

**DEVELOPMENT REVIEW BOARD
108 Shed Road
Berlin, Vermont**

**APPROVED MINUTES
Meeting of TUESDAY, April 15, 2014**

1. The meeting was called to order at 7:02 P.M.

Members present: Robert J. Wernecke, Chairman; Karla Nuissl, Vice-Chairperson; Henry A. LaGue, Jr.; Harvey Golubock; and Paul Irons, Alternate. Absent: Kyle Faye Mooney. The Board welcomed Harvey as its newest member of the DRB.

Staff present: Jeffrey Schulz, Town/Zoning Administrator; Thomas J. Badowski, Assistant Administrator; and Carla Preston, Recording Secretary.

Others present: Richard S. DeWolfe, PE; Alicia A. Morgan, PE, Jeffrey Mugford, Sylvia Parker and Gary Parker.

The Board explained its Policy and definition of party status and interested persons to attendees. Copies of the Rules and Policies and Procedure were available as handouts.

2. New business

A. 14-008 – Weston’s Mobile Home Park, LLC submitted a Subdivision Application for Concept Plan Review to divide a 67.5 acres parcel into three lots. The property is located on Route 12, Berlin, Vermont, in the Commercial and Highland Conservation Districts, Tax Map R07-009.B00. Richard S. DeWolfe, PE and Alicia A. Morgan, PE with DeWolfe Engineering Associates, Incorporated were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Subdivision Application, 14-008, dated 03/19/2014; **Exhibit #2:** Subdivision Survey, C1.02 prepared by DeWolfe Engineering Associates, Inc., dated 03/05/2014; **Exhibit #3:** Natural Resources Atlases, Vermont Agency of Natural Resources showing: Town boundary and Soils-Hydrologic Groups; **Exhibit #4:** Letter dated 03/19/2014 from Richard S. DeWolfe, P.E. to the Town of Berlin, describing the proposed subdivision; **Exhibit #5:** Vermont Soil Fact Sheet from the USDA Natural Resources Conservation Service for Washington County, Vermont; **Exhibit #6:** List of Abutters; **Exhibit #7:** Copies of letters to the Berlin Police, Fire and Highway Departments requesting an impact statement; **Exhibit #8:** Memorandum dated 03/25/2014 from the Berlin Police Department, stating that the proposed application would have no adverse impact on that department; and **Exhibit #9:** Memorandum dated 04/03/2014 from the Berlin Town Highway, Road Superintendent, stating that the proposed application would have no adverse impact on that department.

Harvey Golubock disclosed that another professional engineer, Chris Temple, from DeWolfe Engineering Associates is currently working for him but believed it did not present a conflict. No one objected to Mr. Golubock serving on the hearing panel.

Mr. LaGue advised that he also operates a mobile home park and is a member of the Berlin Sewer Commission. No one objected to Mr. LaGue serving on the hearing panel.

Ms. Morgan described the proposed subdivision of the 67.5-acre parcel and introduced the exhibits presented for this project. Lot #1 consisting of 29 acres includes the land on the western side of Route 12 for the well pump house and the land including 2nd Street, 3rd Street, 3rd Street Extension,

Weston Street, and Weston Street Extension. Lot #2 consisting of 22 acres includes the land of 1st Street and Lot #3 consisting of 16.5 acres includes the land to the east of the proposed Lots #1 and #2. Lots #1 and #2 would be located in both the Commercial (CG) District and Highland Conservation (AR) District. Lot #3 would only be in the Highland Conservation District. Access to Lots #1 and #2 would be maintained and access to Lot #3 would consist of a 50-foot easement from the 1st Street Extension. Ms. Morgan advised that the Berlin Police and Highway Departments had reviewed the proposed subdivision application and stated no objections or concerns. She indicated that a soil map and fact sheet as well as comments regarding the Town's plan and goals were also provided.

In response to the Board's inquiry as to why or the value of subdividing the property, Mr. DeWolfe advised that the owners wish to have two mobile home parks that operate as separate entities. The back lot created within the Highland Conservation District would be forest and in land use.

Zoning Administrator Schulz advised that the proposed three lot subdivision meets the basic requirements of the ordinance. Two lots would be served by a public road and the third lot (#3) has an easement. All three lots would meet the size, frontage and other requirements for the districts. In response to the Board's comments concerning the number of residents served by a private road, he advised these are not deeded lots. The regulations refer to residences served by a private road whereas these are leased lots. The section of the regulations covering mobile home parks allows for it which in this case would be provided by a 50-foot deeded Right-of-Way.

Mr. DeWolfe advised that they did not do a full survey of the property but noted that one had been done and was relied upon for this proposed subdivision. He confirmed that they did not rely on tax maps. The easement will extend all the way through 1st Street Extension which will be shown on the deed as a Right-of-Way to Route 12.

The Board questioned which standard applied with respect to roads, minor or major, since the easement would be serving two lots and a lot of individual units. There is a difference in rights-of-way and construction standards.

Mr. DeWolfe acknowledged that the rules do not specifically allow mobile home parks in either district, Commercial or Highland Conservation. He believes the subdivision can stand alone without the mobile home park since the regulations do allow for concept plan review which is why it is being presented for discussion. He advised that the issue regarding use would be addressed in the next application involving site plan.

The Board noted that the subdivision regulations are outdated and that the definitions can be confusing, particularly regarding roads for both major and minor subdivisions. The Board concluded that it would treat this application as a minor subdivision and minor road. The difference with respect to roads pertains to the quality and design of the road. The Board agreed that sufficient information had been provided to act upon the request for concept plan review of a minor subdivision. The subdivision regulations do not address the underlying use involving lots located in both the Commercial and Highland Conservation Districts and one solely in the Highland Conservation District.

Based on documents submitted and testimony provided, Ms. Nuissl made a motion, seconded by Mr. LaGue, to Approve Concept Plan Review of Subdivision Application 14-008. The Board classified both the subdivision and road as Minor. The question was called and the motion passed. Mr. Golubock abstained since this was his first meeting.

B. 14-009 – Weston's Mobile Home Park, LLC submitted an application to expand the mobile home park requiring Site Plan and Conditional Use Review. The property is located on Route 12, Berlin, Vermont, in the Commercial and Highland Conservation Districts, Tax Map R07-009.B00. Richard S. DeWolfe, PE and Alicia A. Morgan, PE with DeWolfe Engineering Associates, Incorporated were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application for Zoning Permit, 14-009, dated March 19, 2014; **Exhibit #2:** Overall Site Plan, C1.02, prepared by DeWolfe Engineering Associates, Inc., dated 03/05/2014; **Exhibit #3:** Preliminary Site Plan, C1.03 prepared by DeWolfe Engineering Associates, Inc., dated 03/05/2014; **Exhibit #4:** Flood Insurance Rate Map for Washington County, Vermont effective March 19, 2013; **Exhibit #5:** Letter dated 03/24/2014 from Richard S. DeWolfe, P.E. to the Town of Berlin, describing the proposed expansion of the Weston Mobile Home Park and addressing applicable Site Plan, Conditional Use and Flood Hazard review criteria; **Exhibit #6:** Letter dated 03/11/2014 from Alicia Morgan, P.E. to the Berlin Volunteer Fire Department describing the project and requesting an impact statement; **Exhibit #7:** Letter dated 03/11/2014 from Alicia Morgan, P.E. to the Berlin Police Department describing the project and requesting an impact statement; **Exhibit #8:** Letter dated 03/11/2014 from Alicia Morgan, P.E. to the Berlin Highway Department describing the project and requesting an impact statement; **Exhibit #9:** Stormwater Treatment Framework prepared by DeWolfe Engineering Associates, Inc. dated 03/27/2014; **Exhibit #10:** Memorandum dated 03/17/2014 from the Berlin Police Department, stating that the proposed application would have no adverse impact on that department; **Exhibit #11:** Memorandum dated 04/03/2014 from the Berlin Town Highway, Road Superintendent, stating that the proposed application would have no adverse impact on that department; and **Exhibit #12:** Letter dated 04/13/2014 from the Berlin Volunteer Fire Department, Inc. stating concerns regarding water supply for fire suppression and requesting that a lock box be installed.

Ms. Morgan provided an overview of the proposed project which involves the expansion of the existing mobile home park located on 1st Street in Berlin. The expanded mobile home park would contain the nine existing homes with the addition of up to 43 proposed individual lease lots for a total of 52 units/lots. The project would include an extension of 1st Street, new sewer and water services and associated grading. They propose one long road, a cul-de-sac and a large turning area for the shorter road. The 22-acre lot is split by two zoning districts bounded to the east and south by utility easements and to the west by Route 12. She noted that all setbacks would be met for the proposed expansion but advised that two existing homes do not meet requirements based on the existing property line.

Mr. DeWolfe and Ms. Morgan advised that they are requesting concept approval of the expansion of the mobile home park before investing additional costs for surveys and a site development plan. The project is contingent upon connection to the City of Montpelier water and sewer systems. Since the park would be served by municipal water and sewer an area for that would not be needed. They are requesting a variance because they want to avoid the utility easement which limits where a home can be placed. The lease lots could accommodate either a singlewide or doublewide mobile home, and either single parking or stacked parking for the homes. They acknowledged that the plan does not include details for several criteria including stormwater and drainage.

The Board noted that the application was submitted under the criteria covering mobile home parks, planned unit development, site plan and flood hazard review. The Board indicated that it had not seen a proposed PUD used in conjunction with a mobile home park. The Board advised that an impact statement from the Vermont Agency of Transportation (VTrans) would be needed as well. The Berlin Volunteer Fire Department mentioned some concerns about the proposed expansion which would need to be addressed.

Mr. DeWolfe advised that the 22-acre lot for the proposed mobile home park expansion exceeds the minimum 5-acre requirement for mobile home parks. Based on the size of the lot with the maximum build out of 52 individual lots there would be over 18,000 square feet of area per mobile home which exceeds the 12,000 square foot requirement of the regulations. However due to the topography of the lot it would restrict the development of the overall parcel. He advised that the owner is looking to see if there is flexibility regarding the size of the individual lots which would allow the mobile homes to be clustered closer together while still maintaining the overall park density requirements. If not acceptable, they would need to proceed differently. He advised that they used 8,000 square feet per lease lot as an example for the clustered homes.

Mr. Schulz advised that the lot where the proposed mobile homes would be located is 22 acres which would meet the minimum acreage (five) requirement for a mobile home park. The regulations require 12,000 square feet for each mobile home.

Mr. DeWolfe explained that the frontage or shape of the lot may differ as presented. They are requesting the ability to modify the individual lots in size and shape to best fit the parcel. Their intention is to protect the steeper slopes located on the site which is the goal of the Highland Conservation District. He noted that some lots might be 60 feet by 120 feet or 7200 square feet. They have not laid out the final lots noting that latitude would be needed when doing so. He confirmed that the lots are not perfectly sized and that what is shown is a representation of how it could appear. He noted that contours are not shown which will have a significant impact on the design due to the topography. These are leased lots which cannot be transferred. There is no ownership of property transferred when someone gives up a leased lot.

Mr. Schulz mentioned the information missing from the application which included Route 12 access, water and sewer, stormwater, and so forth. The Applicant is also subject to state approval. He advised that neither the Commercial nor Highland Conservation districts permits mobile home parks. The Board must determine whether the proposed use is similar enough to other uses, permitted or conditional, to be considered under conditional use review criteria.

Ms. Morgan advised that they argue that the proposed single-family homes are permitted in both districts. She advised it is not inconceivable that homes and residences currently exist.

The Board noted that the only district in which a mobile home park is specifically identified as either a permitted or conditional use is within the Modified Residential District. Although the overall size of the lot meets the 5-acre requirement it does not meet the intent for each single-family home size. The Board acknowledged that the Applicants were trying to fit the definition into what they propose which may or may not be permitted by the regulations.

The Board realized that it would not resolve the entire application at this meeting and asked the Applicants to address the criteria or concerns on which they needed guidance or a "weather report."

Mr. DeWolfe advised that they are not asking for any specific ruling, just need to know if it might be possible and worth pursuing. He noted that the Berlin Town Plan encourages mobile home parks, dense housing. They are exploring another town's municipal services to serve the existing and proposed expanded mobile home park. He noted that other area businesses (Green Mountain Transportation Authority) have expressed interest in connecting to the City of Montpelier's sewer and water services. He noted it would not be considered smart engineering to bypass a densely populated property to get to that business. The project is contingent upon water and sewer lines

being installed along Route 12 as part of a separate project. He advised the proposal has been presented to the City of Montpelier. He noted that amending zoning regulations may be necessary to allow it. He indicated that stormwater would support the extensive development.

Mr. DeWolfe advised that about three acres of forest or woodland would be removed as part of this project. It is the strip of trees between the former pit and the power lines. They could consider other areas to further to preserve the trees and slopes.

The Applicants asked the Board to identify its concerns for this type of development. They need to know if the proposed project fits with the current zoning or would the regulations have to be amended to allow it. They also need to know whether, with the assistance from the City of Montpelier for water and sewer, the Town of Berlin (DRB) would support this type of development.

The Board opined that mobile home parks may be allowed in the Highland Conservation District under conditional use review. The boundary between the two zones/districts is based on elevation at the 600 foot contour line. In addition to other criteria, the Board would consider the adequacy of the infrastructure and character of the area, which in this case is an expansion of an existing mobile home park, not a proposed new park. The Board would also want to ensure that rural and pristine uses are preserved.

Mr. Schulz confirmed that if a use is not listed as permitted or conditional, an owner may request such use under conditional use review. The Board would look at other uses when a specific use in a district is not listed.

The Board would consider the character of the area in the Highland Conservation compared to permitted uses. The Board indicated that proposing 43 clustered homes on 5 acres is not similar to one single-family home on a 5-acre parcel. The Board advised the use would have to be in same general character. The Board agreed to debate those issues and provide feedback to the Applicant. If not approved, the Applicant would need to seek a different path.

Mr. Schulz questioned the likelihood of connecting to the City of Montpelier's water and sewer lines, particularly if there was no state or federal funding to accompany it. It was his understanding that the state's interest was beginning to fade and that without state or federal funding it would not be possible. He wondered in the event the project was only possible subject to approval of the municipal connection with Montpelier, how far to proceed with the application process with that unknown.

In response to Mr. Schulz' inquiry as to the likelihood of obtaining approval by the City of Montpelier and whether state or federal funding was available to accomplish it, Mr. DeWolfe advised that it is realistic. He believes that the extension of services would be paid for by the users, owners and other businesses along the route, with the possibility of state or federal assistance. He noted that it makes more sense to combine versus running separate main lines. He advised that the state's motivation for bringing water to the area for brine mixing might be fading. He advised that when looking at other area uses there is potential for existing commercial businesses, fire suppression, additional housing, and so on. He opined that when they are added up this section of town is the place to do it.

Chairman Wernecke suggested that the application be recessed while the DRB contemplates the issues presented to determine whether it would be possible as proposed. The issues include but are

not limited to: the Planned Unit Development and Mobile Home Park issue, variances for frontage requirements, applicant's request for varied individual lot sizes some of which that would not meet the space requirement for a mobile home, and mobile home park use within these districts. The Board did advise the Applicants that approval of the lot design would not be carte blanche, specifics would be required.

Mr. DeWolfe advised that they do hope to obtain approval within the current regulations. If the Board determines that it is not approvable, they would then propose amending the regulations with the Berlin Planning Commission. They believe that the proposal meets the intent of the Berlin Town Plan and that the Board will find that this use is in conformance with it even if the regulations are not written to support it. If the Board decides it is not comfortable considering or approving the application under the current regulations, they will decide whether to go through the amendment process. He noted that the owner needs approval for a certain number of units to make it worthwhile. The majority of the proposed new units would be in the Highland Conservation District and the existing mobile home park is in the Commercial District.

The Board noted that neither district allows for mobile home parks but one of the districts has an existing park in it. The Board asked about a stream or wetlands area.

Mr. DeWolfe advised that there is a Class II wetlands area. He indicated that there is no perennial stream. Those issues including buffer areas would be addressed along with stormwater. It is not their intention to encroach. He noted that the proposal is also subject to ACT 250 review and approval.

Based on the discussion above Ms. Nussl made a motion, seconded by Mr. Golubock, to recess Application 14-009 to allow the Board to determine whether the application may move forward based on the circumstances described (zones, requirements, uses, etc.). The Board will deliberate and issue a "weather report" to the Applicants as to the feasibility of moving forward. The question was called and the motion passed unanimously.

C. 14-012 – E & JW Property LLC, Gary and Sylvia Parker, and Ernest and Tammy Wheeler submitted an application for boundary adjustments to increase/decrease three abutting parcels. E & JW Property LLC, located at 2759 Crosstown Road, Berlin, Vermont, Tax Map R06-062.H00; Gary Parker and Sylvia Parker, located at 2835 Crosstown Road, Berlin, Vermont, Tax Map R06-062.F00; and Ernest Wheeler and Tammy Wheeler, located at 102 Wheeler Road, Berlin, Vermont, Tax Map R05-068.000. The properties involved are located in the Highland Conservation Zoning District. Jeffrey Mugford, Gary Parker and Sylvia Parker were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application for Boundary Adjustment, dated 03/24/2014; **Exhibit #2:** Survey prepared by Robert Townsend with American Survey Company, dated 02/04/2014; and **Exhibit #3:** Photographic Map showing existing property lines.

Jeff Mugford advised he is a member of E & JW Property LLC and that the Wheeler's are his in-laws. He advised he would be speaking for the Wheeler's and his property and noted that the Parkers were present.

Mr. Mugford advised that the photographic map shows existing property lines. They are proposing to amend the property lines as shown on the survey map in color. He explained there is a natural ridge that runs along the side of the Parker's property and that they want to move the Parker's

property line to the ridge and move the back lot line to the north which would decrease the Parker's land (22.39 acres) by 1.9 acres and increase the Wheeler's parcel. The parcel owned by the Parker's, Lot 62F would then consist of 20.49 acres. They wish to reduce the parcel owned by E & JW Property LLC (22.4 acres) by 12.4 acres resulting in a 10-acre parcel and increase the Wheeler's parcel by 12.4 acres. Mr. Mugford advised that when complete, the green lines shown on the survey map would reflect the adjusted property for Wheeler (increase of 14.3 acres to 75.3 acres). The property line shown in red reflects the Parker's parcel (decrease of 1.9 acres for a total of 20.49 acres). The property line shown in blue reflects the parcel owned by E & JW Property LLC, decreased by 12.4 acres for a total of 10 acres.

Mr. Mugford advised that they paid attention to covenants and size requirements when proposing the boundary adjustments. All three lots meet all requirements for the district.

Mr. Schulz advised that the proposed boundary adjustments involve three abutting properties. He confirmed that all basic requirements are met. The subdivision regulations would be met because no lot would become nonconforming and no new lots are being created by this proposed boundary adjustment.

The Applicants were advised that they must submit a Mylar suitable for recording that shows the new property lines as proposed. The Mylar must include a signature block for the DRB Chairperson's signature. Updated deeds must also be filed.

Mr. Mugford advised that the survey maps are ready to be submitted. He confirmed that all parties are in agreement and will submit the information requested.

Ms. Nuisl made a motion, seconded by Mr. LaGue, to close the hearing with respect to Application 14-012. Findings of Facts & Conclusion will be issued. The question was called and the motion passed unanimously.

4. Review and approval of the Minutes.

The Chairman called for approval of the Minutes of the March 18th meeting. On page 2, the 1st sentence of the 1st paragraph was amended to read: Mr. Schulz advised that Dodge Farm granted an easement to the Town to construct the wells and storage tank. The 4th sentence in the 3rd paragraph was amended to read: There would be some open space left around the storage tank. The spelling of Ms. Nuisl's name was corrected on page 4.

Chairman Wernecke made a motion, seconded by Ms. Nuisl, to approve the Minutes of the March 18, 2014 meeting as corrected. The question was called and the motion passed. Mr. Golubock abstained.

5. Public Comment

Persons present participated in the meeting as noted above.

6. Other Business

7. Status of Findings.

The Board voted to go into deliberative session at 8:34 P.M. and out at 9:21 P.M. to discuss the status of Findings. The Board's decision with regard to (closed) adjourned applications will be reported in its Findings.

8. The next meeting of the Development Review Board is scheduled for **Tuesday, May 6, 2014.**

9. There being no further business, the meeting was adjourned at 9:22 P.M.

Respectfully submitted,

Carla Preston

Carla Preston
Recording Secretary
Town of Berlin