

**DEVELOPMENTAL REVIEW BOARD
MINUTES**

August 12, 2019

MEMBERS PRESENT:

Phil Carter, Chairman	Julie Nicoll	George Tucker, Jr.
John Boehrer (phone)	Doug Sheehan	Dana Wilson – Alt.

STAFF PRESENT:

Rose Goings

OTHERS PRESENT:

Robin Anderson	Catherine Cocco	Mike Skuro
Shannon Bertrand	Steve Mongeon	Peter Vollers
Betty Briggs	Nick Patel	Lisha Klaiber, Recorder
Ron Briggs	Jane Rebhan	Eric Chattergee – OV-TV
Tesha Buss	Marissa Selleck	

SPECIAL MEETING – REORGANIZATION

1. **CALL TO ORDER**

- A. Meeting opened at 6:03 p.m. by Rose Goings, Board Clerk. All board members present, John Boehrer by telephone.

2. **ELECTION OF CHAIRPERSON**

- A. **MOTION by John Boehrer and seconded by Doug Sheehan to elect Phil Carter as chairman. Motion passed unanimously.**

3. **ELECTION OF VICE-CHAIRPERSON**

- A. **MOTION by Phil Carter and seconded by Julie Nicoll to elect John Boehrer as vice-chairperson. Motion passed unanimously.**

4. **ELECTION OF CLERK**

- A. **MOTION by Phil Carter and seconded by Doug Sheehan to elect Rose Goings as clerk. Motion passed unanimously.**

5. **APPOINTMENT OF RECORDING SECRETARY**

- A. **MOTION by Phil Carter and seconded by Dana Wilson to appoint Lisha Klaiber as recording secretary. Motion passed unanimously.**

6. **DESIGNATION OF NEWSPAPER OF RECORD**

- A. Phil Carter advised that the previous newspapers of record were THE VERMONT JOURNAL and THE RUTLAND HERALD (as back-up).
B. Rose Goings asked if the Select Board has continued with the same newspapers.
C. Lisha Klaiber said they had.
D. **Phil Carter surveyed the board and all were in agreement to keep THE VERMONT JOURNAL as paper of record with THE RUTLAND HERALD as back-up.**

7. **ESTABLISH MEETING DATES AND TIMES**

- A. Previous DRB meeting schedule was to hold regular meetings at 6:00 p.m. on the second Monday of each month and alternate dates on the 4th Monday of the month.
B. **Phil Carter surveyed the board and all were in agreement to keep the schedule of meetings as the second Monday of each month with alternate dates on the 4th Monday of the month.**

8. **ADOPT RULES OF PROCEDURE**

- A. Phil Carter advised that the DRB has, in the past, adopted a set of Rules of Procedure.
B. **Phil Carter surveyed the board and all were in agreement to continue with the existing Rules of Procedure.**

9. **ADJOURN**

- A. **MOTION by Phil Carter and seconded by Julie Nicoll to adjourn the special meeting. Motion passed unanimously.**
B. **Phil Carter adjourned this special meeting at 6:06 p.m.**

REGULAR MEETING OF THE DEVELOPMENT REVIEW BOARD

I. **CALL TO ORDER**

1. Meeting opened at 6:06 p.m. by Chairman, Phil Carter. All members present, John Boehrer by phone.

II. **OPEN THE RECESSED PUBLIC HEARING FOR JOHN AND KATE COCCO**

2. Phil Carter advised that this is an application to consider a Conditional Use Permit to turn an existing guest house into a 5-bedroom Inn. The project is located at 1090 Town Farm Road in the

- Town Residential District. It was recessed from the March 11, 2019, April 9, 2019 and May 13, 2019 meetings. He noted that Dana Wilson will be sitting in on this hearing as he had participated in the previous hearing for this applicant. He advised all persons who has testified at the previous hearings that they are still under oath. He administered the oath to Steve Mongeon.
3. Rose Goings advised that the applicants have received the new Vermont State Septic Permit. She said that the previous one had it listed as 10-person and the Fire Marshal has listed it as 5 bedrooms, 16 person. The septic permit for the dwelling is now 5 bedroom, 16 persons.
 4. Steve Mongeon said that the septic permit has been updated to match the fire marshal's permit – 5 bedroom with 16 person occupancy. He has a valid copy of the permit and will file it with the town clerk. He said it was approved by the state on July 16, 2019. He said that the plans for the septic system will be updated to conform to the new permit.
 5. Phil Carter advised that all other evidence is in place. He asked Rose Goings if she had any comments.
 6. Rose Goings said that they are good to go. She said that the fire marshal did not have the correct numbers on the CO, but sent in a letter to correct it.
 7. **MOTION by George Tucker and seconded by John Boehrer to close this. Motion passed unanimously.**

III. REOPEN THE RECESSED PUBLIC HEARING FOR TESHA BUSS

1. Phil Carter advised that this is an application to subdivide a lot into five separate lots. Property is located at 492 Rod & Gun Club Road in the Town Residential District. It was recessed from the meeting of May 13, 2019
2. Rose Goings advised that this is application SUB19-006. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and on the website April 17, 2018, advertised in THE VERMONT JOURNAL on April 24, 2018 and abutting property owners were notified on April 17, 2018. She advised that all persons previously notified of this hearing had been re-notified.
3. Phil Carter advised all those who had spoken at the previously hearings that they are still under oath. He administered the oath to Marissa Selleck, Peter Vollers, Shannon Bertrand, Jane Rebhan, Betty Briggs and Ron Briggs. He advised those who will speak that this hearing is quasi-judicial and the testimonies given are on the record, tape, minutes and TV. He said that should the DRB decision be appealed to the Environmental Court, the testimony given at these hearings would not be re-heard by the Court. The Court will weigh the DRB findings for their evidence.
4. Tesha Buss advised that this will be a 5-lot subdivision access off Rod and Gun Club Road by a private 50' ROW. The lots will be in the woods and not visible by neighbors.
5. Phil Carter read from the map the following lot sizes:
 - a. Lot #4 – 3.16 acres containing the solar field
 - b. Lot #5 – 2.76 acres
 - c. Lot #6 – 3.02 acres
 - d. Lot #7 – 3.06 acres
 - e. Remaining 89 acres
6. Tesha Buss said that Lot #5 will own the proposed new 50' ROW.
7. Phil Carter referred to the drawing and said there is an existing 50' ROW off of Rod & Gun Club Road that leads to the state lands. He said that the drawing shows that the property line between the Robinson and Buss lands runs down the middle of the ROW. The proposed new 50' ROW runs along lots 4 and % and bears right to serve lots 4, 5, 6 and 7. He asked Tesha Buss if there are any unique features to the land, such as historical sites or wetlands.

8. Tesha Buss said that there are historical sites, but there is a section of lots 6 and 7 that is wetlands. She said that she spoke to Wetlands Personnel (Rebecca Chambers) about it. Tesha Buss said she was told that it was too early for a site visit. An engineer would have to see it.
9. Phil Carter asked what lots it affects.
10. Tesha Buss said lots 6 and 7.
11. Phil Carter asked if the wetlands were located to the northeast.
12. Tesha Buss said yes.
13. Phil Carter said the drawing does not show the lots being developed and discussion of septic systems is premature at this time. He advised that Ms. Buss is doing this subdivision at her own risk as the lots may not be buildable.
14. Tesha Buss said she understands.
15. Phil Carter asked what would happen to the solar fields on lot #4 if she sold the property.
16. Tesha Buss said if the lot were sold, the new owners would inherit the lease of the solar field.
17. Shannon Bertrand asked if Ms. Buss has considered improvements to the shared ROW and has she discussed it with Ms. Robinson.
18. Tesha Buss said not yet. She said that she would be responsible to upgrade and maintain the road to Ludlow and State requirements.
19. Shannon Bertrand said there is an easement to the state for bear crossing and asked Ms. Buss if she has talked to the state about this.
20. Tesha Buss said the state has been notified.
21. Phil Carter asked when the existing 50' ROW was built.
22. Robin Anderson said in 2009, it was built by the state.
23. Phil Carter noted a turn-around on Lot 5 and asked if Chief Kolenda had required this.
24. Tesha Buss said yes. He visited the land and put in stakes.
25. Ron Briggs said the state put the road in to access the logging locations.
26. Peter Vollers said in the deed for the ROW, the state is limited to logging access and bear habitats. The state may not use it for recreation. Ms. Buss and Ms. Robinson may use the ROW for ingress and egress. The state may keep a gate at the town road, but subject to the owner's approvals. It is meant to be limited access for the state.
27. Robin Anderson said that was her deal. She didn't want people using the road.
28. Peter Vollers said that only the state may put in a gate, not one owner.
29. Phil Carter asked if the state does logging.
30. Ron Briggs said yes. The state also keeps the road open for access to forest fires.
31. Phil Carter asked if this was the original mountain road.
32. Robin Anderson said no, the state bought the new ROW from me. She said her mother had purchased the land in 1970. She said that she sold the land to Tesha Buss in 2010 and retained a life estate. She said that Tesha Buss took her to court to have it ended, and was denied by the court. Tesha Buss then have her the house. The road was built in 2009 and on 8/1/2011; she gave it to Tesha Buss.
33. Phil Carter asked why the property line runs down the middle of the road.
34. Tesha Buss said that the surveyor said it was a courtesy to both parties.
35. Phil Carter asked Robin Anderson if she uses the road.
36. Robin Anderson said no.
37. Phil Carter asked Tesha Buss if the first time she used the road was to build the solar fields.
38. Tesha Buss said yes.
39. Phil Carter asked if the state uses it for any recreation.
40. Ron Briggs said there is a cross country trail up at the top.
41. Phil Carter asked if it is accessed by the ROW.
42. Ron Briggs said no.

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43. Jane Rebhan said there are wetlands up there and if the land is subdivided, they state must have the facts for septic systems and wells.
 44. Phil Carter said there is no development proposed at this time. This is a subdivision with no development. If later on, she wants to develop those lots, she will have to meet all of the state and local requirements. If she wants to build a house, the DRB will have to see all of the needed evidence before we would issue a permit.
 45. Ron Briggs said that at the bottom part, there is a flat area. When the logs come down the road, they are put on that flat spot. Will the state be notified of what is going on if the road is developed?
 46. Rose Goings advised that the state is an abutter and as such was notified. Whoever, at the state, is in charge of that property should have been notified by the state.
 47. Phil Carter said the road looks like it was well built. It is a true 50 foot ROW and built with good materials and ditches.
 48. Peter Vollers said the easement does have contingencies for damage to the road. Whoever is the party responsible for the damage is responsible for the repairs.
 49. Phil Carter asked if that means if the damaged is caused by Ms. Buss, then she is responsible for the repairs; if the damage is caused by Ms. Robinson, she is responsible for the repairs and if the state is responsible for the damage, the state is responsible for the repairs.
 50. Peter Vollers said that is correct.
 51. Phil Carter said that the board did make a site visit.
 52. Shannon Bertrand said that the culvert is not part of the subdivided land. The town should take care of this situation. The culvert caused the flood and damages to Ms. Robinson's property. The culvert backed up. He does not think the DRB should issue the permit. He noted that Tesha Buss applied to the state for a stream alteration permit. He does not think this is allowed under the zoning regulations.
 53. Phil Carter asked when the culvert was put in.
 54. Tesha Buss said 2011.
 55. Robin Anderson said 2012, in the spring.
 56. Phil Carter asked if it was after Irene.
 57. Robin Anderson said yes. She said that there was water in her backyard from Irene, but not in her house. She said that in October, 2013, water flooded over the road. She said in the past 18 months, she has had water in her basement two times. She said that the culvert acts as a dam and sends the water into her house. She submitted pictures of the flooding on the Monday before Easter.
 58. George Tucker said we need to make sure of the details. The culvert was crushed and undersized when it was put in..
 59. Doug Sheehan asked her if she had flooding before the culvert was put in.
 60. Robin Anderson said no.
 61. Peter Vollers said the culvert is not part of this subdivision. He said that the ROW stayed passable and the project may improve the situation. He added that this year, the rain was unprecedented.
 62. Phil Carter said that we have to consider storm water mitigation plans. He said that erosion is visible. He asked what can be done to mitigate the situation.
 63. Tesha Buss said that she has met with the people from Vermont Rivers and Streams. He thought we had made changes to the stream. We walked the stream to the subdivision and there was not alteration to the stream. There is logging above us. We'll propose a 9' culvert with 12 foot span bridge. She said that is what her engineer is designing.
 64. Phil Carter said that Scott Jensen is an engineer with the state.

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65. Peter Vollers said that there is a River Corridor Overlay to the area of the map where the land is located. He advised that ½ of the Anderson property is located in the River Corridor. He did not think that one seasonal brook would cause that much flooding.
66. Rose Goings said that the stream is a perennial stream and if flooded, could have gone onto Ms. Robinson's land. She read from an email, dated August 12, 2019, from Scott Jensen of the Vermont Department of Conservation, River Program:
“ A Stream Alternation Permit application was submitted on June 14th for a 6'4" wide Stormtech arch culvert installed without footings. I had some comments for the engineer including wanting a wider span (8' minimum) and more substantial footings (concrete footings). He said he would discuss it with the landowner and get back to me. That is where things stand at this point.”
67. Tesha Buss said that the engineer that she has hired designs big bridges.
68. Marissa Selleck said the stream is above her property and Irene did not flood our area.
69. Phil Carter said there has been flooding and the stream is affected. The state says that the culvert is inadequate. It must be brought up to meet state specifications.
70. Jane Rebhan asked what the time frame is.
71. Rose Goings said we should hear within the next couple of months, depending on when Ms. Buss' engineers submit the design to the state.
72. Ron Briggs said that the Branch Brook never used to come over the banks.
73. Phil Carter said that the stream is partly responsible for some of the water. There will need to be a mitigation plan in place. The state will oversee the plan.
74. George Tucker asked if the bridge would be in the same place as the culvert.
75. Tesha Buss said more or less.
76. Shannon Bertrand said the ROW accesses a bear corridor and wildlife area. The character of the area should be considered. There is pristine open land up there. Ms. Robinson thinks that the character of the area should be considered. There is a 20-acre buffer zone that was sold to the state with the ROW easement.
77. Phil Carter said that the state land borders on the Robinson and Buss lands, above lots 5 and 7. He asked how far it is from the state property to the other Buss land.
78. Peter Vollers said 500 acres.
79. George Tucker asked what was meant by 20 acre buffer.
80. Robin Anderson said it was a 20' wide ROW that was sold to the state – it was the old ROW by the Branch Brook.
81. George Tucker asked if it was along these parcels.
82. Shannon Bertrand said it was sold to the state as part of the bear corridor.
83. Phil Carter asked if it was a parcel sold to the state and added to the bear corridor.
84. Robin Anderson said yes.
85. Phil Carter asked Robin Anderson if the state approached her.
86. Robin Anderson said yes, the old road was inadequate.
87. Phil Carter asked if the state built the road.
88. Robin Anderson said yes.
89. George Tucker asked if there are plans for storm water runoff for the road.
90. Tesha Buss said that all of the plans for this will go through the state.
91. Phil Carter said that the permit plans must be approved by the state and the state will monitor the project.
92. Rose Goings said yes, if over one acre is disturbed.
93. Phil Carter said that since Irene, FEMA is watching all developments.
94. **MOTION by Julie Nicoll and seconded by John Boehrer to close this hearing. Motion passed unanimously.**

IV. OPEN THE PUBLIC HEARING FOR TONY CARUSO

1. Phil Carter opened the hearing for Tony Caruso and advised that this is an application has been withdrawn.

V. APPROVE MINUTES

1. Phil Carter advised that the minutes to be reviewed are from May 13, 2019 and June 10, 2019.
2. May 13, 2019
 - a. Julie Nicoll noted that on page 1, item II, #2, should read “July, 2019.”
 - b. Phil Carter said on page 2, item III, #4, should read, “... the two units have undeveloped, attic...”
 - c. Julie Nicoll said that on page 2, item III, #11, should read, “Julie Nicoll asked if the spiral...”
 - d. Julie Nicoll said that on page 2, item IV, #4, should read, “...where the ROW is, they would like to add a garage door...”
 - e. Phil Carter said that on page 2, item IV, #5, should read, “...packaging and store room there.”
 - f. Julie Nicoll said that on page 2, item IV, #8, should read, “...the wall because it gives better...”
 - g. Julie Nicoll said that on page 2, item IV, #10, “He said” at the end should be deleted.
 - h. Julie Nicoll said that on page 3, item IV, #25, should read, “Craig Goodman said in the back.”
 - i. Julie Nicoll said that on page 3, item IV, #31, should read, “deliveries will be a fast drop...”
 - j. Julie Nicoll said that on page 3, item IV, #37, should read, “They have written a letter about this.”
 - k. Julie Nicoll said that on page 6, item IX, #4, should read, “They wish to change that to 3 duplex residences.”
 - l. **MOTION by Phil Carter and seconded by Doug Sheehan to approve the minutes from May 13, 2019 as corrected. Motion passed unanimously.**
3. June 10, 2019
 - a. Julie Nicoll noted that on page 2, item II, #14, should read, “John Boehrer said that he feels...”
 - b. Julie Nicoll noted that on page 3, item III, #29, should read, “...building height was still no more than 35 feet tall.”
 - c. Julie Nicoll noted that on page 4, item III, #48, should read, “She is concerned that this will be added...”
 - d. Julie Nicoll noted that on page 5, item IV, #6a, should read, “...original plans had no impact...”
 - e. **MOTION by Phil Carter and seconded by George Tucker to approve the minutes from June 10, 2019 as corrected. Motion passed unanimously.**

VI. ADJOURN

1. Phil Carter asked the board if they would like to go into Deliberative Session.
2. Board members agreed.
3. **MOTION by Julie Nicoll and seconded by John Boehrer to adjourn to Deliberative Session. Motion passed unanimously.**
4. Meeting adjourned at 7:08 p.m.

Respectfully submitted,
Lisha Klaiber

Phil Carter, Chairman

Doug Sheehan

John Boehrer

George Tucker, Jr.

Julie Nicoll

Dana Wilson, Alternate