

000326

TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
WEDNESDAY MAY 23, 2007

Members Present: Peter Monte, David Markolf, Chris Behn, Virginia Roth and Lenord Robinson.

Others Present: Dave Olenick, Alice Olenick, Mark Bannon, Bruce Fowler, Dick King, Erin Post, Margo Wade, Susan Hemmeter, Don Swain, Alec Newcomb, John Pollack, Miron Malboeuf and Ruth Robbins.

Agenda: Call meeting to order 7:00 pm

Applications, **2007-07-SD & 2007-07-CU: Two Lot Subdivision** Partially Located in Meadowland Overlay District for Sketch Plan Review. (Continued from April 4th, 2007) The applicant, **Bruce Fowler**, seeks permission to subdivide a 4.9± acre parcel located at 258 Senor Road. The parcel, ID # 023009-000, is located in the Rural Residential District and partially located in the Meadowland Overlay District. This application requires review under Article 2 (Table 2.2) Rural Residential District, Article 2 (Table 2.13), Meadowland Overlay District, Article 5, Development Review and also under Article 6, Subdivision Review, § 6.2, Sketch Plan Review, and Article 7, Subdivision Standards of the Warren Land Use and Development Regulations.

2007-11-SD, 2007-11-PRD, Revisions to An Approved Plat, Mad Gap (Seven Unit PRD) to Adjust Building Envelopes. The applicant, RW #1, LLC, seeks approval to revise an existing plat, previously approved under applications 2005-13-SD, 2006-14-SD & 2005-03-PRD for a Seven Units Clustered Housing on 15.75± acres, located off Lincoln Gap Road on parcel id. # 003008-800. This application requires review under Article 6, §6.7, Revisions to an Approved Plat, Article 7, Subdivision Standards & Article 8 Planned Unit & Planned Residential Development of the Warren Land Use and Development Regulations

Application **2007-01-SD** (continued from February 21st 2007), Danforth and Alexander **Newcomb, Nine Lot Subdivision**, off the South End of Main Street (# 839), Warren Village The applicant, Danforth and Alexandra Newcomb, seek Preliminary Plan Review and Final Plan Approval for a Major Subdivisions, 9 Lot off 839 Main n Street, VT. Route 100 and Fuller Hill Road in the Rural Residential (RR) and Warren Village Historic (WVR) Residential Districts. This application requires review under Article 2, Zoning Districts & District Standards, Table 2.2, Rural Residential District and Table 2.3 Warren Village Historic Residential District, and Article 6, Subdivision Review § 6.3, Preliminary Plan Review and § 6.4, Final Plan Approval, and Article 7, *Subdivision Standards*, of the Warren Land Use and Development Regulations

2007-08-CU, Conditional Use, Construction of a Development Road & Single Family Residence in the Meadow Land Overlay District. The applicant, **Keith C. Underhill**, Trustee, seeks approval to develop within designated Meadowland. The 11 +/- acre parcel, ID # 023003-600, is located at 1695 Fuller Hill Road in the Rural Residential District, partially in the Meadowland Overlay District & the Forest Reserve Districts. This property had received a Conditional Use for Development in the Meadowland on May 22nd, 2002, (2002-11-ZP); however no Land Development resulted and the permit expired in May of 2006. This application requires review under Article 2, Table 2.1, (Forest Reserve District), Table 2.2, (Rural Residential District) & Table 2.13, (Meadowland Overlay District) Article 3, § 3.1, Access, Driveways & Frontage Requirements, and Article 5, Development Review of the Warren Land Use and Development Regulations.

Other Business:

Review and approve Minutes from May 9th, 2007.

Review & sign decisions.

Planning Commission Review of proposed Revisions to Zoning Regulations:

TOWN OF WARREN, VT
Received for Record 7/19 2007
at 11:50 o'clock AM and Received in
Vol 191 Page 326-331
Ruth Robbins
TOWN CLERK

Warren PC Memo #5: Digital Plat Recording [4/24/06]
Warren PC Memo #4: Administrative Review [4/24/06]
Flood Hazard Regulations [Draft Edits 4/6/06]

Mr. Monte called the meeting to order at 7:01 pm.

1- Applications, **2007-07-SD & 2007-07-CU: Two Lot Subdivision** Partially Located in Meadowland Overlay District for Sketch Plan Review. (Continued from April 4th, 2007) The applicant, **Bruce Fowler**, seeks permission to subdivide a 4.9± acre parcel located at 258 Senor Road. The parcel, ID # 023009-000, is located in the Rural Residential District and partially located in the Meadowland Overlay District.

NOTE: Mr. Monte recused himself from the proceedings of this application as he is a neighbor of the applicant.

Mr. Markolf reviewed what had transpired during the Board's site visit prior to the meeting. Members who attended the site visit were: Mr. Markolf, Mr. Behn, Mrs. Roth and Mr. Robinson. Also at the site visit were: Mr. Fowler, Mr. Bannon, Mr. & Mrs. Olenick, Mr. King and Mr. Malboeuf. They walked the length of the ditch line in relationship to the pond, reviewed the existing septic field and tank, looked at the proposed area for the new septic and replacement fields, discussed the location of the driveway and stream setback, noted the location of an existing standpipe, and noted the uphill course of the "stream". Also briefly discussed was a suggestion by Mr. Bannon of where the "stream" could be relocated.

MOTION by Mr. Markolf that the Board deem this as a Minor Subdivision, that the application is complete and that the meadowland contained in the parcel is designated under Table 2.13 (E) (1)(a). **SECOND** by Mr. Behn. **VOTE:** all in favor, the motion passed.

Mr. Bannon then presented the Board with the updated site plan since the last hearing. Mr. Markolf then proceeded to go down the "laundry" list from the previous hearing on April 4th. The first item was to have a designated building envelope around the existing house. Unfortunately Mr. Bannon did not know about that requirement so it wasn't done but said it would be done. Fire Dept. review was also on the list in case the Dept. might want to utilize the pond in addition to some nearby hydrants. The Board, of which a couple members are on the Fire Dept., felt that with the proximity of the hydrants that it would not be necessary. However, Mr. Markolf did suggest that as a possible condition they ask that the existing standpipe be possibly relocated to maximize its accessibility.

The next item on the list was the issue regarding the frontage requirement. After reviewing the current site plan the members along with the Zoning Administrator felt that the requirement had been met by utilizing *Article 3 Section 3.1 (D) Frontage* which allows for the use of private right-of-ways that are a minimum of 50' in width in satisfying the frontage requirement for that district. Mr. King, representing a neighbor, Mary Power, questioned the way the Board was interpreting the ordinance and stated that he felt the frontage had to be met on *both* the private right-of-way and the public right-of-way. Mr. Olenick, representing the applicant, stated he felt it was *either/or*.

Mr. Behn commented that he thought the intent was to keep very narrow lots from forming while Mr. Bannon stated that he thought it had more to do with the issue of driveways and not having a series of them too close together. Mr. Markolf said he felt Mr. King had raised an issue of interpretation that needed to be clarified.

The next item from the list that was discussed was whether or not the Board had been provided with a draft of some covenants that would provide a common road maintenance agreement as well as how the meadowlands should be maintained. Mr. Olenick said the covenants were not

drafted as yet but that the requirements of the Board should not be a problem. Discussion continued as to how best to address the maintenance of the meadowlands.

Mr. Behn asked if the back area of the two lots could be designated "common area" with the intent of consistent maintenance. Mr. Fowler stated that he had always had animals (37 yrs) and would want to continue to do so. Mr. Markolf asked if there was enough acreage to create a common area and Mr. Behn said it looked like maybe two and a half acres could be put aside for a common area. Mr. Bannon noted that this was a subdivision, not a PRD where common areas are typically utilized and that the ordinance protected the meadowland area. The Board was looking for consistency of maintenance and Mr. Malboeuf said he thought it could be handled in the covenants. Mr. Olenick said he would draft something into the covenants that would address the Board's concern.

Another item on the "laundry list" was the designation of conservation areas on the site plan. Mr. Bannon directed the members to a notation on the revised site plan that stated: "no primary or secondary conservation areas identified". Mr. Bannon did note however, that the Meadowland area was indicated on the site plan.

Last, but not least, was the issue regarding the "wash" area, also referred to as either a "drainage ditch" or "stream". Discussion centered on whether this was a natural "stream" or an artificially created waterway, i.e. drainage ditch. The members reviewed the definitions found in the ordinance. Mr. Robinson stated that he felt it was not a stream – yes there was a swampy area above the road, but no stream feeding into what was located on the applicant's property. Mrs. Roth asked if it showed up on the USGS map and was told no. Mr. Malboeuf commented that he thought they needed to determine if this qualified as a naturally occurring stream or a man-made drainage ditch. Mr. Fowler stated that it was created back in 1996 when the pond was re-dug and then rainstorms created some flooding. The existing culvert on Senor Road was also replaced shortly after the flooding with an improved culvert. Mr. Markolf said he thought that water had been running in that "ditch" more than just during heavy rainstorms.

Mr. Bannon said it was largely due to the fact that the water source disappears into the field that led him to label the waterway as a ditch. Mr. Malboeuf asked if Mr. Bannon thought he'd have to obtain a State stream alteration permit for the development they were proposing and Mr. Bannon said no. It was also asked of Mr. Bannon if he might be able to get the State to make a determination - Mr. Bannon said that through the permitting process they would receive a jurisdictional opinion. However, the State definitions and determinations may not be the same as the Town's ordinance. Mr. Markolf mentioned that there was the possibility of the applicant obtaining a stream relocation permit that would allow the building envelope to conform to the setbacks whether the waterway was deemed a "stream" or a "drainage ditch".

Mr. Markolf suggested that the Board take a "straw vote" as to whether they considered the water feature a "stream" or a "drainage ditch". Of the four participating members, two considered it a drainage ditch [Mrs. Roth and Mr. Robinson] and the other two [Mr. Markolf and Mr. Behn] a stream. Due to the tie the Board moved on to other issues.

Mr. Markolf inquired about the distance between the well and the wastewater system as it was showing less than 100'. Mr. Markolf said he was concerned about the distance and with the actual number of bedrooms that were permitted for the existing system. Mr. Fowler did verify that the existing dwelling had two units with a total of five bedrooms. Mr. Bannon did note that the isolation distance was "challenged". He also said that the issue should be if there was potable water [which there is] and/or if the septic system was showing any signs of failure of which he did not observe any. Mr. Malboeuf added that he thought the required isolation distances had changed over the years and that this system and its proximity to the well may meet standards that have since been changed. Mr. Malboeuf also noted that the Board could condition for a water test if they felt it was a serious enough concern.

Mr. Markolf summarized by saying that all other potential issues seem to be covered and that the only item left was the "stream" and some sort of resolution on how it should be viewed. Also outstanding was a copy of the proposed covenants that address road and meadowland maintenance.

MOTION by Mr. Markolf to continue this hearing until the meeting of July 18, 2007 at 7:00 pm.
SECOND by Mr. Robinson. **VOTE:** all in favor, the motion passed.

- 2- **2007-08-CU, Conditional Use**, Construction of a Development Road & Single Family Residence in the Meadow Land Overlay District. The applicant, **Keith C. Underhill**, Trustee, seeks approval to develop within a parcel with designated Meadowland.

Mr. Malboeuf explained that the applicant had obtained a Conditional use permit previously but that he never built the road and thus the permit lapsed. Mr. Olenick disagreed that with Mr. Malboeuf's interpretation and thus is appealing to the DRB for clarification of the ordinance. Technically, an application has not been filed. Mr. Monte asked on what basis the applicant felt they did not need a new permit. Mr. Olenick said that they had been granted a Conditional use approval for the construction of a development road through the Meadowland to a building site. An actual Zoning Permit, for that construction was never issued, therefore not subject to expiration. Mr. Olenick pointed to the language contained under Article 9, Section 9.3 (D) which he believed allowed for the Conditional use permit to remain in effect without expiration and that it was the Zoning Permit that allows for the actual development to occur that starts the clock running. He reiterated that in this case a Zoning Permit had not been issued, only the Conditional Use Approval.

Mr. Monte noted that he saw two conflicting policies of which he did not know which should prevail. One being the vested rights that accompany permits, the other side being that having an expiration, especially with a Conditional Use approval, is that the criteria tends to be pertinent to "issues of the hour", many of which would change or be non-issues many years later if re-reviewed. After some additional discussion Mr. Olenick said he had made his argument and would leave it with the DRB.

- 3- Application **2007-01-SD** (continued from February 21st 2007), Danforth and Alexander **Newcomb, Nine Lot Subdivision**, off the South End of Main Street (# 839), Warren Village The applicant, Danforth and Alexandra Newcomb, seek Preliminary Plan Review and Final Plan Approval for a Major Subdivision

Mr. Monte immediately started the discussion regarding the deeryards on the property and how they were being addressed. Mr. Swain said that the top and bottom thirds of the property were hardwoods where the middle third was a band of softwoods, the preferred vegetation for deer wintering. He also indicated that the middle area consisted of steep slopes and therefore not easily developable. Mr. Swain pointed out that none of the building envelopes contained critical habitat but that a couple of them were close to where the deer would sit. Mr. Monte asked what the degree of imposition was on the deer wintering areas and Mr. Swain said the building envelopes don't get into any of the wintering areas as they are all situated in hardwood areas.

Mr. Monte asked if the conservation commission had any comments. Ms Wade said that notwithstanding the biologist's report that she felt the way the Town Plan and the Land use Regulations were written that it would make more sense for the DRB to have the applicant identify the deeryards first then create the lot line and building envelopes. Mr. Monte replied that in this instance there were limited areas of level spots no matter where you started in the analysis. Ms. Wade said then maybe a nine-lot subdivision was not appropriate for this parcel. Mr. Monte said he felt only the five upper lots were the ones in question. Ms. Wade also pointed out that the biologist mentions in his letter that this application would also be reviewed by Act 250 which is not the case meaning that the DRB has the sole responsibility of protecting the wildlife areas.

Mr. Monte asked about the 300 foot buffer that the biologist refers to. Mr. Swain said that it was a State standard. Mr. Swain went on to explain that the "un-impacted" area totaled approx. 45 acres. He went on to say that if there is land within the parcel that will support the wildlife habitat one can use that as a mitigating factor with a two to one ratio of land put aside. He also reminded the Board that the covenants require significant conservation measures. In summary, Mr. Swain felt that if this application was under Act 250 scrutiny that the steps taken would be found to be satisfactory. Mr. Swain then reviewed with the Board the wording of the conservation/tree thinning sections of the covenants.

Ms. Hemmeter said that she did not see where the conservation area was defined. Mr. Swain replied that it was defined by "default" as it is the area that is not defined for building, infrastructure or tree thinning. Mr. Swain said the area could be labeled as a conservation area and Mr. Monte thought that would be a good idea. Mr. Behn mentioned that he thought it might also make sense to have the contours shown in the thinning areas as well. Ms Hemmeter asked for clarification whether there was any other activity that could take place in the conservation area other than forest management or just leaving it alone. The answer was that there would be no structures built [other than those in the designated building envelopes]. The thinning area would have to meet a standard of a minimum of 25 trees, minimum of 6 inches in diameter, remaining per acre, those areas being located (concentrated) towards the conservation area side of the parcels. To assure that the trees are located such as to lessen the development impact on the conservation area, Mr. Monte suggested that the covenants indicate that the 25 trees per area be concentrated to the north westerly side of the house sites. Trees located due west and to the south of the building site should not be counted in the 25 trees per acre calculation.

Mr. Monte asked Ms. Wade if there was a different way that the Conservation Commission thought the DRB should be considering this. He also said that he understood their concerns about planning, but that in this case this was where they were. Ms. Wade replied that the Board needed to make sure they fully considered the primary and secondary conservation resources to the best of the Board's ability. Mr. Monte said you've just witnessed that consideration but is there anything you want to add to that consideration. Ms. Wade said that she did not think there was anything else.

The Board then went through the laundry list from the previous hearing and found that they addressed most all of the items. The item regarding the access to the Grant's pond came up and Mr. Swain said that Mr. Grant was not really in favor of the idea but had not come out and said no. One item that garnered further discussion was the road cut off of Main Street for the lower lots. Mr. Swain explained that they had submitted to the Select Board a road cut that utilized part of the existing Snow Road before turning left into the parcel. The Select Board in their review also asked for part of a bank to be cut back for better site lines. Otherwise they had no problem with what was being requested. On the other hand, Mr. Snow expressed strong feelings about the road going in as a straight "T" off of Main Street. Mr. Swain stated that though Mr. Snow's approach had some merit, the reason behind the proposed entrance was to keep the slopes within the requirements of the ordinance. Mr. Snow argued that his proposal would eliminate the cutting of the bank, was not any steeper than his current drive, and allowed more visibility. He also expressed concern about people getting their cars stuck in the winter and where the plow guy would have to put the snow.

Mr. Monte said that the DRB really didn't have authority over road cuts and the Select Board needed to make the decision. Mr. Swain said that the Select Board had tabled their decision until the Road Commissioner (Mr. Simpson) Mr. Snow, Mr. Swain and Mr. Newcomb could meet and work the issue out. It was pointed out that though the Select Board decides the road cut, that the DRB can have a say, especially if steep slopes are involved, as to where the drive goes into a project from the point where the Town right-of way ends. Mr. Snow added that his mother when she sold the land to the Newcomb's traded some spring rights for an easement for the leech field for both her house and Charlie's trailer. As such, he thought that the original road plan might

encroach on the area for the leech field. Mr. Swain said they were aware of the 50' easement and that the design meets the State regulations for distances from septic systems.

Mr. Monte said that it seemed like there should be one more hearing to tie up any loose ends and to make sure all concerns had been addressed. Hopefully by the next meeting the drive issue will be resolved, all the conservation areas will be labeled, and an erosion control plan will be submitted. Mr. Monte also asked if there was any problem in submitting the final plat in digital form as well as on a mylar. Mr. Swain did not think it was a problem.

MOTION by Mr. Monte that the Board continues this hearing until the meeting scheduled for Wednesday June 20, 2007 at 7:00 pm. **SECOND** by Mr. Markolf. **VOTE:** all in favor, the motion passed.

- 4- **2007-11-SD, 2007-11-PRD, Revisions to An Approved Plat, Mad Gap (Seven Unit PRD) to Adjust Building Envelopes.**

Mr. Pollack presented the revised site plan to the members that showed modified building envelopes that encompassed a cluster of buildings instead of individually and the addition of an Utility Building. In his presentation however, Mr. Pollack noticed that the Utility Building did not meet the required setbacks. It was decided the request for amended building envelopes would go forward minus the request for the utility building.

MOTION by Mr. Monte that the Board approves the amended site plan and building envelopes with the exception of the utility building which is to be eliminated. **SECOND** by Mr. Markolf. **VOTE:** all in favor, the motion passed.

The meeting adjourned at 10:04 pm.

Respectfully submitted,

Ruth V. Robbins
DRB/PC Assistant

DEVELOPMENT REVIEW BOARD


Peter Monte date 7/18/07


David Markolf date 7/18/07


Lenord Robinson date 7/18/07

Chris Behn date


Virginia Roth date 7/18/07