

Cornwall Development Review Board (DRB)
MINUTES • June 3, 2020 • 7:00–9:30pm
Hearing • Virtual via ZOOM

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

ALTERNATES PRESENT: Cheryl Cesario [*recused*]

ATTENDEES: Matt Bonner, Churchill Franklin--*Applicants*; Benj Deppman, Joan Donahue,
Applicants' Attorneys; **members of the public:** A Quinttus, M Dodge (CCC),
E Karnes, M Martin, S Pelkey, S Sears, E Napier, B Hill, C King, MJ Broughton,
M Broughton

1. CALL TO ORDER: 7:00pm. Barbara opened the meeting.

2. QUORUM: Established.

3. AGENDA: Magna MOVED/Shari SECONDED to approve the Agenda. ***Motion passed***

4. PUBLIC SIGN-INS: In lieu of the usual paper sign-in sheet, Attendees were instructed to give their full names and mailing addresses when unmuted by David for signing in. The DRB Secretary will note names and addresses on a Sign-In form. Attendees also to indicate if claiming status as an Interested Person.

5. MINUTES:

- Joe MOVED, Magna SECONDED, to accept the **Minutes of Hearing, March 4, 2020**. ***Motion passed***. Barbara abstained as recused from that Hearing.
- Shari MOVED, Joe SECONDED, to accept the **Minutes of April 1 and May 6, 2020**. ***Motion passed***

6. HEARING—Beaver Brook LLC Final Subdivision Application

- Barbara opened the hearing with an introduction of Board Members and Applicant parties in Attendance, welcoming all who were attending via ZOOM and explaining how this virtual meeting would be run. David will be handling the ZOOM Host duties and will administer the oath after all have been signed in. Attendees will be muted until the time for Public Comment, at which point each attendee will be unmuted for any question or comment, then re-muted. The Board and Applicant parties will remain unmuted throughout. Additionally, the hearing will be recorded. All were requested to speak clearly and to first identify themselves for the Minutes.
- David administered the oath to those members of the public who expected to speak or present testimony during the hearing.
- **HOUSEKEEPING**—Barbara began the Hearing with a brief explanation about this being a public hearing for the Final Subdivision Application submitted by Beaver Brook Properties LLC for a proposed West Cornwall Subdivision to be located at the junction of Route 74 and North Bingham Street. The DRB approved the Preliminary Subdivision Application in a decision issued, with Conditions, on February 19, 2020.
 - ***Ex parte Communications, Conflicts of Interest, Visits to the Site***—Barbara asked the Board to disclose any *ex parte* communications, conflicts, or site visits. She disclosed that she and Matt Bonner had a phone conversation regarding the requirement of a

performance bond. Matt asked if the Board would accept a letter from the Bank of Middlebury indicating that the principals of Beaver Brook Properties LLC had sufficient funds on deposit to cover infrastructure installation costs. Barbara summarized the conversation and her response in an email to Matt dated May 14, 2020 and to be listed as an Exhibit.

- *Cheryl* was recused as being a potential purchaser of Lot 11 of the proposed Subdivision.
- No other conflicts or ex parte communications were disclosed.
- **Interested Persons**—Barbara reviewed the pertinent parts of 24 VSA 4465(b) wherein Interested Person is defined.
- **Exhibits**—Barbara read, for the Record, the list of Exhibits which were accepted into evidence for this Hearing:
 - *Exhibit 1: Warning* published in the *Addison Independent*, April 23, 2020; posted in Town in 3 places and on the website
 - *Exhibit 2: Envelope containing proof of service* on abutters and interested persons (*Note for the Record: a couple of non-abutter letters were returned as undeliverable.*)
 - *Exhibit 3: Updated list of abutters* (used for mailing the warning)
 - *Exhibit 4: Page with published warning from April 23, 2020 issue* of the *Addison Independent*

Materials filed April 9, 2020

- *Exhibit 5: Benj Deppman letter* to DRB, April 9, 2020
- *Exhibit 6: Application for Subdivision of Land*, April 9, 2020
- *Exhibit 7: List of adjacent property owners* (replaced with corrected list, *Exhibit 3*)
- *Exhibit 8: Subdivision Plat* entitled “*plat showing a subdivision survey of lands of Beaver Brook Properties, LLC North Bingham Street & VT Route 74, Cornwall, Addison County, Vermont,*” prepared by Ronald L. LaRose, RLS, dated October 22, 2018 and last revised March 2, 2020. (Note: 3 full size copies received, and ten 11”x17” copies—1 full-size copy marked *Exhibit 8a* for this Hearing, a second will be for filing in the Town file, the third will be returned to the applicants, per regulations. An 11”x17” copy marked as *Exhibit 8b.*)
- *Exhibit 9: Green Mountain Engineering Drawing No. 1, Cover Sheet*, revised February 27, 2020
- *Exhibit 10: Green Mountain Engineering Drawing No. 2, Existing Conditions Site Plan*, revised February 27, 2020
- *Exhibit 11: Green Mountain Engineering Drawing No. 3, Proposed Lot Layout Site Plan*, revised February 27, 2020
- *Exhibit 12: Green Mountain Engineering Drawing No. 4, Proposed Lot 9 Layout Site Plan*, revised February 27, 2020
- *Exhibit 13: Green Mountain Engineering Drawing No. 5, Proposed Property Easements Site Plan*, revised February 27, 2020
- *Exhibit 14: Green Mountain Engineering Drawing No. 6, Proposed Infrastructure Overall Site Plan*, revised February 27, 2020

- *Exhibit 15: Green Mountain Engineering Drawing No. 7, Proposed Water & Wastewater Infrastructure Site Plan, revised February 27, 2020*
- *Exhibit 16: Green Mountain Engineering Drawing No. 8, Proposed Stormwater Infrastructure Site Plan, revised February 27, 2020*
- *Exhibit 17: Declaration of Covenants, Restrictions and Easements of Beaver Brook Subdivision, clean copy, stated to be updated to address issues in DRB preliminary decision [replaced by updated draft; see *Exhibit 30*]*
- *Exhibit 18: Declaration of Covenants, Restrictions and Easements of Beaver Brook Subdivision, redlined copy, stated to be updated to address issues in DRB preliminary decision*
- *Exhibit 19: Lot 10 Beaver Brook Properties LLC covenant language, stated to be updated to address issues in DRB preliminary decision [replaced by updated version; see *Exhibit 28*]*
- *Exhibit 20: By-Laws of Beaver Brook Homeowners' Association, Inc., stated to be updated to comply with the DRB preliminary decision [replaced by updated version; see *Exhibit 29*]*
- *Exhibit 21: Correspondence from Cornwall Fire Chief Dave Berno dated March 2, 2020 [replaced by updated version; see *Exhibit 32*]*
- *Exhibit 22: Right of Way/Road Access Permit from the Cornwall Road Foreman dated February 28, 2020 [replaced by updated version; see *Exhibit 31*]*
- *Exhibit 23: Forest Conservation Plan for the Beaver Brook Properties LLC property*
- *Exhibit 24: Current Use Map for the Beaver Brook Properties LLC property*
- *Exhibit 25: Exhibit B – Grant of Development Rights, Conservation Restrictions, Option to Purchase, and Right of Enforcement of the United States said to be anticipated for execution relative to Lot 11 [confirmed by Benj to be part of conveyance paperwork for Lot 11 purchase; June 3, 2020]*
- *Exhibit 26: National Bank of Middlebury Letter to the DRB; April 9, 2020*

Materials filed May 15, 2020

- *Exhibit 27: Benj Deppman Letter to the DRB; May 15, 2020*
- *Exhibit 28: Lot 10 Beaver Brook Properties LLC covenant language, stated to be revised at the Town Attorney's request [replaces *Exhibit 19*]*
- *Exhibit 29: By-Laws of Beaver Brook Homeowners' Association, Inc., stated to be revised at the Town Attorney's request [replaces *Exhibit 20*]*
- *Exhibit 30: Declaration of Covenants, Restrictions and Easements of Beaver Brook Subdivision, stated to be revised at the Town Attorney's request [replaces *Exhibit 18*]*
- *Exhibit 31: Right of Way/Road Access Permit from the Cornwall Highway Foreman with one-page attachment (*Standard B-71, Standards for Residential and Commercial Drives*), May 13, 2020 [replaces *Exhibit 22*]*
- *Exhibit 32: Undated note from Chief Dave Berno of the Cornwall Volunteer Fire Department [replaces *Exhibit 21*]*
- *Exhibit 33: Naylor & Breen Builders, Inc. letter with one-page attachment, entitled "Beaver Brook Conceptual Estimate, Civil and Utilities Only, schedule of values;" May 5, 2020 [confirmed by Benj to be the estimate of costs to complete the construction of the infrastructure for Lots 1-8; June 3, 2020]*

Other Materials

- *Exhibit 34: Memorandum from James F. Carroll, Town Attorney, to Benj Deppman regarding Document Review; March 26, 2020*
- *Exhibit 35: Letter from James F. Carroll, Town Attorney, to Benj Deppman regarding Town Attorney review of documents submitted with application; April 30, 2020*
- *Exhibit 36: Copy of The Secretary of the Interior's Standards for Rehabilitation, printed from www.nps.gov on April 27, 2020*
- *Exhibit 37: Email from Barbara Greenwood to Matt Bonner summarizing *ex parte* phone discussion; May 14, 2020 [Note for the record: Matt replied to the email, confirming that the summary was accurate]*
- *Exhibit 38: Written comments from Elizabeth Napier; dated May 15, 2020*
- *Exhibit 39: Written comments from Thomas Keefe and Elizabeth Karnes Keefe; submitted May 12, 2020*
- *Exhibit 40: Written comments from Allison Quinttus; dated May 29, 2020*
[Note for the Record: copies of Exhibits 38 – 40 were supplied to the Applicants]

• **APPLICANTS' PRESENTATION**

- **Benj**: reviewed the current application and addressed concerns and issues raised during the preliminary subdivision hearings.
 - Lots**— The property is to be subdivided into 13 lots. Of these, 3 will not be part of the proposed Association, 1 lot has a duplex with tenants, 7 lots proposed as building sites, 2 lots to be held by the Association as common ground for use by all residents.
 - *Lot 1*: Contains an existing duplex, has 4 bedrooms allocated to it; has its own septic system, but has been included in the overall bedroom count allocation for the proposed septic system so that if its system fails, it can be redirected to the proposed system.
 - *Lots 2 – 8*: proposed house sites
 - *Lot 9* is not part of the proposed Beaver Brook Homeowners' Association and will not share the Association's septic system or be under its covenants or By-laws.
 - *Lot 10*: The restrictive covenants have been revised/updated and submitted; Lot 10 is not part of the Association.
 - *Lots C1 and C2*: common lots; C2 proposed as site for septic system mounds.
 - *Lot 11*: Is not part of the Association, will be sold separately. Development rights to be sold to the VT Land Trust; property is under binding contract, potential purchaser of the Lot will use it for agricultural purposes only.
 - The overall septic system allocation will be 29 bedrooms, with 4 bedroom allocations assigned to Lot 1, the 25 remaining to be allocated among Lots 2 through 8.
 - The Declaration, By-laws for Lots 1 through 8 and the 2 common lots, as well as the covenant for Lot 10, have been updated/revised and submitted for this hearing.
 - *Historic Structures*:
 - To be maintained per the Secretary of the Interior's *Standards for Rehabilitation*;
 - The Vermont State Architectural Historian suggested these standards and will be involved in the ACT 250 process and will be reviewing, and providing the ACT 250 panel with a report on, those aspects of the project.

- *Infrastructure*: Installation will not begin until after ACT 250 has finished and all necessary permits issued.
- Sale of the first Lot is not expected to occur until after the ACT 250 process is completed, all permits issued (e.g. wastewater, stormwater, relevant local permits) , and infrastructure installed (e.g. septic system, drive stubs, access road, utilities).
- *Beaver Brook Homeowners' Association*:
 - Will be a Mutual Benefit Non-profit, papers filed toward the end of the ACT 250 process and prior to sale of any lot.
 - Lot 10 will be conveyed immediately, Lots C1 and C2 will be conveyed to the Association and recorded in the Town Office along with the Lot 10 Covenants, Association Declaration, Association By-laws, and any other related documents. Since these documents will be recorded prior to sale of first lot, the first purchaser's deed will follow the Lot 10, C1 and C2 deeds. This enables the lot owner to become a member of the Association and obtain the shared rights over the common lots and enforcement rights (over Lot 10, for example).
 - A Right of Enforcement has been added to the Declaration, covenants of which burden each saleable lot and run with the land.
 - *Infrastructure costs* estimated by Naylor & Breen; subject to performance bond
 - Applicants would like to exclude Lots 9, 10, and 11 from any performance bond as they have no infrastructure to be installed. [**Matt**]
 - Performance bonds typically have a commencement date specified and run for a year or more; because the time frame of the ACT 250 process is unclear, and infrastructure installation cannot begin until after the process ends, specifying dates could present a problem at this time. The bond period should not begin months before the work can begin [**Churchill**]
 - **Barbara** noted that the timing in the bond condition of the February 19 preliminary decision ("*11. No land development or construction of the Project shall occur or building permit shall be issued within this project, nor any individual Lot sold or transferred, until such time as the Applicant posts a bond to be approved by the Cornwall Selectboard and the Town Attorney in an amount to be determined*") was tied to land development, etc. and that would be defining.
 - A lot purchaser will be responsible only for the expenses of the lot purchased; owner's fractional share of the Association expenses allocated to each lot according to number of bedrooms allocated to the lot.
 - Expenses of unsold lots are the responsibility of the developer (Applicants) not existing lot owners.

• **QUESTIONS FROM THE BOARD:**

- **Magna**: *Questions in three areas:*

1. *Timing related to ACT 250?* **Benj**: The application would be filed after the appeal period for the Board's decision expires. Once begun, the process could take several months, probably a minimum of 6 months.
2. *Process for sale of Lot 11?* **Matt**: Sale of the Land Trust conservation easement and sale of the land itself happen at the same time. Neither can happen until after the subdivision is final which will occur when the appeal period ends., There must be a permit issued for the parcel before it can be sold which could happen prior to ACT 250 approval as ACT 250 is expected to have little, if any, impact on Lot 11.

Its subdivision is relevant only to local permit processes. The VLT will determine whether or not it will be subject to the ACT 250 process before proceeding; if subject, the conveyance process will take longer. Sale could be prevented if buyer were unable to make the purchase. **Benj:** noted that Land Trust projects rarely fail to go through with the sale.

- **Barbara:** *asked about Applicants' concerns about how Board wrote the Condition regarding timing of the sale?* **Benj:** in his letter he wrote that the Board had incorrectly stated the easement conveyance; it is actually the parcel purchaser who conveys the Conservation Easement to the VLT, not the VLT conveying the easement to the Applicants. **Barbara:** *also, please explain the uses of Lot 11.* **Benj:** allowed and prohibited uses are in the covenant covering Lot 11; forestry, grazing, haying, logging and educational use of wooded areas are allowed; agricultural buildings are allowed, though none are planned. **Cheryl:** that was put in to cover future opportunities/needs. Logging is covered by, and Current Use requires adherence to, a Forest Management Plan. **Benj:** the submitted document, *Exhibit 25*, details much about the allowed and prohibited uses.
- 3. **Magna:** *Are bedrooms allotted when a lot is sold, or at another time?* **Benj:** Yes, when sold. A lot could have 0 bedrooms allocated (if a purchaser bought 2 lots but built only on one). The denominator could be reduced from 29 to the number actually allocated to establish the shared costs, but not before all lots are sold. If there remain unallocated bedrooms after the last lot is sold, they could be re-allocated at a later time.
- **Shari:** *Concerns regarding Lot 2: Requirement that the church be used solely for storage seems restrictive. Also, concerned about building a house in addition to the church on the same lot* **Benj:** The restriction was placed because there is no way they can know what any future owner might want to use the building for. If someone wanted to renovate the church as a dwelling there would need to be DRB involvement, and the DRB could also approve an amendment to the Declaration. *Who has responsibility for maintenance of the church if the lot is not sold?* **Benj:** Maintenance is the responsibility of the lot owner. Until the lot is sold, that responsibility lies with the developer.
- **Barbara:** *Please confirm the representations in your letters (Exhibits 5 and 27).* **Benj:** Yes. To the best of his knowledge, the information conveyed in the letters of April 9 and May 15 is accurate.
- **Barbara:** *Would you like to address the issues of concern the Applicants have with several of the Conditions in the Board's February 19 decision?* **Benj:**
 1. The Performance Bond concerns were addressed earlier
 2. Wells: The lot owner, not the developer, drills the well. The owner might have a different feeling about things than does the developer (depth for example). When sold, lots have utilities (including power, and septic with unattached connections), and drive stubs installed, but not wells.
 3. Hours: Town Attorney wanted hours be specified in the Declaration to end at 5:00pm. As construction time in Vermont is limited, workers could make good use of any available hours. Shorter hours would extend the period of time needed to complete construction, increasing developer costs and neighbor unhappiness. Applicant would prefer that, although acknowledging the DRB authority to do so,

there be no conditions regarding hours of construction and in any event that restrictions on hours of construction not be included in the Declaration. However, that is a Board option and decision.

4. Septic: Applicants would like to clarify the septic system wording regarding inconsistencies in the terminology used which may have led to confusion. The Lot 1 bedrooms (4) have been incorporated into the system plan in case of failure of the Lot 1 existing septic system. The developers seek State approval for a 29-bedroom wastewater system permit. Although a 29-bedroom system is planned, only 25 bedrooms are available for allocation among the remaining lots (2 through 8) as Lot 1's 4 bedrooms must be held aside for future use if necessary.

- **Barbara**: *noted that zoning districts and building envelopes are shown on the Green Mountain Engineering drawings, but neither is shown on the plat. She asked that they please add the zoning districts and building envelopes to the Final Plat.* **Benj**: Agreed.
- **Barbara**: *In Article 9 of the Declaration, which addresses building design, 9.0(b) speaks to the use of historic types of elements, 9.0(c) mentions use of "alternative period architectural design," Please explain what "alternative period architectural design" means, and why the wording of 9.0(c) was chosen as it seems to take away from the requirements listed in 9.0(b).* **Benj**: 9.0(c) "alternative period design" would indicate elements of architectural design from any period could be used, up to something from 21st century design. 9.0(c) requires Executive Board approval, but they are open to adding DRB approval as well, since the permit would require DRB approval in any case.
- **Barbara**: 9.1 *allows the landowner to retain the right to amend the architectural requirements if fewer than 4 lots are sold within 18 months after the sale of the first lot. 9.1 also, like 9.0(c), seems to diminish 9.0(b).* **Benj**: 9.1 was put there as a protection for the developer so that the architectural requirements could be amended if there is evidence of a lack of sales due to the stated requirement options. DRB approval is required to make sure the design requirements comply with regulations. Applicants are open to suggestions for better wording for either of the above.

• PUBLIC QUESTIONS

Barbara reminded speakers that they will have three minutes, that David will unmute, then re-mute each person, and each should begin by identifying who they are.

- **Mary Dodge (CCC)**: *No questions, but wanted to express appreciation for the strength of the Lot 11 Forestry Plan and appreciation that Lot 10 preserved wildlife activity/traffic for the most part. Also that Lot 10 uses were curtailed.*
- **Allison Quinttus**: *Wishes to reinforce the importance of the church to the historic part of West Cornwall; objects to expiration of architectural requirements after 18 months.*
- **Elizabeth Keefe**: *Objects to extending work hours beyond 5:00pm.*
- **Bethany Hill**: *has concerns about living in a construction zone.*
- **Elizabeth Napier**: *Reiterated her Lot 2 concerns, would like DRB to prohibit a house being constructed on Lot 2, read a list of items requested by the DRB that Applicants have failed to submit. Why has the DRB declined to follow up?* **Barbara**: questions were asked of the Applicants, and answered, to clarify Board questions. Some items were dropped as not being relevant or needed as the hearings progressed.

- **Mary Jane Broughton:** *is concerned about work hours, wants DRB to hold to what it has said. Curious about costs allocated to Lot 1.* **Benj:** Costs are owner's responsibility, not tenants.
- **Sarah Pelkey:** *Concerned about construction hours and design standards in Article 9.*
- **Mary Martin:** No response
- **Susan Sears:** *No questions*

• **APPLICANT RESPONSES—**

- **Benj:** *in response to concerns about work hours: the majority of workers would be involved in earth moving and other infrastructure work. Later, as each lot is sold, construction would be for well drilling and house construction. Not likely to be a constant, on-going period of construction for years at a time. Regarding expiration of architectural requirements: they don't. The 18-month period refers to a period of time after which the Association can apply to the DRB to amend the requirements. The requirements do not expire, they remain in place, but may be amended with DRB approval.*

• **FINAL QUESTIONS OR COMMENTS—**

- No additional Board, Applicant, or public comments or questions.
- **HEARING CLOSED—**The Board discussed whether or not they had sufficient information and were ready to close the hearing or to adjourn, awaiting additional information. At 8:50, the Board having indicated they had sufficient material to move into the deliberative phase, Barbara closed the hearing. She advised those present that the Board would deliver its decision within 45 days.

Board Business Resumed—

7. CORRESPONDENCE: None

8. UPCOMING MEETINGS—

- **July 1, 2020:** All expect to be available.
- **August 5, 2020:** All expect to be available.

9. OLD BUSINESS:

10. NEW BUSINESS:

- **July Hearing—**Richard Rheume has submitted an application requesting conditional use approval. The DRB approved a similar proposal for Mr. Rheume in 2018. David will be recused. Barbara appointed Joan to take his place. Shari and Joan will be the leads .

11. DELIBERATIVE SESSION:

- Beaver Brook Properties LLC

NEXT MEETING: July 1, 2020, at 7:00 pm, Virtual Meeting via ZOOM.

ADJOURNMENT—Meeting adjourned at 9:30p.m.

Respectfully Submitted,
Robin Conway, DRB Secretary