

Town of Warren  
Development Review Board  
Minutes of Meeting  
Wednesday March 9, 2005

000795

- Members Present:** Peter Monte, David Markoff, Chris Behn, Lenord Robinson, Eric Brattstrom (for Chisel Tooth application only), Virginia Roth (for Ward Properties application only)
- 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.
- Agenda:**
- 1) Call meeting to order, 7:00 pm
  - 2) Election of Officers (Article III, 3.1)
  - 3) **2005-01-PRD**; continued from January 26, 2005; application submitted by Richard Patterson on behalf of the **Chisel Tooth Group** seeking approval for a 5-lot PRD/Subdivision of 98+/- acres. The property is located off Cider Hill Road in the Forest Reserve District. This project requires review under Article 5, Development Review, Article 6, Subdivision Review, Article 7, Subdivision Standards & Article 8.
  - 4) **2005-05-CU**, Conditional Use application submitted in conjunction with **2004-05-SD** subdivision application continued from February 9, 2005. Application #2005-05-CU submitted by **LandPlan, Inc & Lincoln Ridge LLC** on behalf of **Ward Properties, Inc.**, seeks a conditional use permit to use a 39 acre parcel located in the Forest Reserve District for Outdoor Recreation. This request requires review under Article 2, table 2.1 (C,D,E & F) Forest Reserve District, and Article 5, Development Review. In conjunction, #2004-05-SD, originally warned for September 29, 2004, is a continued application submitted by LandPlan, Inc. on behalf of Ward Properties seeking approval for a 20-lot subdivision of 170+/- acres. The property, parcel # 048000-100 is located on Inferno Road in both the Rural Residential and Forest Reserve Districts. This project requires review under Article 6, Subdivision Review & Article 7, Subdivision Standards.
  - 5) Other Business: Review minutes from February 23, 2005; Review schedule for March & April.

I. Call to Order

The meeting was called to order by Chairman Monte at 7:00 pm. The order of the agenda was changed, moving the Election of Officers, item #2, to the end of the meeting.

TOWN OF WARREN, VT

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Vol 172 Page 795-803

Elaine E. Fuller  
assistant TOWN CLERK

**II. 2005-01-PRD, Chisel Tooth Group, 5-lot subdivision off Cider Hill Road**

The following documents were received at the meeting in regards to this application:

- Four updated maps from Bannon Engineering; Parcel Map, Civil/Site Design, Road & Site Slope Analysis & Erosion Control Plan
- Letter from Bannon Engineering in response to Richard King's Erosion Control Proposal
- Subdivision Application for a lot line adjustment submitted by Bannon Engineering on behalf of Jane Austin, property owner.

Mr. Monte recognized Mr. Williams who asked for a response from the board to his letter that he sent dated December 10, 2004. Mr. Monte reviewed the four items; concern regarding road construction by Chisel Tooth and if it had been authorized; the status of meeting the 100-acre requirement; whether the density bonus was appropriate; and a question on conflict of interest procedure. Mr. Monte pointed out that the reason the board has alternates is to deal with any possible conflicts and that he did not believe any of the sitting members for this application had a conflict. The second and third items were the reason the applicant was back before the board and that they were dealing with it now. Mr. Williams asked if the board had a guideline they used, such as a prescribed number/percentage, when awarding the density bonus. Mr. Monte responded that there was no numerical guideline, that it was at the board's discretion, but that there had to be a significant contribution on conservation land put aside to even consider the bonus. He added that the density bonus was not automatic, or guaranteed. In regards to the 100-acre parcel requirement, Mr. Monte told Mr. Williams that the board could condition a permit as being "subject to" the transfer of property ownership to meet the required acreage. The final item was how, and by whose permission, did the road get constructed beyond the entrance to Jane Austin's property. Mr. Monte stated that whenever the DRB issues a permit that it also includes a section that states that one may need additional approval from other agencies and that it is the applicants responsibility to seek that information out. He went on to say that the DRB did not have the capacity or authority to "police" whether or not an applicant has secured all necessary approvals.

Mr. Monte recognized Mr. King who stated that he believed that during the last meeting the board was asked to consider whether or not to award the density bonus since the road was built without permission and that the statute makes that consideration appropriate. He went on to say that there was apparently a site visit that may or may not have been duly warned, who was there, and whether a quorum of the board ever approved anything that was said. The other issue is that a notice of violation was issued that he believed had not been appealed. Mr. Monte responded by saying that the site visit was part of an earlier proceeding that has since been appealed to the Environmental Court and we are now looking at anew. Mr. King asked for the details of the site visit to be clarified and Mr. Monte said any information would be in the files and he was welcome to look at them. Mr. Monte also stated that site visits are normally in conjunction with filed applications and are open to the public. Mr. Markolf spoke up and stated that he believed that the site visit in question was not a DRB site visit, but a site visit made by the Warren Fire Dept. and that whatever documentation he might be looking for was not to be had.

Mr. Monte opened the discussion regarding the issue of erosion control; a proposal by Mr. King and a response by Bannon Engineering. Mr. King commented that he thought the response of the applicant should have been submitted prior to tonight. A review of the minutes from January 26, 2005 showed that information was due to be submitted to the board by February 23<sup>rd</sup>, but there was no noted date by which a response to those submissions was due. Mr. Monte asked Mr. Bannon to briefly outline any difference between his proposal and Mr. King's. Mr. Bannon stated that there was little difference other than to make it easier to put into permit requirement form and that he felt they had gone further than Mr. King had requested in the spirit of making this a good project.

that the current plans had a total of 1.2 acres of disturbed area, and continued on to say that his use of "disturbed areas" could be equated to "impervious surface". It was determined that the information provided indicated that the 2 acre limit had not been exceeded.

With no further discussion, the **VOTE** was taken, motion passed, unanimously.

**MOTION** by Mr. Monte to adopt and make part of this decision the prior 16 conditions that were issued with the Findings of Fact & Notice of Decision issued to Chisel Tooth and recorded in the Town of Warren Land Records, Volume 161, pages 791 & 792 on 12/04/03 at 10:15 am with a modified date change in item # 5 from June 15, 2004 to May 15, 2005.  
**SECOND** by Mr. Markolf. **VOTE**, motion passed, unanimously.

**Article 7.3 Protection of Primary & Secondary Conservation Areas**

**MOTION** by Mr. Behn to accept the requirements under Article 7.3, sections A, B, C as being satisfied.  
**SECOND** by Mr. Markolf.

**DELIBERATIONS/DECISION:**

Mr. Monte reminded the board that Mrs. King had expressed concern for the potential of bear habitat and she suggested that the Agency of Natural Resources be called in to verify. Mr. Bannon pointed out that he had provided information from that agency that indicated that the area was not considered critical bear habitat but possibly seasonal habitat in the upper slopes of the parcel. Mr. Robinson shared with the board that he certainly did not consider his cross-country ski are bobcat territory/habitat, yet he had tracks from two cats on his trails recently. He went on to say that bobcats as well as bears will travel a considerable distance and that their territory is vast. He also felt that there was plenty of area up above where the project was taking place to take care of any bears. Others in the audience also recounted bear sightings in the area.

**VOTE**, motion passed, unanimously.

**Article 7.4 Open Space & Common Land**

**DELIBERATIONS/DECISION:**

Mr. Monte asked Mrs. King about her concerns regarding the Conservation Agreement submitted by the applicant. Mrs. King asked if in the interest of time, since her concerns were numerous, if she could put them in writing. Mr. Monte agreed and asked that she submits those concerns within one week, and that the applicants would have to respond within five days, to allow for review by the board before the next meeting. Mr. Patterson stated that he thought all this back and forth of concerns and comments should have taken place in February after that hearing, and that it appeared to be a delay tactic by the Kings. Mr. Monte said he could see why he might see it that way, but that since the board was not going to be able to complete the final review of his application tonight that he saw no problem in allowing for further comment.

**MOTION** by Mr. Monte to Table the decision on Article 7.4 until after the items discussed have been received and reviewed. **SECOND** by Mr. Markolf. **VOTE**, motion passed, unanimously.

The next topic Mr. Monte brought up was the road maintenance agreement with the residents of Cider Hill Road. Since the Hawkins were part of the Cider Hill Road Association, and the applicant has purchased the Hawkins property, it was determined that Chisel Tooth Group is part of the association and thus subject to their by-laws. The discussion continued as to the "status" of Chisel Tooth's presence, and with no actual residences existing, what their responsibility was. An amendment added in May of 2002 did call for the property owner to bear the financial responsibility for repairs to the road if undue wear & tear had occurred due to their use of the road. Mr. Monte continued, stating that the DRB did not have infinite legal power and thus did not have the authority to enforce the payment of any bills that may have accrued due to the road use. Mr. Patterson stated that he was unsure as to what was owed, had not received a bill, but wanted it made clear that the Chisel Tooth Group had the spirit of cooperation.

Mr. Monte then suggested that the board move on to review the criteria this application is subject to.

**MOTION** by Mr. Markolf to deem the application complete and to classify as a major subdivision.  
**SECOND** by Mr. Brattstrom.

**DELIBERATION/DECISION:**

Mrs. King questioned whether the application was "complete", asking if both primary and secondary conservation areas had been identified and identification of ridgelines and knolls that might be visible from public vantage points. Mr. Robinson commented that he had gone to the site and that it was his feeling that the number and size of the trees left plenty of room so as any building would not be obnoxious. Mr. Markolf reminded everyone that since this project was taking place in the Forest Reserve District, that each individual homeowner would have to come before the DRB for building/design approval, which would also carry screening/landscaping requirements and limitations on number of trees cut.

Mrs. King continued with a list of items that she felt the board needed more information/documentation on in order to consider this a complete application. They included: a report from the Agency of Natural Resources to verify any existing significant black bear habitat; whether the new plan for the extended culvert had the required state permits and an adequate erosion control plan; whether or not the project had complied with the maximum 2% lot coverage requirement stipulated under Table 2.1 in the Forest Reserve District; identify how the additional ten acres and the bonus density carries out the purpose of the Town Plan and the Forest Reserve District; the conservation easement document needs to be redone and resubmitted; and documentation that placing the utilities underground would be prohibitively expensive.

Mr. Monte clarified that calling an application complete indicated that all items required had been minimally met. Whether or not it was adequate or persuasive was another question.

With no further discussion the **VOTE** was taken, motion passed, unanimously.

Mr. Monte stated that they would begin *Final Plan Review*, starting with **Article 7.2. General Standards**.

**MOTION** by Mr. Markolf that standards under **7.2, A through H**, were satisfied.

**SECOND** by Mr. Behn.

**DELIBERATION/DECISION:** A discussion ensued regarding the 2% coverage standard. Mr. King brought to the board's attention a letter from Mr. Bannon to the Act 250 people which mentions an area greater than 2 acres of impervious surface requires a new development general permit. Mr. Bannon clarified that the general permit had a 2-acre threshold. He went on to say

**Article 7.5 Stormwater Management & Erosion Control**

**DELIBERATIONS/DECISION:**

**MOTION** by Mr. Monte to Table the decision until the Kings have had a chance to review Mr. Bannon's response to their erosion control concerns that he submitted this evening. **SECOND** by Mr. Markolf. **VOTE**, motion passed, unanimously.

**Article 7.6 Community Services & Facilities**

**MOTION** by Mr. Monte to find that the project satisfies the requirements of Article 7.6. **SECOND** by Mr. Markolf. **VOTE**, motion passed, unanimously.

**Article 7.7 Roads & Pedestrian Access**

**DELIBERATIONS/DECISIONS:**

Mr. Monte reminded everyone that there already was a condition in place that required the applicant to report any damage caused by road construction runoff that was due May 15, 2005, and that the board reserved the right to impose any further conditions necessary to remediate the damage. Mr. King asked if the revised culvert plans required a state permit and had one been acquired. Mr. Monte responded by saying that if a permit from the state was required, they better get one, but that it did not come under the board's jurisdiction.

**MOTION** by Mr. Robinson to find the project conforms to the requirements of Article 7.7. **SECOND** by Mr. Brattstrom. **VOTE**, the motion passed, unanimously.

**Article 7.8 Water Supply & Wastewater Disposal**

**DELIBERATIONS/DECISIONS:**

Mr. Monte asked if the applicant had acquired a permit from the town. Mr. Bannon replied, no, not yet. Since the requirement to obtain a permit from the town is part of the ordinance, it was determined that it did not need to be conditioned for in this proceeding.

**MOTION** by Mr. Markolf to deem this article satisfied subject to local and state agency ordinances. **SECOND** by Mr. Behn. **VOTE**, motion passed, unanimously.

**Article 7.9 Utilities**

**DELIBERATIONS/DECISIONS**

Mrs. King raised the question of whether evidence had been provided that showed that placing the utilities underground was truly cost prohibitive. Mr. Patterson pointed out that they were continuing the overhead up to the project property at which point they would go underground. Mr. Bannon added that to go underground for that section would most likely encounter ledge, require additional clearing, a wider road etc.

**MOTION** by Mr. Robinson to accept the Article as being satisfied since there were already overhead lines leading up to the project. **SECOND** by Mr. Markolf.

Mr. Brattstrom agreed with the logic behind the motion, as the placement of underground utilities could be more destructive to the area. Mr. Monte felt that the board needed to know what the dollar difference was in order to make a decision.

**MOTION** by Mr. Brattstrom to Table the Motion on the floor until further information was provided. **SECOND** by Mr. Monte. **VOTE**, Mr. Monte, Mr. Behn & Mr. Brattstrom YEA; Mr. Robinson & Mr. Markolf, NAY. Motion passed, 3 to 2.

### **Article 8.3 Planned Residential Developments (PRDs)**

#### **( C ) General Standards DELIBERATIONS/DECISION**

Mr. Monte stated that under this section, one of the criteria was that the overall density of the project should not exceed the number of units permitted if the land were to be subdivided into lots under the standards for the district in which the land is situated. It was brought up that the board had reviewed this standard in the previous application, and Mrs. King asked where the documentation was to support the decision. Mr. Monte said he did not believe that there was any such required documentation, so long as the board makes a finding that it could be done. Mr. Bannon indicated that he thought he remembered submitting a drawing that illustrated the two scenarios. Mr. Bannon went onto ask if the board was comfortable with the coverage issue and that the access road is included in the calculation. Ms. Austin posed the question as to whether or not the additional acreage that the road accessed should be included. Mr. Monte said that at a 1.2 % coverage percentage, the board didn't need to consider that possibility.

**MOTION** by Mr. Monte to recess this hearing and continue on Wednesday April 6, 2005 at which time the application will be reviewed for final plan approval. **SECOND** by Mr. Behn.

Before the vote was called, Mr. Monte asked if there were any other areas of concern that had not already been identified in relationship to this application. Since all "hot spots" had been brought up, the vote was called. **VOTE**, motion passed, unanimously.

### **III. 2005-05-CU & 2004-05-SD, Ward Properties, submitted by LandPlan, Inc.**

The following documents were received at the meeting in regards to this application:

- Letter from Adam Cook, President, Warren Fire Department
- Supplemental Submission to Preliminary Subdivision Plan Application from LandPlan, Inc. re: roadcut access from Inferno Road
- Letter to LandPlan from Hoffer Consulting, Inc. re: Water Supply Issues
- Letter to LandPlan from David Hirth, Biologist, re: wildlife habitat
- Written comments from the Warren Conservation Committee.

Mr. Monte called to order the hearing to continue the consideration of application 2004-05-SD and 2005-05-CU, a 20-lot subdivision request with a conditional use application of 39 acres in the forest reserve district for recreational purposes, submitted by LandPlan, Inc. for Ward Properties.

Mr. Monte identified that there were three areas of concern to be addressed. It was discussed and decided that the board would attempt to deal with the road(s) issue and the water issue, and

that the issues raised by the conservation commission would be postponed due to having just received their letter and the lateness of the hour.

Mr. Monte asked Mr. Swain to summarize Hoffer Consulting's report. Mr. Swain explained that the report showed that testing done on the existing wells showed that over a 72-hour drawdown period, the zone of impact or influence was limited to approximately a 500-foot radius. He went on to say that the report concluded that the wells to be drilled for the future homes were not likely to cause any interference on neighboring wells.

Mr. Brattstrom commented that the report seemed to be contradictory to the actual past experiences of many of the neighbors. Mr. Swain stated that they unfortunately had no specific knowledge of what the circumstances were at the time those problems occurred to be able to address what actually caused them. He went on to say that he felt the applicant had reached their limit as to what they could document regarding the water issue. Mr. Brattstrom asked if any consideration had been given to a central well situated further up the hillside. Mr. Swain said yes, that option had been considered and that the consultant stated that the possibility of impact could be more severe from a heavy pumped central well versus smaller individual wells.

Ms. Kyle stated concern for the protection of her shallow well/spring of which she has an easement for that is located on the Ward Property. It was pointed out on the map where it showed a 500-foot radius of protection. Mr. Friedman spoke up stating that he knew nothing about wells, but that due to his proximity to the project wanted to add his voice of concern. Mr. Markolf asked what was considered an acceptable yield on a well, in general. Mr. Swain replied that it would be less than a gallon a minute.

Mr. Robinson asked if the South Village wells on the Ward Property or the Existing South Village wells were the ones, which caused the neighbors well problems in the past. No one knew for sure, but Mr. Monte asked the Halls if they knew (back when this happened in the 80's) when the well tests were going to be conducted and how soon thereafter they experienced well problems. Mrs. Hall replied that they were notified of the well tests and that it was pretty much right after that their well went dry and stayed dry. Mr. Donaldson pointed out that the test logs showed that it couldn't have been from the wells on the Ward Property, and that current tests show that the radius of affect is only a couple hundred feet.

Mr. Monte asked the Board if they wanted to deliberate about the water question now or not. Mr. Friedman asked if there was a way to get a second opinion. Mr. Monte said that since there was going to be another hearing, and if the adjoining homeowners felt they could get it accomplished in a relatively short timeframe, that he would encourage them to get another expert to give his/her opinion. The Board determined that the next available hearing date would be Wednesday April 13<sup>th</sup> and went on to add that they would like to see the resulting information by Monday April 4<sup>th</sup>.

The other "hot spot" was concerning the West Hill Road Ext. and the Fire Department's position. The letter submitted by the department clarified where they stood regarding whether or to have a gate (they did not want a gate), possible improvements to West Hill Road Ext. to facilitate emergency vehicles, required fire hydrants, required sprinkler systems in homes over 2500 sq. ft., road maintenance requirements, turning radius requirements and such. Mr. Monte asked Mr. Butcher, who was there representing the Fire Dept. why the Dept. would have an opinion regarding the intersection off Inferno Road and the West Hill Road/West Hill Road Ext. intersection. Mr. Markolf answered that the concern was really about access, which in turn was a Select Board issue.

Mr. Friedman stated that he would wager that the Fire Dept. would not be able to get up West Hill Road Ext. today nor would they be able on April 15<sup>th</sup>. He went on to say that he was in favor of the gate as it would minimize traffic as he didn't feel the road in its current state would be able to handle an increase in wear and tear. Mr. Brattstrom stated that he saw the problem as trying

to use an existing steep road that was not in the best of condition for additional Fire Dept. access and that maybe they should consider changing the internal road system to a loop road that brought it back out onto Inferno Road and avoid West Hill Road Ext. altogether. Mr. Brattstrom went onto share his concern that any improvements to West Hill Road Ext. would also involve the taking of neighboring property to do so. Mr. Behn questioned the possible negative impact on the environment by constructing a loop road and where was the balance?

Mr. Butcher stated that the main point of the Fire Dept. letter was that if you provide a second access do not gate it as that will cause more problems than it solves. He went on to say that an open road is better than a closed road, and if you take the gate away then suggestions can be made for improvements to the road which in the big picture helps everyone.

Mr. Monte suggested to Mr. Brattstrom that if he was serious about pushing for a loop road that he get input from the Conservation Commission. On the other hand, Mr. Monte also noted that to improve the road (West Hill Road Ext.) was also not an insignificant thing. Mr. Robinson asked what the Town's right of way was. It was guessed that it might be 50 feet. If that were the case, Ms. Kyle pointed out that part of her non-conforming 160-year-old house is only 30 feet from the edge of the existing road. On the other side of the road was where her spring was located. Which might be sacrificed, she asked. Mr. Monte replied, unfortunately if you were in the highway right of way you were at risk.

Mr. Swain clarified what was currently proposed. He stated that from the end of the class 3 road up to the Ward property that they planned some upgrading to 14 to 16 feet width, but not to the extent that would reclassify the class 4 road as a class 3. It would still be considered a private road and would be plowed by the Association. He went on to say that under that proposal that the traffic should be limited which is why they have proposed the gate. Mr. Swain also reviewed their proposal to make some minor changes to improve the intersection at West Hill Road and West Hill Road Extension. Mr. Brattstrom added that there might be concern about a conflict with Green Mountain Power as to right of way and therefore whether improvements could be made.

Mr. Donaldson asked where the "tipping" point was. Why was it not when Friedman or Price built along West Hill Road Ext. that they were required to improve the road? Mr. Monte responded by saying that those were requests for single family residences, not subdivision requests. Mr. Markolf added that had they been for a subdivision, chances are they may have been asked to make improvements to the road. Mr. Behn added that due to the size of the project that he felt it was important to have two points of access and that it was not unreasonable to ask that the road be brought up to a class 3 standard. Ms. Ware asked for clarification of how any improvements might affect her and it was determined that at present any improvements were a distance from her front yard. Mr. Monte added that they could say all they wanted about what should or shouldn't be done but that it was all moot unless the Select Board went along with the proposal as it was under their jurisdiction. Mr. Monte went on to "predict" that the board will want to have the gate left open and enough improvements to the road to make it safely passable by the Fire Dept.

Mr. Markolf suggested that the applicant go back to the drawing board and talk to the Select Board, as he didn't feel the board was going to make any final decision that night. Mr. Swain said that one item they could clarify was that his map confirmed that none of the building envelopes were in the Forest Reserve District, a question that had been raised previously. Mr. Monte then asked for a straw poll as to how the members would feel if they ultimately required no gate, improve the road to a 16 foot width and make the changes at the intersection. They all generally felt comfortable with that plan. Mr. Monte stated that there were also some strong feelings about the road cut decision off of Inferno Road. Mr. Butcher reminded everyone that the Select Board had voted, 4 to nothing, for their decision. He also added that the Fire Dept. preferred an access further north of the Select Board's decision. The applicant said they would go to the Select Board and in the meantime Mr. Monte said the DRB would continue to move forward.



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**WARREN DEVELOPMENT REVIEW BOARD  
MEETING MINUTES**

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**March 9, 2005**