

**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
AUGUST 18, 2004**

MEMBERS PRESENT: Peter Monte, Chair, David Markolf, Vice Chair, Eric Brattstrom, Lenord Robinson & Virginia Roth.

OTHERS PRESENT: Avilda Whittle, Howard Whittle, John Goss, Francis Kathan, Sheila Getzinger, Reta Goss, Ray Montgomery, Bruce Fowler, Shannon Giligan, Val Pinney, John Roth, Annette Marcinko, Jay Kempf, Karen Van Gilder, DRB/PC Assistant.

AGENDA:

- 1) Call meeting to Order 7:00 PM
- 2) **2004-04-SD Goss/Kathan** – 2-Lot Subdivision on Senor Road
- 3) **2004-09-CU Fowler** – Conditional Use for Inn at 258 Senor Road
- 4) **2004-37-SD Roth** – 6-lot subdivision on Plunkton Road
- 5) Other Business
 - a) Review July 21, 2004 Minutes
 - b) Review August 4, 2004 Minutes
 - c) Review July 19, 2004 Minutes
 - d) Review Decision 2004-01-PRD Warren Land Company
 - e) Review Decision 2004-37-CU White
 - f) Review Decision 2004-09-AM2 Hafiz/Trusova
 - g) Review Decision 2004-05-CU Hickey
 - h) Review Decision 2004-01-SD Booher
 - i) Review Decision 2004-02-CU Kempf

I. CALL TO ORDER

Vice Chair David Markolf called the meeting to order at 7:15 PM. The DRB signed minutes until 7:30 (see Other Business below)

II. 2004-04-SD GOSS/KATHAN – 2-LOT SUBDIVISION ON SENOR ROAD

#2004-04-SD submitted by Wayne, Wendell, and Francis Kathan and Reta Goss seeking approval for a 2 Lot Subdivision of 174.5 +/- acres on Senor Road in the Rural Residential District. The applicant would like to subdivide the property into Lot 1(18 +/-) and Lot 2 (156 +/- acres). The applicants have requested that the Board waive the preliminary plan review. This project requires Review under Article 6, *Subdivision Review* and Article 7, *Subdivision Standards* of the Warren Land Use and Development Regulations.

STAFF REPORT

Ms. Van Gilder reported that the public warning had run in the Valley Reporter on July 30, 2004 and that Mr. Monte had recused himself as an adjoining landowner. Ms. Roth, DRB alternate, served in his place, and Mr. Markolf served as Chair.

PUBLIC INPUT

Ms. Giligan asked for a copy of the letter from Steve Stitzel, Town Attorney, dated April 22, 2004, that describes the Vermont case law regarding natural subdivision by Class I, II, or III

roads and participated as described below. Mr. King, attorney, made statements regarding the case law regarding land subdivision.

GENERAL DISCUSSION

Ms. Getzinger, attorney, came before the board on behalf of the applicants. She stated that the applicants wish to withdraw their application because state case law indicates that lots under common ownership that are divided by a Class I, II, or III road are naturally divided and do not require a subdivision permit. She requested that in addition to granting this request that the board make a general statement about the subject so that it is clear to everyone when to apply and when not to apply. The board noted that the Kathan/Goss property is divided by Senor Road, a Class III highway.

Mr. King stated that Waitsfield has adopted the policy.

Mr. Markolf stated that he saw no problem with the applicants withdrawing their application. Ms. Getzinger stated that this discussion has taken place numerous times over the years but that nothing ever gets recorded in the land records. She also requested that the applicant receive a refund of the application fee.

Ms. Giligan asked who determines the class of a roadway. Ms. Getzinger and Mr. Markolf stated that the state and town determine the class and that it is based on criteria such as the quality, width, and maintenance. Ms. Giligan asked whether anyone would be able to put in a road and thereby divide their land. Mr. Robinson stated that that would not be possible because a road like that would not be of a high enough class. He added that trails and private roads would not create subdivisions.

Ms. Roth asked about existing non-conforming lots. Ms. Getzinger stated that the court had already decided that question and that undersized lots may not be considered divided.

Ms. Getzinger further added that this was not a grey area in the law and that the state had interpreted this situation in this way since the inception of its own subdivision laws. Mr. King concurred.

Ms. Roth asked if the Kathan/Goss parcels were owned by "one person". Ms. Getzinger stated that they were in "common ownership" of a group.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, to grant the applicant's request to withdraw the application, to recommend that the application fee be returned, and to state that the board finds that any land in common ownership divided by a Class I, II, or III road is recognized as subdivided by virtue of Vermont Supreme Court decisions. VOTE: unanimous; motion carried.

Mr. Markolf stated that the board would continue to recommend that the Planning Commission make a change in the zoning ordinance to this effect.

III. 2004-37-CU FOWLER – CONDITIONAL USE FOR AN INN ON SENOR ROAD

#2004-09-CU submitted by Bruce Fowler seeking conditional use approval for a change of use to an inn. The property is located on Senor Road in the Rural Residential District. An unaffected portion of the property is in the Meadowland Overlay District. This project requires Conditional Use Review under Article 5, *Development Review* of the Town of Warren Land Use and Development Regulations.

STAFF REPORT

Ms. Van Gilder reported that the public warning had run in the Valley Reporter on July 30, 2004 and that Mr. Monte had recused himself as a close neighbor. Ms. Roth, DRB alternate, served in his place, and Mr. Markolf served as Chair.

PUBLIC INPUT

Ms. Giligan participated as noted below.

GENERAL DISCUSSION

Mr. Fowler came before the board to present his request for a conditional use. He stated that in the past he has taken care of developmentally challenged kids and adults in his home and that he would now like to make the facilities available to the general public instead. He stated that his residence contains a handicapped accessible apartment with an accessible kitchen that he would like to make available to veterans and others. He stated that he originally approached Ms. Van Gilder to apply for designation as a “Bed and Breakfast” but was told that “Bed and Breakfasts” cannot offer units with independent kitchen facilities for rent. He stated that he decided to apply for the designation of “Inn,” as it does not include such a restriction.

Mr. Markolf asked when the second kitchen was built and under which permit. Mr. Fowler stated that it fell under the 1995 permit to connect his house and his garage.

Mr. Brattstrom asked Mr. Fowler whether he was aware that the requirements for fire, smoke detectors, etc. were entirely different for an inn as opposed to a residence. Mr. Fowler stated that his house had been inspected several years ago to allow the children to stay there.

Mr. Markolf stated that there was a discrepancy in the number of bedrooms in the house, six, and the number of bedrooms indicated on the wastewater permit, five. He stated that he felt this needed to be cleared up before the board could render a decision. Mr. Markolf asked when the septic system had last been inspected. Mr. Fowler replied that it had been inspected in 1995 and that he had extended it 100 feet at that time. Mr. Markolf asked if there was a wastewater permit issued at that time. Mr. Fowler said no.

Mr. Markolf stated that there were two questions that needed to be answered, (1) when did the second kitchen get built and under which permit, and (2) the discrepancy between the actual number of bedrooms and the number listed on the wastewater permit. Mr. Markolf asked Mr. Fowler if he had contacted the wastewater officer about the project. Mr. Fowler said no.

Mr. Brattstrom stated that he felt that the state Agency of Labor and Industry will ask the applicant to make a lot of changes to the structure before they will allow him to operate as an inn. Mr. Fowler stated that in 1995 someone checked the electrical system and that the Fire Marshall and the Agency of Labor and Industry inspected the structure and found that it was up to code. He added that they inspected it as a residence.

Mr. Robinson stated that he was concerned about the bedroom count and said that Mr. Fowler would have to talk to the town wastewater officer and to the state.

Mr. Montgomery asked whether approving Mr. Fowler's permit would set a precedent for large inns on Senor Road and whether he could now apply for designation as an "inn." Mr. Markolf stated that no decision of the board sets a precedent and that Mr. Montgomery could apply for a conditional use as an "inn" and that the board would consider the application independently. He also stated that the board could impose restrictions on the size and expansion of conditional uses and that if this application was approved, the board was likely to do that.

Mr. Montgomery stated that he felt the development may be encroaching on the stream. Mr. Markolf asked if the water feature on Mr. Fowler's property was on the geomorphic map. Mr. Fowler stated that it ends before reaching his property on the map. Mr. Markolf stated that if the water feature is considered a stream, there may be a problem with the septic setback and the wastewater permit may have to be updated.

Mr. Heroux stated that he had informed the town of the problems on the Fowler property regarding the septic and setbacks and that he wanted to know how this process was going to proceed.

Ms. Giligan asked what the distinctions between a "bed and breakfast" and an "inn" are. Mr. Markolf stated that in addition to the use of independent kitchen facilities by renters, inns may have up to 15 rental units and bed and breakfasts are restricted to no more than 5 rental units. Mr. Monte stated that the board would also look at the character of the neighborhood, traffic generation, and the other conditional use review criteria when making a decision about granting a conditional use.

Mr. Markolf asked Ms. Van Gilder to look up Mr. Fowler's 1995 building permit.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, to continue the hearing to September 29, 2004 before which the applicant should, (1) obtain an updated wastewater

permit and/or paperwork regarding the septic system that is verified by an engineer and an accurate bedroom count, (2) discuss the project with the Agency of Natural Resources and verify the status of the water feature on the property, and (3) discuss the project with the Agency of Labor and Industry and learn what would be required to operate as an inn.
VOTE: unanimous; motion carried.

IV. 2004-02-SD ROTH – 6-LOT SUBDIVISION ON PLUNKTON ROAD

#2004-02-SD submitted by John Roth seeking approval for a 6 Lot Subdivision of 115 +/- acres on the Plunkton Road in the Rural Residential District. The applicant also requests waiver of the preliminary and initial meeting and wishes to proceed directly to final plan approval. The applicant would like to subdivide the property into Lot 1(3.3 +/- acres), Lot 2 (3.5 +/- acres), Lot 3 (4.1 +/- acres), Lot 4 (8.0+/- acres), Lot 5 (7.0 +/- acres) and Lot 6 (88 +/- acres). This project requires Review under Article 6, *Subdivision Review* and Article 7, *Subdivision Standards* of the WARREN LAND USE AND DEVELOPMENT REGULATIONS.

STAFF REPORT

Ms. Van Gilder reported that the public warning had run in the Valley Reporter on June 3, 2004 and that this is public hearing has been continued from July 7, 2004, at which time the applicant was not present when the item was called. Ms. Roth recused herself as a relative of the applicant. Mr. Monte took her place and served as Chair.

PUBLIC INPUT

Ms. Pinney stated that her property was to the north of the Roth's property. She noted that the proposed development is not near her property but stated that she was curious about what the plans were for the portion of the Roth parcel closest to her property.

GENERAL DISCUSSION

Mr. and Mrs. Roth came before the board to present the project. Mr. Roth stated that Phase I, which includes Lot 1 and Lot 2, had been approved last year. He stated that he was now proposing another six lots. He stated that he plans to build a 500 foot road to serve the lots. He stated that the sewage disposal has already been designed and that the building envelopes have been selected to take into account the steep slopes. He stated that the fire pond, which is in the process of being built, was part of the previous application.

Mr. Monte asked if the road would have to extend beyond the property in the future. Mr. Roth stated that the Green Mountain National Forest owns the adjacent property. He also stated that he would like to sell the western part of his property to the Forest Service because it is not developable.

Mr. Markolf suggested that the group follow the subdivision application checklist to determine if the application is complete and to give Mr. Roth some guidance on what will be required.

Mr. Monte stated that a survey with corner points will be required.

Mr. Markolf asked Mr. Roth what his plans for the divided lots are. Mr. Roth stated that he plans to build the road in its entirety and offer the lots for sale.

Mr. Monte described the subdivision review process for the members of the public and stated that the applicant has requested a waiver of the sketch plan and preliminary plan review and that after looking at the plan tonight the board will make a decision about whether to grant that waiver.

Mr. Markolf stated that the names and addresses of the adjoining property owners should be on the plan. Mr. Monte stated that the board would like to see an erosion control plan and a road profile and requested that grades over 15% and 25% be marked on the plan. Mr. Roth stated that the road will be built on the contour line and on an old logging road and will not have any slopes over 10%.

Mr. Monte stated that the Fire Department has a committee that reviews applications and that Mr. Roth should discuss the project with them. He added that they have a requirement for turnouts every 400 ft and that they may want a fire hydrant on the road. Mr. Roth stated that he talked to Chief Hartshorn and that the location for the hydrant had been located with a 12 ft drop. Mr. Markolf stated that he understands that Mr. Roth has an agreement with the Fire Department for the first 2 lots but that he should let them know about the additional lots and the road.

Mr. Monte asked if Mr. Roth planned to have covenants and a road maintenance agreement and suggested that they should include a statement regarding payment of attorney's fees. He also asked if Lots 1 and 2 would be part of the agreement. Mr. Roth stated that there would be a separate agreement for the new lots.

Mr. Monte suggested that Mr. Roth may want to reserve rights to any roads to the remaining portion of the property at this time. Mr. Roth stated that he would prefer a new curb cut for the northern portion because the topography would not accommodate a connector road.

Mr. Monte asked if Mr. Roth planned to restrict cutting or provide screening. Mr. Roth stated that the parcel had been logged in the past and that he did not plan to impose any cutting restrictions. Mr. Robinson asked if the parcel could be viewed from anywhere. The board agreed that it could not.

Mr. Markolf asked if there was any open space or common land planned other than the western portion that the applicant hopes to sell to the Forest Service. Mr. Roth said no.

Mr. Monte stated that Mr. Roth should locate the building envelopes on the plan and tie them to known survey points.

Mr. Markolf asked what the estimated yield of the entire property is. Mr. Roth stated that he planned no more than 15 more units beyond the two already approved and the seven he is proposing. Mr. Markolf stated that the traffic and road capacity on Plunkton Road may start to

become a problem as the lots are built out. Mr. Roth stated that he really wasn't sure what he wanted to do and may sell the remainder in large lots. Mr. Monte commented that Act 250 would see any further subdivisions as one deal and would want a traffic study.

Mr. Markolf stated that Mr. Roth should talk to the Clerk's Assistant about a road name and signs. Mr. Roth stated that he had and that the name would be Walden Lane.

Mr. Markolf stated that the board would ask Mr. Roth to screen and buffer any development near abutters. Mr. Roth stated that he was just as concerned about screening his property from the abutters.

Mr. Markolf summarized the board's requests as follows:

- 1) Locate the building envelopes and tie to known points,
- 2) Discuss the development with the Fire Department and obtain a letter from the committee,
- 3) Label any slopes over 15% and 25%,
- 4) Produce a road profile and erosion control plan,
- 5) Show the location of the septic systems (can be on separate plan).

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Robinson, to find the application complete, to deem the development a major subdivision, and to grant the applicant's request to waive the initial hearings. VOTE: unanimous; motion carried.

MOTION by Mr. Markolf, seconded by Mr. Robinson, to continue the hearing to October 13, 2004. VOTE: unanimous; motion carried.

V. OTHER BUSINESS

a) Review July 21, 2004 Minutes

Minutes previously approved. The board agreed to release.

b) Review August 4, 2004 Minutes

MOTION by Mr. Markolf, seconded by Mr. Robinson, to approve the minutes of August 4, 2004. VOTE: unanimous; motion carried.

c) Review July 19, 2004 Minutes

Minutes for the joint Development Review Board and the Planning Commission had been approved by the Planning Commission. Members in attendance on July 19, 2004 signed.

The following decisions were signed by a quorum of the board present for the decision.

d) Review Decision 2004-01-PRD Warren Land Company

e) Review Decision 2004-37-CU White

f) Review Decision 2004-09-AM2 Hafiz/Trusova

g) Review Decision 2004-05-CU Hickey

h) Review Decision 2004-01-SD Booher

i) Review Decision 2004-02-CU Kempf

j) Roth Family Partnership Appeal – Informal Discussion

This item was not on the agenda. Ms. Roth told the board that their decision regarding her Main Street property had been appealed, but that the appeal had come 60 days after the decision had been signed. She asked if there was anything that could be done. Mr. Monte stated that the board would have no further input into the situation other than providing information to the court. He recommended the Roths hire an attorney to file a motion to dismiss because the appeal was filed too late. He stated that if the court found that that was the case, the appeal would be dismissed. He also informed the Roths that while the appeal was pending, their permit was pending.

k) Requests for the Opinion of the Development Review Board

This item was not on the agenda. Mr. Monte stated that as Chair he had received quite a few requests lately for the opinion of the board on matters before the Planning Commission and the Selectboard. He asked the board if they thought he should just answer the requests or wait to bring the items up at meetings. The board generally said it would be fine for him to answer the requests, particularly if a response is needed quickly.

VI. ADJOURNMENT

MOTION by Mr. Markolf, seconded by Mr. Monte, to adjourn the meeting. VOTE: unanimous; motion carried.

The meeting adjourned at 9:30 PM.

Respectfully submitted,
Karen Van Gilder
DRB/PC Assistant

Development Review Board

Peter Monte, Chair (date)

David Markolf (date)

Virginia Roth (date)

Lenord Robinson (date)

Eric Brattstrom (date)

