



TOWN OF WAITSFIELD

# ZONING PERMIT

PERMIT #: SUB-20-10      DATE OF ISSUE: 4/14/21

PROPERTY OWNER: Mavis, LLC

APPLICANT: Mavis, LLC  
*(If other than owner)*

PROPERTY LOCATION: south of Airport Road (06001.000)

APPROVED FOR: Final Plan Approval - Estes Landing 20 unit PRD (amended from SUB04-06). See conditions.

Provided that the person accepting this permit shall in every respect conform to the terms of the application files and conditions of approval granted, and to the provisions of applicable Vermont statutes and the Waitsfield Zoning Ordinance.

THIS PERMIT GRANTED BY THE ZONING ADMINISTRATOR IS SUBJECT TO APPEAL FOR 15 DAYS FROM THE DATE OF ISSUANCE IN ACCORDANCE WITH 24 V.S.A. § 4464.

THIS PERMIT GRANTED BY THE DEVELOPMENT REVIEW BOARD IS SUBJECT TO APPEAL FOR 30 DAYS FROM THE DATE OF ISSUANCE IN ACCORDANCE WITH 24 V.S.A. § 4471.

THIS POSTER MUST BE DISPLAYED IN A CONSPICUOUS PLACE ON THE PREMISES AND VISIBLE FROM THE ROAD DURING THE APPEAL PERIOD AND THROUGHOUT CONSTRUCTION.

BY: *Ann O'Neil*, Waitsfield Zoning Administrator



## **DEVELOPMENT REVIEW BOARD FINDINGS OF FACT AND NOTICE OF DECISION**

<b>Application #:</b>	<b>SUB20-10 (Final Plan) Estes Landing</b>
<b>Landowner:</b>	<b>Mavis, LLC</b>
<b>Property Address:</b>	<b>south of Airport Road (access to the west of 149 Airport Rd)</b>
<b>Parcel Number:</b>	<b>06001.000 (the proposed ~28 acres included in the project site located in the Agricultural Residential District)</b>
<b>Meeting Dates:</b>	<b>Sketch Plan Review on November 10, 2020 Site Visit &amp; Preliminary Plan Hearing on January 12, 2021 Final Plan Hearing on March 23, 2021</b>
<b>Proposal/Type:</b>	<b>Final Plan for Planned Residential Development proposed on 28-acre project site. The application is an amendment of a previously approved PRD (SUB04-06) for which an updated Sketch Plan application was also submitted in 2018.</b>

### **A. GUIDING ORDINANCE and POLICY PROVISIONS:**

1. Waitsfield Subdivision Regulations, amended on January 21, 2008.
  - a. Article 3 (Subdivision Planning & Design Standards)
2. Town of Waitsfield Zoning Bylaws, as adopted March 2, 1971 and amended through September 28, 2020.
  - a. Table 2.07 Agricultural Residential District Standards
  - b. Section 5.04 (Planned Residential Development Review)
3. Waitsfield Town Plan, as adopted on September 26, 2016.

### **B. MATERIALS SUBMITTED**

1. On February 22, 2021, the applicant submitted a complete Final Plan Application form, fee, project narrative, draft condo association bylaws, draft declaration of condominium, project site plans, stormwater plan, approved state wastewater/water permit, and approval letter from the Waitsfield-Fayston Fire Department.
2. On March 4, 2021, staff received an Act 250 notice
3. On March 12, 2021 the applicant submitted an approved stormwater discharge permit and associated construction erosion approval.
4. On March 29, 2021 staff received an approved Act 250 permit

### **C. FINDINGS OF FACT:**

1. The project area includes 28 acres south of Airport Road, currently part of parcel #06001.000 and located in the Agricultural-Residential District.

2. The property owner received Final Plan approval for the original 8 parcel, 24-unit PRD from the Waitsfield Planning Commission on June 21, 2005 (SUB04-06).
3. The project included the subject 28-acre project site, subdivided into 8 parcels, 6 identified for residential development, parcel 7 identified as open space (~13.28 acres), and parcel 8 as the location for wastewater disposal for the entire development (7.48 acres). The 6 residential parcels were intended to each have 4 residential units. The project received Act 250 approval, including a project amendment, on March 8, 2007.
4. The 28-acre project area includes deer wintering area on most of the site as well as prime agricultural soils. The original subdivision was approved with these factors in mind as the open space was found to help protect the wildlife habitat onsite and the Act 250 decision considered the presence of agricultural soils and required as a condition of approval (condition #14 in the amendment) that an “off-site mitigation agreement” be submitted to the District Environmental Commission before any of the original lots were conveyed. The access road to the development was installed and exists onsite.
5. In 2018 the applicant submitted an updated Sketch Plan application that included modifications to this proposed project site for more residential units. The DRB determined the project would require Major Subdivision Review. A Preliminary Plan application was never submitted for the change.
6. The applicant is now requesting an amendment to the original SUB04-06 project for 20 single family residential units to be clustered on a common lot and sold for condominium units. The project retains a similar layout to the original subdivision including 13.5 acres of protected wooded forest land to the west and 7.5 acres preserved to the east which will also include the wastewater system for the development. The new project includes about 6 acres of total residential development land and about 22 acres of protected land.
7. A Sketch Plan meeting was held on November 10, 2020 and the DRB determined that the project would be reviewed as a Major Subdivision.
8. A Site Visit was held on January 12<sup>th</sup>, attended by the Development Review Board, the applicant (TJ Kingsbury), the applicant’s engineer (Chris Austin with Grenier Engineering), and the PZA.
9. A Preliminary Plan public hearing was held on January 12, 2021 and a Preliminary Plan decision was issued on February 8, 2021 with conditions.
10. A Final Plan public hearing was held on March 23, 2021. The abutting property owners were sent notice on December 18, 2020 and the notice appeared in the December 24, 2020 issue of *The Valley Reporter*.
  - a. A public comment was received from Zach Sargent via email before the hearing (on March 2<sup>nd</sup>, 2021) and included in the meeting packet. Mr. Sargent was concerned about the impacts of increased traffic on the condition of Airport Road as he finds the road already gets too dusty.
  - b. A public comment was received from Doug Hall via email on the day of the hearing and read onto the record by the PZA. Mr. Hall was also concerned about

the impacts of development on Airport Road as he finds the road is extremely dusty from the current use.

- c. Eve Silverman, a Fayston resident, attended the meeting but did not have any comments.
11. PRDs are subject to review under [Section 5.04](#) of the Zoning Bylaws and [Article 3](#) of the Subdivision Regulations. This project is also subject to the standards found in [Table 2.07](#) which apply to development in the Agricultural Residential District.
12. The applicant proposes 20 residential units on the 28-acre project site and has not requested any density bonuses for the proposed PRD. The density and project area comply as proposed.
13. The uses proposed include 20 single family dwellings and the draft Declarations of Condominium also allow for home occupation uses. The open space includes a plan for recreation trails, to be coordinated with the VT Department of Fish and Wildlife. The uses proposed are permitted in the Ag-Res District and within PRDs.
14. There are 21 total acres of open space proposed, totaling ~73% of the project site. The minimum required is 60%. The leach field is in the eastern 7.5 acres of open space, as included with the previously approved PRD. The leach field takes up less than half of this area. The 60% open space requirement requires at least 16.8 acres of open space for this project which is still met.
15. The buildings as proposed are located within an identified development envelope, bound by the setbacks of the district as well as wetlands and their associated buffers. The plan includes the 20 specific building footprints for the condo units. The development envelope maintains a ~100ft front setback, 300+ ft on both sides, and a 25ft rear setback (Unit 12 is the closest). The condo units would be considered “zero lot lines” which support clustered development.
16. The development envelope as proposed is designed to protect wildlife habitat onsite. The applicant has provided over 20 acres of open space for the preservation of deer yard on the property and continues to work with VT Fish and Wildlife to ensure protection of deer and wildlife habitat onsite. Trail design is taking place in conjunction with VT Fish & Wildlife. The applicant also confirmed that the draft condo declaration addresses the need to control dogs in the deer yard area.
17. There are ag-soils on a majority of the project site and previous Act 250 approval included ag-soil mitigation requirements. An amended Act 250 application has been submitted to the state.
18. The applicant submitted a copy of the approved wastewater/potable water permit issued by the state on January 21, 2021, subject to conditions (Permit #WW-5-2862-2).
19. An 80’ to 100’ naturally forested buffer will be maintained along Airport Road and the open space area surrounding the development envelope will be left in forest. Some landscaping is proposed within the development envelope. The Board determined that the proposed plan provides adequate screening and landscaping.

20. Section 3.4 of the Subdivision Regulations requires that stormwater management systems shall be designed by a VT licensed engineer in accordance with accepted stormwater treatment practices. On March 12, 2021 the applicant submitted an approved stormwater permit from the state (Permit #4468-9050), including an approval for erosion control during construction.
21. Section 3.5 of the Subdivision Regulations sets standards for emergency service facilities. As a condition Preliminary Plan approval, the DRB required that the applicant consult with the Waitsfield-Fayston Fire Department to ensure that adequate safety facilities are available onsite including emergency access and fire protection (adequate water, etc.). On March 4, 2021 the applicant submitted an approval letter from the Waitsfield-Fayston Fire Department for the development as proposed, updated to include a fire truck pull off between Units #14 & 18, as included on the updated Site Plan.
22. Section 3.6 identifies standards for road design and road construction standards. This includes detail on road and right of way widths, road surfacing, intersection detail, and road names. The applicant submitted details on the internal roads and driveways as part of the stormwater plan and confirmed that all roads will be constructed to the relevant A-76 road standard. The DRB determined that the plans were drawn by an confirmed that the plans and detail provided were appropriate, but requested that the road details and site plan legend be updated to clarify the language used to describe each road section (internal roads vs. driveways).
23. The applicant presented updated detail on proposed traffic impacts on Airport Road. Traffic impacts are determined based on peak hour vehicle trips. The project was originally approved with 13 trips predicted during peak traffic hours, with 122 total trips generated throughout the day. With the project scaling down to 20 units, the applicant now projects 11 peak hour vehicle trips, with a total of 102 trips throughout the day. Act 250 review also includes a traffic/road capacity analysis with a typical trigger of 75 peak hour vehicle requiring additional studies. VTrans was able to provide turning movement count data for North Fayston Road and explained that if Airport Road has similar or lesser traffic volume than Airport Road, there would be no concern about the added capacity. Based on the provided information the Board determined that no additional traffic studies or mitigation are needed at this time.
24. The Board addressed the questions and concerns about the condition of Airport Road. Staff confirmed that Airport Road is included on the Town's Paving Plan, which ranks road paving by road condition. Airport Road is currently slated to be paved in 2025, with other roads in worse condition ranked higher priority at this time. The DRB also determined that this project results in a reduction of units from 24 to 20 which will result in less of an impact than what was already permitted onsite.
25. The applicant confirmed that all proposed utilities will be located underground, and that the location of these lines will be shown on the Final Site plan.
26. Section 3.9 of the Subdivision Regulations requires that a long-term ownership and maintenance plan be identified for any open space and that all costs associated with

maintaining this land is the responsibility of the application and subsequent landowners. The applicant provided a draft “Declaration of Condominium” and Condo Bylaws for the PRD identifying all open space as common land to be maintained/managed by the condo association.

27. The applicants presented a phased development plan for the project, outlining that it is likely that roadways, utilities, and associated units will be built in steps. The proposed phasing plan is as follows:
- a. **Phase 1-** Units 1-5,
  - b. **Phase 2-** Units 6-10
  - c. **Phase 3-** Units 15-20
  - d. **Phase 4-** Units 11-14

The applicant requested that the Board consider some flexibility in the phasing scheduled depending on demand. The DRB found that this is an appropriate request, so long as a plan is in place to ensure that infrastructure is built before units are permitted.

28. On March 29, 2021 an Act 250 Permit was issued for the project (5W0147-22F).

#### **D. CONCLUSIONS OF LAW**

Based on its review of the application materials, submitted site plans, presented testimony, and the Findings of Fact above, the Waitsfield Development Review Board hereby concludes this application as proposed, and when finalized and implemented with the modifications and conditions below, does meet the appropriate criteria of the Waitsfield Zoning Bylaws and Subdivision Regulations and is in conformance with the Waitsfield Town Plan.

#### **E. DECISION**

The Final Plan Application for SUB20-10 (Estes Landing PRD) is hereby approved, subject to the following conditions:

1. Before the Final Plan is recorded, the Site Plan legend shall be updated to clarify the identification of different private road sections (internal roads vs driveways, etc.) which shall correspond with any road detail and as-built plans.
2. All issued state permits shall be recorded in the Waitsfield land records before the Final Plan is recorded.
3. The Final Declaration of Condominium and Final Condo Association Bylaws shall be recorded in the Waitsfield land records before the Final Plan is recorded.
4. The applicant may phase the development on the timeline appropriate for the project (either the plan as included in these findings, or an amended phasing plan appropriate at the time of development). A Certificate of Compliance shall be required for each phase. The Certificate of Compliance application shall include the submittal of “As-Built” drawings of all roads and utilities in the phase, prepared by an engineer. The application shall be reviewed by the PZA and Development Review Board, including a site visit. No zoning permits shall be issued for the development of any units or structures in any phase of the PRD until a Certificate of Compliance has been issued by the PZA for that phase.

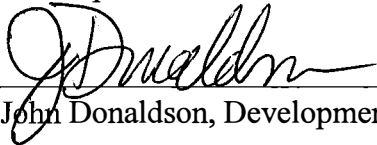
5. The Selectboard shall review and approve all new private road names before signs are installed or addresses assigned.
6. The Planning & Zoning Administrator shall be notified of any updates to the existing access/curb cut from the existing development road onto Airport Road before work commences onsite.
7. There shall be no cutting of trees in the naturally forested buffer along Airport Road except for dead or diseased trees. The Planning & Zoning Administrator shall be notified at least 10 days before a dead or diseased tree is removed from the buffer.
8. This approval is subject to any and all applicable local, state, and federal permit approvals.
9. 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.
10. Prior to plat recording, the plat must be signed by two members of the Development Review Board who participated in 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 \_\_\_, 21\_\_.*  
*Subdivision Permit # \_\_\_\_\_.*

*Signed: \_\_\_\_\_*

*Signed: \_\_\_\_\_ [for the Development Review Board]. "*

Dated at Waitsfield, Vermont this 14<sup>th</sup> day of APRIL, 2021 for the Town of Waitsfield  
Development Review Board by:



John Donaldson, Development Review Board (Vice Chair)

Voting in the Affirmative: Duncan Brines, John Donaldson, Gib Geiger, Steve McKenzie, and JB Weir.

Abstaining: None.

Voting in the Negative: None.

Absent: Chris Cook and Rudy Polwin

**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 Vermont Environmental Court by filing a Notice of Appeal directly to the Environmental Court, 255 North Main Street, Barre, VT 05641, 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.**