

A VIDEO RECORDING OF THE MEETING IN ITS ENTIRETY IS AVAILABLE THROUGH VERMONTCAM.ORG. THE WRITTEN MINUTES ARE A SYNOPSIS OF DISCUSSION AT THE MEETING. MOTIONS ARE AS STATED BY THE MOTION MAKER. MINUTES SUBJECT TO CORRECTION BY THE SHELBURNE DEVELOPMENT REVIEW BOARD. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT MEETING OF THE BOARD.

**TOWN OF SHELBURNE
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING**

March 3, 2021

***Meeting held by teleconference.**

MEMBERS PRESENT: David Hillman (Chair); Mark Sammut, Mike Major, John Day, Anne Bentley, Doug Griswold. (Zeke Plante was absent.)

STAFF PRESENT: Dean Pierce, Planning Director; Dan Albrecht, Acting DRB Coordinator; Lee Krohn, Zoning Administrative Officer.

OTHERS PRESENT: Jack Milbank, Gail Albert, Fran Carr, Ed McMahon, Vlad Kogan, Justin Barnard, Celeste Laramie, Kathy Deavitt, Jesusa Krag, David Mullen, Doug Merrill.

AGENDA:

1. Call to Order and Agenda
2. Approval of Minutes (2/17/21)
3. Public Comment
4. Disclosures/Potential Conflicts of Interest
5. Applications
 - Appeal, Building Permit #B21-003, 0 & 360 Sledrunner Road, Vladimir Kogan/Vlada Alexeeva (A21-01) & Edward McMahon/Frances Carr (A21-02)
 - Sketch Plan, Subdivision, Two Lots, 92 Irish Hill Road, David and Jesusa Krag (SUB19-01R1)
 - Conditional Use, Lakeshore Erosion Control Structure, Two Properties, 122 Sledrunner Road & 2854 Harbor Road, Richard & Jean Page\Charles & Lea Parsons (CU21-03)
 - Open Space Agreement, Mike and Kathy Deavitt, SUB98-08R2
 - Reorganization, DRB Chair & Vice Chair
6. Reorganization
7. Other Business
8. Adjournment

1. CALL TO ORDER and AGENDA

Chair, David Hillman, called the teleconference meeting to order at 7 PM, held rollcall, and explained the procedure to be followed.

2. MINUTES

February 17, 2021

MOTION by John Day, SECOND by Mark Sammut, to approve the minutes of 2/17/21 as presented. VOTING by rollcall: 5 ayes, one abstention (Mike Major); motion carried.

3. PUBLIC COMMENTS

There were no comments at this time from the public.

4. DISCLOSURES/POTENTIAL CONFLICTS OF INTEREST

John Day disclosed he was a potential buyer of property under discussion by the DRB, but the deal did not go through.

Mike Major mentioned his acquaintance with the Deavitts.

Those participating in the meeting were asked if anyone had any concerns about the participation of any DRB member in any matter on the agenda. No concerns were raised.

5. APPLICATIONS

The function of the Development Review Board as a quasi-judicial board and the hearing procedure were explained. Individuals to give testimony before the DRB were sworn in.

A21-01 & A21-02: Appeal of a building (zoning) permit, Building Permit #B21-003, for fencing and gates at 0 and 360 Sledrunner Road in the Rural District and Lakeshore Conservation Overlay District by Vladimir Kogan and Vlada Alexeeva (A21-01) and Edward McMahon and Frances Carr (A21-02)

Celeste Laramie, attorney for Kogan/Alexeeva and McMahon/Carr, and Justin Barnard, attorney for True North, appeared on behalf of the appeal.

STAFF REPORT

The DRB received a staff memo on the appeals, dated 2/25/21, and legal memos from the attorneys, and a memo from Vlad Kogan, dated 2/25/21. Dean Pierce noted the DRB should enter deliberative session to discuss the memo from the Town Attorney per the advice of the Town Attorney.

TESTIMONY

Celeste Laramie, attorney for Kogan and McMahon/Carr, said the DRB should consider easement rights in review of the permit held by True North. Attorney Laramie said her client's property is landlocked and only accessible by private road and easement. The DRB should not allow any easement to be encumbered which could result in no access to the landlocked property. Also, the fence impacts the wildlife corridor, views from the lake, and is a road obstruction. The fence is within the 100' setback of the 102' elevation.

Justin Barnard, attorney for True North, said his client's position is the fence as designed and permitted will comply with the appellant's easement rights. True North has done what can be done to accommodate current and possible uses of the easement. The easement passes through a forested area and a no cut or selective clear zone that will not be developed into a road and is used for foot access to the McMahon/Carr beach easement. This is an issue of private property rights currently pending before the Vermont Superior Court and is not an issue the DRB should decide. The fence will not obstruct sight lines. The fence does not obstruct the road. The "spur" of fence by the lakeshore was present when the permit was approved in 2019 and the permit was not appealed. The "spur" of fence permitted in 2021 was adjusted to accommodate the private easement rights of the neighbors.

Lee Krohn, Zoning Administrative Officer, said his role was to issue a permit for the fence per the bylaws. The DRB needs to decide if the permit was issued lawfully. The issues of property rights are outside DRB jurisdiction.

Vlad Kogan, appellant, said in his opinion the DRB has jurisdiction because the town approved the subdivision plans and the easements. Mr. Kogan said he has never questioned the rights of the neighbors or utilities to cross his property nor would he consider putting up a fence in the easement. Mr. Kogan stressed all easement rights should be respected equally.

Doug Griswold asked if the town zoning administrator can ask to have a fence or building brought into conformance if the structure is in nonconformance. Lee Krohn said per state statute a permit that is issued and not appealed stands. There is no legal right to force a change. Doug Griswold asked if the easement was required in order for the subdivision permit to be issued in 2006. Lee Krohn said access to a lot must be provided. Dean Pierce said he would need to review the permit and site plan before providing an answer. Attorney Laramie addressed the nonconforming structure of the 'spur', noting the spur (fence) was not completed construction and the 2019 permit has expired. The DRB could deny the permit as it relates to the spur which is unbuilt and nonconforming. Justin Barnard countered that a portion of the spur has been constructed. There is a small amount of work to be done and the intention is to finish the fence. The 2019 permit is still in effect.

DELIBERATION/DECISION

Appeals, Fence/Gates at 0 and 360 Sledrunner Road, Kogan and McMahon/Carr (A21-01 & A21-02)

MOTION by John Day, SECOND by Mark Sammut, that the factual and evidentiary record in the proceeding for 0 and 360 Sledrunner Road be closed and the DRB at a time and place it will designate will conduct a deliberative session to discuss the merits of the decision consistent with the provisions in the DRB procedural rules and make a decision at that point. VOTING by rollcall: unanimous (6-0); motion carried.

MOTION by John Day, SECOND by David Hillman, to close the hearing on appeals A21-01 and A21-02. VOTING by rollcall: unanimous (6-0); motion carried.

SUB19-01R1: Sketch Plan for a two lot subdivision at 92 Irish hill Road in the Shelburne Falls Mixed Use District by David & Jesusa Krag

Jesusa Krag appeared on behalf of the application.

STAFF REPORT

The DRB received a written staff report on the application, dated 3/20/19. Dean Pierce stated the application is a re-submission of an earlier plan considered by the DRB that expired. The only change from the previous plan is a shared driveway for the lots.

David Hillman commented the requirement for a stormwater management plan for the two parcel subdivision seem excessive. Dean Pierce said the requirement is a carryover from the first review. John Day pointed out Section 970 of the Subdivision Regulations require a stormwater plan.

APPLICANT COMMENTS

Jesusa Krag said the original plan for the subdivision was to provide her son with a lot, but that is not happening so the lot is being sold.

PUBLIC COMMENT

David Mullen, Green Mountain Habitat for Humanity, said the organization is interested in purchasing the new lot.

Gail Albert, resident, asked if stormwater runoff will go into the LaPlatte River. Dean Pierce said the property is uphill from the river, but there are several properties between the subject property and the river.

DELIBERATION/DECISION

Sketch Plan, Subdivision, Two Lots, 92 Irish hill Road, Krag (SUB19-01R1)

MOTION by John Day, SECOND by Doug Griswold, to classify the application, SUB19-01, as a minor subdivision and finalize the record, close the hearing, and direct staff to prepare a decision authorizing the applicant to prepare a Final Plan application with the following conditions:

- 1. The applicant must obtain comments from appropriate town departments and include the comments in the Preliminary Plan application as stipulated under Shelburne Subdivision Regulations, Section 600(28).**
- 2. Pursuant to Shelburne Subdivision Regulations, Section 970, the applicant should provide a stormwater management plan for the Final Plan application.**

VOTING by rollcall: unanimous (6-0); motion carried.

CU21-03: Conditional Use for a lakeshore erosion control structure spanning two properties at 122 Sledrunner Road and 2854 Harbor Road within the Rural District and Lakeshore Overlay District by Richard & Jean Page and Charles & Lea

Parsons

Jack Milbank, CEA, appeared on behalf of the application.

STAFF REPORT

The DRB received a staff report on the application, dated 3/3/21. Dan Albrecht reported there is a single staff report for two separate decisions requested for a large stone retaining wall (lakeshore erosion control structure) spanning two properties. The wall is 190 linear feet on the Page property and 20 linear feet on the Parsons property. Existing deck and stairs at 122 Sledrunner Road will be replaced with a 30 s.f. deck. The deck is a permitted accessory use requiring a zoning permit. The DRB should discuss the two sets of stairs from the terrace that are not in compliance and the deck outside of the 25' setback.

APPLICANT COMMENTS

Jack Milbank said the plans for the stairs on the Page property will be modified as necessary. On the Parsons property the 20' section of the large boulder wall is above the 98' contour. Additional permitting from the state will be pursued as needed.

Richard Page said there is one set of stairs to the water and one to the natural plateau, not two sets of stairs to the water. There was continued discussion of the stairs being two sets of stairs or one stair to the lake and one to the landing.

PUBLIC COMMENT

Doug Merrill, Lake Champlain Yacht Club, said the yacht club has no objections to the project which is a great improvement to the waterfront. The yacht club is grateful the neighbors are maintaining the waterfront property.

DELIBERATION/DECISION

Conditional Use, Lakeshore Erosion Control Structure, 122 Sledrunner Road & 2854 Harbor Road, Page & Parsons (CU21-03)

Page Property

MOTION by Anne Bentley, SECOND by Mike Major, to close the hearing on the Conditional Use application, CU21-03, and direct staff to prepare a decision to indicate approval for construction of a new lakeshore erosion control structure (a large stone retaining wall) along approximately 190 linear feet of the Page property shoreline and approximately 20 linear feet of the Parsons property shoreline as depicted in the Proposed Site Plan prepared by Civil Engineering Associates, dated 2/9/21, subject to the following conditions:

1. A zoning permit shall be required prior to any improvements being made.
2. A vegetation cutting permit shall be required for any cutting of vegetation within the 100' setback in conjunction with the proposed project.
3. The applicant shall revise the plans, dated 2/9/21, to show the existing deck and existing stairs are to be removed and any replacement stairs shall be constructed in conformity with applicable town regulations.

VOTING by roll call: unanimous (6-0); motion carried.

Parsons Property

MOTION by Anne Bentley, SECOND by Mike Major, to close the hearing on the Conditional Use application, CU21-03, and direct staff to prepare a decision to indicate approval for construction of a new lakeshore erosion control structure (a large stone retaining wall) along approximately 190 linear feet of the Page property shoreline and approximately 20 linear feet of the Parsons property shoreline as depicted in the Proposed Site Plan prepared by Civil Engineering Associates, dated 2/9/21, subject to the following conditions:

1. A zoning permit shall be required prior to any improvements being made.
2. A vegetation cutting permit shall be required for any cutting of vegetation within the 100' setback in conjunction with the proposed project.

VOTING by rollcall: unanimous (6-0); motion carried.

Deavitt Open Space Agreement for SUB98-08R1, 25 Deavitt Farm Road

Kathy Deavitt expressed frustration with the process to complete an open space agreement with the town associated with the subdivision of their property at 25 Deavitt Farm Road, and requested the DRB confirm that the open space document that has been reviewed and revised several times per edits by the Town Attorney is acceptable as is or will have further changes made by the Town Attorney. Ms. Deavitt opined the legal document should be reviewed by the Town Attorney and the final decision by the DRB confirms this is the document to be recorded. The document should not be changed after the approval. John Day explained the DRB makes decisions that are subject to legal review by the Town Attorney.

Dean Pierce said he does not anticipate any further changes to the document.

Kathy Deavitt said she will contact the Town Attorney directly to get confirmation the document will not be further revised.

6. REORGANIZATION

DRB Chair

MOTION by John Day, SECOND by Mike Major, to nominate Mark Sammut as DRB Chair. VOTING: unanimous; motion carried.

Vice Chair

MOTION by Mark Sammut, SECOND by John Day, to nominate Anne Bentley as DRB Vice Chair. VOTING: unanimous; motion carried.

Clerk

MOTION by Mike Major, SECOND by Anne Bentley, to nominate John Day as DRB Clerk. VOTING: unanimous; motion carried.

7. OTHER BUSINESS/CORRESPONDENCE

Changes to Protocol

Dean Pierce requested any changes to the application protocols now that on-the-record review is no longer in place be communicated to staff.

Administrative Site Plan Approvals

Dean Pierce said VIP Tire on Shelburne Road received administrative approval to change the stormwater system to a gravel wetland facility.

8. ADJOURNMENT

MOTION by Anne Bentley, SECOND by John Day, to adjourn the meeting and enter deliberative session. VOTING by rollcall: unanimous (6-0); motion carried.

The meeting was adjourned at 8:59 PM.