

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
September 7, 2016**

- MEMBERS PRESENT:** Mary Kehoe (Chairwoman); Mark Sammut, Jeff Hodgson, Ian McCray, Alex von Stange, Judy Christensen. (Jeff Pauza and Ellery Harkness were absent.)
- STAFF PRESENT:** Kaitlin Mitchell, DRB Administrator; Claudine Safar, Town Attorney.
- OTHERS PRESENT:** Frank Talbott, Jason Tiballi, Don Phelps, Mary Phelps, Moe and Shelley Dubois, Chris Galipeau, Jack Millbank, Chris Pingert, William Posey, Dave Potter, Jeff Halvorsen, Elizabeth Smardon, Amanda Lafferty, Karen Tyler.

AGENDA:

1. Call to Order and Announcements
2. Public Comment
3. Approval of Minutes (8/17/16)
4. Applications
 - Design Review, Garage, 104 Shelburnewood Drive, Phelps (DR16-07)
 - Design Review, Single Family House, Lot #2, 43 Fisher Place, Posey (DR16-09)
 - Conditional Use, Duplex, 5119 Route 116, Dubois (CU16-06)
 - Preliminary Plan, Subdivision, Two Lots, 75 Harbor Road, Talbott (SUB99-02R5)
 - Conditional Use, Lakeshore Erosion Control Structure, 422 Lands End Lane, Halvorsen (CU13-18R1)
 - Conditional Use, Lakeshore Erosion Control Structure, 1611 Harbor Road, Shelburne Farms (CU16-05)
 - Final Plan, Subdivision, 2 Lots, 1056 Falls Road, Smardon (SUB16-01)
 - Appeal, Notice of Violation, Harbor Place, 3164 Shelburne Road, Champlain Housing Trust (A15-10)
5. Other Business/Correspondence
6. Adjournment and/or Deliberative Session

The DRB conducted a site visit to 93 Webster Road prior to the start of the regular meeting.

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

August 17, 2016

MOTION by Alex von Stange, SECOND by Jeff Hodgson, to approve the minutes of 8/17/16 as presented. VOTING: unanimous (6-0); 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.

DR16-07: Design Review for an 18'x 24' garage at 104 Shelburnewood Drive by Donald Phelps

Donald Phelps appeared on behalf of the application.

Submittals:

- Application
- Site Plan
- Elevation of proposed garage
- Catalog sheets for doors, windows and shutters
- Town of Shelburne Staff Report, dated 9/7/16

STAFF REPORT

The DRB received a written staff report on the application, dated 9/7/16.

APPLICANT COMMENTS

Don Phelps explained the property line went through the old garage which had to be removed in order for the bank to issue a loan for the new garage in the new location.

PUBLIC COMMENT

None.

DELIBERATION/DECISION

Design Review, Garage, 104 Shelburnewood Drive, Don Phelps (DR16-07)

MOTION by Mary Kehoe, SECOND by Judy Christensen, to grant design review approval to Donald Phelps for an 18'x 24' garage at 104 Shelburnewood Drive per the drawings received August 23, 2016. VOTING: unanimous (6-0); motion carried.

DR16-09: Design Review for a single family house on Lot #2 at 43 Fisher Place by William Posey

William Posey appeared on behalf of the application.

Submittals:

- Application

- Site Plan
- Elevation sketches
- Floor plan sketch
- Roof corner detail and window detail sketches
- Catalog sheets for vinyl siding and corner trim
- Town of Shelburne Staff Report, dated 9/7/16

STAFF REPORT

The DRB received a written staff report on the application, dated 9/7/16.

APPLICANT COMMENTS

Bill Posey explained the 1,400 s.f. single family, single story, two bedroom house will be built on Lot #2 in the subdivision. The house will have a single car garage. Shelburne Design Review Committee suggested a six window pane on the front door rather than a four window pane.

Mary Kehoe asked about the houses on the other lots in the subdivision. Bill Posey said to date there is a duplex on Lot #3, a single family, one and a half story house with three bedrooms on Lot #5, and the single family house to be built on Lot #2.

PUBLIC COMMENT

None.

DELIBERATION/DECISION

Design Review, Single Family House, Lot #2, 43 Fisher Place, Posey (DR16-09)

MOTION by Mark Sammut, SECOND by Mary Kehoe, to grant design review to William Posey for a single story, single family house on Lot #2, 43 Fisher Place, with the condition that the drawings be modified to depict a front door with a six pane window. VOTING: unanimous (6-0); motion carried.

CU16-06: Conditional Use Review to convert a single family house into a duplex at 5119 Route 116 in the Rural District by Maurice Dubois

Shelley and Moe Dubois appeared on behalf of the application.

Submittals:

- General Application Form received 6/24/16
- Conditional Use Review Application received 6/24/16
- Site photos received 6/24/16
- Sketch Area Table/Addendum
- Town of Shelburne Staff Report, dated 9/7/16

STAFF REPORT

The DRB received a written staff report on the application, dated 9/7/16.

APPLICANT COMMENTS

Shelley Dubois explained the proposal to convert the over 100 year old farmhouse purchased in 2000 into two apartments. There will be no changes to the exterior of the structure.

Alex von Stange asked about apartments in the house. Shelley Dubois explained one apartment will occupy the first floor of the house and the second apartment will occupy the basement level of the house. The farmhouse had an apartment in the basement level originally. The basement level has its own outside access.

PUBLIC COMMENT

None.

DELIBERATION/DECISION

Conditional Use, Duplex, 5119 Route 116, Maurice Dubois (CU16-06)

MOTION by Mary Kehoe, SECOND by Judy Christensen, to finalize the record for CU16-06 to convert a single family house into a duplex at 5119 Route 116 in the Rural District by Maurice Dubois. VOTING: unanimous (6-0); motion carried.

MOTION by Mary Kehoe, SECOND by Mark Sammut, to close the hearing and direct staff to prepare a decision indicating approval of CU16-06 to convert a single family house structure existing prior to June 1, 1981 into a two family structure located at 5119 Route 116 by Maurice Dubois with the following conditions:

1. A zoning permit shall be required prior to any improvements being made.
2. A Certificate of Occupancy shall be required.

VOTING: unanimous (6-0); motion carried.

SUB99-02R5: Preliminary Plan to re-subdivide an existing 113 acre lot into two lots on land currently used for agricultural purposes with no further development or new uses proposed at 75 Harbor Road in the Conservation District and Floodplain and Watercourse Overlay district by Frank Talbott

Frank Talbott appeared on behalf of the application.

Submittals:

- Preliminary Plan Review Application received 8/5/16

- Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bay Harbor, dated 7/25/04 and received 8/5/16
- Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bay Harbor, dated 1/25/12 and received 8/5/16
- Second Amendment to Amended and Related Declaration of Covenants, Conditions and Restrictions for Bay Harbor, undated and received 8/5/16
- Site Plan Sheet titled “Proposed Subdivision of Bay Road Lot 3, arbor Road, Shelburne, Vermont” prepared by Civil Engineering Associates, dated 9/11/15 and received 6/9/16
- Department Head Comments as required per Section 600(28)
- Town of Shelburne Staff Report, dated 9/7/16

STAFF REPORT

The DRB received a written staff report on the application, dated 9/7/16.

APPLICANT COMMENTS

Frank Talbott explained the proposal to subdivide 14 acres from the 113 acre parcel to be conveyed to One Mitten Farm which was established on the property 13 years ago.

There was discussion of access to the land. Frank Talbott said the original access was between lots 2 and 3 and then the access changed to the middle of Lot 3. The original access rights allowed trees and hedges to be planted along the access. Maintaining the access in the original location means traffic would go through the parking lot of the barn and some plantings would be lost so a new access for New Village Farm was created. The access to Lot 3 is only used in the mornings in the summer to milk the cows otherwise the access is not used.

PUBLIC COMMENT

None.

DELIBERATION/DECISION

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

MOTION by Mark Sammut, SECOND by Mary Kehoe, to finalize the record for Preliminary Plan, SUB99-02R5, for 75 Harbor Road by Frank Talbott. VOTING: unanimous (6-0); motion carried.

MOTION by Mark Sammut, SECOND by Mary Kehoe, to authorize the applicant SUB99-02R5 to prepare a Final Plan application. VOTING: unanimous (6-0); motion carried.

MOTION by Mark Sammut, SECOND by Judy Christensen, to close the hearing on the Preliminary Plan, SUB99-02R5, for 75 Harbor Road by Frank Talbott and direct staff to prepare a decision indicating Preliminary Plan approval. VOTING: unanimous (6-0); motion carried.

CU13-18R1: Conditional Use for a lakeshore erosion control structure at 422 Lands End Lane in the Rural District and Lakeshore Overlay and Floodplain and Watercourse Overlay districts by Jeff Halvorsen

Chris Galipeau, Civil Engineering Associates, appeared on behalf of the application. Jeff Hodgson recused himself.

Submittals:

- Project cover letter dated 7/26/16 and received 8/2/16
- General Application Form received 8/2/16
- Conditional Use Review Form received 8/2/16
- Existing conditions photos prepared 2/23/16 and received 8/2/16
- Site Plan Sheets C1.0, C1.1 prepared by CEA, dated 3/3/16 and received 8/2/16
- Town of Shelburne Staff Report, dated 9/7/16

STAFF REPORT

The DRB received a written staff report on the application, dated 9/7/16. Kate Mitchell noted there are portions of the erosion control structure outside of the 98' – 102' elevation. If possible the applicant should consider making the structure conform to the bylaws.

APPLICANT COMMENTS

Chris Galipeau explained there has been additional erosion since 2013 in the sections of the shoreline not stabilized. View management and forest management zones are established on the property. There will be no tree cutting, but many trees are undercut by the erosion and simply falling into the lake. The structure will be built with large quarry stone “keyed in” to hold up the existing embankment. The lake level is low presently which will allow the work. Mr. Galipeau showed photos of how the structure will blend into the shoreline.

Mary Kehoe asked about meeting the bylaws. Chris Galipeau said the wall will be keyed in above the 98' elevation where the erosion is occurring and fit into the shoreline as much as possible so there is less reveal showing. If the wall goes out too far more material to fill in behind will be needed.

PUBLIC COMMENT

None.

DELIBERATION/DECISION

Conditional Use, Lakeshore Erosion Control Structure, 422 Lands End Lane, Halvorsen (CU13-18R1)

MOTION by Mark Sammut, SECOND by Ian McCray, to finalize the record for CU08-02R2 for an erosion control structure at 422 Lands End Lane by Jeff Halvorsen. VOTING: unanimous (5-0); motion carried.

MOTION by Mark Sammut, SECOND by Ian McCray, to direct staff to prepare a decision to indicate approval of CU13-18R1 for an erosion control structure at 422 Lands End Lane, Lot 4, Shelburne Point, as depicted on the Site Plan Sheet C1.0 with the following conditions:

- 1. A zoning permit shall be required prior to any improvements being made.**
- 2. Any zoning permit application for site work shall include the submission of a Vermont Agency of Natural Resources Project Review Sheet.**
- 3. Any removal of vegetation shall require a Lakeshore Vegetation Cutting Application.**
- 4. Within 90 days of project completion a professional engineer shall certify that the project has been constructed according to approved plans as conditioned.**

VOTING: unanimous (5-0); motion carried.

Jeff Hodgson returned to the DRB.

CU16-05: Conditional Use for a lakeshore erosion control structure at 1611 Harbor Road in the Rural District and Lakeshore Overlay and Floodplain and Watercourse Overlay districts by Shelburne Farms

Chris Galipeau, Civil Engineering Associates, appeared on behalf of the application.

Submittals:

- Project cover letter dated 7/27/16 and received 8/2/16
- Technical Basis letter dated 7/27/16 and received 8/2/16
- General Application Form received 8/2/16
- Conditional Use Review Form received 8/2/16
- Existing conditions photos received 8/2/16
- Project Review Sheet prepared 8/1/16 and received 8/2/16
- Site Plan Sheets C1.0, C1.1 prepared by CEA, undated and received 8/2/16
- Email correspondence from Alec Webb received 9/1/16
- Town of Shelburne Staff Report, dated 9/7/16

STAFF REPORT

The DRB received a written staff report on the application, dated 9/7/16.

APPLICANT COMMENTS

Chris Galipeau explained there is a road network around the coach barn and a lot of erosion in the location. More erosion has occurred since 2008. The plan is to stabilize the shoreline and create a quarry stone ramp to access the beach. The ramp will blend in and look natural. The cove has always been used as an access by the farm for residents and employees.

Mark Sammut asked if there will be plantings to replace compromised trees. Chris Galipeau said the embankment will be vegetated per state rules. The farm is trying to save as many trees as possible, but severely compromised trees will be removed. The road has too many trees too close to each other per preference of the Fire Department. The farm is under Act 250 so a Shoreline Permit was not triggered, but the erosion control structure must go through the Act 250 process.

Alex von Stange asked about the width of the rock stairs and if the ramp will get slippery when wet. Chris Galipeau estimated the stairs are five feet wide. The ramp has an aggregate. The stairs do get ice in the winter. The farm will not want people there if it is unsafe.

Mary Kehoe asked if the erosion control plan is consistent with the Shelburne Farms Master Plan. Chris Galipeau explained because Shelburne Farms is a national landmark with historic roads. The language speaks to rehab and maintenance of existing structures so not stabilizing the shoreline would be against the master plan. The farm's goal is not to build shoreline structures, but to maintain historic structures.

PUBLIC COMMENT

None.

DELIBERATION/DECISION

Conditional Use, Lakeshore Erosion Control Structure, 1611 Harbor Road, Shelburne Farms (CU16-05)

MOTION by Mary Kehoe, SECOND by Alex von Stange, to finalize the record for CU16-05 for an erosion control structure at 1611 Harbor Road by Shelburne Farms. VOTING: unanimous (6-0); motion carried.

MOTION by Mary Kehoe, SECOND by Judy Christensen, to direct staff to prepare a decision to indicate approval of CU16-05 for an erosion control structure at 1611 Harbor Road as depicted on the Proposed Conditions Site Plan Sheet C1.0 with the following conditions:

- 5. A zoning permit shall be required prior to any improvements being made.**
- 6. Any zoning permit application for site work shall include the submission of a Vermont Agency of Natural Resources Project Review Sheet.**
- 7. Any removal of vegetation shall require a Lakeshore Vegetation Cutting Application.**
- 8. Within 90 days of project completion a professional engineer shall certify that the project has been constructed according to approved plans as conditioned.**

VOTING: unanimous (6-0); motion carried.

SUB16-01: Final Plan for a two lot residential subdivision at 1056 Falls Road in the Shelburne Falls Mixed Use District and Village Design Review Overlay District by Elizabeth Smardon

Jack Millbank, Civil Engineering Associates, and Chris Pingert, attorney representing the applicant, appeared on behalf of the application.

STAFF REPORT

The DRB received a written staff report on the application, dated 9/7/16. Kate Mitchell noted design review approval is needed for the application (the application is on the 9/8/16 meeting agenda). Comments from the Fire Department and Shelburne Natural Resources Committee are also needed. Staff is suggesting the application be continued pending further information.

APPLICANT COMMENTS

Jack Millbank explained the proposal to subdivide the long, narrow lot on Falls Road into two parcels. The existing house will remain on one parcel and a new structure served by a 20' right-of-way will be built on the second parcel. The property is served by town water and sewer service.

Mary Kehoe asked if the easement will be paved. Jack Millbank said the new lot will be sold and the new owners may want to pave the right-of-way. The current site plan does not show the right-of-way as paved.

PUBLIC COMMENT

None.

DELIBERATION/DECISION

Final Plan, Subdivision, Two Lots, 1056 Falls Road, Smardon (SUB16-01)

MOTION by Mary Kehoe, SECOND by Judy Christensen, to continue the hearing on the Final Plan Application, SUB16-01, for a two lot subdivision at 1056 Falls Road by Elizabeth Smardon until 9/21/16 pending comments from municipal departments and design review.

DISCUSSION: Chris Pingert asked if there are any other concerns to be addressed. Mary Kehoe said there does not appear to be any further concerns.

VOTING: unanimous (6-0); motion carried.

A15-10: Appeal of Notice of Violation by Champlain Housing Trust, Inc. for change of use without a zoning permit and addition of new uses without a zoning permit at Harbor Place, 3164 Shelburne Road

Claudine Safar, attorney representing the Town of Shelburne, Karen Tyler, attorney representing Champlain Housing Trust (CHT), and Amanda Lafferty, attorney representing the DRB, were present on behalf of the appeal.

Reply Briefs

Mary Kehoe stated she needs more time to digest the information in the briefs and recommended the hearing be continued. Other members of the DRB concurred with needing more time to review the briefs.

MOTION by Mary Kehoe, SECOND by Judy Christensen, to accept reply briefs from the town and from CHT. VOTING: unanimous (6-0); motion carried.

Discriminatory Statements

Attorney Safar noted the issue of Michael Monte's allegation of discriminatory statements against CHT by members of town staff is being briefed and she would like the opportunity to cross. Also, there were mischaracterizations in Attorney Tyler's brief in terms of the town's argument. Mary Kehoe recalled the objection was sustained because discrimination was not before the DRB. The issue before the DRB was if Harbor Place is operating as a hotel/motel. Mary Kehoe asked Attorney Tyler if she feels the reason why the violation was issued was for discriminatory issues. Attorney Tyler said there is a provision in the Fair Housing Act regarding municipalities making land use decisions that discriminate against individuals based on disabilities, income level, or receipt of public benefits. Action could be brought to the Human Rights Commission or Superior Court. Title 24 also has a provision that prohibits the DRB from construing the bylaws in a way that would discriminate against the Fair Housing Act. Action could be brought to the Attorney General. Discrimination was discussed in the reply brief. If CHT makes a claim that would be in the future in a different forum.

Mary Kehoe said the question is whether the DRB should take additional testimony on discriminatory conduct on the part of the town in issuing the Notice of Violation and the

DRB issuing a decision that violates Title 24 in so far as the result would be discriminatory. Attorney Tyler said the town argued people who received social benefits/services because they are poor or have disabilities are a special class of people apart from the general public, and Harbor Place serves these people, not the general public. If the DRB affirms the bylaws this would be on a discriminatory basis. The bylaws construed that way would be in violation of the Fair Housing Act. Attorney Safar disagreed with the argument by Attorney Tyler, stating the town has not said the people are poor and are of a class. The people at Harbor Place come by referral so they are a subset of people from a larger group. This has nothing to do with income. It is the use of the property based on an arrangement of referrals. This is being twisted to say the town is discriminating against a group of people. Town staff never said anything intentionally discriminatory or intended to discriminate.

Alex von Stange asked if there would be objection if the referral was the only common item. Attorney Safar said that would depend on the agency's purpose of referral. The situation is qualifying to get a referral and if the qualification is met then the person is let in so this is a category of people.

Mary Kehoe polled the DRB on whether to grant the request to reconsider sustaining the objection to questions of discrimination by Michael Monte and allow testimony on that issue. The DRB was in support.

MOTION by Mary Kehoe, SECOND by Alex von Stange, to reverse sustaining Attorney Tyler's motion to keep out testimony from Michael Monte on discrimination and continue the hearing to the next available meeting. VOTING: unanimous (6-0); motion carried.

MOTION by Mary Kehoe, SECOND by Judy Christensen, to continue the hearing and take oral argument on October 19, 2016. VOTING: unanimous (6-0); motion carried.

5. OTHER BUSINESS/CORRESPONDENCE

None.

6. ADJOURNMENT and/or DELIBERATIVE SESSION

MOTION by Mary Kehoe, SECOND by Ian McCray, to adjourn the meeting. VOTING: unanimous (6-0); motion carried.

The meeting was adjourned at 8:25 PM.

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