

**DEVELOPMENTAL REVIEW BOARD
PRELIMINARY MINUTES**

September 11, 2017

MEMBERS PRESENT:

Phil Carter, Chairman	Julie Nicoll	Dana Wilson
John Boehrer	Linda Petty (by phone)	

STAFF PRESENT:

Rose Goings

OTHERS PRESENT:

John Broker-Campbell	Ralph Michael	Theresa Southworth
Allison Hopkins	Alice Nitka	Lisha Klaiber, Recorder
Rogan Lechthaler	Mary Jane O'Hara	Adam Sayre – LPCTV

SPECIAL MEETING – REORGANIZATION

1. **CALL TO ORDER**

- A. Meeting opened at 5:55 p.m. by Chairman Phil Carter. He welcomed Dana Wilson as a new full-time board member. All board members present, Linda Petty by telephone.

2. **ELECTION OF CHAIRPERSON**

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

3. **ELECTION OF VICE-CHAIRPERSON**

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

4. **ELECTION OF CLERK**

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

5. **APPOINTMENT OF RECORDING SECRETARY**

- A. **MOTION by Phil Carter and seconded by Julie Nicoll 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. **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 John Boehrer to adjourn the special meeting. Motion passed unanimously.**
- B. **Phil Carter adjourned this special meeting at 5:59 p.m.**

REGULAR MEETING OF THE DEVELOPMENT REVIEW BOARD

I. **CALL TO ORDER**

- 1. Meeting opened at 6:00 p.m. by Chairman, Phil Carter. All members present

II. **OPEN THE PUBLIC HEARING FOR ROGAN & ABBY LECHTHALER**

- 1. Phil Carter advised that this is an application to amend a Conditional Use Permit to allow outdoor dining for twenty-two (22) seats for lunch and dinner. Property is located at 190 Main Street, in the Village Residential Commercial District.
- 2. Rose Goings advised that this is application 299-07-CU, Amendment #2. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and on the website on August 15, 2017, advertised in THE VERMONT JOURNAL on August 23, 2017 and abutting property owners were notified on August 15, 2017.

3. Phil Carter administered the oath to all (Rogan Lechthaler, Mary Jane O'Hara) wishing to speak at this hearing.
4. Rogan Lechthaler advised that tonight's hearing is to discuss putting tables in the front, left side of the building, for lunch and take-out. There will be 2 24" tables, each with 2 chairs for a total of 4 seats. There will be a rope and fence. The alley will be discussed next month as they are making a deal with the town for the use of the driveway.
5. Phil Carter advised that this hearing is for both the front and side seating. This portion is only for the front as the town owns the driveway. He said there was a letter from Chief Billings.
6. Rose Goings said there is also a letter from Chief Kolenda.
7. Phil Carter read from the letter from Chief Billings:
 - a. There will be no more than 2 tables with 2 chairs in front of the building. This may be amended at a later date.
 - b. There will be a barrier in place to separate pedestrians from restaurant patrons.
8. Rogan Lechthaler submitted a copy of the survey. He said that 1/2 of the sidewalk in front belongs to the town, the other half to them. He said he had originally planned on 30" tables, but changed them to 24" tables.
9. Linda Petty noted that the drawing only shows 20 seats.
10. Rogan Lechthaler said he applied for 2 more in the alley in case there was a larger party.
11. Phil Carter said this hearing is only dealing with the 2 tables in front.
12. Mary Jane O'Hara asked if the state owns the ROW from the centerline of the road.
13. Phil Carter said not in Ludlow, the town owns it. He added that the letter from the fire chief said there would be no significant impact.
14. Mary Jane O'Hara asked about the driveway.
15. John Boehrer said that is not in question tonight.
16. Phil Carter repeated that tonight is only to discuss the two tables in front. There is no agreement at this time with the town to use that area.
17. **MOTION by Julie Nicoll and seconded by Dana Wilson to recess this hearing until the October meeting.**
18. Rogan Lechthaler asked why they are recessing the hearing. The 2 tables out front would be on his property.
19. Phil Carter said they only opened part of the hearing and must leave the hearing open until the rest of it can be discussed. If not, they would have to re-open the hearing,
20. John Boehrer asked what if they come to an agreement with the town in less than one month.
21. Rogan Lechthaler said he thinks they are close to making a deal with the town. They want to be able to use that space for foliage and Columbus Day weekend.
22. Rose Goings said the Select Board does not meet again until October 2 and the DRB's next meeting is on October 23, because October 9 the offices are closed for the holiday. She added that the other hearings for October 23 are already scheduled.
23. Phil Carter added that the board needs time to warn the hearings.
24. Rogan Lechthaler said if they can't get a decision before Columbus Day weekend, he would not ask the board to make a special hearing. He said he thought the hearing could be split.
25. **Motion passed unanimously.**

III. **OPEN THE PUBLIC HEARING FOR ROBERT & JUDITH ZIMPFER**

1. Phil Carter advised that this is an application to allow for a subdivision creating 2 separate lots. The project is located at 137 North Ridge Road in the Village Residential District.

2. Rose Goings advised that this is application SUB18-003. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and on the website on August 15, 2017, advertised in THE VERMONT JOURNAL on August 23, 2017 and abutting property owners were notified on August 15, 2017.
3. Phil Carter administered the oath to all (Ralph Michael, Alice Nitka, Theresa Southworth) wishing to speak at this hearing.
4. Ralph Michael advised that the applicant wishes to subdivide a 16.01-acre lot into two lots. One lot, Parcel #1 will be 5.17 acres, undeveloped at this time and wooded. Parcel #2 will be 10.84 acres and is where the existing house is. This lot has waste water, replacement area, drilled well and driveway on site. Parcel #1 will have road frontage and be accessed off of Northridge Road. It is on the north side of the village boundary, but in the town. He has submitted sketches. Sheet #1 is the boundary survey. Sheet #2 is all of the sketch plan notes. It shows that the subdivision, per Article #2, will meet all procedures and per Article #4, meets all standards. Section 4.3 shows that the project will protect natural resources. Parcel #1 is not being developed at this time and Parcel #2 already meets all-natural resources standards. The road frontage meets Ludlow Village Zoning Regulations. The frontage for Parcel #1 will be 87.95 feet and for Parcel #2, 155 feet.
5. Phil Carter clarified that Parcel #1 would be accessed from Northridge Road and not from Parcel #1.
6. Ralph Michael said that is correct.
7. Julie Nicoll asked if the drawing shows the well shield on Parcel #2.
8. Phil Carter said that lot is existing.
9. Alice Nitka asked for clarification of where the driveway would be on Northridge Road.
10. Ralph Michael indicated it on the drawing, saying it would be on her west property line.
11. Alice Nitka said there was a recent survey done of the Goralnik property and asked about the original and new pins.
12. Ralph Michael said the new pin is on the Zimpfer property line.
13. Phil Carter asked where the access would be with relation to the pins.
14. Ralph Michael said between the two pins.
15. Phil Carter asked Ralph Michael is there is anything that the board is not aware of.
16. Ralph Michael said no.
17. Theresa Southworth asked if there would be anything that would affect the Odd Fellows property.
18. Ralph Michael said there would not be any changes to the parcel (#2) that abuts their property.
19. **MOTION by John Boehrer and seconded by Dana Wilson to close this hearing. Motion passed unanimously.**

IV. **OTHER BUSINESS**

1. **Flood Presentation with John Broker Campbell and Allison Hopkins**
 - a. Phil Carter advised that this is an informal discussion about Flood Hazard Regulations. John Broker-Campbell is here tonight from ANR along with Allison Hopkins from Regional Planning Commission.

-
- b. John Broker-Campbell said that all towns are struggling with the new state and FEMA guidelines. He distributed packets which included a Users' Guide to FEMA Technical Bulletins. He said that he reviews all of our permit applications before the permits are issued. He added there are things over which the towns have no control. He noted that Ludlow's regulations are fairly standard. He explained the FEMA map showing the three distinct zones: Floodway, Flood Fringe and Special Flood Hazard Area. He said it is hard to get a permit to build in the Floodway. He added that they used to use to 100-year flood area as a guideline, but that has been changed to 1% chance areas and towns are adopting stricter regulations. He said that Ludlow's regulations require buildings to be 1 foot above BFE and other towns are increasing that. He said that copies of the Ludlow maps are available in Rose Goings' office as well as at the FEMA Map Service Center and the ANR Atlas (he feels the ANR maps are the easiest to use.) He then went on to explain Substantial Improvement. Substantial Improvement is an improvement that exceeds 50% of the fair market value of the existing structure. If there is substantial improvement, the entire structure must be brought into compliance with town, state and FEMA requirements. Ludlow uses the Listers' cards for consistency. If the applicant proves that the improvement is less than 50%, then only the new construction has to be compliant.
 - c. Phil Carter said that the DRB requires material costs and labor costs. He asked if labor costs are required even if the applicant is doing the work himself.
 - d. John Broker-Campbell said if the improvement is close to 50%, yes. He said that FEMA requires detailed accounting.
 - e. Phil Carter asked if people do the work themselves, should the DRB ask for an independent labor estimate from a contractor.
 - f. John Broker-Campbell said if you find that their labor rate is acceptable or appropriate that is okay. But, you must be consistent with all applications. He said Ludlow's by-laws are fairly straight forward and have definitions.
 - g. Julie Nicoll said that the FEMA map lists certain properties as being in the flood range, but that is not correct.
 - h. John Broker-Campbell said that the FEMA maps have not all been updated. You can try for a Letter of Map Adjustment. He said that to get a LOMA, there would have to be a survey that would cost the applicant, but there would be a long-term benefit with the house's resale value.
 - i. Phil Carter asked if any town's liability has been hit if they approved a permit and the property was then damaged by floods.
 - j. John Broker-Campbell said not in Vermont.
 - k. Julie Nicoll asked if people owned a house and did improvements valued at 25% of the fair market value and then sold the house, could the new owners do another 25% and still not be required to bring the entire structure into compliance.
 - l. John Broker-Campbell said in Ludlow, yes. He does not see any time windows factor in the regulations. If you put that in the regulations, you would need the mechanics to track it.
 - m. Phil Carter said there was a situation in Ludlow, where the DRB had evidence from an engineer and relied on that evidence to grant a permit for an addition to a structure in the Flood Plain. FEMA did not agree with the evidence and said it was incorrect and the permit was wrong. Is there a process for this after we have made our decision?
 - n. John Broker-Campbell said we (ANR) does visits to towns and checks permits. If it was an accidental oversight, the structure still has to be brought into compliance.
 - o. Rose Goings said at that time, the person from the State did sign off on the permit.
 - p. John Broker-Campbell said that things have changed and improved over the years.

-
- q. Rose Goings said if there is any application near the water, she now contacts John Broker-Campbell.
 - r. Phil Carter asked about replacement areas for development in fringe areas.
 - s. John Broker-Campbell said Ludlow's regulations do not require Compensatory Storage. If the project involves ACT250, they may create an offset. You can amend your regulations to mirror the state requirements. Our office can provide you with a newer model,
 - t. Phil Carter asked if there is a case for FEMA or the state to override our decisions.
 - u. John Broker-Campbell said he would find out.
 - v. Julie Nicoll asked if insurance rates are lower with the requirements for structures to be 5' above BFE.
 - w. John Broker-Campbell said the rates are set per each property, but generally, the higher the structure, the lower the base rates would be.
 - x. Phil Carter advised that going back in geologic history, Ludlow was once a lake. The town is sitting in a bowl, surrounded by North, East, West and South Hills. This is challenging to the boards.
 - y. John Broker-Campbell said with the development, the river can't access the flood plain. They may want to consider not allowing more development in the flood plain.
 - z. Phil Carter said when applications come in; we do reach out to you.
 - aa. John Broker-Campbell said that's the correct way to do it. Ship the plans over to me and people can call me with questions. He added that Ludlow does require Elevation Certificates at the end of construction. This is a good idea and to keep them on file.
 - bb. Phil Carter asked if John Broker-Campbell has any advice for improvements of what we bring into the process.
 - cc. John Broker-Campbell said from the FEMA perspective, you're in good shape. He recommends Ludlow encourage River Corridor Lateral Space as an amendment to the regulations and not allowing new structures there.
 - dd. Phil Carter asked about buried items such as gas tanks.
 - ee. John Broker-Campbell said they can be allowed if properly anchored and certified by an engineer.
 - ff. Phil Carter said that during Irene, tanks floated away. When people rebuild, do they have to meet new regulations.
 - gg. John Broker-Campbell said they should be anchored. FEMA requires this for all development. He added that he, Allie Hopkins and Jason Rasmussen are there as resources and he encourages the board to avail itself of our assistance.
 - hh. Phil Carter said this board always considers safety and does not want to issue a permit that may harm someone.
 - ii. John Broker-Campbell said that with regard to Variances, the board needs to look at what is really a legal variance and he urges them to use caution when approving a variance.
 - jj. Allie Hopkins said that Regional updated the application check list.
 - kk. Rose Goings said she gives that to all applicants and it works well.
 - ll. Allie added that Ludlow's regulations are clear to understand.
 - mm. Rose Goings said she used the check list on a recent substantial improvement project by the lake, and it went well.
 - nn. John Broker-Campbell said even with the check list, they must be sure to be consistent.
 - oo. Phil Carter said he thinks Ludlow's zoning regulations are good. They have evolved and improved over time with trial and error. He said we have had a lot of challenges and appreciate the help.
2. Green Mountain Lodge

- a. Phil Carter advised that the applicant had submitted a letter to withdraw their application without prejudice. He took the consensus of the board and they all agreed to allow the applicant to withdraw the application without prejudice.

V. **APPROVE MINUTES**

1. Phil Carter advised that the minutes to be reviewed are from August 14, 2017.
2. Julie Nicoll noted that on page 3, item IV, 19, should read "Ed Floyd said..."
3. Julie Nicoll noted that on page 4, item IV, 39, should read "...36 seat restaurant is not..."
4. **MOTION by John Bohrer and seconded by Dana Wilson to approve the minutes from August 11, 2017 as corrected. Motion passed unanimously.**

VI. **ADJOURN**

1. **MOTION by Phil Carter. Motion passed unanimously.**
2. Meeting adjourned at 7:23 p.m.

Respectfully submitted,
Lisha Klaiber

Phil Carter, Chairman

Linda Petty

John Bohrer

Dana Wilson

Julie Nicoll