

FINDINGS OF FACT

Town of Shelburne - Development Review Board

RECONSIDERATION OF DECISION FOR SUBDIVISION PRELIMINARY PLAN/PUD, SITE PLAN, AND CONDITIONAL USE APPLICATIONS

SUB08-03 – Shelburne Woods LLC, Mixed Use PUD on multiple parcels totaling 44.32 acres in size

5059 SHELBURNE ROAD, 82 SHELBURNEWOOD DRIVE, AND 5171 SHELBURNE ROAD

PROPERTY OWNERS: MARGARET A. DYER, MARVIN AND SUE THOMAS AND TRINITY EPISCOPAL CHURCH

Overview:

On the 18th day of February 2010, Shelburne's Development Review Board approved Green Mountain Development Group Preliminary Plan/PUD, Site Plan and Conditional Use Applications subject to conditions. A formal request to reconsider¹ the approval with conditions was received on February 23, 2010 in a letter dated February 19, 2010 from the developer, John Giebink. More specifically, the request was made to reconsider certain conditions of the approval:

- Conditions 3, 4 and 5, restricting development below the 130 foot elevation contour for the entire northern part of the site, and below the 140 foot elevation contour for the entire southern part of the site.

- Condition 6, requiring the applicant to redesign the Development to provide a second ingress and egress drive connecting the Development to Shelburne Road in the general location of the Harrington House.

The Development Review Board considered the request on March 3, 2010 and voted unanimously to warn a public hearing to reconsider the conditions of approval on March 24, 2010. The hearing was opened and closed on March 24, 2010.

Public Hearing Notice:

On March 6, 2010 a notice of a public hearing was published in the *Burlington Free Press*, and on March 8, 2010, a notice of a public hearing was posted in the Shelburne municipal office complex, the Shelburne Post Office, and the Shelburne Supermarket.

¹ Reconsideration authorized by Section 4470(a) Vermont Planning and Development Act

Record and Decision:

The application was considered by the Development Review Board (DRB) at a public hearing formally warned for March 24, 2010. The hearing was opened and closed on March 24, 2010. Present at the hearing was a quorum of the members of the DRB. Any members participating in the decision but not present at the hearing session have reviewed relevant meeting minutes and videos. A number of deliberative sessions regarding the project were conducted subsequent to the close of the hearing. The DRB reviewed the application under the Town of Shelburne Zoning Bylaws, as amended effective March 17, 2009.

Material added to existing written record maintained by the Planning and Zoning Office as part of the reconsideration proceeding consists of the following:

- Letter from John Giebink, Green Mountain Development Group, to the Development Review Board, Dated February 19, 2010 and received February 23, 2010
- Email from Tim French, Project Supervisor in Utilities and Permits unit at the Vermont Agency of Transportation, to Dean Pierce and John Giebink, dated March 3, 2010 re: 'Shelburne Woods Project.'
- Email from Dean Pierce, to John Giebink, dated March 4, 2010 re: 'Shelburne Woods Project.'
- Email from John Giebink, to Dean Pierce, dated March 4, 2010 re: 'Shelburne Woods Project.'
- Documents submitted by John Giebink, undated, submitted at the hearing March 24, 2010

Testimony offered at the March 24, 2010 hearing, included sworn remarks from the applicant, as represented by John Giebink and Charlie Brush of the Green Mountain Development Group, residents of the Shelburnewood Mobile Home Park; other residents of Shelburne; town staff; and others (as indicated on the sign-in sheet) .

Based on the reevaluation of evidence presented during the Preliminary Plan application hearings, the Reconsideration hearing and the applicable bylaws the DRB has added the following facts to the February 18 **Findings of Fact:**

209. The Vermont Agency of Transportation has agreed in concept to allow one signalized intersection from the proposed Shelburne Woods Project onto US 7.
210. The Vermont Agency has agreed in concept to allow one gated access from the proposed Shelburne Woods Project onto US 7 for "Emergency Use Only."
211. The Vermont Agency of Transportation has not reviewed detailed plans for the project or received an application for a highway use/access permit, as required by Title 19 VSA, Section 1111, from the applicant.
212. Some areas below the 130 and 140 contour lines may be suitable for development; however, before these specific areas can be identified, additional evidence is required regarding the potential for negative resource impacts on the palustrine natural community, wildlife habitat, and the Laplatte River corridor.

Conclusions:

Based on the above findings and those contained in the written decision dated February 18, 2010, all of which are derived from the evidence and testimony offered during the proceedings, the DRB is obligated to reach the same conclusions as specified in the February 18, 2010 decision.

However, in light of certain new facts, the Board concludes there is a need to modify the conditions of approval as listed below (modified conditions are in bold).

Reconsidered Decision:

Based on the above-cited findings and conclusions, the Development Review Board hereby decides as follows:

- The request for Preliminary Plan approval of the major subdivision and the proposed land transfer and boundary modification is APPROVED, subject to the following conditions:
 1. such approval is contingent on final approval of the PUD-MU application:
 2. Fulfillment of Conditions 2, 3, 4, 9, 11,12, 13,14 as enumerated below.

- The request for approval under Site Plan review criteria is APPROVED, subject to the following conditions:
 1. such approval is contingent on final approval being granted for the proposed land transfer and boundary modification between parcels : 31-50-52 and 31-50-47;
 2. Fulfillment of Conditions 1, 3, 5, 6, 7, 9, 15 as enumerated below.

- The request for approval under the Conditional Use approval is APPROVED, subject to the following conditions:
 1. such approval is contingent on final approval being granted for the proposed land transfer and boundary modification involving 5059 Shelburne Road and 82 Shelburnewood Drive;
 2. such approval is contingent on final approval being granted for the PUD-Commercial proposed for 5059 Shelburne Road and 82 Shelburnewood Drive;
 3. Fulfillment of Conditions 4, 7, 10, 11, 12, 13, as enumerated below.

- The request for approval of the Preliminary Plan stage of PUD-MU review, including request for Preliminary Plan approval of the overall project, is APPROVED, subject to the following conditions:
 1. such approval is contingent on final approval being granted for the proposed land transfer and boundary modification involving 5059 Shelburne Road and 82 Shelburnewood Drive;
 2. such approval is contingent on final approval being granted for the Conditional Use cited herein;
 3. such approval is contingent on final approval being granted under Site Plan review criteria of the zoning bylaw;
 4. Fulfillment of Conditions 1, 2, 3, 7, 8, 13, 14, 15, as enumerated below.
- Further consideration of loading, design review, and parking shall be reviewed as part of any Final Plan application.

Conditions of Approval

1. ROAD WIDTH/TREES

Any Final Plan application shall include roads designed to meet the Public Works specifications. However, road widths in certain areas of the project may be narrower than proscribed by the specifications and trees shall be permitted in the right of way as long as they do not interfere with the maintenance of any public utility.

2. REDESIGN C STREET AT SLOPE

Any Final Plan application will include modifications to the design with provisions made for certain steeply sloped portions of the site. Specifically, the northeast corner of 'C' street shall be relocated southward away from the sloped area so as to significantly reduce the fill and proposed retaining structure. The duplex unit closest to the northeast corner of 'C' street shall be eliminated.

3. AVOID STEEP SLOPES

As part of any Final Plan application the applicant shall provide substantial evidence demonstrating that any development on slopes greater than 15 percent grade will not threaten the palustrine natural community, degrade wildlife habitat, or negatively impact the Laplatte River corridor. The applicant shall demonstrate that appropriate provisions have been made to address any potential erosion, soil slumping or collapse, and groundwater contamination.

A vegetation management plan consisting of cutting and building restrictions, with the goal of preventing both erosion and habitat destruction, shall be submitted for review and approval by the DRB. Said plan shall be submitted as

part of any Final Plan application and if accepted by the DRB, shall also be provided to any prospective buyers.

4. PRIMARY ACCESS

Prior to the filing of any Final Plan application for the subject project, the applicant shall invite the owners of commercial properties on the west side of Shelburne Road, opposite the project, to cooperatively redesign and consolidate the accesses serving such properties. The DRB prefers a single signalized intersection serving properties on the east and west sides of Shelburne Road over other alternatives presented. In addition, as a supplement to the aforementioned signalized intersection, any Final plans for the project shall be revised to include a 'slip lane exit' for emergency vehicle access in the area north of the so-called Harrington House. If required by the Vermont Agency of Transportation as a condition of any permit issued under Title 19 VSA, Section 1111, the exit may be gated. Further, alternatives to pavement may be utilized on the surface of the slip lane if deemed appropriate by the Shelburne Fire Chief.

5. APPLICATION FOR SHELBURNE INN

A site plan application amending the existing approval for the 'Shelburne Inn' property shall be simultaneously submitted with any Final Plan application. The application shall include any proposed changes and legal documents providing residents and visitors with ROW to use any sidewalk to the site and attempt to improve pedestrian and vehicular circulation.

6. APPLICATION FOR TRINITY CHURCH

A site plan application amending the existing approval for the Trinity Church property shall be simultaneously submitted with any Final Plan application.

7. PARKING REMOVED FROM PUD BUFFER

Plans submitted with the Final Plan application shall eliminate or relocate all parking located within the periphery buffer of the PUD. The applicant shall have the option of proposing adjustments to parcel boundaries or other changes to address this requirement.

8. HOME OCCUPATIONS

There shall be no restrictions of home occupations of structures in the PUD by any Homeowner association or deed restriction. Any use changes will, however, need to comply with Shelburne's Zoning Regulations. Structures shall not be considered non-complying due to setback requirements for commercial structures.

9. BICYCLE LANES

The proposed bike lane shall be continued South to the Harbor/Falls Road intersection as proposed by the segment 5 conceptual alignment analysis (proposed interim improvements.)

10. ABANDONMENT OF WATER LINES

Additional information regarding abandonment of existing water infrastructure must be submitted to the Department of Public Works for review. Public Works staff must approve the applicant's plans for abandonment of existing water infrastructure before a Final Plan application may be submitted to the Planning and Zoning office.

11. WATER LINE AND SEWER LINE PROFILES

Water line and sewer line profiles must be submitted to the Department of Public Works for review. Public Works staff must approve the applicant's water line profile before a Final Plan application may be submitted to the Planning and Zoning office.

12. WATER LINE ON SHELBURNE INN PROPERTY

Additional information regarding use, ownership, and maintenance of the private water line on the Shelburne Inn property must be submitted to the Town for review. Town staff must approve in concept a plan for use, ownership, and maintenance of the private water line before a Final Plan application may be submitted to the Planning and Zoning office.

13. FIRE FLOW MODELING

Additional fire flow modeling must be submitted to the Department of Public Works and fire chief for review. Public Works staff must indicate concurrence with the updated modeling and any recommendations for system improvements before a Final Plan application may be submitted to the Planning and Zoning office. In the event improvements are required to address project-induced deficiencies, the applicant shall be responsible for defraying the costs of those improvements.

14. WASTEWATER MODELING

Additional wastewater system modeling must be submitted to the Department of Public Works for review. Public Works staff must indicate concurrence with the updated modeling and any recommendations for system improvements before a Final Plan application may be submitted to the Planning and Zoning office. In the event improvements are required to address project-induced deficiencies, the applicant shall be responsible for defraying the costs of those improvements.

15. STREET WIDTH WAIVER

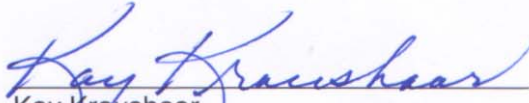
A detailed request for waiver of street width requirements must be submitted to the Department of Public Works and Town Manager for review. Town staff must approve of any street width waiver request relating to public streets before a Final Plan application may be submitted to the Planning and Zoning office.

Appeal Rights:


Under state statute, parties qualifying as interested persons have the right to appeal this decision or parts thereof consistent with Section 4471 of Title 24, Vermont Statutes Annotated.

Dated at Shelburne, Vermont this 2 day of ^{April} ~~March~~, 2010, for the meeting of March 24, 2010.

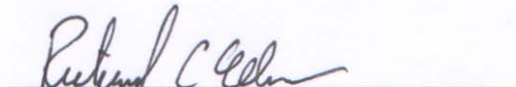
Peter Gibbs, Chair




Kay Kraushaar



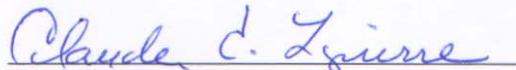
Mark Sammut, Vice Chair



Richard Ekins



Anna Rosenblum Palmer



Claude Lapierre



Jacques "JD" Landry

Copies: Applicant
Colleen Haag, Town Clerk
File