

**Starksboro Development Review Board  
Hearing/meeting minutes**

**6/22/2017**

Dan opened meeting at 7:30 PM

DRB Members present-Dan Nugent, Chair, Ben Campbell, Marjorie Dickstein, Rob Liotard, Arnell Paquette and Rich Warren.

Others: Kerry Kurt, Bill Coon, Peter Marsh, Dennis Casey, Jeff Keeney and Dave Wetmore (ZA)

**I. Review of Minutes:**

6/8/2017- Ben moved minutes as corrected, Marjorie 2nds, approved 4-yes, 0-no. Rich and Arnell abstained. Dave will correct and Dan will sign on Monday.

**II. Adjustments-** Town of Starksboro/Kerry Kurt BLA discussion will be conducted prior to review of Hogback Heaven decision.

**III. Visitor Business-** none

**IV. Scheduled public hearing/ DRB Business**

**1. Kit and Karen Harris, application #2017DRB-02-SP/CU, request to hold up to 10 yearly outdoor recreational events, i.e. festivals and concerts. This hearing is continued from 4/27/2017 and 5/25/2017.**

Dan- read the notice and opened hearing. Applicant is not present. Applicant informed the ZA that he posted the notice on 6/19/2017. Dave confirmed that it was in place on 6/22/2017.

**Rob moved to continue the hearing on 7/27/2017 at 7:45 PM, Ben 2nds. DRB approved hearing date 6-yes, 0-no.**

**Other Business-**

Old Business-

**1. 2016DRB-02-BLA- The Selectboard has asked the DRB to review the survey and approve the final mylar from decision #2016-02-BLA. Dave took minutes but did not record the discussion as it is not a public hearing.**

Dan- explained that the Selectboard is seeking the DRB approval and sign off of the Mylar to be recorded. Dan acknowledged that the DRB decision was issued last July 2016 and the based on State Statute 24 VSA 4463(b) which Dave has furnished, the DRB approval has now expired.

Dave- stated that while the decision did not refer to the Statute, all Board decisions regarding the filing of a plat has always been subject to 24 VSA 4463. Further, the DRB has in the past reopened a decision to affirm the subdivision (with proper notice) and applicant has submitted new Mylar for recording.

Kerry Kurt and Peter Marsh- challenges the language in the Statute and suggests that the 180 days does not start until the Board approves the final draft which includes the conditions. Peter agrees. Kerry expressed that as a past legislator it is her opinion that the Board is not interpreting the Statute correctly.

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Peter- also suggests the wording of the DRB approval refers to a future approval once the conditions of approval are met.

Marjorie- states that one could read the DRB that the DRB's decision does suggest that the approval is not final until the conditions are met. She expressed this was not the DRB's intent but it does appear to be worded that way. If this is the case one could conclude that the 180 day clock has not started. Rob and Rich agree. It is the future tense of the wording that creates a problem

Rich- asked Dave if this is one of those situations, if 4 members sign the plat that it would be approved. Dave stated that it takes a quorum of the DRB (4 members) to approve an application. If they did it might be a violation of State law.

Dave- asked if the logic behind Kerry's and Peter's comments are accepted, does a decision ever expire? Is the hearing open until a Mylar is signed or conditions are complied with? How about the DRB appeal period? This would be almost impossible to manage. If it's the BLA is open still when does the appeal period begin. This situation is unusual, interpreting the decision and the Statute in this way would be total counter to DRB practices.

Marjorie- is in general agreement with Dave's points but she feels that the way the decision is worded states that the 180 days may not start until the conditions are met. **Marjorie moved to accept the plat as presented. No 2<sup>nd</sup> – motion died.**

Dennis Casey- it is his opinion that the DRB's intent was and always has been that the 180 days start from the date of decision. He believes the Statute is clear, and sets a time limit on the Boards approval. Conditions are always part of an approval, they are not open ended. There is a purpose behind the Statute. An approval cannot be open for years waiting for conditions to be met.

Peter- feels the DRB should sign. As presented the proposed plat (paper copy) complies with the conditions of the DRB decision. Kerry agrees and further states the DRBs own approval supports this action. Dan states that is not technically true, the DRB does not have a draft copy of the deed nor are the corner pins set.

Rich – asked if the Selectboard has met to discuss the language in the Statute. Not specifically, but Peter stated that the Town through the Selectboard (SB) are the sellers and there are conditions of the sale that need to be met. This is one of them. The SB is just trying just to get their tasks in order.

Tony Porter- the DRB is a separate Board and the SB is not trying to compel the DRB to sign or deviate from their accepted practice. The SB is asking whether the survey as presented complies with the Board's conditions.

Bill Coon- compares this decision to a condition regarding a fence, it's in the future to be completed. If it's not completed its not compliant.

Dennis and Jeff- reiterated the review process, application, public notice, hearing, decision, then a 180 days. It's a legal process that is outlined in Statute and gives all parties a place and purpose in the process.

Rob- asked if the plat presented tonight complies with the Boards conditions regardless of the 180 days. Do we agree this BLA should be allowed?

Dave- acknowledged that the survey presented complies with most of the conditions of the Board. Today, Donald Johnston left him an e-mail message about the internal roads represented and that the pins will be set before the Mylar is presented. He can have a Mylar available next week.

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Dan and Ben- their concern is that the Statute is clear and that the Mylar needs to be recorded within 180 days of the Boards decision. The approval is reflected in the decision dated July 28<sup>th</sup>. Why has it taken so long to get this to the Board? Ben does not feel the DRB has the authority to sign the Mylar.

Dan- so how do we move ahead?

Dave- expressed that he believes that the Boards approval has expired.

Marjorie- Send back to Selectboard and possibly Town Meeting. The Boards decision was badly worded. She favors leaning toward the Boards conclusion that it was the decision to let the BLA take place with conditions.

Peter Marsh- Decision and approval should be read literally and ignore the intent behind the decision.

**Ben- moved to acknowledge that the Boards decision has expired pursuant to 24 VSA 4463. Arnell 2nds. Motion voted down 3-yes and 3-no. Needs 4 members to vote in the affirmative to move.**

Bill Coon- asked if the decision to approve, based on 24 VSA 4463, would go against past Board practices.

Rich- does not feel this would set a precedent, but the wording of the Boards approval is not clear. We need to be careful how decisions are worded in the future.

**Rich moved to approve the survey presented as it meets to conditions outlined as #2, #3 and #4. Marjorie 2nds.** Discussion- Ben read conditions 2, 3 and 4. Pins are not set. Dave shared surveyors comments related to the internal roads.

Dan noted the deed restriction language has not been presented. The signature on the Mylar will complete the Boards approval and it is the last piece, and therefore all conditions should be met.

Rich- unsuccessful vote on Ben's motion demonstrates that there is difficulty with the wording of the decision.

Ben- reflected on the reason for condition #3.

Dennis- if the Board's decision in July 2016 was not an approval, what did they approve?

Dan- suggests that he would like to have a lawyer look at this decision, other than the Towns attorney.

Rob- the DRB has never confronted this situation. It would be good to have an attorney look at this. What should the appropriate language be? Bill and Jeff suggest an out of town attorney who has no biases or conflict of interest.

**Rich and Marjorie- with draw motion. No action.**

Peter- asked if a new application/hearing is warned does that need to be publically noticed. Dave stated yes and it would likely take another 2 months.

Tony- asked is the new Regulations allow for the ZA to approve BLA administratively. The SB would then have to withdraw and reapply? Dave noted that he did not feel the SB would need to withdraw, as it is his opinion that

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the Boards approval has expired. The answer to Tony’s question is the Regulations do allow for the ZA to act administratively on BLA requests.

Rob and Marjorie would like a legal opinion on this topic. Our decision need to be clear and avoid this problem.

**Rich- offers his motion to approve, again, the survey presented as it meets to conditions outlined as #2, #3 and #4. Rob 2nds. Motion to approve fails 3-yes, 3-no.**

Dan- expressed that the DRB will not act to sign off on the Mylar. Dave should handle administratively. Discussion concludes at 9:10.

**2. 2017DRB-05-SD/PP- major 3-lot SD request by Hogback Heaven Farm, Peg Kamens and Jim Mendell. This is the preliminary plat hearing.**

DRB reviewed draft preliminary plan. Marjorie moved to approve with corrections. Rob 2nds. Approved 4-yes, 0-no. Rich and Arnell abstained. Dave made corrections and Board signed.

**Adjournment**

**Ben moved to adjourn at 9:35 PM, Rob 2nds. So moved 6-yes, 0-no.**

DRAFT

Date:\_\_\_\_\_

Approved:\_\_\_\_\_