

Town of Calais
Development Review Board

Re: Permit Application 2020-18
Janet Ancel
Stephen Reynes
270 Old West Church Road
Kent's Corner Design Control District
Calais, Vermont 05648

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On July 29, 2020, the Calais Development Review Board issued a decision on the above application approving construction of a new house on a 3.33 acre lot in the Kent's Corner Design Control District. The decision was entered at the Town Clerk's Office on July 30, 2020.

On August 27, 2020, Craig Line, a nearby adjoiner who participated at the July 9, 2020 DRB hearing on the application, filed a Motion to Recuse DRB Members and a Motion to Reconsider. On September 1, 2020, Attorney Michael Tarrant, on behalf of the applicants, filed a response to the Motion to Recuse and Motion to Reconsider.

24 V.S.A. Section 4470(a) provides for a DRB to consider an appeal or request for reconsideration that was filed within 30 days of the decision. It requires that the decision on reconsideration be rendered within 10 days of the date of filing of the motion.

On September 2, 2020, after public notice, the DRB convened a special hearing for the purpose of considering the motions of Mr. Line. The hearing was held via Zoom. DRB members participating were Margaret Bowen (Chair), Art Edelstein, Ryan Edwards, Stephanie Kaplan, and Denise Wheeler.¹ Attending in addition to the DRB members and Clif Emmons who hosted the Zoom video, were Craig Line, the applicant Stephen Reynes and his attorney Michael Tarrant, and 46 Calais residents. An attendance list is attached as Appendix A. All those wishing to speak were sworn in. Of those attending, in addition to Mr. Line and Attorney Tarrant, the following people spoke: Elisabeth Shedd, Walt Amses, Olivia Gay, and John Brabant.

The DRB also received letters from Calais residents, most of which expressed support for the applicants. Some of the letters expressed the desire that the DRB would uphold the permit and not reconsider. The DRB appreciates these sentiments. But other letters contained personal attacks against both Mr. Line and Ms. Wheeler. It was clear from some of the letters and comments made at the hearing that some people do not understand the process that is provided by law in quasi-judicial proceedings such as those conducted by the DRB that are for the benefit of both applicants and interested persons.

¹ Two of the DRB members who had participated in the July 9 DRB hearing subsequently resigned from the DRB and a new member, Stephanie Kaplan, was appointed.

The DRB also regrets that some Calais residents do not understand both the legality of and the policy reasons for having members of various town boards also sitting on other town boards. It is extremely helpful for people on town boards to have first-hand knowledge of how the other town boards function. Such a practice in fact is encouraged by knowledgeable members of organizations that deal with municipalities.

Motion to Recuse

Mr. Line argued in his Motion to Recuse DRB Members Margaret Bowen and Art Edelstein that they showed they were prejudging the merits of the application by remarks they made during the DRB's deliberations following the hearing. According to the Calais Conflict of Interest Policy, it is up to the board members to determine if they have a conflict of interest or are biased against any parties to a proceeding.

Both members stated they did not believe they prejudged the merits of the application and declined to recuse themselves.

Timeliness of Motion to Reconsider

Attorney Tarrant argued in his written response that Mr. Line's motion was not timely filed because more than 30 days since the date of the decision had elapsed. After considering Attorney Tarrant's arguments and the oral and written public comments, the DRB concludes that the motion to reconsider was filed within 30 days of both the decision and the entry of the decision by the Town Clerk.

Citing several Vermont Supreme Court decisions, Attorney Tarrant argued that "the appeal period is triggered by the date of the decision." *In re Mahar Conditional Use Permit*, 2018 VT 20, ¶ 13. In that same paragraph, the Court continued: "[T]he period begins to run when judgment is entered." The Court then cited another case in which it had ruled "that the 30-day appeal period began to run when the municipality mailed the applicant a copy of the applicable minutes, thus placing the party on formal notice of the determination it might wish to challenge." *George v. Timberlake Assocs.*, 169 Vt. 641, 642 (1999) (mem.).²

Thus it appears that according to the Supreme Court, the 30-day period for filing for reconsideration or appealing can be variously triggered by either the date of the decision, entry of judgment, or mailing the decision to the parties.

Notwithstanding Attorney Tarrant's ingenious argument that the operative date of the decision is when the final member that constitutes a quorum signs it, the DRB believes that a decision is issued when all members of the DRB have signed it. This is consistent with the practice of the Vermont Supreme Court. There, decisions are final only after all members have signed them, including those in the majority and any dissents.³

² Sometimes DRB decisions are contained in minutes that are sent to the parties.

³ However, Denise Wheeler's comment in the decision was not a dissent but rather an expression of concern about some aspects of the process at the hearing.

Therefore the DRB's decision to approve the application became final on July 29 when the last member signed, or July 30 when the decision was received and stamped by the Calais Town Clerk, an action similar to entry of judgment in that that is the date the decision becomes public. The Motion to Reconsider filed on August 27 was within 30 days from either of those dates. Therefore, the Motion to Reconsider was timely filed and the DRB will consider whether to reconsider.

Motion to Reconsider

The only issue raised in the Motion to Reconsider was that because two members of the DRB had made comments indicating they had prejudged the application in favor of granting it, the DRB should remove them and reconsider and issue a new decision on the application.

As stated above, according to Calais's Conflict of Interest Policy it is up to the individual members to determine whether they believe they can fairly consider an issue. While the DRB regrets that some comments were made that could be construed to have prejudged the application in favor of the applicants, because the individuals involved disagree with that characterization of their comments and believe they can fairly rule on the issues raised in Mr. Line's motions, they may continue to participate.

The DRB has reviewed its decision in this matter with the final date of July 29, 2020.⁴ We do not find an objective basis to alter the decision. No new issues were raised that would require a new hearing, nor have we received any new information which would compel a new hearing or any changes in the decision. Thus we decline to reconsider the decision.

The DRB wishes to be clear that its decision not to reconsider is based on our consideration of the July 9 hearing and our review of the decision and is not based in any way on the accusations directed at Mr. Line and Ms. Wheeler in correspondence sent to the DRB by some Calais residents. We realize that it may not seem fair that an applicant who followed the proper procedures and received a permit may still have to wait to begin construction until motions are heard and resolved and the applicable appeal periods have run. It can be very frustrating for permit applicants and their friends. However, Vermont law establishes certain procedures and due process rights for all participants in land use permit proceedings, and boards such as the DRB are required to follow them. Personal attacks on those you disagree with are neither warranted nor productive in a proceeding such as this and serve only to create divisiveness in the community.

⁴ The recently appointed DRB member Stephanie Kaplan watched the video recording of the July 9 hearing and has read the DRB's decision.

TOWN OF CALAIS
DEVELOPMENT REVIEW BOARD

**Re: Permit Application #2020-18
Janet Ancel (Applicant)
Stephen Reynes (Applicant)
270 Old West Church Road
Kent's Corner Design Control District**

ATTACHMENT A

1. Clif Emmons (Selectboard/Technical Facilitator)
2. Margaret Bowen (DRB, Chair)
3. Art Edelstein (DRB, Member)
4. Ryan Edwards (DRB, Member)
5. Stephanie Kaplan (DRB, Member)
6. Denise Wheeler (DRB, Alternate)
7. Anne Winchester (DRB, Alternate)
8. Janice Ohlsson (DRB, Alternate)
9. John McCullough (Assistant Zoning Administrator)
10. John Brabant (Selectboard, Member)
11. Stephen Reynes (Applicant)
12. Michael Tarrant (Applicant's Attorney)
13. Craig Line (Appellant)
14. John Brabant (Selectboard, Member)
15. David Schutz (DAB, Member)
16. Allyson Evans (Resident)
17. Barbara Butler (Resident)
18. Barbara McAndrew (Resident)
19. Barbara Weedon (Resident)
20. Bill Davis (Resident)
21. Brian Burns (Resident)
22. Carolyn Morton (Resident)
23. Catherine Lowther (Resident)
24. Catherine Reed (Resident)
25. Chris Miller (Resident)
26. Christen Andersen (Resident)
27. Cornelia Carey (Resident)
28. Donna Fitch (Resident)
29. Elisabeth Shedd (Resident)
30. Fletcher Dean (Resident)
31. Grant Fair (Resident)
32. Greta Lowther (Resident)
33. Hasso Ewing (Resident)
34. Jamie Moorby (Resident)
35. Judy Bingham (Resident)
36. Judy Robert (Resident)
37. Katie Reed (Resident)
38. Larry Bush (Resident)
39. Lesley Bean (Resident)
40. Linda Schutz (Resident)
41. Maggie Thompson (Resident)
42. Martha Deiss (Resident)
43. Mary Jane Ohlsson (Resident)
44. Meg Dawkins (Resident)
45. Molly McCreedy (Resident)
46. Naomi Reed (Resident)
47. Nel Emlen (Resident)

48. Nick Emlen (Resident)
49. Olivia Gay (Resident)
50. Paul Hannon (Resident)
51. Paul Ohlsson (Resident)
52. Richard Jenney (Resident)
53. Richard Maizell (Resident)
54. Ruth Porter (Resident)
55. Sam Potter (Resident)
56. Sarah Gallagher (Resident)
57. Toby Talbot (Resident)
58. Walt Amses (Resident)

**Town of Calais
Development Review Board**

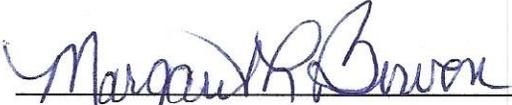
Request for Reconsideration

Re: Permit Application 2020-18
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ORDER:

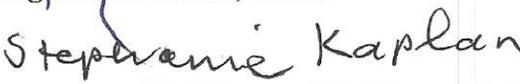
For the reasons set forth above, the Development Review Board concludes that Mr. Line's motions for recusal and reconsideration were timely filed and Denies the Request for Reconsideration on Application #2020-18.

Members of the Calais Development Review Board



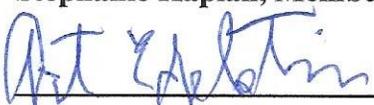
Margaret L. Bowen, Chair

Dated 9/4/20



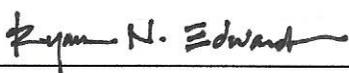
Stephanie Kaplan, Member

Dated 9/5/20



Art Edelstein, Member

Dated 9/4/20



Ryan Edwards, Member

Dated 09.03.20



Denise Wheeler, Alt Member

Dated 9/5/2020

NOTICE: This decision may be appealed to the Environmental Division of the Vermont Superior Court by an interested person who participated in the proceeding(s) before the Development Review Board. Such appeal must be taken within 30 days of this decision, pursuant to 24 V.S.A. §4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.