

Montpelier Development Review Board
March 21, 2011
City Council Chambers, City Hall

Approved

Present: Kevin O'Connell, Vice Chair; Alan Blakeman, Daniel Richardson, Jack Lindley, Roger Cranse, Sabina Haskell and Ken Matzner.
Staff: Clancy DeSmet, Planning & Zoning Administrator

Call to Order:

Kevin O'Connell, Vice Chair, called the meeting of the Montpelier Development Review Board to order at 7:00 P.M.

I. 3 Pitkin Court – CB-I/DCD

Owner: Duane Wells
Applicant: Celeste, Moulton, d/b/a Zuri
Design Review for two signs.

Mr. O'Connell explained since this was on the Consent Agenda they could precede with approval in a rapid fashion.

Mr. Blakeman moved approval for the signs at 3 Pitkin Court, with Sabina Haskell seconding the motion.

Mr. Cranse suggested the motion include the adjustment by the DRC about the gooseneck lamps. Ms. Moulton agreed with that adjustment. The motion was approved on a vote of 7 to 0.

Mr. O'Connell administered the oath to witnesses to items on the agenda.

II. City Dump Road/Elm Street (LDR)

Owner: Bryndle, LLC
Applicant: Douglas Hill & Brad Ruderman
Preliminary and Final Approval for a two-lot subdivision.

Mr. DeSmet said the parcel came in for sketch plan review approximately six months ago and there was an outstanding access issue dealing with a bridge on the City Dump Road. The city and the applicant have reached an agreement on an easement for that access as well as some other information so the applicant is here for the combined hearing of preliminary final review of the project.

Mr. O'Connell asked if the Public Works Department had approved their current proposal.

Mr. DeSmet replied that is correct.

Mr. Richardson said his recollection of this project before was there was some question as to how the Dump Road would function since the gate is at the front. He presumes the city is moving that back beyond the right-of-way.

Mr. Ruderman said it is going to be the responsibility of the landowner to relocate the gate beyond the right-of-way.

Mr. Richardson asked if City Dump Road would be a Class 4 road.

Mr. Ruderman replied that is correct.

Mr. Richardson said the applicant would presumably maintain at his own expense.

Mr. Ruderman said the city maintains that road right now.

Mr. Richardson said as a Class 4 road there is no obligation by the city to do anything for that road.

Mr. Ruderman said it was his understanding from what Public Works told them is that the city maintains the road and will maintain it from here on out.

Mr. Richardson said then it will be a Class 3 road. He noticed that Mr. Giuliani's letter was talking about a Class 4 road. The city is taking some responsibility for maintaining that road up to at least the point of the right-of-way.

Mr. DeSmet asked Mr. Richardson if he had seen the memo from Tom McArdle.

Mr. Richardson replied he did.

Mr. O'Connell said the proposal is to divide the 85.2 acres into two lots of 76.3 and Lot 2 would be 8.9 acres. Is the access through the Stump Dump Road to both lots?

Mr. Ruderman replied no. One access off Elm Street. There is an existing curb cut. That is for Lot 2. Lot 1 will be accessed off City Dump Road through a deeded easement.

Mr. Blakeman asked if the grades were okay with the city. That's a steep hill.

Mr. DeSmet said one of the differences here is that these are two private drives and not city streets. There was no opposition from Public Works regarding the grades of either access.

Mr. O'Connell said they may be steep but it is the property owner's responsibility to deal with that grade.

Mr. Blakeman said the bridge to Lot 1 is going over a culvert.

Mr. Ruderman replied there is no culvert. The existing bridge is a steel and concrete bridge. It is going to be used for this residential drive. It was built by Bryndle. It spans the existing brook which is the property line. That is the only water way.

Mr. Blakeman said on the map he is curious about the swamp figures.

Mr. Ruderman replied those were some wet areas that aren't going to be disturbed. No wetlands will be impacted by this development.

Mr. O'Connell inquired if there were immediate plans for building.

Mr. Ruderman replied no. What they are trying to accomplish is two subdivision lots. Brindle will likely convey the lots as is to be developed at a future date.

Mr. Cranse asked why there were proposed building sites then.

Mr. Ruderman said they were required for state permits. They have to show a proposed house site to get a wastewater permit plus a construction permit from the state.

Mr. DeSmet added it is also a requirement of a subdivision.

Mr. Lindley asked if both lots were connected to city water and sewer.

Mr. Ruderman replied no they are both on-site water and septic.

Mr. O'Connell asked if they had all of their state permits.

Mr. Ruderman replied they did.

Mr. O'Connell asked if it required Act 250 review.

Mr. Ruderman replied no. The lot count was under the 10 acre threshold plus nothing else triggered an Act 250 review.

Mr. Lindley said the Board's review if approved is good for two years.

Mr. DeSmet said the real action in this one is they record the Mylar after approval. There is no development proposed at this time as far as housing is concerned. They are dividing two lots to provide for two housing sites at some future time so they will still have to come in and get a zoning permit for each single house and a building permit. The wastewater reports are in the back and his report about the wells and septic systems are in the report. They will just need a standard zoning permit. It is under the threshold for site plan. Initially the proposal was for the housing, too. They have since removed that portion from the application. We are just doing subdivision at this point.

Mr. O'Connell asked if all of the issues they had discussed with the applicant last August have been resolved.

Mr. Ruderman replied they believe so. The major one was the access. Another was to get the state permits.

Mr. Richardson said he had a question about the existing trail that is denoted on the first map.

Mr. Ruderman replied it is just a logging trail. It is not a public trail. Snowmobilers and cross country skiers have used it. Even though they ran snowmobiles on it the trail wasn't part of the VAST system.

Mr. O'Connell said there have been some additional people that have come in since they started this hearing for the subdivision at City Dump Road/Elm Street. Mr. O'Connell administered the oath to witnesses.

Kris Hammer, a resident, and also Chair of the Conservation Commission. He didn't hear about this back in August. Their concern is they have gone through the whole Master Planning process and embarking on doing zoning. In the past they really haven't been tools in our zoning codes that allowed us to look at what is going on in the landscape to help us guide where it make sense for development to occur from a natural resources standpoint. He felt like this is a good opportunity for the Conservation Commission to come before the DRB and talk about how they would like to see natural resource information used in the future and this may be reflected and changed in the zoning. Since the zoning code they are working on now was put into place they had a natural resources inventory that was done. They had a planning grant and a \$15,000 contract and mapped a large part of the city, including this parcel, in 2007. It has been recognized that this parcel is a significant wildlife corridor that extends from the upper part of Hubbard Park all the

way up into Middlesex. Most of the parcel is a mapped deer yard which was mapped by the State of Vermont. When they had their ecologist go in he found lot diversity in terms of natural communities. When he heard about the proposal they now have a map and see what kind of natural features are there. The development is really off to one side. The house is accessed off Route 12 and the driveway coming up from the Stump Dump. What is left of the parcel at this point there isn't a development proposal. A lot of that corridor is still intact. From their standpoint they like the fact they don't have a driveway that goes deep into the property crosses the stream and would cut it off from having it be a conduit for wildlife go north into Hubbard Park. There was one natural community that was identified that's not too far from the one house site at the end of the long driveway. That natural community is only one of three occurrences in the city so it is a fairly rare natural community. Their idea with the natural community inventory and the language is in the Master Plan that they want to preserve biodiversity in the city. They are concerned if they have a rare and natural community they would like to see whether this development will destroy it or is it going to be mitigated at all so that community can survive. They would be concerned about what is the impact on having a driveway go in there. There are plenty of other natural features on the property that aren't affected at all by a development; the stream is not touched. There is a lot about the development that the Conservation Commission would support. They would be interested in talking with the landowners about if there is any possibility of trying to conserve some of that land. There is a conservation fund in Montpelier that could be used to defray some of the costs. They don't have money to purchase a conservation easement. There can be some real benefit from a tax standpoint for a landowner who wants to conserve land. They would be interested in talking to the landowners about what can do to secure the land that is not being developed from a wildlife standpoint. We need to look at where these rare and natural communities are. Is the development situated in such a way that the impacts can be minimized? They would like to talk to the landowners about how they can secure permanent protection of parts of the property that there is no intention of ever being developed. There is something like 80 or 90 natural communities that have been identified in Vermont that have very specific definition. It is just a way to classify the landscape. A big chunk of that is northern hardwood forest. It isn't just the trees but often depends on the kind of soil, hydrology and different kinds of animal species as well.

Mr. Bryndle said Lot No. 1 still exists there for future discussions. They were just hoping to get Lot No. 1 and Lot No. 2 approved.

Mr. Matzner asked Chris is he still had concerns with the application. It isn't clear to him that he is satisfied that this is going to be okay as far as conservation is concerned.

Mr. Hammer said his main point was to make sure the landowners were aware that the Conservation Commission has a real strong interest in seeing a bunch of this land remain relatively undisturbed because it has a tremendous wildlife potential. Land conservation is a voluntary choice of the landowner. That is something that is in the Master Plan. If the city really wants to use these kinds of tools the city doesn't have to buy the land to preserve it. There is other conserved land in town where the landowners have decided there were some natural attributes they want to maintain but they want to hang on to their property. Often that can come with some public access in terms of recreation trails, etc.

Mr. Richardson said one difficulty in putting that in front of the DRB at this point is that usually at this juncture the applicant has progressed to a point where coming forward as the Conservation Commission feels like imposing a condition and less like cooperation on his part. At least as a DRB member he is a little leery about any type of condition that put on it that doesn't necessarily serve the zoning purposes. The conservation purposes may be valid but he doesn't see in the bylaws other than in Section 720 about a requirement to provide open space, which wouldn't be triggered in this particular situation because it is just a subdivision. If the Commission is serious about working with landowners, at this point when it is a public hearing and when the applicant has already done the engineering, obtained a number of these permits they aren't going to get an applicant willing to say he would be interested in setting aside a woodland that sits in

the middle of a building site. It is often in advance, especially if you are looking for that voluntary compliance for something that can be translated into a zoning condition. It is difficult, if not impossible, to get applicant buy-in or DRB buy-in.

Mr. Hammer said the intention going forward as they look at how they do zoning is the Conservation Commission will be at the table early on so before you spend any money on engineering and roads, septic, etc. they get that natural information out and look at it.

Mr. Ruderman said they had the Vermont Fish and Wildlife Department up for a site visit and determined that much of the development is going to be within a deeryard and recommended some restrictions on dog leashes. They didn't find anything that the development would disturb. They did have Geoff Beyer's input at the Technical Review level and nothing seemed to trigger any disturbance to wildlife. This is obviously away from any conservation area.

Mr. Richardson said it gets into the realm of speculativeness because it isn't necessarily under the purview under a subdivision. The good news, Chris, is if you want another bite at the apple and work with Mr. Brindle or a future landowner. This is information the Board wouldn't necessarily need about the house sites for a subdivision. Some of this may be value added information so your property is more valuable because of these various habitats or wildlife scenery that is worth preserving. He isn't ready to talk about this where we are just talking about a subdivision.

Mr. Matzner said basically he is encouraging the conversation about those issues to start soon before any more development is proposed.

Mr. Richardson said if the Conservation Commission is serious about pursuing these things there is a lot that has been subdivided.

Mr. Hammer said they just want to be part of the conversation.

Geoff Beyer, Director of Montpelier Parks, said he is still learning but he brought things up at the Technical Review Committee about a potential trail and wanting to conserve the western side in some way. It really is a valuable area and could be a real win/win situation for the city and for the landowner. Many studies show that conserved areas and parks next to a property increases property values anywhere from 15 to 30 percent. There is an opportunity for the community and the landowner.

Mr. O'Connell closed the public hearing portion of this application. Mr. Richardson moved to close the public hearing and evidence on this subdivision for City Dump Road. Sabina Haskell seconded the motion.

Mr. Lindley said he would like to offer a friendly amendment to close the hearing and suggest they have a deliberative session.

Mr. Richardson amended his motion with Mr. Lindley seconding the amended motion.

Mr. O'Connell said the DRB has a motion to close the hearing and discuss the application in deliberative session. The motion passed 4 to 3. They will go into deliberative session at the conclusion of the meeting. The DRB will take this under advisement. A written decision will be issued within 45 days as to the preliminary and final subdivision approval of the application.

III. 18 Leap Frog Hollow (LDR)

Owner/Applicant: Dejung Gewissler

Interested Party: Don Marsh, Marsh Engineering

Mr. O'Connell administered the oath to Don Marsh and Dejung Gewissler.

Mr. DeSmet said this application is for preliminary plan review for a 3 Lot Subdivision with a total of 5 dwelling units on a 7.31 acre parcel.

Don Marsh, engineer for the project, said they have not made any significant changes. It is a 3 Lot Subdivision with a total of 5 units with a duplex up near Towne Hill Road and a single family dwelling. One change that did come out of a Technical Review Committee meeting was they described this as a 16 foot wide graveled road with a 2 foot shoulders. Glenn Moore from the Fire Department reminded us they really need a 20 foot wide road so from a construction point of view it doesn't change but for a final change it is clear that is a 20 foot traveled way. It is also clear that it gets maintained as a 20 foot traveled way. The road is intended to be gravel with the crushed slate top coating that is better to maintain and has less dust issues. There are no other changes from what was on the sketch plan.

Mr. Marsh said they did submit a copy of the survey which is an addition they need for this stage of approval so that is part of the record.

Mr. Lindley asked if he was aware of Section 702 with regards to driveways.

Mr. Marsh inquired if that was the one about the 75 foot setback.

Mr. Lindley said he thinks the staff has indicated that under Section 702.b there is a chart relative to the number of units and what is required.

Mr. Marsh replied they exceed that. They are going to end up with a 20 foot wide road instead of the 16 foot they proposed before. They are using gravel which DPW has agreed to for a typical approach for a private common driveway. They don't suggest the pavement and concrete wouldn't be appropriate for a road like this. Tom McArdle said specifically that gravel is fine and what he would expect.

Mr. DeSmet said they made it more discretionary.

Mr. Lindley said the letter which indicates gravel should indicate 6 inches of crushed slate on top of the gravel.

Mr. Marsh said the crushed slate is actually crushed gravel. That's the specification they would use and then there is 12 inches of a different type of crushed gravel underneath for a total of 18 inches.

Mr. Lindley said the concern he has about that is the water way that is created by the 20 foot width. He has seen water go down that driveway in pretty good shape. He is concerned they have it under control and haven't created a floodway down to the bottom.

Mr. O'Connell said the proposal is to make a 3 Lot Subdivision with a total of 5 occupied units. The building closest to Towne Hill Road has been modified. The original plan was 4 units and now it is a duplex with 2 units. The driveway has been moved to the rear of the building so it is no longer directly on Towne Hill Road. Are there any other changes?

Mr. Marsh replied the parking is under the building. There have been two sketch plans on this application and these changes were all made after the first sketch plan review. The parking and the drive are at least 75

feet from the road even though that doesn't specifically apply to a duplex. It does keep the cars away from Towne Hill Road.

Mr. O'Connell said for preliminary approval the Board has to go through it in a more formal way and then if they find items they want to see changed prior to final plan approval they would be included in any action the DRB would take. This is an opportunity for the DRB as well as the other folks who wished to be heard on this to give input prior to the applicant coming back for final approval.

Mr. O'Connell administered the oath to James Nagle.

James Nagle said he is an abutting landowner. He lives at 227 Leap Frog Hollow. He originally owned the subject property before the Board today as part of a 3 Lot Subdivision that he brought to this Board first in 2007. At that time they approved a 3 Lot Subdivision and after they approved that Dejung, the owner of this lot, came and said he was interested in buying one of the lots. He would like the lot to be bigger and be able to put two house sites on it. He let the first approval the Board gave him for the first three-lot subdivision back in 2007 lapse so he could come back and make a new application. He made a new application in 2009 and took into consideration Dejung's request that his lot would be about 7 acres and it would be on the subject area that is before the Board and there would be two house sites. At that time none of the abutting landowners came to object or testify. The two house sites one is where the two-family dwelling is situated now and a house site down where it is called House C. Once that particular 3-lot subdivision was approved he subsequently sold the 7.3 acres to Dejung with a right-of-way on the existing road. The right-of-way was limited for two house sites on one lot.

Today he is here to object to the subdivision as a 3-lot subdivision on numerous grounds. The first one is that many of the driveways that are on his subdivision cross wetlands. None of the wetlands are shown but are significant. Mr. Lindley noted the water concerns and this is a significant issue on this particular 7 acres because not only is there substantial water that seeps out of this property but a water way that runs on to the property from different developments over the course of the last 20 years. Mr. Lindley brought up the issue around the flooding that happened in 2008. It significantly took out most of the driveway all the way down to House C. This intermittent stream is not actually an intermittent stream but is a year-round stream and right now is running really high. It has expanded into most of the wetlands that are now shown on the plan. Also there is another stream which comes from the pond that is not on the survey, and that actually has been running pretty high, because the pond is a spring fed pond and also receives runoff from the wetland area that is above the pond but just below the two-family house.

When he originally came to the DRB to break up his original 26 acres and carve out the 7-acre lot he tried to find the two places where you actually could put a house on the lot that wouldn't also create more water issues for his self or for the two streams. His first objection is there are some substantial wetland issues for House A and House B.

The other objection he has is the traffic that is going to be on the right-of-way now. When he sold the land to Dejung there were two houses here for a total of four houses for the entire driveway. Now we are going to increase it to seven dwellings for the entire driveway which is an increase of almost 50 percent. He is worried that the maintenance that has been proposed is not sufficient.

Finally, he is objecting for the issue around whether or not these driveways would be able to go across the wetland areas. There is a culvert in some of these places but not where the wetlands are located. He is just wondering what the procedure is for the DRB that should be looking at the wetland issue for flooding downstream and on he property itself.

Having a 3-lot subdivision created and having create another 3-lot subdivision with 5 units in just 2 years you are seeing on just this property something from a one-dwelling 23 acre property to 7 dwellings on five different lots. He wonders whether or not that instigates an Act 250 review.

Mr. Marsh said they are in disagreement in that the deed of the property to Dejung deeds some right-of-way that is maintained in common. There is no discussion about limits of development, number of lots or number of units. The maintenance agreement for the common road also makes no mention of any density issue or number of units. They have reviewed both the city's maps and the Agency of Natural Resources environmental locator with the exception of the pond which is by definition mapped as a Class 2 well there are no wells mapped on any of the parcel. There are no mapped wetlands. It sounds like Mr. Nagle was indicating that the two-family house was in the middle of a wetland but that's also the same location the house was on his project. The density is less than that which is allowed within the district in that zone and it is in fact an infill which is where the density ought to be placed in the city. It is significantly less dense than the surrounding neighborhoods of the Towne Hill area. Act 250 doesn't apply because there are only five units proposed on the parcel. Even with the other units it still wouldn't rise to Act 250 jurisdiction with the total of 7 units.

Mr. O'Connell asked what the trigger for the Act 250 review was.

Mr. Marsh replied in Montpelier the trigger would be 10 or more units.

Mr. Richardson said he had a follow up question for Mr. Nagle. He isn't asserting that there is any kind of deed restriction on what this application is proposing to do, is he?

Mr. Nagle replied the warranty deed incorporates by reference the plot which shows fairly clearly that the right-of-way is for two house sites on one lot.

Mr. Richardson said he remember when he was before the Board the issue came up to whether or not to put a restriction on two lots or whether to leave it simply as is.

Mr. Nagle replied the restriction was for one lot and two house sites.

Mr. Richardson said the DRB didn't go with that restriction. Simply showing a plot that was approved by a zoning board that has two houses on it, is he saying that creates a legal restriction?

Mr. Nagle said since it is incorporated by reference into the deed, yes, he is making that argument.

Mr. Richardson inquired if he was planning on filing private action against him.

Mr. Nagle replied he was going through due course and if the case becomes that this body feels they have the right to go ahead and provide a right-of-way to something that he believes Dejung does not have he will be appealing the DRB's decision first as an unlawful taking. Then, from there he will probably also incorporate some type of private action.

Mr. Richardson asked what he meant by a taking.

Mr. Nagle said there is some case law in Vermont that shows that if you burden a right-of-way more than it was intended for that it could be considered an unlawful taking.

Mr. O'Connell said he thinks they are jumping ahead and they should deal with the Board's action.

Mr. Richardson said that was an issue when Mr. Nagle was here for the subdivision. His understanding was when that subdivision was granted by this Board they had the option of adding a condition that would say two houses and no more. It was the vote of the board, which wasn't unanimous, to leave that development option open. He wanted to make sure that was Mr. Nagle understands as well.

Mr. Nagle replied he would have to go back and look at the findings of fact and the decision. His understanding of the final findings of fact was that this particular lot was supposed to be one lot and two house sites.

Mr. Richardson said when he came before the Board before he was subdividing this parcel off from his holdings, and there were three parcels all together he was making. He had located two building sites but wasn't asking for a building permit but simply asking for a subdivision permit like the applicant is tonight. His understanding is the DRB granted the subdivision which doesn't necessarily lock him into those two house sites but simply parcels off those 7 acres from the larger parcel. They had the option of adding that condition of saying they would grant the subdivision but only two house sites on it and chose not to go with that condition. Then, the subdivision was approved. He is confused when he says the Board's action there in creating the subdivision somehow locks any future owner into those two houses he put on the map that weren't at issue. The Board was just simply subdividing the parcel and not granting a site plan or building permit of that nature.

Mr. Nagle said he would have to look at the record.

Mr. Lindley asked Mr. Marsh if he had done any geological survey in terms of where the water flows on this particular lot. Does he have any records of where the water flows are on them?

Mr. Marsh replied he had observed them and they have identified there is a stream on James' land that flows from the large culvert of the city's off Towne Hill Road. They investigated the soils and they are all prime agricultural soils.

Mr. Lindley asked if he had a hydrological survey of this particular development.

Mr. Marsh replied no, it isn't warranted.

Mr. Lindley said it is a major corridor for water moving off the Towne Hill area. It's called Clay Hill. There is a lot of water that comes down through that area. He is curious that he has moved the house down 40 feet from the roadway yet there is a driveway coming out of that that is 75 feet. It says on his notes they are 40 feet from the roadway. The driveway for that unit is 75 feet from the top of the hill. Yet, the parking is under the building which would be 40 feet. Where is the other 35 feet?

Mr. Marsh said the building is 40 feet from the road. The building is about 30 feet wide. The driveway comes in and you turn into the garage so you would have room to park your car behind the garage so that is another 20 feet. It is really in excess of 75 feet and probably about 85 feet. They want to point out that it is in excess of the standard which is 75 feet and doesn't really apply to this because it is a duplex. That only applies to multi-family units. They meet the standard even though it doesn't apply.

Mr. O'Connell administered the oath to Paul Giuliani.

Paul Giuliani said he and his wife own the property that is across the street and kiddy corner and uphill from the subject property. Historically, the Montpelier zoning ordinance has been applied and interpreted to prohibit the construction of two permitted use buildings on a single lot. He doesn't know if that is the case under the new ordinance but he would suggest the Board try to get some definition on that because it is

a very important factor in what they have before them. He can say with some degree of certainty that it historically has been the case in Montpelier and there is quite a bit of precedent that would support that. He is speaking for his wife and himself but thinks he echoes some sentiments of some other folks they will be hearing from tonight. He voices and objection and a serious concern to one particular aspect of what are before the DRB. He doesn't think in the neighborhood or surrounding the property objects to the construction of single family dwellings on this lot. They all look down on it. Across the street it is very visible to see houses on that property. It would not be offensive in the least and kind of a welcome addition to the neighborhood. However, he is very concerned and objects to the notion that a multi-family dwelling is going to be placed close to Towne Hill Road upgrade from the rest of this property. The proposed structure is quite inconsistent with the neighborhood and the whole Towne Hill area. There are no other multiple family dwellings in the neighborhood in the close proximity to this property. His house was the last one. When they moved in 37 years ago there was a two-bedroom apartment in their house and they discontinued that use at least 35 years ago. Within viewing distance of this property there are no other multiple family dwellings. If you go towards Main Street at the intersection of Towne Hill Road and Main Street there are some properties that are multiple family. The brick house was multiple family conversions before zoning came into effect in Montpelier. That property's use as a multi family use was at least back to 1965 or 1966. The other two structures that are multi family were preexisting structures that were converted. There has been no new multi family construction on Towne Hill in his lifetime.

Mr. O'Connell said his understanding is that a duplex is considered the same as a single family.

Mr. Giuliani said a single family house, or any house that close to Towne Hill Road he doesn't think is appropriate.

Mr. O'Connell said the other point he brought up about the residential structures and how many are on the lot they do allow it. It is in §605(c) of the ordinance which says residential structures there shall no more than three family residential structures or four duplex multi-family dwelling units on a single lot except as may be approved.

Mr. Giuliani said he wasn't aware of that and takes it as the existing ordinance. As far as the appropriateness of multi-family house or any structure that close to Towne Hill Road several years ago there was an inventory taken of open spaces in Vermont, even Montpelier, and this particular property was identified as an open space that should be protected. The identification wasn't to prohibit the use of the construction of a development or any improvements on that property. It merely says that care should be taken not to degrade or create an impediment to the value of that open space. Placing any structure that close to Towne Hill Road is certainly going to impede the view scape and accessibility of that open land. Their concern is that the construction of single family residences on that property would be very desirable and very welcome but in their opinion the placement of any structure that close to Towne Hill Road really is inconsistent with the character of the neighborhood.

Mr. O'Connell said his main point is his objection to the duplex.

Mr. Giuliani replied yes, it has nothing to do with the rest of the property.

Mr. Richardson said it is the proximity of the duplex in particular to Towne Hill Road.

Mr. Giuliani replied that is correct.

Peter Goodell, a resident at 169 Towne Hill Road, which is adjacent to the subject property. As he mentioned at the second sketch plan review he still continues to have some concerns about Parcel A which would include the two structures on the single lot. They have had examples in the neighborhood where it

starts off with two structures on one lot and then subsequently there is a request to subdivide those. They have gone from having one lot to having three, and now they are going to go to five; he has a concern they may go to six which, as Mr. Nagle mentioned, is a substantial increase in the amount of development on that one parcel. That is his primary concern. Someone mentioned that as a courtesy he has been mowing the lawn over there. That is true. There are certainly some wet areas there even through the course of the summer. Only on the bottom side of the pond is where they can get the water to flow down there. Those wet areas require some drainage for sure. At the second sketch plan review there were some comments made by the Parks Commission requesting they consider requiring an easement on the easterly side of the applicant's property. He strongly objects to that sort of consideration. It would be an unnecessary and unacceptable burden to his property as well as others properties. He doesn't object to the notion of trails but where that one was requested to be placed it is clearly a significant burden. There are portions of the lower part of his property that are also wet and if anybody is hiking down there even in the summer they are going to be up to their ankles in water.

Mr. Richardson asked if there was a condition on this permit that required Parcel A to stay unified would that satisfy his concerns?

Mr. Goodell replied yes.

Mr. Marsh said the geometry of Parcel A is partially driven by trying to control that by maintaining an undivided ownership of the land below the building and below the pond for agricultural purposes. They debated about trying to do subdivisions but it didn't make sense on this one. It was better to put the three on that one and keep those prime agricultural soils intact.

Mr. Richardson asked if there was a condition would it be a burden on them.

Mr. Marsh said the only hesitation is the former chair said that does create some issues with financing. If in pursuit of that Dejung found out that was difficult he might want to come back at a later date and ask for a subdivision of that, but it's not the intent now. They would like to not have that condition if they could.

Mr. Richardson said he thinks the previous speaker's concerns may reflect certainly the history of this parcel that seems to have been subdivided piece by piece. If there is a financing issue that is something they can certainly take under consideration. If there is a condition that is easily accepted that would resolve a concern that would be good to know as well. There may be a financing issue in the future and they would like to keep that option open.

Mr. Matzner said even if it were limited to a 2-lot subdivision that wouldn't increase the number of further subdivisions and could help them with their finances.

Mr. Richardson said he was thinking about putting a condition on Lot A that would essentially says it remains as one and it be subdivided no further for the duplex and the house. What Don is saying is that might create a hardship unforeseen and unexpectantly later on. What they are saying now is they have no intention of subdividing the parcels because of both your current proposal which is to put yourself in one and family in the other as well as to keep the prime agricultural soils together which wouldn't happen if they subdivided the duplex off from the residence.

Mr. Marsh said it would be more cumbersome.

Mr. Matzner said if it were only a 2-lot limitation of subdivision that would still limit the total number of buildings in this area.

Mr. Marsh said Lot A is 3 acres and there would be 3 units on it so you can't create any more density there because that would be the maximum allowed.

Mr. Richardson said the only lot left over that he could technically build upon would be Lot C because that is 3.29 acres and there is only one unit.

Mr. Marsh replied that is correct. That does have an additional two units of density.

Mr. Matzner asked Mr. Marsh if he could address the wetlands issue a little more. They have heard from a lot of people there is a lot of wetness out there and he has said there is nothing mapped out there. We all know that the maps used by the city are pretty much done by guess from aerial photographs and not ground truth. From personal experience he knows when you can ground truth it you can come up with a different result. Are they confident if a wetlands biologist went out there they wouldn't find something?

Mr. Marsh replied no. They are on a side hill and Montpelier soils he would be remiss to say there aren't any. They haven't done that. The houses are all placed upon the higher portions of the parcel. If it were a wetland the amount of impact would be relatively small.

Mr. O'Connell said Clancy has just advised him that the last subdivision application for this that wetland issues were not brought up.

Mr. DeSmet said they were not delineated on the site plan previously, just the intermittent stream.

Mr. Marsh said he believes there is a multi-family unit that had been approved off Towne Hill on the property that is bordered on Easy Street. That was several years ago.

Mr. O'Connell asked if they had given any thought to moving the duplex back further off the proximity of the road.

Dejung said his primary intention was to keep as much open space as possible and not segment it for various reasons. The frontage of the buildings are pretty much in line with the neighbors to the west, if not further back from their house and what he feels is in line with Peter's house too. It's not that it is any closer to Towne Hill Road than any of the neighboring houses.

Mr. Matzner asked if there had been any serious conversation about a trail easement.

Mr. O'Connell replied there was a request from the Parks Commission and the Parks Director to give consideration to that. It is part of the testimony of the sketch plan.

Mr. Matzner asked if anything had happened with that.

Mr. Marsh said it came up again at the Technical Review Committee. They met with Geoff Beyers. Although there are some very good points for it, because of the long relatively narrow arrangement of the lot and the fact the Zorzi property is not a public park that there are intervening landowners, specifically Mr. Nagle, between this parcel and the Zorzi parcel. That is significantly longer access for the vast majority of houses. There are about 100 houses up in the Towne Hill area of which 95 percent of them would be closer access and almost directly to the Zorzi parcel if they went down through Spring Hollow. There are a number of reasons why it would make much more sense to have it somewhere else and it would have a significant adverse impact on Dejung's property. There is no place to park whatsoever if people were there. They respect their request but also respectfully decline to pursue that. With the geometry of this parcel it seems to have a significant impact to have people walking through your front yard.

Mr. Richardson asked if the aerial photo map was part of the application. Is that accurate?

Mr. Marsh replied it is a GIS map. He hopes it is accurate because it came from the city.

Mr. Richardson said he wonders how accurate it is as far as relying on setback distance because he was doing some quick measurements and noticed there is a number of properties up and down Towne Hill Road that seem to be within that 40 feet range of frontage.

Mr. Marsh said the houses directly across the road are both closer. The one directly to the west is closer. Many of the parcels of the houses are quite close. Where the front entrance is 40 feet from the road the house itself is 44 feet from the road. They did have a gravel walkway up to the city sidewalk that DPW asked for.

Mr. Richardson said it would characterize this as a suburban type neighborhood with front lawns set back from the road. It is almost residential neighborhood exclusively and maybe a little bit of rural or agricultural but certainly not like living down in the village in the city center. It's the duplex maintaining that character. Even though he understands he wants to maximize the open space, at the same time it is not to create a Spanish wall along Towne Hill Road where the houses are as close as possible. If it is in line with the other houses then that affects his evaluation of the application.

Mr. Marsh replied it is in line and further back. His concern would if the neighbors were concerned about having a duplex use there then it shouldn't have been allowed in the ordinance. It is unreasonable to have it in the ordinance as a permitted use and say it's not.

Mr. O'Connell asked how many square feet the duplex is.

Dejung said it is 28 x 56 because each is 28 x 28.

Mr. Matzner said the city does not regulate Class 3 Wetlands but the Corps of Engineers does. What are their rules?

Mr. O'Connell said he didn't think it applies here.

Mr. Lindley asked if they were aware of the committee draft on views and vistas in Montpelier done in 2002.

Mr. Marsh replied yes.

Mr. Lindley said he notes they say the second floor is going to be just 5 feet below Towne Hill Road. Is that what they are presenting as evidence?

Mr. Marsh said the front step of the first floor of the building is five feet below Towne Hill and the peak of the roof would be 19 feet above Towne Hill Road at that elevation.

Mr. Lindley said from the sidewalk up and down the vista down to College Hall is gone. You wouldn't be able to see it beyond this building. Is that correct?

Mr. Marsh replied they could see it before and after the building like you do with the other houses on that street. The building is 60 feet across. That draft of 2002 was a draft of a vista report and never adopted. They can't deny there always a conflict between vistas and infill development. You would literally have to

be in the pond to have the roof be below Towne Hill. They are not going to preclude the view of the College and that part of Montpelier, but a portion of it would be affected, certainly.

David Nelson said he and his wife live at 38 Coolidge Street which is the western abutter of the proposed property. He has lived there since he was 6 years old and bought the home from his mother about 15 years ago. His in-laws were the original owners of that lot that was sold to the Nagles. It was zoned agricultural back then and used for horses and a recreational open space. There is actually a postcard of the property that looks out over the city which is quite scenic. His objections are a lot like his neighbors. One, the traffic on that road – he has small boys in the backyard and there is a lot of traffic on Leap Frog Hollow now and used to be none. You are talking about adding three or four more structures and he is adamantly opposed to that. He thinks Towne Hill Road itself has changed in the 40 plus years he has lived there and in such a great way. It is now all paved from one end to the other and now used as a cut through from East Montpelier. Since they did the roundabout there is a whole slew of people that found that way to access National Life, the downtown area and the Interstate, and adding more cars on that road at this point is not something he thinks is prudent. As far as the area being wet they have been flooded three or four times. He has had significant damage to his property done in 2008 and two years before that from water flowing above. He believes that a lot of that water since the last 15 to 20 years when there has been significant development above them the Chestnut Hill area the water table seems to have changed and their brook in the backyard can become a ranging inferno within a couple of hours. There are some water issues with that land. They are proposing a duplex on. Since his in-laws owned that property for quite a few years he has walked his dogs on that and it is wet as heck all over. There are a few dry spots. He doesn't know how geologically that could survive or be upheld as not being a wetland. The duplex itself he believes is totally out of character with the neighborhood. There are not any duplexes near their homes. Like Mr. Richardson said it is more a suburban area. He isn't objecting to houses being built on this land but he would adamantly oppose a duplex and three structures on that lot. It is out of character to the neighborhood. It just doesn't make any common sense. Finally, his last concern is with Leap Frog Hollow itself. That road has washed out. He has seen his father-in-law spend tens of thousands of dollars repairing that road in the past when water has come down. Mr. Nagle, who is his neighbor, has in the flood of 2008 had to actually access and drive his car over his lawn to get out. More traffic and stuff on that piece of property which used to be pristine is totally out of character for the neighborhood. Thank you.

Mr. Marsh said he would like to remind the Board that in their application they did a traffic analysis based on the Central Vermont Regional Planning Commission's traffic data and VTrans data, and it's all there. Insured, the project would have slightly over a 1 percent increase in traffic relative to the traffic on the roads now. This is during the peak AM and peak PM times. He doesn't think anybody is going to dispute that the traffic has changed significantly on that road and it may be a concern, but this project is not going to have a significant adverse impact on it.

Mr. Lindley asked if he understood the traffic study to indicate there would be 48 trips up and down that driveway a day.

Mr. Marsh replied that is true. That is what the traffic data would indicate from the trip generation guidance.

Mr. Lindley said that would be two trips an hour.

Mr. Marsh said it is 24 round trips; 48 trips. It is a 20 foot common road.

Dejung said the road is going to be built to a Class 3 or Class 4 road standard so it is no longer a driveway.

Mr. Marsh said the road is being constructed with the same sub base as a city street like they did on Stone Cutters Way last year. The construction of both of those roads would essentially be the same.

Mr. Lindley asked if they got a Technical Review minutes on that application.

Mr. DeSmet said there are handwritten notes that the applicant incorporated everything that was requested of him in the application.

Mr. O'Connell administered the oath to Cindy Larson.

Cindy Larson, a resident of 117 Towne Hill Road, which is next door to Peter Goodell. This would be directly next to her house on the other side of the driveway. Her house was built in 1820 and was the original farm house. The traffic is just unbelievable. When they bought the house in 1992 it wasn't anything like it is now. It's the noise. The noise is unbelievable and the dirt. She understands her house is probably one of the closest to the road. She thinks the right-of-way to the city is her front steps. She certainly wouldn't put it there today if she were to build it. She can't imagine why anybody would want to build a home so close to such a busy road. It's like being on an interstate. It's the noise and the traffic, and the maintenance of the road, too. She hears every pothole for the city sewer. Every car that goes over the potholes she hears inside her house. She wishes the road could be further back. It is too much for the area. Adding another subdivision isn't going to work well.

Mr. Richardson moved to close the evidence on preliminary plan review and to take the decision under advisement in deliberative session. Mr. Lindley seconded the motion. The motion carried 6 to 1.

Mr. O'Connell thanked everyone for attending this evening. The DRB will now take the matter under advisement and have 45 days to render a decision.

Adjournment:

The Development Review Board adjourned.

Respectfully submitted,

Clancy DeSmet
Planning & Zoning Administrator

Transcribed by: Joan Clack