

DEVELOPMENT REVIEW BOARD

PRELIMINARY MINUTES

ZOOM ELECTRONIC MEETING

Monday – April 11, 2022

6:00 P.M

Join Zoom Meeting

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MEMBERS PRESENT:

Phil Carter, Chairman

Julie Bowyer

Doug Sheehan

John Boehrer

Julie Nicoll

STAFF PRESENT:

Rose Goings

Cherry Nicoll

OTHERS PRESENT:

Eric Alden

Marek Kovac

William Meub

Kathy Burns

Bill Leach

Amy O’Neil

Paul Carrocchio

James Levy

Mike O’Neil

Alan Couch

Carl Lisman

Emily Samel

Eric Erwin

Meredith McClements

Josh Shelby

Lara Fram

Mike McClements

Mike Shelby

Suzanne Garvey

Amy Minuit

James Ipad

Tom Harris

Carl Minuit

John Watanabe

Victoria Hone

Andy

Suzanne Whalen

Ed Kelleher

Jenn

203-410-9559

I. CALL TO ORDER – ELECTRONIC MEETING GUIDELINES

1. Phil Carter opened the meeting opened at 6:00 p.m. He advised that the Electronic Meeting Guidelines are still in effect.
2. Roll Call:
 - a. Phil Carter advised that all members are present. He advised that the DRB is an “On the Record” and we swear in anyone wishing to speak and we accept evidence.

II. **OPEN THE PUBLIC HEARING FOR COOL EDGE LAKE RESCUE ASSOCIATION, INC.**

1. Phil Carter advised that this is an application to consider to amend Permit SUB18-006 in order to change the dock location previously permitted to a new location. Property address is Route 100 North in the Lakes District.
2. Rose Goings advised that this is application SUB18-006, Amendment #2. Posted in the Town Hall bulletin boards and the Post Office Bulletin Board and on the website March 23, 2022 advertised in THE VERMONT JOURNAL on March 23, 2022 and abutting property owners were notified on March 23, 2022. She advised that letters have been received from the Fire, Ambulance and Police Departments.
3. Phil Carter administered the oath to all wishing to speak at this hearing. He said that because this is a ZOOM meeting, it is hard to see who is raising their hand.
4. Victoria Hone said that she is representing the owners' association. They wish to relocate the previously permitted dock. She said that the hill is steep and it is a challenge for people to bring their kayaks up the hill. She said that they want to amend the subdivision permit, but that she did not address a Conditional Use permit. She said that they can go through the Local Act 250 criteria.
5. Phil Carter said that this hearing is not for Local Act 250, it is just to amend the permit.
6. Rose Goings said this hearing is for Local Act 250, site plan review and to amend the subdivision permit.
7. Victoria Hone said that she had submitted documents on March 28, 2022. She said that per section 280, this project will not place a burden on educational services. There will not be new children. She said that regarding Municipal Services, she said that the dock is there and has an existing access structure. She said that the Municipal Plan has no current language that would prohibit this project. It is just a relocation.
8. Phil Carter said that he does have the documents. He said they want to move the dock and had mentioned a hill. Where is this?
9. Victoria Hone said that is another reason – it is challenging to place the dock. The new dock will be the same length and width, but the path will be shorter. She referred to Exhibit #3 for the planting plan. She said the path is shorter and more accessible. There is also concern for one property owner who has a disability. The new location would be safer. She said that Stephanie Grover of the Ambulance Department said there are no issues with this change that would circumscribe the project. The current location of the dock makes access for the EMS to access the dock.
10. Mark Minuit said that it is a hazard getting up and down the hill to the dock. It is steep. The new location would give easier access and would be the same length. He said that the parking area is for drop-off only.
11. Phil Carter asked if they have made any changes to the by-laws.
12. Victoria Hone said not at this time, but we can make adjustments if the DRB needs changes.
13. Julie Nicoll asked what they will do with the old path.
14. Victoria Hone said she would speak to her clients, but we can put plants in.
15. Amy Minuit said they could let it grow natural. We are not using the path and the vegetation is coming back. She said she would be happy to add additional plants. She said that it is hard to get to the dock and the new location is easier.
16. Bill Meub said this is not a new location and is the only location they can use. The dock was put in without permission. They cut trees and denuded the area, brought in gravel. He said what was permitted was the ability to install a dock. Their activities are inconsistent with what was permitted. He said the Shoreline Protection Act permit is not on record. They have a planting plan to help trees grow back, but they cut the trees. They can't do anything without permission. He said they are asking to put in what they already have. They have thumbed their noses at the permitting process. He said that we have submitted pictures of what the area originally looked

- like. The plan was to build several hundred feet away from their neighbors. They have made a beach area and leave chairs there. They are 10 feet away from my clients' boundary. He said that the by-laws have 10 lots and now they can have owners, guests, tenants and invitees using the dock/ landing/launch. They have "Vehicles Entering and Leaving" signs, but the area was only supposed to be used by a limited number of people. There are no gates or fences. The area is unsupervised and is unseen, except by the neighbors. The area was supposed to be pristine, they were not supposed to cut within 250 feet of the shore and they have only put in a minimal amount of plantings. The by-laws say they can park there, but the permit says no. The documents are not properly recorded. The area is very different from what it was in 2018. He suggested that board members go and look at the area. There was a planned, shared driveway, but they added another cut to Route 100. They are non-compliant. He said that even the application pictures shows that the area was cleared out. They have no respect.
17. Tom Harris said that prior to, nothing had been done to the shore in over 20 years. The lake lot had vegetation, hemlock and deadfall that was very thick. You couldn't get to the water, it was marshy and muddy. In 2020, they cleared the vegetation and added gravel. They made a 9 foot wide path. They put in an unpermitted dock. It was supposed to go up the hill according to the original permit. Parcel #2 was supposed to be land only and now had significant development. He said that abutting neighbors never received notice. He said there was a remediation plan that would have re-established the buffer. They left a 9 footpath and cleared the grassy area. There is a lot of activity in the cove and it is used to launch personal watercrafts.
 18. Victoria Hone said that the signs were a requirement of the DRB permit. It was supposed to curtail to Act 250 and local zoning. She said that things have been remedied and we worked with Act 250. We do have planting plans and did remediation of the Notice of Violation. She said if the issue is parking, we can revisit the by-laws to drop-off only. We are working on getting any required state and local permits. Our goal is to be in compliance.
 19. Phil Carter said that he spoke with Rose Goings today about the Shoreline Protection Act and Act 250 supersedes it.
 20. Rose Goings said that is correct. Stephanie Gile discussed this last year and a Lakeshore permit is not required if this is under Act 250.
 21. Phil Carter said that we have a copy of the Act 250 permit granted 6/9/
 22. Bill Meub said there is a permit with a later date that is not recorded in the land records.
 23. Victoria Hone said she will rectify the situation.
 24. Bill Meub said to look at the draft of the amended permit; the Planting plan is Exhibit 16 and says the need to leave an open area where they want to put the dock. Look at the footpath and the dock at the end and the Act 250 location. There is no vegetation within the cleared area. It's supposed to be 250 feet. They have the dock in an unpermitted location with a gravel path. They have not been in compliance with the Act 250 permit. We think there should be no amendment to the permit until they come into compliance with the existing permit. He said that he challenges all inappropriate amendments to be approved and return them to non-compliance. It is not appropriate to approve an amendment for the reasons they have requested.
 25. Victoria Hone said that all of the issues with Act 250 and the Notice of Violation, we are working to remedy. She said that Local Act 250 is specifically tailored to 3 specific criteria. We want to relocate the dock, are asking for an amended permit. Then we will go to Act 250
 26. Phil Carter said there is a huge disconnect between Local Act 250 and Act 250 and nobody communicates about both. This is an Act 250 issue. These are not local issues.
 27. Eric Erwin said that he is a law clerk with Meub and he went to visit the site. He had no issues with the path. He said that the permit originally said that's where the dock should have been.
 28. Bill Meub said this was a bait and switch. He said that when people get a permit, they rely that it will be that way it will go. Now it is close to their property and house. Since this is an amendment, and what was represented to the neighbors. I see no reason to move the dock. If

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- they hadn't cut the trees, they wouldn't have a choice. It is not appropriate to grant the amendment.
29. Victoria Hone said they will talk about Local Act 250 and this project has not problems with it. If there are issues with Act 250, we will apply for an amendment. She added that they also have an exhibit for planting, but it is not part of this criteria to discuss that today.
30. Julie Bowyer said the subdivision application for a permit for the location of the dock, and it was not put there. Now they want to move it.
31. Victoria Hone said she does not have prior knowledge about that. She said that carrying a kayak is a challenge and if someone is disabled, not everyone is in that position. She said that she does not know if the dock was ever placed there. She said that this application is because they are not able to use the dock as permitted. They were not in compliance and had to move the dock. She said that there was a planting plan, and to her knowledge they have done it.
32. Amy O'Neil said that prior to purchasing their home; they looked at the land records and by-laws. It was clear that only non-motorized boats were allowed. The path was there. The dock was put in in 2020 and was not there when we purchased. She was happy to see the path from the parking area to the lake. She said that the dock went in – shockingly in 2020. She said that the by-laws said that the homeowners have to vote on a dock and the attorney at the time didn't know about it. She asked if all 10 homeowners know about this. We relied on the by-laws about the existing path and no motorized boats. She was hoping that it would not be party-time, adding that voices carry on the water.
33. Mike O'Neil said everyone knew where the dock was. Ralph Michael designed it. We looked into to it, but don't know how to control it. It is too close to the Harris' home. He said that the rack area for boats was never put up. This benefits only 1 or 2 homeowners.
34. Amy O'Neil said the said the DRB should look at the bylaws. She said that they said that they'll amend the bylaws to make this possible.
35. Victoria Hone said she did not mean that. She said the anything that looks incorrect – like parking vs. drop off can be corrected.
36. Amy O'Neil said that there is a boat landing on the other side of the lake that persons with disabilities can use. She added that only 6-foot paths are allowed.
37. Victoria Hone said the association is trying to be inclusive. This is limited to land-owners and they want to be in compliance with state and local regulations.
38. Phil Carter said that there were some concerns last year about the public beach and there seemed to be evidence about it. The DRB is not the police. He asked if the attorneys are familiar with the Stowe Club Highlands Analysis. He said that we have adopted it. Basically, at a certain point, permits that were issued are finished and done. We can be flexible for certain things like (a) changes in factual or regulatory circumstances beyond the control of a permittee; (b) changes in the construction or operation of the permittee's project, not reasonably foreseeable at the time the permit was issued; or (c) changes in technology. He said that he would like Victoria Hone and Bill Meub to address that. He would like to recess this hearing or close it in 2 weeks and you can just submit your positions on this analysis. He said that they could also recess to the May Meeting – or close in 2 weeks. That would give you time to look at it and state how it pertains to this project.
39. Bill Meub said that recessing it would be better, this way, the board can still accept evidence until the May meeting and we can make sure we have all of the evidence.
40. Phil Carter said that is reasonable.
41. **MOTION by Julie Nicoll and seconded by Julie Bowyer to recess this hearing until the May meeting. Motion passed unanimously.**

III. **OPEN THE PUBLIC HEARING FOR WINTERPLACE COA**

1. Phil Carter advised that this is an application to build two duplexes with a total of 8 bedrooms in a previously approved Planned Residential Development. Property is located on Stewart Lane in the Mountain Recreation District.
2. Rose Goings advised that this is application 081-94-PRD, Amendment #17. Posted in the Town Hall bulletin boards and the Post Office Bulletin Board and on the website March 23, 2022 advertised in THE VERMONT JOURNAL on March 23, 2022 and abutting property owners were notified on March 23, 2022. She advised that letters have been received from the Fire, Ambulance and Police Departments.
3. Phil Carter administered the oath to all (John Watanabe) wishing to speak at this hearing. He said that this is an application to build two 4 bedroom duplexes.
4. John Watanabe said the square footage will be 6,900 square feet, with the deck. The density calculation is: they have 27.86 acres remaining for development. They will use 1.84 acres for this project, leaving 26.02 acres for development.
5. Phil Carter said that evidence was presented on March 21, 2022. He read the conditions listed in the letter from Fire Chief Kolenda, dated April 10, 2022: A permit is required from the Vermont Division of Fire Safety. They will need to provide at least one egress window in each bedroom and bunk room (5.7square feet of clear area when the unit is open. Provide hard wired smoke and carbon monoxide detectors and or fire alarm system as required by Vermont Division of Fire Safety. A NFPA 13 Sprinkler system is required. No wood burning appliances or fireplaces are allowed. Since this is new commercial construction, a 35 cent per square foot impact fee is required for the Town of Ludlow Fire Equipment Fund.
6. John Watanabe said they can do these conditions. He said they are going from 258 to 260 units and will provide 2 parking spaces per unit, at the north side of the building.
7. Phil Carter asked if there is existing parking.
8. John Watanabe said it is an extension of the driveways and caters to 2 other buildings.
9. Julie Nicoll asked the height of the buildings.
10. John Watanabe said they will be identical to the existing, approved buildings.
11. Phil Carter asked if there are any erosion issues on the site plan.
12. John Watanabe said they have hire Dufresne to do the storm water system. He said there will be a retention pond that has already been approved. It will be at the south end of the property.
13. Phil Carter asked where the storm water will go.
14. John Watanabe said between buildings M and N in the existing wooded area.
15. Phil Carter asked if there will be a containment pond.
16. John Watanabe said yes.
17. Phil Carter asked if it will be maintained.
18. John Watanabe said yes as per state requirements.
19. Phil Carter asked if the sewer allocation is in place.
20. John Watanabe said yes, they made the payment last week.
21. Phil Carter said that the ambulance letter requested that there be adequate space, at all times, for appropriate entering and existing for emergency personnel and equipment at all stages of construction and during the finished project.
22. Phil Carter asked about the height of the buildings.
23. John Watanabe said he will get an answer back to them. He said that thy met the requirements on the last 4 buildings and these will be the same.
24. Phil Carter confirmed that the 2 new buildings will be the same as the existing 4 buildings.
25. John Watanabe said yes.
26. Phil Carter asked Rose Goings if there are any height violations.
27. Rose Goings said no. She added that she did check and the sewer payment was made.

28. **MOTION by John Boehrer and seconded by Julie Nicoll to close this hearing. Motion passed unanimously.**

IV. **OPEN THE PUBLIC HEARING FOR OKEMO TRAILSIDE COMMUNITY ASSOCIATION, INC. (F.K.A. OKEMO TRAILSIDE MASTER ASSOCIATION)**

1. Phil Carter advised that this is 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. Property is located at Okemo Trailside Condominiums in the Mountain Recreation District.
2. Rose Goings advised that this is application 484-22-AP. Posted in the Town Hall bulletin boards and the Post Office Bulletin Board and on the website March 23, 2022 advertised in THE VERMONT JOURNAL on March 23, 2022 and abutting property owners were notified on March 24, 2022. She advised that in March of 2020, the fire hydrants were welded shut because there was not enough domestic and fire protection water. We sent a Notice of Violation for Trailside and Kettlebrook on March 10, 2020 to TPW. Paul Carrocchio came into the office with an application plans for a water storage tank designed by Otter Creek. There was no fee attached to the application. He called the next day and said he wasn't going to submit the application. We stopped issuing Bianchis. This past July, Paul Carrocchio said they have paved, and installed a potable water storage tank and the fire pond was dredged 2 years ago. He said they have a 280,000 gallon fire pond, with 3 fire hydrants and an 8" main line. No application was submitted to the town and no Local Act 250 permit was issued. They have not communicated with the Fire Chief since March 2020.
3. Phil Carter said that there are a number of things on the Notice Of Violation:
 - a. Violation of Article 2, Section 220 – for performing land development as defined by the Regulations in Article 7, without the necessary permits
 - b. Violation of Article 2, Section 227 for failing to obtain the required Certificates of Occupancy for the Land Development performed without the required permits referred to above.
 - c. Violation of Article 2, Section 280 (5) (b) for land development not in compliance with fire safety codes and conditions of the existing permits concerning fire safety and the ability to provide adequate fire protection.
 - d. As per the Ludlow Fire Chief, you were notified that you are in violation of fire codes and exiting permits as well as the need for additional local and state permits: Specifically:
 - 1) Failure to upgrade hydrant protection system.
 - 2) Failure to complete the proposed water extension as conditioned
 - 3) Failure to comply with NFPA requirements
 - 4) Failure to address proper locations and adequate number of fire hydrants
 - 5) Failure to provide approved engineering calculations for fire flows from the new hydrants and usable storage volume of the fire protection pond
 - 6) Failure to dredge the fire pond to restore sufficient usable volume for fire protection, possibly to include a mechanical mixer or aerator to eliminate ice buildup and increase usable volume for fire protection
 - 7) Failure to obtain the required ACT 250 permit
4. Carl Lisman said that the issues were raised in the Lara Fram application. We are ready to file at the Environmental Court. The association believes it has a defense. On March 22, 2022, the Association met with the Town Manager and town attorney to clear the air and identify the needs. The Fire Chief met with the Association on a plan that is not finalized and would require approval of the Association and the Town. The Association will come to the DRB for permits and will not

add without them. We are requesting a continuance, indefinite, to be brought back by the request of the Town or association.

5. Phil Carter said that the DRB will keep this in the process. He said we want to get this cleared up.
6. **MOTION by Phil Carter and seconded by Julie Nicoll to recess this hearing until the May meeting and if the Association is not ready, to recess it until June. Motion passed unanimously.**
7. Phil Carter asked Mr. Lisman that if he has any new information, to please submit it.

V. **APPROVE MINUTES**

1. Phil Carter advised that the minutes to be reviewed are from March 14, 2022.
2. Phil Carter noted that on page 2, item II-4 should read, "... and changing these attic spaces into bonus rooms..."
3. **MOTION by Julie Nicoll and seconded by Julie Bowyer to approve the minutes from March 14, 2022 as corrected. Motion passed unanimously.**

VI. **OTHER BUSINESS**

1. **Divided Ski Drug Rehabilitation Treatment Permit**
 - a. Phil Carter said that the attorney for the appellant has submitted her brief to the court. Steve Ankuda has responded to her brief. She has 15 days to respond to their brief. This is public record and available in the Planning office.
 - b. Rose Goings said Divided Sky has pulled the petition to accept Medicaid. They can accept cash.

VII. **ADJOURN**

1. **MOTION by Phil Carter and seconded by Julie Nicoll to adjourn. Motion passed unanimously.**
2. Meeting adjourned at 7:21 p.m.

Respectfully submitted,

Lisha Klaiber

Phil Carter, Chairman

Julie Nicoll

John Boehrer

Doug Sheehan

Julie Bowyer