

TOWN OF WARREN, VT

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**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT AND NOTICE OF DECISION
PROPOSED RESIDENTIAL DEVELOPMENT**

Elaine E. Fuller
assistant TOWN CLERK

Application #2005-01-PRD submitted by Mark Bannon of Bannon Engineering on behalf of the Chisel Tooth Group seeking approval of a 5-Lot PRD/Subdivision of 100.3+/- acres. The property is located off Cider Hill Road in the Forest Reserve District. The project requires review under Article 5, *Development Review*, Article 6, *Subdivision Review*, Article 7, *Subdivision Standards* & Article 8, *PRD/PUD*, of the *Warren Land Use & Development Regulations*. This is a resubmitted application following the appeal to the Environmental Court of application 2003-01-PRD. The Court remanded the proposal back to the Development Review Board with the understanding that additional acreage in the amount of 10 acres was being purchased from adjoiner Jane Austin to meet the 100-acre minimum requirement.

A duly warned hearing took place on Wednesday January 26, 2005 and was continued to Wednesday March 9, 2005. The Final Plan Review was warned for Wednesday April 6, 2005. Deliberations of the Final Review were reopened briefly at the April 13, 2005 meeting. At the aforementioned hearings, the Development Review Board (DRB) reviewed documents and heard comments from the applicant and the public.

Members Present January 26, 2005: Peter Monte, David Markolf, Eric Brattstrom, Lenord Robinson, Jeff Schoellkopf.

Others Present: Richard Patterson, Mark Bannon, Lauren Kolitch, Jane Austin, Lil Brewster, Clayton-Paul Cormier, Jr., Harriet and Dick King, Alice and Peter Tenbeau, Miron Malboeuf, Ruth Robbins.

Members Present March 9, 2005: Peter Monte, David Markolf, Chris Behn, Lenord Robinson, Eric Brattstrom.

Others Present: Lillian Brewster, Tim Williams, Steve Butcher (Warren Fire Department), Jane Austin, Jim Caffry, Alice & Peter Tenbeau, Harriet & Dick King, John Donaldson, Cindy Carr, Trafton Crandell, Phil Huffman, Don Swain, Melna & Peter Hall, Ken Friedman, Joan Foster, Dotty Kyle, John Goss, Karin Ware, Richard Patterson, Mark Bannon, Miron Malboeuf, Ruth Robbins.

Members Present April 9, 2005: Peter Monte, Lenord Robinson, Chris Behn

Others Present: Rick Patterson, Mark Bannon, Lauren Kolitch, Shelia Ware, Tim Williams, Dick King, Harriet King, Andrew Cunningham, Miron Malboeuf, Ruth Robbins

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

In addition to all exhibits specifically referenced below, this decision will also be based on the Findings of Fact of December 3, 2003 along with any corrections /modifications that may have been determined during this review process.

1. The applicant submitted the following materials to the DRB:
 - Completed application #2005-01-PRD

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- Project narrative
 - Abutter notification and proof of mailing
 - Site Plan, Sheet 1, Parcel Map, dated 02/11/04
 - Site Plan, Sheet 2, Civil/Site Design, dated 02/11/04
 - Site Plan, Sheet 3, Road & Site Slope Analysis, dated 02/11/04
 - Site Plan, Sheet 4, Erosion Control Plan, dated 02/11/04
 - Letter and map from Mark Bannon to the DRB in response to additional information on wildlife habitat, dated February 11, 2005.
 - Letter from Mark Bannon to the DRB regarding the "Design Change at Initial Culvert Crossing STA 0+00"
 - Document titled "Grant of Conservation" supplied by Attorney Lauren Kolitch on behalf of the applicant, received 02/11/05
 - "Summary of Project and Review of Criteria" supplied by Attorney Lauren Kolitch on behalf of the applicant and received 02/11/05.
 - Chisel Tooth Group Member Agreement supplied by Attorney Lauren Kolitch on behalf of the applicant and received 02/11/05.
 - Letter from Mark Bannon to the DRB in response to Mr. King's Erosion Control Proposal, dated and received March 9, 2005.
 - Copy of Town of Warren Subdivision Permit Application for the Lot Line adjustment with the purchase of 10 acres from Jane Austin, submitted by Mark Bannon, received 03/09/05.
 - Letter from Mark Bannon to the DRB regarding Underground vs. Overhead Power Costs, received 03/29/05.
 - Copy of ANR Wastewater System and Potable Water Supply Permit, # WW-5-3139, dated 4/25/05.
2. The DRB received the following submittal material from interested parties:
- Copy of the *Order on Pending Motion* issued by the Vermont Environmental Court November 12, 2004.
 - Letter to the DRB from Tim Williams of Cider Hill Road, Warren, dated December 10, 2004.
 - Road Maintenance Association and Agreement submitted by Lil Brewster on behalf of the residents of Cider Hill Road.
 - Letter from Richard King to the DRB regarding suggestions for erosion control and monitoring standards, dated February 23, 2005.
 - Letter from Richard King to the DRB regarding erosion control and monitoring standards, dated April 5, 2005.
3. Rick Patterson and Laurie Patterson, Chisel Tooth Group Applicants & Mark Bannon, Chisel Tooth Group Engineer presented the proposed project, which includes a 5-Lot Proposed Residential Development with an additional lot of conservation land on 90.2+/- acres in the Forest Reserve District.
4. Under the Warren PRD provisions, a 25% density bonus could be achieved if 60% of the total acreage is set aside as open space.
5. With the current acreage (90.2+/-) only 3 lots may be created. With the 25% density bonus 3.75 lots may be created; therefore the current bulk acreage is not large enough to achieve an

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additional lot with the density bonus. A total of 100 acres would be necessary to achieve an additional lot in the FR District. (e.g. 100 acres = 4 developable lots; $4 \times 25\% = 1$ additional lot; achieving 5 developable lots).

6. The Chisel Tooth Group has an agreement with Jane Austin, an adjoining property owner, to trade the development of the shared road up to the river in exchange for 10.1 acres of her land. The 10.1 acres will complete the Chisel Tooth Group's minimum 100 acres they need for a 5-Lot PRD.

7. The land could "strictly conform" to the Warren Land Use & Development Regulations by subdividing the land into four narrow lots parallel to the length of the property.

8. The Chisel Tooth Group would like to concentrate the development at the lower elevations and conserve most of the high elevation property.

9. Each individual lot owner of the 5-Lots must come back before the DRB for a conditional use permit to develop within the Forest Reserve District, the clearing restrictions for each lot will be reviewed at that time.

10. The only exceptions to the prior permit condition would be for the development of the road and the conservation land that is in the state current use program.

11. The building envelopes were configured to exclude all slopes > 25% grade.

12. The DRB waived the 200' lot frontage on Lot #5. They have the authority to waive the dimensional standards to accommodate the clustered development in the PRD standards.

13. The applicant has included a 14' right of way for common access for the 5-Lot owners to the 60-acre conservation land.

14. The location of the stream from the replacement leach field on Lot #3 is indicated to be 50 feet on Site Plan Sheet 2, Lot #3 Septic Design.

15. A PRD in the Forest Reserve Zoning District requires 50% of the land to be conserved. The application is approved with a 25% density bonus as allowed for under PRD standards when 60% of the land is put into permanent conservation.

16. In addition to benefiting the productive timberland, animal habitat and headwater streams the conservation land will also benefit the general public because the applicant has agreed to not prohibit public access to the 60-acre conservation parcel.

17. The clustering of the development will also help to preserve the view of the lot from across the valley.

18. Owners of the Chisel Tooth Group Association may choose to post their own individual lot.

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19. The Warren Fire Department conducted a site visit and requested the Chisel Tooth Group road be roughed in before they would issue a letter of support for the project, which they ultimately did issue on September 12, 2003.
20. The portion of property to be acquired from Jane Austin will also be included in the conservation area.
21. Erosion control measures; including, without limitation, diversion dikes, vegetated buffer strips, stone dikes, hay bale dikes, seeding and mulching (collectively, "Erosion Control Measures") shall be installed, maintained, repaired and replaced in substantial conformance with all plans and specifications submitted to and approved by the Board and all permits, permissions and authorizations issued by the Board.
22. Erosion Control Measures shall be installed, maintained, repaired and replaced in substantial conformance with all plans and specifications submitted to and approved by the State of Vermont, Agency of Natural Resources.
23. Annually on September 1st in each year until the completion of the common access road to the project is complete, a physical inspection of the road construction area shall be conducted by a person designated by the applicant (the "Contact Person") and following each such inspection, a written report shall be prepared detailing the conduct of the physical inspection, including the name, address and telephone number of the Contact Person, the time and date of the inspection, the weather conditions during and immediately prior to the inspection, and any evidence of erosion and /or silt collection observed, any maintenance, repair or replacement of any Erosion Control Measure performed any replacement and/or additional Erosion Control Measure installed (the "Report"). The name, address and telephone number of the Contact Person shall be included in the Chisel Tooth permit file maintained by the Town of Warren. A copy of the report shall be filed by September 1st with the Zoning Administrator and made available as part of the Town's public records.
24. In the event that any Erosion Control Measure has been damaged, moved or has failed in any material way to be effective, including, without limitation, if sediment has collected behind any dike to the level of one-half of the height of the dike, then, and in each such event, appropriate remedial action shall be undertaken with respect to the damaged, moved or failed Erosion Control Measures and all collected sediment shall be removed and disposed of appropriately and such compromised Erosion Control Measures replaced with new Erosion Control Measures of comparable or better effectiveness.
25. All road surfaces shall be covered with gravel of sufficient quality and depth to effectively prevent erosion of the road surface. All other disturbed surface areas shall be seeded, fertilized and mulched. Any newly disturbed surfaces shall be seeded, fertilized and mulched at least weekly. If for any reason the seeding, fertilizing and mulching does not result, within a reasonable period of time, in healthy, growing vegetative ground cover over the disturbed area, then seed impregnated matting shall be applied according to the manufacturer's instructions in each such area.

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Notice of Decision:

The Development Review Board approves the application subject to the following conditions:

1) The project shall be constructed and used only in accordance with the terms, plans, procedures and specifications stated:

- In the application, as amended,
- All exhibits furnished by the applicant, and
- All findings of fact and conclusions stated above in this decision.
- The Subdivision Plat approved by the DRB.

2) The Mylar Plat to be filed in the land records must indicate that it was prepared from a land survey and that the parcel in question, including the land transferred by the adjoining Austin property, is a minimum of 100 acres.

3) The additional acreage (10.1 acres) from the adjoining Austin property must be transferred to the Chisel Tooth Group prior to the filing of the 5-Lot PRD Mylar Plat.

4) The applicant shall not restrict non-motorized public access to the 60-acre conservation area. The public access must not interfere with the forest management activities.

5) The applicant must hire a qualified professional to prepare a report explaining any damage caused by the road construction runoff. The DRB must receive the report by June 15, 2005. The DRB reserves the right to impose any conditions necessary to remediate the damage.

6) The 60-acre conservation area must be managed as productive timberland under a forest management plan prepared by a forester.

7) The protective covenants and restrictions as submitted will be imposed on all lot sales and any changes to the document require prior approval by the DRB.

8) All driveways, rights of way, and easement access are to be plowed and maintained to a minimum width of 14 ft. in winter. Private and feeder roads are to be plowed and maintained to a minimum of 16 ft in winter. Normal maintenance, as to not restrict access, shall be expected for the remainder for the season.

9) All corner radius' including parking areas, turn around, and access from the main roads in both directions shall not be less than 30 ft inside radius.

10) A 70-ft by 70-ft turn-around, suitable hammerhead, or equivalent shall be constructed as indicated on the application.

11) A 12-ft by 50-ft turnaround on access roads and driveways shall be required for all roads over 400 ft as well as every subsequent 400-ft.

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12) No zero clearance fireplaces shall be allowed, no combustible materials are to be in direct contact with masonry, and only masonry chimney shall be acceptable. Wood-burning stoves are suggested for backup heat only.

13) If, and when, ponds or swimming pools are constructed, the Fire Department shall be notified in advance for advice and assistance should the installation of standpipes or hydrants be required.

14) Each residence must be equipped with a sprinkler system of a rating of 13-D minimum.

15) All private or common roads shall vary in width but must be maintained to a minimum width of 16' 0" at all times.

16) Any roads or driveways shall not exceed 15% gradient.

In accordance with Section 6.5 and the Act [§4416], within 90 days of the date of receipt of final plan approval under Section 6.4(C), the applicant shall file 3 copies of the final subdivision plat, 1 mylar copy and 2 paper copies, for recording with the town in conformance with the requirements of 27 V.S.A., Chapter 17. Approval of subdivision plats not filed and recorded within this 90-day period shall expire. Prior to plat recording, the plat must be signed by at least two authorized members of the Development Review Board.

Approval shall become effective once this decision has been signed by at least three members of the Warren Development Review Board who participated in the final decision. Beginning the effective dated of this decision, there is a 30-day period during which parties may appeal the decision to the Environmental Court.

Development Review Board

Lenord Robinson 5/27/05
Lenord Robinson (date)

Chris Behn 05-25-05
Chris Behn (date)

Peter Monte 5/25/05
Peter Monte (date)