

**WAITSFIELD DEVELOPMENT REVIEW BOARD  
FINDINGS OF FACT AND NOTICE OF DECISION-  
FINAL PLAN REVIEW**

<b>Application #:</b>	<b>SUB 16-08</b>
<b>Land Owner:</b>	<b>Joseph &amp; Carol Klimek</b>
<b>Representative:</b>	<b>Don Swain, Landplan Inc.</b>
<b>Property Address:</b>	<b>3354 East Warren Road</b>
<b>Parcel Number:</b>	<b>35001.200 in the Agricultural-Residential District</b>
<b>Meeting Dates:</b>	<b>Sketch Plan Review on July 12 &amp; 26, 2016 and Final Plan Review on October 11, 2016</b>
<b>Proposal/Type:</b>	<b>Request for approval to subdivide a 19.2+/- acre parcel (pending a lot line adjustment with abutting property owner Tremper) into two lots: Lot 1 would become a 6.9+/- acre parcel with an existing single-family dwelling and garage; Lot 2 would become a 12.3+/- acre parcel with existing vineyard and proposed building envelope. The subdivision was deemed to be "minor" during Sketch Plan Review.</b>

**I. FINDINGS OF FACT**

1. The subdivision application was considered under the following guiding ordinance and policy provisions:
  - a. Town of Waitsfield Zoning Bylaws, as adopted March 2, 1971 and amended through May 17, 2010, Table 2.07 Agricultural-Residential Zoning District (AR).
  - b. Waitsfield Subdivision Regulations, amended on January 21, 2008.
  - c. Waitsfield Town Plan, as adopted on October 22, 2012.
2. On September 16, 2016, the applicant submitted a subdivision application with narrative and revised site plan.
3. On October 4, 2016, the representative submitted a proposed erosion control plan.
4. The property is a 52+/- acre parcel with existing single-family dwelling, garage, and vineyards. The parcel is identified as #35001.200 in the Agricultural-Residential Zoning District.
5. At the July 12, 2016 Sketch Plan Review for this subdivision proposal, the board reviewed the proposed two-lot subdivision. There is a lot line adjustment in progress which will reduce the parent lot from 52+/- acres to 19.2+/- acres. This proposal is to divide the remaining acreage so that the existing house is on one buildable site, and the existing vineyard is on a second buildable lot. There is a stream on the property, with

slopes of 15 to 20 percent along its banks. Mr. Tremper pointed out that his driveway's easement lines are not depicted on the map presented. The board unanimously voted to continue the sketch plan review hearing to July 26, 2016 in order to perform a site visit the same evening.

6. At the site visit, the site contours were observed and proposed building envelope was flagged; pink and yellow tape marked a line 75 feet from the road, orange tape marks a line 90 feet from the stream bank. It was noted that the proposed envelope is larger than the proposed house site and incorporates a portion of the current vineyard, and that the currently proposed house site is screened by an existing stand of trees. Mr. Swain explained that the stream prevents moving the house further into the woods and leaving more of the open field undisturbed. He also explained that Mr. Klimek plans to take down some older unhealthy trees in the existing stand near the house site, but for the most part leave the tree line in place.
7. At the July 26, 2016 continuance of Sketch Plan Review, board members inquired as to whether Mr. Klimek would consider reducing the size of the building envelope to bring it more in line with the proposed building site in order to provide a more definitive preservation of open space. He explained that he would like to keep various options open, and thus designed the envelope based upon existing rules for building setbacks as they relate to streams, roads, and property boundaries. The board clarified that structures are limited to being located in development envelopes, but that some site development, such as septic systems or regrading/terracing, as well as specified accessory structures, such as agricultural outbuildings, may be located outside an approved envelope. Mr. Swain requested a waiver which would allow him to prepare an erosion control plan, if required.
8. The board voted unanimously to determine that the proposal was a "minor" subdivision at the July 26, 2016 hearing and closed Sketch Plan Review.
9. On August 10, 2016 the board made the following recommendations for Final Plan Review as part of its Sketch Plan Review determination:
  - a. The revised site plan shall depict proposed building envelopes for Lots 1 & 2. The proposed building envelope on Lot 2 shall be reduced; the northern side of the envelope shall align with the large boulder which is south of the existing vineyard.
  - b. The revised site plan shall identify Mr. Tremper's right-of-way over the proposed Lot 2.
  - c. The revised site plan shall identify the existing tree stand between East Warren Road and the proposed building envelope on Lot 2, and any proposed tree cutting.
  - d. The board noted that the site was not particularly erosion-sensitive, so they granted a waiver for the requirement that the erosion and sedimentation control plan be prepared by a licensed engineer. Mr. Swain of Landplan, Inc., is

authorized to prepare the plan.

- e. The board granted a waiver for identification of contours on the site plan.
10. On September 16, 2016, the applicant submitted a subdivision application, narrative, and revised site plan for Final Plan Review per the Sketch Plan Review determination.
11. On October 4, 2016, the representative submitted an erosion control plan.
12. The public hearing on this application was held on Tuesday, October 11, 2016, and was warned in the September 22, 2016 *Valley Reporter* issue. The ZA mailed hearing notices to the abutting property owners on September 21, 2016.
13. The applicant presented the erosion control plan prepared by Mr. Swain, the modified building envelope, and the tree screening area. The board reiterated an allowance for agricultural structures to be constructed outside of the building envelope and behind the existing vineyard.
14. The ZA raised the issue of the pending lot line adjustment, and asked what should happen to that additional acreage if the lot line adjustment fell through. The applicant stated that the intent would be for that acreage to run with Lot 2.
15. The board adjourned Final Plan Review. They stated that a written determination would be issued within 45 days.

## **II. CONCLUSIONS OF LAW**

Based on its review of the application materials, submitted site plans, presented testimony, supporting materials, and Findings of Fact above, the Waitsfield Development Review Board hereby concludes that the proposed subdivision is consistent with the purpose of the Agricultural-Residential Zoning District as defined in Waitsfield Zoning Bylaws (Table 2.07).

## **III. DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, FINAL PLAN APPROVAL for subdivision application #SUB 16-08 is hereby granted, subject to the following conditions:

1. Proposed Lot 1 and proposed Lot 2 are approved. The applicant shall follow the erosion control plan when developing either property.
2. The land proposed as passing to abutting property owner Ted Tremper through a pending lot line adjustment shall remain with Lot 2 if the proposed lot line adjustment is not finalized for any reason.
3. Screening by the existing trees between the Lot 2 building envelope and East Warren Road shall be maintained; select cutting of trees within this grove, to eliminate dead or dying trees, or trees that pose a threat to the new residence, is allowed.
4. In accordance with state statute, AAPs, and the Waitsfield Zoning Bylaws, agricultural structures are allowed to be constructed outside of the approved building envelope.
5. In accordance with the Act [Section 4463], within 180 days of final plan approval under Section 2.4(C), the applicant shall file a copy of the final subdivision plat, for recording in the Town in conformance with the requirements of 27 V.S.A. Chapter 17. The size of

the mylar plat shall be 18" x 24" for recording. Approval of subdivision plats not filed within 180 days shall expire, unless the subdivider requests and receives a 90-day extension from the Zoning Administrator based upon a determination by the Zoning Administrator that necessary final municipal, state, or federal permits are pending but have not been issued.


6. Prior to plat recording, the plat must be signed by two members of the Development Review Board who participated in the issuing the applicable decision of approval. The mylar plat shall contain the following signature line, as required by the Subdivision Regulations:

*"The subdivision depicted on this plat was duly approved, as conditioned, by the Waitsfield Development Review Board in accordance with the Waitsfield Subdivision Regulations and all other applicable laws and regulations on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. Subdivision Permit # \_\_\_\_\_. Signed: \_\_\_\_\_ [for the Development Review Board]."*

7. This DRB decision is subject to any and all applicable State and Federal permit approvals.

Final Plan Approval is based on the submissions and testimony provided during the Sketch Plan and Final Plan Review.

Dated at Waitsfield, Vermont this 1<sup>st</sup> day of November, 2016 for the Town of Waitsfield Development Review Board by:



Chris Cook, Development Review Board Chair

Voting in the Affirmative: Chris Cook, John Donaldson, Chris Jernigan, Mike Kingsbury, Rudy Polwin, and Brian Shupe.

Abstaining: None.

Voting in the Negative: None.

Absent: Gib Geiger.

#### Appeal

Pursuant to Title 24 VSA §4471 and §4472, an interested person who has participated in the review of this application may appeal this decision to the Environmental Division of the Vermont Superior Court by filing a Notice of Appeal directly to the Court, 32 Cherry Street, Suite 303, Burlington, Vermont 05401, by certified mail within thirty (30) days of the date this decision is issued. A copy of the notice must also be sent to the Zoning Administrator or the Municipal Clerk who is required to provide a list of interested persons to the appellant within five days of receipt of the Notice. The appellant is required to send a copy of the Notice, via certified mail, to each interested person.