

**WAITSFIELD DEVELOPMENT REVIEW BOARD  
MEETING MINUTES  
Tuesday, May 8, 2007**

**I. CALL TO ORDER:** Brian Shupe, Chair, called the meeting to order at 7:40 p.m. at the Waitsfield Town Office.

**MEMBERS PRESENT:** Brian Shupe (Chair), Eleanor D'Aponte, Jamey Fidel, Gib Geiger, Jr., Michael Kingsbury, Mark Sinclair, Hallie Tamez.

A quorum was present.

**MEMBERS ABSENT:** None.

**STAFF PRESENT:** David Jescavage, Planning & Zoning Administrator.

**OTHERS PRESENT:** Mark Grosby, Suzanne Grosby, Erin Post, Anthony Italiano, Mark Peal.

**II. OLD BUSINESS (Discussion Phase)**

**Continuation of CASE# BLA-2007-04-02:** Mark & Suzanne Grosby: Application for a boundary line adjustment between a 6.5 acre and a 3.5 acre parcel both identified as Parcel#42003.000. These two parcels were created by a state subdivision approval prior to the existence of the Waitsfield Subdivision Regulations. The applicants propose to adjust the lot line so that each lot will consist of 5 acres. The property is located at the conjunction of Palmer and Sugarhouse Lanes.

Mr. and Ms. Grosby were in attendance.

Brian S. stated that the Board is in sketch plan review, a process allowed under both the permanent existing subdivision regulations and the proposed regulations in effect because of the Selectboard's warning. Sketch plan review is a pre-application process to allow the Board to provide some direction to the applicant regarding any issues that come up or on how to make the subdivision compliant with regulations before putting time and expense into the application materials. In the first meeting of the formal hearing, the question was raised as to whether this application constitutes a lot line adjustment. No plat had been filed with the town and there were no separate deeds identifying the two parcels. At that first meeting, the Board said that it wanted to hear from the Town Attorney. At the second meeting, the Board had only received the Town Attorney's opinion within the preceding 24 hours, and it hadn't had an opportunity to digest it or to decide to what extent to convey that opinion to the applicants. That opinion has since been provided to them. The Board has not taken a position since then.

Mr. Grosby read a memorandum from him and Mrs. Grosby to the Board responding to the Town Attorney's position (a copy of the memorandum is attached to these minutes).

Brian S. said that a jurisdiction issue isn't the intent of a sketch plan review, but that is the situation the Board and the applicants are in. The application is a relatively minor issue in the broader context of the purpose of subdivision regulations. Mr. Grosby said that the town has had a practice of not taking cases like this up as subdivisions and questioned the need to do so now.

Board members replied that that would have to be based on an acceptance that, because there is no pre-existing plat, there is no need to approve a new plat. The application was confusing in that the application form refers to a boundary adjustment for a zero-acre lot and a 10-acre lot, which seemed to confirm that there is no pre-existing parcel.

The Board asked for time to digest and discuss the memorandum and decide whether the Board thinks it has jurisdiction for this subdivision. Mr. Grosby said that at the next meeting, he would have affidavits from five or six local attorneys expressing their concern that the Board is upending the practice of the earlier Planning Commission. The minutes of the August 7, 1991, meeting of the Planning Commission were consulted. They include a motion passed to recognize a project as a pre-existing subdivision and not subject to the town's subdivision regulations.

The applicants were asked how their lot got subdivided into 6.5- and 3.5-acre lots when the original seller said that the lots could not be subdivided into less than 5 acres. The application filed with the state was for two 5-acre lots. The permit issued by the state was for 6.5 and 3.5 acres, which may have violated the seller's covenants, but it complied with then-current regulations. The applicants' concern is that an adjacent landowner could now object to the violation of the covenants. No plat was filed with the town because none was required at the time. The plat was filed with the state.

The town established interim subdivision regulations in 1987, but after the permit was issued in 1984. There was discussion of how *In re McCormick Management* and the then-existing statutes apply. The applicants maintained that the state statutes existing at the time control the action and grant landowners vested rights. Mark S. said the relevant statute cited in *McCormick* allows a town board to approve development of previously filed plats if such plats are undeveloped. Mr. Grosby acknowledged that there is no development on the two plats.

Mr. Grosby asked what difference there was in how the Board reviewed subdivisions and lot line adjustments other than a waiver of a public hearing. It was suggested that the Planning Commission may have to offer an amendment to deal with situations where plats haven't been recorded with the town. Existing regulations provide the Board with waiver authority and to look at the case as a subdivision, looking at the boundary and house site. The assumption is that there are two developable lots with a house site, and less scrutiny than a new subdivision is likely. The Board would have to decide whether building envelopes and house site locations are to be considered in a lot line adjustment. The Board could wait until a new building is proposed and approve the building envelope on the second lot. A question is whether the new subdivision regulations can be applied without calling the application a new subdivision.

David J. said that the old and new regulations set no guidelines other than that a new lot cannot be created via a lot line adjustment. Acting alone, he would see whether both lots met the zoning standards for minimum lot size. He would not have the authority to dictate a house site other than the required setbacks. The lot line adjustment process is more truncated than subdivision, which looks at access roads, wildlife, stream impacts, culverts, etc. A lot line adjustment takes two existing approved lots, and the only thing verified is that a brand new lot is not being created. The presumption is that because it was previously subdivided, it has already met the standards in place at the time and doesn't need further review.

Mark S. observed that under a subdivision, the Board could say the applicant may not subdivide, but that wouldn't be the case with a lot line adjustment.

David J. said that he could not find deeds for the separate lots, only deeds for one parcel of 10 or 10.1 acres. The applicants replied that that was the parcel conveyed to them. The map on file with the state indicates the boundary of the two lots. They would resist consideration as a subdivision, standing on the vested right to subdivide.

Asked whose line is to be adjusted, the applicants said that the line is in the map filed with the state and referenced in town documents. The map has identified building envelopes, setbacks, easements, and everything needed for a subdivision application.

A concern for the Board is the unknown number of similar pre-existing subdivision approvals that could arise. As Mr. Grosby noted, it regularly occurs that a state permit is the only evidence of a subdivision. The Board is concerned with setting a precedent that exempts from review many lots that had limited and varied state permitting in years past, and that might have impacts on landscape and natural resources.

The Board will deliberate the issues and establish a position for the applicants to respond to and decide how they want to proceed. Under the new rules, the Board is supposed to issue direction, grant or denial of request for waiver, provisions, recommendations for proposed changes, whether the subdivision is minor or major, and classification as a boundary adjustment.

Mike K. moved to close the sketch plan review at 8:32 p.m. Hallie T. seconded. There was no discussion. All members voted in favor.

### **III. DRB ORGANIZATION**

#### **1. Adoption of Rules of Procedures and Conflict of Interest Policies**

Mark S. moved to accept the Rules of Procedures at 8:35 p.m. Gib G. seconded. There was no discussion. All members voted in favor.

#### **2. Process for Deliberations and Issuance of Decisions**

The Board should make clear how it comes up with decisions and how responsive it is. A frustration is the timeliness of drafting decisions. Brian will be talking with Valerie Capels and Karl Klein on communication and workload issues for David J. The Board discussed possible mechanisms for circulating and discussing a draft of a decision, and the relative merits of email discussions, and consolidating the input from all the members. Deadlines for edits are important. The Board considered assigning responsibilities to different members.

David J. is in the unique position of being present at both DRB and PC meetings, and he can convey the proceedings of one to the other. His difficulty is in needing uninterrupted time for that work. Some other towns provide four days a week when the Zoning Administrator is available and one day when that office is closed to the public.

Formulating a draft decision in the format of a staff report might help. A challenge is preparing conditions that are precise, detailed, enforceable, and consistent. Preparation of standard text for common conditions would help. It would also help to have a checklist and advice for lay people on how to prepare an application, including, for example, an explanation of what a site plan is. Act 250 administrators have the same issues.

As the DRB becomes the dominant adjudicatory board and the Planning Commission will be reviewing applications less, swapping meeting days with the PC was considered. It might help applicants if DRB meetings were closer to the beginning of the month.

### **3. Election of Officers**

Mark S. nominated Brian Shupe as Chair for the period of one year at 9:03 p.m. Mike K. seconded. All members voted in favor.

Mark S. nominated Hallie Tamez as Vice-Chair for the period of one year at 9:03 p.m. Mike K. seconded. All members voted in favor.

### **IV. APPROVAL OF MINUTES**

Mike K. moved to approve the minutes of the April 24 meeting at 9:07 p.m. Jamey F. seconded. There was no discussion. All members voted in favor.

### **V. ADJOURNMENT**

Mike K. moved to adjourn at 9:08 p.m. Gib G. seconded. There was no discussion. All members voted in favor.

Respectfully submitted,

Mark Peal  
Minute Taker