Town of Hinesburg
Development Review Board
May 6, 2014
Approved 5/20

Members Present: Zoe Wainer, Dennis Place , Sarah Murphy, Ted Bloomhardt. Dick Jordan, Greg Waples. , Kate Myhre arrived at 7:33pm.

Also present: Alex Weinhagen (Director of Planning & Zoning), Peter Erb (Zoning Administrator) and Freeda Powers (Recording Secretary). Representing Applications: George Bedard, Rob Farley, Brian St. Cyr.

Public Present: Elly Coates, Gill Coates, Kim Coates, Bill Moller.

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

Minutes from 4/15/14:

Zoe W. **made a motion to approve as amended** the minutes from 4/15/14. Dennis P. **seconded the motion.** The motion was approved **5-0.** Greg W. abstained as he was not present at the 4/15 meeting.

Lawrence & Cynthia Caron: The applicants are requesting Preliminary Plat approval for a 3-Lot PUD on their property located at 274 Richmond Road in the Rural Residential 1 District.
George Bedard represented this application on behalf of the Carons. The Board viewed the parcel via maps on the projector. George B. demonstrated that the Open Space designated on the parcel exceeds the minimum requirements. He went on to note that each house site will have individual pipe easement from Lot 2- Lot 3 for sewer. Lot 1 gives up gravity feed to sewer in exchange for a pump.

George B. also noted the access road easement and said power will run down the access road on the right and on the south side of the driveway to Lot 3. The vault there will serve residence for Lots 2 &3. The primary power will then be brought back to the corner.

There is an existing drilled well on Lot 1 and the proposal calls for drilled wells for Lots 2 & 3. On the left side of the access road, there will be room for gas connection from the north side of Richmond Road. Outside of the 40' strip (for gas & power) will be a 10' strip for the water line easement should the opportunity to connect to the town source occur prior to the well drilling.

George B. said he has been in conversations with staff regarding the Open Space on this application; specifically concerns that the 30' strip along Lots 2 & 3does not fit the definition. He said without this strip, the parcel still meets the requirements for Open Space and suggested the strip be described instead as a wooded buffer with intent to remain as such.

Staff comments suggest that the Community Facility aspect of this proposal, the proposed 100' wide strip connecting to the Richmond Road ROW, be wider. George B. said Mike Anthony (road foreman) will further discuss this with staff.

Regarding an Open Space Management Plan, George B. suggested dealing with invasive species like Poison Parsnip with a years-long regular mowing plan (like a hayfield; brush hogging). He said the alternative to this is a chemical treatment which they prefer to avoid.

George B. noted that the building envelope on Lot 3 does not get into the areas designated by the state as Class 3 wetlands.

Zoe W. thanked George B. for addressing all of the concerns raised. She said she had no specific questions and opened the discussion to public comments or questions. There were none. Peter E. noted that the east side ditch is sometimes dry and that the final Conditions should acknowledge this; should it ever act to exacerbate existing run off issues on adjacent sites to the south, it will need to be addressed.

Zoe W. made a motion to close the public hearing and direct staff to draft approval based on **tonight's discussion.** Greg W. seconded the motion. The Board voted 7-0.

Rob Farley: The applicant is requesting a conditional use permit for a dog sled tour business to be operated from his property. This property is located at 1088 Texas Hill Road in the Rural Residential 2 Zoning District. **Site Visit prior to the meeting, at 6:00pm. Public Welcome. ***Ct'd from 3/18***

Zoe W. began by describing Board observations from the site visit. Present for the site visit were: Greg W., Sarah M., Zoe W., Dennis P., Ted B., Andrea B., and Alex W. In addition, John Villiveau (neighbor to the West) and the applicant, Rob Farley were present. Together, they met up at the Farley home, looked at the existing pole barn and met the sled dogs. They observed some trees around the run and a roof over the kennel. The area of roof estimated at 20'X30' and an additional area estimated at 14'X16' with a few of the kennels positioned outside of the roofline. Across and up the hill, the group made their way up to the Cunningham property. They faced out across the valley while the dogs went through their feeding routine. Zoe W. said she did not hear much at this visit, some barking but not to the level she was expecting based on the discussions she has been hearing.

Dennis P. asked the applicant if the feeding routine they witnessed and activity from the dogs at the site visit was what normally takes place. The applicant said yes; typically there are about 4 dogs that bark during feeding time, the rest are older and know the routine well enough to sit quietly and wait.

Zoe W. said upon arrival, it was clear the dogs were excited and she could hear a few of them vocalizing. Alex W. noted it seemed at the site visit that the dogs were barking individually, one at a time rather than all at once. Rob F. said when they go out with food or when someone drives up to the property, the dogs will typically vocalize, get excited, and then settle down. Sometimes, he said, they will let some of the dogs out to run in the fenced area to help calm and settle them. He said typically feeding time takes about 20 minutes and play time around 1-2hrs.

Zoe W. noted that the Board was in receipt of some late submission comments (from Bob Linck & Elly Coates) and asked if there were any final notes. Rob F. said his letter submitted to the Board tries to address staff comments. He voiced his concerns with staff comments regarding no disturbance of any kind at any time, saying this seems to him to be an impractical standard in society. He also voiced his concerns with staff comments regarding the Burden of Proof (which falls to the complainant). He said there is nothing in the town Ordinances that specifically addresses frequency. The group howl, which the Board did not hear on their site visit, is what carries but at what frequency would this be considered a disturbance or problematic? He said in the worst case scenario, the dogs are vocalizing maybe 1% of the total day (15 minutes). He does not see that as frequent. He also noted how other kennels and animal

control officers handle this and addressed how well the business fits into the surrounding area in terms of aesthetics. In that respect, he said, the Act 250 review does address the emotional impact of a project. The applicant asked Alex W. to speak to his comments in the staff report which state that "a strong case could be made that the project does in fact violate a clear written standard" which he disagrees with. He said there is no clear standard. The only community standard applicable here would be the Animal Control Ordinance 4.1, which again raises the question of frequency. The applicant also questioned staff reference and application of the Quechee Test in the staff report. Zoe W. said she feels the reference to the Quechee Test was simply staff's way of giving the Board a way to look at the issue. It is but one tool to assess a project. Alex W. concurred, saying it is not part of case law but is another way of thinking through something. He said he does not disagree with the applicant's assertion that the standard is a difficult one to meet but said that is the way it is written. In addition, Alex W. said, the Quechee Test and Act 250 review are related to general Conditional Use standard criteria. One of those is undue adverse impacts. He said one could argue that the Cunningham's is not an adjacent property and therefore concern #2 as listed in the staff report does not apply.

Sarah M. asked the applicant to go over again what mitigation has been done to this point. Rob F. said they have changed from feeding twice a day to once a day, added lights to the kennel to flicker as a tool to quiet vocalizing dogs, added water hook up to the kennel to use spraying as a tool to quiet and calm excited dogs. He said his family is concerned with the money and time required to install fencing as suggested by the Cunningham's as they feel there is a good possibility that as with the other mitigations they have put in place, fencing will not satisfy the complainants. In addition, he said, it seems unlikely that further mitigation will change the sound of the dogs. He feels that the Cunningham's have no tolerance and won't truly be satisfied unless the dogs are removed completely.

Greg W. said while he also has an affinity for dogs, one aspect of disturbance is noise. He said this is a function of the number of dogs on site. He suggested perhaps then, a limit on the number of dogs may be one way of addressing this issue. Rob F. said while there are kennels that are very large (upwards of 40 dogs) he has no desire to have that count. He said they have never had more than 20 dogs at one time and typically fall in the range of 12-15 dogs at any given time.

Sarah M. noted that on the site visit she observed where 5 additional trees were planted. The applicant said yes, adding that there have already been 9 trees planted in an attempt to create a sound barrier.

Andrea B. asked from the audience if the night time noise from the dogs occurs frequently. Rob F. said it is hard to say, at times they hear the coyotes howling, and sometimes the female sled dogs go into heat which causes the males to be more vocal and excited. There are many variables, he said.

Kim Coates spoke from the audience, saying during the site visit, she could not hear the dogs.

Zoe W. said she feels it will always be something; a female dog in heat, a coyote in the woods, people driving up, some disturbance to get the dogs vocalizing and excited. As a business, how do you mitigate the spikes in activity of the dogs? Rob F. said these are animals, suggesting one doesn't try to regulate the sounds of sheep, cattle, roosters, or other animals found in a rural setting. Gill Coates spoke from the audience, saying some businesses are in a position to better control when their business peaks and thus the related noise or traffic are elevated temporarily, but they still have those peaks.

The applicant voiced his frustration that he had previously been told that he did not need a permit. All of the business is conducted off-site. He said that getting approved for a Home Occupation will likely not increase his training time on-site. It may allow him to offer the occasional cart ride but that ultimately, he prefers to take customers to alternative locations. He said the kennels can serve in an educational aspect

as well. Occasionally, boys from the Howard Center have come up to work with the dogs. In this sense, too, he said, the dogs have had a positive influence. A permit would allow him to do this, but the business he runs will look very much the same as it does now. He respectfully asks that if mitigation is required for permitting, the Board make their requests reasonable.

Peter Erb (Zoning Administrator) spoke to the applicant's comments regarding permitting. He said while it is true that the site did not require a permit a few years ago, that was his personal evaluation; the Board may question that if they see fit.

Dick J. voiced his confusion as to the matter that lay before them. This is not a business review. Alex W. clarified that it is not the Board's purview to determine whether or not a home occupation permit is required, that is the Zoning Administrator's purview.

Dennis P. said that at the site visit, he did not hear anything that was unreasonable.

Ted B. said he feels there should be some limit on the number of dogs allowed. Dick J. said that seems reasonable to him as well. Dennis P. said when the dogs have litters, he doesn't want to see the applicant be put in violation due to the temporary spike in the number of dogs on the property. The applicant said they do not have litters that often, perhaps 5 in the past 20 years but said that they do typically keep at least some of those pups to replenish the pack as older dogs retire from the team. Dick J. suggested a limit of 25 dogs at any given time and asked if the Farley's would feel comfortable with that. The applicant said likely yes, reiterating that they have no desire to be a large kennel of 30-40 dogs and indeed would prefer to subcontract before owning that many dogs on their own. A team for them consists of 8-10 dogs. They asked the board to consider the age variance as some dog's age out of the job of sled dogging and new young ones fill in the ranks.

Zoe W. made a motion to close the public hearing and take up the matter in closed deliberative session. Sarah M. seconded the motion. The Board voted 7-0. Zoe W. reminded the applicant that the Board now has 45 days to render a decision.

Brian & Penny St. Cyr: Two-Lot Subdivision Final Plat – The applicant is seeking Final Plat approval for a 2-Lot subdivision on a 9.85 acre parcel on the west side of Rte. 116 and the north side of Tyler Bridge Road. This property is located at 58 Tyler Bridge Road in the Agricultural Zoning District. ***Ct'd from 4/1***

The Board reviewed comments submitted by George Bedard on the Order. The building envelope on Lot 3 is irregular and therefore getting someone to survey it in the future could be time consuming and unexpected for a future owner. Therefore, staff had suggested it be done now. George B. said the existing residence shall be limited to the approved building envelope and that no expansion or replacement of that residence (a trailer) is proposed at this hearing. He asked that staking of the building envelope on Lot 3 be done when and if that occurs.

The pipeline on Lot 4 was made visible this spring with snow melt. There is 53' to the east side of the pipeline easement and 50' to the south. The easement language is clear that no future development shall interfere.

Dick J. raised his concern with the depth of the below ground pipe. George B. said there is a note to insulate the pipe should a driveway ever be built over it.

Dick J. asked if the applicant will be pinning the Lot 3 building envelope. George B. said there are no plans yet, but that might change. Dick J. said there is currently none? George B. said that is right. He is showing one tonight as requested.

Ted B. said the site appears to be bounded by easements and setbacks on three sides. George B. concurred. Zoe W. asked is there a way to provide measurements from the house itself? Peter E. said it is not impossible to define the envelope with pins. George B. said they can have instructions for pinning to clearly define the dimensions for that building envelope on Lot 3 in the final Mylar. Peter E. said the more dimensions available from a survey the better.

George B. said in the deed to Lot 4, the language will note that Lot 1 has access to the easement from the north side of Lot 4's mound or south side through the setback to pass equipment through, etc. Zoe W. asked about road association language, does that need to be done now? George B. said Order #3 proposes that the deed and road association documents be reviewed and coordinated as the lots are transferred or sold. He asked that the Board include this in a Condition. Zoe W. asked why the applicant is hesitant to address this now. George B. said there are no buyers lined up at this time and there remains time for staff to review such documents. He said while it can be done in advance, it makes sense to him to do it at the time of transfer. Greg W. said while he understands what George is saying, it seems to him more efficient to get it in with the final approval. George B. suggested the road improvements be done with the proceeds of the first sale, prior to the C.O. for the residence on Lot 4. Zoe W. asked if there were any other questions or comments regarding this application. There were none.

Zoe W. made a **motion to close the public hearing and direct staff to redraft approval.** Greg W. **seconded the motion.** The Board voted **7-0.**

Zoe W. made a **motion to go into closed deliberative session to discuss the 4 Hannaford applications, the Balchiunas, Farley and St. Cyr applications.** Greg W. **seconded the motion.** The Board voted **7-0** and went into deliberative session at 9:16pm.

The following motions were made in Closed Session:

Zoe W. made a **motion to approve the Balchiunas sketch plan approval as amended.** Ted B. **seconded the motion**. The motion passed **7-0.** Sarah M. left the meeting after the Balchiunas decision was finalized.

Zoe W. made a **motion to approve the Hannaford related subdivision revision approval as written** for the internal lot line change for 1987 Giroux Building Supply subdivision. Greg W. **seconded the motion.** The motion passed **6-0.**

Greg W. made a **motion to approve the Hannaford related subdivision revision denial as amended** for the Automotion site plan revision. Dennis P. **seconded the motion.** The motion passed **6-0.**

Zoe W. made a **motion to approve the Hannaford related subdivision revision denial as amended** for the Lot 15 land transfer. Greg W. **seconded the motion.** The motion passed **6-0.**

Zoe W. made a **motion to approve the Hannaford related site plan denial as written** for the Aubuchon site plan revision. Greg W. **seconded the motion.** The motion passed **6-0.**

The meeting adjourned at 10:30pm.

Respectfully Submitted,
Freeda Powers---Recording Secretary