

**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
SEPTEMBER 15, 2004**

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

OTHERS PRESENT: Graham Hewison, Maxine Hewison, Mike Krongel, Jim Halavonich, Matt Sargent, Karen Hewitt, Douglas Condit, Bob Ackland, Van Nilsson, Elaine Nilsson, Pat Fowler, Steve Fowler, Jim Edgcomb, Lauren Kolitch, John Vihinen, Miron Malbeouf, Zoning Administrator, Karen Van Gilder, DRB/PC Assistant.

AGENDA:

- 1) Call meeting to Order 7:00 PM
- 2) **2004-07-SD Sargent** – 2-Lot Subdivision on Plunkton and Lake Roads
- 3) **2004-02-PRD Fowler/Rosita's** – 8-lot PRD on Sugarbush Access Road
- 4) **2004-08-SD Leskowitz** – 2-lot Subdivision on Volkstown Road
- 5) Other Business
 - a) Review September 1, 2004 Minutes
 - b) Review 2004-06-CU Conti Decision
 - c) Review 2002-09-PRD-AM2 Hafiz/Trusova Mylar
 - d) Review Nilsson Motion to Reconsider / Notice of Appeal of Application 2004-01-PRD Warren Land Company

I. CALL TO ORDER

Chair Peter Monte called the meeting to order at 7:10 PM.

II. 2004-07-SD SARGENT – 2-LOT SUBDIVISION ON PLUNKTON AND LAKE ROADS

#2004-06-SD submitted by Matthew Sargent seeking approval of a 2-Lot subdivision of 28.8 +/- acres into Lot 1 (3 +/- acres) & Lot 2 (25.8 +/- acres). The property is located on the east side of Plunkton Road in the Rural Residential District. The larger parcel is currently accessed from Lake Road. The smaller parcel would be accessed from Plunkton Road. The applicant has requested a waiver of the initial sketch plan review and wishes to proceed directly to the final plat approval. This project requires review under Article 6, *Subdivision Review*, and Article 7, *Subdivision Standards*, of the *Warren Land Use & Development Regulation*.

STAFF REPORT

Ms. Van Gilder reported that the public warning had run in the Valley Reporter on August 26, 2004. Robinson, Brattstrom, Sargent, and Van Gilder attended a site visit at 6:00 pm. They saw the house site and discussed the access right-of-way. Ms. Van Gilder reported that the application was complete and that proof of notification and the request for a waiver of initial sketch plan review had been submitted.

PUBLIC INPUT

none

GENERAL DISCUSSION

Mr. Sargent came before the board to present the project. He stated that he wishes to create a rectangular lot surrounded entirely by his own property and that would be accessed by a logging right-of-way that he maintained when he subdivided the parcel fronting Plunkton Road from his property. He stated that he has old soil tests for the whole parcel that indicate medium to good soils at the proposed house site. He stated that the right-of-way follows the contour lines but that he has not had an engineer look at it. He stated that at the time of previous subdivisions in 1993 and 1996 he placed a covenant on the deeds of all three lots that they would not be further subdivided but that now he feels differently about that restriction. He stated that he and the other owners had agreed to lift the restriction and that a document to that affect is in the Clerk's office to be recorded. He also stated that he had done neither perk tests nor any roadwork because he wanted to get a feeling from the board before he spent the money. Mr. Sargent expressed hope that the board could issue the decision with the perk tests and road work as conditions. Mr. Sargent stated that none of the abutters had expressed any objections to the proposal.

Mr. Monte asked whether the Planning Commission, which was reviewing applications in 1993, imposed the restriction on subdividing to the property. Mr. Sargent replied that the deed restriction was purely his decision.

Mr. Markolf asked whether the Planning Commission knew that the deed restriction would be in place when they made the decision to allow the subdivision. Mr. Sargent replied that in 1993 they were aware and in 1996 he had stated that he had no further plans to subdivide because of the topography of the remainder of the parcel.

Mr. Robinson stated that the site was a good location and that no one but the Sargents would be able to see the new residence.

Mr. Monte asked if the applicant had plans to subdivide any further in the future. Mr. Sargent stated that his remaining parcel would not be further developable because of the topography. He added that Ms. Martin may have an area that could be developable on her parcel. He stated that he would not object to a condition restricting further development on his parcel.

Mr. Brattstrom stated that he would like to see the road contours before making a decision but that he did not see a problem with making a decision without a perk test. Mr. Monte noted that the wastewater permitting goes through a separate process and that the DRB could make that a condition of approval. Mr. Sargent stated that if the DRB was behind the project that he would like to improve the right-of-way in order to get the equipment to the site to do the soil tests.

Mr. Markolf asked whether the applicant had a curb cut for the logging right-of-way. Mr. Sargent stated that he had never applied for one but that it was a long established road header.

Mr. Robinson asked where the Roth subdivision driveway was in relation to this road. Mr. Sargent replied that it is on the same flat area to the north. Mr. Brattstrom stated that the Selectboard, which issues curb cut permits, prefers to have them opposite each other, rather than staggered. Mr. Monte stated that the curb cut could be a problem because the right-of-way is for

a logging road not a driveway. Mr. Sargent stated that it would be much less desirable to move the road to be opposite the Roth's because there is a steep slope at that point.

Mr. Markolf stated that he was concerned with the setback from the brook. Mr. Sargent stated that the house site is 30-40 vertical feet above the brook and about 200 horizontal feet away.

Mr. Brattstrom asked why the applicant had not extended the proposed lot to Lake Road to get access there. Mr. Sargent replied that that location was not desirable because it was in his yard and that his property stopped 25 feet away from Lake Road.

Mr. Markolf asked how wide the logging right-of-way is. Mr. Sargent replied that he believed that it is about 50 feet wide and that he could look at his deed. Mr. Markolf stated that the driveway right-of-way would need to be at least 20 feet as per §3.1 of the land use regulations. Mr. Monte stated that drainage ditches and erosion control measures may increase the required width, as well.

Mr. Markolf asked how long the driveway would be. Mr. Sargent stated that it would be about 400 feet. Mr. Markolf stated that the applicant should show the plans to the fire department to see if they have any recommendations or requirements.

Mr. Monte stated that he would like to see a plan for the driveway showing a profile and erosion control measures. Mr. Sargent asked if this was necessary for a driveway because he had not been asked for that for other projects and added that it would be costly. Mr. Monte stated that if looking at a topographical map showed that the slope was less than 10% that just the erosion control plan may be sufficient.

Mr. Monte stated that the applicant should check on whether his previous projects would cause Act 250 requirements to be triggered. He stated that it probably would not matter that the other projects were undertaken as part of a partnership and that all of the lots would count toward the Act 250 total.

Mr. Markolf asked the applicant to show any areas with slopes between 15% and 25% and in excess of 25% on the plans.

Mr. Monte asked whether the applicant planned any further structures. Mr. Sargent stated that he already had several sheds on his property and planned to build a barn. He stated that he did not plan to build anything other than the residence on the proposed lot.

Mr. Monte summarized what the board would like from the applicant:

- 1) Check the slope of the road. If any part of the road is greater 10% in slope, submit a profile and an erosion control plan. If it is all less than 10%, an erosion control plan will suffice.
- 2) Submit confirmation from the Selectboard that the curb cut and right-of-way are okay.

- 3) Show proposed building envelopes with setbacks to the stream, if it is a true watercourse, and to the lot lines on the plans. Use fixed pins to locate these points. No survey is necessary at this time.
- 4) Show primary (greater than 25% slope) and secondary (between 15% and 25% slope) areas on the plans.
- 5) No soil test is necessary at this time.
- 6) Check on any Act 250 requirements.

DELIBERATION/DECISION

MOTION by Mr. Monte, seconded by Mr. Brattstrom, to deny the applicant's request to waive the initial and preliminary plan review because this meeting had served as that review. VOTE: unanimous; motion carried.

MOTION by Mr. Monte, seconded by Mr. Brattstrom, to continue the hearing to October 13, 2004 at 7:00 pm. VOTE: unanimous; motion carried.

III. 2004-02-PRD ROSITA'S/FOWLER – 8-LOT PRD ON SUGARBUSH ACCESS ROAD

#2004-02-PRD submitted by Steve and Patricia Fowler seeking approval of a 8-Lot subdivision of 2.99 +/- acres into multi-family dwellings. The property is located on Sugarbush Access Road in the Vacation Residential District. This project requires review under Article 6, *Subdivision Review*, Article 7, *Subdivision Standards*, and Article 8, *Planned Residential Development* of the *Warren Land Use & Development Regulations*.

STAFF REPORT

Ms. Van Gilder reported that the public warning had run in the Valley Reporter on August 26, 2004. The DRB held an Informal Discussion about this project on April 28, 2004. This is the initial hearing.

PUBLIC INPUT

Mr. Ackland, of Sugarbush Resort, made comments about Sugarbush's lagoons, snowmaking pipeline, and easement. Mr. Krongel, representing the owners of the LBO, LLC property to the northwest asked questions about the density, the leachfield, and the well. Mr. and Mrs. Hewison, of the Sugar Tree Inn, were concerned with the height of buildings and how that would affect views from their deck. Mr. Halavonich, Bridges Owners' Association, asked questions about the leachfield and well. All participated in the General Discussion as noted below.

GENERAL DISCUSSION

Mr. Edgcomb and Mr. Fowler came before the board to present the proposed project. Mr. Edgcomb submitted an updated code review based on the smaller number of units and revised plans, axonometric drawings, and elevations, dated September 15, 2004. He reported that these showed minor changes to the plans submitted on September 7, 2004 based on recent comments from the Fire Department. He stated that they reduced the number of units when they discovered

that Mr. Fowler must maintain a 300 foot isolation distance from the Sugarbush lagoons on the neighboring property.

Mr. Ackland, of Sugarbush Resort, reported that covering the lagoons would reduce the isolation distance to 150 feet.

Mr. Edgcomb continued that the Fire Department required a wider turn-around and a hydrant at the top of the driveway. Mr. Ackland stated that the applicant would have to speak to Sugarbush Resort about placing a fire hydrant on its snow making line. He stated that Sugarbush would maintain control of the hydrant, but that Mr. Fowler would have to pay for the installation.

Mr. Edgcomb stated that another change since the DRB Informal Discussion was that the drainage would not be uncovered as much as originally planned because of the required changes for the Fire Department. He also noted that the buildings had been pulled back from 35 – 40 feet to a 50 foot setback from the drainage ditch. He stated that the buildings are not sited on the steep slopes but that they may have to grade some to achieve positive drainage from the structures.

Mr. Edgcomb stated that the project is entirely within the standards of the land use regulations and that a variance would not be required. He stated that even without the Sugarbush Access Road right-of-way included in the total acreage, the density was within the requirements.

Mr. Monte asked about the existing driveway to the east of the property. Mr. Edgcomb stated that it was in fact a driveway and not a right-of-way. He stated that they had eliminated that access point but that the plans allow additional access to Sugartree Inn to proceed if necessary.

Mr. Monte asked whether the pathway shown along the frontage connected to the Sugarbush pathway. Mr. Ackland stated that at that point, the pathway was actually on the other side of the road. Mr. Edgcomb responded that the applicant was willing to grant access to that area if Sugarbush wanted it.

Mr. Markolf asked if the massing and elevations that Mr. Edgcomb submitted were fixed. Mr. Edgcomb replied that the massing was fixed but not the design of the elevations. Mr. Fowler added that their goal was to provide many windows and large open space.

Mr. Edgcomb stated that each unit would have a two car garage. Mr. Markolf asked if garages count as parking spaces for parking calculations. Mr. Edgcomb replied that that was how he interpreted the regulations. He stated that the regulations require 3 spaces per two dwelling units and that he has included 8 outdoor spaces in addition to the garages to meet this requirement.

Mr. Monte asked for any public comment.

Mr. Krongel asked about whether the leachfield that overlapped onto his client's property was in fact going to be abandoned and about the two leachfields shown on the plans. Mr. Edgcomb

stated that the far leachfield has already been abandoned, that the first field was existing and that the second was a backup. Mr. Krongel asked if the existing well is going to be used. Mr. Edgcomb stated that the engineer reported that the existing well may be sufficient for this size development. Mr. Krongel asked about the density of the development. Mr. Edgcomb answered that they planned 3-bedroom units of approximately 2200 sq. ft.

Mr. Hewison asked about the height of Units 3 & 4, which appeared to be 35 feet and the impact on their deck. Mr. Edgcomb said that the base of Unit 3 would be at about 1455 feet and the base of the Hewison's gazebo would be at about 1494 feet, which would place the roof at the same or lower height. Mr. Hewison asked about tree removal along the boundary and noted that there was currently a significant buffer. Mr. Edgcomb stated that they do not plan to remove any trees and may add more vegetation. Mr. Hewison stated that he liked the style of the structures and would wait to ask more questions about the hours of construction and phasing later in the process.

Mr. Ackland stated that his main concern was protecting the Sugarbush access easement for use by tankers. Mr. Markolf asked whether the question about who had the key to the gate raised during a previous conversation had been resolved because the Fire Department would like to know. Mr. Ackland stated that Sugarbush had the key and that that discussion was between them and the Fire Department. He further stated that the current plans meet the needs of the tankers.

Mr. Halavonich, Bridges Owner's Association, asked whether there were further plans for a replacement leachfield. Mr. Edgcomb stated that the second leachfield was a backup. Mr. Halavonich asked whether the well would be sufficient and whether they planned to have a cistern. Mr. Edgcomb said that it appeared that the well was sufficient but that they may consider a holding tank of some kind. He added that they did not plan a new well. Mr. Monte stated the project would have to meet health department standards.

Mr. Ackland asked how traffic generation would be considered. Mr. Monte said that the DRB would apply the criteria found in the regulations but that he imagined there would be less traffic than that associated with the current use of restaurant.

Mr. Halavonich asked whether this was considered a change of use. Mr. Monte stated that the each application was considered without regard to the old use.

Mr. Hewison asked whether the construction access would be the main driveway. Mr. Edgcomb said yes and that they did not want to use the access close to Hewison's structure.

Mr. Markolf asked why the applicant was asking for a PRD because it did not appear to meet the requirements for a rural hamlet or a crossroads hamlet which were found on page 91 of the regulations. Mr. Monte asked how the applicant planned to structure the ownership. Mr. Fowler replied that it would be a normal condominium with declarations and land owned in common. Mr. Monte suggested that the project could be considered as a conditional use and that the applicant may rather proceed outside of the PRD requirements. He stated that the advantage of

a PRD is that the applicant may get bonuses of various types for providing certain things such as affordable housing and that these would not be applicable here. Mr. Monte stated that the application might be able to be amended to conditional use mid-review and reminded the applicant that the same general review criteria would be used regardless of their decision.

Mr. Markolf asked whether the applicant planned to phase development. Mr. Fowler replied that he planned to build the proposed development at one time. Mr. Monte asked whether the applicant planned to have pre-sale requirements or whether he would commit to build the whole project for sale. Mr. Fowler stated that he planned to build without a pre-sale.

Mr. Ackland asked whether the property was for sale. Mr. Fowler stated that the property is not for sale and is not listed for sale. He added that he had approached the neighboring property owners to see if they would like to purchase the property and that he had run a for-sale-by-owner ad but had not had any interest. He continued to say that he now had a group together that would support the project and did not want to sell it.

Mr. Monte asked when he planned to start the project. Mr. Fowler stated that he planned to start on April 1, 2005 and have it completed before the first snow of 2005. Mr. Monte asked that the applicant let the DRB know if there were any changes to any of this information.

Mr. Brattstrom stated that he was concerned about projects of this size starting but not finishing and leaving the town with an eyesore. Mr. Monte stated that the board may ask the applicant for evidence of commitment from the bank and/or may impose a bonding requirement.

Mr. Halavonich asked if proof of financing was a requirement. Mr. Monte said that the board had the authority to ask for it. Mr. Fowler asked if such a requirement was consistent with the past. Mr. Monte said yes, it was, and that Mr. Ackland and Sugarbush Resorts had had to comply in the past.

Mr. Monte stated that the board would like to see comparison traffic counts for the condominium and restaurant use. He also stated that it would be good to see the access to Sugartree Inn work out, but that it was up to the applicant and Sugartree Inn to work that out on their own.

Mr. Ackland asked if there was any plan for a shuttle stop. Mr. Monte said that that makes sense and asked the applicant to consider a larger pull-off at the driveway.

Mr. Markolf stated that he would like to see an erosion control plan and asked for more information about the "water feature." Mr. Edgcomb stated that the brook would remain underground for the most part and that water drains down to the middle of the site. Mr. Fowler stated that the existing pipe is old and needs to be replaced.

Mr. Markolf asked whether there were plans for a sign. Mr. Edgcomb stated that a sign was not part of the application. Mr. Markolf stated that it would require a separate application and

suggested that the applicant may want to do that now. Mr. Fowler stated that the proposed development was not yet named.

Mr. Monte stated that the board would rely on the state to confirm the water supply.

Mr. Monte asked whether the adjoining property owners had any comments on the screening. Mr. Ackland stated that he did not have any issues. Mr. Krongel stated that it would be nice to maintain the screening.

Mr. Monte stated that if the ridge is over 25% in slope the board will require no tree cutting to preserve the primary conservation area. He added that areas between 15% and 25% and in excess of 25% in slope should be shown on the plans.

Mr. Monte asked whether they had a lighting plan. Mr. Edgcomb stated that they planned lighting at the entrances and garages and planned shielded, down casting fixtures. Mr. Monte stated that the board would like to see the design of the fixtures.

Mr. Markolf stated that he wanted to see materials, colors, height, and massing but that he did not need to see a final elevation. Mr. Monte said that he would like to see the roof and siding colors. Mr. Edgcomb said he would provide a palette.

Mr. Markolf stated that he would like to see an open space management plan in the homeowners' declarations. Mr. Edgcomb asked whether the permit could be conditioned on having an agreement. Mr. Monte said that the board typically sees the agreement before approval but that it was okay to wait and do that later in the process. He stated that they would like to see some assurance of open space and road maintenance and a provision for payment of legal fees for delinquent dues. Mr. Markolf suggested that the applicant could ask for a waiver of this requirement and explain why it was not necessary. Mr. Monte said that he would expect to see it before the final approval.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, to find the application complete and continue the hearing to October 27, 2004 at 7:00 pm. VOTE: unanimous; motion carried.

IV. 2004-07-SD LESKOWICZ – 2-LOT SUBDIVISION ON VOLKSTOWN ROAD

#2004-07-SD submitted by Bryan Leskowicz seeking approval of a 2-Lot subdivision of 35 +/- acres into Lot 1 (27 +/- acres) & Lot 2 (8 +/- acres). The property is located on Volkstown Road near the intersection of Airport Road and Route 100 in the Rural Residential District. The applicant has requested a waiver of the initial sketch plan review and wishes to proceed directly to the final plat approval. This project requires review under Article 6, *Subdivision Review*, and Article 7, *Subdivision Standards*, of the *Warren Land Use & Development Regulations*.

STAFF REPORT

Ms. Van Gilder reported that the public warning had run in the Valley Reporter on August 26, 2004 and that the applicant had chosen not to be present at the hearing. A letter of concern was received from Karen Hewitt on September 13, 2004. Brattstrom, Robinson, Hewitt, Condit, and Van Gilder attended a site visit at 6:30 before the hearing where they saw the proposed house site, septic field, and roughed in road. Leskowicz was represented by a neighbor.

PUBLIC INPUT

Ms. Hewitt and Mr. Condit had concerns about the proposed development's proximity to their neighborhood well and participated in the discussion as noted below.

GENERAL DISCUSSION

Mr. Brattstrom stated that the site had been cleared and that a road had been roughed in at the site and that the neighbor representing Mr. Leskowicz stated that the site had been cleared for firewood.

Mr. Monte asked Ms. Hewitt if contamination of the neighborhood well was her main concern. Ms. Hewitt said that was correct. She added that the well serves four homes and that there is a vertical ledge right behind the water source for the well. She said that she did not know anything about the well-shield on the well.

Mr. Brattstrom stated that the cistern and well house, which is not being used, are up against a steep slope of bedrock and that the proposed house site is on the flat spot above the well. He stated that he believed that the well could be contaminated.

Mr. Robinson stated that it would be hard to place any protective barrier even during construction because there is water running down already. He stated that he believed the septic field would support the house but that he would want an engineer to speak to the possible contamination of the well.

Mr. Monte stated that the spring house and well were not shown on the plans.

Mr. Robinson stated that even if there is enough distance from the well to satisfy the requirements, the slope probably will not.

Mr. Brattstrom suggested to Ms. Hewitt that she should take a water sample to get a baseline to protect herself.

Mr. Monte stated that the board would need to see well shield data and a more engineered response to the problem.

Mr. Brattstrom stated that the driveway is definitely at least a 25% grade. Mr. Monte confirmed that the drive was roughed in without any erosion control. Mr. Brattstrom stated that the house site is flat and that there is no other way to access it.

DELIBERATION/DECISION

MOTION by Mr. Monte, seconded by Mr. Markolf, to deny the applicant's request for a waiver of the preliminary hearings, continue the hearing to October 27, 2004 at 7:00 pm, and to ask the applicant to provide the following: (1) plans showing the nearby wells and well shield information, (2) engineering/hydrologist report on possible contamination of the community well near the property, (3) plans indicating the primary (over 25% slope) and secondary (15%-25% slope) areas and showing the entire site in 20 foot contours, (4) a letter from the Fire Department with any recommendations, (5) an explanation of the work completed without a permit. VOTE: unanimous; motion carried.

V. OTHER BUSINESS

a) Review September 1, 2004 Minutes

MOTION by Mr. Markolf, seconded by Mr. Monte, to approve the September 1, 2004 minutes. VOTE: unanimous; motion carried.

b) Review 2004-06-CU Conti Decision

The decision was signed by all four members.

c) Review 2002-09-PRD-AM2 Hafiz/Trusova Mylar

The mylar was signed by two members.

d) Review Nilsson Motion to Reconsider / Notice of Appeal of Application 2004-01-PRD Warren Land Company

Mr. Monte brought before the board the Motion to Reconsider/Notice of Appeal Application 2004-01-PRD dated September 14, 2004. Adjoiners Nilssons sought reconsideration on two grounds: (1) applicant's failure to obtain an Act 250 permit in advance or disclose to the board that a permit was required, and (2) applicant's failure to disclose that Reynells had a financial interest in the applicant or in the project property.

Mr. Monte stated that it is routine for applicants to get local permits before going through the Act 250 process, so he personally was not troubled if this applicant did so in this instance. Monte added that he was less clear about the merits of the claims about the Reynells possible involvement. He asked the Nilssons' attorney, Lauren Kolitch, to state what evidence exists to show that Reynells are involved, and to state why they claimed the board should care about Reynells' involvement, if any.

Mr. Markolf stated that he was not concerned by the Act 250 issues but that he would be concerned to learn that the Reynells were involved. Mr. Markolf stated that he had specifically asked the Town Clerk who the application was signed by, and the Town Clerk said that she believed that the application was signed by Warren Land Company's principal, John Vihinen, before Warren Land Company closed on the land.

Ms. Kolitch, representing the Nilssons, stated that her research had shown that Mr. Reynells owned the land 3.5 months after the plans were drawn up in December of 2003 and that the letters to the abutters went out in February and March, which was prior to the Warren Land Company purchase. In addition, she noted the check for the DRB review was made out by yet another organization.

Mr. Monte said that he was not concerned about who signed the check. Mr. Markolf stated that someone else came to the board for an informal discussion, which the board understood was an attempt to get a feel for the possibilities prior to purchase. He added that this was before the board did their site visit and before Mr. Vihinen was associated with project. Mr. Markolf stated that the person represented himself as a principal in Mr. Vihinen's organization.

Mr. Monte stated that zoning permits run with the land. Thus, there is always a possibility that people who actually build the permitted project may be different from the people who first applied for it. So the board routinely writes permit conditions with future owners in mind rather than personalizing the permits to the applicant. Thus, Monte stated, it would not matter to him if Reynells had acquired an interest in the project after this board granted the permit. He asked if the Nilssons thought Mr. Reynells alleged involvement pre-dated the permit or had other significance that would warrant a reopening.

Ms. Kolitch stated that there are two Act 250 issues (1) Reynells has subdivided exceeded the number of lots allowed without Act 250 review and (2) in 2001 the Reynells 5-acre subdivision attached Act 250 permit requirements to the entire 23 acres. She added that the Warren Land Company never told the board about the Act 250 requirement.

Mr. Monte said that in his opinion, Act 250 issues were not a legitimate concern for this board. If there were violations of Act 250 or prior State permits, or if the project also requires a new Act 250 permit or an amendment to an Act 250 permit, it was only the State who had authority to enforce those violations or consider a new or amended Act 250 permit. The DRB has neither the resources nor the legal authority to duplicate the State's enforcement of past Act 250 violations or any State requirements for a new Act 250 permit. Ms. Kolitch asked if the board would have added a condition to comply with that Act 250 permit if they had known of its existence. Mr. Monte stated that the board routinely includes a statement in its decisions alerting permittees about the need to comply with all other State and local permitting regulations, but that the board is not equipped to evaluate and advise applicants about a project's State permit needs, nor to monitor compliance with State permit requirements.

Mr. Nilsson expressed disappointment that the board was going to make him pay a lot of money to get the question straightened out. Mr. Monte replied that it may be regrettable that the State process can cost money, but the Warren DRB does not have the resources or authority to deal State permits questions and that the system allocates that responsibility entirely to the State.

Ms. Kolitch stated that the 2001 permit from the Warren DRB required Mr. Reynells to do a variety of road improvements and that few had been completed. She added that the Warren Zoning Administrator is planning to issue a notice of violation to the third party buyers, such as the Nilssons, to get the improvements done. She asked that if Mr. Reynells still has an interest in the property, shouldn't he be required to complete those improvements as part of the current permit.

Mr. Monte stated that the board might well have arrived a different decision about some issues if it had known in the original hearings that Mr. Reynells was a principal of Warren Land Company. The adequacy of the project's access roads was discussed at length during the board's deliberations. For reasons of practicality, the final board decision required the applicant to make only those improvements to the access roads that were within the applicant's apparent power to perform. While those improvements met the minimum standards to make the access roads safe, the board might have ordered more work to be done if the board had thought that the applicant had the practical ability to do more. If the board had known during the original hearings that Reynells was a member of the applicant limited liability company, the board may have considered the practicality of additional road improvements, if any, that are within Reynells' ability to perform.

Mr. Markolf stated that during the original hearings the board asked the applicant whether Mr. Reynells was involved as a member of the applicant limited liability company and the applicant replied "No". He asked Ms. Kolitch what more she expected the board to have done.

Mr. Monte asked what evidence Ms. Kolitch and the Nilssons have now that leads them to believe Mr. Reynells is involved in Warren Land Company. Ms. Nilsson stated that she has seen Mr. Reynells at the property frequently. Mr. Monte stated that Reynells presence on the land could be explained by many reasons. For example, there was discussion at the hearings that Reynells might be hired to build the septic system or do other contract work for the applicant. Without more evidence, Monte stated that mere sightings of Mr. Reynells on the property did not warrant a conclusion that Reynells had a membership or other financial interest in the applicant LLC.

Mr. Nilsson stated that the problem was that the board in earlier permits granted to Reynells had required road improvements that still had not been completed. Mr. Monte stated that there were numerous enforcement actions available to the Town and/or the Nilssons for the other permits, if they were violated, but the issue of any violations of earlier permits was not directly relevant to the motion to reconsider now on the table.

Mr. Monte returned to the question of why the Nilssons believed that Reynells was involved in the applicant LLC, Warren Land Company, and why they claimed his involvement warranted reopening the hearings for this permit.

Ms. Kolitch asked if the board asked for any documents regarding the ownership, the LLC organization, or financing. Mr. Monte said no. Ms. Kolitch said the recorded documents did

not list Reynells as a member, but the recorded documents did not list all members because applicant was not a member-managed LLC.

Mr. Monte asked what other evidence the Nilssons could offer to show an interest of Reynells in the project. None was offered.

Mr. Monte stated that there was a possible ground to reopen the hearings that had not yet been discussed. Monte noted that statements made in passing tonight suggested that the applicant, Warren Land Company, was not the record owner of the project property when the application was filed. Mr. Monte stated that there might be grounds to grant the Nilssons' motion to reconsider if there was a violation of the requirement that the record owner of property must sign the application when it is submitted.

Mr. Markolf asked Ms. Kolitch and the Nilsson's what they hope to accomplish. Ms. Kolitch stated that Reynells and the Warren Land Company knew of the Act 250 requirement and did not advise the board of this and that while the board doesn't seem to think this is a problem, she does. She stated that she would like the board to reopen the hearing to discuss two things (1) do they have any intention of pursuing the Act 250 process and (2) information about any ownership and lending agreements between Warren Land Company and Reynells.

Mr. Monte stated that in his opinion, for the reasons discussed above, the Act 250 issues raised by Nilssons did not justify reopening. Mr. Monte stated that he also believed that the other ground, Reynells' alleged involvement in Warren Land Company, did not justify reopening either. It might arguably have been a good idea for the board to look further into the Reynells' involvements in Warren Land Company during the original hearings, but absent new and believable evidence, Monte did not think there was a good enough reason to reopen hearings now. Nilssons were present at all of the hearings and had ample time then to raise issues about Reynells' financial involvements in Warren Land Company, but they did not do so. And tonight they cannot offer new evidence that credibly suggests that the board was misled about Reynells lack of involvement or that would otherwise justify the board's reconsidering its original decision.

Mr. Vihinen, who had just arrived, stated that Mr. Reynells has no ownership in the Warren Land Company and that Warren Land Company bought the property from Mr. Reynells. He corrected himself to say that the property was actually purchased from Long Associates but that Long Associates and Reynells are connected.

Mr. Monte reminded Mr. Vihinen of the requirement that the owner of record sign the application form. Mr. Vihinen stated that Warren Land Company was the owner of record on the day the application was filed. Mr. Monte stated that that fact was a matter of record and could be verified (or disproved) easily by Ms. Kolitch if there was any remaining doubt.

Ms. Kolitch asked what financial gain Mr. Reynells could receive from the project. Mr. Vihinen asked how such a question was relevant to what the DRB does. He stated that the

supposed Act 250 requirements came as a surprise to him. He added that Mr. Reynells was on the property recently to give Warren Land Company an estimate of his price to clear timber.

Ms. Kolitch asked the DRB to take a vote on reconsidering the application and stated that she would file an appeal to the Environmental Court if they did not reconsider it.

Mr. Monte reminded the board that they had the option to deliberate in executive session if anyone on the board preferred not to deliberate in an open, public hearing. No one on the board requested closing the hearing for deliberations. The board continued the hearing in open session.

MOTION by Mr. Robinson, seconded by Mr. Markolf, to deny the request to reconsider application 2004-01-PRD. VOTE: unanimous; motion carried.

VI. ADJOURNMENT

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

The meeting adjourned at 10:00 PM.

Respectfully submitted,
Karen Van Gilder
DRB/PC Assistant

Development Review Board

Peter Monte, Chair (date)

David Markolf (date)

Lenord Robinson (date)

Eric Brattstrom (date)