

**Cornwall Development Review Board (DRB)**  
**MINUTES • December 2, 2020 • 7:00–8:45pm**  
**Hearing • Virtual via ZOOM**

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

**ALTERNATES PRESENT:** Joan Lynch, Cheryl Cesario

**ATTENDEES:** Peter McCormick-*Applicant*; Tony Stout, *Planner with Lakeside Environmental Group (formerly with project's original engineering group Heindel & Noyes)*; **members of the public:** Mary Dodge, Chair, Cornwall Conservation Commission

- 1. CALL TO ORDER:** 7:00pm. Barbara opened the meeting with Board introductions to the Attendees.
- 2. QUORUM:** Established.
- 3. AGENDA:** David MOVED/Magna SECONDED to approve the Agenda. ***Motion passed.***
- 4. PUBLIC SIGN-INS:** Barbara welcomed hearing Attendees, then introduced Board members and Attendees. In lieu of the usual paper sign-in sheet, Attendees were instructed to give their full names and mailing addresses when called upon by David for signing in. The DRB Secretary will note names and addresses on a Sign-In form. After all attendees were signed-in, David administered the oath.
- 5. MINUTES:**
  - Shari MOVED, David SECONDED, to accept the **Minutes of August 5, 2020**, the Burnham Hearing, as amended. ***Motion passed*** (Magna abstained, not at August hearing).
  - Magna MOVED, Shari SECONDED, to accept the **Minutes of September 2, October 7, and November 4, 2020**. These three meetings had been cancelled. ***Motion passed.***
- 6. SKETCH PLAN REVIEW—Foote Farm Vermont, LLC, Peter McCormick Representative; Request for Approval to Amend Original Plat and 2005 PC Decision**
  - Barbara explained that this is a Sketch Plan Review meeting, not a hearing. It is the first step in the hearing process and presents the opportunity for the Applicant, Board, and community to informally discuss the proposed project and for the Board to consider what additional information they might require to be submitted with the hearing application. The Board may suggest changes to be made in the formal application, and may require establishment of an escrow account to cover Board legal and technical expenses. At the conclusion of the meeting the Board will determine the classification of the project as Minor or Major. Barbara then explained how this virtual meeting would be run: after some housekeeping the Board will turn the meeting over to the Applicant to present his case. This will be followed by Board Questions, then Public Comments & questions. The Applicant will have an opportunity to respond to the public following the Public Comments. The Board and Applicant will have an opportunity for last questions and/or comments. The Board will confer with the Applicant regarding any additional materials, application changes, or other issues relating to the upcoming hearing; David will be handling ZOOM

Host duties. The Board, Applicant, and attendees will all remain unmuted throughout, everyone requested to keep rustling of papers and other miscellaneous noise to a minimum to avoid disrupting the meeting. All were requested to speak clearly and to identify themselves for the Minutes when commenting.

Barbara explained that this Review was in regard to proposed modifications to the final subdivision plat approved by the Planning Commission in 2005. The Applicant seeks to deed existing Lot 14 to the HOA's common land and to divide existing Lot 15 into 2 lots (15-A, aka "Lot 15" and 15-B aka new "Lot 14").

- **HOUSEKEEPING**—First the 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.
    - Shari indicated she had visited the site on November 28, but had not communicated with anyone.
    - No other conflicts or *ex parte* communications were disclosed.
  - ***Exhibits***—Barbara read, for the Record, the list of Exhibits which had been received for this Review:
    - ***Exhibit 1*** – Application for subdivision, filed 10/2/20
    - ***Exhibit 2*** – Lakeside Environmental Group's November 17, 2020 2-page description of the proposed subdivision and necessary dimensional waivers, filed 11/19/2020
    - ***Exhibit 3*** – Contact list for Foote Farm homeowners and abutting property owners, filed 11/19/20
    - ***Exhibit 4*** – Package of what are described as unanimous pre-approvals by Foote Farm property owners (13 in total) – filed 11/19/20
    - ***Exhibit 5*** – Package of four 11" x 17" maps, filed 11/19/20 –
      - A. Final subdivision plat entitled "Lands of Peter V. Foote", dated April 6, 2006, unsigned;
      - B. Draft subdivision plat entitled "Lands of Foote Farm Vermont, LLC", dated Sept 16, 2020;
      - C. Draft Foote Farm Associates map entitled "Loop II – Road, Grading, and Stormwater Plan" (Sheet 9)– dated Feb 15, 2005;
      - D. Draft Foote Farm Associates map entitled "Loop II – Utility, Water Supply and Wastewater Site Plan" (Sheet 12) – dated Feb 15, 2005
    - ***Exhibit 6*** – Full size (24" x 36") Final subdivision plat entitled "Lands of Peter V. Foote", dated April 6, 2006, unsigned – filed 11/20/20
    - ***Exhibit 7*** – Full size Draft subdivision plat entitled "Lands of Foote Farm Vermont, LLC.", dated Sept 16, 2020 – filed 11/20/20
    - ***Exhibit 8*** – Email from Mary Dodge dated November 25, 2020, and with the Cornwall Conservation Commission's review of the proposed subdivision attached
    - ***Exhibit 9*** – Full size version of map 5-C "Loop II – Road, Grading, and Stormwater Plan" (Sheet 9)– dated Feb 15, 2005
    - ***Exhibit 10*** – Full size version of map 5-D "Loop II – Utility, Water Supply and Wastewater Site Plan" (Sheet 12)– dated Feb 15, 2005
    - ***Exhibit 11*** – Email from Mary Dodge, CCC, with geological map showing Lot 14 as having a clay over sand natural community – dated December 1, 2020

- **Exhibit 12** – Email from Peter McCormick with a short history and context of the Foote Farm project to date– dated December 2, 2020

- **APPLICANT PRESENTATION**

- **Peter:** Introduced Tony Stout, explaining that he had been with the original engineering firm of Heindel & Noyes when the Foote Farm project was begun, and was now with Lakeside Environmental Group, the company that has prepared the current maps and plans for this proposal. Peter went on to explain the history of the property, what they proposed doing now, and why.
- The McCormicks purchased all the unsold lots when the property was foreclosed and put up for sale. They did not plan to be “developers” and had not intended originally to purchase all the lots, but decided it was the only way to preserve and protect the intent of the development and its existing, and future, community. Several lot owners had purchased more than one lot (9 or 10 of the lots will not be built on), so the number of dwellings, once all lots are sold, would be 12, maximum, rather than the originally planned 22. Only 2 lots remain unsold.
- The septic system, designed for a maximum of 22 dwellings, runs at under 50% capacity.
- Existing Lot 14 (2.6 acres) is considered to be unsuitable for building and, as it consists of heavily-wooded old-growth hemlock pine, and beech forest, would be better protected if deeded to the Foote Farm Home Owners Association to be part of the existing common lands.
- Existing Lot 15 (about 1.8 acres of wide-open meadow) is proposed to be divided into two (2) lots. Lot 15-A, on the Exhibit 7 Draft Plat 9/16/20, will remain Lot 15, but reduced to 1.1 acres, while Lot 15-B on that map, would become the new Lot 14, at .73 acres. This would keep the number of lots the same as approved in the 2005 PC decision and the ACT 250 decision.
- The two resized lots (the last remaining unsold parcels) are currently under contract, pending approval of the proposed modifications to the original decision by the current DRB.
- Tony noted that there are no setback or other dimensional considerations as the PRD design and decision included waivers of all dimensional standards, smaller lots in return for larger common land to remain undevelopable. No lot sizes were originally determined, just the placement of 100' x 100' building envelopes.
- There is a gravel road between the south side of existing Lot 15 and the north side of existing Lot 14, and which leads to the septic system pump house. This road currently provides the proposed access to the north boundary of existing Lot 14 off its south side. If the proposed modifications are approved, the access would remain as the driveway location for new Lot 14, but would be on the opposite (north) side of the gravel road as new Lot 14 would be on the north side of the road.

- **QUESTIONS FROM THE BOARD:**

- **Magna:** Requested clarification regarding the labeling of the “old” (Lot 14, Lot 15) and “new” (A-1, 15-A, 15-B) lots as depicted on maps and in the narrative. *Peter: On the Draft map (Exhibit 7), A-1 is the designation for what is currently called Lot 14. Lot 15, as divided, is called 15-A in the application narrative, but shown on the Exhibit 7 map as, and will retain the name of, Lot 15. The Exhibit 7 Draft map shows the new*

*Lot 14 to the west of Lot 15, it is referred to as 15-B in the application. These are just draft documents and the intent was to avoid having 2 different parcels with the label "Lot 14." The final Plat will show the parcels labeled as Lot 15, Lot 14, and Lot A-1 (the lot to be deeded to the HOA as common land under the Natural Area heading).*

- **Magna:** What were the dimensions of the lots as determined in the 2005 decision?  
*Tony: There were no lot dimensions noted, all were planned, as a PRD, to be smaller than the 4-acre minimum of the LDR. The dimensions were waived, with the smaller sizes allowed in response to the common land to be kept open and undeveloped. All the building envelopes were set at 100' x 100'.*
- **David:** Regarding Lot A-1: referred to on the map as being "common land /permanent open space" – is this defined in the HOA? *Peter: The HOA defines common land as "agricultural area," "natural area," and 2 or 3 others. A-1 would be deeded to the HOA as common land under the "natural area" heading.*
- **Joan:** What maintenance is associated with the open areas? *Peter: The meadows are hayed each year, but no other maintenance is being done. The open areas are intended to be left undisturbed, other than with possible utility easements.*
- **Shari:** Does Current Use apply? *Tony: No. Current use may not work with the MALT easement.*
- **Shari:** Will the wells on 15-A (Lot 15) and 15-B (new Lot 14) be sufficiently far apart?  
*Tony: Sheet 12 shows to proposed locations for the wells. The location of the new Lot 14 well will be only slightly closer to Lot 15's well than the old Lot 14 well location.*
- **Barbara:** In the formal application, how will the well site on the new Lot 14 be indicated? *Tony: The Water/Wastewater Permit will be amended and submitted, along with the final proposed site, to the DEC which will then issue a new permit and finalize the well site.*
- **Joan:** Has a shared well been considered? *Tony: There would be no advantage to a shared well; the draw-down would be the same whether 2 wells or one shared well.*
- **Barbara:** Concerned about the lot size, particularly of new Lot 14 at just .73 acres, despite that it may appear larger due to being surrounded by the common agricultural area. Why split it so unevenly instead of dividing the lot 50:50 (each roughly .95 acres) or add land from A-1 to enlarge them? *Tony: the division was based more on "looks" than acreage, and the North/South widths are nearly equal (177.5' and 186'). A-1 could be split to add land to 14 and 15. Peter: If that were done, however, the gravel road would split both lots.*
- **Barbara:** To clarify: the gravel road is on the south side of Lots 15 and the new 14 and the driveway for 14 comes off the road? *Tony: Correct.*
- **Barbara:** Concerned about the precedential value if the DRB approves the proposal-- How will this proposal be set off and differentiated from similar proposals in the future so as to not set a precedent for other owners of multiple lots subdividing their excess lots into smaller parcels? *Peter: The number of lots (22) was set by the ACT 250 permit and the original PRD decision. This current proposal keeps the number of lots as permitted in those decisions. To subdivide any existing lot(s) into smaller parcels would increase the number of lots beyond what was allowed by the previous decisions and would require going before the District Commission for modification to the ACT 250 permit, and the DRB for another modification of the PRD decision.*

- **Magna**: Is there anything to prevent an owner of multiple lots from splitting into smaller parcels if willing to go through the ACT 250 process? **Tony**: *The septic system is for a maximum of 22 houses and is based on the availability of suitable land. Going to beyond 22 would require additional suitable land which would also require easements for waste transfer to those lands and more State wastewater permit modifications. Beyond 25 would be almost impossible as the Indirect Discharge Regulations come into play.*
- **Barbara**: Will A-1 be included in the MALT easement? **Peter**: *That has not yet been addressed. Tony: Putting A-1 under MALT, if required, could be a very involved and expensive process. Barbara noted that a deed restriction could be used to provide protection for A-1. Tony: Deeding A-1 to the HOA under “common land” subjects it to the HOA provisions for the common lands which protect it from any development, requiring that it be left in a natural undisturbed state.*
- **Magna**: Can a copy of the HOA be provided ? **Tony**: *There should be a copy filed in the land records and each homeowner should receive a copy, so one can be included with the final application.*

• **PUBLIC QUESTIONS/COMMENTS**

- **Mary**: Regarding Current Use: there could be significant tax issues resulting from inclusion of common land in the Current Use Program. **Peter**: *At the time of the last town-wide evaluation (2010?), the Listers apportioned 5.x acres of open space to each lot for property tax purposes in accordance with guidance from the State (correction per P McC email Dec 16 '20). Other options were discussed but the Listers preferred to take that route.*
- **Mary**: The CCC has no objections to the proposal. The clayplain is a relatively rare land type and the old-growth forest, which shows on a pre-1940 map, is worthy of protection. The CCC would very much like to see these areas included in the preservation plans, and the plans followed through.

• **FINAL QUESTIONS OR COMMENTS—**

- **Board**: None
- **Public**: None
- **Peter**: None

• **BOARD DISCUSSION**

- **Classification**: The Board conferred and agreed that this is a minor subdivision project.
- **Requested submissions**: Board discussed what additional items they would like the Applicant to submit with the hearing application and requested:
  - **Per §251 of the Subdivision Regulations** the Applicant shall file a Final Plan for review within 6 months of the Sketch Plan review
  - **§320 of the Subdivision Regulations** indicates items that are required and items which may be requested for Minor subdivisions if the DRB deems necessary:
    - **#1 - 4# are required—Subdivision permit application, fees and escrow funds; Sketch Plan Review materials** (only those that are updated); Statement of compliance of the proposal with the Town Plan, Zoning Regulations and other bylaws in effect; Complete survey showing lots, building envelopes, easements, wells, septic, other infrastructure.

- **#6 & #7 are required** (proposed water supply, septic system)—Board requests written assurance be submitted that the well plan will meet DEC requirements, noting that the final DEC permit will be requested after DRB approval.
- **#11(j)** (Natural Resources Impacts: any proposed covenants and/or deed restrictions) —As noted in the HOA
- **#11(k)** (Association documents)—Copies of HOA, Driveway Easement for Lot 14
- **#14**—Set up of temporary boundary and building envelope markers so Board can see the layout
- ***Copy of 2005 PC Decision***
- ***Fire Department sign-off***
- ***\$2,000 for escrow account*** to cover legal, technical expenses per §233 of the *Subdivision Regulations*
- ***Next Steps***: Applicant to file updated application and the requested materials within 6 months of this meeting date. Board's usual 25 day-prior-to-hearing time-frame has been altered by the local paper's once-per-week publication and the 15-day Statutory pre-hearing warning requirement. Applicant requested to keep this in mind if a definitive hearing date is sought.
- **SKETCH PLAN REVIEW CLOSED**— At 8:35 pm Barbara closed the Review.

## **Board Business Resumed—**

### **7. CORRESPONDENCE:** None

### **8. UPCOMING MEETINGS—**

- **January 6, 2021:** All expect to be available.
- **February 3, 2021:** All expect to be available.

### **9. OTHER BUSINESS:**

- **OLD**
  - ***Burnham:*** Decision issued, signed, and sent in late August.
- **NEW**
  - ***Board:*** Time to consider re-upping and additions to the Board.

**NEXT MEETING:** January 6, 2021, at 7:00 pm, Virtual Meeting via ZOOM.

**ADJOURNMENT**—Meeting adjourned at 8:45 p.m.

Respectfully Submitted,  
Robin Conway, DRB Secretary