

Cornwall Development Review Board (DRB)
MINUTES • November 6, 2019 • 7:00–9:45pm
Hearing • Cornwall Town Hall

MEMBERS PRESENT: Barbara Greenwood, Joe Severy, Shari Johnson, David Anderson,
Magna Dodge

ALTERNATES PRESENT: Cheryl Cesario (recused), Gary Barnett

ATTENDEES: Churchill Franklin, Matt Bonner, *Applicants*; Benj Deppman, Joan Donahue,
Applicants' Attorneys; Craig Heindel, Waite Heindel Environmental Mgt.; Steve
Revell, Jamie Simpson, *Green Mountain Engineering*; **members of the public**
(11)

1. CALL TO ORDER: 7:03pm. Barbara opened the meeting.

2. QUORUM: Established.

3. AGENDA: Barbara requested Board approval to move consideration of October Minutes from the fourth Agenda item to the fifth item so that all regular business items would follow the hearing. Magna MOVED/David SECONDED to approve the Agenda as amended.
Motion passed

4. HEARING—Beaver Brook Subdivision Application, West Cornwall

- Barbara, DRB Chair, opened the Hearing with Board introductions and a brief explanation that this is a hearing for the continuation of the Preliminary Subdivision Application for the “West Cornwall Village Subdivision” proposed at the Route 74 /North Bingham Street intersection. The previous hearing on this issue was held September 4, and was followed by a site visit on September 9.
- Barbara explained how the hearing will proceed: after hearing from the applicant about the revised drawings and materials submitted since the September hearing, Craig Heindel of Waite Heindel Environmental Management, the firm hired by the DRB to assess the well issues presented by the proposed development project, will speak to their findings and conclusions. Then the DRB and Applicants will ask any questions they may have for Mr. Heindel. Attendees will have an opportunity to speak, each person having three minutes to do so, and—if expecting to claim Interested Person status—Barbara noted that each should be sure to sign in on the form being circulated in the room. Written comments will be accepted. Mr. Heindel will have an opportunity for any further comments and then will be excused. The Board will then ask questions of the Applicants. The Applicants will have an opportunity to respond after DRB questions. The DRB will ask any final questions they may have, and the Applicants will have an opportunity to make any final comments. The Chair will then either close the hearing or adjourn to a specified date and time for resumption of the proceedings. Barbara then asked David to administer the oath to those who planned to speak.
- **HOUSEKEEPING—*Ex parte Communications, Conflicts of Interest, Visits to the Site***—Barbara asked the Board to disclose any *ex parte* communications, conflicts, or site visits, noting that Cheryl remained recused.
- **Interested Person:** Barbara read the relevant portions of the Statute (24 VSA 4465(b)) regarding requirements for Interested Person status, explaining that only those who qualified as Interested Persons and participate in the proceedings can appeal the DRB

decision. Those present who felt they met the requirements were reminded once again about the sign-in sheet. The DRB makes no decision regarding the status of attendees.

- ***Additional Exhibits—***

- *Exhibit XX*—Draft survey prepared by Ronald LaRose, dated October 22, 2018, revised October 11, 2019; filed October 11, 2019.
- *Exhibit YY*—Drawing No. 1—Cover Sheet/Index of drawings; filed October 11, 2019.
- *Exhibit ZZ*—Drawing No. 2—*Existing Conditions Site Plan*; filed October 11, 2019.
- *Exhibit AAA*—Drawing No. 3—*Proposed Lot Layout Site Plan*; filed October 11, 2019.
- *Exhibit BBB*—Drawing No. 4—*Proposed Water and Wastewater Infrastructure Site Plan*; filed October 11, 2019.
- *Exhibit CCC*—Drawing No. 5—*Proposed Stormwater Infrastructure Site Plan*; filed October 11, 2019.
- *Exhibit DDD*—Draft *Bylaws of West Cornwall Village Home Owners Association, Inc.*; filed October 11, 2019.
- *Exhibit EEE*—Draft *Declaration of Covenants, Restrictions and Easements of West Cornwall Village*; filed October 11, 2019.
- *Exhibit FFF*—October 11, 2019, email from Jamie Simpson to Zapata Courage re further investigation of wetlands.
- *Exhibit GGG*—Email from Matt Bonner advising of needed corrections to the plans filed October 11, 2019; dated October 28, 2019.
- *Exhibit HHH*—Email from Benj Deppman attaching proposed language for restrictions on Lot 10, and red-lined copy of revised draft *Restrictions and Easements of West Cornwall Village*; dated November 1, 2019.
- *Exhibit III*—Table showing proposed lot dimensions; filed October 31, 2019.
- *Exhibit JJJ*—Follow up wetland classification report prepared by Zapata Courage, dated October 21, 2019; filed October 31, 2019.
- *Exhibit KKK*—Review and Opinion prepared by Waite Heindel Environmental Management; dated October 24, 2019.
- *Exhibit LLL*—Email comments from Misse Smith concerning cattail habitat at the property and mosquitoes; dated September 25, 2019.
- *Exhibit MMM*—Email from Barbara Greenwood to Applicants concerning advice from the Town Attorney on interior lots and frontage; dated September 26, 2019.
- *Exhibit NNN*—Email from Pelkeys, Quinttus, Napier, Karnes-Keefe, Keefe enumerating their concerns.
- *Exhibit OOO*—Resumé of Craig Heindel; accepted and marked, dated November 6, 2019.
- *Exhibit PPP*—Map of property showing the area wells, prepared by Craig Heindel; accepted and marked November 6, 2019.

- **APPLICANTS' PRESENTATION OF REVISED DOCUMENTS AND OTHER MATERIALS FILED**

- Matt Bonner presented the updated materials noting:
 - The Applicants only just realized that the setbacks in the drawings submitted were not as they should have been. He showed a version of the lot layout submitted (*Exhibit AAA*) marked up with pink and yellow highlighter, that showed the necessary revisions. The drawings and the Table (*Exhibit III*) will need to be amended.
 - Map with updated lots showing 35' setbacks
 - Lot 3 will be expanded to the east and includes an outbuilding formerly part of Lot 4
 - Table of Lot Dimensions will be revised to note 35' set backs

- Lot 3 with only 1 dwelling, not 2, and a 50' wide ROW to Lot 4; these will need to be shown on revised drawings.
- The church has a light 2-wheel track providing access to the church which will be shown on next map revision
- Zapata confirmed her findings, there are no vernal pools, no bat or deer habitat (*Exhibit JJJ*); **Mary Dodge**—needs more clarification on the vernal pool issue; **Jamie**—Zapata's area of examination exceeded the map's wetland delineation by several hundred feet, she confirmed no vernal pool
- **Barbara**—Noted that she would have some comments later on the need for clearer, more easily read maps
- **Benj Deppman**—The Lot 10 covenant restrictions and the Declaration of Covenants, Restrictions and Easements were revised as requested, and removed a couple of the architectural comments that were objected to (*Exhibit HHH*).
- **CRAIG HEINDEL PRESENTATION**
 - *Exhibit OOO*—Craig's resume accepted into evidence and marked.
 - Craig introduced himself and his company, noting he has been in the groundwater hydrogeology business in Vermont since 1978.
 - The data used came from publicly available data, he did no field research, the results are in the document labeled *Exhibit KKK*.
 - Well data consisted of 14 well logs (from drillers) maintained in the State database for 14 of the existing neighboring wells. The data included information on the wells themselves and their distance from the proposed Beaver Brook wells.
 - Additional data came from the ANR Natural Resources Atlas which provided parcel bounds (“tax map” not survey quality), roads, ground elevations, E911 addresses.
 - Brief background on the data—In the mid-'70s drillers began to submit their “well logs,” with sketch maps of well locations, to the State. Not included are any details on dug/shallow wells, springs or other older wells that have never been added to the database. About 15 years ago, the maps began to be replaced with GPS coordinate locations, though old maps remain in the database. The State also began requiring small aluminum tags to be affixed to wells. The tags have the well's unique ID number, the driller's ID number, and the date of the drill.
 - The three questions Waite Heindel had been asked to evaluate regarding the proposed water supplies for the Beaver Brook project:
 - *Is there sufficient water available?*—Yes, their opinion is that there is quite likely sufficient water. The map (*Exhibit PPP*) indicates the well yields (in the yellow boxes). A house needs less than one gallon/minute. The flows of the area wells range from 1 to 80 gallons/minute. The two properties reporting dry wells (Broughton, Hill) do not appear in the State database. Though it is not possible to be 100% sure, Heindel is “quite comfortable” regarding the sufficiency of available water for the existing and the proposed wells.
 - *The likelihood of interference with neighboring wells*—If wells for single or duplex dwellings are situated 150' - 200' or more apart there is very little chance of interference. These wells are all 200' apart with the exception of one which is 180' or 185' from its nearest neighboring well.

- *The impact of the [likely] use of water softeners*—The back-wash water will not cause problems if flow-calibrated (demand-initiated) based softeners—not timer-based softeners—are used.

• DRB QUESTIONS

- **Shari:** *Should the two reported dry wells be a concern?* **Craig:** It is very unusual, though not unheard of, for wells to have heavily altered flows. The solution is to drill deeper or use hydro-fracking. Even if the wells were set at 0 flow, it would not cause him to change his estimate.
- **Gary:** *Are new wells deeper than older ones?* **Craig:** Up to the mid-'70s, wells were drilled only to the depth where water appeared. When hydraulics came into use, wells were easily drilled deeper and drillers did so both to ensure the flow and to defray equipment costs.
- **Barbara:** *Since this report is based on database information rather than field work, should anything more than this desk review be done?* **Craig:** This is more than most Boards do. More could be done, but this really covers it. No need to do a field review.
- **Matt:** *Heindel and Revell have come to the same conclusions? Any suggestions as to what Beaver Brook could do to help ensure the wells flows and lack of interference?* **Craig:** Yes, [both agree]. Have the drillers go deeper. The additional storage would also help. *Note:* The amount of water used has little relation to a well's flow. Storage does have a bearing on available water.

• PUBLIC COMMENT

- **Mary Dodge** (Cornwall Conservation Committee): *Requested that the wetland area be placed on the map in its entirety. The CCC agrees with Zapata's recommendation that buffer zones be clearly marked. Also, please clarify whether or not there is a vernal pool.* **Jamie:** The wetland area is shown in its entirety on one of the drawings. He will contact Zapata and ask for a clarification.
- **M. Broughton:** *Regarding his wells, he has two, a dug well and a drilled well. The dug well is what went dry. The drilled well has a 15 gallon/minute flow. The dug well was done by his father-in-law whose name was Boardman.* **Craig:** A 15 gallon/minute flow is a high yield. He will look in the database under Boardman to see if he can find any additional information.
- **S. Pelkey:** *Is concerned about what constitutes a substantive change and requested a list of the revisions to the plan to make it easier to follow.*
- **K. Branch:** *Expressed concern about the need for affordable housing for low and medium income families and the lack of any apparent affordable housing options in this development.*
- **M. Heineken:** *Also noted the housing issues. What would be considered “affordable” lies well below the price points of the project. The Foote Farm made a cash transfer that allowed the building of four Habitat homes on DeLong Road.* **Barbara:** Noted that the Foote Farm was a PUD so there was authority to require affordable housing. A regular subdivision such as this one has no similar option.
- **E. Napier:** *Concerned about lack of complete application going on too long.*
- **B. Menkhart:** *Echoed Napier's concern, and lack of clarity.*

- **BOARD QUESTIONS FOR APPLICANTS**

- **Barbara:** *Before any new materials are submitted, please make sure all compliances are in order, such as the [now changed] 35' setbacks on all sides for interior lots (Cornwall Zoning Regulations [CZR] §502). Also, revise any structure or building envelope location changes necessitated by setback corrections.*
- *Mechanisms by which 50' ROW will be deeded as permanent easement to respective Lot(s) and maintained?* **Benj:** The Declaration of Covenants and Easements controls, and deeds will reflect the Declaration.
- *Currently, the ROW off North Bingham goes through the building on Lot 3?* **Benj:** The ROW could be shifted—it also goes through a building envelope.
- *The Table of Lot Dimensions (Exhibit III) shows Lot 2 having a 195.6' frontage. This is not apparent on the map. It appears that access is from North Bingham. There needs to be a correlation with what the zoning definitions say (e.g. lot frontage, front yard setback, lot depth).* **Benj:** No access from North Bingham is planned for that Lot.
- *Items needing clarification: It is not clear what the Lot 3 structure dimensions are. Are there setback requirements? The frontage of Lot 8 is unclear in the Table. Where is the 152' frontage noted in the Table for Lot C2?*
- *Drawing 5 has numerous oblong boxes, what are they and are they all the same?* **Jamie:** Yes, all are run-off areas and will be part of the stormwater system on recorded documents and deeds. The entire development will be covered under one State Stormwater Permit, which will be amended after any changes.
- *Lot 10 Clarify where it is noted that Lot 10 can be altered at any time by the land owner...* **Benj:** Beaver Brook anticipates input from the Board on that subject. Also, there is an error in the Lot 10 document (Exhibit HHH): “motorized” should be “non-motorized.”
- *The use of “West Cornwall Village” as a name for the development is troubling and it should be changed. The entire district in which the development is located is named in the CZR as the West Cornwall Village District and the name should be restricted for reference to that district.*
- *Zapata has recommended delineating the wetland borders with boulders or a fence. Thoughts?* **Matt:** Beaver Brook agrees, though would prefer to have a general rather than specific border delineation mechanism.
- **Magna:** *Several comments on HOA documents, but they are small and she will submit in a note to the Applicants.*
- **Barbara:** *the Board would like to see a detailed list of projected infrastructure costs for possible use in estimating a bond for the work.*
- *How many members does Beaver Brook LLC have and who are they? Who is the manager?* **Matt:** there are two members, Churchill and himself. He [Matt] is the manager. Both members can speak for the LLC and there are no limits on their authority with regard to this application.
- *No other Board questions.*
- *Barbara repeated the DRB's request that all new/revised materials be filed at least 25 days prior to the next hearing.*

- **FINAL BOARD QUESTIONS/APPLICANT COMMENTS—**

- No additional Board comments or questions.

- *Matt: Regarding the constant changes to the project plans and materials and the difficulty people have in keeping up with such things, he disputes those claims. Only three times have there been changes submitted and much has remained the same throughout the process to-date. Changes happen during an ongoing process such as this and are to be expected. Barbara: Agreed, this is how the process goes.*

- Hearing adjourned—At 9:15 Barbara adjourned the hearing to Thursday, January 9, 2020, at 7:00 p.m. at the Cornwall Town Hall. All requested materials to be submitted by December 13.

5. MINUTES:

- **October 2, 2019**—Shari MOVED/David SECONDED to approve the October 2 Minutes as presented. *Motion passed.*

6. CORRESPONDENCE

- Joe reported that he has had another message from Nigel Cheetam, but hasn't has time to review it yet.

7. UPCOMING MEETINGS—

- **December 4, 2019:** Cheryl not available
- **January 9, 2020** (re-scheduled regular meeting): All expect to be available.

8. DELIBERATIVE SESSION—Gill Application

NEXT MEETING: December 4 at 7:00 pm, Town Hall

ADJOURNMENT—Meeting adjourned at 9:45p.m.

Respectfully Submitted,
Robin Conway, DRB Secretary