

A VIDEO RECORDING OF THE MEETING IN ITS ENTIRETY IS AVAILABLE THROUGH VERMONTCAM.ORG. THE WRITTEN MINUTES ARE A SYNOPSIS OF DISCUSSION AT THE MEETING. MOTIONS ARE AS STATED BY THE MOTION MAKER. MINUTES SUBJECT TO CORRECTION BY THE SHELBURNE DEVELOPMENT REVIEW BOARD. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT MEETING OF THE BOARD.

**TOWN OF SHELBURNE  
DEVELOPMENT REVIEW BOARD  
MINUTES OF MEETING  
July 20, 2016**

**MEMBERS PRESENT:** Mary Kehoe (Chairwoman); Mark Sammut, Ian McCray, Alex von Stange. (Jeff Pauza, Jeff Hodgson, Judy Christensen, Ty Parker, and Ellery Harkness were absent.)

**STAFF PRESENT:** Kaitlin Mitchell, DRB Administrator; Joe Colangelo, Town Manager.

**OTHERS PRESENT:** Joe Precourt, Erik Dalen, Diane McCarthy Fred Erdman, Leslie Parker, Mike O'Brien, Jeremy Owens, Patrick McKee, Chris Galipeau, Jason Tiballi, Frank Talbott, Lisa Falcone, Chris Leopold, Jill Burley, Marcel Beaudin.

**AGENDA:**

1. Call to Order and Announcements
2. Public Comment
3. Approval of Minutes (6/29/16 & 7/6/16)
4. Applications
  - Design Review, Window, Door, Shed, 65 Falls Road, Precourt Investment Co., LLC (DR16-06)
  - Sketch Plan, Re-Subdivision, Two Lots, 75 Harbor Road, Frank Talbott (SUB99-02R5)
  - Conditional Use\Site Plan, Utility Building, 2790 Harbor Road, Lake Champlain Yacht Club (CU03-08R1\SP97-15R2)
  - Final Plan, PUD-R, 38 Units, Renovations, Continuing Care Retirement Facility, 200 Wake Robin Drive, Wake Robin Corporation (SUB03-08R5\CU16-02)
5. Other Business/Correspondence
6. Adjournment and/or Deliberative Session

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**1. CALL TO ORDER and ANNOUNCEMENTS**

Chairwoman Mary Kehoe called the meeting to order at 7 PM.

**2. PUBLIC COMMENT**

None.

**3. APPROVAL OF MINUTES**

*June 29, 2016*

**MOTION by Mark Sammut, SECOND by Mary Kehoe, to approve the minutes of 6/29/16 as presented. VOTING: unanimous (4-0); motion carried.**

*July 6, 2016*

**MOTION by Ian McCray, SECOND by Mark Sammut, to approve the minutes of 7/6/16 as presented. VOTING: unanimous (4-0); motion carried.**

#### 4. APPLICATIONS

The function of the Development Review Board as a quasi-judicial board and the hearing procedure were explained. Individuals to give testimony before the Board were sworn in.

**DR16-06: Design Review for replacement of windows, removal of one door, and demolition of a shed at 65 Falls Road by Precourt Investment Co., LLC**

Joe Precourt appeared on behalf of the application.

Submittals:

- Application
- Site Plan
- Photographs of building and shed
- Catalog cut sheets for proposed windows
- Town of Shelburne Staff Report, dated 7/20/16

#### STAFF REPORT

The DRB received a written staff report on the application, dated 7/20/16.

#### APPLICANT COMMENTS

Joe Precourt explained the plan to replace windows and a door on the left side of the building and remove the shed in the backyard. The windows are rotted and the shed is dilapidated.

#### PUBLIC COMMENT

None.

#### DELIBERATION/DECISION

Design Review, Windows, Door, Shed, 65 Falls Road, Precourt (DR16-06)

**MOTION by Mark Sammut, SECOND by Mary Kehoe, to grant design review approval to Precourt Investment Co., LLC for replacement windows with a one-over-one pattern, addition of a frieze board on the front façade, replacement of the door on the north elevation with siding to match the building, and demolition of the deteriorated shed at 65 Falls Road. VOTING: unanimous (4-0); motion carried.**

**SUB99-02R5: Sketch Plan to re-subdivide an existing 113 acre lot involved in agricultural use into two lots at 75 Harbor Road in the Conservation and Rural Districts and Floodplain and Watercourse Overlay Districts by Frank Talbott**

Frank Talbott appeared on behalf of the application.

## Submittals:

- Transmittal prepared by the law offices of Jason R. Tiballi, P.C., dated 6/7/16 and received 6/7/16
- Cover letter prepared by the law offices of Jason R. Tiballi, P.C., dated 6/7/16 and received 6/7/16
- General Application received 6/7/16
- Sketch Plan Review Application received 6/7/16
- Project Review Sheet, dated 5/11/15 and received 6/7/16
- Correspondence from ANR detailing exemption from 1-304(a)(2)
- Site Plan Sheet, titled “Proposed Subdivision of Bay Road Lot 3, Harbor Road, Shelburne, Vermont” prepared by Civil Engineering Associates, dated 9/11/15 and received 6/9/16
- Town of Shelburne Staff Report, dated 7/20/16

## STAFF REPORT

The DRB received a written staff report on the application, dated 7/20/16.

## APPLICANT COMMENTS

Frank Talbott explained 14 acres of the 113 acre lot are licensed to One Mitten Farm. The farm wants to buy the leased land. The proposal is to subdivide 14.6 acres from Lot 3 forming two lots. The boundaries are not changing.

Mary Kehoe asked about the sliver of land shown on the site plan. Frank Talbott explained the sliver is an easement for the pasture fence that is on the property line.

## PUBLIC COMMENT

None.

## DELIBERATION/DECISION

Sketch Plan, Re-Subdivision, Two Lots, 75 Harbor Road, Talbott (SUB99-02R5)

**MOTION by Mary Kehoe, SECOND by Ian McCray, to classify SUB99-02R5 (re-subdivision into two lots at 75 Harbor Road) as a Major Subdivision. VOTING: unanimous (4-0); motion carried.**

**MOTION by Mary Kehoe, SECOND by Mark Sammut, to authorize the application for re-subdivision of two lots at 75 Harbor Road (SUB99-02R5) and allow the applicant to prepare a Preliminary Plan application with the recommendation to obtain written comments from department heads as required in Section 600(28) of the Subdivision Regulations. VOTING: unanimous (4-0); motion carried.**

**CU13-08R1\SP97-15R2: Conditional Use\Site Plan to reconstruct and expand an existing utility building partially located within the 100' setback of the 102' elevation contour at 2790 Harbor Road in the Rural District, Lakeshore Overlay and Watercourse Overlay by Lake Champlain Yacht Club**

Marcel Beaudin appeared on behalf of the application.

Submittals:

- General Information Application received 6/14/16
- Conditional Use Review Application received 6/14/16
- Site Plan Application received 6/14/16
- Site Plan titled “Butler Building Replacement Lake Champlain Yacht Club” prepared by Civil Engineering Associates, dated 6/7/16 and received 6/14/16
- Town of Shelburne Staff Report, dated 7/20/16

STAFF REPORT

The DRB received a written staff report on the application, dated 7/20/16.

APPLICANT COMMENTS

Marcel Beaudin explained the 50 year old metal building with added wooden lean-to is rusty and needs reconstruction. The function of the replacement building for the junior sailing program and storage of equipment will remain the same. Porches will be added. The existing building is almost totally in the setback area. The new building is increased in size by approximately 30% beyond the setback area.

PUBLIC COMMENT

None.

DELIBERATION/DECISION

Conditional Use\Site Plan for reconstruction and expansion of an existing utility building partially located within the 100' setback of the 102' elevation contour at 2790 Harbor Road in the Rural District, Lakeshore Overlay, and Watercourse Overlay by Lake Champlain Yacht Club (CU03-08R1\SP97-15R2)

**MOTION by Mark Sammut, SECOND by Mary Kehoe, to finalize the record for CU03-08R1\SP97-15R2 for reconstruction of an existing utility building at 2790 Harbor Road. VOTING: unanimous (4-0); motion carried.**

**MOTION by Mark Sammut, SECOND by Alex von Stange, to direct staff to prepare a decision to indicate approval of CU03-08R1\SP97-15R2 for reconstruction of an existing structure within the Lakeshore Overlay District and relocation of a portion of an existing access drive at 2790 Harbor Road by Lake Champlain Yacht**

**Club with the condition a zoning permit shall be required prior to any improvements being made. VOTING: unanimous (4-0); motion carried.**

**SUB03-08R5: Final Plan to amend a Residential Planned Unit Development (PUD-R) to include renovation of existing facilities and addition of a 38 unit apartment building and conditional use approval for a continuing care retirement facility at 200 Wake Robin Drive in the Residential District and Stormwater Overlay District by Wake Robin Corporation**

Erik Dalen, project manager, and Diane McCarthy, attorney, and other individuals working on the project appeared on behalf of the application.

Submittals:

- Project Description received June 14, 2016
- Conditional Use Application received June 14, 2016
- General Information Application received 6/14/16
- Site Plan Review Application received 6/14/16
- Final Plan Review Application received 6/14/16
- Wake Robin Renovation and Expansion project summary of Applicable Planning Standards received 6/14/16
- Overall Plan prepared by Civil Engineering Associates titled “ALTA/ACSM Land Title Survey Wake Robin Corporation, Bostwick Road, Shelburne, Vermont”, dated 6/18/12 and received 6/14/16
- Plans prepared by Perkins Eastman titled “Wake Robin 200 Wake Robin Drive Shelburne, Vermont 05482”, dated and received 6/14/16
- Memo from Town Manager’s Office, dated 7/12/16
- Town of Shelburne Staff Report, dated 7/20/16

STAFF REPORT

The DRB received a written staff report on the application, dated 7/20/16. Kate Mitchell clarified per Section 900(10) a maximum of 250 independent living units can be constructed as part of continuing care, the agreement on the limit of 215 units (Section 1930.2.C) has expired so the condition is no longer applicable, and the plan before the DRB is the Final Plan, not the Preliminary Plan. Also, the applicant is in compliance with Section 1910.4.D.

APPLICANT COMMENTS

Erik Dalen recapped the Wake Robin development with the original apartment units and cottages and the community center and health center in Phase 1, extension to the health center and cottages in Phase 2, and another addition to the health center and a 38 unit, three story fully sprinklered apartment building in Phase 3. The bridge connecting the

community center to the apartment building has been eliminated and the height of the building has been decreased by six feet. The road has been straightened (90° turn eliminated). Staff comments have been addressed except the water tank which Wake Robin feels should not be linked to DRB approval for the project.

Diane McCarthy, attorney for Wake Robin, reviewed the items in the staff report that were highlighted and introduced various experts to address the matters.

#### *Fiscal Impact Analysis*

Fred Erdman, Wake Robin CFO, discussed the fiscal impact analysis. Based on 38 apartments, 10 residential care units and six skilled care units the estimated additional taxes from the expansion is \$136,227. Estimated water and sewer fees from the proposed expansion is \$35,997 for total additional money paid to the town by Wake Robin of approximately \$172,000. Alex von Stange asked if the calculation considers only new residents or total residents. Mr. Erdman said the total number was used though Wake Robin many not get to that number. An average of 1.3 residents per unit was used for the building. Alex von Stange asked if the new building is different from the existing building. Erik Dalen said there is a combination of one and two bedroom units which is very similar to the existing building.

#### *Waivers*

Chris Galipeau, Civil Engineering Associates, explained the waiver granted during Preliminary Plan relative to creating a homeowners association agreement for maintenance of the roads in the development. Wake Robin is the sole owner of the property and roads and manages the site so an agreement is not necessary. As well Wake Robin owns the entire property so there is no need to establish a right-of-way for the roads/streets. A waiver for curbing is requested to allow sheet flow and treatment of storm water per the stormwater plan. Documentation from town departments heads was done at the Preliminary Plan level. The letters are referred to in the Final Plan application.

#### *Lighting*

Jeremy Owen, landscape architect with Hoyle Tanner Associates, explained the initial plan to match the existing light fixtures in the first phase of Wake Robin, but LED fixtures are used today. The overall height of the LED light fixtures was lowered to 16' which will increase the average illumination level above the threshold in the town's regulations of .80 so a waiver is requested to go to .90.

#### *Miscellaneous*

Diane McCarthy confirmed the town's fire codes are in place, downstream drainage has been satisfied, and Wake Robin is not looking at dedication of land in lieu of impact fees. Also, Wake Robin owns its own vans to transport residents so public transit is not applicable. Regarding open space, Wake Robin will have 69% open area. The regulations require 33%. Wake Robin has met with Shelburne Natural Resources and Conservation Committee. Mary Kehoe commented the applicant feels there is so much open space it would be redundant to designate more. Erik Dalen pointed out the open space, both meadow and forest, on the site. There are four miles of trails on the campus.

Mary Kehoe asked about the installation of storm water ponds. Chris Galipeau said the existing storm water pond that is about 400' from the building will be expanded. There is infiltration around the building. There is another pond to the north not involved in the expansion project.

There was discussion of the water tower. Diane McCarthy objected to the letter sent by the Water Commission as "Entry of Appearance" and requested the letter be on the record. Joe Colangelo on behalf of the Water Commission explained due to the increased demands of "on the record" review the Water Commission formalized their information in a letter. The purpose of the letter is to formalize the capacity fee charge for Wake Robin and re-assert the need for a second water tank. The burden to construct the water tank is on the applicant and then the water tank will be transferred to the town water department. At the request of Diane McCarthy Mary Kehoe clarified the letter is casual pre-file testimony from members of the Water Commission or the administrator of the Water Commission, Joe Colangelo. The DRB will consider the letter in deliberative session. Mark Sammut pointed out per the DRB rules of evidence if pre-file testimony is accepted as testimony the individuals represented in the letter are not present for inquiry. The letter can be accepted, but the evidence left open to allow more testimony if wanted. The applicant must have the opportunity to cross-examine people referenced in the letter.

Joe Colangelo offered to speak to the October 2015 motion relative to the capacity fee. Diane McCarthy interjected the fee should not be a condition of approval since other fees are not conditioned. Mary Kehoe said a second water tower may be needed before construction can begin. Diane McCarthy said Wake Robin does not feel the second water tank is necessary, but is open to discussion of the matter with the Water Commission. The town has capacity in the current tank of 628,000 gallons.

Mary Kehoe asked about the existing water tank being underutilized. Joe Colangelo said the second water tank would serve Wake Robin. The primary tank serves Wake Robin and other parts of the system. The primary function of the second tank is as backup to the primary tank and to provide fire flows to Wake Robin. The town agrees there is plenty of

capacity in the tank. The issue is maintaining residuals (chlorine) in the tank and providing Wake Robin with potable water. If the residuals are lost then the tank is taken out of service. A backup tank is needed to be able to provide fire flows and potable water to Wake Robin. Residuals are lost because the water does not turn over in the large tank so it must be cleaned. With a second tank the water can be transferred to the smaller tank while the larger tank is being cleaned so service to Wake Robin is maintained. The Water Commission identified the second tank as an appropriate engineering solution to the issue. Other ideas that are adequate have not been expressed. Diane McCarthy noted the chlorine issue occurred in the past and was addressed by the town without taking the tank out of service. The tank has been cleaned using divers. Erik Dalen said per their talks with the town engineer the second tank would be empty unless the first tank is taken off line.

Diane McCarthy stated the Water Commission's concerns are set forth through department heads and there is a process for that. Wake Robin has been through the issues with the department heads. Mary Kehoe stated the DRB will accept the letter from the Water Commission which was signed by public officers so that is reliability. Diane McCarthy stated there are items in the letter that Wake Robin disputes. Mary Kehoe said the hearing can be recessed and left open to allow Wake Robin to respond in writing to the letter from the Water Commission. Diane McCarthy stated Wake Robin remains open to discussion with the Water Commission, but the process has been difficult. The Water Commission indicated there was no desire to talk to Wake Robin. Attempts were made to contact the Town Manager and Town Attorney without success. Joe Colangelo interjected Wake Robin has been fully informed of Water Commission meeting dates. The town has been communicating with Wake Robin on a regular basis.

Mark Sammut observed per the response to the letter, dated January 4, 2016, there are a number of issues Wake Robin takes exception to including the fire truck requirement, paving, and the water tank. Erik Dalen said it was Wake Robin's understanding the fire truck and paving were no longer requested by the town. Kate Mitchell said the DRB position at the time was the fire truck and paving were not part of the requirements of the bylaw. Wake Robin submitted a site plan application and final plat showing the second water tank so a site plan amendment would have to be made if there is agreement the second tank is not part of the plan. Erik Dalen said the plan included the water tank in order to be able to submit the application. There is a note on the plan indicating the need for continued conversation on design cost. Diane McCarthy further explained there was an understanding that the tank was on the Preliminary Plan, but did not need to be built or if a smaller or different tank were to be built further approval by the DRB would not be necessary provided the location of the tank does not change. Erik Dalen said Wake Robin would like to continue to do better than what is on the plan. The plan shows what can and

will be built if necessary (Sheet C-2.0), but the water tank should be separate to the Phase 3 expansion proposal. Mark Sammut stated if the tank is shown on the site plan then it must be built or an amendment made to the site plan. Erik Dalen assured the tank can be built if required by the town in order to move the project forward. Joe Colangelo said it has been the town's understanding that the tank is part of the plan. Chris Galipeau pointed out there has always been a note on the plans through the review process about the smaller second tank. Wake Robin recognizes to get through DRB review the tank must be shown on the plans. There is a design that meets the requirement, but Wake Robin would like to continue to pursue alternatives that meet the requirement and ask the Water Commission to entertain the alternative. Kate Mitchell said the site plan with the tank can be approved and the applicant can pursue a site plan amendment for the tank. The applicant must abide by the bylaws and subdivision regulations regarding potable water and this is the avenue per the Water Commission and Water Department. Diane McCarthy said Wake Robin thought the plans could be approved, but the water tank would not need to be built because it is not necessary for potable water for Phase 3, and an alternative if found and placed within the existing footprint could be built. Mark Sammut stated the matter needs to be settled with the Water Commission before a building or occupancy permit is issued. Erik Dalen asked if there is still opportunity to move forward with the process with the tank and pursue other options. Mary Kehoe said a Certificate of Occupancy will not be issued unless there is a tank or an amendment to the site plan.

Mark Sammut asked how much of the town system is served by the existing tank. Joe Colangelo said he can get the information. Mr. Sammut asked if the Water Commission has seen details on the water tank. Joe Colangelo said the water tank was part of the motion by the Water Commission in October. Diane McCarthy clarified the approval in October was in reference to a site plan dated March 2014 which was prepared on behalf of the town and showed a water tank. Since that time Wake Robin has met with the Water Department on the plans. Erik Dalen said Rick Lewis confirmed he received all the plans and the alternative design with details from the vendor.

Mary Kehoe asked if the applicant is willing to build the water tank. Erik Dalen said Wake Robin is willing to do what is necessary to get the Phase 3 expansion done, but does not want to be locked into 100% payment of the tank. Joe Colangelo speculated the Water Commission would be receptive to hearing from Wake Robin. Diane McCarthy said Wake Robin would like discussion with the Water Commission, but was told the Water Commission is not open to conversation. Phase 3 has potable water and Wake Robin has a letter from the town regarding available allocation. There was also the understanding at Preliminary Plan approval that if there is to be a smaller tank or none at all then further approval by the DRB is not necessary. Wake Robin disagrees with

statements made in the letter from the Water Commission and requests the letter be on the record. The request by the town for the water tank pre-existed the Phase 3 expansion proposal and should not be linked. If the town takes the primary water tank out of service Wake Robin has a plan with the fire department for fire flows and will provide the residents with bottled potable water. It is hoped the Water Commission meets with Wake Robin for a good faith discussion. Ms. McCarthy mentioned correspondence from Joe Colangelo regarding a request for postponement by the Water Commission to discuss Wake Robin and then being advised the Water Commission did not want to hear from Wake Robin. A response from Joe Colangelo to Wake Robin's inquiry on the matter has not yet been received. Joe Colangelo stated Wake Robin has been informed of Water Commission meetings and is welcome to attend. The Water Commission wants to see alternative solutions and not continued discussion of the same tank.

There was discussion of other site plan requirements. Diane McCarthy noted there is adequate capacity for waste water and water. Chris Galipeau stated the site plan does not have a survey plat (Mylar) so the site plans were recorded with the town. Chris Galipeau will work out the details with Kate Mitchell.

Mary Kehoe asked if the DRB has authority to require the applicant to pay the water connections. Joe Colangelo said he did not know and was being more formal due to "on the record" review.

Diane McCarthy noted conditions #6 and #7 in the draft motion in the staff report are satisfied. Kate Mitchell pointed out the conditions are standard for the record. Following further discussion there was agreement to add "as of the date of the approval" to Condition #7.

There was brief discussion of constructing in accordance to the plans in order to get a Certificate of Occupancy. Kate Mitchell said the Certificate of Occupancy is issued based on the building permit and what is stated in the building permit must be built.

Mark Sammut asked the cost to build a water tank. Erik Dalen said a water tank without engineering ranges from \$300,000 to \$500,000. Pat McKee, Wake Robin CEO, said the estimate does not include the cost added to the project (\$1 million design costs) because the Selectboard tagged the water tank and denied the zoning change by the Planning Commission which forced redesign of the independent living (IL) building. In hindsight Wake Robin should have just built the water tank.

#### PUBLIC COMMENT

None.

## DELIBERATION/DECISION

Final Plan, PUD-R, 38 Units, Renovations, Continuing Care Retirement Facility, 200 Wake Robin Drive, Wake Robin (SUB03-08R5\CU16-02)

**MOTION by Mary Kehoe, SECOND by Mark Sammut, to finalize the record for the Final Plat Application (SUB03-08R5) and Conditional Use Application (CU16-02) by Wake Robin. VOTING: unanimous (4-0); motion carried.**

**MOTION by Mary Kehoe, SECOND by Alex von Stange, to close the hearing on SUB03-08R5\CU16-02, applications by Wake Robin for 200 Wake Robin Drive and direct staff to prepare a decision to indicate Final Plan approval. VOTING: unanimous (4-0); motion carried.**

**MOTION by Mary Kehoe, SECOND by Mark Sammut, to direct staff to prepare a decision to indicate approval of the Final Plat Application (SUB03-08R5) for a 38 unit apartment building and other renovations as depicted on the plans submitted and titled “Wake Robin 200 Wake Robin Drive Shelburne Vermont 05482” prepared by Perkins Eastman and dated June 14, 2016, and Conditional Use Application (CU16-02) for a continuing care retirement facility at 200 Wake Robin Drive by Wake Robin with the following conditions:**

- 1. The Mylar acceptable to staff shall be recorded in the Shelburne Land Records within 180 days of the signed approval.**
- 2. A zoning permit shall be required prior to commencing any site work or construction.**
- 3. Prior to commencing construction a pre-construction meeting will be held between the developer, his engineer and contractor, and town staff; additional meetings will be held as requested by tow staff during construction (e.g. following large storm events).**
- 4. The project shall be constructed in accordance with the plans and a Certificate of Occupancy will not be issued unless the project is constructed as proposed and consistent with the building application and process of the project.**
- 5. A copy of the Individual Stormwater Permit Application shall be required prior to the issuance of a zoning permit application.**
- 6. The project shall conform to Shelburne Public Works Specifications in force as of the date of this approval.**
- 7. Fire hydrants and spacing, water pressure levels and other aspects of fire protection systems shall be designed and installed in accordance with applicable codes as of the date of this approval identified by the Shelburne Fire Chief in all areas served by municipal water at no expense to the town.**

- 8. A Certificate of Occupancy permit shall be required for the IL Building, Community Center and Linden Healthcare Center.**

**VOTING: unanimous (4-0); motion carried.**

**5. OTHER BUSINESS/CORRESPONDENCE**

None.

**6. ADJOURNMENT and/or DELIBERATIVE SESSION**

**MOTION by Mark Sammut, SECOND by Ian McCray, to adjourn the meeting.**

**VOTING: unanimous (4-0); motion carried.**

The meeting was adjourned at 9:06 PM.

*RScty: MERiordan*