

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**

**January 20, 2021**

**\*Meeting held by teleconference.**

**MEMBERS PRESENT:** David Hillman (Chair); Mark Sammut, Mike Major, John Day, Anne Bentley, Zeke Plante, Doug Griswold.  
**STAFF PRESENT:** Dean Pierce, Planning Director; Dan Albrecht, Acting DRB Coordinator.  
**OTHERS PRESENT:** Brian Currier, Alan Bauman, Mike and Kathy Deavitt, Joyce George, Allyson Myers, Carolyn Orben, Martin Courcelle, Ryan Morse, Tom Cavin, Derrick Senior, Phil Bondo, Keith Wagner.

**AGENDA:**

1. Call to Order and Agenda
2. Public Comment
3. Approval of Minutes (1/6/21)
4. Disclosures/Potential Conflicts of Interest
5. Applications
  - Conditional Use\Site Plan, PUD/Subdivision, Two Lots, Eight Residential Units, 2659 & 2689 Shelburne Road, Shenk Enterprises, LLC (SUB11-02R1\CU20-06\SP19-01R1)
  - Conditional Use, Modify Non-Conforming Structure, 104 Pine Haven Shores Lane, Stiller (CU20-09)
  - Conditional Use, Lakeshore Erosion Control Structure, 240 Clearwater Road, Bauman (CU03-02R1)
  - Amendment Final Plan, PUD-R, Modify Open Space, 25 Deavitt Farm Road, Deavitt (SUB98-08R2)
6. Other Business
7. Adjournment

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**1. CALL TO ORDER and AGENDA**

Chair, David Hillman, called the teleconference meeting to order at 7 PM, held rollcall, and explained the procedure to be followed.

**2. PUBLIC COMMENTS**

There were no comments at this time from the public.

**3. MINUTES**

*January 6, 2021*

**MOTION by John Day, SECOND by Mike Major, to approve the minutes of 1/6/21 as presented. VOTING by rollcall: 5 ayes, 2 abstentions (Anne Bentley, Zeke Plante); motion carried.**

**4. DISCLOSURES/POTENTIAL CONFLICTS OF INTEREST**

Mike Major and David Hillman said they know the Deavitt family personally.

Those participating in the meeting were asked if anyone had any concerns about the participation of any DRB member in any matter on the agenda. No concerns were raised.

## 5. 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 DRB were sworn in.

**SUB11-02R1\CU20-06\SP19-01R1: Subdivision\Conditional Use\Site Plan for a two-lot subdivision with one lot associated with an existing commercial use and the second lot for residential use with an eight-unit multi-family building at 2659 & 2689 Shelburne Road in the Mixed Use and Residential Districts, and the Stormwater Overlay District by Shenk Enterprises, LLC**

Brian Currier with O'Leary Burke Civil Associates, Inc. appeared on behalf of the application.

### Submittals:

- Cover letters prepared by O'Leary Burke Civil Associates, Inc., dated 7/13/20 to the present
- General Application Form
- Sketch Plan Review Application
- Sketch Plan (Sheet No. 1), received 3/26/19
- Burlington Free Press classified advertisement, 8/2/20
- Town of Shelburne Planning & Zoning Sign Protocol
- Notice of Hearing
- Notice of Application
- Verbal testimony at hearing
- Subdivision Review Application
- Site Plan Review Application
- Conditional Use Review Application
- Materials submitted re: PUD criteria of the bylaws (PUD form)
- Letter from landowners of record authorizing applicant to apply for subdivision approval
- ITE Trip Generation Table
- VT ANR Project Review Sheet
- VT DEC Stormwater Program email 9/4/20
- Landscaping Planting Budget
- Plans prepared by O'Leary Burke Civil Associates, dated 10/26/20, Sheets 1-7 and Site Plan 12/2/20 and Roadway and Storm Details
- Plans prepared by S-2 Architecture, dated 9/14/20 (elevations) and 10/26/20 (landscaping)
- Plat prepared by O'Leary Burke Civil Associates, dated 9/30/20
- Town of Shelburne Staff Report, dated 1/20/21

### STAFF REPORT

The DRB received a written staff report on the application, dated 1/20/21. Dean Pierce reviewed the PUD on 2.94 acres at the corner of Shelburne Road/Martindale Road. Lot 1 is developed with an existing commercial use (deli). Lot 2 will be developed with an 8-unit multi-family condominium project. Lot coverage on the entire parcel can be considered and the DRB should ask about open space, pedestrian facility, and connectivity.

### APPLICANT COMMENTS

Brian Currier reviewed the plan for a two-lot subdivision and construction of multi-family residential housing to be served by municipal water and sewer, and addressed the staff comments in the Staff Report. The following was noted:

- There will be community gardens, landscaping, stormwater management.
- The conditional use application is to adjust the zoning line by 50' to gain one unit of housing.
- The 20' x 50' open space area proposed on the southern end of the parking will contain the community gardens.
- A fence will be installed along the southern end of the parcel with plantings added to the east.
- The existing wooded buffer will remain.
- There is no sidewalk on Martindale presently. The applicant is willing to provide an easement on the property for a future sidewalk though it appears the best location for a sidewalk would be on the other side of the road.
- A fiscal impact analysis (FIA) is not warranted because the construction cost of the project is not greater than \$2 million and there are less than 50 units being proposed.
- The ITE Manual for a multi-family housing project of this size indicates the 5 PM peak hour traffic impact on Shelburne Road would be negligible.
- A 20' wide access drive is proposed to accommodate fire vehicles.
- Lot coverage on the entire parcel is less than the 50% allowed with a PUD.
- There will be four light bollards between the parking lot and building in order to be more in character with the surrounding buildings. There will be a building mounted light either on the outside or within the rear entrance of the building.
- The proposed landscaping budget is \$15,665 based on \$125,000 budgeted for site costs, not building construction. Foundation plantings can be investigated.
- The existing single family house on the site will be removed, but the garage and curb cut will remain.
- Comments from the Water Department have been addressed.
- No negative comments on the project have been received from town departments.

There was discussion of retaining the curb cut and the garage. Brian Currier said the applicant may develop the lot at some point in the future. The garage will be used for storage of maintenance equipment. The DRB agreed the curb cut can only be approved for the purposes of the existing garage and VTrans must approve the curb cut for any other development.

Regarding lighting, the applicant can determine the type of lighting, but all lighting must comply with the town's lighting standards. Safety and darkness are the issues for the DRB.

There was discussion of drainage. Brian Currier described what will be in place to direct water flow and changes to be made for Final Plan.

Dan Albrecht asked if there will be a water line to serve the community garden. Brian Currier said a water spigot can be added on the back of the building to provide water to the garden.

#### PUBLIC COMMENT

Joyce George, resident, asked that the DRB add a condition saying the green space shall remain undeveloped and vegetated and not used for storage or commercial use, and the landowner, not the person or business with the easement, is responsible for maintaining the green space vegetation. Dean Pierce stated the Town Attorney will likely want wording in the easement to ensure there is green space. Staff will communicate the DRB's position on the easement prior to Final Plan review. Joyce George asked if the apartments will be market rate and the number of bedrooms per unit. Brian Currier said the units will be market rate and the number of bedrooms per unit will be finalized when sewer allocation is provided by the town. It is likely the units will be one and two bedrooms. Joyce George opined that locating the apartments at the back of the lot could be to eventually develop the lot in front and that is the reason the developer is keeping the garage and curb cut.

Allyson Myers, speaking as a resident and not as a DRB member, expressed concern about the number of curb cuts on the parcel (three for the deli and one for the lot to be developed) and the traffic at the intersection where many accidents have occurred. The added housing units will add traffic and children to the area. The traffic flow for the deli lot should be improved and perhaps a sidewalk added. Dean Pierce pointed out nothing is proposed to change on the deli property, but the deli parcel is part of the PUD and the application has always been a subdivision so the DRB can raise issues and request options from the applicant. Following further discussion, the DRB wanted the developer to show some options for improvement with the deli curb cut on Martindale. Brian Currier stressed the application is for an 8-plex proposal, not the deli which has been operating for many years. No changes are proposed to the deli parcel. Traffic generated by the 8-plex has been determined to be negligible in the Route 7 corridor. The pedestrian connectivity piece is directly related to the residential portion of the proposal and the neighbors to the east.

#### DELIBERATION/DECISION

Conditional Use\Site Plan, PUD Subdivision, Two Lots, Eight Residential Units, 2659 & 2689 Shelburne Road, Shenk Enterprises, LLC (SUB11-02R1\CU20-06\SP19-01R1)

**MOTION by Mark Sammut, SECOND by Doug Griswold, to finalize the record, close the hearing and direct staff to prepare a decision indicating Preliminary Plan**

approval of the proposed subdivision/PUD (SUB11-02R1) at 2659 & 2689 Shelburne Road by Shenk Enterprises, LLC, and authorize the applicant to file a Final Plan (Plat) application, and to grant Conditional Use and Site Plan approval (CU20-06\SP19-01R1) with the following conditions:

1. Final Plan (Plat) materials submitted for review will address unresolved comments supplied by town department heads and include materials required by the Final Plan Checklist.
2. The retention of the curb cut on Shelburne Road will be for the use of the garage only and the Final Plan application shall include additional details regarding retention of the curb cut on Shelburne Road, outdoor lighting, bicycle parking sidewalks, and foundation landscaping.
3. Conditional Use approval and Site Plan approval shall be contingent on the project receiving Final Subdivision/PUD approval.
4. All construction shall be done in accordance with the approved plans and approved modifications thereto.
5. The applicant shall not remove any topsoil, sand or gravel beyond that required to meet construction needs of the subdivision.
6. The applicant shall provide potential revision to the curb cut and traffic pattern on the parcel owned by NIMRAH, LLC.
7. The applicant shall provide language to ensure that the green space, easement or not, shall not be used for any commercial purpose other than being green space.

**VOTING by rollcall: unanimous (7-0); motion carried.**

**CU20-09: Conditional Use for modifications to a non-conforming structure and work on the lakeshore erosion control structure at 104 Pine Haven Shores Lane in the Residential District and the Lakeshore Overlay and Stormwater Overlay Districts by Christian Stiller**

Phil Bondo with ReArch Co. appeared on behalf of the application. It was noted that work on the lakeshore erosion control structure was removed from the application.

**Submittals:**

- Conditional Use Review Application, received 12/2/20
- Pine Haven Residence, Landscape Plan, Sheet L-100, prepared by Wagner Hodgson, Landscape Architects, dated 1/13/21
- 104 Pine Haven Shores, Proposed Site Plan, Sheet A-1, prepared by McGavern Design, dated 11/19/20
- Town of Shelburne Staff Report, dated 1/20/21

**STAFF REPORT**

The DRB received a written staff report on the application, dated 1/20/21. Dan Albrecht reported the proposal is to modify a non-conforming structure within the 100' setback to the 102' elevation contour. The existing deck will be removed and a new deck will be built on the same footprint. The DRB should ask about vegetation and cutting within the 100' setback.

## APPLICANT COMMENTS

Phil Bondo stated the raised deck will be reconstructed with an on-grade terrace in the same footprint, and a new 100 s.f. deck will be built outside the setback. The existing stairs to the lake will be replaced with 4' wide stone stairs.

John Day asked if vegetation will be removed. Keith Wagner, landscape architect, said an arborist is looking at the health of the trees. Removal will be limited to limbs and invasives. There is an extensive plan for plantings on the south and east sides of the deck.

## PUBLIC COMMENT

Derrick Senior, resident, expressed concern about extensive cutting of vegetation. Keith Wagner said big trees will not be removed. Invasives will be removed and plantings will be done. The arborist will work with the town.

## DELIBERATION/DECISION

Conditional Use, Modify Non-Conforming Structure, 104 Pine Haven Shores Lane, Stiller (CU20-09)

**MOTION by Anne Bentley, SECOND by John Day, to close the record and direct staff to prepare a decision to indicate Conditional Use approval of CU20-09, application to modify a non-complying structure within the 100' setback from the 102' elevation contour in the Lakeshore Overlay District at 104 Pine Have Shores Lane by Christian Stiller as depicted in the plan prepared by Wagner Hodgson Land Architects and McGavern Design as noted in the Staff Report on the application, dated 1/20/21, subject to the following conditions:**

- 1. A zoning permit shall be required prior to excavation or any improvements being made, and the application shall detail the area of disturbance and propose measures to limit sedimentation and erosion.**
- 2. Pursuant to Section 1760, a vegetation cutting permit may be required for cutting of vegetation within the 100' setback in conjunction with the proposed project.**

**VOTING by rollcall: unanimous (7-0); motion carried.**

**CU03-02R1: Conditional Use for a lakeshore erosion control structure at 240 Clearwater Road in the Residential District and Lakeshore Overlay and Stormwater Overlay Districts by Alan Bauman**

Martin Courcelle with Champlain Consulting Engineers appeared on behalf of the application.

## Submittals:

- Conditional Use Review Application, received 11/30/20
- General Application, received 11/30/20
- Lakeshore Erosion Control Structure Narrative and Photo Report with four photos showing existing conditions at the property, November 2020, prepared by Champlain Consulting Engineers
- Bauman Real Estate, LLC, Permit Set, 240 Clearwater Road, Lakeshore Erosion Control Structure, prepared by Champlain Consulting Engineers, dated 11/19/20

- Town of Shelburne Staff Report, dated 1/20/21

#### STAFF REPORT

The DRB received a written staff report on the application, dated 1/20/21. Dan Albrecht stated the proposal is to replace 103' of shoreline protection riprap. The VT ANR Project Review Sheet has been received.

#### APPLICANT COMMENTS

Martin Courcelle explained the existing riprap slope will be replaced with a conventional stone erosion control structure. There will be two tiers on the north side and one tier on the south side with riprap above. The stairs will be replaced as well with the upper portion being precast concrete and the lower portion being wood or metal. No trees are proposed to be removed. Application will be submitted if a vegetation cutting permit is needed from the town.

Following discussion of the stairs there was concurrence the stairs are not part of the erosion control structure.

#### PUBLIC COMMENT

None.

#### DELIBERATION/DECISION

Conditional Use, Lakeshore Erosion Control Structure, 240 Clearwater Road, Bauman (CU03-02R1)

**MOTION by John Day, SECOND by Mike Major, to finalize the record, close the hearing, and direct staff to prepare a decision indicating Conditional Use approval of CU03-02R1, application for a lakeshore erosion control structure at 240 Clearwater Road by Alan Bauman with the following conditions:**

1. A zoning permit shall be required prior to excavation or any improvements being made, and the application shall detail the area of disturbance and propose measures to limit sedimentation and erosion.
2. As required under Section 1816, the applicant must submit a Project Review Sheet with the application for a zoning permit.
3. Pursuant to Section 1760, a vegetation cutting permit may be required for cutting vegetation within the 100' setback in conjunction with the proposed project.
4. An updated set of plans shall be submitted to reflect the use of stone.

**VOTING by rollcall: unanimous (7-0); motion carried.**

**SUB98-08R2: Amendment to the Final Plan for a PUD-R to modify the open space boundary and change the open space agreement to allow for agriculture and light recreational use at 25 Deavitt Farm Road in the Rural District and the Stormwater Overlay District by Mike and Kathy Deavitt**

Mike and Kathy Deavitt appeared on behalf of the application.

Submittals:

- Cover letter from Kathy R. Deavitt, dated 12/14/20
- Final Plan (Plat) Review Application Form, received 12/17/20
- Deavitt Subdivision, Proposed Subdivision Plan, Sheet C-1, prepared by CEA, revised 12/8/20
- Deavitt Subdivision, Proposed Subdivision Plan, Sheet C-1.1, prepared by CEA, revisions to adjust open space
- Revised Site Plan redline version of Open Space Agreement from Town Attorney
- Redline version of Open Space Agreement from Applicant
- Town of Shelburne Staff Report, dated 1/20/21

#### STAFF REPORT

The DRB received a written staff report on the application, dated 1/20/21. Dean Pierce explained the open space boundary change is to avoid overlapping the existing mound septic system. The Town Attorney wanted more information on the agricultural structures in the open space, use of motorized (ATV) vehicles in the open space, and the backup well located in the open space.

#### APPLICANT COMMENTS

Kathy Deavitt stated the Town Attorney reviewed the Open Space Agreement and made edits. The original agreement mentioned a replacement septic system and well if needed. Agricultural structures in the open space might be a chicken coup or a maple sugar house or a pony shed. ATVs will be used to maintain the beehives on the property. A tractor and brush hog will be used to mow the field. Snowmobiles may be used by family members on the property.

#### PUBLIC COMMENT

None.

#### DELIBERATION/DECISION

Amendment Final Plan, PUD-R, Modify Open Space, 25 Deavitt Farm Road, Deavitt (SUB98-08R2)

**MOTION by John Day, SECOND by Mark Sammut, to finalize the record, close the hearing, and direct staff to prepare a decision indicating approval of SUB98-08R2 for amendment of the PUD approval of the Deavitt subdivision at 25 Deavitt Farm Road by Mike and Kathy Deavitt with the following conditions:**

- 1. The applicant shall provide a mylar version of the revised site plan suitable for recording with 30 days of the close of the hearing.**
- 2. All previous conditions not affected by the decision shall remain in force and in effect.**
- 3. The use of ATVs and snowmobiles in the open space are for agricultural purposes and for family members only.**

**VOTING by rollcall: unanimous (7-0); motion carried.**

It was noted the DRB is in agreement with the staff recommendations in the Staff Report, dated 1/20/21, with regard to the well location and accessory structures given the limit of 600 s.f. in size.

**6. OTHER BUSINESS/CORRESPONDENCE**

None.

**7. ADJOURNMENT**

**MOTION by John Day, SECOND by Mike Major, to adjourn the meeting.**

**VOTING by rollcall: unanimous (7-0); motion carried.**

The meeting was adjourned at 9:26 PM.

*RScty by tape: MERiordan*