

**TOWN OF WESTFORD**  
**DEVELOPMENT REVIEW BOARD MINUTES**  
**Minutes for April 28, 2010 Meeting**  
Approved on May 12, 2010

**Board Members Present:** Tony Kitsos (Chair), Dick Heaps, Jason Hoover and Don Maddocks.

**Board Members Absent:** Eric Jacobsen and Gene Hallman.

**Also Present:** Melissa Manka (Planning Coordinator), Richard Mathieu, Linda Mathieu and David Burke.

The meeting began at approximately 7:16 p.m.

**Notice of Re-Opened Public Hearing for Final Plat Amendment – Linda Mathieu:**

Linda Mathieu, Richard Mathieu and David Burke were present.

David began by explaining the amendment was originally heard on February 10<sup>th</sup>, the hearing was reopened on March 24<sup>th</sup>, and a response to the DRB's request to take evidence as to whether the amendment meets the Stowe Club Highland Criteria was submitted on April 20<sup>th</sup>. David said the Stowe Club Highland Criteria came from an Act 250 decision and the Hilderbrand decision confirmed that use of the criteria was appropriate at the municipal level.

David said he reviewed the tape and minutes from the September 10, 2008 amendment public hearing to enlarge the building envelope on Richard Mathieu's lot. He said the Planning Commission at that time did not discuss access to the accessory structure and the driveway was not depicted on the site plans. David said he believes the condition stating all structures on Richard's lot must be accessed by Mathieu Road was an afterthought. Therefore, the condition is not integral to the decision and review of the amendment under the Stowe Club Highland Criteria is not justified. David said the proposed driveway is superior to the approved access and has better site distances.

Tony asked David to speak specifically to the three Stowe Club Highland Criteria.

David reiterated that he does not believe the condition stating all structures on Richard Mathieu's lot must be accessed by Mathieu Road is integral to the decision, because an access driveway to the barn wasn't depicted on the 2008 site plans. Therefore, review under the Stowe Club Highland Criteria is not justified. However, he believes his client meets criteria number one because the approved access is inferior to the proposed access. Furthermore, the approved driveway could not be constructed due to the divorce of Casey and April Mathieu who own property to the north of Richard's lot. The second criteria is met because the location of the accessory structure was unknown at time of approval and after the structure was constructed the proposed driveway was decided to be the better access. Lastly, his client recently received a State wastewater permit for the wastewater system located on Linda's lot which allowed them to remove a replacement wastewater area depicted on the 2003 wastewater plans. The State wastewater permit was necessary to correct a violation, but the revision made it possible for his client to construct the road near the primary wastewater system, with a guard rail on its eastern side of the road to protect the system. Therefore, David said he believes his client meets all three criteria.

Dick asked where in the Stowe Club Highland decision did it state the issue under criteria review

must be crucial or integral to the original decision.

David said it was his interpretation of the decision, but he also believes the term “integral component” is used in the decision.

Don said the structure at the rear of Richard’s lot was approved as an accessory structure. Don read the definition of accessory structure. He informed the Applicant that a driveway was not required to be depicted on the original site plans for the enlargement of the building envelope because access is shown to a building envelope, not all structures within said envelope, and it is common sense that use of any additional structure would need to be accessory and connected to the permitted and primary use of the property. Therefore, a common access is expected for a use such as this. Don said what is being proposed is more incidental to Linda’s lot.

David said the regulations do not prohibit access of accessory structures by a separate driveway and the regulations do encourage shared access.

Don asked why the accessory structure can’t be accessed by Mathieu Road.

David said it is possible to access the structure by Mathieu Road, but the access over Linda’s lot is superior. Furthermore, if they were to add a use to Mathieu Road they would need to amend the State access permit.

Melissa said if the structure is accessory to the residential use of the lot an access permit would not be required because the use of the lot would not be affected.

David said a permit would be required.

Tony asked why the Applicant didn’t propose this access in 2008 when Richard received approval to enlarge the building envelope.

Richard said he didn’t know where he would locate the barn at that time.

David also said the road couldn’t have gone in the proposed location due to the location of the replacement wastewater system on Linda’s lot.

Don said the accessory structure on Richard’s lot seems more appropriate for Linda’s lot as opposed to an expansion of the use of Richard’s lot. Don then asked what the barn was going to be used for.

David said it is accessory to Richard’s lot and it would be used to store Richard’s personal equipment. He said Richard’s brother, who lives in the dwelling on that lot, will also use the structure for storage.

Richard asked why the access was such a big issue.

Tony said the 2008 amendment to increase the building envelope on his lot included a condition which stated all structures on the lot shall be accessed by Route 128 and now there is an amendment before the DRB asking approval for the constructed roadway accessing Richard’s lot off Westford-Milton Road, which is in violation of the 2008 condition. Therefore, an amendment to cure the violation is necessary and use of the Stowe Club Highland Criteria is justified. He went on to say the DRB re-opened the hearing to grant the Applicant the opportunity to justify the request for amendment approval.

David said they were shocked the hearing was re-opened because there didn’t seem to be an issue with the project on February 10<sup>th</sup> and it appears as though the concern came after the Town Attorney reviewed the proposal during deliberative session. He said he didn’t think it was fair they couldn’t review correspondence between the Town and the Town Attorney.

Melissa said it was attorney-client privilege.

David asked if the attorney was going to review the draft decision.

The DRB said they have 45 days to deliberate and can use the services of the Town Attorney during that time.

David asked if Gene and Eric were going to participate in the decision.

Tony said if they chose to review the materials, minutes and tapes of the hearing they could participate in the decision.

David said they had no issue with Gene and Eric reviewing the materials and participating in the decision.

Jason said he was not at the February 10<sup>th</sup> hearing but he did review all the materials, tapes and minutes from the hearing. No objections to his participation were heard.

The hearing was opened to the public and no comments were heard.

Dick MOVED to close the public hearing.

Don SECONDED the motion.

The motion PASSED: 4 – 0.

**Site Plan & Conditional Use Review – Applicant: Telephone Operating Co. of VT  
(FairPoint) Owner: Donald & Dale Pouliot:**

Dick MOVED to continue the public hearing until May 12, 2010.

Jason SECONDED the motion.

The motion PASSED: 4 – 0.

**Minutes of the April 14, 2010 Meeting:**

The DRB will discuss the minutes at their next meeting.

**Other Business:**

**Appointment of Officers**

Jason MOVED to appoint Tony Kitsos to the position of Chair.

Don SECONDED the motion.

The motion PASSED: 4 – 0.

Tony MOVED to appoint Don Maddocks to the position of Vice Chair.

Jason SECONDED the motion.

The motion PASSED: 4 – 0.

Dick MOVED to appoint Eric Jacobsen to the position of Clerk.

Tony SECONDED the motion.

The motion PASSED: 4 – 0.

**Deliberation: Final Plat Amendment – Linda Mathieu Property:**

The DRB deliberated on the amendment application and decided to ask Gene and Eric to review the information presented and participate in the decision.

Tony MOVED to adjourn. Jason SECONDED the motion.

The motion PASSED: 4 - 0.

The meeting adjourned at approximately 8:34 p.m.

Submitted by,

Melissa Manka, Planning Coordinator