

DEVELOPMENT REVIEW BOARD

PRELIMINARY MINUTES

Monday – February 13, 2023
6:00 P.M. – Hybrid (Physical & Remote) Meeting
Town Hall Conference Room – 37 Depot Street Ludlow, VT 05149

Information on how to access the meeting remotely:

Zoom - <https://us02web.zoom.us/j/2681100320?pwd=YnRTWjBzUnBJanc2aVBkbGQzTGIVUT09>

Meeting ID: 268 110 0320

Passcode: 646559

MEMBERS PRESENT:

Phil Carter, Chairman	Julie Nicoll	Doug Sheehan
John Boehrer	George Tucker	

MEMBERS ABSENT:

STAFF PRESENT:

Cherry Nicoll	Lisha Klaiber, Recorder	Okemo Valley TV
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OTHERS PRESENT:

Paul Alcorn	Todd Hindinger	Josh Sapp
Shodie Alcorn	James Levy	Patrick Smart
Eric Alden	Carl Lisman	Jean Strong
Ian Bard	John Neal	Kevin Theissen
Richard Dunseith	Ted Reeves	Rob Worchuck

I. CALL TO ORDER

1. Chair, Phil Carter opened the meeting at 6:36 p.m. due to technological difficulties. All members present.

II. REOPEN THE RECESSED PUBLIC HEARING FOR OKEMO TRAILSIDE COMMUNITY ASSOCIATION, INC. F.K.A. Okemo Trailside Master Association

III. REOPEN THE RECESSED PUBLIC HEARING FOR OKEMO TRAILSIDE COMMUNITY ASSOCIATION, INC. F.K.A. Okemo Trailside Condominiums

1. Phil Carter advised that these hearings are for an appeal to the Development Review Board from a Notice of Violation, dated February 22, 2022, issued by Rosemary Goings, Administrative Officer to the Okemo Trailside Master Association. And also, for an application to comply with the Ludlow Fire Department's fire protection improvements at Okemo Trailside. These hearings were recessed from the DRB meeting held on August 8, 2022. Property is located at Okemo Trailside Condominiums in the Mountain Recreation District. Phil Carter reminded all those who spoke at the last meeting that they are still under oath and swore in Patrick Smart. He said they are both here because the fire protection is not in place. He said the DRB has the Notice of Violation and is not acting on it. We are acting in good faith. He asked Patrick Smart to give a brief overview as all the details will be heard when the application comes in to the DRB.

2. Patrick Smart said that there was an issue with the State Drinking Water as there was not enough water to provide fire protection and the hydrants were only used to do flushing. They wish to pipe the existing hydrants to the fire protection pond.
3. Phil Carter asked if Okemo Trailside is buying into this.
4. Patrick Smart said yes.
5. Phil Carter asked if they had reviewed the letter from Chief Kolenda.
6. George Tucker said there was one stipulation and that was to add an additional hydrant.
7. Patrick Smart said they are 100% in agreement.
8. Phil Carter asked about a time line.
9. Patrick Smart said they hope to do design one and be able to put the RFP out for construction in 2024.
10. Phil Carter said if they move forward and the application is presented with an entire package and fees are paid, if the permit is issued the DRB will pull the Notice of Violation and the permit would be the regulating body. The DRB is willing to hold off on the Notice of Violation. Once the permit is filed, they will have one year to start construction and the project has to be completed within a 3-year period (per Chief Kolenda.) If the DRB acts and you do not like the decision, it will go to the Environmental Court. He said the DRB can recess these hearings indefinitely until the application comes in to the DRB. At that time, we will open a new hearing and reopen the Notice of Violation.
11. Patrick Smart said MSK, TPW and Okemo Trailside all want to move forward as soon as possible with the Local Permit, Act 250, Local Act 250 and wetlands. He said the permit process takes longer than expected.
12. Phil Carter said this board will not start the one-year clock until the state process is complete, including Fire Safety, Act 250 and any other regulating bodies. You can still come to us to get your permit and it will sit as is until the state processes are complete.
13. **MOTION by George Tucker and seconded by Doug Sheehan to recess these hearings – Notice of Violation and Fire Protection Improvements at Trailside indefinitely until the applicant is ready to come in with a complete application for a regular permit, pending further information. Motion passed unanimously.**

IV. RE-OPEN THE RECESSED PUBLIC HEARING FOR OKEMO HEIGHTS

1. Phil Carter advised that this is an application for an 8-lot subdivision in the Village Residential District. This hearing was recessed from the meeting on July 11, 2022; it includes subdivision, Local Act 250 and site plan approval.
2. Ted Reeves said that he is trying to gather information from Scott Murphy, Ron Tarbell and Peter Kolenda requesting specific direction from zoning to complete the traffic study. He has not received any information back from them. He is asked the board to issue a decision and if it is no, to describe why and if yes, what conditions will be imposed.
3. Phil Carter asked if Ted Reeves would agree to a one-month recess. He said that he wants more clarification from Highway and Fire. This board cannot make a decision without that information.
4. Ted Reeves said that at one-point, Chief Kolenda did issue a letter of ability to serve, but now needs information.
5. Phil Carter said that he will get the information. He asked about the 50-foot ROW that was in question.
6. Ted Reeves said after researching the records, it is resolved. Okemo Heights owns the ROW. It is in the town records and they have the legal rights to use it.
7. Phil Carter asked Ted Reeves to put that evidence together and submit it.

8. Ted Reeves said he will get the information from the attorney.
9. Phil Carter said we (the DRB) will track down the Fire and Highway departments and Ted Reeves will get the ROW evidence and submit it.
10. **MOTION by Julie Nicoll and seconded by George Tucker to recess this hearing for one month. Motion passed unanimously.**

V. **OPEN THE PUBIC HEARING FOR KEVIN THEISSEN, AV INNOVATION**

1. Phil Carter advised that this is an application to amend a Conditional Use Permit to add an office space for a new business. The project is located in the Village Residential Commercial District.
2. Julie Nicoll advised that this is application 185-01-CU, Amendment #4. Posted in the Town Hall bulletin boards and the Post Office Bulletin Board and on the website December 29, 2022, advertised in THE VERMONT JOURNAL on January 4, 2023 and abutting property owners were notified on December 29, 2022. She said we received letters from Police, Ambulance and the Fire Marshal's permit.
3. Phil Carter administered the oath to Kevin Theissen, Luke and Reilly.
4. Kevin Theissen said that when the state was doing the bridge work, they used the front part of the building.
5. Phil Carter asked if there would be any changes to the footprint of the building.
6. Kevin Theissen said it would stay the same.
7. Phil Carter noted that the letters from town departments are in.
8. John Boehrer asked about an alarm system.
9. Kevin Theissen said there is one.
10. Julie Nicoll asked if there would be a separate entrance.
11. Kevin Theissen said yes.
12. John Boehrer asked if it would be one of the existing doors.
13. Kevin Theissen said yes.
14. George Tucker asked about changes to exterior lighting.
15. Kevin Theissen said there would not be any changes.
16. Julie Nicoll asked about parking
17. Kevin Theissen said in the back of the property.
18. John Boehrer said there is a letter from Fire Safety granting occupancy and noting no violations.
19. Phil Carter asked hours of operation.
20. Kevin Theissen said 6:00 a.m. to 10:00 p.m.
21. **MOTION by George Tucker and seconded by John Boehrer to close this hearing. Motion passed unanimously**

VI. **OPEN THE PUBLIC HEARING FOR LAMERE SQUARE, LLC**

1. Phil Carter advised that they received a letter from Betsy Mitchell dated January 23, 2023 and this application has been withdrawn.

VII. **OPEN THE PUBLIC HEARING FOR GUIDO AND ELIZABETH BUCHBINDER**

1. Phil Carter advised that this is an application for Flood Hazard Review to replace an existing deck and stairs. The property is located in the Special Flood Hazard Area of the Lakes District.

2. Julie Nicoll advised that this is application 493-23-FHR. Posted in the Town Hall bulletin boards and the Post Office Bulletin Board and on the website January 4, 2023, advertised in THE RUTLAND HERALD on January 6, 2023 and abutting property owners were notified on January 5, 2023. She said we received letters from Police, Ambulance and the Fire Marshal's permit.
3. Phil Carter administered the oath to Todd Hindinger.
4. Todd Hindinger said they wish to replace a deck by the lake and the retaining wall is tilted into the lake. The existing deck is cantilevered and cross sections are tilting. They need stabilization. They will replace the deck with one of similar size that won't be any further out into the lake and will put in a new retaining wall. The shoreline is outside of the walls and the wood is rotting. They will shore up the walls with stones and boulders. There will be no excavating below the water line and will put stones along the water line.
5. Phil Carter asked if the deck will be the same size.
6. Todd Hindinger said there will be a small change in the square footage.
7. Phil Carter asked if they had contacted the regional flood plane manager. He represents FEMA. He said the letter from John Broker Campbell had standard conditions.
8. Todd Hindinger said that all of those conditions are listed on his plans. He did the structural component and Tim Calabrese did the site plans. He said that his plans have all of the conditions built in. He said the drawings comply with all Ludlow Flood Hazard regulations and FEMA regulations.
9. Julie Nicoll asked about the porch in the front.
10. George Tucker said that the map proposed deck expansion as well.
11. Todd Hindinger said he represented the Flood Hazard hearing. You have the application for the work attached to the house and it was not related to this project.
12. Cherry Nicoll said that had administrative approval.
13. George Tucker asked about the one year to have the town post the construction.
14. Todd Hindinger said yes.
15. Doug Sheehan asked about the shed.
16. Todd Hindinger said it will be relocated.
17. **MOTION by John Bohrer and seconded by Julie Nicoll to close this hearing. Motion passed unanimously.**

VIII. **OPEN THE PUBLIC HEARINGS FOR TROY CARUSO**

1. Phil Carter advised that they received a letter today and said they are switching architects and request a one-month recess.
2. **MOTION by Julie Nicoll and seconded by George Tucker to recess this hearing until the March meeting. Motion passed unanimously.**

IX. **OPEN THE PUBLIC HEARING FOR OKEMO LIMITED LIABILITY COMPANY**

1. Phil Carter advised that this is an application for a Conditional Use Permit to convert an existing Multi-unit Family Residential Home into a Rooming House. The project is located in the Village Residential District.

2. Julie Nicoll advised that this is application 494-23-CU. Posted in the Town Hall bulletin boards and the Post Office Bulletin Board and on the website December 29, 2022, advertised in THE VERMONT JOURNAL on January 4, 2023 and abutting property owners were notified on December 29, 2022. She said we received letters from Police, Ambulance and the Fire Marshal's permit.
3. Phil Carter administered the oath to John Neal, Jean Strong, Richard Dunseith and Paul Alcorn.
4. John Neal said that they filed the application and there are no changes to the building. It was a 3-unit home. We went through and made it safe and the fire suppression is up to code. The previous owner hadn't tried up the sewer allocation. He said that he spoke to Scott Murphy to help get this corrected and put in as a conditional use. He said he didn't know that it would go from a 3-family home to a commercial use. There is no change of use – it is still a multi-family dwelling. The occupants are employees of the mountain and we shuttle them to and from the mountain.
5. Julie Nicoll said that they do have cars.
6. Phil Carter said it the use and permits run with the land. If building were sold again, it would still be a rooming house. The use has changed – it was a multi-family and the occupants don't live there. They are transient.
7. Phil Carter said it is 14 bedrooms
8. John Neal said the house is currently listed as 7 bedrooms and was previously permitted for 7.
9. Phil Carter asked if they have brought the sewer allocation up to 14.
10. John Neal said yes.
11. Phil Carter said the definitions for lodging home, rooming house and boarding house don't fit this use.
12. Julie Nicoll said they are all for no more than 8 sleeping rooms.
13. Cherry Nicoll said that tourist home is not seasonal.
14. Phil Carter said he discussed this with Scott Murphy and they are overnight guests.
15. John Boehrer said that 2 Pleasant Street is similar.
16. Phil Carter said it doesn't make it as a boarding or rooming house – they would be limited to 8 bedrooms. Also, they would be required to have one parking space per bedroom. You will need a parking plan. How will they access Prospect Street. If you sell this property, the permit will run with the property. We need to establish new parameters now.
17. George Tucker asked if they added new bathrooms.
18. John Neal said no.
19. Phil Carter said we need to look at the definitions and get a site plan for parking, driveway entrances and exits. He said these states the occupancy as 26.
20. George Tucker said unit 21 has 26, unit 21A has 8 and 21B has 8 – 42 people.
21. Phil Carter said we need a drawing of the footprint and where the sleeping areas are.
22. Julie Nicoll asked the schedule for the shuttle buses. She said that in his letter, Chief Billings said this project would not cause additional traffic, but it does.
23. Phil Carter said if permitted, we may want to put conditions on traffic and what the next owner may have.
24. Doug Sheehan asked if they have room to park 14 cars.
25. John Neal said yes.
26. Julie Nicoll said she would like to know the number of shuttles.
27. George Tucker asked for a shuttle schedule. He asked how the fire department would look at the change of use.
28. John Neal said there are no interior changes.
29. Julie Nicoll questioned, if the number of bedrooms was wrong, you just need to go to the town to change it.

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30. Phil Carter said just go to the town sewer to make the change in the number, but this is not applicable for commercial use. We have to consider the use. He said that this board needs a parking plan, site plan – for entrances and exits from the property, interior house drawing, bus schedule and definition of what you are looking for.
 31. Paul Alcorn said he is concerned about the loss of affordable housing in Ludlow. There is still a demand for work force housing and how does this decision get made.
 32. Phil Carter said there are procedures for this. Start with the Planning Commission. They are working on this and it starts there. They propose new or changed regulations. They hold public hearings and then present their proposals to either the Select Board or Village Trustees. They hear the proposal and then schedule their own public hearings. Once decisions are made, the new regulations come to the DRB. We cannot go outside the law. We can't be subjective to that and must act within the law. We have no control over that.
 33. Paul Alcorn asked how this is supervised and managed. By him, there is a dumpster that is overflowing, trash is blown into his yard, and there are additional cars and this impacts the neighborhood. Do we call the police?
 34. Phil Carter said they need to look at the original permits for the Pettigrew Inn and any conditions.
 35. Paul Alcorn said it was sold as an inn.
 36. Phil Carter said it did not come before the DRB.
 37. Cherry Nicoll said our office was not aware of that. She suggested that Mr., Alcorn come into the Planning office to look at the permits.
 38. Phil Carter said there are many properties that circumvent the process all the time. If the use has changed, they may be in violation of their permits.
 39. Julie Nicoll said the Zoning for Prospect Street is residential only.
 40. Phil Carter said we need to look at the uses.
 41. Julie Nicoll said she would not be able to use her house for commercial uses, it's residential.
 42. Phil Carter said the Planning Office often finds out about changes in use from neighbors. If they find out. They will act on it. The DRB acts as the court. If the application is denied and it goes to Environmental Court, they will not hear new evidence, but instead will look at what the Finding of Fact and Rules of Law were delivered by the DRB. We look at the uses allowed in the different districts.
 43. Richard Dunseith said this is a residential district
 44. Phil Carter said we look at the uses allowed in the districts.
 45. George Tucker asked about tourist homes.
 46. Cherry Nicoll said they are allowed in the Residential District.
 47. Richard Dunseith said there are 42 people, packed in and it sounds like a dorm. In the summer, they will flow outside and there will be loud music. That doesn't fit in the neighborhood.
 48. Phil Carter said you are not familiar with this board. We discuss every detail and we are not out there, yet. We will recess this hearing for more information.
 49. Richard Dunseith how far out the abutting neighbor notifications go.
 50. Cherry said there is a 50-foot radius.
 51. John Boehrer said hearings are also warned in the town newspaper, on town bulletin boards and on the town website.
 52. Phil Carter said that at certain distances, you are no longer considered an interested party. You can give evidence, but we cannot act on it. Legally, you may not be an interested party. We try to give everyone the opportunity to speak, but we have to be careful about who is an interested party.
 53. George Tucker said that the character of the area is part of the regulations.
 54. Cherry Nicoll said that the Planning and Zoning documents are on the website, but she will email them to him.

55. Phil Carter said we do consider the character of the area.
56. Jean Strong said the Trustees' wastewater allowance references sewer rates and this new use is commercially based.
57. Phil Carter said that John Neal will bring back new evidence. At this point it is too nebulous – this board needs specifics.
58. **MOTION by George Tucker and seconded by Doug Sheehan to recess this hearing until the March meeting. Motion passed unanimously.**

X. **OPEN THE PUBLIC HEARING FOR ROBERT WOFCHUCK**

1. Phil Carter advised that this is an application to amend a Planned Unit Development Permit to enclose part of the deck under the front atrium. The project is located in the Mountain Recreation District.
2. Cherry Nicoll advised that this is application 128-98-PUD, Amendment # 64. Posted in the Town Hall bulletin boards and the Post Office Bulletin Board and on the website January 26, 2023, advertised in THE VERMONT JOURNAL on January 25, 2023 and abutting property owners were notified on January 26, 2023. She said we received letters from Police, Ambulance and the Fire Marshal's permit.
3. Phil Carter administered the oath to Robert Wofchuck and Josh Sapp.
4. Robert Wofchuck said they wish to enclose a small portion of the existing deck and move the front door.
5. Phil Carter noted that some of the neighbors have done similar projects. He asked if they would be changing the footprint of the structure.
6. Robert Wofchuck said no, because the roof changes already exist. They will just move the front door.
7. George Tucker asked about the dormer in the "V" section.
8. Robert Wofchuck said they did that so the water sheds to the sides
9. John Boehrer said that the atrium was not livable space and will be changed to livable space.
10. Josh Sapp said that the changes were already approved as part of the Arapaho Roof project. He said they are not changing the roof now as it was already approved. They are just closing up a section.
11. Phil Carter said there was a project in the Lakes District years ago. The applicant had a deck with open space underneath and wanted to enclose it. The DRB denied it and it went the court. The court agreed with the homeowner.
12. George Tucker said because it was within in the existing footprint and no changes were being made to the footprint. He asked if this project is affected by the Notice of Violation.
13. Phil Carter said no. The Notice of Violation stands, but allows this application to do their project. He noted that letters are in. He said the letter from Chief Kolenda requires a permit from the Division of Fire Safety and a noncombustible wall surface to be used on the interior of the new mudroom (i.e. sheetrock.)
14. Josh Sapp said there is fire retardant that is available.
15. Phil Carter said if it is non-combustible, it is okay.
16. **MOTION by John Boehrer and seconded by Doug Sheehan to close this hearing. Motion passed unanimously.**

XI. **MINUTES**

1. December 12, 2022

- a. Julie Nicoll noted that on page 1, item number 1 should read "...opened the meeting at 6:01 p.m."
- b. Julie Nicoll noted that on page 2, item II2 should read "...spoken at the previous..."
- c. Julie Nicoll noted that on page 2, item II9, should read "...if the state does inspections."
- d. Julie Nicoll noted that on page 2, item II 11 should read "Phil Carter asked how we can be assured..."
- e. Phil Carter noted that on page 3, item IV 1, last words in the comment should be under oath.
- f. Phil Carter noted that one page 3, item IV 9, and should read "Ted Reeves said he has no objection..."
- g. Phil Carter noted on page 4, item IV, 11, should read "...apply for houses..."
- h. Julie Nicoll noted on page 4, item IV, 13, should read "...reports if they apply..."
- i. Julie Nicoll noted that on page 5, item VI, 5c, should read "...carbon monoxide detectors as required..."
- j. Julie Nicoll noted that on page 8, item VII, 41, should read "He said it is for the subdivision..."
- k. **MOTION by Phil Carter and seconded by Julie Nicoll to approve the minutes from December 12, 2022 as corrected. Motion passed unanimously.**

XII. **OTHER BUSINESS**

1. There was none.

XIII. **ADJOURN**

1. **MOTION by George Tucker and seconded by Doug Sheehan to adjourn. Motion passed unanimously.**
2. Meeting adjourned at 8:11 p.m.

Respectfully submitted,

Lisha Klaiber

Phil Carter, Chairman

Doug Sheehan

John Boehrer

George Tucker, Jr.

Julie Nicoll