

**DEVELOPMENT REVIEW BOARD**

**PRELIMINARY MINUTES**

**ZOOM ELECTRONIC MEETING**

**Monday – May 10, 2021  
6:00 P.M**

**Join Zoom Meeting Online:**

<https://us02web.zoom.us/j/89445497136?pwd=aVI5WkVKOXN3VGdGZnFBN3lvQ2ltdz09>

**Meeting ID: 894 4549 7136**

**Passcode: 480295**

**To dial in by phone, find the number to call based on your location:**

**Find your local number: <https://us02web.zoom.us/j/89445497136?pwd=aVI5WkVKOXN3VGdGZnFBN3lvQ2ltdz09>**

**MEMBERS PRESENT:**

Phil Carter, Chairman  
John Boehrer

Julie Bowyer  
Julie Nicoll

Doug Sheehan

**STAFF PRESENT:**

Chief Billings  
Terry Carter, Co-host

Rose Goings  
Lisha Klaiber, Recorder

Patrick Cody– Okemo Valley TV

**OTHERS PRESENT:**

**Public Hearing for Kathy Boyce:**

Kathy Boyce

**Public Hearings for Divided Sky:**

Trey Anastasio  
Jason Batten  
Matt Boggs  
Elizabeth Brach  
Cheryl Buffo  
Steve Burton  
Troy Caruso  
Abby Chaloux  
Larry Dockum  
Seth Dolensky  
Jason Dolmetsch  
Roger Eisner  
Paul Faenza  
Phil Fernandez  
Jessica Frasca  
Toni Girardi

Melanie Gulde  
Barbara Heidel  
Bill Heidel  
Morgan Henson  
Christine Hoffman  
Jim Hoffman  
Julie Kniceley  
Doug Leech  
Hawes Lyle  
Blakely Maggi  
Brian Maggi  
Jose Marcal  
Fred Marin  
Ellen McArdle  
Lois McArdle  
Richard McArdle

Julie McKensie  
Pam O’Neil  
Melissa Perrino  
Brad Pershing  
Steve Polin  
Al Ragozzine  
Darlene Ragozzine  
Chris Roy  
Bruce Schmidt  
Jamison Scott  
Sarah Scott  
Patrick Smart  
Michelle Stinson  
Dr. Bennie Waller  
Brooke Willard

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**I. CALL TO ORDER – ELECTRONIC MEETING GUIDELINES**

1. Phil Carter opened the meeting at 6:02 p.m. He advised that the Electronic Meeting Guidelines explained previous DRB meetings are still in effect. We request that everyone mute and unmute only to speak, then re-mute. If you wish to speak, use the “raise hand” and you will be recognized and put in a queue. Please turn your “chat” off.
2. Roll Call: Phil Carter noted that all board members are present.

**II. OPEN THE PUBLIC HEARING FOR KATHY BOYCE**

1. Phil Carter advised that this is an application requesting a Motion to Reconsider the denial of a Variance requested from the road setbacks for the front porch.
2. Rose Goings advised that this is application 473-21-VA-MOTION TO RECONSIDER. Posted in the Town Hall bulletin boards and the Post Office Bulletin Board and on the website, April 16, 2021 advertised in THE VERMONT JOURNAL on April 21, 2021 and abutting property owners were notified on April 20, 2021. She advised that letters have been received from the Fire, Ambulance and Police Departments. She added that the applicant has submitted a survey, pictures, response to the 5 Criteria for a Variance and letters
3. Phil Carter administered the oath to all (Kathy Boyce) wishing to speak at this hearing. He explained that the initial request for a variance was denied by the DRB.
4. Kathy Boyce thanked the board for the opportunity to present the motion to reconsider. She said that she did not understand the scope of what was needed and Rose Goings suggested that she have a survey done. She said that hers is a 1/3-acre property, surrounded on one side by the state road, and 2 bodies of water on the other sides. She said that part of the house is also not within the 55-foot setback and she doesn't know how to bring it to code.
5. Phil Carter said that he read through her submittal and asked about the water issues in the cellar.
6. Kathy Boyce said that after her father passed, she wanted to bring the house up to code. She replaced windows, the floors and wiring. While the contractor was doing this, he found water gushing into the basement and suggested that she also needed additional egress and a French drain under the porch. George Tucker did this, added gravel and it helps a lot. The state replaced a culvert under Route 100, but the one that runs along the road is not functioning.
7. Phil Carter said that the issue is the porch build out: a slab was put in to keep the drain and soil in place. and the second is for safety egress.
8. Kathy Boyce said that she is trying to bring the house up to egress standards. There should be 36” out from the exit – a minimum 36” pad. This is a federal standard. She added that there is also the pile up of snow in the winter.
9. Rose Goings said that she visited the site in the winter and their front door was totally covered with snow and impossible to get into or out of. They really only have one egress and for safety reasons, there should be 2. Also, there is a problem with the other egress when the snow is deep. They don't have land and it is a small lot. These are unique physical circumstances. There is also ice buildup on the front steps and it is dangerous. The patio helps the situation for egress.
10. Kathy Boyce said that she also sent pictures showing that in the snow, there is no real exit.
11. Phil Carter asked if the front porch made a difference.

12. Kathy Boyce said it does. She added that they want to do the side also, but will not need a variance for it and will submit an application for a permit.
13. Phil Carter asked if this was to enable them to get out of the house more quickly for safety.
14. Kathy Boyce said yes.
15. **MOTION by John Boehrer and seconded by Doug Sheehan to close this hearing. Motion passed unanimously.**

III. **REOPEN THE RECESSED PUBLIC HEARINGS: –**

- **DIVIDED SKY FOUNDATION – Site Plan Review**
- **DIVIDED SKY FOUNDATION – Conditional Use Permit**
- **DIVIDED SKY FOUNDATION – Local Act 250 Review**

1. Phil Carter advised that they will address these hearings are for the Conditional Use Permit and Local Act 250 review concurrently as the evidence for both hearings often intermingles. He said that the meetings are video-taped, digital voice recorded and minutes are taken. He noted that the recording secretary has the green light to interrupt at any time for clarification. He said that they left off at the site plan review at the last meeting and he does not want repetition of that meeting at this one. He asked that people respect each other. He asked everyone to mute themselves and to use the “raise hand” option and they will be recognized by their order in the queue. He reminded all those who spoke at the last hearing that they are still under oath. He administered the oath to those who were not at the last meeting (Steve Polin, Julie Kniceley, Dr. Waller, Julie McKensie, Larry Dockum, Hawes Lyle and Paul Faenza.) We will discuss the site plan which encompasses parking, character of the area and the municipal letters. He advised that municipal letters have been submitted. He noted that the property is 18.63 acres. He said they will start with parking.
2. Patrick Smart said the site includes the Inn Building, the town house buildings, access roads, water and wastewater infrastructure and parking. He said that are 20 spaces and it meets the standard requirements and the needs of the facility. He said they submitted a cover letter with narrative that speaks to the needs of the facility.
3. Phil Carter asked if they have a parking plan in place and where will they be parking – by the lodge or on the hill. Where would employees and guest’s park.
4. Patrick Smart said they will use the existing spaces on the site.
5. Phil Carter asked if they will be parking by the curve.
6. Patrick Smart said adjacent to the inn building and the curve.
7. Phil Carter asked if there are 10 spaces in front of the building.
8. Patrick Smart said yes and spaces by the curve and one handicapped space.
9. Phil Carter asked about neighbors parking up by the hill.
10. Patrick Smart said he doesn’t believe so.
11. Toni Girardi said there are concerns about parking by the Fox Run folks. They object to the contention that the site only requires 20 spaces and Section 530.1 of the Ludlow Zoning Regulation are unclear – they state:
  - Hotel, Motel, Tourist Home, Boarding House: one space per bedroom
  - Dormitory, Nursing Home, Hospital: one space for every two beds
  - Commercial, Business and Unspecified Uses: one parking space for every motor vehicle used in the business, plus one parking space for every two hundred (200) square feet of floor area

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- Toni Girardi continued asking, what parking requirement applies to this. She said that Health Care facility is not specified. She said that every nursing home is a health care facility, but every health care facility is not a nursing home. She said that to her, this is an unspecified use and clearly the parking estimate is incorrect.
12. Phil Carter asked why they can't park up on the hill, they own the land.
  13. Toni Girardi said parking around the curve is not feasible and there is a discrepancy about how much parking is required and she does not think that 20 spaces for the staff and others is adequate.
  14. Patrick Smart said the use meets the standards – 1 space for every 2 beds. He said that the number of spaces is greater than the number of staff (14) and they will be arranging transportation for the clients. Clients will not have cars.
  15. Phil Carter clarified that the clients would not be arriving in their own vehicles.
  16. Patrick Smart said that is correct.
  17. Toni Girardi asked if a patient shows up in their own vehicle, will that vehicle be towed and what happens to the vehicle. Will it be parked in one of the spaces?
  18. Morgan Henson said they will not be towing vehicles and will arrange transportation for all of their clients.
  19. Toni Girardi said she is using information from the traffic study that was submitted and asked about traffic with 12 staff leaving and 15 arriving. Does this account for overlap when all of their vehicles are there at one time? She said there will be more than 20 cars at one time.
  20. Phil Carter asked again, is there any reason why they can't park on the hill.
  21. Toni Girardi said that she submitted photos of cars parked on the hill.
  22. Jim Hoffman said that he had supplied the photos of the road going up the hill – it is one-lane and there is no place to park except by A and B buildings. He said the tennis court is not on the site plan and would have to be reworked for parking. He said the road is dangerous and people would have to walk on the hill. He said there are 25 to 30 cars for Fox Run people. He asked where people will park while they are changing shifts. There will be severe gridlock while people are waiting to park while waiting for others to leave. He said that in the winter, when they plow, the snow goes up around the corner. Parking there is not realistic.
  23. Phil Carter said that Jim Hoffman may know the history of when it was an Inn.
  24. Jim Hoffman said that he did not live there at that time.
  25. Phil Carter referred to the evidence presented in the form of the 1984 Windsor County Court decision from June 29, 1984 where there was litigation between the condo owners and the inn (Weight Loss Center). The findings of fact which listed that the Inn had an 80-seat dining room and 45-seat lounge. There was entertainment on Friday and Saturday nights and there were bus groups. He said that the public had access to the pool and tennis court, gym and game room. He said that the dining room was open to the public and people stayed at the Inn. He said there was clearly a lot of activity going on – bus groups, live entertainment He asked, how can this parking be more egregious than what was in the facts of finding. Where did the buses park and turn around where did all of those people park?
  26. Jim Hoffman said not above by the town houses. The buses parked down by the golf course. He said no one parked above and they never got the full play.
  27. Phil Carter said he was just reading from the findings of fact.
  28. Jim Hoffman said they parked down below at the golf course. This was all part of the golf course.

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29. Phil Carter asked that if a guest wanted to go out to dinner, they would have to walk up the hill.
  30. Jim Hoffman said the inn was part of the golf course and the parking overage was down by the golf course.
  31. Julie Nicoll said she was confused, was Jim Hoffman there at that time. Was he a resident?
  32. Jim Hoffman said no.
  33. Julie Nicoll asked Jim Hoffman if what he said was fact.
  34. Jim Hoffman said he has documents from home owners' meetings that had commentaries on how it operated at the time.
  35. Julie Nicoll said that her brother worked there and it was a wild place and there was a lot of traffic and it seems like it would be farther to walk from where he had suggested than walk to the inn than from the pool area down
  36. Jim Hoffman said he suspects that it would.
  37. Jose Marcal said that parking is an issue if it is a medical facility. He said that staff hands-over medical information directly from people going off duty to people coming on duty. They are there at the same time and would be parking at the same time. If there is an emergency, they need to consider EMT crew, ambulances, police vehicles and possibly fire trucks. How will they accommodate this?
  38. Brian Maggi said that the decision was in 1980s. Now, the zoning regulations say that parking must be within 300 feet of the entrance. He does not think it would be 300 feet. It would be treacherous with 10 spots around the curve. There is a significant grade change. How will they make it safe around that curve?
  39. Julie Kniceley said that they stagger shift changes and not all 14 leave at once, usually 2 on 2 off. They do not shift the entire crew at one time.
  40. Doug Leech said this is not a hospital and there will not be big shift changes and he does not think they will use all 20 spaces. He said that 20 spaces will be adequate based on his experience.
  41. Toni Girardi asked how exactly many staff will work at the facility. She said that the zoning application says 30 and the application to Green Mountain Care says 40 and the traffic study says at least 45. This will impact parking and traffic. She asked what the staggered shift times will be and said that the traffic study said that shift changes would not be at peak hours. She we have not been talking about traffic generated by after-care patients, family and friends, police, fire department and ambulance traffic and parking. We have not been talking about existing traffic generated by the home owners. She asked about parking for laundry service, mail and food service deliveries or intake and discharge of patients. She said the road is a single lane, dirt road that is steep with switch-backs. She said that she does not think 20 spaces is adequate that under section 530.1 of the zoning regulations. She does not think that this it is the applicable number. She thinks that this facility or site cannot comfortably accommodate a much larger number than that.
  42. Doug Leech said these questions are hard to answer and he understands that without any knowledge of how these facilities operate, the questions would come up. If there are 5 nurses FTE, there will be one at a time at any given point in time. They will not have 30 FTE there at the same time, possibly 7 – 8. It is hard to respond to the questions. We do this all over the country. We will meet the requirements and always have had ample parking. He does not think they will use all 20 spaces, based on experience. He does not think parking will be an issue. They have 18 acres and have other facilities on one acre. He does not think there will ever be a traffic jam, based on his experience. When we put together a plan it is based on decades of experience.

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43. Toni Girardi asked how many employees Divided Sky will employ.
  44. Doug Leech we haven't opened the center yet and it depends on the start. They will hire adequate number of staff for the patients we have. Our staffing plan is adequate and based on all of the regulations that apply to facilities like this. Patients will not bring cars. People will not just show up and knock on the door. They will have to be pre-admitted. We have a plan for every person coming into the facility and their transportation to the facility is part of that plan.
  45. Phil Carter said that Brian Maggi noted that parking has to be within 300 feet from the front door. Per the site plan, it is about 200 feet from the front door to the upper back property line.
  46. Cheryl Buffo said that she has worked for Ascension for 3 years and has worked on several different project and this conversation is painfully similar to conversations she has heard several times. There is parking for staff and possibly only 2 parking spaces by guest at any given time. She had never seen an ambulance or Emergency service show up. They opened in July 2019. These are not scary people.
  47. Lyle Hawes asked what if there is maximum number of staff at one time. In the winter, there is no space to park other than the spaces outside the condos, maybe by the tennis court, but they are not in the calculation and if there are 10 detox beds, what about incidents or problems that may occur.
  48. Phil Carter said we are not there yet.
  49. Chris Roy said that all of the parking areas being used on the parking plan are existing, and not new. They will be better organized and better laid out. We did submit an engineering analysis as to the needs for potential staffing. We have also heard from Ascension personnel about their experiences. This is a very structured facility with structured programs. As a consequence, they have the ability to control how many vehicles are on site at any given time. So, at the end of the day, if a condition of the permit approval is that these are the spaces you get and you can't exceed these spaces, then they will have the ability because of the level of control they have at the facility to make sure they can comply with that. They have made the showing both from the clinical-operational perspective and the engineering perspective as to why the parking is adequate and it will be better defined and utilized and if it is a condition of the permit, they have the ability and obligation to make sure that their operation conforms to whatever the permit conditions are.
  50. Jim Hoffman noted that none of their other properties are not located at the end of a 1.5-mile dirt road up a steep mountain with switchbacks. They are in urban areas. They have a 30 bed plus 12 detox bed facility in WV with 30,000 square feet and 92 parking spaces. This is a serene area and they will cram 40 people into a 11,000 square feet property.
  51. Doug Leech said it is hard to compare. They plan to build multiple other pad sites and will be putting in more buildings at that site. So, the comparison of 92 spaces is not accurate. We have done rural areas. We have a 24-bed facility on 1.5 acres, with 7 – 8 parking spaces also up a steep hill.
  52. Jim Hoffman said Brooksite Farm.
  53. Doug Leech said Brooksite Farm is no part of Jacob's Ladder. It is rented and people go there to perform farming activities.
  54. Jim Hoffman said there isn't a house close to it.
  55. Doug Leech said there is a house next door.
  56. Brian Maggi said that parking around the curve doesn't exist today. There is a significant grade change.
  57. Phil Carter asked if that was opinion or fact.
  58. Brian Maggi said to look at the site plan.

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59. Phil Carter asked if cars have parked there before.
  60. Chief Jeff Billings said they have always allowed people to park there, sometimes 6 to 10 to 12 on the corner and there was never an accident. There has not been an issue with parking in the 32 years he has been there. There has not been an issue with snow removal. There have only been about 2 to 3 accidents on the hill in the winter when it gets narrow. He said parking was always allowed there. He said they have never been an issue called into us by the condo units that they couldn't get by there or that there was a parking issue.
  61. Julie Kniceley said they can control parking by staggering shifts by the hour. They can be flexible. They can shuttle people. They have the ability to control the parking
  62. Toni Girardi asked how many people, in total, will be employed. She reiterated that they told this board 30 people, and in the application to Green Mountain Care, (which she said was not provided to this board and submitted after the deadline) said 40 employees and the traffic assessment said 45 plus employees. How many employees will be employed at this facility?
  63. Chris Roy said for a parking analysis we want to be conservative. He said here we are looking for a number higher than we would be looking for approval elsewhere to demonstrate that the parking needs can be met. He said that he doesn't think that the DRB typically gets down, when it is dealing with a conditional use site plan application into dealing with shift or numbers of employees. He said what they deal with is if the parking needs can be met. Here we have used very conservative numbers. The traffic study looked at the maximum possible and even with 45 employees, we believe we have shown what is needed and demonstrated that adequate parking is available.
  64. Toni Girardi asked if the facility will allow visitors.
  65. Doug Leech said at specific times, weekends when there are no clinical programs. Saturdays or Sundays, may 3 or 4. We can control who visits and when. There will be scheduled times and limited numbers.
  66. Toni Girardi asked if there is a concrete proposal for visitation schedules for this facility.
  67. Doug Leech said either Saturday or Sunday and they have not set exact hours. They will do that later on in the process. If, at some other time, we need family members for a session, possibly with a counselor, that would be scheduled. We are not saying that there will not be visitors other than on weekends. This is not a facility where people just drop by.
  68. Toni Girardi asked if the number of visitors will be restricted on those visitation days.
  69. Doug Leech said family members or partners will be scheduled. It will not be a free-for-all. If parking is a question, 20 spaces are all we would need.
  70. Patrick Smart said patients/clients will only have one visitor at a time.
  71. Darlene Ragozzine said if the patient only be allowed to have one visitor at a time and if it would be more, and parking becomes an issue, where will people park. Have there been discussion with Fox Run if they will be allowed to use their parking. Will they be allowed to walk around the property unsupervised with their loved ones?
  72. Patrick Smart said that he will affirm and reiterate that they have 20 spaces and they will be adequate to meet their needs. There will be structured visitors as needed and handle programming accordingly to make sure that the 20 spaces is adequate for their needs.
  73. Phil Carter asked if the clients will be allowed to walk around freely with the visitors.
  74. Doug Leech said that is a hard question. It is rooted in "these are bad people and they need to be chaperoned and escorted around." This is not the case. These are people that are here voluntarily
  75. Toni Girardi objected.
  76. Doug Leech continued.

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77. Darlene Ragozzine said that her son was in rehab center by court order. She asked if there would be anyone there by court order. She said that when she went to visit, they were very strict about where I could go, what I could do, what I could bring and where I could go with him, mostly just to the cafeteria and we were not allowed outside. I was only allowed a limited period of time. Will that be your policy? Will visitors be checked?
78. Morgan Henson said that we (Divided Sky) touched on this at the last hearing. We own the property. She said that she walked the property in July and October and is in long term recovery. She said everyone still has all of their belongings and the property was not harmed. That is something to take into consideration. Even if they are walking around, it's not like it's just going to be people running loose.
79. Toni Girardi said that she objects to the assumption and characterization that these questions are being asked for some nefarious purpose. She said that she thinks that the Fox Run folks have a legitimate interest in how traffic and the presence of more people are going to impact the character of the area and they are allowed to participate and ask these questions. And, as we have made clear, we have no ill will toward people in recovery. Everybody at Fox Run has, in one way or another been affected by addiction and I object to any characterization or any suggestion that they are discriminating or stereotyping in any way. They are simply asking questions that are relevant to this proceeding as to how it will impact traffic, parking and the character of the area and related issues.
80. Phil Carter asked Toni Girardi if she thinks the DRB is limiting discussion.
81. Toni Girardi said so not as it pertains to this particular reason that I am objecting, but while you've raised the issue, I do have to object to the general format of this hearing. This is an on the record hearing. It's been a little difficult to follow along and have a meaningful opportunity to direct examine witnesses, cross examine witnesses, object to certain statements or evidence that have been entered and certainly doing this over video-conference with this number of participants is a bit unwieldy. I recognize that COVID had brought this on, but the fact that this, being on the record makes these errors fundamental and prejudicial. That's my general objection to this format.
82. Phil Carter said it is the position of this board and we said it at the very first part of the first hearing, you're right. It's very difficult to do these on a Zoom meeting. But I also said that our intent is for everybody to be heard and so far, so good. He said that he doesn't think there is one person in this hearing that can say that they have not been heard or were denied testimony or denied to be cross examined. None of that has happened. This has been open, above and beyond where it should be. The fact is, this is a relatively simple hearing – a change of use, but I've opened this up to discussions that really aren't pertinent to the criteria of the actual zoning. I did that because I want everyone to be heard. I know this is an emotional issue. I know it's far reaching, with all kinds of different tentacles out there. Peoples' lives, quality of life, neighborhoods, loved ones – all of it. So, this board has taken the approach to go above and beyond and to let everybody be heard and have an opportunity to respond to what's being heard. And, if anybody here, during this hearing feels that that's not happening, please speak up because I would have addressed that immediately. We could have wrapped this hearing up, probably in one hour at the first hearing. But here we are again, in that same vein with everybody having the opportunity to speak their mind and that's where we are at with this hearing.
83. Julie Kniceley said that visitation will be structured and set up in advance. They will limit the number of people and cars. We get to know our guests and know who strong supports are for our clients and who are not. We don't want to put our patients in a bad situation. We do check what the visitors bring in and put things in lockers. People will be able to walk around with structure. We want to make sure the patients stay in recovery.



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84. Phil Carter asked what the security plans are: staff, cameras, searches. What assurances can Divided Sky give to their neighbors?
  85. Morgan Henson said there will be cameras and staff. People will be searched as well as their belongings.
  86. Julie Kniceley said when a person is admitted, all of their items will be searched for approval and appropriateness before they can get into the residential treatment area. There are rules as to what may and may not be allowed. We want to make sure they are ready for treatment.
  87. Phil Carter asked who watches the cameras.
  88. Julie Kniceley said there will be 24/7 security who will make rounds and watch the cameras.
  89. Morgan Henson said there will also be 24/7 staff who will be making rounds.
  90. Phil Carter asked if patients will be allowed to leave the building.
  91. Julie Kniceley said there will be a schedule for free time and there will be constant staff around with them. We take head counts.
  92. Darlene Ragozzine said that she read in an article that the driving range will remain and that Mr. Caruso will be adding family friendly features, including bocce, horseshoes and a dog park. It will go from behind the maintenance building. They will build a trail that will lead to the snow making pond. In addition to the children at the condos, there will be children there. If I were a visitor and wanted to go outside, can I walk freely on the trail and service road? Would I be supervised to make sure nothing inappropriate happens? What about court ordered individuals? this is not discriminatory, but I know how they operate. This needs to be answered.
  93. Chris Roy said that he has not objected to some of the statements as long as they are tied into the issue. The reason is that while this is on the record review, this is not a court of law. You are allowed to hear what their issues are, as long as it is tied to the issue and the DRB will separate it all out later. You have erred on allowing people to be heard. In response to the question from Darlene Ragozzine about court ordered and statements that people are there voluntarily. These are 2 separate issues. Someone may be ordered by court to seek treatment, but it is their choice to come to this particular facility and to abide by its rules and treatment protocols. That is voluntary. So, just because someone may be court ordered, it may be the push they need to go for treatment. They voluntarily choose the location and approach that is right for them. Finally, I'm not really sure that this is not too far afield with Darlene Ragozzine's question. My clients may have concerns about folks who rent out their condos through Air B&B, what do they do to check that it will not be a bunch of wild parties, who may come down and interfere with our quiet, therapeutic facility. That shows how absurd that question is. If it was a cancer treatment facility, would we be talking the same way about the people walking around outside. I don't think so. There is literally no evidence before this board to suggest any real danger or any disruptive behavior that will impact the character of the area. There's a lot of evidence to the contrary. And, we have a lot of non-discriminatory speculation about those kinds of people being next door. Which, frankly echoes the court proceedings of the 1980s, where "those people" were the weight loss people and now it's the treatment people. But they're not discriminating. And, it's completely inappropriate for this board to worry about future development somewhere else as a reason to prevent current development here that complies with zoning. There is a line; we want everybody to be heard. And, after their statements, they add, "we've all been touched by this" and "we're not being discriminatory." And yet, they make characterizations, stereotypical, unsubstantiated speculative statements, over and over again, rehashing points we have heard. We get it. They don't want it next door. But, that's not the question. The question is, does the application satisfy the zoning standards and we are yet to hear anything that suggests that there's anything about this application that does not satisfy all those standards.

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94. Toni Girardi said that Attorney Roy's characterization that safety concerns have not been entered into evidence is false. The Chief of Police raised safety concerns at the last hearing. The fact is that, there is yet to be anything challenged that the application hasn't met the criteria of the site plan. We have challenged parking and traffic concerns. The Fox Run folks don't need to justify before any question is asked of the applicant or to make sure people know. They don't have to prove that they are not discriminating. Darlene Ragozzine does not have to explain that she has personally been affected by her son going through treatment. If we want to keep this on the issues about parking and the site plan and the character of the area, we certainly can do that. We can't act like these aren't valid questions and they're not relevant to this board's inquiry.
  95. Jose Marcal said that he is concerned that this is going from a leisurely residential activity to a medical facility. The fact that they have to meet JACHO (Joint Commission on Accreditation of Healthcare Organizations) criteria and its requirements in order to bill insurance companies This makes it a medical facility. What is the back-up plans if someone gets sick? What about drugs interactions. What about withdrawal medications. What about psychosis. It is miles to Springfield or Dartmouth.
  96. Morgan Henson said we will not accept medically compromised people. If someone needs care, we will send them to Springfield. All staff will be CPR trained.
  97. Jose Marcal asked if the staff will be qualified for defibrillation, crash carts or need to resuscitate.
  98. Steve Burton said that the facility will meet all JACHO standards.
  99. Melissa Perrino said that she is a Licensed Substance Counselor in Ludlow. She said that parking is a non-issue and they have done a great job explaining how the facility will operate. She has a 10 year and has talked to her child about alcoholism and drugs. There is no need to be concerned as parents. This creates the opportunity to talk to children about abuse. She said that for court mandated people, they may not have taken the step to get help without the mandate.
  100. Jason Batten said that the accreditation is voluntary and they have gone above and beyond. Staff will meet ASAM (American Society for Addictive Medicine) Level 3.7.
  101. Phil Carter asked about exterior lighting.
  102. Pat Smart said there is existing exterior lighting and they will replace it with dark sky compliant lighting. They have submitted a cut sheet.
  103. Phil Carter asked if it will be downward lit.
  104. Patrick Smart said yes.
  105. Phil Carter asked about lighting down the hill.
  106. Patrick Smart said other than the existing lighting on the exterior of the building, there will be no additional lighting.
  107. Toni Girardi asked if they are able to guarantee that they will not admit dangerous or violent individuals.
  108. Julie Kniceley said there is a pre-screening process done by social workers and licensed therapists. They will have to be emotionally, socially and cognitively stable. She said that most of their referrals come from other facilities that have also screened the individuals. We will screen them again when they come to our facility. We screen for symptoms, whether they are suicidal or homicidal. If they are dangerous or problematic, we have the ability to say they are not acceptable. Once admitted, we continue for 24 – 48 hours with multiple assessments. Bio psychosocial assessments are done by licensed therapists. They are partnered with staff that are like peer recovery coaches in recovery. We look for any red-flags. They are closely monitored for fit with our program. We look to see if they are comfortable or

- questioning the setting. If they are not ready for that level or program, we may refer them for higher level of treatment after a formal assessment.
109. Toni Girardi asked about the red flags they screen for.
110. Julie Kniceley said it is a Bio psychosocial assessment is very thorough that looks at environment, history, medical background, past treatments, trauma, substance abuse, family use, legal situations, nutrition and if they have sought medical or mental health help. There will be a lot of interactions, formal assessments.
111. Jason Batten said it is a very long process vetted by the Joint Commission. We also include spiritual and cultural background. We want to know who the person is and what they bring to the facility. It is based on ASAM criteria.
112. Toni Girardi asked about the mental health factor, can you elaborate.
113. Jason Batten said with substance abuse, they may have anxiety, depression or OCD. He said that any mental health disorder may co-occur with substance abuse.
114. Toni Girardi asked about ADHD.
115. Jason Batten said yes. He said that any mental health disorder may co-occur with substance abuse.
116. Toni Girardi asked about psychotic disorders.
117. Jason Batten said yes, schizophrenia disorders. He said that any mental health disorder may co-occur with substance abuse.
118. Toni Girardi asked about borderline or antisocial disorders.
119. Jason Batten said yes, any mental health disorder may co-occur with substance abuse.
120. Doug Leech said that a person with active psychosis would not be admitted. Their primary disorder will be substance abuse. He said we screen for primary substance abuse disorder. Thought disorders will not fit and the person would need a higher level of treatment. He added that anti-social behaviors also will not fit and would be screened out. He said that there are psychiatric inpatient facilities for a different population. People voluntarily choose this facility and they may have legal issues. People who are severely mentally ill will not fit in this program. We are looking for people who will be present, responsive and able to participate.
121. Toni Girardi asked if they are satisfied with their vetting process that you could guarantee that there will not be violent patients or guests admitted to the facility.
122. Chris Roy said that he objects. He doesn't see the word guarantee in the zoning bylaws. Nobody can guarantee anything, that the sun will come up in the morning or you won't get hit by an asteroid. There are processes in place to do the best they can. Most importantly, is to abide by the regulations promulgated by state and federal agencies with the expertise over these matters, which license facilities like this and oversee and ensure that the facility will be operated consistent to those regulations. He said this is getting far afield from the standards for this application under the zoning bylaws.
123. Phil Carter recognized the objection and said it is correct. We want to ensure the safety of the residents There is enough evidence to move forward. With regard to parking, they own 18 acres. There's a lot of room to park. We have received the municipal letters and discussed the letter from the police chief last month. He said that the fire chief listed the following conditions:
- The existing sprinkler system must be fully functional and tested.
  - A permit is required from the Vermont Division of Fire Safety, Fire Marshal's Office.
- Phil Carter asked if they had contacted the Fire Marshal.
124. Morgan Henson said they had had a conversation with Jay Moody and will have the Fire Marshal's inspection after these hearings are done.
125. Phil Carter asked if they had any issues with the sprinkler conditions

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126. Morgan Henson said it would not be an issue.
127. Phil Carter said that the Ambulance Department listed the following conditions:
- Access to the building needs to remain clear at all times. There should be ample room to park an ambulance in front of the building with egresses to remain clear and accessible at all times. All entrances/exits, hallways, etc. should be large enough to fit necessary equipment and personnel in the event of an emergency. If the building is to be locked at all times, you need to provide us with an access code to enter the building in the event of an emergency or have the entrance be staffed with somebody to let us in.
  - If a client needs transport to an emergency room, they will be transported to the closest appropriate facility which is Springfield Hospital per Vermont Emergency Medical Services Protocol
  - As talked about with Morgan Henson, the facility should be equipped with an AED on site. If this is a public access AED, then the appropriate paperwork needs to be filed with the State of Vermont. All staff should also be trained on CPR and AED use.
128. Phil Carter asked if they would be able to comply with each of these.
129. Morgan Henson said there would not be any problems.
130. Phil Carter referred to the letter from the Ludlow-Mount Holly Unified Union School District and noted that it said that it will have no appreciable impact on the Ludlow school system. He said that the neighbors are concerned about the character of the area and crime, In the documents submitted, there is a misconception about crime around treatment centers. This is a residential facility and has been mis-categorized. All parts of this are public record. He said that there is an expert witness.
131. Toni Girardi introduced Dr. Dr. Waller, Ph.D., Professor of Finance and Real Estate. He is an expert in the areas of real estate, market trends and negative externalities.
132. Terry Carter advised that there are 5 people in the queue ahead of Toni Girardi and Dr. Waller.
133. Jose Marcal asked what are the plans to upgrade the road up to the facility.
134. Phil Carter said there had not been any evidence submitted about the road and the road has been there since 1980.
135. Patrick Smart said the traffic study that had been submitted shows that there is no significant traffic impact expected and the existing roadway is adequate.
136. Darlene Ragozzine, next in the queue deferred her spot to Dr. Waller.
137. Jamison Scott asked if with the assessment process, will there be people on probation or parole admitted and will sex offenders be a part of the population.
138. Morgan Henson said no. They will have appropriate screening to make sure that does not occur.
139. Phil Fernandez said that he had submitted a letter to the board in support. He has 30 years' experience with the Department of Corrections and working as a partner with substance abuse resources in Vermont. He has often heard concerns about increase crime rates, noise, safety and decrease in property values. None of these occur. We are running out of places to send people who need help. In Vermont, there are a limited number of beds and we need more options. I regard to court mandated programs; people would be under the supervision of Probation and Parole. He said the courts in Vermont, can't mandate someone to go to somewhere except jail.
140. Chris Roy said there is a broad characterization and perception of what aspect of the character of the area. He would like to know what aspects of the character of the area Dr. Waller will address

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141. Dr. Waller said he was retained to offer his opinion of the impact the character of the area, quality of life and property values and externalities.
  142. Chris Roy objected to discussion about property values. He said that there are zoning bylaws in the state that include property values, but not in Ludlow are not appropriate. Ludlow does not have property values as part of its bylaws and is not a proper inquiry for these proceedings. He would also like to hear what analysis, specific to Ludlow that he has done as opposed to general research and whether and to what extent property values has on the zoning bylaws.
  143. Phil Carter said it does not. Ludlow does not have property values as part of our zoning bylaws. He said that since in all of the years since 1988, as part of the Planning Commission, Board of Adjustment and ultimately the DRB, he cannot recall even a conversation of the character of the area has included property values. However, character of the area is part of this discussion.
  144. Dr. Waller said he did research and while not specifically on Ludlow, all over the country. Externalities impact property value. Sex offenders are an externality. Historical properties are a positive externality. Foreclosures and schools can drive values down. Rehab centers decrease the demographics for the area. It is all based on the potential buyer. It's their perceptions. People may or may not perceive this as a negative. Many of the people at Fox Run view this as a negative externality. It's their perception. You are going to have people walking around the area will make people very nervous to be around these individuals, probably hanging and smoking. Legitimate or not. He said that he has spoken with 5 of his counselors and all 5 would not want to live in an area with a rehab facility. If the neighbors think of this as a negative externality, they will probably move out. You will probably see a downward trend in the area. People are not going to want to be out and enjoying the community. They are not going to feel safe walking around. It is their perception and you can't control someone else's perception.
  145. Cheryl Buffo said we have 5 new facilities in the past 18 months in all in residential neighborhoods. She has heard this conversation several times. There is a men's' center (not Ascension) with 15 beds behind a popular elementary school with a 20 soccer fields. There is a people trail surrounding it all and people are there all the time. She said that people are not leaving their homes because of it and she's not sure people even know what's there.
  146. Chris Roy asked if Dr. Waller was familiar with the concept of the character of the area for the purposes of Vermont Conditional Use review.
  147. Dr. Waller said no.
  148. Chris Roy asked how Dr. Waller, he has been able testify about the impact this project would have on the character of the area affected if not familiar with it
  149. Dr. Waller said he had numerous conversations with the association members as to the environment that has existed over the years and the country life styles, they've enjoyed and their perceptions about what it would happen should this facility come in.
  150. Chris Roy asked how many of the owners at Fox Run are year-round, permanent residents.
  151. Dr. Waller said he doesn't have that data in front of him.
  152. Toni Girardi objected to the format of this particular witness. She said she doesn't know if she has even asked him one question.
  153. Chris Roy said that he certainly has no problem with Ms. Girardi asking him questions after I'm done, but I waited and I'd like to ask my questions. I don't have many and will not take a lot of time.
  154. Phil Carter asked to let Chris Roy finish up and then he will give Toni Girardi the floor.
  155. Chris Roy, asked, for purposes of this hearing, how do you determine the character of the area affected under the zoning bylaws.

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156. Dr. Waller said that based on prior conversation and his research on externality, it is very likely that the perception of these home owners would be negative toward the facility. If it is a negative perception, then it is likely going to decrease the homeowners' quality of life and/or utility.
  157. Chris Roy asked, putting aside the alleged impact on the character of the area affected, how do you determine for purposes of conditional use review, what the character of the area affected is.
  158. Dr. Waller said every homeowner has a different utility curve. It's impossible to say.
  159. Chris Roy asked what zoning district the property is in.
  160. Dr. Waller said he doesn't know.
  161. Chris Roy asked what is the purpose of this zoning district.
  162. Dr. Waller said he doesn't know.
  163. Toni Girardi said that she sees from his resume that you have been published and can you tell us, briefly, about the topics and research.
  164. Dr. Waller said he has done about 40 peer reviews, and 2 texts. Most are on residential real estate. Quite a few are on residential real estate and particularly on externalities; sex offenders, historic properties, rehab facilities, schools, foreclosures etc.
  165. Toni Girardi asked if he had been published in any academic journals or other noteworthy platforms.
  166. Dr. Waller said yes, many other platforms.
  167. Toni Girardi asked if there is a particular article, he wrote that is relevant to his presence here tonight.
  168. He said that for properties located within 1/8 mile of a rehab facility – which is further than this particular instance here, up to 17% decrease in value.
  169. Chris Roy objected, noting that Phil Carter had made it pretty clear that impacts on property values is not relevant.
  170. Phil Carter sustained the objection.
  171. Toni Girardi asked if he is from Virginia.
  172. Dr. Waller said yes.
  173. Toni Girardi asked if he has consulted outside of Virginia
  174. Dr. Waller said yes, in Indiana, Chicago and Florida.
  175. Toni Girardi asked if his opinion had been accepted as evidence.
  176. Dr. Waller said yes.
  177. Toni Girardi asked if he is familiar with Fox Run development.
  178. Dr. Waller said yes, it is a resort, with country club, town homes, a one lane road, that goes by the facility (which appears to be a nice facility) up to the town homes where the home owners live, which is basically within 100 yards of the facility. He has researched public records, engineering studies and talked to home owners.
  179. Toni Girardi said, without talking about property values, what is the socio-psychological impact of this plan.
  180. Dr. Waller said there is a perception of fear and the quality of life, there are negative externalities of crime, undesirables, impact on how they will move about the facility. This is their perception.
  181. Toni Girardi asked if he had reviewed the research material provided by Divided Sky
  182. Dr. Waller said he had read the study by the opposition on substance abuse and local crime.
  183. Toni Girardi asked his opinion of the research.
  184. Dr. Waller said in 2016 the county level data. It deals in averages which I get some statistics. He said it says that showed that over 50% of the population lives in less than 5% of the county

- This may be skewed. They even admit that they didn't consider how far to homeowners and whether or not it impacted crime. So, they acknowledge that it is a drawback in their article.
185. Toni Girardi asked, based on his research, what do you know about the proximity from the substance abuse treatment facility to the nearby home.
186. Dr. Waller said that someone had said in previous testimony that they are not sure people know it's here. Well, that's something that we found in our sex offender paper. If you are in a big, metropolitan area, neighbors are totally different that if you are in a rural area. Out in Virginia, somebody that is 2 miles away, where in New York, it's 2 blocks away and you don't even know who you are dealing with. So, it all depends on the area and the geographical atmosphere which you're working from. But regardless, whatever the definition is, generally, the closer you are to an externality, where it be positive like a bar, or negative like a sex offender, it's going to have a higher impact on the homeowner.
187. Phil Fernandez asked the board to ask Dr. Waller if he is familiar with the 2019 study National Bureau of Economic Research, about substance abuse, disorder treatments centers and property values.
188. Dr. Waller said the one that he is familiar with deals with substance abuse, treatment centers and local crime.
189. Phil Fernandez said that Dr. Waller has mentioned property values and it appears in a more recent article, that property values are not impacted.
190. Phil Carter interrupted, noting that we are not considering property values at this hearing. It's not part of our criteria. It's a conversation that we could have but it's not going find its way into the findings of fact. He asked Rose Goings if there was an update on the sewer issues.
191. Rose Goings said that she was told that it had been fixed and was out there one day and they are potting the sod back. I believe that it is 100% repaired.
192. Troy Caruso said that is not correct.
193. Patrick Smart said that they completed the additional repairs at the golf course and if there are more, we are open to hearing about them. He said that his understanding may be in error.
194. Phil Carter said that the septic system has to be working and approved.
195. Patrick Smart said to his knowledge, they are working and functioning
196. Phil Carter asked who signs off on that. Who attests that it is working?
197. Patrick Smart said he will. It is regulated under an existing VT DEC indirect discharge general permit, ID # 9-0136 and the system is being operated in accordance with that permit.
198. Troy Caruso said that some of the work has been done and they did a good job on it. The golf course is back to normal, but there is still on the golf course for the 1/3 phase. He said that phase #1 is done, they found a pipe that had bypassed the tanks that was going directly into the leeching field. Then they found a clean out which they did last week that done. They need to test the leeching on hole #3. They need to come down on 3 and actually see if the system is working because when you put 25 or 40 or 50 more people up there in that building, we don't know what will happen, because the solids were going directly into the leeching field, bypassing the tank on the line that has been abandoned for years that people may not know about. They need to test the fields to see if the system is working.
199. Patrick Smart said that when this was identified this spring, they reported it to the VT DEC and provided them prompt notification as required by the permit and followed the verbal directions received to find and repair the cause of the leak. We firmly intend to continue to operate the system in accordance with the permit. They fully intend to make sure the system is operating per the initial design and in accordance with the permit conditions which includes prohibition of surfacing wastewater.
200. Phil Carter asked board members if there are any other points they want to discuss.

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201. Dr. Waller said that to clarify. He said that in his report, he does include that the property is in the RC1 zoning district required standard rule is the quality of life that's referred to in that statute.
202. Jim Hoffman asked how many full-time residents live there. In A building 2 FT residents out of 6. He said that last month, Patrick Smart had said that all of the work was completed. They uncovered the tank by B building and it was not complete. Unless completed today it has been a full month since he said the work was complete. The work is not complete. At the first meeting, Morgan Henson said that this facility would be for Windsor County and for the uninsured. He said that in his letter, Mr. Fernandez said facilities that historically relied on Medicaid payments have failed due to the financial burden. It's clear from their ad that Ascension will be marketing and recruiting from all over the country rather than Windsor County. He said he submitted a copy of the ad. The marketing people, in their ads said that Ascension provides concierge services dealing with problems. They said you can they pay for that, with American Express, wire transfer or Discover. There is not one mention of private insurance or Medicaid. Is this a private facility. Is it for Windsor County or will most of the people who pay come from elsewhere?
203. Phil Carter said that the answer will not matter to the DRB, it is not our purview to figure out payments or where people will come from.
204. Doug Leech said that they have not prepared any marketing materials for this facility. This is a Vermont non-profit organization and Trey Anastasio has raised money for people in Vermont seeking care. He has gotten grants and done fund raising. We will accept uninsured and underinsured people. We are a 501(3)(c) with a purpose to help people from Vermont.
205. Jim Hoffman said that the board has copies of the ad information.
206. Toni Girardi said that she doesn't think the ad Mr. Hoffman was talking about is not for this property.
207. Doug Leech said that is irrelevant. We have not prepared any marketing materials for this property
208. Toni Girardi said that the Green Mountain Care evidence was submitted after the evidentiary deadline for this hearing.
209. Phil Carter said he hasn't seen it.
210. Toni Girardi requested the option to submit finding of fact and conclusions of law.
211. Phil Carter said he is not sure how that works.
212. Rose Goings said the board would need to provide a date (for submitting evidence) and close the hearing after that date. She asked if Divided Sky would provide a copy of the 501(3)(c) for Vermont.
213. Doug Leech said it is a federal 501(3)(c) and he would have Morgan Henson send her a copy.
214. Rose Goings said that if Toni Girardi wants to send in findings of fact, the board would need to make a motion to close with a date maybe one week.
215. Phil Carter asked if one week is good.
216. Chris Roy said yes.
217. Toni Girardi asked for 2 weeks.
218. Phil Carter said they will close the hearing on May 24, 2021. He said that will give this board time to review the Green Mountain Care documents.
219. **MOTION by John Boehrer and seconded by Doug Sheehan to close this hearing effective May 24, 2021.**
220. Rose Goings stated that all documents must be submitted prior 5/24/2021.
221. **Motion passed unanimously.**



IV. **ADJOURN**

1. Phil Carter said they will not look at the minutes of the last meeting tonight.
2. **MOTION by John Bohrer and seconded by Phil Carter to adjourn. Motion passed unanimously.**
3. Meeting adjourned at 8:49 p.m.

Respectfully submitted,

Lisha Klaiber

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Phil Carter, Chairman

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Julie Nicoll

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John Bohrer

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Doug Sheehan

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Julie Bowyer

**(b)** For the purposes of this chapter, an interested person means any one of the following:

- (1)** A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
- (2)** The municipality that has a plan or a bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality.
- (3)** A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.
- (4)** Any ten persons who may be any combination of voters or real property owners within a municipality listed in subdivision (2) of this subsection who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.
- (5)** Any department and administrative subdivision of this State owning property or any interest in property within a municipality listed in subdivision (2) of this subsection, and the Agency of Commerce and Community Development of this State.