

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 5, 2018**

MEMBERS PRESENT: Joanna Watts (Chair); Ian McCray, Jeff Pauza, Lisa LaMantia, David Hillman, Mark Sammut, Jeff Hodgson.
STAFF PRESENT: Ravi Venkataraman, DRB Administrator; Brian Moneghan, Town Attorney.
OTHERS PRESENT: Peter Regan, Gail Albert, Ken Albert, Anne Powell, David Stewart, Colleen Mindell, Johann LaGauge, Jane Knowlton, Anne Knowlton, Margaret Titus, Nancy Hinsdale, Linda Lavalette, Steve Lavalette, Mona Muzzy, Laval Thuloden, Elaine Lawrence, Andy Rowe, Collin Frisbie, Bart Frisbie, Dave Farrington, Sr., Dave Farrington, Jr., Chris Galipeau, Alan Kirkpatrick, Diane McCarthy, Peter Raymond, Yves Bradley, Al Nevins, Normand Stanislas, John Ravell, Brad Nutt, Dave Marshall, Persis Worrell.

AGENDA:

1. Call to Order and Announcements
2. Public Comment
3. Approval of Minutes (8/13/18 & 8/15/18)
4. Applications
 - Sketch Plan, Subdivision, Three Lots, 82 Mount Philo Road, Sterling Land Company (SUB18-02)
 - Boundary Line Adjustment, 151 Ordway Shore Road, Sledrunner Properties (BLA18-02)
 - Final Plan, Subdivision, Two Lots, 6747 Spear Street, Alan Kirkpatrick (SUB17-03)
 - Final Plan, Subdivision, Four Lots, 4788 Spear Street, David Farrington (SUB17-04)
 - Amendment to Approvals, Meet Threshold of Stowe Club Highlands Doctrine, 120 Graham Way, Shelburne Green, LLC (SUB13-02R3)
5. Other Business
6. Adjournment

1. CALL TO ORDER and ANNOUNCEMENTS

Chair Joanna Watts called the meeting to order at 7 PM.

2. PUBLIC COMMENT

Linda Lavalette, Shelburne resident, spoke of the number of subdivisions being approved by the DRB and the impact on the community and the lake, and urged slowing down the number of approvals to get a handle on the impacts.

3. APPROVAL OF MINUTES

August 13, 2018 (site visit)

MOTION by Joanna Watts, SECOND by Ian McCray, to approve the 8/13/18 minutes as presented. VOTING: 6 ayes, one abstention (Mark Sammut); motion carried.

August 15, 2018

MOTION by Joanna Watts, SECOND by Lisa LaMantia, to approve the 8/15/18 minutes as presented. VOTING: unanimous (7-0); 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 DRB were sworn in.

SUB18-02: Sketch Plan for a three lot subdivision at 82 Mount Philo Road in the Residential District and Stormwater Overly District by Sterling Land Company

Andy Rowe, Lamoureau & Dickinson, and Bart and Collin Frisbie appeared on behalf of the application.

Submittals:

- Cover letter, dated and received July 10, 2018
- General Application Form, received July 10, 2018
- Sketch Plan Review Application, received July 10, 2018
- Site Plans
- Town of Shelburne Staff Report, dated 8/1/18

STAFF REPORT

The DRB received a staff memo on the application, dated 8/30/18, and a written staff report, dated 8/1/18. Ravi Venkataraman said the Fire Chief provided comments on 9/4/18 that indicated the Final Plan should include a 22' wide driveway with 18' of pavement and 2' wide shoulders on each side of the pavement, and 14' clearances for fire access.

APPLICANT COMMENTS

Andy Rowe said the applicant would like to maintain the same road width and sub-base, but narrow the improved surface to 12' or 14' to look like a driveway which will decrease the impervious surface and maintain the character of the area. The entire right-of-way will be maintained year round. The turnaround for fire trucks can be done, but the applicant would like this to be a gravel surface since the turnaround would only be for emergency vehicles. The greater radius point requested by rescue can also be accommodated.

David Hillman expressed skepticism at over-ruling the Fire Chief's recommendations. The access should be endorsed by the Fire Chief. Ravi Venkataraman noted Section 900.8 of the regulations say all streets and roads shall meet public works specifications and be paved unless this is shown not to be justified. Andy Rowe offered to discuss the widened shoulders and the surface material with the Fire Chief to find a middle ground.

Jeff Hodgson asked if a U-loop type of access with the road widened on the curve is a possibility. Andy Rowe said this can be considered.

PUBLIC COMMENT

Linda Lavalette, neighbor adjacent to the proposed subdivision, said two dwellings on the back half of the lot would be very close to the neighbors who are not used to the noise and activity. Also, the land has a steep grade. Washouts after rainstorms are common. Drainage is an issue. One house would be better than two for the character of the neighborhood. The site is not suited for two houses. Neighbors on both sides of the project site are opposed due to the proximity and disruption of peace and tranquility. A fence will not stop noise. Joanna Watts pointed out the lot is in Growth Area 2 which allows a modest density neighborhood. David Hillman assured the DRB will be looking at criteria that includes fitting with the neighborhood.

Steve Lavalette, neighbor to the proposed subdivision, said if the DRB members can see two houses fitting on the back of the lot then they should resign.

Ramona Muzzy, neighbor, stated the proposal is not in keeping with the character of the area. The driveway will now be a paved street which will change the concept of the area and the quiet neighborhood. There will be water between driveways especially if the trees are removed.

Andy Rowe said the applicant is willing to discuss character of the area with the DRB. Lisa LaMantia said there are no other layouts in the area with two houses on the back of the lot. Andy Rowe assured there are examples of two houses in front and two houses in back from lots subdivided from larger lots. The width of the proposed lots are the same as Maplewood or Maplelawn. The lots meet dimensional requirements. Jeff Hodgson mentioned having a duplex (one building) rather than two separate structures at the back of the lot.

DELIBERATION/DECISION

Sketch Plan, Subdivision, Three Lots, 82 Mount Philo Road, Sterling Land Company (SUB18-02)

MOTION by Mark Sammut, SECOND by Jeff Pauza, to classify the Sketch Plan application by Sterling Land Company for a three lot subdivision at 82 Mount Philo Road as a Minor Subdivision. VOTING: unanimous (7-0); motion carried.

MOTION by Mark Sammut, SECOND by Joanna Watts, to authorize the applicant to prepare a Final Plan application for SUB18-02 for a three lot subdivision at 82 Mount Philo Road with the following recommendations:

- 1. Obtain written comments from department heads as set forth in the *Shelburne, Vermont, Subdivision Regulations*, Section 600 (28), and include the comments in the Final Plan application.**
- 2. Provide a State Project Review Sheet or a statement certifying that the applicant has been informed of the responsibility to identify and obtain state permits with the Final Plan application.**
- 3. Include site plans and text that clearly indicate plans for existing structures on the subject property with the Final Plan application.**
- 4. Any conditions as the result of deliberations.**

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

BLA18-02: Boundary Line Adjustment to merge two adjacent parcels at 151 Ordway Shore Road in the Rural District, Lakeshore Overlay District, and Floodplain and Watercourse Overlay District by Sledrunner Properties, LLC

Chris Galipeau, CEA, appeared on behalf of the application.

Submittals:

- Cover letter prepared by Jack Milbank, Civil Engineering Associates, dated 8/3/18 and received 8/6/18
- General Application Form, received 8/6/18
- Boundary Line Adjustment Application, received 8/6/18
- Site Plans
- Town of Shelburne Staff Report, dated 9/5/18

STAFF REPORT

The DRB received a written staff report on the application, dated 9/5/18.

APPLICANT COMMENTS

Chris Galipeau said both parcels have the same owner who would like to dissolve the property line between the parcels to form one 4.1 acre lot.

PUBLIC COMMENT

None.

DELIBERATION/DECISION

Boundary Line Adjustment, 151 Ordway Shore Road, Sledrunner Properties, LLC (BLA18-02)

MOTION by Joanna Watts, SECOND by Lisa LaMantia, to finalize the record and approve the application for a boundary line adjustment at 151 Ordway Shore Road by Sledrunner Properties (BLA18-02) as depicted on the boundary line adjustment plat prepared by Jack Milbank, CEA, with the condition the Mylar shall be recorded within 180 days of the approval. VOTING: unanimous (7-0); motion carried.

SUB17-03: Final Plan for a two lot subdivision at 6747 Spear Street in the Residential District and Stormwater Overlay District by Alan Kirkpatrick

Chris Galipeau, CEA, and Alan Kirkpatrick appeared on behalf of the application.

Submittals:

- Sketch Plan Review Application, received 10/10/17
- Preliminary Plan Review Application, received 5/16/18
- Final Plan Review Application, received 7/10/18
- Town of Shelburne Staff Report, dated 9/5/18

STAFF REPORT

The DRB received a written staff report on the application, dated 9/5/18. Ravi Venkataraman said the memo from attorney Norm Smith was received by staff on 9/5/18. All parties should be present at the meeting to provide testimony. The applicant can present new evidence.

APPLICANT COMMENTS

Chris Galipeau said the two lot subdivision is north of the existing residence and will be served by a drilled well and municipal sewer service. A memo from Norm Smith, attorney for the applicant, was sent to the town in response to the staff report on the application. Mr. Galipeau urged the DRB to do a site visit to see why the cost of the path will be so severe that the project would not be able to move forward. The path goes against the position of the Shelburne Natural Resources Committee with regard to maintaining the trees. The DRB could approve an alternate facility to the path which could be the widened shoulder done by the town. To build the path would require removing rock, screening (trees), and blasting. The right-of-way and the path site can be staked out for the site visit. The lot has 700' of frontage. The proposal is for a single family house on the two acre north lot.

PUBLIC COMMENT

None.

DELIBERATION/DECISION

Final Plan, Subdivision, Two Lots, 6747 Spear Street, Kirkpatrick (SUB17-03)

MOTION by Joanna Watts, SECOND by Mark Sammut, to continue the hearing for SUB17-03, two lot subdivision at 6747 Spear Street by Alan Kirkpatrick, to the DRB meeting on 9/19/18 with a site visit at 6 PM, and further, the applicant will stake out the right-of-way, house location, and sewer location for the site visit.

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

SUB17-04: Final Plan for a four lot subdivision at 4788 Spear Street in the Residential District, Stormwater Overlay District, and a portion of the Floodplain and Watercourse Overlay District by David Farrington

Chris Galipeau, CEA, and David Farrington appeared on behalf of the application.

Submittals:

- Cover letter for Sketch Plan Review Application prepared by Civil Engineering Associates, dated 10/4/17
- General Application Form, received 10/4/17
- Sketch Plan Review Application, received 10/4/17
- Building Permit Copy 8485-73
- Building Permit Copy 8686-79
- Sketch Plan, dated 9/20/17 and received 10/4/17
- Staff Report for Sketch Plan Application for 11/1/17 DRB meeting
- Memorandum from Chris Robinson, Water Quality Superintendent, dated 3/27/18
- Cover letter for Preliminary Plan Review and Site Plan Review applications, dated 4/27/18
- Comments from Fire Chief Jerry Ouimet, Shelburne Volunteer Fire Department, dated 4/27/18
- Preliminary Plan Review Application, received 4/30/18
- Letter from Amy Escott, Esq. from Escott Legal Services, dated 4/23/18 and received 4/30/18
- Site Plan set
- Comments from town department heads, received 4/30/18
- Staff Report for Preliminary Plan Application for 6/20/18 DRB meeting
- Cover letter, received 7/10/18
- Final Plan Review Application, received 7/10/18
- General Application, received 7/10/18

- Site Plans
- Memo from Farrington Construction Company to DRB listing current uses on proposed Lot 3, dated 7/10/18 and received 7/11/18
- Town of Shelburne Staff Report, dated 9/5/18

STAFF REPORT

The DRB received a written staff report on the application, dated 9/5/18.

APPLICANT COMMENTS

Chris Galipeau reviewed the proposal for a four lot subdivision with Lot 1 being 2.9 acres and containing the existing Farrington house, Lot 2 being 16 acres to remain open (undeveloped for now), Lot 3 being 2.7 acres and containing the Farrington Construction Company barn and garage, and Lot 4 being 2.0 acres to contain a new single family house. Lot 4 will have on-site sewer and municipal water service. A waiver will be requested for the sewer system if needed. The applicant feels the widened road shoulder on Spear Street from Irish Hill Road to South Burlington should be the alternate path facility. Issues with the requirement to build a path include the cost for a path with no connection and the lack of a town design. The town is urged to establish a surcharge or fee paid into a fund designated for the future construction of the path in town.

Mr. Galipeau addressed other items in the staff report, noting verification from the state that a storm water permit is not needed can be provided. Regarding the nonconforming use on Lot 3 (construction company), the attorney for the applicant and the Town Attorney agree on the use and that the lot complies with setbacks. The construction company has been in existence for many years and has permits. There is no intention to downscale operations. Regarding the landscaping plan, a plan can be done when application is submitted to build the single family residence. Regarding adding sidewalk from Spear Street to Farrington Construction on Lot 3, no one from the public walks to the business. Adding sidewalk will increase the nonconforming of the use plus the VAST trail goes through the site. There is 1000' of paved road from Spear Street to the business.

David Farrington said the DRB has the authority to not require the path. The master plan for sidewalk throughout Shelburne is not complete. Chris Galipeau added Mr. Farrington was not aware of the meeting by the Paths Committee on the sidewalk master plan, but would have provided comment. There are many open questions and issues. Jeff Hodgson said the DRB has asked the Paths Committee for a more specific plan for the path on Spear Street. David Farrington noted the town water line is in 16' of the widened road shoulder. As an option for the path an addition 5' could be paved to make the path 10' wide and the town could plow the path. The cost for the additional 5' width is \$18,000.

Ravi Venkataraman noted per the public works specifications a sidewalk must be 5' wide bituminous concrete with curb.

David Hillman observed the applicant has the permit for the nonconforming use which has been in existence for years so the DRB cannot mandate transition to conforming. Ravi Venkataraman said the objective is to encourage the long term goal of conformity. Joanna Watts stated the DRB does not want the use to become more nonconforming.

Jeff Pauza requested a copy of the memo from the Town Attorney on the nonconforming issue.

PUBLIC COMMENTS

None.

DELIBERATION/DECISION

Final Plan, Four Lot Subdivision, 4788 Spear Street, Farrington (SUB17-04)

MOTION by Mark Sammut, SECOND by Jeff Hodgson, to close hearing on SUB17-04, Final Plan application for a four lot subdivision at 4788 Spear Street by David Farrington, with indication of approval and any conditions will be a result of deliberations by the DRB. VOTING: unanimous (7-0); motion carried.

MOTION by Mark Sammut, SECOND by Jeff Hodgson, to finalize the record for SUB17-04, Final Plan application for a four lot subdivision at 4788 Spear Street by David Farrington. VOTING: 6 ayes, one nay (Jeff Pauza); motion carried.

SUB13-02R3: Amendment to approvals issued for 120 Graham Way and determination if the proposal meets the requirements of Stowe Club Highlands Doctrine by Shelburne Green, LLC

Peter Raymond, Diane McCarthy, Yves Bradley, Dave Marshall, Norm Stanislas, Brad Nutt, and Al Nevins appeared on behalf of the application.

STAFF REPORT

The DRB received a staff memo on the application, dated 8/30/18.

APPLICANT COMMENTS

Attorney Peter Raymond stated Shelburne Green disagrees with bifurcating the process and the limited hearing. Evidence was submitted and there have been multiple hearings. The DRB allowed the application to proceed. The threshold issue has been resolved.

Yves Bradley, broker for Shelburne Green, read a letter from Matt Cohen, Fiddlehead, and Graham Goldsmith, Shelburne Green, in support of the project. The letter from Matt Cohen was submitted into evidence as Exhibit A and the letter from Graham Goldsmith was submitted into evidence as Exhibit B.

Dave Marshall, CEA, stated the original intent of the project was to rebuild a prior industrial manufacturing facility. Different square footages and land uses were proposed without tenants in mind so the facility was built with flexibility, and the total potential impact on the community was regulated by the square footage inside the buildings. The applicant did a master plan and showed how the buildings were laid out in the building footprint. The layout was sensitive to surrounding uses and residences. The applicant needs flexibility to reflect changing times. Changing the hours of the food service is minor in nature. The increase in the building square footage from 20,000 s.f. to 30,000 s.f. is a function of aesthetics and what is happening in the area. Teddy Bear has a 46,000 s.f. building and a 126,000 s.f. building. The applicant has masked the size of the buildings and accommodated the businesses in the building.

Peter Raymond stated Shelburne Green does not agree with some of the points in the legal memo submitted 8/30/18. The project is a series of one larger building maintaining the appearance of several smaller buildings so the intent of the PUD is not changing. Food service was originally proposed as a café, but the site could not support this type of service with the hours of operation being 6 AM to 3 PM due to manufacturing hours more suited to different hours of operation. The shift in hours (10 AM to 10 PM) was to accommodate the café, PUD, and market demands.

David Hillman asked how the Burlington waterfront case applies to the application. Peter Raymond said the intent of the Stowe Club Highlands decision was to balance the permit conditions with flexibility because development is inherently unpredictable. With the waterfront case there were conditions on the sound level and events, but the court ruled that the factors favor flexibility, not finality, because the area is changing. David Hillman commented if the project is good for Shelburne then flexibility is due.

Norm Stanislas, property manager and contractor for Shelburne Green, said Matt Cohen, owner of Fiddlehead, needed more space and a letter of intent was drafted, but then it was realized that more than 20,000 s.f. was needed in order for the business to be viable and remain in Shelburne so further planning was done. The amount of expansion for Fiddlehead was not reasonably foreseeable. The hours of operation for the café were done to address the leases which allow operation seven days a week, 24 hours a day. Fiddlehead operates six days a week, 24 hours a day. The original hours of operation for the café were not viable in a rural area. There would not be enough business to support

the café with operating hours of 6 AM to 3 PM. Also, a food service operator could not be found for the café with the service hours within the parameters of the original decision. The new hours will allow lunch and dinner to be served, and will allow Matt Cohen to move forward with his plan to bring people to the café during dinner hour (people will be able to pick up a growler after work and grab some light fare at the café).

PUBLIC COMMENT

David Stewart, The Gables, said the 36 unit townhouse development adjacent to Shelburne Green and next to the Fiddlehead restaurant has mainly pre-retirement and retirement residents. The nexus of the issue is whether the permit originally issued for light industrial activity at the site to end at 6 PM has substantially changed. The location of the restaurant and associated entertainment are also issues. The building size is not a problem, but the complexion of the development is a problem. It seems the applicant, Shelburne Green, would rather ask for forgiveness than ask for permission because there have been many changes not in step with what the DRB approved.

Anne Powell, The Gables, expressed concern about the change in hours of operation and change in focus of what is at the site. The change in hours of the brewery is to accommodate the brewery, but the brewery is not the only business at the site. The other businesses may not want the café open past 6 PM. Matt Cohen said he does not want to run a restaurant yet it seems that is what is happening. Having the restaurant open until 10 PM is a big change and will have adverse impacts on the nearby residential units. There have been concerts at Shelburne Green that were not expected by area residents. If the café is open until 10 PM there will be noise, cars, music, car lights. Patrons will likely be there after closing. The change in hours and the restaurant concept are the concern to the residents at The Gables, not the success of the brewery.

Elaine Lawrence, The Gables, recalled originally the restaurant was not intended to be a draw for the public so the location may not be good for a restaurant.

Ken Albert, Shelburne Vineyard, said any town would love to have what is at Shelburne Green. There is a national food magazine headquarters, a successful pizza baker, a brewery that is recognized locally, regionally, and nationally, a cookie baker selling in and out of state, a tortilla manufacturer, and a distiller. The growth phenomenon in Vermont is tied up in craft enterprises. Large manufacturers and employers like IBM and GE are no longer in the state. This was not envisioned when the regulations by the town were drafted. The regulations were drafted as such because the town did not want McDonald's Restaurant or strip development. The regulations are over a generation old. The kinds of jobs supporting the tax base are the vertically integrated businesses that create, package, and sell their product. Sound can be minimized with the right kind of

architecture. The town has this precious commodity and needs to find a way to accommodate it and address the concerns of neighbors. There should be a focused effort to resolve the matter in a realistic timeframe. The businesses now at Shelburne Green are more desirable than what was there before.

Dave Marshall reviewed the site plan of Shelburne Green pointing out the buildings that are constructed and those that are proposed. The 150' setback between land uses and the existing and planted trees between Shelburne Green and The Gables were noted. Mr. Marshall explained the intent was to create a “cold edge” on the backside of the building closest to The Gables. Activity occurs on the west side of the building. Dave Stewart interjected the location of the restaurant is on the far eastern edge of the building. Concerts are heard.

Nancy Hinsdale, The Gables, said the change in the café hours is a concern as is the drainage with the change in the buildings because water cannot percolate into the ground. The existing swamp is up to the fence now. Having Fiddlehead and the pizza place together in the same building is not a good location. The building is touching the fence.

Jane Knowlton, The Gables, said phrases such as “intent”, “assumed”, and “unexpected” are nebulous. It is important that the neighbors’ concerns and good will are taken into consideration.

Peter Raymond confirmed there were concerts in July and August. The restaurant/food service is allowed 2,500 s.f. It was not foreseen that the 2,500 s.f. food service would have a market need to serve businesses in the PUD between 10 AM and 10 PM. It was always contemplated to have food service to accommodate the PUD and people coming to the PUD. The leases allow businesses to operate 24 hours a day.

Diane McCarthy, attorney for Shelburne Green, said Shelburne Green is happy to continue the conversation with residents of The Gables, but the Preliminary Plan application has not yet been scheduled to be heard. The purpose of the current hearing was limited to the Stowe Club Highlands threshold.

DELIBERATION/DECISION

Amendment to Approvals, Stowe Club Highlands Threshold, 120 Graham Way, Shelburne Green, LLC (SUB13-02R3)

MOTION by Joanna Watts, SECOND by Mark Sammut, to close the hearing on SUB13-02R3, amendment to approvals for 120 Graham Way, Shelburne Green, and determination of whether the proposal meets the requirements of the Stowe Club

Highlands Doctrine, and that the DRB will issue a decision in writing. VOTING: unanimous (7-0); motion carried.

5. OTHER BUSINESS/CORRESPONDENCE

None.

6. ADJOURNMENT and/or DELIBERATIVE SESSION

MOTION by Mark Sammut, SECOND by Jeff Pauza, to adjourn the meeting.

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

The meeting was adjourned at 9:55 PM.

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