

**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
DECEMBER 8, 2004**

MEMBERS PRESENT: Eric Brattstrom, Lenord Robinson, David Markolf.

OTHERS PRESENT: Peter Lazorilak, Douglas Condit, Karen Hewitt, James Caffry, Bryan Leskowitz, Dexter Lafavour.

AGENDA:

- 1) Call meeting to Order 7:00 pm
- 2) 2004-09-SD Colpitts – 3-lot subdivision on West Hill Road (cont)
- 3) 2004-07-SD Leskowitz – 2-lot subdivision on Volkstown Road (cont)
- 4) 2004-05-SD Ward – 20-Lot Subdivision on Inferno Road
- 5) Other Business
 - a) Review November 10, 2004 Minutes

I. CALL TO ORDER

David Markolf called the meeting to order at 7:15 p.m.

II. 2004-09-SD COLPITTS – 3-LOT SUBDIVISION ON WEST HILL ROAD

#2004-08-SD submitted by Peter Lazorilak of McCain Consulting on behalf of George and Cynthia Colpitts seeking approval of a 3-Lot subdivision of 12.8 +/- acres into Lot 1 (1.2 +/- acres), Lot 2 (6.6 +/- acres) and Lot 3 (5 +/- acres). The property is located on West Hill Road in the Rural Residential District. This project requires review under Article 6, *Subdivision Review*, and Article 7, *Subdivision Standards*, of the *Warren Land Use & Development Regulation*.

Peter Lazorilak stated that their request for a waiver of the sketch and preliminary plan review was denied at preliminary DRB meeting. Mr. Lazorilak presented an overview. He stated that the Colpitts currently own a parcel in Warren totaling approximately 13 acres. Two houses stand on the lot: the main house on the back portion and a guest house closer to West Hill Road, with a separate five acre lot across a stream. DRB has determined this constitutes a three-lot subdivision—separating the two main houses and creating a new building lot.

Mr. Lazorilak summarized the issues covered at the preceding meeting. One was the site distance on the proposed driveway as it comes off West Hill Road. The adjoining land owners, the Crandells, didn't feel that the sight distance was appropriate at the proposed location.

Mr. Markolf asked where the Crandell's land was sited. It was determined that the Crandells were behind the main house; they were concerned about safety issues and increasing traffic on West Hill Road.

Mr. Lazorilak replied that his initial reason for not putting the driveway in the proposed location was that he was not sure if the area included wetlands. McCain has since located class III wetlands in that area—there are two drainages coming down off the road that connect with Class III wetlands. Impact was found not to be significant if the driveway was located in proposed area, for a total of 1300 square feet of wetlands impact, which since they are Class III would not require a formal written permit from the Army Corps of Engineers.

Mr. Markolf asked if the proposed driveway would have affected wetlands.

Mr. Lazorilak replied that they were using the existing woods road to tie in to the driveway. A waterline would have been impacted.

Mr. Lazorilak continued. The Crandells had concerns related to the replacement leach fields for the proposed house located on the other side of the stream, including erosion controls, that the stream could be located on bedrock and overall construction issues. McCain evaluation showed that this system can be built in the location. Regarding stream crossing permits and erosion controls, they feel that it's unrealistic to require these steps for something that won't be built for 20 or 30 years. They have included note on plans that such issues need to be addressed when the system is to be built. Mr. Lazorilak checked during a site visit for bedrock in the stream bed and was able to go three and a half feet without hitting a refusal, so he is confident that a crossing can be found without having to blast bedrock.

Mr. Lazorilak also reported on the issue of the garage of the main house, which was built over the existing drilled well. McCain's plan recommended testing the well for solids **volatile metals**, organic compounds, total petroleum hydrocarbons, ido and ethylene glycol to confirm that well has not been contaminated. To create prevention against future contamination, McCain recommended removing the cover of the existing stump, putting a water-tight manway in the middle, pouring concrete with a 3-inch reveal to shed all liquids from the manway and to require annual testing with the same parameters as the initial test.

Mr. Lazorilak also stated that McCain has determined that health permits for the septic system for the guest house had been obtained from the town of Warren when it was built in 1990.

Mr. Lazorilak also stated that there is an encroachment associated with the existing leach field. The Colpitts will address this by either building a primary leach field as designated or purchasing a five-acre lot from the neighboring Sardis so that they is no longer an encroachment.

Mr. Brattstrom asked if there had been concerns about a pond on the land.

Mr. Lazorilak stated that since the pond was away from the road, they were not interesting in installing a hydrant.

Mr. Markolf asked when the decision about land sale will be made between the Sardis and the Colpitts.

Mr. Lazorilak stated that he was not sure when a decision will be made about options. They are applying for a state permit for the subdivision of the main house from the guest house. The state views lot 3 as a separate existing lot so no state permit is needed for that. They are sending plans to the state. The assistant regional engineer was present for all test pits on both lots.

Mr. Markolf stated that the board was concerned about the well in the garage for two reasons. First was the water, which Mr. Lazorilak has addressed by the proposed annual testing. The other was that he understands that a well can not be within 10 feet of a setback.

Mr. Lazorilak replied that such a ruling would apply for new construction. He presented a copy of the state regulations that address this issue. In the subdivision of improved lots, he read, "Notwithstanding any other provisions of these rules, the permit required under this subchapter for the subdivision of an improved lot shall comply with the following requirements: if the lot is exempt from permit requirements of this subchapter, the potable water supply and waste water system serving the building or structure at the time of subdivision may continue to be used as is even if they do not meet the current technical standards of these rules unless the system meets the definition of a failed supply or system. In addition a fully compliant replacement area for the waste water system and a fully compliant area for the potable water supply system shall be identified." He also read the definition of a failed of potable water: "A potable water supply that is contaminated so that it is rendered not potable."

McCain has designated a replacement drilled well that meets all current standards if the current well is determined to be a failed system. He said that Kate Herald, (**right name?**) state assistant regional engineer, is prepared to issue a permit.

Mr. Markolf asked how the Town of Warren would enforce annual testing.

Miron Malboeuf stated that the situation could create a liability for the town. In 2007 the State of Vermont will take over all in-ground disposal issues. He does not see how the DRB can be responsible for monitoring of the well. It is outside the purview of the zoning administrator. He advised that, absent other issues, the condition of the zoning permit should be that the applicants obtain the state permit and that be sent to the town and recorded as an attachment to the town zoning permit. The town should also have copies of the initial test on the well.

Mr. Markolf stated that this would serve as a disclaimer on the mylar to any purchaser since the existing house would have a mylar as well.

Mr. Lazorilak says that it is McCain's recommendation to abandon the existing leach field and construct the proposed primary leach field, but based on the rules, the current system can continue to be used. So the real issue is the encroachment.

Regarding the septic system being across the stream, Mr. Robinson said that **(not sure what was said or meant here. It's at 27:05 on the iPod recording)** since you can drive across the stream without digging it up, he did not see any problem.

Mr. Markolf stated that he will make it a condition that McCain needs to go to the Select Board regarding the new curb cut.

Mr. Markolf asked how the DRB stands regarding roads and streams separating lots.

Myron (need last name) stated that streams do not apply.

Mr. Markolf asked if the questions regarding the Sardis do not apply, what else stands?

Mr. Brattstrom replied the board had decided that the applicants do not need to register the pond with the fire department since the pond is already there. There is also a pond close by on the Sardi property that does have a hydrant.

Mr. Markolf stated that he would like to see the septic and a well put in. He proposed that Mr. Lazorilak take that proposal back to the applicant. He proposed that one of the conditions be that the septic and the well be installed as shown.

Mr. Lazorilak asked if the application was approved with those conditions, is there the option to come back at the next meeting with the full board for reconsideration?

Mr. Brattstrom replied that the board would have expected Mr. Lazorilak to have reviewed the recommendations with the Colpitts in the meantime.

Mr. Markolf suggested that since septic and well systems are the only present issues, the board can continue the application to the next meeting, or they can do the review and sign it if in agreement.

Mr. Lazorilak decided to request a vote with the conditions of drilling new well and septic. If the Colpitts do not want to comply with the conditions, the Board will have to rewarn it.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, that the applicant be required to install the primary leach field and the replacement well as shown on Plan July 8, 2004; Revision Date November 16, 2004.

VOTE: unanimous; motion carried.

Mr. Markolf stated that the board does not have a problem with the replacement field on the other side of river but asked about further engineering and erosion control.

Mr. Lazorilak stated that McCain has plans in case to contact a designer for additional details if and when replacement area is constructed.

DECISION/DELIBERATION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, that 7.2 A, B, C, D, E, F G and H have been met or found not applicable. VOTE: unanimous; motion carried.

Mr. Markolf asked if the only conservation areas were the Class III wetlands.

Mr. Brattstrom asked about slopes down by the stream that should be avoided.

Mr. Lazorilak replied that there are steep portions of the property. He has not shown setbacks because the building envelope and the leach field area are not in those areas. Applicants will have to deal with erosion control issues if and when construction is done on Lot 3.

Mr. Markolf asked why a steep area on Lot 3 was not shown on the plan.

Mr. Lazorilak replied that it's expensive to map an area they are not interested in.

Mr. Markolf stated that for the DRB to create Lot 3, they have to have it drawn, showing the primary conservation area.

Mr. Lazorilak replied that the **meets and bounds (is this right term?)** of the lot are shown in separate drawings and that McCain will be have a survey mylar within 90 days.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, that the final flat mylar must show primary and secondary conservation areas on any relevant parcels. VOTE: unanimous; motion carried.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, that 7.3 is deemed satisfactory. VOTE: unanimous; motion carried.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, that 7.4, 7.5, 7.6 and 7.7 have been satisfied. VOTE: unanimous; motion carried.

Mr. Brattstrom asked if statements on erosion control and curb cuts had been included.

Mr. Lazorilak stated that erosion control had not been addressed and that the Colpitts know they have to go to the Select Board about the curb cuts.

DELIBERATION/DECISION

MOTION by Mr. Brattstrom, seconded by Mr. Markolf, that erosion control measures under 7.5 shall be spelled out limited to Lot 3. VOTE: unanimous; motion carried.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, to find that 7.8, water supply and waste water disposal, subject to state and local permits, is satisfied with conditions herein. VOTE: unanimous; motion carried.

Mr. Markolf asked if utilities are underground or overhead.

Mr. Lazorilak replied that they are underground.

Mr. Markolf replied that he thinks they should leave it up to GNP for one house.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Robinson, that 7.9 and 7.10 are either met or not applicable. VOTE: unanimous; motion carried.

Mr. Lazorilak asked where they would like to see the erosion controls noted.

Mr. Markolf replied that a note on the mylar showing the location of the primary and secondary erosion areas would suffice. Anything in excess of 25 percent is primary; anything 15 percent to 25 percent is secondary.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, that the DRB grant the application subject to the conditions as outlined. VOTE: unanimous; motion carried.

Mr. Markolf told Mr. Lazorilak that if his clients are in agreement, the DRB will sign the application and they have 90 days to file a mylar. If they have problem, Mr. Lazorilak will inform the DRB immediately to reschedule for later meeting.

III. 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*.

Regarding the continuation of the Leskowicz application, Mr. Markolf asked Mr. Leskowicz to update DRB on actions since last meeting.

Mr. Leskowicz reported that he seeks a subdivision permit for the 35 acre piece of land at 358 Volkstown Road to make an 8 acre lot. At the last meeting, he was told that the greatest obstacle was the Warren Fire Department approval of the road. Engineer Dexter Lafavour has redesigned the road and the Fire Department addressed concerns for approval, which are reflected on the new plan presented to the DRB. Other issue was neighbors' (Karen Hewitt and Douglas Condit) wells.

Mr. Markolf noted the WFD (**couldn't public property ?—can't understand what's said**) and had recommended that the application be denied. He listed some of the WFD concerns. One was that ("**here**"--**not sure specific location**) to the parking area can not exceed 15 percent gradient. Mr. Lafavour noted that gradient was 14.98 percent. WFD recommended that the road be widened at the intersection 10-12 feet and 50 feet wide. He confirmed with Mr. Lafavour that this would also be where an 18-inch culvert would be put in. The parking area should be a minimum of 30 feet by 30 feet. And the proposed dwelling should have a central alarm system and a minimum of a 13-D sprinkler system. He also asked if they were raising a section of the road to get a 16 percent gradient.

Mr. Lafavour says that the 16 percent gradient will not be obtainable with the restrictions. Now it's 20 and 25 percent.

Myron asked if we could agree upon a hard number.

Mr. Lafavour says that 20 percent is probably the maximum. There are restrictions on two ends. They can't lower the intersection without making the other one steeper. He pointed out that to get the 20-25 percent section down to 16 percent, it would take 10 feet of fill, which is not feasible because it would make driveways inaccessible.

Mr. Lafavour also said that the new plans show driveway plans to get them to 15 percent and also erosion control and storm water disposals for grass behind the house, stone-lined ditch to come down the middle of the site and go over the cliff, and a silt fence around the construction.

Mr. Lafavour said that primary and replacement areas are outside of the protection area of that well located down below on the plan. It was a shallow drilled well. It serves three houses with 12 bedrooms together.

Mr. Leskovicz noted that the new plan shows all wells in question and the primary and secondary mound system. Also all well shields as specified by the state.

Ms. Hewitt questioned the isolation distances.

Mr. Markolf replied that anything uphill has to be 200 feet and 100 feet if down. It is not adjusted for ledges and streams.

Ms. Hewitt questioned if these specifications are adequate in cases with little soil.

Mr. Markolf noted concerns about waste water stated by Mr. Leonard at the last meeting, that when system is uphill from a water source the septic must be 200 feet away. Leonard added at that time that only a geologist could say how the waste would flow.

Mr. Lafavour stated that the waste water would go into the soil above the ledge. State requirements are to be at least 25 feet away from a cliff, and they are more like 100 feet away. The concern is the effluent does not surface within 25 feet of the mound--criteria that must be met to satisfy the state.

Mr. Brattstrom questioned how much water is percolating above the bedrock.

Mr. Lafavour presented an approved state permit. He said that the state requirement is at least 18 inches of soil to bedrock; they have at least 30 inches.

Mr. Brattstrom asked about the mound system.

Mr. Lafavour replied that they had high models based on water table of 17 and 21 inches. Ledge was not a restriction. It is a 1-foot mound which means there's a foot of sand beneath the stone in the mound. The overall height of the mound would be 3 feet.

Mr. Markolf asked if the applicants had a state permit.

Mr. Leskowitz presented the Agency of Natural Resources permit for the septic system to the DRB. The permit recognized the system's sand filter.

Mr. Markolf asked how the DRB can create a lot that's in a primary conservation area when the ordinance clearly says it can't.

Mr. Lafavour presented a salt map showing that most of the development was outside of the primary conservation map. He presented a map showing red indicating less than 15 percent, yellow less than 20 percent, so anything red or yellow is secondary or better. He compared the colored map and the plan map to show that all of the development except for the driveway is within secondary or better slope.

Mr. Markolf noted that it appears that the proposed house falls out of the red and yellow area into a green area, indicating greater than 20 percent.

Mr. Leskowitz says they can move the house out of that area.

Mr. Lafavour noted that green is 20 percent to 50 percent. So it may *not* be in an area of more than 25 percent, which is cut off.

Mr. Markolf asked his question again—how to construct house in primary conservation area?

Mr. Brattstrom noted from a previous site visit that they had staked out the house site in a pretty flat area, not anywhere near 15 percent. Are the map and field site different?

Mr. Leskowitz said that the USGS map might not be to actual scale.

Mr. Caffry said that Section 34-B states that after the blanket prohibition, "developments shall not take place on sites of greater than 25 percent gradient. Limited site improvements necessary to facilitate development on contiguous land with a slope of less than 25 gradient...may be permitted by the DRB subject to the requirements of subsection A," which folds in the DRB's conditional use criteria.

Mr. Lafavour reiterated that it would be easy to move the house and parking area closer to the cliff and out of the green zone.

Mr. Caffry clarified that previous DRB interpretations had been that it's OK for a driveway to go through a section of 25 percent slope or greater, that the DRB have previously allowed for a driveway but not a foundation of the building.

Mr. Leskowitz affirmed that there will be portions of the driveway that will be bulldozed so that they will be no more than 15 degrees.

Mr. Markolf would need to see that any structure would not be in the primary conservation area.

Ms. Hewitt, who is an abutter, stated for the record that she is against the development. When the site was originally developed, the grade was raised so much on her road that it changed the character. She has maintained the private portion of the road; Mr. Leskowitz' culvert is on her property. She has concerns about parking at bottom of road, which might block access for her tenants.

Mr. Leskowitz noted that he'd done most of the road maintenance on her section, that he'd put in culverts to keep the road dry.

Mr. Markolf asked if the road was private, and if so, was there a maintenance agreement.

Mr. Leskowicz affirmed that it was a private road and that there was no maintenance agreement.

Mr. Markolf stated that an agreement was important to the DRB.

Ms. Hewitt stated that the road grade can't be raised any higher.

Mr. Caffry said that the deed states that there should be a 50-foot right of way with no common road agreement. There are not any restrictions or maintenance of use. The deeds are silent about right to change the road.

Mr. Markolf said that in looking at the plan, the septic field is in the green gradient area, too.

Mr. Lafavour said there is room to put the septic field in the red zone. The criteria are the stone within the leach field. The greater concern is the ground down slope where the effluent will disperse.

Mr. Markolf asked if the grass swale will be graded.

Mr. Lafavour said it would be in lawn, a depression to provide cutoff for storm water coming down the slope heading for the building. It will divert it to the stone lined ditch.

Mr. Caffry said the issues he is concerned with are the primary conservation area and fire department.

Mr. Markolf noted that FD is no longer an obstacle. He is concerned about the hard fact that he is seeing a structure and septic system in an area that's more than 25 percent.

Mr. Leskowicz says that on-site, it's clear that it's not in the over-25-percent zone. They will build on the level. They will adjust map to show it's not in that zone.

Mr. Brattstrom said that on a site visit, it looked like the dwelling was well within any boundaries.

Mr. Robinson said his problem was with the septic system more than anything else. It appears they have met the state requirement.

Mr. Markolf noted that the state says the concerns have been met. He noted three items:

1. He wanted a clarification of the topography
2. He wants a chance for the DRB to go over the A&R permit and ask questions
3. He doesn't want the DRB to approve the application without adequate road maintenance agreement.

Mr. Caffry will look at to what extent a does right extend into pre-existing right of way with an adverse party.

Mr. Markolf noted that this road is not within the pre-existing subdivision but would be an agreement outside of the subdivision. He stated that the DRB can not create a lot that doesn't have a clearly defined access by right-of-way and road maintenance agreement from all involved.

Ms. Hewitt noted that the part of the road on her property is very vulnerable to the added stress of construction. Would the FD need an additional turn-out?

Mr. Markolf noted that the FD is satisfied with the existing turn-out.

Mr. Caffry clarified: To what extent does DRB have the authority to grant a subdivision for this piece of property that has a deeded right-of-way with limited language? The deed just says that purchase of these properties is subject to the 50-foot right-of-way for access. The issue will be to what extent the DRB could deny a subdivision of this

subsequent lot in absence of the consent of the parties who have the right to use the access subject to the rights of the others.

Mr. Markolf stated that it's obvious everyone has the right to use the roadway but he is concerned about maintenance.

Mr. Caffry stated to confirm:

1. DRB wants new maps with location of building and septic sites in areas of less than 25 percent slope
2. DRB wants complete set of A&R permit and plans that the permit is based on
3. DRB wants road maintenance agreement or legal opinion that such agreement is unnecessary or not able to be required.

Mr. Brattstrom wanted to know on whose land the road needs to be raised. Is it feasible and are neighbors agreeable.

Mr. Caffry wanted to verify that Mr. Brattstrom needs to know precisely within the 50-foot right of way, what section the FD has asked to be raised.

Mr. Brattstrom asked for this during a site visit. Site location to be looked at the same time.

Mr. Robinson will review the septic plan and permit to verify that it's OK.

Ms. Hewitt would like to see what state reviewed to issue permit. She is concerned about the road raising.

Mr. Markolf assured here she will be notified as long as she signed in to meeting.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, to continue hearing to Wednesday, January 12, 2005, with site visit set for 9:30 a.m., Saturday, January 8, 2005. VOTE: unanimous; motion carried.

III. OTHER BUSINESS

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, to approve the November 10, 2004, minutes. VOTE: unanimous; motion carried.

(NOT SURE HOW TO NOTE THE REST—TOOK PLACE AFTER MEETING STARTED BREAKING UP)

Myron noted that in the Chisletooth will resubmit under a minor subdivision application. The Environmental Court returned it to the GRB and under section 6.7 DRB has to hear it as a new application. Suggested that this be put on for the January 26, 2005 meeting.

Also will continue application request for Ward Subdivision to February 9, 2005 meeting.

IV. ADJOURNMENT

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

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, to continue hearing on the Ward subdivision to Wednesday, February 9, 2005. VOTE: unanimous; motion carried.

The meeting adjourned at 9:30 PM.

Respectfully submitted,
Jeffery Lindholm

Development Review Board

Peter Monte, Chair (date)

Lenord Robinson (date)

Eric Brattstrom (date)

David Markolf (date)