> See Town of Queensbury Zoning Code Table 2 (Summary of Allowed Uses in Residential Districts).

<sup>18</sup> See Town of Queensbury Zoning Code Table 2 (Summary of Allowed Uses in Residential Districts); Table 3 (Summary of Allowed Uses in Commercial Districts).

topography provide a natural buffer, screen and background. Zoning Code § 179-4-010(D)(2).

The Zip-Flyer and its associated wires, tower, platform and clearing, would disturb the mountainside, negatively impact the views from public roads, destroy mature trees, and result in structures on steep slopes. Therefore, the proposed Zip-Flyer does not satisfy the design criteria of the Comprehensive Plan.

The location of the upper tower and platform would violate Zoning Code § 179-4-010(D)(2)(b) because they would not be "located where existing vegetation and/or topography provides a natural buffer and screening from roads and neighboring properties". They would be located on the top of French Mountain where they would be seen from many roads and the adjoining landowner's property. Zoning Code § 179-4-010(D)(2)(b).

In addition, the site of the Zip-Flyer's upper features is at such a high elevation on the mountain that the existing vegetation and topography would not provide an adequate "background". Zoning Code § 179-4-010(D)(2)(d). The site of the Zip-Flyer would create a break in the ridge line when viewed from public roads, and would create a silhouette against the sky when viewed from public roads.<sup>19</sup> As a result, the Zip-Flyer's proposed location violates Zoning Code § 179-4-010(D)(2)(d).

Therefore, the proposed Zip-Flyer does not meet the design standards in the Zoning Code and the application must be denied. See Zoning Code § 179-9-080(O).

#### 4. The Zip-Flyer Would Cause Undue Adverse Impacts

The Zip-Flyer would cause undue adverse impacts on the "natural, scenic, aesthetic" and "open space resources" of the Town and the Adirondack Park. Zoning Code § 179-9-080(H). Therefore, the project application must be denied.

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<sup>19</sup> See Letter from Peter Loyola to Claudia K. Braymer dated October 18, 2013, a copy of which is attached hereto as Exhibit D, p. 1 (Exhibits B1, B2, C1, C2 to that letter); Applicant's Figure 17b - View Point 14 Simulation with Riders dated November 20, 2013).



A. The Adverse Impacts On Scenic and Aesthetic Resources Would be Undue

The Visual Impact Analysis Review<sup>20</sup> prepared by LGRV Park's consultant, CLA Site, concluded that "the proposed zip line will have an adverse visual impact to the aesthetic resources within the viewshed area and will significantly contrast with the wooded landscape of French Mountain and the undeveloped natural and scenic gateway to the Adirondack Park".<sup>21</sup>

The Zip-Flyer's infrastructure elements, as well as the cleared area, will be visible from numerous locations around the area, including Interstate 87, US Route 9, Prospect Mountain Veterans Memorial Highway, Prospect Mountain Multipurpose Trail, and the Warren County Bikeway. The visibility of this manmade structure running down the side of French Mountain will significantly detract from the natural beauty of this area's landscape and would cause adverse effects on its aesthetic resources. See Zoning Code § 179-9-100(A)(7).

Due to the location and scope of the proposed project, its adverse impacts on the "natural, scenic, aesthetic" and "open space resources" in and around the Town of Queensbury cannot be adequately mitigated. The applicant's consultant, LA Group, admitted that "[b]ased on the simulations and the distances from which the project is visible, purposefully cutting an irregular edge at the clearing limit would not significantly alter the appearance of a straight/geometric cleared edge", and that, "[similarly], variation in tree heights along the cleared edge . . . would not dramatically affect the geometric appearance of the clearing". LA Group's August 2013 Addendum p. 3. Therefore, the applicant's proposed tree removal and planting mitigation plan, as presented in the applicant's Upper Site Plan (Sheet-S6 revised November 28, 2013), actually has little or no mitigating effect on the adverse visual impact of the Zip-Flyer.

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<sup>20</sup> CLA Site's Visual Impact Analysis Review showed a more accurate representation of the visual impacts of the Zip-Flyer than the visual impact assessment provided by the applicant's consultant. Documentation of the flaws in the applicant's visual impact assessment are included in letters from the undersigned to Suzanne McSherry (APA) dated December 7, 2012 and February 20, 2014. Copies of these letters were previously provided to the Planning Board.

<sup>21</sup> Letter with exhibits from Peter Loyola to Claudia K. Braymer dated October 18, 2013, a copy of which is enclosed as Exhibit D, p. 1.

Additionally, as noted above and as shown in a photo simulation by CLA Site (see Exhibit B-2 of Exhibit D hereto), the clearing of trees for the Zip-Flyer would exacerbate and accentuate the disturbance on the mountain caused by the existing gravel road. The combined effect would be a highly visible notch on the ridge line of French Mountain.

The 3,450± foot long Zip-Flyer could be relocated to reduce its visual impacts. For instance, it could be reduced in length and located at a lower elevation on the mountain. According to the applicant<sup>22</sup>, the competitive standard is a zip line in Bromley Vermont that is 2,600± feet long. Additionally, according to an article provided by the applicant's attorney<sup>23</sup>, the longest zip line in all of North America is only 3200± feet long. The article also refers to a 1400-foot zip line as a "big dog". Therefore, the proposed Zip-Flyer could be greatly reduced in length and still provide a thrilling, adventure ride by industry standards<sup>24</sup>.

As currently proposed, the Zip-Flyer must be denied because it would cause undue adverse impacts on "natural, scenic, aesthetic" and "open space resources" of the Town and the Adirondack Park. Zoning Code § 179-9-080(H).

B. The Zip-Flyer Would Cause  
Other Undue Adverse Impacts

In addition to the undue adverse visual impacts, the Zip-Flyer would cause:

- an undue adverse impact on the adjoining lands of LGRV Park, and on the quality of existing outdoor recreational opportunities. See Zoning Code § 179-9-100(A)(2)(i); Zoning Code § 179-9-100(C)(2)(a);
- undue adverse noise impacts at the top of French Mountain. Zoning Code § 179-9-100(A)(4); and

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<sup>22</sup> Letter from applicant's attorney, Michael J. O'Connor, to Suzanne McSherry, APA, dated September 26, 2013 p. 3.

<sup>23</sup> Letter from applicant's attorney, Michael J. O'Connor, to Suzanne McSherry, APA, dated October 2, 2013.

<sup>24</sup> If the Zip-Flyer were relocated to be only in the Town of Lake George, the Zip-Flyer would be approximately 2,000± feet in length and its visual impacts would likely be greatly reduced.

- undue adverse impacts on water and land resources, and on wildlife. Zoning Code § 179-9-100(A) (1), (2), (6).

These impacts are explained in detail in a letter from me to Suzanne McSherry (APA) dated February 20, 2014. A copy of the letter was previously provided to the Planning Board.

As a result of these adverse impacts, the Zip-Flyer application must be denied.

5. The Zip-Flyer's Access Road Has Not Been Adequately Reviewed

Since it is an integral part of the Zip-Flyer project, the Planning Board should review the portion of the access road located in the Town of Queensbury for its compliance with Town Zoning Code Chapter 147 (stormwater management). See Zoning Code § 179-6-070; Zoning Code § 179-6-080.

The Planning Board should also conduct site plan review of the access road because it would be part of the "new" Zip-Flyer operations and because it would be an "expansion or change of use" from the previous logging operations. See Zoning Code § 179-9-020(A).

The Planning Board should not deem the application complete until it has all of the information it needs to conduct an adequate review of the Zip-Flyer's access road. See Zoning Code § 179-9-070(A).

POINT III

THE ZIP-FLYER IS NOT COMPATIBLE WITH THE  
GOALS OF THE TOWN'S COMPREHENSIVE PLAN

The Planning Board must, as part of site plan review, ensure that a project is sited and designed to meet "the goals and objectives of . . . the Comprehensive Plan". Zoning Code § 179-9-010.<sup>25</sup> The Comprehensive Plan (p. 6) also stresses the economic goals of the Town and dictates that the Planning Board should "not allow every project into town, but only quality projects that . . . reflect the goals of the Comprehensive Plan".

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<sup>25</sup> See Zoning Code § 179-7-010(C) ("The Planning Board must implement the design standards with the main goal of achieving community character as defined by the Comprehensive Plan").

1. The Zip-Flyer Does Not Protect Important Natural Areas and Viewsheds in the Town

One of the Town's goals is to protect the "natural areas and viewsheds in the town, especially unique landforms, ridges, and slopes."<sup>26</sup> Comprehensive Plan p. 6. The Comprehensive Plan (p. 6) emphasizes that "protecting and enhancing natural resources and viewsheds is economically beneficial as well as environmentally sound."

The proposed Zip-Flyer, as currently designed, does not reflect the Town's goal of protecting the "natural areas and viewsheds in the town, especially unique landforms, ridges, and slopes." The Zip-Flyer would detract from, not protect, French Mountain - its landform, ridge and northwest slope.

Therefore, the proposed Zip-Flyer, in its current location, does not satisfy the objectives of the Comprehensive Land Use Plan. See Zoning Code § 179-9-010(D). As a result, the proposed Zip-Flyer also does not satisfy the objectives of the Zoning Code, which is to "support the overall objectives of the Town's Comprehensive Land Use Plan" (Zoning Code § 179-1-020(B)). See Zoning Code § 179-9-010(A).

Accordingly, the Planning Board "shall not approve [the] site plan" application for the proposed Zip-Flyer because it is inconsistent with the Town's Comprehensive Plan. See Zoning Code § 179-9-080(A).

2. The Zip-Flyer Does Not Support the Town's Economic Goals

Another goal in the Comprehensive Plan (p. 6) is to foster projects "that contribute to the community's vision for the future" while also providing a "tax base and job opportunities". The Town of "Queensbury is so successful as a commercial and residential destination that it need not compromise [its] values" to allow projects that are inconsistent with the Town's vision and goals. Comprehensive Plan p. 58.

As noted in the Comprehensive Plan (p. 6), "open spaces and scenic vistas" are what make Queensbury unique and are an asset that "attract[s] residents and businesses". Degrading the natural environment of this area, in the highly-visible manner that the Zip-Flyer would, will harm Queensbury's economic position by detracting from the businesses that rely on the

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<sup>26</sup> See also Town of Queensbury Comprehensive Plan pp. 19-23.

scenic qualities attributable to the views from, and the views of, an undeveloped ridge atop French Mountain.

Furthermore, the proposed Zip-Flyer project would provide no services and few, if any, jobs for Queensbury's residents. Contrary to the applicant's statement to the Planning Board in its letter dated February 11, 2014, that 20 full-time and 12-16 part-time jobs would be created, APA found that only 12 full-time and 8 part-time workers would be employed as a result of the zip-line. APA also found that these jobs would have an average annual wage of \$19,702. In addition, the zip-line would provide little to no increased tax base for the Town of Queensbury because, as found by APA, some of the Zip-Flyer's sales revenue would be generated by redirecting revenue from existing businesses within Warren County.

Therefore, the Zip-Flyer application must be denied because it would be inconsistent with the Town's Comprehensive Plan. See Zoning Code § 179-9-080(A). In addition, taking into account the negligible economic benefits and the significant adverse impacts of the Zip-Flyer, "a net overall evaluation of the project" leads to the conclusion that the Zip-Flyer application must be denied. Zoning Code § 179-9-080(H).

#### POINT IV CONCLUSION

The Planning Board cannot approve the application because the Zip-Flyer is not a permitted use in the LC-10A zoning district (Point II.1). As stated above (p. 3), we have filed an appeal to the ZBA to challenge the determination that the Zip-Flyer is an "outdoor recreation" use.

While it is our position that the Planning Board could deny the application at this time for the other reasons stated in Points II and III, we recommend that the Planning Board table any further consideration of this application until the ZBA has made its decision on the pending appeal.

If the application comes before the Planning Board at some future date, the Planning Board should request an updated review by its engineers of the Zip-Flyer's stormwater management design. The proposed size of the permanent impervious surface created by the Zip-Flyer has increased since the Town's engineers last reviewed the Zip-Flyer in November 2011. Due to the changes to the project, the Town's engineers should be consulted about the adequacy of the stormwater management design for the Zip-Flyer and the access road.

If the Planning Board proceeds with its review of the project at this time, the Planning Board must deny the currently proposed Zip-Flyer application because the project does not meet the criteria for site plan approval. The Zip-Flyer would be inconsistent with the zoning district in which it would be located, it fails to meet the design standards, and it would cause undue adverse impacts. In addition, the proposed Zip-Flyer is not compatible with the goals of the Town's Comprehensive Plan.

Thank you for your consideration of these comments.

Sincerely,



Claudia K. Braymer

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CKB/ljs  
enc.

cc: LGRV Park  
Lake George Park Commission  
Town of Queensbury ZBA

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