

Shaftsbury Development Review Board
Shaftsbury Town Hall
Minutes for December 5, 2012 at 7:00pm

DRB members attending: Megan Donckers, Chair; Chris Ponessi, Vice- Chair; David Mance; Tom Huncharek; Jennifer Viereck, Alternate

Others Attending: Tyler Yandow, Zoning Administrator, Mike Foley, Jeri Schoof, Charles Stewart, Paul Williams, Tom Arendt, John Tiffany, Ann Arendt.

The Chairman called the meeting to order at 7:00 pm and led the Pledge of Allegiance. It was then noted that the DRB recording Secretary was not present, but the meeting was being recorded digitally by the ZA. The Chair stated her preferences for re-ordering the agenda items (as presented below), and all agreed.

Conflict of Interest: Chris Ponessi stated that he had a conflict with the Hale Mountain application, and David Mance stated that he had a conflict with the Shaler and Lawrence subdivision applications.

Access Permit Application # 12-9335: Parcel ID 11 02 11. Application for a logging road at 4050 East Rd, by Gerald Mattison, owner. Access to be off Bear Run Rd (Town trail). The applicant was not present. It was noted that Bear Run is a Class 4 Road, actually called a Trail, and as such is not maintained by the Town of Shaftsbury. Therefore, the Road Foreman had stated that he did not feel the application was necessary, and he had no comment on the access requirements. The board agreed to follow the agenda and consider the application.

John Tiffany stated that logging roads themselves are usually exempt from permits based on Vermont's agricultural practices laws. Mike Foley questioned who would be responsible for repairing any harm to the public Trail if the access caused erosion or other damage. David Mance responded that like everyone who uses an unmaintained public right of way, the applicant would be responsible for any damage to it. John Tiffany added that agricultural law also requires the applicant to follow state-defined best practices under the VT Forestry Board in conducting any logging activity.

Motion made by David Mance, seconded by Chris Ponessi: To approve the Access Permit with the stipulation that the permitted access does not block the use of Bear Run road as a public trail. After the above discussion, the motion passed unanimously.

Other Business

Board Training: Stephanie from Vermont League of Cities and Towns (VLCT) will conduct a Training Session for the DRB in Shaftsbury on Jan. 16th from 6pm-8pm. No hearings will be scheduled during that meeting. The public may attend as an audience for educational purposes as they wish, but must conduct themselves "as though a glass wall existed between the audience and the board," according to Chair Megan Donckers.

She will circulate a list of issues to include in the training based on her reading of past minutes, but would like further input from the board.

Role of Alternates: Megan brought up Tom Huncharek's concern at the prior meeting about whether Shaftsbury's practices regarding Alternates complied with state regulations. The concern was whether Alternates could participate in the meeting as a whole, or only in the individual hearings that comprise much of each meeting. Megan had discussed it with VLCT staff and lawyers, who stated that arguments could be made for either position. Megan also discussed it with the Town Attorney, who stated only that an Alternate was not actually required in a vote unless a quorum could not be met. Tom restated his previous concern, citing VLCT documents and an email from Brian Leven, Deputy Secretary of State.

Jennifer Viereck stated that she had called Brian Leven after the last meeting for further clarification, and found that his response to Tom did not include how the law is applied in Shaftsbury. The only legal basis for determining procedure is the relevant section of law 24 VSA 4460(c). It is composed of only two sentences, in effect: "The Select Board may appoint alternates to a development review board for a term to be determined by them. Alternates may be assigned by the legislative body to serve on the development review board in situations when one or more members of that board are disqualified or otherwise unable to serve." She noted the use of the word "may", not "shall."

She stated that Shaftsbury's practice, as noted in current procedures that the DRB is bound to follow until amended by majority vote, mainly follows the first sentence of 4460. Select Board appointments for DRB Alternates are for one year. When a DRB member is absent, the Alternate fills their seat in all ways for the duration of the meeting. In other instances, if a full panel of 5 was already seated, and a board member recuses themselves from a particular hearing, an Alternate might be appointed by the DRB Chair (not the Select Board) to serve for the duration of that hearing (and subsequent sessions if the hearing is continued). In that case, Brian Leven's advice about only participating in the hearing and not in other meeting items would apply. David Mance confirmed that this practice has continued since the DRB was formed, and that the intent is to uphold the input of five diverse participants at DRB hearings, not just to meet a quorum. The Chairman sought confirmation from the board, and all agreed that they would continue to follow these procedures.

DRB Applicant Process: There are seven applicants for one regular and one alternate seat. The Chairman presented a schedule to interview applicants on 12/19/12 (Jennifer Viereck, Michael Bidy, Mitch Race), 1/2/2013 (Michael Foley, Ron Schoof, Jay Palmer) and 1/16/2013 (Kathy Geneslaw). The Select Board has asked for notification of the DRB interview schedule, and their recommendation, after which they will conduct their own interview process and final appointments.

Rules of Procedure: The Chairman stated that in learning her new role, she had reviewed a lot of material on procedures on the VLCT website. Also, templates for Rules of Procedure for two different levels of formality were available at www.VPIC.info.

The Chair had taken elements of both and combined them into a new draft that she proposed using in replacement of the Rules in place now. Jennifer Viereck offered an amended version of the Chair's draft, which edited some clauses more applicable to other types of boards, and added in some parts of the existing rules, such as Rules of Evidence. Since the www.VPIC.info website was offline most of the week, this item is continued until the next meeting to allow more time for review of all available materials.

Continuation of Application # 12-9334: Parcel ID # 18-01-09 and 18-01-24 – Pursuant to Bylaw Section 7.1.1.3 and 3.6, Hale Mountain Fish and Game Club requests Site Development Plan review and approval for previously completed site improvements for which no permit was obtained. This is for a non-conforming nonprofit group use of RR-40 parcels.

Chris Ponessi recused himself and left the table. The Zoning Administrator also noted that he had once been a member of the Hale Mountain club, but not for at least five years. The board agreed that there was no current conflict of interest. The Chairman described her discussion with the Town Attorney Rob Woolmington, who stated that the only issue and evidence to be considered at this hearing was that of Site Plan review for the list of fourteen improvements on the application. Therefore, a packet of evidence submitted by mail by Owen Beauchesne was not opened yet, and will be handled by the Zoning Administrator. He will review the materials for anything relevant to the Site Plan review, and pass that on to the DRB.

There was a request from Charles Stewart to remove the citation of Nonconforming Use Bylaw 7.1.1.3 from the agenda. The board declined, noting that the site plan review needs to be in the context of the use and zone, but added the citation of Site Plan Review 3.6 and noted that the use is in the RR-40 Zone. The Chairman will confer with the Town Attorney again to confirm procedure in this hearing, and Jennifer Viereck requested that his response be in writing for clarity. The board continued with the Site Plan Review, noting three things that need to be added to the Site Plan. These include the driveway of the caretaker's trailer, all examples of exterior lighting, and the North Bennington water easement.

Motion, made by David Mance, seconded by Jennifer Viereck: to accept the applicant's submitted photos of site improvements in lieu of the building floor plans required under 3.6.2.3. The motion carried unanimously.

The Chairman discussed scheduling site visits for the DRB with the applicants. She stated a preference that DRB members go in pairs but not in a group, to facilitate refraining from any ex-parte discussion with each other or the applicants. Emails will be exchanged with Charles Stewart and proceed from there.

Motion: Made by David Mance, seconded by Jennifer Viereck: To continue this hearing until January 2, 2013, to allow time for site visits by all DRB members. The motion carried unanimously.

Chris Ponessi returned to the table for the duration of the meeting.

Approval of Minutes: October 17, 2012

Motion: Made by David Mance, seconded by Chris Ponessi, to approve the Minutes as written. The motion carried unanimously.

Approval of Minutes: November 7, 2012. Review of the Minutes revealed that two motions were missing, and some text had been highlighted for additional detail. Jennifer and Tyler will work on editing, and present again for approval at the next meeting.

Motion, made by Chris Ponessi and seconded by Tom Huncharek: To enter into Deliberative Session for the consideration of the remaining two agenda items. The motion carried unanimously.

Deliberative Session: David Mance left the meeting.

Application # 12-9302: Parcel ID # 092033 – Pursuant to Subdivision Regulations – Section 5.0 - Applicants Melvin Lawrence and Wanda Bezio request Final Plat Approval to proceed with a two (2) lot Minor Subdivision at property located at 75 Lawrence Rd.in an RR-80 Zone District.

The board reviewed the Final Plat and assured themselves that all requested or required items were included and correctly identified.

Motion, made by Chris Ponessi and seconded by Tom Huncharek: To approve the subdivision request and accept the final plat and mylar. The motion carried unanimously.

Application # 12-9309: Parcel ID # 03 02 21.1 – Pursuant to Subdivision Regulations – Section 5.0 - Applicant Regina Shaler request Final Approval for a Hearing for a two (2) lot Major subdivision at property located at 236 Glastonbury Rd. in a RR-200 Zone District. Previously subdivided in 1990 by Hawks (two lot minor).

The board reviewed the Final Plat and assured themselves that all nine requested or required items were included and correctly identified. The board recalled seeing Proof of Notice during the Final Review, but asked that the Zoning Administrator confirm with Chris Heins that copies were in the permanent file.

Motion, made by Chris Ponessi and seconded by Tom Huncharek: To approve the subdivision request and accept the final plat. The motion carried unanimously.

Motion, made by Chris Ponessi and seconded by Tom Huncharek: To close the Deliberative Session. The motion carried unanimously.

Motion, made by Chris Ponessi: To adjourn the meeting.