

**DEVELOPMENTAL REVIEW BOARD
MINUTES**

November 24, 2008

MEMBERS PRESENT:

Phil Carter, Chairman	Julie Nicoll	Rose Goings, Zoning Administrator
Troy Adams	Linda Petty	Barbara Davis, Zoning Admin. Asst.
Richard Harrison		

OTHERS PRESENT:

Ralph Michael	Chris Rowen	Duncan Love, LPC TV
Jerry Morton	Ken Zuba	Lisha Klaiber, Recorder
Chris Ponessi		

1. **CALL TO ORDER**

A. Meeting opened at 6:03 p.m. by Chairman Phil Carter. All board members.

2. **RE-OPEN THE RECESSED PUBLIC HEARING FOR PETER DARTLEY**

- A. Phil Carter advised that this hearing is for an application for a variance for a Renewable Energy Resource Structure – Application (application 314-09-VA, Amendment #1) for a wind turbine which exceeds the height requirements in the District Standards in the Town Residential District. Property owner is Peter Dartley and applicant is E. Jerome Morton. Property address is 1181 Bixby Road in the Town Residential District. He added that since the last meeting, the board has learned a lot. The board heard the arguments presented by Mr. Morton and sought a legal opinion from town counsel. Chris Callahan agreed with Mr. Morton in that the Public Service Board (PSB) has jurisdiction over power systems that are net-metered, attached to the electrical grid. In essence, it removes the DRB from the variance issue. The Select Board, DRB and Planning Commission may have input at the hearings held by the PSB.
- B. Jerry Morton said that the PSB considers input from the boards as well as Town Plans and Town zoning regulations. The PSB understands that some small towns have many of the same issues and there would be a huge bottleneck if the PSB tried to address every objection. They consider wind turbines to be beneficial to the state as well as the majority of its citizens.
- C. Phil Carter advised that the Planning Commission is moving forward to correct the discrepancies between the town plan and the zoning regulation and to include a height exemption for wind turbines. On behalf of the board, he thanked Mr. Morton and Mr. Dartley for their patience. This was the first time the DRB has had an application for a wind turbine and they learned a lot.
- D. Jerry Morton said that the PSB statutes and hearings are also new to him and he also learned a lot. He offered to attend a Planning Commission meeting if they needed more information regarding wind turbines.

- E. Phil Carter said that he may someday be needed as an expert witness.
- F. Jerry Morton said that the board, Rose Goings and Barbara Davis have been very supportive and he thanked them for their assistance.
- G. Phil Carter said that he would entertain a motion to close the hearing and that Rose Goings would send off a letter advising that the hearing is closed.
- H. Richard Harrison asked about the De Rosia concern regarding noise.
- I. Jerry Morton advised that he had addressed that at the last meeting. Based on tests, the distance to the De Rosia home is about 1,600 feet. The rustling of grape leaves at 200 feet or more would be louder. It would be no more objectionable than the snow making machines. They may hear the turbine if the wind is blowing in their direction.
- J. Richard Harrison said then that basically Jerry Morton is saying they probably will not hear it.
- K. Jerry Morton said that is not what he said. He said that individuals can complain about a lot of things. If they listen, they may hear something, but that the sound would not be objectionable to any reasonable person.
- L. **MOTION by Julie Nicoll and seconded by Linda Petty to close this. Motion passed unanimously.**

3. **OPEN THE PUBLIC HEARING FOR HENRY CORR AND REGINA FITZSIMMONS**

- A. Phil Carter advised that this hearing is for an application for a subdivision for a two-lot subdivision in the Town Residential District. Property address is 1179 South Hill Road.
- B. Rose Goings advised that this is application SUB09-002. Posted in the Town Hall bulletin boards November 4, 2008, advertised in THE VERMONT JOURNAL on November 5, 2008, and the abutting property owners were notified, by the engineer as per the new subdivision regulations, on October 29, 2008 and that Certification of Service had been received. She advised that she has not heard from any abutter. The letter from the police department has been received, but the letters from fire and ambulance have not been received. Mr. Michael did send letters to those departments requesting their letters.
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. Ralph Michael advised that the applicants wish to subdivide 27.2 acres into 2 parcels. Parcel #2 will have the existing house, garage and barn. The intent is to create 2 smaller lots. The applicants will sell Parcel #2 with the existing structures and retain the undeveloped lot, Parcel #1. The plans that have been submitted address every requirement contained in Article 2. He referred to the sketch and indicated the building envelope, saying that all of the land down to where the woodland starts, would be considered prime-ag(ricultural) or statewide. That means they have to limit the building to a certain envelope and there will be no building on any slope greater than 15°. He indicated that proposed location of a mound wastewater system, the well site and the well shield. He advised that the well shield does not cross the road. He advised that applications have been filed with the state.
- E. Phil Carter noted – for the record – that Parcel #1 would contain 13.72 acres and Parcel #2 would have 13.50 acres. He asked the distance from the barn to the property line.
- F. Ralph Michael said 25 feet. He added that the building envelope is 25 feet from the property line and that the setbacks meet the zoning regulations from the center of the road.
- G. Troy Adams asked about the shed.

- H. Ralph Michael said it is an old milk shed and would be removed.
- I. Rose Goings advised that there would be single access to the property and no ROWs would be required.
- J. Phil Carter asked about any wetlands other than way down (indicated on drawing.)
- K. Ralph Michael said there is a buffer, but there are no other wetlands other than maybe a class three. But, the land cannot be considered prime-ag if there are wetlands.
- L. Phil Carter said those fields have been hayed for a long time. He noted that the well shield for Parcel #1 encroaches on Parcel #2 and that is allowed since it is within the subdivision. The well shield on Parcel #2 is pre-existing and does overlap the abutting property.
- M. Ralph Michael said that there is no leech field on that portion of the abutting property. He added that the applicant is anxious for a decision because he may have a prospective buyer for the house.
- N. **MOTION by Linda Petty and seconded by Troy Adams to close this hearing. Motion passed unanimously.**

4. **OPEN THE PUBLIC HEARING FOR NORTHERN SKI WORKS**

- A. Phil Carter advised that this hearing is for an application to amend an existing Conditional Use permit and Flood Hazard Review to construct a fire escape and roof overhang. Property owner is Lori Budney, Northern Ski Works. Property address is 10 Main Street in the Village Residential Commercial District.
- B. Rose Goings advised that this is application 59-93-CU, Amendment #2. Posted in the Town Hall bulletin boards November 4, 2008, advertised in THE VERMONT JOURNAL on November 5, 2008, and the abutting property owners were notified on November 4, 2008. She advised that the agent for the applicant is Ken Zuba.
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. Ken Zuba advised that the applicant was told by the state fire marshal that they need fire escape access – a second floor door to the loading dock.
- E. Phil Carter said they need to amend the permit.
- F. Rose Goings said that they also need flood hazard review.
- G. Ken Zuba said the fire escape would land onto a 4' x 8' loading dock that is on the original permit. It is above flood plain level.
- H. Phil Carter asked if they would have a roof over it.
- I. Ken Zuba said yes, over the double door. He had asked for a 3' overhang on the original drawings but may only use 2 feet. They have to put the stairs in first to see what they will need.
- J. Richard Harrison said that the fire escape was a requirement from L&I because of the changes to the upper floor. The applicant will need a letter from L&I.
- K. Ken Zuba said he will get a letter from Scott Adnams.
- L. Rose Goings said she also did not receive a letter from Water Quality Control. She had spoken to Rebecca Pfeifer about it.
- M. Richard Harrison said a copy of the letter from L&I should be sent to Chief Kolenda at the fire department.
- N. Phil Carter asked Rose Goings to clarify the state involvement.
- O. Rose Goings said that anytime there is a project in the floodway or floodplain, the town has to notify the state within 30 days. She will be meeting with them in December to talk about some problems with the new addition. That is also why they have not received

approval for the stairs, yet. FEMA regulations are stricter now and the town must follow the rules to the "T." She added that she has written to Rebecca Pfeifer several times, but has not heard back from her. She is on the road a lot.

- P. Richard Harrison asked if the stairs would be steel.
- Q. Ken Zuba said they will be galvanized with web tread.
- R. Rose Goings asked if they were using the addition. They need a CO before using it. There a 2 separate hearings. She still needs the as-builts for the addition and that can be done without this one being complete.
- S. **MOTION by Richard Harrison and seconded by Julie Nicoll to close this hearing, pending receipt of all letters.**
- T. Rose Goings suggested that they may want to amend the motion to close the hearing next Monday pending receipt of letters.
- U. Linda Petty asked if Monday would be enough time because of the holidays.
- V. Phil Carter suggested 2 weeks,.
- W. **Richard Harrison amended his motion to close the hearing effective December 8, 2008. Julie Nicoll accepted the amendment to the motion. Motion passed unanimously.**

5. **REVIEW AND APPROVE MINUTES**

- A. Phil Carter advised that the minutes to be reviewed and approved are from October 27, 2008.
 - i. Phil Carter said that on page 1, Item 2F, next to last sentence should read "...imbalance, furling of the blades..."
 - ii. Troy Adams said that on page 2, item 2BB, second sentence should read "The sound factor is still kind..."
 - iii. Phil Carter said that on page 5, Item 5E should read "Phil Carter asked..."
 - iv. Linda Petty said that on page 5, item 5L last word should be bathroom.
 - v. Phil Carter said that on page 5, item 5N, first sentence, should read "...the steps down to the driveway..."
 - vi. Phil Carter said that on page 7, item 7A, "for n extension" should be deleted.
 - vii. **MOTION by Julie Nicoll and seconded by Linda Petty to accept the minutes from October 27, 2008 as corrected. Motion passed unanimously.**

6. **OTHER BUSINESS**

- A. **Rowen/Herring Subdivision General Discussion Only**
 - i. Chris Ponessi said that the applicant was not clear with the decision rendered by the DRB. They did not understand how the infrastructure could be completed without the final plat being approved. They submitted a letter to the board.
 - ii. Phil Carter advised that they are between a rock and a hard place. Once the DRB has issued a decision it cannot be changed at a meeting unless the applicant files for an application to amend that decision. The conditions imposed in that decision must be met. He asked why, if those conditions were not working for the applicant, why they didn't appeal the decision

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- iii. Chris Ponessi said that it was not clear that they had to build the infrastructure. They have an approved preliminary plat and were hoping to be on the agenda this evening for final plat review.
 - iv. Rose Goings said that she spoke to Chris Rowen and told him that if the conditions are not met, the final plat will not be approved.
 - v. Phil Carter read from page 7 of the decision. He added that the applicant could have appealed or filed a motion to reconsider. He said they now have 3 options: they can drop the application; they can meet the conditions; or they can come back for an amendment.
 - vi. Chris Ponessi said that the old rules do not say anything about phases for a project. He voiced concern that if they complete the infrastructure, the final plat would not be approved.
 - vii. Phil Carter said that the whole board voted on that decision. If the applicant meets the conditions in the decision properly, the final plat will be approved.
 - viii. Chris Ponessi said that they have completed everything except the retention pond. They have a letter of intent from AOT. They need guidance.
 - ix. Phil Carter said they could file for an amendment.
 - x. Rose Goings said that if they file for an amendment, the hearing would be under the new rules. She wanted to make sure that was clear to the applicant.
 - xi. Phil Carter said that an amendment hearing is a new hearing and reopens the project to everything. This permit was granted with conditions.
 - xii. Chris Rowen said that when the board came for the original site inspection, everything was a mess up there. He put 3 houses on foundations this year. They left the first hearing hoping to get approval. The mess has been cleaned up and he hoped for final plat review. They can't do the road cut because AOT has not granted the permit.
 - xiii. Phil Carter said that the AOT permit is for use, not to cut. The board needs to see the forestry, erosion control and homeowners association plans.
 - xiv. Rose Goings said that the final plat review was not on the agenda because the site work is not complete according to the decision. She has not been to the site recently.
 - xv. Chris Rowen said there was no list in the decision. He also questioned putting in the road cut prior to receiving the AOT permit.
 - xvi. Phil Carter said he is not speaking for the AOT, but he is not aware of the AOT prohibiting a road cut, but use of it is another ballgame. This board has never seen a denial from the AOT to cut.
 - xvii. Chris Ponessi asked where they go from here.
 - xviii. Phil Carter said that the decision calls for the roadways being up to par.
 - xix. Rose Goings said that erosion control and roadways were things the applicant proposed to the board and that is what this board approved. All of the files they originally submitted were used to base the decision on.
 - xx. Phil Carter said that there was nothing in that decision that was not discussed at the hearing. He used the higher location for the pond as an example. The engineer who worked for the applicant suggested that location.
 - xxi. Rose Goings said that phasing is somewhat unique, although other permits have been issued with phases. That is the only thing that is different from every other permit that is issued. It was a mess up there. It is a major subdivision in the Aquifer District.

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- xxii. Chris Ponessi said that he did not remember saying they would construct the roads. The 2 residential driveways were existing. The only thing left is the retention basin.
 - xxiii. Richard Harrison said that this board tried to work with them. The board wanted something that was 180° different from what was there.
 - xxiv. Phil Carter asked when they plan to complete the work.
 - xxv. Chris Ponessi said when they receive final plat approval.
 - xxvi. Phil Carter said that the decision tells them what they need to do for final plat approval.
 - xxvii. Rose Goings said that when they made their presentation, they described the roads. The board wants and expects you to build the road. It must be done as a condition. Phil Carter made it very clear that what must be in place is what you submitted. Once the work is done, then the board will do the final plat review.
 - xxviii. Chris Rowen wanted the board's assurance that once he had accomplished everything that in the plan, the board will come up and look at the site. He understands that a decision is a decision. He must either act accordingly or ask for an amendment. We feel like we are putting the cart before the horse. We thought just stabilizing would be okay. Can you assure him the AOT will allow the cut?
 - xxix. Phil Carter said that to his knowledge, they will.
 - xxx. Chris Ponessi asked about "the roads being up to par" statement in the decision. Does this mean they must be paved, because they will be bringing in a lot of heavy equipment and that would tear up a road?
 - xxxi. Phil Carter said that paving is part of the overall project. The board wants to see intent and the final road grade. They will look at that and the erosion work and the detention pond. The paving can wait until the construction is completed.
 - xxxii. Rose Goings said that for them to get a certificate of compliance, the paving must be completed.
 - xxxiii. Phil Carter said the board is not trying to make this prohibitive, but they must protect the Aquifer district.
 - xxxiv. Chris Rowen said there were 12 trailers parked up the road and it was an amazing feat to complete what he did. He did the best that he could.
 - xxxv. Rose Goings suggested that he send he a letter requesting an extension.

B. December Meeting

- i. Rose Goings advised there will be no meeting in December.

C. Pending Court Cases

- i. Phil Carter asked the status of the cases.
- ii. Rose Goings said no new information. She added that at the last meeting, Matt Birmingham had indicated that the parties involved in the Ledgewood case would be getting together. She has not heard anything more about it. That case was decided, by the court, in our favor.

7. DELIBERATIVE SESSION

- A. Phil Carter indicated that a deliberative session was needed.

- B. **MOTION by Julie Nicoll and seconded by Richard Harrison to enter into Deliberative Session. Motion passed unanimously.**
- C. Board entered deliberative session at 7:28 p.m.

Respectfully submitted,

Lisha Klaiber

Phil Carter, Chairman

Julie Nicoll

Troy Adams

Linda Petty

Richard Harrison