

DRAFT MINUTES
DEVELOPMENT REVIEW BOARD
CALAIS TOWN HALL
TOWN OF CALAIS, VERMONT
December 7, 2022

MEMBERS PRESENT: Anne Winchester (Chair), Ryan Edwards (Vice Chair), Dot Helling (Clerk), Willa Farrell, Dennis Shaffer, Candi Smith, Scott Bassage (alternate). Quorum established.

MEMBERS NOT PRESENT: Stephanie Kaplan, Ashley Moore (alternate), Megan Sullivan (alternate).

OTHERS PRESENT: John McCullough (Zoning Administrator), Stephen Reynes, attorney for applicant, Jason Morefield, assistant to Cindy Hill, attorney for interested neighbors. See also Interested Persons Record List and Other Attendees, copy attached.

RE: Public Hearing on CKC Holdings, LLC, Final Plan Application for Major Subdivision #2022 -8 for 4-lot subdivision on Bayne-Comolli Road, Parcel ID 101197.

Chair Anne Winchester called the hearing to order at 7:06pm, after explaining the “how to” of signing in and identifying oneself as an “interested person.” Chair Winchester confirmed that no Board members had conflicts of interest and no ex parte discussions regarding the case. She then swore in those intending to testify. Winchester then reported that the evidence taken and arguments heard in the preliminary review hearings as set forth in the Development Review Board (DRB) decision dated June 10, 2022, based on that evidence and those arguments, stand and are on the record, and that only new evidence and/or argument would be considered at this hearing.

The applicant CKC Holdings, LLC (hereinafter “CKC”) has filed for final approval including a request for reconsideration of three conditions in the preliminary decision: (1) a request to remove or limit the limitation on development of Lot 4; (2) a correction of the reference to the school bus by changing County Road to Dugar Brook Road as Bayne-Comolli Road does not intersect with County Road; and (3) changes to the fill requirements for the shared drive and roadway. Request (2) accepted as this was a topographical and typographical error.

Paul Olander, an interested neighbor, contested the ability of the DRB to reconsider its limitations of development on Lot 4 and presented comments he had received from Attorney Cindy Hill who represents a group of neighbors but was unable to attend. Attorney Hill’s assistant Jason Morefield was in attendance and confirmed Hill’s submission. Olander read into the record the email containing Attorney Hill’s opinion written to interested neighbors dated December 5, 2022 and the legal citations therein, copy attached. Stephen Reynes, attorney for CKC, questioned the propriety of presenting Attorney Hill’s opinions when he had not been copied, being attorney of record for CKC. He requested the opportunity to counter and was told he would get the opportunity.

CKC then presented a brief overview of what they have done since the preliminary approval and how they have addressed the conditions. Chris Connor explained that the timeline has shifted out a year, reiterated CKC’s intent not to develop Lot 4, and checked off the conditions they have complied with including a revised forest management plan, curb cut permit, right of way easement, wetlands permit, acceptance of the trucking limits with a question about how to record activity, acceptance of the road

limits and school bus condition etc. He summarized the reconsideration requests CKC is making. Marge Garfield questioned whether or not Lot 4 was now to be considered as a single lot owned by a separate entity. ZA McCullough explained that all the lots under consideration are one parcel being considered for a major subdivision. The subject parcel is defined by its current boundaries and will not become a new, separate parcel until subdivided.

Chair Winchester moved on to consideration of the criteria pursuant to the Town of Calais Land Use & Development Regulations Article 6. Subdivision Review, and starting with Section 6.9 General Standards including (A) Character of the Land, (B) Conformance with Calais regulations, (C) District settlement patterns and (D) Lot layout. She requested new evidence, if any, regarding the Forest Management Plan and CKC's reasoning for requesting reconsideration of the conditions on Lot 4. Chris Connor testified that the Forest Management Plan which is part of the final application was revised as requested including removing the three original exclusionary zones under use value appraisal, establishing proposed Lots 1, 2 and 3 as exclusionary zones, and establishing regeneration plans for the previously excluded areas.

Attorney Reynes spoke to the reasons for CKC's request to reconsider the restrictions set on Lot 4. First he suggested that the DRB's Preliminary Decision dated June 10, 2022 was not a final decision and therefore was not appealable to the Environmental Court and that including the "right to appeal" paragraph after signatures on the decision was an error. CKC wants Condition 2 in the preliminary decision removed based on the following claims: (1) that the project as proposed meets the purposes and goals of the Calais Town Plan and the goal of balancing housing and the natural environment; (2) that the Calais regulations put a cap on such restrictions and that the condition as scripted sets a limit in perpetuity whereas the Town Plan sets caps on such restrictions at 8-10 years and that the DRB should follow the plain language of the Plan; and (3) that this restriction defies land use policy and would set a bad precedent for others if restriction to development is so limited that any future proposal would be subject to future knowledge and conditions and not what exists presently. Reynes further argued that zoning laws are against property interests, citing In re Weeks, and that the DRB must decide in favor of the property owner if the regulations are ambiguous. He said the DRB cannot suppress owner rights, and that this restrictive condition lacks the essential nexus between government action and property development.

Dot Helling asked why restrictions on Lot 4 are an issue when CKC claims it has no plans to develop Lot 4 yet won't accept a restriction on doing so. Emily Connor stated that they do not want to set a precedent for future development. Marge Garfield pointed out that Lot 4 would be exempt from further DRB review if it became a single lot owned by a separate entity, and subject only to Zoning Administrator approval if developed in the future whereas the condition against further development requires that review go back to the DRB. Paul Olander expressed concern that if Lot 4 is an unrestricted and separate lot that the owners of Lot 4 could come back and propose housing development (ie. up to three houses) without DRB review. He then read into the record his three-page letter to the DRB, copy attached. CKC generally objected to these representations, Attorney Reynes requested and was provided with a copy of Olander's letter.

Still on criteria 6.9, Marge Garfield asked whether the Town Plan's goal to balance development and regulation in rural residential areas speaks to the edges of the property as opposed to the edges of the resource, which constitutes more than one lot. Chair Winchester clarified that this was something the DRB considered in granting preliminary approval.

Chair Winchester then moved onto criteria under Section 6.11 Common Land and the conditions imposed there. The shared driveway/roadway is proposed as the only common land. Chris Connor testified to

the preparation of the required right of way easement, copy included in their application (Declaration of Road Covenants & Right of Way for Lots Subdivided by CKC dated November 9, 2022), and the fact that it was near ready for signatures and recording. He noted that the agreement includes the requirement that only clean fill be used with a gravel surface and that salt and other de-icing compounds not be used, as was a condition of the DRB's preliminary approval.

Next CKC was asked to address criteria under Section 6.12 Stormwater Control and Erosion Management. Kris Jurentkuff, Project Manager with Chase & Chase Surveyors & Septic Designers, Inc. talked about the certification dated October 4, 2022 included in the CKC application. Chase & Chase prepared the erosion control plan for both the house and road construction sites, including areas in the project subject to State wetlands and erosion control jurisdiction. He explained that the project is phased and described it as a "low risk" project, and that it will follow the standards of the Vermont State Low Risk Site Handbook for Erosion Prevention and Sediment Control.

Jurentkuff further explained that the project is subject to State construction plans and that State General Permit #17 will issue when the project commences construction and that all other permits are or will be in place. He stated that only the swales, culverts and outfall protection will pose some impact to the environment but these will be minimal. Criteria 9 (A) through (C) are addressed in the certification letter and plans included in the CKC application.

The DRB took up criteria under Section 6.13 Facilities, Services and Utilities, sections (A)-(D). The only questions had to do with fire protection facilities and access for emergency vehicles. The letter from the East Montpelier and Woodbury Fire Departments dated September 15, 2022, included with the application, states that there is "access on a limited basis" because of the width of the roadway. The proposed roadway is 12 feet wide whereas the NFPA guideline recommends a 20 foot wide access. CKC had approached the former Fire Chief prior to presenting their preliminary plans and was told the 12 foot proposed roadway would be acceptable, however, this opinion was not put in writing before the former chief retired. CKC proceeded based on this understanding. CKC will have pull-outs along the roadway. Other parts of Calais have limited access as well. Terry Van Veghten said his property is serviced by the Woodbury Fire Department (Calais does not have one) and it was confirmed that both East Montpelier and Woodbury signed the letter. Section 6.5(K)(1) requires that the proposed roadway or drive be "accessible to emergency vehicles." Section 6.13(B) states that the DRB "may solicit recommendations from the fire departments serving Calais."

Chair Winchester asked if anyone wanted to offer new evidence under the criteria of Section 6.15 Legal Requirements. No one offered any.

Lastly, the DRB took up the criteria under Section 6.14 Roads Sections (A)-(K). CKC has requested a waiver of the A-76 standard which requires a subbase depth of 15" minimum. CKC is proposing a minimum 9" depth to minimize impacts under the wetlands permit. This change will cut the amount of fill in half as well as the number of trucks needed to haul it. The cost will also be half as much. Kris Jurentkuff pointed out that the A-76 standards were designed with public roads in mind, ie. roads which must be maintained at public expense. Therefore, the standards design the roads to ensure minimal maintenance. He argued that, since the road in question will be maintained by the applicant, there is no need to protect the public from maintenance expenses since these will be paid for by the property owners. The new plan showing the cross-section for this fill was presented, copy attached.

Denise Wheeler, a resident on Bayne-Comolli Road, expressed concern about the number of trucks allowed per day, 15 pursuant to the preliminary finding, and asked why such a limit. She feels it to be

too high given the road conditions and the existence of disabled and older residents, and that this number poses safety concerns and will impact road conditions particularly at certain times of year, eg. mud season. Chair Winchester stated that this was the number presented by the applicant at the preliminary hearing and the number was accepted given no opposition at the time. No further testimony on these criteria was taken as determined to be included in the application materials and preliminary findings of the DRB.

Motion and second were made to move into deliberative session and the hearing was temporarily recessed at 9:03pm. The DRB returned at 9:17pm and Chair Winchester reported the following:

Counsellors Stephen Reynes and Cindy Hill have until December 16, 2022 to file arguments regarding the issue of the finality of the preliminary findings and decision and whether or not those findings and decision are subject to reconsideration.

The DRB will resume its deliberative session on December 21, 2022 at 6pm.

The final hearing will recommence on January 5, 2023 at 7:00pm. If the DRB is able to reach a decision without further information before this date, the hearing will be held solely for the purpose of formally adjourning the hearing. Public notice will be posted as required.

Upon motion and second this hearing was recessed at 9:25pm.

Respectfully submitted, Dorothy (Dot) Helling, DRB Clerk

ATTACHMENTS (these are posted on the Town of Calais website)

1. Interested Persons Record and Other Attendees List, December 7, 2022;
2. Letter from Cindy Hill, Esq. (3 pages) to Calais subdivision neighbors dated December 5, 2022;
3. Letter from Paul Olander (3 pages) read into the record on December 7, 2022; and
4. Proposed Driveway Cross-Section presented by CKC.