

**TOWN OF BERLIN
DEVELOPMENT REVIEW BOARD
108 SHED ROAD
BERLIN, VT 05602**

Findings of Facts and Conclusion

A. Background

1. Application Number: **07-028**
2. Property Owner(s): **Dodge Farm Community, LLC**
3. Applicant (If Different):
4. Brief Description of Request: The applicant submitted an application for Concept Review of a subdivision to subdivide its 300 plus/minus acres located on Scott Hill and both sides of Airport Road.
5. Date Application Filed: **May 14, 2007 (Concept)**
5. Publication and Posting Information: **Posted: May 15, 2007 (Concept).**

B. Hearings, Witness Testimony, Evidence

1. Hearings, Site Visit and Public Meeting Information: **A hearing was held on June 5, 2007 (Concept Review).**
2. List of Persons Present at the Public Hearing(s): **June 5 2007:** Members present and voting: Robert J. Wernecke, Chairman; John Hurley, Vice-Chair; Muriel Morse, and Henry A. LaGue.
Staff present: Peter Noyes, Interim Zoning Administrator, and Carla Preston, Recording Secretary.

Others present: Peter Schober, Jack Barnes, Romeo Cyr, Valerie Cyr, Catherine Burns, LeGrand C. Burns, MD, Cynthia Knauf, Linda Winter, Cally Schober, Conor Schober, Charlie Coughlin, Michael Barnes, Don Marsh, Chris Boyea, Adam Guilmette, and Mark Cavanaugh.
3. List of Witnesses Who Gave Testimony: **June 5, 2007:** Peter Schober, Jack Barnes, Valerie Cyr, LeGrand C. Burns, MD, Cynthia Knauf, and Linda Winter. Abutters, Dr. Burns, Catherine Burns, Romeo Cyr and Valerie Cyr requested and were granted party status.
4. List of Documents Presented as Evidence by Any Person:
 - a. Application submitted by the applicant on May 14, 2007 (Concept).
 - b. Warnings of Public Hearings as follows: Concept, posted May 15, 2007.
 - c. Appeal Notice to Zoning Administrator: Not applicable.
 - d. List of Plans: Survey plans showing proposed subdivision, architectural drawings showing cluster units, existing roads, proposed access, etc.

The following documents were submitted and admitted as Exhibits:

- Exhibit #1:** Subdivision Application, Town of Berlin, dated May 14, 2007;
Exhibit #2: Survey Plans for Dodge Farm Community LLC, dated December 2006, prepared by Gregory F. DuBois, L.S.
Exhibit #3: Ortho Site Plan OA-1, dated January 10, 2007, prepared by Marsh Engineering Services;
Exhibit #4: Overall Site Plan OA-1B, dated June 7, 2006, prepared by Marsh Engineering Services;

B. Hearings, Witness Testimony, Evidence - continued

Exhibit #5: [Landscape Architectural] Drawing of Cluster B/30 Units, Dodge Community Farm, dated May 9, 2007;

Exhibit #6: [Landscape Architectural] Drawing of Cluster C/34 Units, Dodge Community Farm, dated May 9, 2007;

Exhibit #7: Topographic map showing lands, roads, etc.;

Exhibit #8: Applicant's Concept Plan Narrative, dated May 11, 2007; and

- e. Written Comments from Other Municipal Boards:
- f. Written Comments from State or Federal Agencies: None.
- g. Written Comments of any Other Witness:

Exhibit #9: Zoning Administrator's Report for DRB meeting June 5, 2007.

5. Testimony:

Mr. LaGue said he is an officer and shareholder in a corporation that abuts the applicant's property and would recuse himself if the applicant wished. No one expressed any objections to Mr. LaGue serving on the Board regarding this matter. _

Peter Schober said he one of the owners/partners of the Dodge Farm Community, LLC (Dodge). Other owners include his wife, Cally, and Jack and Pam Barnes. He said they want to subdivide the 300 plus/minus acres located on Scott Hill and both sides of Airport Road. The 300 acres of farmland is divided by the Airport Road into 240 acres on the South side and 60 acres on the North side. He said their intent is to maintain most of the property, more than 90 percent, as well preserved farmland in Berlin. He said as a means to support the cost, maintenance, and long-term management of the land, they are proposing two clustered residential housing developments, one on each side of the Airport Road. He said a co-housing model is to be used, which is similar to a residential planned unit (PUD) development. They believe it would be an asset to the community by providing much needed housing and by retaining 90 percent of the property in open farmland. Mr. Schober said they have hired a landscape architect and Marsh Engineering.

For the benefit of the audience, the Board explained that during Concept review of a proposed subdivision, proposals are discussed in general. It is not typical to have specific plans during this phase. The Board asked attendees to indicate on the sign-in sheet if they requested interested party status and to be sure they provided a complete mailing address. Anyone present may ask questions regardless of party status.

Cynthia Knauff said she is a landscape architect from Montpelier. She presented colored Ortho maps to show the proposed location of the property and housing clusters. The dark green areas are wooded, the light green areas are cleared or open land, and the purple areas show the area to be developed. The purple or areas to be developed would be kept to 10 to 15 acres to minimize impact on the environment and agricultural portions of the land. She said there would be no impact on forested areas, streams or wetlands. She said there would be minimal visual impact from public roads as well. She indicated that they had to meet many criteria to consider a co-housing project.

B. Hearings, Witness Testimony, Evidence - continued

Ms. Knauff explained that they would create strong connections to the land and would leave the agricultural area in tact. There would be trails, etc. for recreational use. She said they are proposing two separate housing clusters.

Don Marsh with Marsh Engineering Services pointed out the boundaries of the property. The boundaries are shown on the map. He said they determined the boundary of the property located within the Highland Conservation District by the previous Zoning Administrator and the information available.

Cynthia Knauff described the housing clusters. She said the access road to cluster B would be about 1500 feet. The access road to Cluster C would be about 1200 feet long. The homes would be arranged in compact pods on the more gentle slopes in the upper corner of the field. The central building would focus around the green. She said it is essential for the common building to look toward the view and to the sun. She noted that common characters of co housing include shared garage and/or parking. She said there would be trails that lead to the other neighborhoods. Placing the clusters in these locations protects the homes from the winter winds, allows reasonable solar exposure and views and significantly reduces the impact on the land.

Abutters and other interested persons: Dr. Lee Burns said he is an abutter. He commented that he has a pond on this property and that it could be an “attractive nuisance.” He said he does not want children going on to their property and getting into their pond. It appears that the closest building would be 50 feet away from his property line.

Linda Winter, abutter, asked if she would be able to see the housing cluster and how close it would be to her? She was concerned that it would appear in her view. The applicants noted that part of it would be in her view.

Dr. Burns asked if the curb cuts existed. He thought the access point mentioned would be very close to his property. The applicants indicated that no curb cuts have been approved; it is concept only.

Don Marsh referred to the narrative of the project. He said they need Board approval before proceeding much further. Two districts do not indicate that this type of development (Co-housing or PUD) is permitted or conditional. In order to preserve the greatest amount of land, clustering makes the most sense. They need to know if the Board considers this proposal similar to that of other permitted or conditional uses in the Highland Conservation or Light Industrial districts.

According to the allowable density a total of 169 units could be approved on the entire parcel; they are looking at a total of only 64 on two different clusters. Mr. Marsh said the houses would have coverage of less than one percent. They want the Board to consider allowing multiple family dwellings, single or double story houses. These units, planned residential concept and the potential for multiple family housing (5 or 6 perhaps condensed), allow more affordable housing and reduce the impact on the land. Mr. Marsh said the plans protect buffers for the stream and they would comply with all energy standards.

Peter Noyes, Interim ZA, said the proposed project is to develop two parcels of land at the south end of the Airport to construct two clusters of housing. The area covers three districts. Lot 1 consists of 182 acres in the Highland Conservation and 61 acres in the Rural Residential District. Lot 2 consists of 47 acres in the Light Industrial District, and 15 acres in the Rural Residential

District.

B. Hearings, Witness Testimony, Evidence - continued

Mr. Noyes reported that Planned Residential Development is not listed as a Permitted or Conditional use in either the Highland Conservation or in the Light Industrial Districts. It does appear that the DRB has the authority to consider it.

Mr. Marsh said they propose to apply under the criteria for a Planned Unit Development, but need the Board's guidance and approval. It is unclear because the ordinance does not address it. He said he believes it would be considered a major subdivision. Ownership of the land would be held in common by the homeowners. He explained that they are asking the Board for permission to apply under the PRD criteria?

Mr. LaGue and other members asked for a clearer definition of co-housing.

Jack Barnes presented information on the subject of co-housing that he retrieved from a Web site. He said co-housing has a national link; it is a recognized model of housing. He said people involved in developing it are writing books on the subject of family and senior co-housing. He read the definition, which states in part: intentional neighborhoods, share common beliefs and interests, want one close community with a density of 24-35 houses, share common building, many have a group meal once a week. He added that there is an emphasis on agriculture use. He said Burlington is working on an urban co-housing project. There are four currently constructed in Vermont and two or three others in the planning stage. He said there are 205 in the United States. All are individually owned structures, similar to condominium units. The condominium structure is that the house is owned individually, the lands are owned in common.

The Board must determine which setbacks apply, etc.

Mr. Marsh said the cluster development concept is similar to the condominium structure, but co-housing is much more integrated and has a social fabric to it. He said it is more of a neighborhood.

Dr. Burns asked for clarification regarding acreage and if they were proposing other housing clusters in the future.

Mr. Marsh explained the acreages involved and said they would not do any more housing clusters. They wish to reduce the impact on the overall property.

Mr. Barnes said all acreage other than the two housing clusters would remain as agriculture lands. He said they must know what the Board will allow in these districts. He said they must spend considerable monies for consultants. He said it could end up as not being a co-housing project, but as condominium units. They believe this type of project is marketable and need to begin. The people themselves (owners) make the rules for the co-housing (similar to condominium association).

The Board noted that it might need further clarification before making its decision.

Valerie Sear, abutter, asked the applicants about the timeframe they had in mind?

Mr. Schober said that they would like to begin digging within at least a year from now. He said they would not begin both projects at the same time. He said they would bring water and sewer from the area. He further clarified that water would be drilled wells. He said the plan is to have public (municipal) sewer because it has less impact on the land. He said they do not know about a

water tower.

B. Hearings, Witness Testimony, Evidence - continued

Mr. Marsh said the Town Plan encourages expansions of municipal sewer and noted that it is important to this project. He said preliminary discussions with the Berlin Sewer Commission indicated they could provide sewer to the project. They want feedback from the Board on these issues. He noted that the strict interpretation of the ordinance might prohibit it but asked that the Board consider it. He said it would consume a lot of agricultural land if done separate. He noted that they would probably have their own water tank as well.

Linda Winter asked why they plan to locate clusters on both sides. She said the fields have been used for agricultural purposes for years. She said there are preserved areas for deer habitat by the state.

Mr. Schober said they want the housing units accessible but without being obvious. He said they intend to be careful in locating the clusters so they are tucked away. He said one driveway would serve up to 30 homes versus 30 driveways to 30 homes.

Mr. Marsh mentioned the State's process for preserving the land and the ACT 250 process. He said clustering homes preserves land. He also mentioned the definition of prime agricultural lands and noted that some areas do not meet the definition as defined by federal and state.

Mr. Marsh said they provided constraints mapping, Sheet OA-1B. He said the gray areas are identified as wetlands, the striped area shows potential for deer habitat, and streams are shown on the plans. He said agricultural soils are also labeled. He said wetlands are based on data from the ground; the other data are based on aerial mapping. The project would protect the streams and wetlands on the property with permanent vegetated buffers and would not impact the deer habitat in the southern portion of the land.

Mr. Marsh said they plan to perform a traffic study. He asked the Board for guidance as to where it should be focused? Some traffic studies are done to determine whether a signal is needed. The signals do currently exist. Information gathered would be presented to the Board.

It was noted that the intersection at Granger Road, Route 62, and Airport Road has a history of congestion and safety problems. Mr. Barnes said they are currently working with an attorney and would present all the legal documents and information (i.e., covenants) with the application.

Mr. Marsh noted that it would be likely that some wetlands permits would be needed since roads, sewer lines, etc. might affect them slightly. He said this would require approval from the Army Corps of Engineers.

Mr. Marsh said they would probably have a single access private road but have not made a final determination at this point. He said they would have side roads within the clusters to meet town standards. He said those roads would be created from a fire safety point of view. He said roads would be narrow to the extent fire codes are met. He acknowledged that sight distance would be considered as well when creating roads.

Mr. Marsh said they have not yet considered proposing side walks but there would be paths between buildings. He said they are talking about sidewalks within the development. He said they would need to deal with pedestrian issues.

B. Hearings, Witness Testimony, Evidence - continued

The Board mentioned the criteria for Concept Plan Review of a proposed subdivision. The Board noted that this proposal fits the classification for a Major subdivision. It must also classify roads as major or minor. The Board must also determine how this proposal fits into the ordinance. Multi-unit and co-housing projects are not provided for in two districts. The Board referred the applicants to page 19 of the subdivision regulations, which addresses major subdivisions.

Mr. Marsh noted that the proposed uses were not prohibited, thus they are asking the Board to approve them as a similar use to single-family houses. He also believes this use could be approved as a PRD with single and multifamily houses. He said the Board has the authority or ability to allow the PRD within the Light Industrial and Highland Conservation districts. He is aware that the Board may put restrictions on it. He said coverage would only be 1/5 of what would be allowable in the districts. He said he found no argument in the regulations against considering multifamily housing.

Mr. Marsh said it is common ownership and noted that some residential clustered projects are marketed as a club. Mr. Schober said they are trying to be more straightforward and respond to criteria and show where they comply. Mr. Barnes acknowledged that it has a club atmosphere. The applicants said the intent of the road ownership would be private, owned and maintained by the association.

The Board indicated that it must deliberate and consult with town counsel prior to giving concept approval.

The applicants want their proposed housing project to be considered as a PRD or multifamily. They explained that they are attempting to maintain and preserve a large portion of the land.

6. Minutes of Meetings/hearings held on June 5, 2007 were prepared and filed with the Town Clerk and Zoning Administrator (copy for file).

C. Applicable Law and Criteria

1. Applicable ordinances in effect at time of Application are the Town of Berlin Zoning Regulations, latest revision June 21, 2005 and the Town of Berlin Subdivision Regulations, adopted March 7, 1989.
2. Town/City Plan: Town of Berlin Municipal Plan adopted June 21, 2005.
3. Criteria that must be met under all applicable Ordinances or Plan. Town of Berlin Zoning Regulations: Article II, Establishment of Zoning Districts, Table 2.01 Highland Conservation (AR) District and Table 2.03 Rural Residential (R-40) District; Table 2.08 Light Industrial (LN) District; Section 2.03 (A), Application of District Standards; Section 3.09 (B), Lot & Yard Requirements; Article III, General Regulations, Section 3.02 Access, Driveways, & Frontage Requirements; and Article IV, Specific Use Provisions; Section 4.10 Planned Unit Development (PUD); and Subdivision Regulations, Article III, Concept Plan Review, Article 5, Major Subdivision Application and Procedure; Article VI: Application Submission Requirements; and Article IX: Development Requirements and Design Standards.

D. Findings of Fact

1. The property is located at 45 Scott Hill Road in the Light Industrial (LN), Rural Residential (R-40), and Highland Conservation (AR) Districts, Tax Map R2-67, R3-27.
2. The applicant proposes to subdivide its 300 plus/minus acres of farmland located on Scott Hill and both sides of Airport Road, which consists of 240 acres on the South side and 60 acres on the North side.
3. The area covers three districts. Lot 1 consists of 182 acres in the Highland Conservation and 61 acres in the Rural Residential District. Lot 2 consists of 47 acres in the Light Industrial District, and 15 acres in the Rural Residential District.
4. The Subdivision would be designated as a Major Subdivision based upon the definition in the regulations.
5. The applicant is proposing two clustered residential housing developments, one on each side of the Airport Road, with the intent of maintaining most of the property, more than 90 percent, as well preserved farmland in Berlin.
6. The applicant proposes a co-housing model with common ownership.
7. The areas to be developed would be kept to 10 to 15 acres to minimize impact on the environment and agricultural portions of the land.
8. The intent of the design of the development would be to minimize the impact on forested areas, streams or wetlands. The project would be designed to protect the streams and wetlands on the property with permanent vegetated buffers and would not impact the deer habitat in the southern portion of the land.
9. Each driveway would serve approximately 30 homes.
10. The applicant proposes public (municipal) sewer for this development because it has less impact on the land.
11. At Concept Review the applicant proposed a single access private road but has not made a final determination. All roads within the clusters would meet town standards.
12. According to the allowable density a total of 169 units could be approved on the entire parcel; the applicant proposes only 64 on two different clusters.
13. The boundary of the property located within the Highland Conservation District was determined by the previous Zoning Administrator based on elevation, and the information available.
14. The multi-family dwelling units are not listed as permitted or conditional uses in the Highland Conservation, Rural Residential, or Light Industrial districts.

E. Conclusion of Law

1. Reference applicable ordinance: Town of Berlin Zoning regulations, latest revision June 21, 2005; Town of Berlin Municipal Plan adopted June 21, 2005; and the Town of Berlin Subdivision Regulations, adopted March 7, 1989.
2. Reference applicable sections: Town of Berlin Zoning Regulations: Article II, Establishment of Zoning Districts, Table 2.01 Highland Conservation (AR) District and Table 2.03 Rural Residential (R-40) District; Table 2.08 Light Industrial (LN) District; Section 2.03 (A), Application of District Standards; Section 3.09 (B), Lot & Yard Requirements; Article III, General Regulations, Section 3.02 Access, Driveways, & Frontage Requirements; and Article IV, Specific Use Provisions; Section 4.10 Planned Unit Development (PUD); and Subdivision Regulations, Article III, Concept Plan Review, Article 5, Major Subdivision Application and Procedure; Article VI: Application Submission Requirements; and Article IX: Development Requirements and Design Standards.
3. Address any interpretations made: The applicant is requesting its proposed housing project be considered as a Planned Residential Development (PRD) under the zoning regulations.

Planned Residential Development is listed as a conditional use in the Rural Residential District but not specifically listed as a permitted or conditional use in the Light Industrial or Highway Conservation Districts. However, under Section 4.10 Planned Unit Development, (A) Applicability, “The Development Review Board is hereby empowered to permit modifications from certain zoning regulations to permit planned residential developments under the criteria and procedure established in the Act [§4417].”

Therefore, the Board finds that it has the authority to consider Planned Residential Developments in all districts.

F. Decision

1. Apply Findings of Fact and Conclusions of Law: Based upon the evidence presented, the Board concluded that the applicants have met the requirements under the provisions pertaining to this application.
2. State Decision: Based on evidence presented and testimony heard, the Development Review Board hereby **APPROVES the Concept Plan** regarding Application number 07-028.

The proposed subdivision is classified as a Major Subdivision and the access roads are classified as Minor Roads.

3. Signatures:

Appeal rights:

You have the right to appeal this decision to the Vermont Environmental Court, pursuant to 24 V.S.A. § 4471 and V.R.C.P. 76, in writing, within 30 days of the date this decision is issued. The fee is \$150.00. If you fail to appeal this decision, your right to challenge this decision at some future time may be lost because you waited too long. You will be bound by the decision, pursuant to 24 V.S.A. § 4472 (d) (exclusivity of remedy; finality).

Town of Berlin
Development Review Board
108 Shed Road
Berlin, Vermont

**Findings of Facts and Conclusion
In the matter of 07-028
Dodge Farm Community, LLC**

SIGNATURE PAGE:

Date:

For the Development Review Board

Robert J. Wernecke, Chairman