Town of Hinesburg
Development Review Board
October 1, 2013
Approved 10/15/13

Members Present: Zoe Wainer, Dennis Place, Kate Myhre, Ted Bloomhardt, Greg Waples, Dick Jordan, Sarah Murphy.

Members Absent:

Also present: Peter Erb (Zoning Administrator), Alex Weinhagen (Director of Planning & Zoning). Representing Applications: Matt & Judy Laberge, Mike Skinner.

Public Included: Gary & Fiona Fenwick, Tonia & David Bouchard, Diantha Francis, Judy Laberge (of Charlotte), Richard Francis, Bill Moller.

Zoe W. chaired the meeting, which was called to order at 7:31pm.

Minutes from 9/17/13:

Zoe W. **made a motion to approve as amended** the minutes from 9/17/13. Dick J. **seconded the motion.** The motion was approved **7-0.**

Matt & Judy Laberge (Appeal of Notice of Violation, continued from 9/17 meeting) –The appellants are appealing a noise violation that was issued by the Zoning Administrator under Section 5.12.1 of the Hinesburg Zoning Regulations. This property is located at 852 Hayden Hill West in the Rural Residential 2 Zoning District.

Dennis P. recused himself from this hearing.

Zoe W. explained that the hearing was continued from the 9/17 meeting because substantial new written material was submitted by Gary & Fiona Fenwick at the end of the 9/17 meeting. Zoe W. explained that the Board wanted time to review this, and that the Board wanted other interested parties to have time to review and respond to this. Alex W. handed out written comments recently received from the appellants and from Judy Laberge of Charlotte.

Zoe W. asked the appellants if they had any comments. The appellants summarized their written comments. They reiterated that they feel their motorcycle use is usual and customary, and that they have implemented several measures since the original 2007 noise violation – e.g., fewer motorcycles, reduced duration of riding, and limited frequency of riding.

Greg W. asked the Fenwicks to clarify their understanding of the level of motorcycle use. There was agreement between the Fenwicks and the Laberges with regard to the number of bikes being ridden (two motorcycles, two distinct noises) and the number of days the bikes were ridden this summer (approximately 8 times). The two parties differed on the duration of riding on any given

day. The Fenwicks said the riding went on for 1-2 hours. The Laberges said each of their two children would ride for about 25 minutes, possibly adding up to about 1 hour of total riding.

Zoe W. asked Peter Erb for clarification on the duration of the 80+ decibel readings cited in his notice of violation. Peter E. explained how he received readings and related information from the Fenwicks as well as Peter's direct observations on one occasion.

Ted B. explained his perspective regarding neighbor activities, and his feeling that while the noise may be loud, he feels the frequency of only 8 times throughout the summer is not unreasonable. Greg W. said he feels differently. He feels that this level and character of noise (e.g., whining of engines accelerating) at the frequency and duration described is unreasonable. Greg said the nature of the track contributes to making the noise problematic due to the tight turns, jumps, and banks that cause the motorcycles to accelerate more often.

Matt Laberge said he felt three times in seven weeks (as outlined in the notice of violation) is not unreasonable. He said that even if the track was not used, his family would still ride on the property, and that the 2007 DRB decision indicated this would be usual and customary in rural residential areas. He feels the issue is not the track but the noise levels. Gary Fenwick said that the 88 decibel level is annoying. Fiona Fenwick said that she finds the noise to be unreasonable.

Tonya Bouchard related her experience with neighbors who generate noise in her neighborhood from recreational backyard uses. She said there are many hobbies and residential recreational uses that create noise.

Peter E. said the definition of "customary" is clear, but that this determination does slowly change over time. He said that some use of motorized vehicles is probably a customary use; however, he said that the motorcycle use is not usual and customary in Hinesburg. Furthermore, he doesn't think that the motorcycles being used by the appellants are usual and customary because they are designed for racing. Judy Laberge of Charlotte, asked if the Laberge family is prohibited from riding on their track, will this prohibition also extend to others in town who have motorcycle tracks.

Fiona Fenwick reiterated that the motorcycles in question are racing bikes that generate 88 decibels at her property line. Alex W. reminded the Board of the Fenwick's offer to host a site visit to their Richmond Road property for a demonstration of motorcycle noise. Zoe W. said she doesn't require a site visit, and that she feels a site visit at an alternate location would be problematic. Greg W. agreed that a site visit to an alternate location would not be useful.

Dennis P. disagreed with Peter Erb's interpretation of motorcycle use not being a customary residential activity in Hinesburg. Dennis P. said he has lived in Hinesburg for 45 years, and he and all of his siblings have used motorized vehicles and made plenty of related noise. He said the real issue is the need to find compromise, rather than a zero tolerance policy on noise.

Ted B. made a motion to close the public hearing and take the matter up in deliberative session at the end of the meeting. Greg W. seconded the motion. The motion passed 6-0.

Federal Home Loan Mortgage Corporation & Mike Skinner of Lang McLaughry Real Estate
(Conditional Use Review – Removal of a barn built before 1940) The applicants are requesting retroactive conditional use approval for the removal of a barn that was built prior to 1940. Conditional use review/approval for removal of such structures is required by section 5.22.3 #1 of the Zoning Regulations. The property is located at 32 Silver Street, tax map number 20-50-42.000. The property is owned by the Federal Home Loan Mortgage Corporation, and is being listed by Mike Skinner of Lang McLaughry Real Estate. Mike Skinner was present at the meeting to represent the applicant.

Dennis P. rejoined the Board.

Kate M. asked for clarification on the possible outcomes of this review since the building in question has already been removed. Peter E. said he was unaware of this particular situation happening in the past. Zoe W. asked if the Town had done any landowner education/outreach to make people aware of this regulatory provision. Peter E. and Alex W. said doing some education/outreach is a good idea, and that they weren't aware of any being done in the past. Peter E. and Alex W. discussed some of the possible rationale for the regulation – e.g., historic preservation, ability to document historic structures prior to removal, preservation of village streetscapes and building scale, etc.

Ted B. noted that he drives by the property every day, and didn't notice that the barn had come down. He noted that the barn was set back from the house at the end of the driveway. Peter E. noted that the perspective new owners may be interested in building a new structure on the previous barn site, but that this is complicated because the barn was non-complying with regard to setbacks. **Ted B. made a motion to close the public hearing and direct staff to draft approval language with suitable conditions for consideration at the next meeting. Dennis P. seconded the motion. The motion passed 7-0.**

Other Business:
DRB Decision Revision Error. Alex W. explained that Planning & Zoning staff had made an error in finalizing the decision language for the Town Police Station site plan approval. At the July 16, 2013 meeting, the Board reviewed draft approval language for the police station project. This was done under Other Business at the end of the meeting – but in open session. The Board discussed and agreed to make several revisions to the draft approval language. Unfortunately, when staff finalized the decision language the next day, staff neglected to include a condition of the Order that had been discussed. Both the meeting minutes and the VCAM video indicate that the Board wanted a condition that said the Town had to work out the stormwater system agreement with the Creekside Association prior to the issuance of a building permit. Finding of Fact #18 and Conclusion #5 of the final decision support this; however, the final signed decision does not contain this condition, and unfortunately, the building permit for the police station was issued before the error was discovered. It just so happens that the stormwater agreement is still being negotiated. Alex W. said that he has no doubt that the Town will work out this agreement in good faith (the Town Attorney is actively working on it), but per the DRB discussion, this should have happened before issuance of the building permit.

Alex W. said that going forward, he and Peter E. will continue to work together at the meetings to take notes on decision language revisions. After the meetings, Peter E. will finalize a decision based on those notes and recollection by using MS Word's Track Changes feature so that the revisions are readily apparent. Alex W. will then proof the Track Changes document decision to make sure it squares with his notes and recollection. Only after that will staff accept the changes, print the decision, and have the final version signed. Staff will provide the Board signer of decisions (Zoe, Dennis, or Kate – but usually Dennis) with both the final version for signature and the Track Changes version so he/she can readily see what changes were made before signing.

Deliberations on Federal Home Loan Mortgage Corporation & Mike Skinner of Lang McLaughry Real Estate

The Board discussed the application and provisions that should be in the decision language. The findings of fact or conclusions should deal with the conditional use standards – i.e., no adverse affect on… A conclusion should be included to instruct the Board to consider historic architectural features if another building is proposed where the barn was located – especially if the owner applies to retain the non-complying setback condition from the original barn. The approval should contain a condition that any new structure in the location of the barn that retains any of the original, non-complying setback shall return to the DRB for conditional use approval.

At 8:55pm, Zoe W. made a motion to go into closed deliberative session to discuss the Laberge appeal. Greg W. seconded the motion. The motion passed 7-0.

Peter E. and Dennis P. left the meeting before the closed deliberations began.

The meeting adjourned at 9:30pm.

Respectfully Submitted,
Alex Weinhagen – Director of Planning & Zoning