

DEVELOPMENT REVIEW BOARD

PRELIMINARY MINUTES

ZOOM ELECTRONIC MEETING

**Monday – December 12, 2022
6:00 P.M**

Join Zoom Meeting

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MEMBERS PRESENT

Phil Carter, Chairman

Julie Nicoll

George Tucker, Jr.

Doug Sheehan

MEMBERS ABSENT

John Bohrer

STAFF PRESENT:

Cherry Nicoll

OTHERS PRESENT:

George Abraham

Seth Johnson

Robert Sanford

Eric Alden

Sal Marotolli

Larry Slason

Troy Caruso

Gerard McGuinness

Jean Strong

Alan Couch

Stephen Messina

Leslie Stuart

Cathleen Ellmaker

Steve Meyers

Mark Stuart

Lee Ellmaker

Gary Neff

Kevin Theissen

Dan Hanover

Ted Reeves

Heather Valade

Sandy Johnson

Andrea Sanford

Matt Valade

I. CALL TO ORDER – ELECTRONIC MEETING GUIDELINES

1. Phil Carter opened the meeting opened at 6:01 p.m. All members are present except John Bohrer.

II. 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. He said it was recessed from the July 11th meeting as there were questions to still be answered.
2. Phil Carter reminded all who had spoken previous hearing that they are still under oath.
3. Ted Reeves advised that there is no update. He is still working back and forth with Scott Murphy to evaluate the road. He requested a 60-day recess for this hearing.
4. MOTION by George Tucker and seconded by Julie Nicoll to recess this hearing until February, 2023. Motion passed unanimously.

III. OPEN THE RECESSED PUBLIC HEARING FOR GERARD MCGUINNESS

1. Phil Carter advised that this is an application for a 9-lot subdivision in the Aquifer Protection District. It was recessed from the meetings on October 24, 2022 and November 14, 2022. He advised that the hearing was recessed for further information, regarding character of the area and other relevant items that had been pointed out at the last hearing. He reminded persons who were sworn in at the last meeting that they are still under oath.
2. Ted Reeves advised that he has since submitted the draft Storm Water Permit and Declaration of Covenants and Restrictions. A copy of the Declaration will be given to all homeowners. He said that he had reviewed the 2005 Hillard and Sylvia Foster decision and went through the notes and minutes. He has addressed the habitat, esthetics, aquifer protection and carved them into the new Declaration.
3. Phil Carter asked Ted Reeves if there were any issue with the covenants as conditioned.
4. Ted Reeves said there were no issues.
5. Phil Carter asked board members if they had read the covenants. He said he did and thinks that they have covered all of this board's issues. He asked Ted Reeves, if there were any complaints, who the town would contact.
6. Ted Reeves said the association.
7. Phil Carter asked Ted Reeves about the storm water permit.
8. Ted Reeves said it is a draft permit to develop and operate construction and protection and maintain. The system will include drainage, swales, pond and maintenance. Maintenance will be the responsibility of the association.
9. Phil Carter asked if the state inspects.
10. Ted Reeves said that the association will hire a PE to provide the reports to the state on the operational effectiveness.
11. Phil Carter said can we be assured the plan is working.
12. Ted Reeves said if the association does not file the report, the state will come in. They will also need to have a designer's recertification every 3 years to make sure they are in compliance with the requirements. He said that Rose Goings can call the state for an inspection.
13. Phil Carter said that the ROW runs through the parcels and if storm water mitigation is needed, who is responsible.
14. Ted Reeves said the association.
15. Phil Carter asked if the home owners pay dues to the association.
16. Ted Reeves said yes.
17. Phil Carter asked if the utility poles are above ground.
18. Ted Reeves said yes.
19. George Tucker asked about monthly review after building
20. Ted Reeves said they can do the inspection process on their own.

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21. George Tucker asked if they keep records.
22. Ted Reeves said yes.
23. Phil Carter asked who the town would call if there were an issue. He said that officers of associations change.
24. Ted Reeves said the president of the association. He said that could be a condition of the permit.
25. Julie Nicoll asked, if only 2 lots were sold, would they automatically become the association.
26. Ted Reeves said he doesn't know the trigger, but the developer and the owners would be responsible until all of the lots were sold.
27. **MOTION by George Tucker and seconded by Doug Sheehan to close this hearing. Motion passed unanimously.**

IV. **OPEN THE RECESSED PUBLIC HEARING FOR VACATION PROPERTIES LLC**

1. Phil Carter advised that this is an application for a 2-lot subdivision in the Village Residential District. He said it was recessed from the November 14, 2022 meeting. He said that the DRB is a quasi-judicial board – we are the court. If our decision is appealed to the Environmental Court, they will not hear new evidence. They will review our decision, findings of fact and conclusions of law. He said that he understands that there are concerns from the neighbors and some of the evidence is not pertinent at this hearing. This is only an application for a subdivision; building is not part of the proposal. The subdivision regulations have to show the footprint of the lots. We have no idea what they are going to do with the lots. Phil Carter reminded all who had spoken at the previous hearing that they are still under.
2. Ted Reeves said that since the last meeting, he had Ethan Gilmour revise the plans: he removed the references to boundary line adjustments, added adjacent property owners, and added the road profile – with a grade of 13.5% to 14%. He said that that they have also applied for the state waste water permit.
3. Leslie Stuart said that the neighbors have a lot of concerns. The downhill properties already have problems with storm water runoff and asked how this subdivision will impact our properties. She said the pitch is 15% for part of the map. They need to provide attention to screening, buffers and lights.
4. Phil Carter said that the land already exists and asked if there are water or erosion issues now.
5. Leslie Stuart said there is tremendous amount of water coming off Gill Terrace. They do clear the sewers of debris. It would seem that there will be more runoff.
6. Cathleen Ellmaker said the new houses could impact drainage. This is a historic district and if they change the pattern. There is water runoff. The entire hill is pitched downhill from Gill Terrace.
7. Marc Stuart said the neighbors have drafted a letter. There are a number of days when it is too slippery. Ambulances go to Gill Home daily. We are overwhelmed with storm water. We need to have extra caution about the distribution, slope and character of the area.
8. Phil Carter advised that the letter has been received and is part of the evidence and will be considered by the DRB.
9. Ted Reeves said he has not objection to the letter being part of the record. He has not discussed this with his client - the requirement for full cut off lighting. He said that the comment about requiring 5 parking spaces is incorrect. The parking requirement is for 2 spaces per unit. He will follow up on that. He said that regarding storm water runoff, they may be willing to make some accommodation with directing that water downhill. There is an existing buffer – a nice row of trees and he thinks they will have that buffer.

10. Heather Valade said that the proposed driveway is designed right into our living space. She said that unhosted Air B&Bs require 5 parking spaces per 5 bedrooms. We are concerned with the parking and headlights.
11. Phil Carter said this hearing is only about the subdivision. They have not applied for any houses yet. If they do apply houses, we will look at the evidence at that time. Your course of actions, if they apply for houses and we approve it, then you can appeal that decision. The DRB had no mechanism to look at houses at this time, but we will take the evidence. He said that some building plans come in with some subdivisions. There is nothing in this application about houses.
12. Lee Ellmaker said they are concerned about the storm water runoff, steepness and the acreage above is a huge concern, especially if they remove any of the permeable ground.
13. Phil Carter said we will look for engineering reports when they apply for houses. We are not there yet.
14. Leslie Stuart said that the onus would be on the applicant to show there would be no adverse effect.
15. Phil Carter said yes, when that application is posted. You can ask to be notified, then can appeal and the DRB will be in contact. We will look into every single detail. We will ask for testing, engineering, screening, lighting, and traffic.
16. Marc Stuart said then this is a preliminary step. We have all heard that they are planning 5 bedroom/5 bathroom houses on both lots. It will affect the runoff and traffic.
17. Phil Carter asked how it will affect the runoff as it already exists.
18. Marc Stuart asked, so right now this application is just lines on a map.
19. Phil Carter said yes. If the DRB were to deny this application, the court would say that there are no building plans included.
20. Cathleen Ellmaker said if the application is for 5 bedrooms/5 baths and they are making that clear, why is it not relevant.
21. Steve Meyers said that the DRB does an excellent job of following the letter of the law and all points are valid. The DRB can't do anything about possible houses at this point, not until the applicant puts in an application to build houses.
22. George Tucker said that applications are made both ways; just subdivision and subdivision with houses. They are taking a chance that the houses would be approved. Right now, they are just asking for lines on a map.
23. Phil Carter said the DRB really does look at the zoning regulations and we have a whole plethora of things that we have to address.
24. Marc Stuart said we are unfamiliar and we need time and how to respond.
25. Phil Carter advised them to call Cherry Nicoll in the Planning Office. He added that DRB members are not allowed to discuss this hearing outside of the hearing. That is ex-parte communication. He said that sometimes we take a harder line at the hearings, but he opened this up for opinions. The DRB is very objective and if there is an application for houses, we will address them when the application comes in.
26. Leslie Stuart said that that lot is not fit to be subdivided.
27. Phil Carter said the DRB is bound by laws, findings of fact and conclusions of law. That is our job. We have to look at this as just a subdivision, but it is not dead to you.
28. **MOTION by George Tucker and seconded by Doug Sheehan to close this hearing. Motion passed unanimously.**

V. **OPEN THE PUBLIC HEARING FOR INSIDE EDGE RENTALS AT OKEMO**

1. Phil Carter advised that this is an application to amend a Conditional Use Permit to add office space for a new business. The project is located at 213 Main Street, Suite #2 in the Village Residential Commercial District.
2. Cherry Nicoll advised that the application 88-221-CU Amendment #12. Posted in the Town Hall bulletin boards and the Post Office Bulletin Board and on the website, November 22, 2022 advertised in THE RUTLAND HERALD on November 23, 2022 and abutting property owners were notified on November 22, 2022. She said we received letters from Police, Ambulance and the Fire Marshall's permit.
3. Phil Carter administered the oath to George Abraham and Steve Messina.
4. Steve Messina advised that Inside Edge is owned by Mary Davis Realty. We want to add the business to the existing office. It would be one additional employee in one empty cubicle.
5. Phil Carter said they have submitted a map of the layout.
6. Steve Messina said that the cubicle is located in the upper right-hand corner.
7. Phil Carter asked if it is in the main room.
8. Steve Messina said yes and we already have the permit.
9. Phil Carter asked about the Fire Marshall.
10. Steve Messina said we have the Fire Marshall, Fire Chief, Police Chief and the Ambulance letters.
11. Phil Carter noted that there were no conditions on those letters.
12. Julie Nicoll asked if the hours of operation would change.
13. Steve Messina said no.
14. **MOTION by George Tucker and seconded by Julie Nicoll to close this hearing. Motion passed unanimously.**

VI. **OPEN THE PUBLIC HEARING FOR TROY CARUSO**

1. Phil Carter advised that this is an application amend a Conditional Use Permit to change the use from a Laundromat into a 2-bedroom and 2-bathroom condo. The property is located at 85 Main Street in the Preservation District.
2. Cherry Nicoll advised that this is application 86-150-CU, Amendment #1. Posted in the Town Hall bulletin boards and the Post Office Bulletin Board and on the website, November 22, 2022 advertised in THE RUTLAND HERALD on November 23, 2022 and abutting property owners were notified on November 22, 2022. She said we received letters from Police, Ambulance and the Fire Marshall's permit.
3. Phil Carter administered the oath to Troy Caruso.
4. Troy Caruso advised that the condo association would not allow us to turn the building back into a Laundromat. It is part of the condo association. He said they would like to change it into a 2 bedroom/2 bath condo. It is an existing structure. We have received letters from the Police, Fire, Ambulance and Electric departments.
5. George Tucker noted comments on each letter:
 - a. Police – no additional traffic, not additional traffic control and it has adequate parking. No adverse impact.
 - b. Ambulance – will increase call volume, but by unknown amount, building should be numbered, all building and fire codes be met. No concerns
 - c. Fire – should not create negative impact. Permit is required from the Vermont Division of Fire Safety. Provide at least one egress window (5.7 square feet clear when unit it open.

Provide smoke and carbon monoxide detectors are required by the Vermont Division of Fire Safety.

6. Troy Caruso said that they have submitted to the Fire Marshall and are waiting for the permit.
7. Phil Carter asked if the Fire Marshall has inspected it yet.
8. Troy Caruso said no.
9. Phil Carter advised that any conditions imposed by the Fire Marshall will be a condition of the DRB permit.
10. Julie Nicoll asked if they are changing the exterior lighting.
11. Troy Caruso said no.
12. Doug Sheehan asked about parking.
13. Troy Caruso said on the side and back of the property.
14. Cherry Nicoll asked if they had applied to the Village for Water and Sewer allocations.
15. Lisha Klaiber said they are on the Trustees' and Water Commission agendas for tomorrow night.
16. **MOTION by George Tucker and seconded by Julie Nicoll to close this hearing. Motion passed unanimously.**

VII. **OPEN THE PUBLIC HEARING FOR JEWEL BROOK LLC**

1. Phil Carter advised that this is an application for a 4-lot subdivision in the Village Residential District.
2. Cherry Nicoll advised that this is application SUB23-007. Posted in the Town Hall bulletin boards and the Post Office Bulletin Board and on the website, November 22, 2022 advertised in THE RUTLAND HERALD on November 23, 2022 and abutting property owners were notified on November 22, 2022. Property is located at 1 Parker Avenue. She said we received letters from Ambulance, Police and the Highway Foreman.
3. Phil Carter administered the oath to Sal Marotolli, Larry Slason, Jeanie Strong and Andrea Sanford and Serenity Wolf.
4. Larry Slason said that they have submitted and are looking for Pre-Sketch Plan approval. If the DRB is satisfied with this, they will return in 6 months with the final plat review. There will be 4 lots, 4 buildings. Three of the buildings will have 8 units and the fourth will have 4 units – for a total of 28 units. The property is 1.98 acres. Back in 2004 the town asked Sal Marotolli if he would be interested in the property, it was blighted and abandoned and had delinquent taxes. Mr. Marottoli purchased the property in 2005 for \$400,000 and removed the buildings, and cleaned up the property for a cost of \$600,000. In 2007, they applied for and were approved for a 33-unit condo development. In 2009, ACT 250 approved the project. In 2016, there were inquiries for changing this to a hotel. In 2019, both the DRB and ACT 250 approved the permit. In 2022, the permit was appealed and denied.
5. Julie Nicoll said that this was advertised as a 4-lot subdivision.
6. Larry Slason said that the application said layout.
7. Cherry Nicoll said that the application she received was just for a subdivision and she did not receive an application for buildings. They only paid for a 4-lot subdivision.
8. Phil Carter said this is for a 4-lot subdivision and pre-look.
9. Larry Slason said we submitted sketch plans for the layout, parking and landscaping. We want to show you our intentions and receive comments from the board.
10. Phil Carter said that tonight is just for the subdivision.
11. Larry Slason said that Exhibit 4 shows the lots, outside boundaries, setbacks for each lot. They will conform to the district standards. The drawings show access to parking for lots 1, 2 and 3 and also a separate one for lot 4. He also indicated the Emergency access. He said that he has

spoken with Chief Kolenda and he likes the emergency access. When we get more specific, he wants to review that there are no obstructions at the fire access and no structure. He said the landscaping is shown on the drawings and will provide a visual buffer off Route 100. He indicated on the drawings that Buildings 1 and 2 face each other, not Route 100. He indicated the main access, parking and courtyard.

12. Serenity Wolf shared a screen shot of the pre-architectural concept for buildings 1, 2, and 3.
13. Larry Slason said there are 61 parking spaces – 2 per unit. The density standard is 7,500 square feet per lot, and 2,500 per unit and the area required for each lot would be 20,000 square feet – broken down:
 - a. Lot 1 – 8 units at 2,500 = 20,000 square feet – lot size 20,000 square feet
 - b. Lot 2 – 8 units at 2,500 = 20,000 square feet – lot size 20,600 square feet
 - c. Lot 3- 8 units at 2,500 = 20,000 square feet – lot size 20,100 square feet
 - d. Lot 4 – 4 units at 2,500 = 10,000 square feet plus parking – lot size 25,000 square feet
 - e. Lot coverage (max 50%): Lot 1 = 15.8%, Lot 2 = 15.7%, Lot 3 = 16.1% and Lot 4 = 12.9%
14. Larry Slason said that building heights would be 35 feet or less. The project meets all of the requirements of the Village Residential Commercial District. This is an entire new re-design; it will be a residential application.
15. Phil Carter asked about the 2 existing buildings.
16. Serenity Wolf said that the historic building would remain in place. The single-family condo will be removed. There will be a riparian area. There will be ADA parking
17. Phil Carter asked if the units would be individually owned.
18. Sal Marotolli said there will be a COA and it will be managed by a 3rd party.
19. Phil Carter asked if all of the lots would have the same COA.
20. Sal Marotolli said yes.
21. Larry Slason said that his office is preparing the Declaration of Covenants and easements. The units will be owned – fee simple, with ownership in the common areas.
22. Doug Sheehan asked about the office building
23. Sal Marotolli said it is a complete restoration and will be preserved. He is not sure of its use. He said it would lend itself well for a common room for owners.
24. Steve Meyers asked if there would be 2 parking spaces per bedroom.
25. Larry Slason said 2 parking spaces per unit.
26. Phil Carter said that a unit is a living space.
27. Larry Slason said there are 28 units.
28. Phil Carter asked about lock-outs.
29. Larry Slason said no. He said that the regulations say 2 parking spaces per unit. He said the only time bedrooms are considered is for water and sewer. We propose this project will be on Village water and sewer.
30. Phil Carter said that a dwelling unit has: separate living room, cooking, sleeping areas and does not include transient space.
31. Steve Meyers said that could mean unlimited numbers of people.
32. Phil Carter said yes, it would be a private home and can have guests.
33. Larry Slason said that Section 530.1 says that a single family or multi-unit dwelling must have 2 spaces per unit.
34. Jean Strong asked about the green area on lot #1.
35. Serenity Wolf said that is a riparian buffer – green space.
36. Jean Strong asked why they are subdividing into 4 lots.

37. Larry Slason said it was unintentional. We proposed a PUD, but PUDs are not authorized in the Village, unless the property is at least 10 acres. This project will conform to the zoning and subdivision regulations. We have no assurance that the regulations would not be changed.
38. Jean Strong said that the project looks much better for the village and area.
39. Phil Carter said this is just a preliminary look. Lots are lots. Everything on these drawings is preliminary and when it comes to the DRB, we will drill down on it.
40. Larry Slason said that we were asked to be specific to show the lots, buildings and would like sketch plan review comments.
41. Phil Carter said the DRB will do that and try to be as helpful and as possible. He asked what the buildings would look like. He said is for the subdivision of lots and a preliminary at the overall property. He asked interested parties to submit their comments to the Planning Office and we will respond.
42. Jean Strong asked when they can submit our comments.
43. Phil Carter said this is just for the subdivision and the DRB has 45 days to send out its Notice of Decision. He said that the pre-sketch comments are open.
44. Steve Meyers said this is just for the subdivision and the rest is off the record, and not to scale, just the lots.
45. Phil Carter said yes. The drawings are a conception of the project.
46. Larry Slason said they have submitted the lot dimensions, access, pre-sketch and hope for comments. He said the drawings are to scale with regard to location, footage and parking.
47. Sal Marotolli said he wants to work with the town and village and neighbors. He said the village renderings are based on a UNESCO village in Austria. We asked the architect to recreate it and liked the look of the central courtyard and buildings facing each other. There are not construction drawings. We want the 4-lot subdivision and will return with more detailed drawings.
48. Phil Carter said the DRB will send its position on the application. Abutters may send their input to the Planning Office.
49. Eric Alden said he is happy to see the residential proposal and suggested that they may want to set aside some units for affordable, workforce housing.
50. Julie Nicoll asked for clarification regarding PUDs not allowed in the Village.
51. Larry Slason said they have to have at least 10 acres.
52. **MOTION by Julie Nicoll and seconded by George Tucker to close this hearing on the subdivision. Motion passed unanimously.**

VIII. **MINUTES**

1. Phil Carter advised that the minutes to be reviewed are November 14, 2022.
 - A. Phil Carter noted that on page 2, item II - 2c should read "...We acknowledge that there is likely to be a bear population."
 - B. Julie Nicoll noted that on page 6, item V-15 should read "...that note 2 on the drawings needs..."
 - C. **MOTION by Julie Nicoll and seconded by George Tucker to approve the minutes from November 14, 2022 as corrected. Motion passed unanimously.**

IX. **OTHER BUSINESS**

1. Next Meeting - will be on January 23, 2023.

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- A. Phil Carter advised that that meeting will be in-person at Town Hall. It will not be a hybrid, so people will have to come to the meeting if they want to comment.
 2. Alan Couch also noted that the applicants for Gill Terrace subdivision had already gone to the Village Trustees and Water Commissioners for their allocations. He said it is odd to do that before the project is approved. What if the project is not approved? Also, the change in conditional use from residential to rooming house was given an increased allocation before the Conditional use. Is this legal.
 3. Phil Carter said that has nothing to do with the DRB. It is the wording in the zoning regulations – do it at your own risk. We would put that in our decision that it is not the Town’s liability. He said the water has nothing to do with the DRB. If they get water allocations, he doesn’t know what the town does with it. It is not on this Board.
 4. Alan Couch asked where you find decisions for retroactive permits.
 5. Phil Carter said you can call the Planning Office. They are not public until I sign them or the Vice Chair signs them. Rose Goings may tell you. He said that there are copies in the Planning office of closed permit.
 6. Cherry Nicoll said that you can go on the town website, to Land Records, by property owners’ names.

X. **ADJOURN**

1. **MOTION by George Tucker and seconded by Julie Nicoll to adjourn. Motion passed unanimously.**
2. Meeting adjourned at 8:01 p.m.

Respectfully submitted,

Lisha Klaiber

Phil Carter, Chairman

Julie Nicoll

John Boehrer

Doug Sheehan

George Tucker, Jr.

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