

**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
JANUARY 26, 2005**

MEMBERS PRESENT: Peter Monte, Chair, David Markolf, Vice Chair, Eric Brattstrom, Lenord Robinson, Jeff Schoellkopf.

OTHERS PRESENT: Miron Malboeuf, Zoning Administrator, Richard Patterson, Mark Bannon, Lauren Kolitch, Lil Brewster, Jane Austin, Clayton-Paul Cormier Jr. , Harriet and Richard King, Alice and Peter Tenbeau.

AGENDA:

- 1) Call meeting to Order 7:00 pm
- 2) 2005-01-PRD Chisel Tooth – 5-lot subdivision on Cider Hill Road (cont)
- 3) Other Business
 - a) Review of Minutes from December 8, 2004, December 15, 2004, Colpitts and Perellie Trevathern Decisions.

I. CALL TO ORDER

Peter Monte called the meeting to order at 7:20 p.m.

II. 2005-01-PRD CHISEL TOOTH – 5-LOT SUBDIVISION ON CIDER HILL ROAD

#2005-01-PRD submitted by Richard Patterson on behalf of the Chisel Tooth Group seeking approval of a 5-Lot PRD/Subdivision of 98 +/- acres. The project is located off Cider Hill Road in the Forest Reserve District. The project requires review under Article 5, *Development Review*, Article 6, *Subdivision Review*, Article 7, *Subdivision Standards* and Article 8. Chisel Tooth (warned) New App, (cont to January 26, 2005).

The project was on remand from the Environmental Court. Mr. Patterson stated that Chisel Tooth had 100 acres on the proposed subdivision site. The survey line had to be bumped over more to have Chisel Tooth pick up 10 acres instead of 2-3 acres. He presented a survey map to the board showing the changes. They picked up a 10-acre lot from Jane Austin.

Ms. Kolitch stated that those acres have already been conveyed by deed and by specific agreement by Ms. Austin. Those documents are being held in escrow by Sheila Ware subject to confirmation that they have been conveyed.

Mr. Bannon stated that the lots that can be developed are of the same acreage with minor differences within an acre except for Lot 5 (from 8.3 to 10.3 acres). Any changes did not go into conservation lands.

Mr. Monte asked that 60 acres will still be conserved as intended and Mr. Patterson verified this; any changes are from shifting of internal boundaries.

Mr. Patterson asked the Board to reconsider all criteria as if the application was new so that the findings that go to the Environmental Court will be more specific and take into account any changes.

Mr. Monte asked and Mr. Patterson verified that the total acreage adds up to 100.23 acres. The Board had previously considered the project as a 100-acre lot.

Mr. Monte asked the Board members for consideration. Mr. Schoellkopf asked if about any changes other than lot lines especially slopes in regards to creating building envelopes. Mr. Monte asked if building envelopes had changed within the lots. Mr. Markolf read from Item 12 in the previous decision, "The building lots were configured to exclude all slopes in excess of 25 percent grade."

Mr. Markolf asked if the Board has established each individual who would be building on a lot would have to come back to the Board, which would at that time deal with building envelopes and gradient. This was confirmed by Mr. Monte.

Mr. Patterson noted that Chisel Tooth had submitted clearing envelopes drawn from surveys rather than USGS data to show actual contours on the actual lots. He also noted that Act 250 had placed additional conditions on the property that Chisel Tooth has to show the actual extent of the clearing in the building envelopes.

Ms. Kolitch stated that Act 250 can impose restrictions on clearing that are more stringent than those from the Board. The building envelopes approved by the condition are now much smaller than the ones the Board had previously considered. Mr. Monte stated that the Board had stated that each site will be considered when each lot owner presents a specific plan. The Board has not approved any clearing. The Act 250 review is a parallel process with the Board review, but the Environmental Court review overtakes the Board review.

Ms. Kolitch stated that the previous Board Decision was that specific building envelopes were configured and that each individual lot owner would have to come back for review of clearing restriction. The Act 250 Commission narrowed the building envelopes and decreased the possible clearing area. Mr. Monte clarified that the building envelope is larger than the actual house and the clearing site is possibly larger than the building envelope.

Mr. King stated that he was not aware that the Board had approved a subdivision of the Austin parcel. Is this a necessary condition preceding any conveyance from that parcel? Mr. Bannon stated that Mr. Monte had previously told him that this change was a lot-line adjustment and didn't need to go through a separate subdivision process. Mr. Monte says that lot-line adjustments are a simplified procedure but still requires a subdivision permit. Ms. Kolitch stated that a subdivision permit had not previously been requested nor required by the Board.

Mrs. King stated that in the attachment in the revised application for the conveyance of the 100 acres, there is an escrow agreement and an agreement between Chisel Tooth and Ms. Austin that indicates that the deed shall be held in escrow. She asked if the deed has been released after satisfying conditions. There followed a discussion on contingencies related to the deed, including completion of the road and installation of utilities. Ms. Kolitch stated that conditions can't be met until the permits are obtained and conditions are written; it depends on permits having been granted. Mr. Monte stated that the Board can condition its permit on delivery of the deed and consummation of the transaction with conditions noted.

Mr. Monte stated that the seller (Ms. Austin) needs a subdivision permit to allow the 10-acre parcel to be subdivided off her property. He stated that the 10 acres coming from her 160+ property raises a technical issue of needing a permit to transfer land.

Mr. Monte asked if any present had a reason why the land reconfiguration would change anything relevant to the criteria the Board needs to consider for approval. Mr. Bannon says that it's consistent with the spirit and intent of the proceedings of last year.

Mr. Patterson said that the idea of a conservation lot was a good thing. Mr. Monte stated that the Board did give Chisel Tooth a bonus because it was going to allow non-motorized access to the land. (**EXTRA LOT BONUS ?**)

Ms. Kolitch noted that the Act 250 additional considerations that were imposed on the road in terms of construction, slope and grade are such that they make the project itself more in conformity with the town's ordinance.

Mr. Monte noted that this means that the Board must consider other aspects in addition to the boundaries, including changes to road profiles.

Ms. King asked if an Act 250 permit had been issued. Ms. Kolitch stated that Act 250 had identified and requested submissions that have been provided.

Mr. King stated that the road had been built for the project almost 2 years ago. Erosion has been identified as an issue, and an erosion control plan has been developed and submitted and some measures have been put in place, but nothing has been done since those measures have been put in place. He stated that intervening weather has rendered stone dams and other measures virtually useless and that erosion is proceeding in spite of measures. He submitted pictures of erosion taken last summer. Nothing has been done since then, he stated.

Mr. Patterson stated that he has been in contact with Susan Barrett at Act 250 and that she has indicated that Chisel Tooth does not need to do any more work and that in her opinion the work already done is among the best they have seen.

There followed a discussion over whether or not the Board's decision about erosion controls is in effect. Ms. Kolitch says that Judge Wright's opinion vacated the decision in October, as she understands it. Mr. Monte asked if any erosion question should affect any decision of the Board

at this meeting or should it be handled elsewhere. Mr. King asked the Board to reinstate the requirements with additional protective considerations. Chisel Tooth assured Mr. Monte that they have drawn up specific erosion control plans as required by Act 250.

Ms. Kolitch noted that this project has been subject to an Act 250 permit for more than 15 years. Multiple Act 250 representatives have visited the site as late as Fall 2004. No violation of current permits has been issued. There was discussion of whether or not all roads on the property are covered and have been Act 250 approved. Mr. King stated that he would be willing to proposed specific erosion control conditions for the Board's consideration.

Ms. Brewster said that she had spoken with Ms. Barrett within the past month. Ms. Barrett told Ms. Brewster that they had been violations. Mr. Monte stated that Ms. Barrett's comments are beyond the scope of what the Board can consider and are hearsay.

Ms. Brewster also read from the November 12, 2004 Board meeting ruling that anyone owning land on the property should join the Cider Road Association (to maintain private road) and that so far no one has; that the Pattersons and Chisel Tooth have used and damaged the road without paying for use. Mr. Monte noted that once the Board's decision was appealed, it's not in effect. He also explained that the Board's authority is limited to zoning ordinances. Until the decision becomes a legal reality, the Board has no say. Mr. Monte said that if such controls should have been in a prior decision and were not, the Board will correct the oversight. Ms. Brewster asked how to enforce parties to join the association.

Ms. Austin stated that at the beginning of the project, she and her husband did state in good faith that they would join the association. She understood that the initial project would involve construction and use of the road with each party paying a fair share of any damage to the road area. After construction began, then when the parties began construction, each one would be members of the association for purposes of snow plowing to property sites. After construction was cut off, she never got a bill for damage but did get bills for plowing and maintenance even though they are not using nor have access to the site. Mr. Patterson said as president of Chisel Tooth has never received any information and would like to see this also.

Mr. Monte asked that someone from the association provide the Board with copies of the bylaws and a statement of what the basis of charges would be for membership. Ms. Brewster will get this information from the association president, Bill Wilson.

Mr. Markolf asked Mr. King for a copy of the current erosion control proposal, which he provided. Mr. Monte verified that the current plan is more extensive and elaborate than what was previously submitted. Mr. Bannon verified that the plan pertains only to the road inside the property. The separate road to the Austin property had previously been approved by the Board. The Board will review the current plans.

Ms. King addressed several other changes to the project in addition to boundaries:

1. In the original plan, utilities were underground in compliance with the zoning ordinance. She notes that on the current plans, utilities are above ground.
2. Road construction may impact fire department approval in a section over a culvert that is not wide enough to have guard rails and two lanes. Mr. Bannon noted that a 48-inch culvert there had been approved by Act 200 and was in place for 10 years or more. He said that the current plan calls for making this a 14-foot-wide crossing to allow for guard rail installation. Mr. Markolf noted that item 15 from the original decision was that all private county roads must be made to a minimum width of 16 feet. Mr. Bannon noted that the current plan is to make it a 14-foot travel way for about 30 feet. He said cost would be substantial to change this. He noted that this change was pre-approved by Act 250 for a 2-lot subdivision.
3. Table 7.1 of the ordinance requires establishment of primary and secondary conservation areas. She did not believe that had been done. Mr. Monte noted that part of this was dealing with slope, which had been done. She asked for a drawing that shows primary and secondary wildlife areas that might be impacted.
4. Regarding the road past Ms. Austin's proposed bridge, which is not currently under permit, Ms. King noted Grade Graph on F3 shows a variety of grades, some close to 15 percent. She questioned if the road once it is constructed will exceed 12 percent in 50-foot segments on average.
5. Where is blasting proposed and what impact might it have on ground water?

Mr. Markolf stated that the Board has dealt with wildlife habitats previously. Ms. King agreed but said that it has never been specifically stated what animals are in the area. Mr. Monte that someone from Chisel Tooth check the town map overlays of habitats on site map to compare. Ms. King asked about wildlife biologists surveying the animal population given that this parcel of land is under forest reserve. Mr. Monte noted that this is not usual practice but could be done if special conditions warranted it.

Regarding utilities running underground, Mr. Bannon stated that the map showed overhead utilities (OH) run from Station 00 to Lot #2 where they become underground (UU), as shown on sheet #2 of the new set. This does not include any changes from plan submitted in last Board hearing.

Regarding the width of the road at the culvert, Mr. Monte noted that the Board will discuss this at a later date.

Regarding the wildlife habitat, Mr. Monte noted that the Board has asked Chisel Tooth to check the town map overlay to determine if the proposed site includes any critical areas.

Regarding the road grades, Mr. Monte asked what specific section of the ordinance applied. Ms. Kolitch stated that there was a specific provision in the Board's previous decision, conclusion

#16, that no road or driveway should exceed 15 percent grading. Ms. King cited section 7.7, B-6, which she read that maximum road grade shall not for any 50-foot section exceed an average grade of 12 percent. Ms. Kolitch read from Section 7.1B pursuant to Act 4412, section 6.1E, that the Board may waive or vary subdivision review changes subject to the appropriate conditions. Mr. Markolf stated that it was a requirement of the Fire Department that all the houses constructed on the property had to be equipped with sprinkler systems, so that offset the gradient issue; emergency access is the most compelling reason for the gradient percentage.

Regarding blasting, Mr. Patterson stated that there were 3 or 4 spots that would require blasting. Mr. Bannon showed sites on F3 on the plans. Discussion followed about using licensed dynamiter and safety.

Mr. Markolf asked to address the building envelopes again and asked to see location of specific envelopes. He stated that the Board previously said that when each applicant comes to the board, that's when they'd determine building envelopes. Act 250 had asked to see building lots and clearing areas, so that's why they are indicated on plans.

Mr. Monte asked the Board if they wanted to keep to earlier plan to approve clearing envelopes when the specific plans are submitted. Mr. Markolf stated that based on a site visit, there are touchy areas, so he would rather do it individually. Mr. Monte stated that the Board should be very specific in any decision that the Board has not approved clearing envelopes; that this would be lot-by-lot consideration as this is a Forest Reserve site.

Ms. King asked if the Board was approving the house sites. Mr. Monte said that the Board is approving a building envelope for each site. The specific houses and the amount of clearing on each site are up for later approval.

Mr. Schoellkopf asked about Lot #3, stating the site looked steep. Discussion followed about ledge on the site and slope on the site and whether or not the Board would approve on such a steep slope. Mr. Bannon noted that the house site and slope analysis is provided on Sheet 3 with the building envelope shown. He stated that it was his understanding that the site has a slope of 15 percent or less on average. Mr. Malboeuf asked that Chisel Tooth remove the house sites from the map and show only the building envelope.

Mr. Bannon asked for specifics on what the scale would be on map that the Board would require slope analysis for. Mr. Markolf stated that most cases are case by case, many determined by site visit.

Given the great amount of material still to be considered, Mr. Markolf suggested continuing the hearing to a future meeting. Mr. Monte listed the subjects to be addressed:

- 1) comments on Mr. King about erosion control
- 2) Submission of Cider Hill Road Association of bylaws and financial terms for membership

- 3) Information from the applicant on the town wildlife habitat assessments that might affect the property
- 4) Feedback from the Fire Department on 16 foot vs. 14 foot road width over culverts.
- 5) Minor subdivision/lot-line adjustment. Ms. Austin is the applicant in this case. Need to have a map showing all of her land and specifically the land to be transferred.

Mr. Monte wanted to see all material in advance of the next scheduled meeting. Mr. Monte also surveyed those in attendance to determine who wanted to get copies of all material submitted. One copy of each needs to be sent to:

- 1) Mr. Malboeuf, Zoning Administrator
- 2) Ms. Kolitch, representative for Chisel Tooth. 502 Mikhal Drive, Waitsfield, VT
- 3) Mrs. King, PO Box 879, Waitsfield
- 4) Ms. Austin, 62 Magnolia Ave., Tenafly, NJ 07670.

After discussion, Mr. Monte proposed that the application be continued to March 9, 2005

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, to continue the application hearing to March 9, 2005. VOTE: unanimous; motion carried.

Ms. Kolitch asked about a time frame in which material needed to be submitted. Discussion followed about time needed to gather material and to allow enough time for review.

DELIBERATION/DECISION

MOTION by Mr. Schoellkopf, seconded by Mr. Monte, to require submission of material by February 23, 2005. VOTE: unanimous; motion carried.

Mr. Monte requested that at the next meeting Chisel Tooth resubmit all material from the checklist making up their final request so that a complete determination can be made at that time without confusion with duplicate copies from past presentations.

III. OTHER BUSINESS

Approval of Mylar 2004-06-SD Mathew Sargent ("applicant"). In this proceeding, applicant seeks approval for a 2-lot subdivision of the property, Parcel # 028-005-101, consisting of 28.8 +/- acres located at 72 Lake Road in the Rural Residential District.

**MOTION by Mr. Markolf, seconded by Mr. Monte to approve mylar as presented
.(Signed and Stamped at 09:39 PM), VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Brattstrom, to approve the December 8, 2004,
minutes with changes as noted. VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Monte, to approve the December 15, 2004,
minutes with changes as noted. VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Brattstrom, to approve the Colpitts Decision
with changes as noted. VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Monte to approve the Perellie Trevathern
Decision with changes as noted. VOTE: unanimous; motion carried.**

Board members signed the Sargent Mylar.

The meeting adjourned at 9:35 PM.

Respectfully submitted,
Jeffery Lindholm

Development Review Board

Peter Monte, Chair (date)

Lenord Robinson (date)

Eric Brattstrom (date)

Jeff Schoellkopf (date)

David Markolf (date)