

DRAFT

**Development Review Board Minutes  
Town Office New Haven, Vermont  
October 7, 2019**

**Members Present:** Paul Audy, Kathy Barrett, Carol Charbonneau, Tom Fyles, Donald Johnston, Charlie Roy, Susan Smiley

**Staff:** Karen Gallott-Minute Taker  
Aaron Brown-Town Administrator/Zoning Administrator

**Guests:** Fred Sargeant, John VanHoesen, James Sherman, Gerald Sherman, Jacob Reed, Paul Bolduc, Peter Lind, Daniel Poulin, Michael Buscher, Steve Delphia, Floyd Siple, Kevin Brown, Esq., Rita Booska, Dan Monger, Jodie Paul, Don Paul, Jeremy Ouimette, Esq., Lonie Parker

Kathy Barrett, Chair called the Development Review Board (DRB) meeting to order at 7:00 PM.

**Adjustments to the Agenda** - none

**Visitors Business** – none

***III. Informal session of proposed VELCO Emergency Control Center.***

Peter Lind, project manager for VELCO, presented. Distributed a handout “New Haven Operations Facility.” Tonight’s presentation is an updated version from the one that was presented on Sept 18, 2019 in an open public meeting to the Town of New Haven. The VELCO Emergency Control Center is a backup to the VELCO operations center in Rutland. New Federal rules require a backup operations center. This facility will host operator training, a data center, utility/meeting room, and be secondary incident command center in event of a disaster at the Rutland headquarters 30 miles away. The proposed location for this facility would be on the property located on Rte 17 that VELCO already owns.

Rte 17 is ideally located to State Police, Green Mountain Power and various electric utilities, the nearby AOT facility, and the VELCO substation.

The building is designed to look like a barn, set back from road and located behind current hedgerows. The building would be energy efficient and VELCO is looking for LEED certification (Leadership in Energy and Environmental Design), a green building certification.

No regular staff will be on site, maintenance and technical staff will visit on a regular basis to attend to the various equipment: Two independent generators that will be operated once a week during daytime for 30 minutes, networking and cooling systems. The building will be connected with 3 phase power and Green Mountain Power is working on a design that will be installed on existing poles.

The timeline is: 2019 mid-November-file for permit; 2020 mid-summer-construction beginning; 2022 project completed. They have already filed the 45-day notice to apply for a certificate of public good.

Floyd Siple mentioned the area currently hosts three septic mound systems. VELCO is aware of the septic infrastructure and assured that they will not be disturbed.

The proposed building is 18,000 sq. feet; two story with the basement located in the berm in the ground. VELCO will be adding more deciduous and evergreen trees to the current hedgerows. An 8-foot-high fence will be installed for security purposes.

Smiley asked about locating solar panels on the roof. Peter Lind mentioned the roof is strong enough to hold solar panels and they are looking into this. Jake Reed indicated legal issues that they need to balance; VELCO can only produce so much power before it is considered a generation utility.

The team has met with the local fire department as well as the state fire/safety marshal. A dry system is recommended instead of a wet sprinkler system.

Dan Monger asked if the National Guard is connected with this project. National Guard is not normally connected to this project, but the building would be available as an incident command post.

The power will be connected to the building via underground from the road.

Is this facility a mandate from Homeland security (HLS)? VELCO is regulated by federal gov. VELCO is involved with HLS and is regulated by NERC and FERC under a higher level of security that mandates certain requirements for safety, reliability and maintaining electric systems, from all bulk transmissions companies throughout the US.

***IV. #2019-DRB-12-SK Sketch Plan Review for proposed subdivision of Jerry Sherman and Gerald Sherman at 630 East Street.***

Donald Johnston recused himself as he anticipates doing survey work for the Sherman's.

The Sherman's would like to subdivide the property at 630 East Street, of 213 acres into 2 lots. Proposed Lot B would be 47 or 48 acres and include the current house with septic and a road frontage of 465 feet. Lot A would be the remaining lands of approximately 165 acres with road frontage of 1,115 feet. The Sherman's have talked with the road foreman who felt they could get permission from the Selectboard for a curb cut to Lot A. Lot B has an existing curb cut.

The DRB needs to decide if this is a major or minor subdivision.

The DRB needs to confirm that a septic design is not needed for Parcel A if there is no development on this lot. Johnston feels a letter to the state indicating no development on Parcel A would be enough. In the future if there were development on Parcel A, the Sherman's would need to contact the state.

Johnston wanted to know if a survey needed to be done on the entire 213 acres or survey just Parcel B with the house on it. The DRB felt that a survey done on the boundary line dividing Parcels A & B is enough.

John Van Hoesen asked if Johnston recused himself why is he asking these questions. DRB Chair explained that by recusing himself Johnston is not acting, nor voting as a DRB member, but is asking these questions as a public individual and as a potential employee of the Sherman's. Van Hoesen said that the recusal was not made clear.

Barrett made the motion to accept #2019-DRB-12-SK sketch plan as a minor subdivision and Parcel B needs to be surveyed as it is being carved out of the entire parcel.

Roy seconded

Discussion – none

Vote: Yes – 6 (Audy, Barrett, Charbonneau, Fyles, Roy, Smiley)

No – 0

Abstention – 1 (Johnston) Motion carries

***V. Hearing #2019-DRB-13-SD to review two lot subdivision of Donald Paul at 308 Otter Creek Highway.***

The Paul's currently own 10 acres (parcel 0296-200) located at 307 Otter Creek Highway in the RA5 district. They would like to subdivide the property into Lot #1 for 5 acres and Lot #2 for 5 acres. Each lot would have the required road frontage. There is adequate depth to meet the zoning requirement. Lot #1 would have an easement for the driveway to Lot #2.

Septic designs are in process and will be submitted to the state for approval.

Johnston mentioned that both Lots on the site map indicated 5 acres +/- . Larose Surveying needs to confirm the exact acreage on each lot.

Dan Monger had no questions.

Fyles made the motion to accept site plan #2019-DRB-13-SD as presented with the correction of the acreage on both lots; and pending approval of the septic design.

Roy seconded

Discussion – none

Vote: Yes – 7 (Audy, Barrett, Charbonneau, Fyles, Johnston, Roy, Smiley)

No – 0

Abstention – 0

Motion carries

***Both the of the following hearings will be held together:***

***VI. Hearing #2019-DRB-07-SP- Site plan amendment for Lonie Parker d/b/a Porky's Barbeque, 7404 Ethan Allen Highway.***

***VII. Hearing #2019-DRB-09-AP Appeal of Zoning Administrator's Notice of Violation to Porky's Barbeque, 7404 Ethan Allen Highway.***

Jeremy Ouimette, Esq., representing Lonie Parker presented and asked for clarification on site plan number. The Zoning Administrator (ZA) indicated that #2019-DRB-02-SP was the original site plan number, and Parker would like to amend the original permit.

Ouimette indicated that there was confusion due to the schedule of items on the permit. Parker's understanding was there was no need to finish all the items stated on the permit before this amendment, as he was planning to finish items as revenue became available.

Barrett indicated if the original site plan came in with items to be accomplished in Phase 1 and items to be accomplished in Phase 2, and so forth. The DRB would have looked at the site plan differently than it did.

There was considerable discussion with regards to:

- The pavilion – what sides (North, South, West) were to be enclosed and what constitutes a permanent enclosure material.
- Noise decibel level
- Serving spirits (hard liquor) in Pavilion
- Definition of “Event” – intensity, hours, and number of events
  - at the Pavilion
  - inside the restaurant
- State regulations regarding wastewater and the capacity thereof
  - Port-a-Let usage
- Certificate of Occupancy
- Definition of “Club”

Audy made the motion to modify the current permit to allow the Port-a-Lets on site from May 1 to October 31.

Charbonneau seconded

Discussion – Kevin Brown, attorney for Rita Booska, read the state statute that lists the procedures for appealing a zoning decision and the state statute regarding septic requirements; thus, he felt that the DRB should deny the request for amendment.

Audy withdrew the motion

Charbonneau agreed with the withdrawal

Barrett made the motion to continue site plan amendment #2019-DRB-07 to November 18, 2019:

- To enable Parker to obtain information on the site's wastewater system from the state
- To have the town's lawyer present

Fyles seconded

Discussion: none

Vote: Yes – 6 (Audy, Barrett, Charbonneau, Fyles, Roy, Smiley)

No – 0

Abstention – 1 (Johnston) is opposed to continuing

***Notice of Violation – Appeal – Received at the Town Office on September 4, 2019***

Items brought up by the ZA

#1 – Use of the outdoor pavilion without a Certificate of Occupancy permit

#2 Service of liquor in outdoor pavilion

#3 Events per month

It is the understanding of the DRB Chair there were conversations between the ZA and Parker prior to the written notice of violation, thus Parker proceeded with the amendment.

Kevin Brown Esq. mentioned the DRB needs to determine 1) was there a violation and 2) what is the remedy of the violation.

Jeremy Ouimette Esq - Can we pass judgement on the Notice of Violation with the Site Plan Amendment still being open? Both issues are heavily linked to each other.

The letter dated July 30, 2019, from Dave Wetmore (acting ZA at the time the DRB approved site amendment 2019-DRB-02) to Aaron Brown regarding the need for a Certification of Occupancy was not printed out tonight for review.

Johnston indicated that the violation is based on the permit language.

The DRB Chair indicated that a certified copy of the permit was mailed to Parker; he had 30 days to appeal, which he did not do.

There was considerable discussion with regards to:

- The pavilion – what sides (North, South, East) need to be enclosed and what constitutes a permanent enclosure material. The permit says the North and South ends need to be permanently enclosed and the East and West sides to have the ability to be enclosed.
- Noise decibel level
- Serving spirits (hard liquor) in Pavilion
- Definition of “Event” – intensity, hours, and number of events
  - at the Pavilion
  - inside the restaurant
- Certificate of Occupancy

Fyles made the motion to uphold the ZA decision not to issue a Certificate of Occupancy until all conditions are met.

Discussion: discussion on the permanent ability to enclose noise – canvas sheeting doesn’t reduce notice.

Fyles withdrew the motion.

Barrett made the motion to continue the hearing #2019-DRB-09-AP to November 18, 2019

- To have the town’s lawyer present

Fyles seconded

Discussion – Audy doesn't feel the DRB should charge penalty fees with the continuance of these hearings.

Vote: Yes – 6 (Audy, Barrett, Charbonneau, Fyles, Roy, Smiley)

No – 0

Abstention – 1 (Johnston) the DRB should solve, not delay the issue

## **DRB Business**

### **1. Minutes**

#### **a) Minutes for August 5, 2019:**

Fyles made the motion to accept the August 5, 2019 minutes as presented

Audy seconded

Discussion – none

Vote: Yes – 6 (Audy, Barrett, Charbonneau, Fyles, Johnston, Smiley)

No – 0

Abstention – 1 (Roy)

#### **b) Minutes for September 16, 2019**

Fyles made the motion to accept the September 16, 2019 minutes as presented

Smiley seconded

Discussion – none

Vote: Yes – 6 (Audy, Barrett, Charbonneau, Fyles, Johnston, Smiley)

No – 0

Abstention – 1 (Roy)

### **2. Review and Sign Decisions:**

#### **a) 2019-DRB-08-BLA Farnsworth Boundary Line Adjustment**

Fyles made the motion to accept the Findings and Decision as presented

Smiley seconded

Discussion – none

Vote: Yes – 5 (Audy, Barrett, Charbonneau, Fyles, Smiley)

No – 0

Abstention – 2 (Johnston, Roy)

#### **b) 2019-DRB-11-SP Ethan Allen Highway Storage Site Plan**

Fyles made the motion to accept the Findings and Decision as presented

Smiley seconded

Discussion – none

Vote: Yes – 6 (Audy, Barrett, Charbonneau, Fyles, Johnston, Smiley)

No – 0

Abstention – 1 (Roy)

### **3. Review decisions compliance and/or sign final plats – none**

### **4. Correspondence – none**

### **5. New/Old Business – none**

Fyles made the motion to adjourn

Charbonneau seconded

Discussion – none

Vote: Yes – 7 (Audy, Barrett, Charbonneau, Fyles, Johnston, Roy, Smiley)

No – 0

Abstention – 0

The meeting was adjourned at 9:40 PM

Respectfully Submitted By

Karen Gallott

Kathy Barrett, Chair

Tom Fyles, Vice Chair

Donald Johnston, Clerk

Paul Audy

Carol Charbonneau

Charlie Roy

Susan Smiley