

Town of Londonderry, Vermont
Development Review Board
Meeting Agenda

Wednesday, July 15, 2020 – 5:30 PM

Meeting will be held remotely online with no physical presence - see information below

1. Call Meeting to Order
2. Additions or Deletions to the Agenda
3. Minutes Approval – Meeting of June 17, 2020
4. Public Hearings as warned:

Application 2020-21 by the Connecticut River Conservancy for property owner Ski Magic, LLC, requesting Conditional Use Review per Zoning Bylaw sections 205(H) and 503 for the proposed removal of an unused dam located within a Flood Hazard Overlay District on the Thompsonburg Brook, on Parcel 070004.000, in the vicinity of VT Route 11.

5. Other Business
 - A. Update on appeal of Application 2019-42 (VT Woodchips Real Estate Holdings, LLC)
6. Next regular meeting date – Wednesday, August 19, 2020
7. Adjourn

Meeting may be attended remotely as follows:

Join Zoom Meeting: <https://us02web.zoom.us/j/86189720843>
By Phone: 929-205-6099
Meeting ID: 861 8972 0843

It is strongly recommended that potential participants familiarize themselves with Zoom software (<https://zoom.us/>) prior to the meeting as the Board will not dedicate time to educating the public in its use.

Posted and Distributed on July 10, 2020

Town of Londonderry, Vermont Development Review Board

Regular Meeting Minutes
Wednesday, July 15, 2020

Note: This meeting was held remotely online with no physical presence – all attendees participated by video or phone, per the instructions provided in the public hearing notice and in the agenda posted in advance of this meeting, as indicated within these meeting minutes.

Board Members Present: Esther Fishman Chair, Denis Pinkernell Co-Chair, Paul Abraham, Terry Hill, John Lancaster, Chris Laselle. **Board Members Absent:** Bob Maisey.

Others in Attendance: Town Officials: Shane O’Keefe, Zoning Administrator, and Sharon Crossman, Assistant to the Zoning Administrator. Members of the Public: Andy Hoak-Dubois & King, Ron Rhodes-Connecticut River Conservancy.

1. **Call the meeting to order.** At 5:32 pm, Development Review Board (DRB) Chair Esther Fishman called the online meeting to order and read a prepared script describing the authority to hold an entirely online meeting and the procedures to be followed by Board members and others in attendance, depending on their mode of participation (script attached).
2. **Additions or deletions to the agenda** (to occur as Other Business). The Board agreed to add discussion regarding progress of the Zoning Bylaw rewrite suggested by Paul Abraham.
3. **Minutes Approval.** Denis Pinkernell made a motion, seconded by Paul Abraham, to approve the minutes of the June 17, 2020 DRB meeting. The motion passed, with Chris Lasalle abstaining due to not being present at the June meeting.
4. **Public Hearing as warned. Application 2020-21** by the Connecticut River Conservancy (CRC) for property owner Ski Magic, LLC (Owner) requesting Conditional Use Review per Zoning Bylaw sections 205(H) and 503 for the proposed removal of an unused dam located within a Flood Hazard Overlay District on the Thompsonburg Brook, on Parcel 070004.000, in the vicinity of VT Route 11.

At 5:38 pm, the Chair opened the public hearing and asked the Applicant to describe the proposed project. Andy Hoak, representing contractor Dubois & King (D&K), explained that the project is a collaborative effort by CRC and VT Fish and Wildlife (VTF&W) on behalf the Owner who has agreed to the removal of an historic dam on Lowell Lake Brook & Thompsonburg Brook. He stated that both excavation and fill are necessary to accomplish the project including: excavation to remove existing concrete dam wingwalls and stream sediment; fill material to attain the existing hydraulic grade as observed up and down stream; with a net balance overall of 91 cubic yards of fill, as shown in the project plans included in the application. Hoak pointed out that there will be a temporary coffer dam in place for diversion during the project, expected to be 2-3 weeks. He added that all necessary state and federal permits for the project have been approved, including wetlands, stream alteration and historic significance of the old mill site.

Applicant Ron Rhodes, CRC, confirmed that the current project is completely separate from a prior Magic Mountain Act 250 project. He said the VT state fisheries biologist brought the project to CRC after getting the Owner to agree to removal, then CRC wrote grants and contracted with VT Fish and Wildlife Service staff to run the project with equipment from Conte Refuge and a local contractor to haul and dispose of material offsite. In closing, Rhodes said that brook trout are the “species of concern” that will “move freely” after the dam is removed.

No one else joined the meeting to speak for or against the application. Hearing no other comments, the Chair advised the Applicant that the Board would deliberate in private after the meeting is closed and deliver its written decision within 45 days, as required by State statute. The Applicant stated that with completion required by October 1st it would be ideal to be able to move from a project nearby onto the Thompsonburg Brook project by August 15th.

The Chair closed the public hearing at 5:49 pm. Ron Rhodes and Andy Hoak left the meeting.

5. **Other Business** (b. as approved in Item 2).
 - a. Update on Appeal of Application 2019-42 (VT Woodchips Real Estate Holdings, LLC)
O’Keefe reported that the VT Environmental Court held a hearing on 6/22/2020 and ordered mediation between the parties by 9/30/2020 and the hiring of an acoustics consultant at cost to the Applicant to occur during July. He reminded that the Board’s approval of the permit was appealed by an abutter. O’Keefe added that Town is a party to mediation, and he plans to attend the on-site testing yet to be scheduled.
 - b. Update on progress of Bylaw rewrite. Paul Abraham said the Planning Commission (PC) has completed a final draft of the proposed new Bylaw and stressed that as a stakeholder group, the DRB should attend a presentation by the PC along with the Selectboard. Sharon Crossman, PC Chair, confirmed that the draft is a totally new and comprehensive document, and that thorough review, questions and comments will be valuable, particularly if synthesized into one set per Board. She agreed to arrange for paper copy sets for those interested and said the draft will soon be posted on the Town’s website.
6. **Next regular meeting** - Wednesday, August 19, 2020 at 5:30 pm.
7. **Adjourn.** A motion to adjourn, made by Denis Pinkernell and seconded by Paul Abraham, passed unanimously. The meeting was adjourned at 6:01 pm.

Approved on August 19, 2020.



Esther Fishman, Chair

Development Review Board – July 15, 2020

- I'd like to call to order the Londonderry Development Review Board meeting of July 15, 2020. This is Board Chair Esther Fishman.
- In response the Governor Scott's January 20, 2020 declaration of a State of Emergency due to the spreading COVID-19 pandemic, and his "Stay Home, Stay Safe" executive order restricting and minimizing all unnecessary activities outside of the home, and in accordance with Act 92, signed into law on by the Governor on March 30, 2020, which allows for changes to the Vermont Open Meeting Law to protect the health and welfare of the public, this meeting is being held entirely remotely with no physical presence.
- This meeting is being conducted entirely on Zoom meeting software and the Board members and staff are participating by video except for Commission member(s) _____, who is(are) participating via telephone. Other attendees are permitted to participate via video or telephone. The meeting agenda posted on July 10, 2020 and still available on the Town's website provided information on how the public can participate in this meeting.
- We will mute attendees except for Board members and Town staff and those determined by the Chair to be unmuted, such permit applicants and abutters. After Board discussion on a specific agenda matter, all participants will be unmuted to ask questions or provide comment, which will be limited to 3 minutes per person.
- All non-unanimous votes by the Board, if any, must be taken by roll call vote, with each member stating their name and vote.
- We will then repeat this process for each agenda item.
- For those of you participating by telephone, you can mute and unmute yourself by dialing star-6.
- For those of you participating by Zoom video, particularly those new to it, here are a few highlights.
- At bottom left is the mute button to turn sound on or off, though the host controls that for this meeting.
- Just to the right of that button is the video button, where you can either turn or off your video.
- The participants button at the bottom allows you to see who is on the call, and there will be a list that populates with all of the participants.
- There is a raise hand button at the bottom of the participants list for those who want to be recognized. We will hold off on recognizing those raising their hand and wait for the end of the specific agenda discussion so that those on the phone are treated equally.
- While viewing if you want to see all participants being viewed, press the Gallery View button on the top right of the screen.
- Beyond these few pointers, the Board will not take time for educating the public in the use of Zoom software during the meeting, as the posted meeting agenda recommended that those wishing to participate familiarize themselves with the software program ahead of time.

Development Review Board – July 15, 2020

- Before we proceed to the rest of the agenda, I ask all Board members to vocally identify themselves, which is a requirement of the Vermont Open Meeting Law. And throughout the meeting, as appropriate, Board members and other participants are asked to identify themselves when they speak.

 - Esther Fishman
 - Denis Pinkernell
 - Bob Maisey
 - Chris Laselle

 - Terry Hill
 - John Lancaster
 - Paul Abraham
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- The next order of business is the consideration of additions to or deletions from the agenda.

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Town of Londonderry, Vermont
Development Review Board

Findings of Fact and Notice of Decision
Application 2020-21
Property of Ski Magic, LLC
Parcel 070004.000 at Thompsonburg Road
August 3, 2020

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves Application 2020-21 by the Connecticut River Conservancy (CRC) for property owner Ski Magic, LLC (the Owner) requesting Conditional Use Review per Zoning Bylaw sections 205(H) and 503 for the proposed removal of an unused dam located within a Flood Hazard Overlay District on the Thompsonburg Brook, on Parcel 070004.000, in the vicinity of VT Route 11.
2. The application for Conditional Use Review was received by the Zoning Administrator on 6/9/2020 and 6/18/2020.
3. On 6/18/2020 the Zoning Administrator deemed the application “Complete” and referred the application for Conditional Use Review to the Development Review Board (the Board).
4. Copies of all documents referenced above are available at the Londonderry Town Office.
5. On 6/24/2020, notice of a public hearing to be held by the Board was posted at the following places:
 - a. The Londonderry Town Clerk’s office.
 - b. The Londonderry Post Office.
 - c. The South Londonderry Post Office.
6. The Notice of Public Hearing included information regarding the possibility for a change in the venue of the meeting to a means of remote electronic access as allowed by 1 V.S.A. Section 312(a)(2) due to the ongoing COVID-19 health emergency, and advised that the most current information on remote meeting participation could be obtained within at least 48 hours of the meeting by contacting the Town Office or checking the Town website www.londonderryvt.org
7. On 6/24/2020, a copy of the notice of public hearing was mailed to the Applicant/Owner and owners of properties adjoining the parcel to be subdivided as listed on the Certificate of Service.
8. On 6/24/2020 a notice of a public hearing was published in the *Vermont Journal*.
9. On 7/9/2020, the agenda for the 7/15/2020 Board meeting was properly posted and distributed via email to Board members and the applicants, and the agenda included information on how the public could participate electronically or by phone.

10. The application was considered by the Board at a public hearing opened on 7/15/2020. This hearing was held remotely online as Zoom Meeting ID 861 8972 0843. All attendees participated by video or phone, per the instructions provided in the public hearing notice.
11. Present over the course of the proceedings were the following members of the Board: Esther Fishman (Chair), Denis Pinkernell (Vice Chair), Paul Abraham, John Lancaster, Chris Laselle, and Bob Maisey. On 7/15/2020 the public hearing was closed.
12. During the course of the hearing, the following exhibits (available at the Town Office) were submitted and/or referenced for the record:

Exhibit 1. Zoning Permit Application 2020-21 and associated attachments received 6/9/2020 and 6/18/2020, including Connecticut River Conservancy, Magic Mountain Ski Area, Dam Removal, Dubois & King Inc. Project #12497, Drawing CWJ/AJS in 6 sheets, dated 3/26/2020.

Exhibit 2. Land Use Application Review Form dated 6/18/2020, issued to the Applicant by the Zoning Administrator, indicating Application 2020-21 was complete and referred to the Development Review Board as required in order to proceed with the proposed land development on Parcel 070004.000.

Exhibit 3. VT Department of Environmental Conservation stream alteration permit dated 6/23/2020 and USAOCE authorization notice dated 5/29/2020.

13. On 7/17/2020 the DRB opened a public hearing on Application 2020-21. Applicant Ron Rhodes, Connecticut River Conservancy (CRC) and Andy Hoak, Dubois & King Inc., participated by phone to discuss the proposed project.
14. In response to questions from the Board, the Applicant and Contractor offered the following testimony:

Andy Hoak, representing Dubois & King (Contractor), explained that the project is a collaborative effort by CRC and VT Fish and Wildlife (VTF&W) on behalf the Owner who has agreed to the removal of an historic dam on Lowell Lake Brook and Thompsonburg Brook. To further describe the project, he stated the following:

 - a. Both excavation and fill are necessary to accomplish the project - excavation to remove existing concrete dam wingwalls and stream sediment and fill material to attain the existing hydraulic grade as observed up and down stream, with a net balance overall of 91 cubic yards of fill, as depicted in the project plans by Dubois & King Inc. included in the application (Exhibit 1 above).
 - b. There will be a temporary coffer dam in place for diversion during the project period, expected to be 2-3 weeks. (Exhibit 1 above).
 - c. All necessary state and federal permits for the project have been requested and approved, including wetlands/stream alteration and historic significance of the old mill site. (Exhibit 3 above).

Applicant Ron Rhodes, CRC, confirmed for the Board that the current project is completely separate from a prior Magic Mountain Act 250 project. He testified that this collaborative project was developed after a VT State fisheries biologist convinced the Owner to agree to remove the dam; the CRC applied for and received funding; VTF&W staff was contracted to manage the project; and Conte Refuge provided equipment for a local contractor to haul and dispose of material offsite. The Applicant stated that the “species of concern” are Brook Trout that will “move freely” after the dam is removed.

He advised that with project completion required by 10/1/2020 the ideal timing for this project would be to move directly to Thompsonburg Brook another project on 8/15/2020.

15. No one else responded, appeared or spoke, for or against the application.
16. On 6/17/2020, the Board closed the public hearing and announced that deliberations would occur in private later in the evening and that their Findings and Decision would be delivered within the requisite 45 days from the close of the hearing on this date, per 24 VSA 4464 (b).

FINDINGS

Based on the application, testimony, exhibits and other evidence, the Board makes the following findings:

1. The subject property is a 750 +/- acre parcel located at VT Route 11 and along Thompsonburg Brook, referred to as Parcel 070004.000, and described in a deed dated 11/22/2016 and recorded in Book 781, Page 416 of the Londonderry Land Records.
2. The subject property is situated in the Recreation Commercial (RC) zoning district and the Flood Hazard Overlay District, as described on the Town of Londonderry Zoning Map on record at the Londonderry Town Clerk’s Office and Section 201 of the Bylaw.
3. The Applicant proposes to remove a deteriorated, unused dam on Lowell Lake Brook that is situated on the subject parcel in the vicinity of Thompsonburg Brook, then to regrade the channel to achieve “static geometry” for the purpose of improving aquatic organism passage, specifically Brook Trout species.
4. The proposed land development is subject to Conditional Use Review per Zoning Bylaw Sections 205(H) and 503 for the proposed removal of an unused dam located within a Flood Hazard Overlay District as determined by the Town of Londonderry Zoning Administrator (Exhibit 2 above).
5. As presented by the Applicant in Application 2020-21 and indicated in all associated materials provided, as well as the testimony presented at the public hearing, the Board finds that the proposed removal of an unused dam located within a Flood Hazard Overlay District on the Thompsonburg Brook, on Parcel 070004.000, in the vicinity of VT Route 11, as indicated in the application materials provided, meets or exceeds the applicable standards

specified in Zoning Bylaw section 205(M), and does not adversely affect the standards specified in Zoning Bylaw Section 503(D).

DECISION AND CONDITIONS

Based on the findings above, the Board makes the following decision:

To grant Conditional Use approval per Zoning Bylaw sections 205(H) and 503 for the project, with the following condition as recommended by the State of Vermont Department of Environmental Conservation:

- That, within 90 days of project completion, as-built cross-sections of the restored reach certified by a registered professional engineer or licensed land surveyor in the same vertical datum as the published base flood elevations be submitted to the Town.

Dated at Londonderry, Vermont, this 3rd day of August 2020.



Esther Fishman, Chair

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