

**DEVELOPMENTAL REVIEW BOARD
MINUTES**

May 9, 2011

MEMBERS PRESENT:

Phil Carter, Chairman	Richard Harrison	Linda Petty (by phone)
John Boehrer	Julie Nicoll	Rose Goings, Zoning Administrator

OTHERS PRESENT:

Peter Alberti	Jay Maciejowski	Ted Reeves
Andy Becker	John McMullen	Diane Rousseau
Constance Bixby	Beth Merrill	Chris Rowen
Mike Doran	Lisa Merrill	Larry Slason
Paul Haynes	Sandra Merrill	Duncan Love, LPC-TV
Todd Hindinger	Ralph Michael	Lisha Klaiber, Recorder
Vanessa Johnson	Mary Jane O'Hara	

1. **CALL TO ORDER**

- A. Meeting opened at 6:05 p.m. by Chairman Phil Carter. All board members, including Linda Petty by telephone present.

2. **OPEN THE PUBLIC HEARING FOR MARCUS AND AMY MIGNOME**

- A. Phil Carter advised that this is an application to amend a Planned Residential Development permit to allow for a mudroom addition located at Trailside Lower IVA 52A in the Mountain Recreation District.
- B. Rose Goings advised that this is application 128-98-PRD, Amendment #27. Posted in the Town Hall bulletin boards April 15, 2011, advertised THE VERMONT JOURNAL on April 20, 2011, and the abutting property owners were notified on April 19, 2011.
- C. Phil Carter administered the oath to all wishing to speak at this hearing. Phil Carter advised that the DRB has heard this application for other units many times.
- D. Peter Alberti advised that the applicant wishes to enclose the entry deck as permitted there previously for other units.
- E. Phil Carter verified that there would be no change in the footprint.
- F. Peter Alberti said that is correct.
- G. **MOTION by Julie Nicoll and seconded by John Boehrer to close this hearing. Motion passed unanimously.**

3. **OPEN THE PUBLIC HEARING FOR GREGORY AND SUSAN KASPARIAN**

- A. Phil Carter advised that this is an application to amend a Planned Residential Development permit to allow for a mudroom addition located at Trailside Lower IVA 55A in the Mountain Recreation District.

- B. Rose Goings advised that this is application 128-98-PRD, Amendment #26. Posted in the Town Hall bulletin boards April 15, 2011, advertised THE VERMONT JOURNAL on April 20, 2011, and the abutting property owners were notified on April 19, 2011.
- C. Phil Carter administered the oath to all wishing to speak at this hearing. Phil Carter advised that the DRB has heard this application for other units many times.
- D. Peter Alberti advised that the applicant wishes to enclose the entry deck as permitted there previously for other units.
- E. Phil Carter verified that they would not be extending the footprint.
- F. Peter Alberti said that is correct.
- G. **MOTION by Julie Nicoll and seconded by Linda Petty to close this hearing. Motion passed unanimously.**

4. **OPEN THE PUBLIC HEARING FOR SANDRA LIEBERMAN REVOCABLE TRUST**

- A. Phil Carter advised that this hearing is an application for a two (2) lot subdivision. Property is located at 901 Bixby Road Town Residential district.
- B. Rose Goings advised that this is application SUB-11-013. Posted in the Town Hall bulletin boards April 15, 2011, advertised THE VERMONT JOURNAL on April 20, 2011, and the abutting property owners were notified on April 19, 2011. She said that a letter was received from Beth Merrill on May 6, 2011.
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. Ralph Michael advised that this is a 2-lot subdivision; he had prepared the application and addressed all of the subdivision standards. Referring to a drawing, he indicated where the subdivision would be along the east side of the existing home. The existing parcel is 10.2 acres. The new lots would be 6.35 acres and 3.68 acres. He indicated an open meadow. He said that the property line would follow the drainage way of a small stream that develops on-site. He said that the division line would follow the east edge of the wooded area that would serve as a buffer for the stream and other parcel. He has received the waste water and potable water permits from the state. This complies with town standards. He pointed out proposed house site location for the 3.68 acre lot. He added that this lot is adjacent to a town road and private drive to 2 other lots. This is a corner lot. Setbacks can be met. There is no proposed development for the other lot, but it does comply with town standards for building. The preliminary plot established the building envelope and it is proposed to keep development toward the tree line with open space in the front. It is prime agricultural land and the section along Bixby has a high seasonal water table. It may be a class III wetland. There are no steep slopes and most are under 15%. The wastewater system must be designed in the proposed location because it has the best slope, other areas are too flat. He designed the system where the slope is steeper and has included a pretreatment system. The design has been approved by the state.
- E. Phil Carter asked that approximate distance from the proposed building site to the wastewater system.
- F. Ralph Michael said the septic tank is gravity fed to the filtrate system and is about 65 feet. It will be pumped to the leach field – about 150 feet with a 2” diameter forced main. The leach field 1 one 46’ long, 4’ wide trench in a mound. It can be this small because of the pretreatment system.
- G. Phil Carter asked the board for questions.

-
- H. Rose Goings said that the driveway would access 3 lots, would therefore be a private road and would have to be named.
- I. Ralph Michael said that the property is owned by Yurofino and there is a ROW.
- J. Phil Carter said that the Yurofino heirs would propose the name for the road to the Select Board for approval.
- K. Richard Harrison said he wants to make sure that all of the surrounding property owners are protected, including Bixby (with regard to any wastewater problems.)
- L. Ralph Michael said they would be protected. The state has approved the system.
- M. Phil Carter asked Ralph Michael to describe the wetland.
- N. Ralph Michael said that when he did the site inspection, it had snow on the ground. He said that where a stream has banks, usually means there is very little wetland. The types of soil up there also don't usually indicate wetlands. Also, the vegetation is not of the type found in wetlands. THE ANR Environmental Interest Locator Map indicates that area to be deer yard.
- O. Phil Carter asked how far the house site is from the swale.
- P. Ralph Michael said about 65 feet.
- Q. John McMullen asked if you can tell about wetland vegetation is the area is mowed.
- R. Ralph Michael said that he is not a wetland expert, but he did have an expert there.
- S. Phil Carter asked John McMullen if he is under the assumption that the area is a wetland.
- T. Beth Merrill said that she read a copy of the application and the isolation area will impact her property. She said that she is familiar with Act 145. She grew up there and feels that she is entitled to not having her property impacted by this subdivision. It is 55 feet from the leach field to her property line and only 82 feet from the septic to the wetland. She said that it is a wetland. There is a stream there and it goes into another stream and then to Bixby Brook. The area stays wet until July. She said that she has considered putting a pond on her land and does not want the isolation area on her land. She would like to see the property not subdivided, but left as one lot. There would be other places to put the septic system.
- U. Phil Carter asked Ralph Michael if there has been any discussion with the Liebermans for putting an easement on the remaining parcel to put the proposed wastewater system.
- V. Ralph Michael said the only thing that would be prohibited within the isolation area would be a drilled well for potable water. The state would allow you to put anything else there, including a pond.
- W. Beth Merrill said that she does not want the leach field flowing into her property.
- X. Ralph Michael said the design has been approved and permitted by ANR.
- Y. Beth Merrill asked why the Liebermans can't use their own land and not impact her. She deserves that right.
- Z. John McMullen agreed that the Liebermans should use their own land.
- AA. Phil Carter said that traditionally this board prefers no encroachment on other people's properties. He said it would be worth discussing this with the Liebermans. He suggested creating an easement on their other parcel. He added that he is not convinced that the area is a wetland.
- BB. Ralph Michael said that he walked the area and it is not a wetland. There are hardwoods there.
- CC. Phil Carter asked Ralph Michael what safeguards could be taken to ensure that the system would not fail and leach into the stream or a pond.
- DD. Ralph Michael said that ANR rules are very conservative. This design complies in every way with the standards. Additionally, he has included a filtrate system for the septic effluent and BOD.
- EE. Phil Carter asked what BOD is.
- FF. Ralph Michael advised Biological Oxygen Demand. He said that is removed by the pretreatment system. He said that the property owners must sign a 7-year contract once the

- system is installed. The system must be inspected once a year and a report will be filed with the ANR and also the town land records. At the end of each 7 year period, a new contract must be signed.
- GG. Richard Harrison said that he did not like the location and would not want his land affected. The Liebermans should consider putting it on their own property.
- HH. John McMullen said that he objects to the infringement on Beth Merrill's property.
- II. Phil Carter asked Ralph Michael to talk to the Liebermans.
- JJ. Ralph Michael said the permit would have to be amended and the soil on the other lot may not be good.
- KK. Richard Harrison said the Liebermans should keep it on their own property.
- LL. Phil Carter said that if the Liebermans are not willing to entertain and easement on their property, this board would have to ascertain whether there are wetlands there. This would include another site visit and getting an expert up there.
- MM. Beth Merrill said if they move the house site south, there is another area there that is wet. She added that one question on the application was whether this land previously had an Act 250 permit. The application said no, but there was one.
- NN. Ralph Michael said it was not in the state records.
- OO. Phil Carter said this board would need clarification about that.
- PP. John McMullen said that no one believes that anyone should be able to put restrictions on someone else's land.
- QQ. Phil Carter said that as a board, we have found it could be very detrimental to people to have restrictions on their property and we now look at each situation very carefully,
- RR. Ralph Michael said that the only restriction on the Merrill land would be drilling potable water well. Act 145 says that we have to notify other property owners about restrictions and eventually the time may come when any new project will impact someone else's property. It needs to be understood that the state may change isolation distances. If you go across the brook, the area probably does not have to be in the isolation zone, but because of Act 145, I had to show it that way.
- SS. Phil Carter asked if it was the only place the system could be located.
- TT. Ralph Michael said yes.
- UU. **MOTION by Richard Harrison and seconded by Julie Nicoll to recess this hearing until the June 11, 2011 meeting. Motion passed unanimously.**
- VV. Phil Carter advised Ralph Michael that if he is not ready, to call Rose Goings and advise her.

5. **OPEN THE PUBLIC HEARING FOR VANESSA JOHNSON AND NICOLE DITZ**

- A. Phil Carter advised that this is an application for Local Flood Hazard Review and to consider a variance to repair and raise the entire structure located at 47 Red Bridge Road in the Special Flood Hazard area of the Lakes District.
- B. Rose Goings advised that this is application 340-11-VA and 337-11-FH. Posted in the Town Hall bulletin boards April 15, 2011, advertised THE VERMONT JOURNAL on April 20, 2011, and the abutting property owners were notified on April 19, 2011. She advised that there are letters from Peter Andrews and Harry and Charlotte Butts.
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. Todd Hindinger that the applicants wish to protect the existing building from flood hazards and to repair the building. He said it is a wood on stone cottage. On the sides there is dirt against the house. Underneath, the major structure is in contact with the dirt, is rotting and parts are gone. There are some temporary props to keep the building up. They propose to put

a foundation under the building, keeping the exterior walls the same. They want to pick up the entire building to protect it from floods. When the lake rises, it is 7' higher than the existing shore line and water goes into the building and inundates the utilities. If they raise the building, they will raise the utilities up 3 feet and install flood vents. They need a variance because the lot is small and does not meet any setback requirements. They are not going to make the building any bigger, just pick it up. Then they raise the building, they will need to put in new steps outside, but it will actually make the collective footprint smaller. They will use code compliant steps. There will be no changes to the exterior walls or enclosed area below. On the outside, the columns are not connected to anything and are just sitting on cinder blocks or concrete. They want to put in lateral supports on the columns. They want to insulate the pump chamber tanks also. They want to raise the building 3 feet, but now it is buried 1 ½ feet, so the actual height difference will be only 1 ½ feet. There will be some light grading of the land. He referred to detail drawings showing the footings and foundation, elevations and building. He said that the utilities will be safer and there will be gusset plates on top of the columns and flood vents.

- E. Phil Carter said the crux of the project is the impact on the flood situation. If there were no vents, can you say where the water would go?
- F. Todd Hindinger said the water in the flood hazard has no velocity. The utilities have to be protected and they need to keep the building from flooding. They will use all flood resistant materials. As proposed, the building will be reasonably safe from flooding. As the building is now, the water will continue to go under the walls. When the waters come, things from the building may flow with it. This is required as part of the Flood Hazard Ordinance. A propane tank could float away. Rebecca Pfeiffer from the Water Quality Division of the State has reviewed and supports the plans.
- G. Phil Carter noted that there is a letter from Rebecca Pfeiffer that encourages the town to support this request.
- H. Todd Hindinger said if this is not repaired; it may not only cause further damage to this house, but may also cause damage to other buildings.
- I. Richard Harrison said that there will probably be another flood like the 1927 flood again. There is a lot of rot in the building and most people would not do these repairs.
- J. Todd Hindinger said there is also a question of safety to the people. If every building were made safe, there would be less overall damage and less pieces floating down the river. Communities should encourage people to make repairs like this. This is about minimization of loss.
- K. Linda Petty asked about the visual impact of the road side height of this.
- L. Todd Hindinger said the whole building will go up 3 feet, but you will only see 1 ½ feet difference because part of it is buried under dirt.
- M. Rose Goings said the town of Ludlow and Division of Water Quality worked very hard on these Flood Hazard Regulations and they were approved by FEMA. We must follow their guidelines. Rebecca Pfeiffer was in favor of raising the equipment above the base flood elevation. You are in the floodway and water rushed through. Rebecca Pfeiffer made some good points on the application. It is a lot of major work and the goal is to get the property out of the water.
- N. **MOTION by Julie Nicoll and seconded by John Boehrer to close this hearing. Motion passed unanimously.**

6. **OPEN THE PUBLIC HEARING FOR PAUL AND LINDA HAYNES**

-
- A. Phil Carter advised that this is an application for a variance for the side line setback for a garage that was built without a zoning permit. The property was recently surveyed which determined the side line of the property. The property is located at 957 Chapman Road in the Town Residential District.
 - B. Rose Goings advised that this is application 339-11-VA. Posted in the Town Hall bulletin boards April 15, 2011, advertised THE VERMONT JOURNAL on April 20, 2011, and the abutting property owners were notified on April 19, 2011.
 - C. Phil Carter administered the oath to all wishing to speak at this hearing.
 - D. Paul Haynes asked for additional time to talk to his neighbor and try to do a land swap to avoid the need for a variance.
 - E. **MOTION by Julie Nicoll and seconded by Linda Petty to recess this hearing until June 11, 2011. Motion passed unanimously.**
 - F. Paul Haynes said that if he needs additional time, he will call Rose Goings.

NOTE: LINDA PETTY EXCUSED HERSELF FROM THE MEETING AT 7:30 P.M.

7. **OPEN THE PUBLIC HEARING FOR TIMBER CREEK AT OKEMO II, LLC**

- A. Phil Carter advised that this is an application for Local Act 250 Permit for a 208 unit Recreational Residential Planned Unit Development located off Trailside Road in the Mountain Recreation and Town Residential Districts. He added that the applicants have received a permit from the town for this project.
- B. Rose Goings advised that this is application 338-11-ACT 250. Posted in the Town Hall bulletin boards April 15, 2011, advertised THE VERMONT JOURNAL on April 20, 2011, and the abutting property owners were notified on April 19, 2011.
- C. Phil Carter administered the oath to all wishing to speak at this hearing. He advised that this hearing is to discuss the 3 criteria for Local Act 250 review and he is not reopening the permit hearing.
- D. Larry Slason advised at this hearing, they will respond to Criterion 6 – Educational Impact, Criterion 7 – Burden on Municipal Services and Criterion 10 – Conformance to Town Plan of the state ACT 250 review process. He asked the DRB to consider the same 50+ exhibits that were presented with the original PUD, CUP and site plan for the permit hearings. He asked the DRB to take administrative notice of the permit dated April 26, 2011. He added that the DRB has already made their decisions and findings.
 - i. Criterion 6 Educational Impact – Larry Slason advised that both LES and Black River High School have the ability to serve any additional students that may enroll. He said that since these will primarily be vacation/recreation homes, it is unlikely that many will be primary residences.
 - ii. Criterion 7 Impact on Municipal Services – Larry Slason advised that letters from the various town and village department heads were submitted under the Conditional Use Permit portion of the hearings. Letters indicated that the town has the ability to serve. This project will increase revenues by way of application fees, property taxes and educational taxes. The project will have a positive net fiscal impact on the town. In addition, the Timber Creek developers will be responsible for construction of the infrastructure and the Home Owners’ Association will be responsible for maintenance and repairs.

- iii. Criterion 10 – Conformance to Town Plan – Larry Slason cited page 9.4 of the town plan and this project is consistent with the future land use in the Mountain Recreation District. It will be a large scale outdoor recreational area, not limited to skiing. It will have tourism related housing. This DRB, in its permit decision, found this project to be in conformance with the town plan. Additionally, it will provide construction for the next decade and people may vacation here other than during ski season.
- iv. Transportation – Larry Slason advised that the project will continue to implement and provide peak season traffic control mitigation.
Larry Slason asked the board to take administrative notice of the permit and previous exhibits.
- E. Mary Jane O’Hara asked what Larry Slason meant by infrastructure.
- F. Larry Slason said internal roads, water and wastewater systems, and erosion control procedures. He added that the Home Owners’ Association will be responsible for these.
- G. Mary Jane O’Hara asked where the project responsibility for the sewer lines will begin.
- H. Larry Slason said to the boundary and manhole where the connections are made.
- I. Phil Carter said that we are past this discussion and the town has signed off on it. The town has said that this project will not impose additional burden on the municipality.
- J. Mary Jane O’Hara voiced her concern about the trustees saying that the town has the capacity for this project in the wastewater/water facility. She is concerned about the future.
- K. Phil Carter said this has all been previously covered and is in the record.
- L. Larry Slason said that Exhibit 13 in the original permit submittal shows the waste water lines and reports on capacity. He pointed out the manhole that he had previously mentioned.
- M. **MOTION by John Boehrer and seconded by Richard Harrison to close this hearing. Motion passed unanimously.**

8. **OTHER BUSINESS**

- A. Rowen Extension
 - i. Phil Carter advised that a letter was received dated 4/8/11 requesting a 2-year extension. He asked if there would be any changes to the permit.
 - ii. Chris Rowen said there would not be any changes and the reason for the request is the economy.
 - iii. **MOTION by Julie Nicoll and seconded by Richard Harrison to extend the permit until May, 2013. Motion passed unanimously.**
- B. Winterplace Extension
 - i. Phil Carter advised that Winterplace has requested a one year extension on the permit and there would be no changes to the permit.
 - ii. Rose Goings advised that John Watanabe is unable to attend this meeting, but has indicated the reason to be economic decline.
 - iii. **MOTION by Richard Harrison and seconded by John Boehrer to extend the permit until May 2012. Motion passed unanimously.**
- C. Approve Minutes
 - i. Phil Carter advised that the minutes to be approved are from January 10, 2011, February 16, 2011, March 14, 2011 and April 11, 2011. He said that he saw no changes to be made. He asked board members for comments.
 - ii. **MOTION by John Boehrer and seconded by Julie Nicoll to approve the minutes from January 10th, February 16th, March 14th and April 11th as written. Motion passed unanimously.**

D. The next meeting will be held on June 11, 2011.

9. **ADJOURN**

- A. **MOTION by John Boehrer and seconded by Phil Carter to adjourn this meeting.**
Motion passed unanimously.
- B. Meeting adjourned at 7:55 p.m.

Respectfully submitted,
Lisha Klaiber

Phil Carter, Chairman

Julie Nicoll

John Boehrer

Linda Petty

Richard Harrison