

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
February 1, 2017**

MEMBERS PRESENT: Mary Kehoe (Chair); Mark Sammut, Jeff Pauza, Joanna Watts, Jeff Hodgson, Ellery Harkness. (Judy Christensen, Ian McCray, and Ty Parker were absent.)

STAFF PRESENT: Kaitlin Mitchell, DRB Administrator; Dean Pierce, Planning Director; Joe Colangelo, Town Manager.

OTHERS PRESENT: Mary Griswold, Katherine Helm, Bruce Hartshorn, John Hammer, Jeremy Owens, Scott Jaunich, Jeff Jackson, Willard Jackson, Julie Gaboriault, Kane Smart, Erik Dalen, Patrick McKee, Diane McCarthy, Chris Galipeau, Stephen Vock, Mark Sperry, Erin Miller Heins, Russell Fox.

AGENDA:

1. Call to Order and Announcements
2. Public Comment
3. Approval of Minutes (1/18/17)
4. Applications
 - Amend Final Plan, Phase III PUD, 200 Wake Robin Drive, Wake Robin (SUB03-08R6)
 - Appeal, Notice of Violation, Shelburne Shipyard, Inc. (A16-09)
 - Variance, Dimensional Standards, Shelburne Shipyard, Inc. (V17-01)
5. Other Business/Correspondence
6. Adjournment and/or Deliberative Session

1. CALL TO ORDER and ANNOUNCEMENTS

Mary Kehoe called the meeting to order at 7 PM. There were no announcements of conflicts of interest with any of the applications before the DRB.

2. PUBLIC COMMENT

None.

3. APPROVAL OF MINUTES

January 18, 2017

MOTION by Mary Sammut SECOND by Joanna Watts, to approve the minutes of January 18, 2017 as written. VOTING: unanimous (5-0); 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.

SUB03-08R6: Amendment to Final Plan for the Phase III PUD at 200 Wake Robin Drive in the Residential District and Stormwater Impaired Watershed Overlay District by Wake Robin

Erik Dalen and Jeremy Owens appeared on behalf of the application.

Submittals:

- Cover Letter, dated 1/6/17
- Final Plan (Plat) Application
- General Application
- Letter prepared by Leslie Parker confirming approval by Water Commission of smaller water tank
- Letter to Rick Lewis prepared by Leslie Parker
- Fire Department letter for water tank prepared by Jerry Ouimet
- Minutes from January 9, 2017 Water Commission meeting
- Aquastore water tank details and specs
- Itemized list of amendments to Final Plan with corresponding sheet numbers prepared by Civil Engineering Associates
- Itemized list of amendments to the landscaping and lighting plan prepared by T.J. Boyle and Associates
- Final Plan Amendment Plan Set
- Lighting Waiver Request and supplemental information
- Town of Shelburne Staff Report, dated 2/1/17

STAFF REPORT

The DRB received a written staff report on the application, dated 2/1/17. Kate Mitchell noted the lighting waiver being requested will enhance the public good and health. The other amendments to the plan are minor changes.

APPLICANT COMMENTS

Erik Dalen explained modifications were made to the building entrances and landscaping around the buildings. The Fire Department approved the 75,000 gallon water tank and the request for a lighting waiver was also approved.

Jeremy Owens explained the waiver for pole height of 16' was approved which will increase the average illumines on the ground. It is suggested bollard lights be used instead of the lighting on the buildings to better illuminate the sidewalks and courtyards. People over the age of 65 need four times as much lighting as 20 year olds. The effective lighting area on each side of the bollards is about 10' on each side.

PUBLIC COMMENT

None.

DELIBERATION/DECISION

Amend Final Plan, Phase III PUD, 200 Wake Robin Drive, Wake Robin (SUB03-08R6)

MOTION by Mary Kehoe, SECOND by Mark Sammut, to finalize the record for the Final Plat Application SUB03-08R6 for 200 Wake Robin Drive by Wake Robin.

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

MOTION by Mary Kehoe, SECOND by Jeff Hodgson, to grant the requested lighting waiver for SUB03-08R6 at 200 Wake Robin Drive by Wake Robin.

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

MOTION by Mary Kehoe, SECOND by Mark Sammut, to close the hearing and direct staff to prepare a decision to indicate approval of the Final Plat Amendment Application SUB03-08R6 for 200 Wake Robin Drive by Wake Robin as depicted on the plans submitted and titled “Wake Robin 200 Wake Robin Drive Shelburne, Vermont 05482” and prepared by Perkins Eastman, dated November 18, 2016, with the following conditions:

- 1. An as-built plan that accurately reflects the installation and illumination be completed per the zoning bylaws.**
- 2. All conditions of approval within the Findings of Fact and Notice of Decision of SUB03-08R5 stand.**

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

A16-09: Appeal of Notice of Violation dated 11/7/16 for development not in compliance with site plan approval SP16-04, zoning permit B16-097, and setback standards at 4584 Harbor Road (Shelburne Shipyard) in the Rural Zoning District, Lakeshore Overlay District, and Floodplain and Watercourse Overlay District by Shelburne Shipyard, Inc.

Mary Kehoe reviewed the list of submittals and rules of the DRB on pre-filed testimony. Rules of evidence are as followed in Superior Court. The DRB reserves the right to receive additional evidence under certain circumstances. The letter from the Town Manager will not be considered because the Town Manager is present and can submit the information when testifying. There are additional emails from Dean Pierce regarding an engineer visiting the property.

Kane Smart, attorney for Jeff Jackson, noted request to access the site was denied. The DRB is asked to continue the hearing and do a site visit then take further evidence after the site visit. Erin Heins, attorney for Shelburne Shipyard, said the request for the engineer visit was just received 1/31/17, but the material was available since 1/4/17. The

request to have an engineer visit is not reasonable because someone from the shipyard needs to be present. There is no reason to delay the hearing for four weeks. Mary Kehoe explained it is common practice to do a site visit in these cases, and in fact, the plan was to announce a site visit would be done. Mary Kehoe asked Attorney Smart the intention of the site visit. Attorney Smart said the plan is to observe the foundation to give context to the photos and inspect the exterior and the soils. Invasive testing is not anticipated.

Attorney Smart expressed concern about the record and bifurcating the proceeding and keeping the record straight. The record on the appeal is developed at the hearing, but there is concern of bleeding of facts of record for each proceeding. If the Notice of Violation is deemed not warranted and the decision overturned, the facts should be relevant to that and not the variance. Also, the decision may be appealed. Testimony relative to the variance is not relevant to the Notice of Violation on record and would clutter the record with facts not relevant to the Notice of Violation. Mary Kehoe pointed out if it is found there is no violation then a variance would not be needed. The focus is on the Notice of Violation and then move to the variance application. Attorney Heins recalled a continuance was requested and approved by the DRB on January 4, 2017 in order to hear both applications per 24VSA4462. Jeff Jackson was asked at that time if he objected and he did not. Attorney Heins read language from Section 4462. Attorney Smart said his client is not objecting to hearing the cases concurrently, but wants to define the record. The Notice of Violation is relative to the buildings being in compliance with the permit. The variance test is not relevant to the Notice of Violation.

Mary Kehoe asked Dean Pierce to confirm that the application for the variance was to be determined at the same time as the Notice of Violation. Dean Pierce said the position for concurrent review has stood since the beginning. The Chair at the ruling said both matters will be heard on the same night on the same agenda. Mary Kehoe pointed out the letter from Attorney Heins, dated November 18 2016, includes the request for a variance.

TESTIMONY

Individuals to give testimony were sworn in.

Joe Colangelo

Joe Colangelo, Shelburne Town Manager, testified on or about October 31, 2016 Jeff Jackson and a neighbor come to the Town Manager with concern about construction of the structure by Shelburne Shipyard. A couple of days later Joe Colangelo, Ann Janda, Kate Mitchell, and Dean Pierce did a site visit to the shipyard. Mary Griswold and another representative from the shipyard were present. Dean Pierce used a wheel measuring device to measure the new foundation in place and compared the measurements to the permit. It appeared based on the measurement that the structure was

built different from what was shown on the permit. The permit showed a 20' lateral shift, but the new foundation was an 80' to 100' shift. The corner of the new foundation was significantly closer to Jeff Jackson's property (from 50' to 30'). Dean Pierce's measurements and GIS points showed there was a violation of the permit. The Notice of Violation was issued based on the following:

- The structure was built 80' laterally rather than 20'.
- The replacement building is encroaching on the setback more than the existing building.
- The new storage facility does not comply with the rear yard setback of 50' from Jeff Jackson's property.
- The measurements confirmed what was witnessed at the site visit.

Town Exhibits:

- Exhibit 1 - Notice of Violation
- Exhibit 2 – Copy of Permit B16-097, copy of application by Shelburne Shipyard, copy of letter from B. Hartshorn to K. Mitchell, dated 8/9/16 including a diagram of the building and aerial photo of the site.
- Exhibit 3 – Memo from K. Mitchell, dated 8/11/16, re: Administrative Site Plan Approval for the Shelburne Shipyard Application.

Mark Sammut asked if the information for issuing the Notice of Violation includes the site visit, visual measurements and GIS mapping. Joe Colangelo said the complaint by the neighbor was the reason for the site visit to visually see the structure and take measurements.

Mark Sammut asked what the property line determination was based on. Joe Colangelo said fencing and screening that was there and staff looked at tax maps to determine the property lines. It was clear the structure was within 50' of the property line.

Attorney Heins asked Mr. Colangelo if he is the chief Zoning Enforcement Officer for the town and familiar with Vermont Planning and Development Act and Shelburne zoning regulations. Joe Colangelo said by charter he is the Zoning Enforcement Officer for the town and is generally familiar with the regulations, but relies on staff to assist.

Attorney Heins asked Mr. Colangelo if he has a general understanding of the bylaws. Joe Colangelo said he often has to rely on the expertise of staff, but felt comfortable from the visual observation and reviewing the application with Kate Mitchell that there was a violation.

Attorney Heins asked Mr. Colangelo if he delegates authority to an assistant enforcement officer. Joe Colangelo said this has not been done since the former enforcement officer for the town left. Kate Mitchell was asked to assist in drafting the Notice of Violation. The Zoning Enforcement Officer does not issue permits.

Attorney Heins asked if Kate Mitchell issues permits. Joe Colangelo said Ms. Mitchell issues administrative permits.

Attorney Heins asked if Kate Mitchell is the Administrative Officer per the Planning and Development Act and people get information on applications from her. Joe Colangelo confirmed this and confirmed Kate Mitchell is the point person.

Attorney Heins asked if the Administrative Officer only approves permits that conform to the bylaws. Joe Colangelo said the Administrator Officer grants administrative approvals. If a conditional permit is not required then approval can be granted administratively. Attorney Smart objected because the question is unclear as to how a permit conforms to the bylaw. Attorney Heins restated the question and asked if there is agreement no permit is issued by the Administrative Officer except in conformance with the bylaws. Joe Colangelo answered yes.

Attorney Heins asked if the permit that was issued complies with the bylaws. Joe Colangelo said the permit complies if issued appropriately. Certainly mistakes have been made and permits not given correctly. Just because a permit is issued does not mean it necessarily complies. Attorney Heins restated that what was said is that it is possible a permit can be issued that does not comply.

Attorney Heins asked if a permit once approved become final if not appealed. Joe Colangelo said yes.

Attorney Heins asked if an appeal was filed against Permit B16-097. Joe Colangelo said he is not aware of an appeal being filed.

Attorney Heins asked Joe Colangelo if he was involved in the application process for B16-097. Mr. Colangelo said he was not.

Attorney Heins asked Mr. Colangelo if he had any contact with the applicant or in his opinion the permit should have been approved administratively. Joe Colangelo said it was not his determination or his scope as the Zoning Enforcement Officer. Mr. Colangelo said he looked at what was approved and what he saw at the site visit. Attorney Heins

observed Mr. Colangelo does not have an opinion on whether the permit could have been approved administratively.

Attorney Heins asked what the applicant is responsible for. Joe Colangelo said the applicant is responsible for coming into the DRB Office to determine the best course of action and to be clear on what is going to be done.

Attorney Heins asked if Permit B16-097 contained all the necessary information for the Administrative Officer to approve. Joe Colangelo said he is not prepared to answer the question. The permit application says 20' shift. Mary Kehoe clarified the question is whether the building permit application references the 20' shift. Joe Colangelo said the building permit application references the administrative approval and a 20' lateral shift is what was sought by the applicant.

Attorney Heins asked how the Notice of Violation can be issued when the location of the building is not known per the permit. Joe Colangelo said the building was approved for a 20' shift and was moved 80'. Attorney Heins asked for clarification of 20' from the wall or the entire building moved 80'. Joe Colangelo said a 20' shift is a 20' shift. This was an 80' shift.

Attorney Heins asked if the shift was 80' from the wall of the existing building to the wall of the new building. Joe Colangelo said the shift was from the far wall of the old building moved 80' to where the new building is located. The inside wall and outside wall are comparing apples and oranges.

Attorney Heins asked where on the permit application it says outside wall moved 20'. Joe Colangelo said the permit says 20' lateral shift. Attorney Heins asked if this is ambiguous. Joe Colangelo said no. Attorney Heins said the entire building or the wall could be moved and Mr. Colangelo does not know what the applicant was going to do because he was not part of the conversation. Mr. Colangelo did not know the intent was to move the entire building 20' versus just the wall. Attorney Smart objected to the speculation of intent of the applicant then withdrew his objection.

Attorney Heins stated 20' relocation is as the application says so why is it not reasonable to mean moving the entire building as opposed to just one wall. Joe Colangelo said he did not see any ambiguity. A 20' lateral move is moving 20' over, not 20' from where the old wall was located. The intent of the applicant was not known.

Attorney Heins asked if the application contained a pictorial of where the building was located. Joe Colangelo said there was no pictorial. Attorney Heins asked if the permit has

pictorial views of where the building is to go. Mary Kehoe said Exhibit 2 contained photos.

Attorney Heins showed a picture of the existing building and the new foundation next to the Carew building, noting there is nothing attached to the permit that shows where the building is to be or in relation to the setbacks or in reference to other buildings or boundary lines (i.e. site plan or drawing). Joe Colangelo said correct.

Jeff Pauza asked what was relied on for the Notice of Violation. Joe Colangelo said staff knowledge of the bylaws and the site visit.

Attorney Smart confirmed the permit says the permit is conditioned upon compliance with the bylaws. Joe Colangelo answered to the best of his knowledge that is the case adding that he did rely on staff.

Attorney Smart asked Mr. Colangelo if he gets involved when there is a potential violation, and when assessing a violation does he first look at the permit. Mr. Colangelo said yes and in this case he did a site visit with staff to look at what was on the ground. Kate Mitchell had the permit and Dean Pierce had relevant documents.

Attorney Smart asked if what was permitted was viewed. Mr. Colangelo said yes.

Attorney Smart asked if the permit for the replacement building was seen. Mr. Colangelo said it was and referred to Town Exhibit 2.

Attorney Smart asked if the permit is conditioned on complying with the bylaws and the zoning bylaws include setbacks so it is fair to say the permit is conditioned on complying with the setbacks. Joe Colangelo said yes.

Attorney Smart asked if the ground investigation revealed encroachment on the setback and if that was one of the violations. Joe Colangelo said yes, one of three violations.

Attorney Smart referred to a document marked “JJ-1” (also “SSY-1”) and asked if the map of the Carew building reflects what was viewed on the ground. Joe Colangelo said yes, the cement foundation was a few inches about the ground in that configuration.

Attorney Smart asked if how close the foundation was to the property line was seen. Joe Colangelo said he could see that the old building was not as close as the new one and was slightly within the 50’ area.

Attorney Smart asked if the foundation for the new structure could be seen and how close it is to the boundary. Joe Colangelo said the structure is much closer.

Attorney Smart asked if there is any dispute of the new foundation to the property line by the applicant or the town. Joe Colangelo said he is not aware of any dispute.

Attorney Smart asked what the zoning permit authorizes. Town Exhibit 2 or JJ-6 was referenced. Joe Colangelo stated the permit allows removal of the existing storage building and replacement with a new building.

Attorney Smart asked if the building was removed. Joe Colangelo said as of the site visit in late October 2016 the building had not been removed. Commencing the foundation is not removal.

Attorney Smart asked if removing the building is complying with the face of the permit. Joe Colangelo said not if the building needs to be removed first.

Documents JJ-1 and SSY-1 were referenced. Attorney Smart asked if there are any other setback encroachments by the foundation of the replacement building in addition to that on the Jeff Jackson property. Joe Colangelo said he did not spend time investigating any other encroachments and cannot answer the question.

Attorney Smart asked if the depiction on the map is consistent with what was viewed on the site. Joe Colangelo confirmed this.

Attorney Smart asked if the map is inconsistent or inaccurate. Joe Colangelo said he did not know.

Attorney Smart asked if there was any encroachment on the 50' setback on the other side of the shipyard and would that add to the violation. Attorney Heins objected to the question and the objection was sustained.

Attorney Smart asked if encroachment on another property would be a violation. Attorney Heins objected to the question and the objection was sustained.

Attorney Smart asked if it is a violation of the zoning bylaws to encroach on property boundaries. Joe Colangelo said generally speaking, yes, but each situation is handled case-by-case.

Joe Colangelo mentioned the supporting documents to his memo indicate ways to mitigate and find alternate solutions were investigated.

Mary Griswold

Mary Kehoe asked Mary Griswold if her pre-filed testimony is accurate and true to the best of her knowledge. Mary Griswold confirmed this.

Attorney Smart objected to the pre-filed testimony by Mary Griswold, specifically Questions and Answers 11 & 12 on the grounds of relevancy. Attorney Heins argued the testimony is allowed per Rule 408. The DRB allowed the testimony.

Attorney Smart objected to Question and Answer 23 of the pre-filed testimony on the grounds of relevancy. Attorney Heins argued there were objections to the viewshed in the Jeff Jackson filing and the question addresses that. Attorney Smart questioned to what extent the Jeff Jackson evidence has been submitted to the record. The DRB allowed the testimony.

Attorney Smart objected to Question and Answer 29 of the pre-filed testimony on the grounds of relevance. Attorney Heins said the question goes to the final permit that was not appealed. Attorney Smart said no permit can ever be in violation because it cannot be collaterally attacked. Mary Kehoe said this is a legal argument. The DRB will not opine on whether the Heins argument has merit. The pre-filed testimony question goes to the argument and will be allowed.

Attorney Smart objected to Question and Answer 31 and Question and Answer 33 of the pre-filed testimony on the grounds of relevance. Attorney Heins said the questions and answers go to reliance on the permit and funds expended. Mary Kehoe said there was no appeal of the permit so the permit stands. The testimony will be allowed.

Attorney Smart objected to Questions and Answers 39-45 of the pre-filed testimony on the grounds of relevancy. Mary Kehoe said the information is not relevant to the Notice of Violation, but the testimony will be allowed for the variance application.

Attorney Smart objected to Question and Answers 48 through 51 of the pre-filed testimony on the grounds of relevance. Attorney Heins said the testimony is in response to the appeal of the Notice of Violation. Mary Kehoe said the DRB will take this under advisement until evidence from Attorney Smart is heard.

Attorney Smart objected to Exhibits SSY-5, 6 and 8. Attorney Heins said SSY-5 & 6 go to the variance and SSY-8 goes to the viewshed argument as part of the Notice of

Violation. All the other exhibits submitted by Shelburne Shipyard are stipulated as to their admission including SSY-1, 2, 3A, 3B, 4A through 4I, 7, and 9.

Mary Kehoe outlined the exhibits admitted include:

- SSY-1, 2, 3, 3A, 3B, 4A through 4I, 7, and 9
- SSY-5 and 6 relate to the variance
- SSY-8 is under advisement

Attorney Heins asked Mary Griswold if the shipyard built the replacement structure in accordance with the permit. Mary Griswold said she explained to the town that the Carew building had to be moved so a new building can be constructed.

Attorney Heins asked Mary Griswold if all the forms required by the town were submitted and the fees paid. Mary Griswold said yes and that \$2,740 in fees was paid.

Attorney Heins asked if the permit that was received was based on the project that was to be done. Mary Griswold said yes.

Attorney Heins asked if the project involves moving the building or just a wall. Mary Griswold said the project involves a new building 20' over from the old building. The building has water underneath and has to be moved to a dry place.

Attorney Heins asked if there was ever the intention to just shift the wall. Mary Griswold said no.

Attorney Heins asked if there was any attempt to hide that the building was to be moved. Mary Griswold said no.

Attorney Heins asked if the town was engaged in the project and if the town was shown where the building was to go. Attorney Heins asked if the town asked for plans or how close to the setback the building would be. Mary Griswold said she was not sure because she did not have a map. Attorney Heins asked Mary Griswold if she told the town the information. Mary Griswold said the information was in the permit application.

Mary Kehoe asked when the application was made whether the town was given maps showing the shipyard and where the building is located. Mary Griswold said she pointed to the location on a map, but did not have a drawing.

Attorney Heins asked if there is a question on setbacks on the application. Mary Griswold said the application refers to any easement on the property and the reply given was “not sure”. The permit says comply with the setbacks and the answer given was “not sure”.

Attorney Heins asked if the town asked for information on the setback. Mary Griswold said the town asked if the building was nonconforming and the answer was yes, like all the other buildings.

Attorney Heins asked how many other buildings are nonconforming. Mary Griswold answered all of them.

Attorney Heins asked if the other buildings are in the setback. Mary Griswold said yes and there is either water or housing on the side.

Attorney Heins asked if all the information supplied to the town is correct. Mary Griswold said yes.

Attorney Heins asked Mary Griswold if she was surprised by the Notice of Violation. Mary Griswold said she was because she told the town all she knew and where the building would be and that the building was nonconforming.

Attorney Heins asked if there was concern about the trees behind the replacement structure and if a condition to the permit would be accepted. Attorney Smart objected, saying the DRB does not have the authority to do a conditioned permit after the permit has been issued. The DRB sustained the objection.

Attorney Heins asked if there have been filings about damage to trees by the proposed structure. Mary Kehoe interjected the question is not relevant to the issue of violation of the permit.

Attorney Heins asked how much has been spent to date on the project. Mary Griswold said \$371,158 has been spent to date. The amount is financed and \$3,400 is paid on the loan.

Joe Colangelo asked if the Zoning Enforcement Officer looked for ways to resolve the issue in a way to avoid a hearing before the DRB. Attorney Heins objected to the question. The DRB sustained the objection.

Attorney Smart asked Mary Griswold if she personally discussed the project with Joe Colangelo or Kate Mitchell. Mary Griswold said she did not, but relied on staff she trusts. Ms. Griswold said she discussed the project with her staff before going to the town.

Attorney Smart asked the direction given to staff. Attorney Heins objected to the question as being too vague. The DRB overruled the objection. Mary Griswold said she told her staff to get an application which they filled out and returned to the town.

Attorney Smart asked about the direction given to Mr. Hartshorn on what to do to replace the structure and move it slightly to the south. Mary Griswold said she picked the location.

Attorney Smart asked Ms. Griswold how she knows there is less concern for ground water at the site chosen. Mary Griswold said by moving boats it is known there is not a problem to the south.

Attorney Smart asked if any formal testing or ground water analysis was done. Mary Griswold said no. Walking on the site for 30 years during rain has shown there is no water at the location.

Attorney Smart asked if any professionals were consulted. Mary Griswold said no.

Attorney Smart asked why the site was chosen. Mary Griswold said the site is the driest area.

Attorney Smart asked if other locations were considered. Mary Griswold said yes, but to the east there is no room and farther south there is too much water.

Attorney Smart referred to SSY-1 and JJ-1 and asked why a location to the east was not chosen. Mary Griswold said there is a 100' setback from the lake and the area is wet. Attorney Smart asked if a professional was consulted. Mary Griswold said a forklift got stuck in the area last summer due to ground water and last summer was a very dry year. Attorney Smart asked how it is known to be ground water and not surface water. Mary Griswold said because the water is coming up from the ground. It is wet under the building.

Attorney Smart asked if locations on the western side were considered. Mary Griswold said they were, but there are setbacks from the road and the neighbors.

Attorney Smart asked Mary Griswold if she was aware of setbacks when the location was chosen to the south or other locations were excluded. Mary Griswold said she had knowledge of the general proximity, but not exactly where the setback was. A survey was not done. The south lot is wetter than the area chosen. Attorney Smart summarized that Mary Griswold testified she knew of the general setback requirements, but not specifically and several locations were no feasible. Mary Griswold said to go farther south would mean losing spaces for about 40 boats or 1/10th of the boats at the shipyard.

Attorney Smart asked if the replacement building is the same size as the Carew building and removal would provide space. Mary Griswold said a road would have to be created to store boats in the south lots and there would be a cost in loss of the number of boats and cost to build the road. Attorney Smart stated the location was not chosen due to setbacks and the cost of access and relocating boats. Mary Griswold said the site was not chosen mostly because of water.

Attorney Smart asked if alternative designs for the replacement building were considered before selecting the location to the south. Mary Griswold said the design was to be more easily accessible for boats in and out. Attorney Heins objected to the question because it does not deal with the Notice of Violation. The DRB sustained the objection.

Attorney Smart asked Mary Griswold if the location to the south was selected before the application for the zoning permit and why that is not reflected in the application materials. Mary Griswold said the town did not ask for the information and it did not come up in conversation. Mary Griswold said she did not talk with the town herself.

Attorney Smart asked Mary Griswold if she was aware of potential designs for a building on saturated soils. Attorney Heins objected to the question. The DRB sustained the objection. Attorney Smart asked Mary Griswold if she was confident there was no possible place to locate the replacement structure elsewhere on the property. Attorney Smart withdrew the question before Mary Griswold gave a response.

Attorney Smart asked where in the zoning permit it authorizes construction of the replacement building in the setbacks. Mary Griswold said when they applied and asked to build a nonconforming building. Attorney Smart asked where in the application is the request for a nonconforming building. Mary Griswold said when they went to the town and asked what needs to be done with a nonconforming building. Attorney Smart asked Mary Griswold if she learned that was the request when someone told her. Mary Griswold said that is correct.

Attorney Smart asked where in the application materials it was asked for a conforming building. Mary Griswold said she does not know. Attorney Smart recalled Mary Griswold mentioned circling “unsure” on the application and that was for the existing building and locating in the setback. Mary Griswold said the General Application, page 2, says existing nonconforming structure, does structure comply. Attorney Smart recalled Mary Griswold testified all the buildings on the lot are nonconforming. Mary Griswold said the buildings that are there are nonconforming. Attorney Smart asked if the question on the application is about the existing building. Mary Griswold said yes. Attorney Smart asked Mary Griswold why the response was “unsure” then. Mary Griswold said because at that time a survey had not been done.

Document labeled JJ-4 was submitted into evidence.

Attorney Smart asked if a survey has been done and submitted into evidence. Mary Griswold said yes.

Attorney Smart referred to Exhibit JJ-4, page 1, at the bottom of the page where the estimated cost is blank and asked if that is consistent with Town Exhibit 2. Mary Kehoe confirmed there is nothing in the line item for estimated cost.

Attorney Smart referred to document SSY-3A (estimated cost) and asked if there is an entry. Mary Griswold said yes. Attorney Smart asked if she added the number after the fact. Mary Griswold said no. Attorney Smart asked if anyone from the shipyard added the number to the evidence the shipyard submitted into evidence. Mary Griswold said they did not fill in the number. Attorney Smart said the number is in evidence if submitted at the hearing. Mary Griswold agreed the number is there.

Attorney Smart referred to document JJ-4 (general application) and the list of abutters in SSY-3A, and asked Mary Griswold if she included the list of abutters in the submissions by the shipyard. Mary Griswold said she believes so.

Attorney Heins asked what the list has to do with the Notice of Violation. Attorney Smart said completeness and showing the application at the hearing is different from the application that was previously submitted with the addition of the cost figure and the omission of the abutter list. Mary Kehoe asked if the credibility of the applicant is being attacked. Attorney Smart stated the ability to submit valid and accurate documents goes to credibility. Mary Kehoe outlined Exhibit 2 contains:

- Building zoning permit application (four pages), but not the abutter list
- Letter to Kate Mitchell from Bruce Hartshorn and includes a drawing
- Map of the building layout and schematic of the shipyard

Mary Kehoe recalled Mary Griswold testified a map was not included and it is understood the general application has the abutters list.

Attorney Smart asked if the testimony on the conversation for selecting a location for the replacement building took into account the right-of-way and existing access road. Mary Griswold said yes.

Attorney Smart asked how the right-of-way is oriented. Mary Griswold said it is oriented so the road would not have to be moved closer to LCT.

Attorney Smart asked who benefits from the right-of-way. Mary Griswold said LCT.

Attorney Smart asked if LCT is listed on the abutters list in Exhibit JJ-4. Mary Griswold said she could not find any abutters listed in Exhibit JJ-4. Attorney Smart said Mary Griswold knew LCT was an adjoining landowner because the LCT right-of-way was accounted for in locating the building and wanted to be sure they had enough parking and the road would stay. LCT right-of-way is the road to the LCT property.

Attorney Smart asked why LCT was not on the abutters list. Mary Griswold said she did not know.

Attorney Heins asked Mary Griswold if she “doctored” any documents. Mary Griswold said no.

Attorney Heins asked Mary Griswold if she would ever “doctor” documents. Mary Griswold said never.

Attorney Heins asked Mary Griswold if she tried to hide anything from the town. Mary Griswold said no.

Attorney Heins asked Mary Griswold if she supplied all information to the town with respect to the project. Mary Griswold said yes.

Bruce Hartshorn

Attorney Heins asked if the 21 questions and answers of pre-filed testimony that was submitted are true and correct to the best of Mr. Hartshorn’s knowledge. Mr. Hartshorn said yes.

Attorney Heins asked Mr. Hartshorn if he is the representative from the shipyard who met with the town and who at the town he spoke to. Bruce Hartshorn said he met with

Kaitlin Mitchell in April when contemplating the new building to see how to obtain a variance because the building is nonconforming and would be replaced with a nonconforming building. Mr. Hartshorn said they discussed replacing the existing building that was failing and Ms. Mitchell's advice on only needing a building permit. Attorney Smart objected to hearsay. The DRB overruled the objection. Mr. Hartshorn stated Kate Mitchell said a variance would not be needed, only a building permit because another nonconforming building would not adversely impact the property further. Ms. Mitchell provided the application form.

Attorney Heins asked if the forms were filled out. Bruce Hartshorn said not until August and then there was a meeting with Ms. Mitchell in her office to review the forms.

Attorney Heins asked if the forms said the building is shifting 20' or the wall. Bruce Hartshorn said the building is being moved because the current one is collapsing. It makes no sense to put the new building where the old building is located. The old building needs to be torn down because there cannot be two nonconforming buildings. The new building must be the same square footage as the old building.

Attorney Heins asked if the new foundation is the same as the old foundation. Mr. Hartshorn said yes, 78'x 100'.

Attorney Heins asked if there was discussion with the town that the old building will remain while pouring the foundation for the new building. Mr. Hartshorn said yes. There is storage in the building that is needed.

Attorney Heins asked Mr. Hartshorn if he altered the documents from the town. Mr. Hartshorn said no.

Attorney Heins asked Mr. Hartshorn if he added information after the fact. Mr. Hartshorn said no.

Attorney Heins asked Mr. Hartshorn if he submitted a plan. Mr. Hartshorn said he submitted an aerial view from the ground water storm pollution plan by the engineer and pointed out to the town where the new building would be. There was nothing in writing.

Attorney Heins asked Mr. Hartshorn if he wrote "20' lateral relocation" (last page in Exhibit SSY-3A) or knows who did. Mr. Hartshorn said he did not write the words and cannot recall if Kate Mitchell wrote the words while they were talking.

Attorney Heins asked Mr. Hartshorn if he used the term “lateral”. Bruce Hartshorn said that he said “moving the building to the south”.

Attorney Heins asked if the town asked for a plan showing the building location or a survey to show setbacks. Bruce Hartshorn said this was not discussed. The dimensions were not put on the application because the building was nonconforming and it was believed a variance would be needed.

Joe Colangelo asked if Kate Mitchell agreed the building was nonconforming and a new one could be approved administratively. Mr. Colangelo asked if Ms. Mitchell agreed to approve a new building that increases the degree of nonconformity. Bruce Hartshorn said this was not discussed.

There was no further testimony. The DRB scheduled a site visit on 2/4/17 at 3 PM. The hearing was recessed to 2/15/17

5. OTHER BUSINESS/CORRESPONDENCE

None.

6. ADJOURNMENT and/or DELIBERATIVE SESSION

MOTION by Mark Sammut, SECOND by Mary Kehoe, to adjourn the meeting.

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

The meeting was adjourned at 10:02 PM.

RScty: MERiordan