

In re: Kokell/ Preliminary Subdivision, PRD Approval
December 6, 2007

Findings & Decision

INTRODUCTION & PROCEDURAL HISTORY

1. This proceeding involves a request by Michael Kokell for preliminary subdivision approval of a 6-lot, 7-unit Planned Residential Development (PRD) under Section 6.4 (Preliminary Subdivision Review) and Articles 7 (Subdivision Review Standards) and 8 (Planned Development) of the Town of Bolton Land Use & Development Regulations (BLU&DRs) as adopted on 1/26/05 (effective 1/26/05). The Kokell property, accessed from the Bolton Valley Access Road, is located in the Resort Residential (RR) Zoning District (Tax Map Parcel ID # 6-3003501). All materials regarding these proceedings are on file for review at the Bolton Town Office.
2. An initial application for sketch plan review, prepared by Trudell Consulting Engineers (TCE), dated 7/3/07, was received by Zoning Administrator Lawrence Peterson and referred to the Bolton Development Review Board (DRB) for consideration at its 7/18/07 meeting. The information forwarded to DRB members for review included:
 - A cover letter from Karen Ann Pettersen, Project Manager for TCE (dated 7/3/07) generally describing the project as a 7-lot, 7-unit residential subdivision.
 - The application for sketch plan review (dated 7/3/07).
 - An initial sketch plan of the proposed subdivision (dated 4/30/2007).
 - A list of adjoining property owners.
 - A memo from Chris Brunelle, Stream Alteration Engineer for the state (dated 6/6/07) providing comments and concerns based on a preliminary site visit of the property. Bolton Zoning Administrator Lawrence Peterson also attended this site visit.
3. Mr. Kokell was represented at the 7/18/07 DRB meeting by John Pitrowiski, PE (License #8104) of TCE. Mr. Pitrowiski indicated that a planned residential development was proposed to cluster development at the allowed density (1 unit/2 acres) on the most developable portions of the site, as required to protect natural features and avoid areas of steep slope. It was determined by the DRB that the application qualified as a major subdivision and planned unit development, requiring both preliminary and final subdivision review and approval. Key issues to be addressed by the applicant in subsequent filings, as reflected in the minutes of this meeting, were steep slopes, site drainage, and surface water setback and buffer requirements, particularly along Joiner Brook.
4. A written request was received from Mr. Pitrowiski on 8/22/07 to discontinue the sketch plan review process and proceed with preliminary subdivision review. This request was granted by the DRB at its 9/26/07 meeting, as reflected in the meeting minutes.
5. The application for preliminary subdivision review of a 6-lot, 7-unit planned residential development and associated fees were received on 8/20/07 and referred to the Development Review Board on 8/24/07. The public hearing was scheduled for 9/26/07 and a site visit was scheduled for 9/22/07.
6. The notice of public hearing and site visit (on file at the Town Office) was:
 - Submitted to the Mountain Gazette on 8/28/07 for publication on 9/6/07.

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- Mailed to Michael Kokell, Applicant, and John Pitrowiski, TCE on 9/6/07, with a sign for posting on the applicant's property within view of Bolton Valley Access Road.
 - Mailed to the list of adjoining (on file at the town office) on 9/6/07
 - Posted at the Bolton Town Office, Smilie School and Bolton Store on 9/6/07.
7. A site visit was conducted on 9/22/07, led by John Pitrowiski of TCE. DRB members in attendance included Jerry Chabot, Michael Hauser, Sharon Murray, Margot Pender and Mike Rainville. Others present included abutter David Kemp.
8. The application was considered by the DRB at a public hearing on 9/26/07, attended by Michael Kokell, applicant, and John Pitrowiski of TCE, representing the applicant. The hearing was recessed, to give the applicant time to submit additional information, and was reconvened on 10/24/07.
9. Present on September 26th and October 24th were the following members of the DRB, representing a quorum of the Board:
- Sharon Murray, Chair
 - Jerry Chabot
 - Michael Hauser
 - Margot Pender
 - Michael Rainville

The Chair disclosed ex parte communications, in the absence of a Zoning Administrator, with John Pitrowiski, consisting of phone calls and e-mails (on file at the Town Office) to clarify applicable regulations and DRB procedures. No conflicts of interest were declared.

10. At the outset of the hearing the DRB Chair afforded those persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that statute could be met. It was determined for the record that the following persons met the criteria for interested person status and retain the right to appeal any decision of the DRB under these proceedings.
- Michael Kokell, Applicant
 - David Kemp, Abutter – attended site visit on 9/22/07
 - Bolton Valley Resort, Abutter – letter submitted by Larry Williams, dated 9/26/07

No other persons participated or requested interested person status.

11. During these proceedings the following persons testified under oath, as reflected in meeting minutes on file at the Town Office:
- Michael Kokell, Applicant
 - John Pitrowiski and William Park of Trudell Consulting Engineers, representing the applicant.
12. The following materials, on file at the Town Office, were entered into evidence on 9/26/07:
- Preliminary subdivision plat dated 8/23/07 (as surveyed 4/6/06), prepared by Button Professional Land Surveyors PC, Leonard Amblo License # 695), with an inset showing the project location.
 - SP1–Overall Site Plan (dated 8/22/07) prepared by TCE, showing 6-lot subdivision, preliminary building envelopes/footprints, access road, driveway, utility locations and common land (Lot #6) bordering Joiner Brook.
 - EC1 – Existing Conditions Plan (dated 8/22/07) prepared by TCE, showing contours, locations of streams/buffers, general vegetative cover, areas of steep slope (>25%), wetlands, Joiner Brook floodplain, toe of slope

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- P1 – Site Plan (dated 8/22/07) prepared by TCE, showing centerline profiles for the proposed road.
- D1 – Road Details (dated 8/22/07) prepared by TCE, showing cross-sections, typical design/construction specs.
- D2 – Sewer Details (dated 8/22/07) prepared by TCE, showing lines/connections to the Bolton Valley community wastewater system.
- D3 – Water Details (dated 8/22/07) prepared by TCE showing typical drilled well construction.
- D4 – Erosion/Drainage Details (dated 8/22/07) prepared by TCE, showing standard construction specifications for stone check dams, silt fences, slope stabilization, spreaders, splash pools, culverts, etc.)
- Memo from Chris Brunelle, Stream Alteration Engineer for the state (dated 6/6/07) providing comments and concerns based on a preliminary site visit of the property, as forwarded by Zoning Administrator Lawrence Peterson.
- Letter from Larry Williams, representing the Bolton Valley Resort, dated 9/26/07, highlighting their concerns regarding the proposed subdivision.

13. The following materials, on file at the Town Office, were entered into evidence on 10/24/07:

- Cover letter, dated 10/15/07, from John Pitrowiski, TCE, summarizing the additional information submitted.
- Joiner Brook stream profile, dated 10/11/07.
- TCE memo regarding traffic generation rates and volumes, dated 10/11/07.
- TCE memo regarding stormwater systems, dated 10/11/07.
- TCE memo regarding capacity of proposed 24" culvert to conduct stormwater.
- Preliminary (incomplete) state wastewater & potable water supply system application form.
- Draft covenants and restrictions prepared by L Randolph Amis, Esq., dated 10/11/07
- TCE letter to Mike Gervia, Bolton Fire Department, dated 10/12/07.
- TCE letter to Eric Andrews, Bolton Road Foreman, dated 10/12/07.
- Copy of a letter from John Akielaszek, Vermont Department of Environmental Conservation, dated 5/9/07, documenting available wastewater treatment facility capacity allocated to the property.
- Copy of Letter from Robert J. Perry Esq. to Larry Williams/ Bolton Valley Resort regarding issues raised in their letter of 9/26/07.
- Additional attachments prepared by TCE (dated 10/15/07), including:
 - Pre-construction plan showing soil types, subwatersheds, drainage pathways, limits of disturbance, location of preliminary soil erosion and runoff control measures.
 - EPSC-1 – Erosion Prevention & Sediment Control Construction Plan, including detailed construction notes.
 - EPSC-2 – Erosion Prevention & Sediment Control Stabilization Plan, including detailed construction, stabilization notes.
 - D5 – Erosion Prevention & Sediment Control Details, showing additional design details.

14. Following hearing adjournment on 10/24/07, the Development Review Board considered this application in deliberative session, pending issuance of a written decision within 45 days of the date of hearing adjournment.

FINDINGS

Based on the application, testimony and other evidence submitted for review, on file at the Bolton Town Office, the Development Review Board makes the following findings:

Project Description:

1. The property to be subdivided is an undeveloped 15.18-acre parcel (Tax Map ID# 6-3003501) located on the Bolton Valley Access Road (former “Snow Pond Road” subdivision), as depicted on existing conditions and site plans, and the preliminary subdivision plat. The parcel is largely forested and borders Joiner Brook to the west. It includes areas of steep (15+%) and very steep (>25%) slope, drainage and streams (identified as drainage swales) into Joiner Brook, and two wetland areas. The Joiner Brook Trail, part of Bolton Valley’s existing Nordic trail network, also loops across the property (shown as “existing trail”).
2. The exact location of the southern boundary is being resolved with the Mountain Operations and Development Corporation (Bolton Valley Resort). The Ponds event facility and snowmaking pond are located on the adjoining parcel.
3. The proposal is to subdivide the property into a 6-lot planned residential development, as shown on preliminary survey and site plans, including five lots intended for subsequent residential development (ranging in acreage from 1.31 acres to 2.17 acres), and one 7.58-acre undeveloped lot bordering the length of Joiner Brook (Lot #6) to be held in common ownership as protected open space.
4. The applicant is negotiating a trail easement with Bolton Valley Resort to protect the existing, or relocated, trail corridor across the lower portion of the property along Joiner Brook.
5. Seven residential units, including two duplexes (Lots 1 and 5) and three single family dwellings (Lots 2, 3 and 4) are proposed, to be served by 480 +/- feet of shared private access road, and 300 +/- feet of common driveway, as shown on the preliminary site plan (SP1). Dwelling units are to be served by connections to the Bolton Valley community wastewater system, and private wells located on the site.
6. According to testimony provided, the applicant intends to subdivide and sell the lots, and install the road and shared infrastructure; however dwellings, driveways, and utility connections will be constructed or installed by subsequent lot owners.
7. According to the applicant, Act 250 and state water and wastewater permits are also required.

Zoning District Criteria (Table 2.3):

8. The parcel is located entirely within the Resort Residential (RR) Zoning District as depicted on the official Town of Bolton Zoning Map, and described in Table 2.3 of the Bolton Land Use & Development Regulations. It is not located within the Flood Hazard Overlay District (designated 100-year floodplain). This district requires a minimum lot size of 2 acres, and minimum road frontage of 100 feet per lot. Steep slope requirements (Section 3.16) and surface water and wetland setbacks and buffers (Section 3.17) also apply.
9. The subdivision is proposed as a planned residential development (PRD) to allow for the clustering development on portions of the lot that are suitable for development. As such, modifications have been requested to district dimensional requirements to allow for reduced lot sizes and frontage requirements. Planned unit developments are allowed in the RR district, and are required for any subdivision in this district that results in the creation of four or more new lots. PRD requirements therefore also apply.

Subdivision Review Criteria (Article VII):

10. **Development Suitability.** The lot is largely forested, providing natural screening from the road and adjoining properties. Development will be clustered on developable portions of the site. Building envelopes have been delineated to avoid areas of very steep slope, surface water setbacks and buffers. Cutting restrictions will apply outside of designated building envelopes. Land bordering Joiner Brook will be set aside as commonly held, conserved open space. As such, the subdivision as proposed will not have an undue adverse effect on public health and safety, the natural environment, neighboring properties and uses or the character of the area.
11. **Bolton Town Plan & Regulations.** The proposed subdivision is consistent with the goals and policies of Bolton Town Plan (as adopted on 6/4/07), for the Resort Residential District (Section 2.4), the protection of natural resources (Sections 3.2, 3.3), transportation (Section 4.2) and housing (Section 8.4), including specific policies that promote planned unit development to cluster development and protect environmentally sensitive areas.
12. **District Settlement Patterns.** The proposed subdivision is located within the Resort Residential District, in an area that serves as the gateway to Bolton Valley resort. The purpose of this district is to allow for moderate densities of coordinated, well-planned residential development in the immediate vicinity of the Resort Village District, and to protect environmentally sensitive areas. This project is designed to protect environmentally sensitive areas, and to limit its visibility from the Access Road and adjoining properties. Because it is not located adjacent to other developed residential or village areas, related criteria regarding pedestrian connections do not apply.
13. **Lot Layout.** Lots as proposed, are regularly shaped, and are configured to be consistent with site topography and development suitability. Modifications in district lot size and dimensional requirements have been requested as part of PRD review and approval (see below).
14. **Building Envelopes.** Proposed building envelopes have been designated on Lots 1-5 that are scheduled for subsequent residential development, as shown on the preliminary site plan (SP1). Building envelopes as proposed have been configured to largely, but not completely, exclude areas of very steep slope (>25%) and surface water setback and buffer areas. Proposed cutting restrictions currently apply beyond conceptual building footprints, rather than designated building envelopes, as required. Building envelopes are not depicted on the preliminary subdivision plat.
15. **Survey Monuments.** The location of existing and proposed boundary, lot and road right-of-way markers are shown on the preliminary subdivision plat. No building envelopes or associated boundary markers are shown on the plat.
16. **Landscaping & Screening.** The parcel is largely forested, providing natural screening from the road and adjoining properties. Lot and building envelope locations, and cutting restrictions outside building envelopes, particularly within designated surface water buffers, are intended to minimize adverse impacts to surface waters and adjoining properties, including any potential impacts to The Ponds events facility as raised by Bolton Valley Resort during the hearing process (letter of 9/28/07).
17. **Energy Conservation.** The site is forested, providing natural windbreaks, but does not have a strong southern exposure. The PRD as proposed includes the clustering of development to help minimize road and utility line extensions.
18. **Protection of Natural & Cultural Resources.** Environmentally sensitive areas identified on the property from maps and site investigation, and as depicted on existing conditions and site

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plans (SP1, EC1) include forestland, steep and very steep slopes, wetlands, surface waters and drainage into Joiner Brook. No designated floodplains, critical wildlife habitat areas, or cultural or historic features were identified by the applicant, or by the DRB from available maps and information. According to testimony from John Pitrowiski, the wetlands on site are Class III wetlands with limited functional value, one of which will be disturbed by road construction. Mr. Pitrowiski agreed to reduce proposed building envelopes to avoid areas of very steep slope (>25%) and required surface water setback and buffer areas. The proposed road right-of-way will follow an existing trail limiting the need for additional cut and fill. Fifty-foot setback areas (but not associated buffers) are shown along unnamed streams and drainage swales. At the request of the DRB, the applicant agreed to extend the setback and riparian buffer area along Joiner Brook from the minimum 200-foot setback depicted on the site plan to include the entire 25+% slope area along the brook as shown on the existing conditions plan (ECP-1). According to testimony, buffer areas are to be maintained in an undisturbed, naturally vegetated state. This was not supported by draft legal documentation.

19. **Open Space & Common Land.** Open space identified on site, as defined in Section 7.4 of the regulations, includes all delineated areas of very steep slope and surface water setbacks and buffer areas, including the extended setback/buffer area as agreed to along Joiner Brook. Lot #6, as shown on the site plan (SP1) and preliminary plat, includes much of the buffer and steep slope area along Joiner Brook, and is to be held in common as protected open space. This area is to remain undisturbed, except for limited clearing as necessary to maintain the existing or relocated trail corridor. Other proposed common land includes the shared road/utility corridor right-of-way. Preliminary, incomplete legal documentation (draft covenants and restrictions) was provided.
20. **Stormwater Management & Erosion Control.** Preliminary stormwater management and erosion control plans submitted by the applicant (EPSC-1, EPSC-2, D5) incorporate accepted state design standards and management practices. According to Mr. Pitrowiski, the project is being phased to limit areas of disturbance, as allowed by the state. The plan incorporates existing drainage patterns, including required buffers, except for the relocation of a drainage swale along the road (designated "stream overflow") back to its original channel. William Park of TCE provided calculations, accepted by the DRB, documenting that the proposed 24" culvert for the stream crossing would be sufficient to handle drainage from anticipated storm events.
21. **Transportation Facilities & Infrastructure.** Mr. Pitrowiski provided calculations, accepted by the DRB, documenting that traffic generation rates, estimated at six PM peak hour trips using ITE standards, will not affect the overall capacity of town roads (memo dated 10/11/07). The subdivision will be served by 480 +/- feet of shared private access road, with a 50-foot right-of-way, as shown on the preliminary subdivision plat, and 300+/- feet of common, 12-foot wide driveway, as shown on the preliminary site plan (SP1). The exact location of driveways will depend on final building sites. The Bolton Road Foreman and Fire Chief were contacted by the applicant regarding the proposed road and access on the Bolton Valley Access Road (letters dated 10/12/07) but no response had been received to date. Based on the site visit, the DRB agreed that the pile of earth located at the proposed road entrance is manmade and, as such, may be disturbed even though the slope exceeds 25%. The proposed road has otherwise been laid out to minimize cut and fill and will not exceed a grade of 15%. At DRB request, the applicant agreed to pave that section of road exceeding a 7% grade, and to reduce the road (travel lane) width from 20 feet, as proposed, to 18 feet, as allowed under Section 7.6(D) of the regulations based on projected traffic volumes.
22. **Facilities & Utilities.** The proposed subdivision is to be served by individual wells and sewer line connections to the Catamount/Bolton Wastewater Treatment Facility, as shown on the site plan (SP1). Documentation provided by the applicant (DEC letter dated 5/9/07) indicates that the property, as part of the former Snow Pond Road Subdivision, has been approved to connect to the Catamount/Bolton Wastewater Treatment Facility under previously issued

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state permits. Though Bolton Valley Resort has stated that they may seek a repeal of this allocation, based on the documentation provided the DRB finds that, given the proposed reduction in the number of units approved by the state, the remaining allocated capacity should be sufficient to serve the subdivision as proposed. An amended state permit will be required. Other utilities serving the subdivision are to be buried within the road right-of-way.

23. **Legal Requirements.** Draft covenants and restrictions provided by the applicant (dated 10/11/07) are the only supporting legal documentation submitted to date. These include cutting restrictions outside of proposed house sites, building setbacks from outer property boundaries and the Bolton Valley Access Road centerline, and siding, roof material and lighting restrictions intended to address concerns raised by Bolton Valley Resort. They do not limit the construction of all buildings and parking areas to designated building envelopes, nor do they address the long-term management of designated open space areas and common land, including surface water setback and buffer areas, areas of very steep slope (>25%), Lot #6 to be held in common as protected open space, or the shared access road and driveways, as required under the regulations. The DRB finds that, in addition to covenants and restrictions, a homeowners' association agreement will be necessary, given the shared responsibilities for long-term management and maintenance of designated open space areas and other commonly held land and infrastructure, including Lot #6, the access road, and shared driveways.

Planned Development Review Criteria (Section 8.5)

24. **General Standards.** The proposed PRD is consistent with the goals and policies of Bolton Town Plan (as adopted on 6/4/07), for the Resort Residential District (Section 2.4), the protection of natural resources (Sections 3.2, 3.3), transportation (Section 4.2) and housing (Section 8.4), including specific policies that promote planned unit development to cluster development and protect environmentally sensitive areas. The proposed PRD represents an environmentally sensitive and unified treatment of the site that locates development on the most developable portions of the site and excludes development from environmentally sensitive areas.
25. **Allowed Uses.** Residential development, including single and two-family dwellings as proposed, is an allowed use within the Resort Residential District. The proposed PRD is restricted to residential uses only, as required under the regulations.
26. **Density.** Based on the parcel size (15+ acres), minimum district lot size (2 acres) and multi-family residential density requirements (maximum of 3 units/acre), a maximum of seven single family units or 45 multi-family units could be developed on the property. The proposal for seven dwelling units is well below the overall residential density allowed for this district.

DECISION & CONDITIONS OF APPROVAL

Based upon the above findings, the Development Review Board **APPROVES** (5-0) the request by Michael Kokell for preliminary subdivision approval of the 6-lot, 7-unit planned residential development as proposed and documented in submitted materials and testimony. Preliminary approval does not constitute approval of a subdivision plat for recording in the town land records, and is subject to the following conditions:

1. Within six months of this decision, the applicant shall either submit an application for final subdivision approval, or a written request to extend preliminary plan approval for stated reasons. If the applicant fails to submit an application or extension request within this 6-month period, preliminary plan approval shall expire and reapplication shall be required.

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2. Application for conditional use review under Sections 3.16 (Steep Slopes) and 5.4 (Conditional Uses) is also required for site work and road construction on slopes of 15% or more, and shall be considered concurrently with final subdivision review by the DRB, unless otherwise requested by the applicant.
3. In order to expedite the permitting process, the applicant is encouraged to apply for other required municipal and state permits and approvals prior to filing the application for final subdivision review. Any modifications to subdivision design necessitated by other permits or approvals should be incorporated in final subdivision plans, as submitted for review by the DRB.
4. The following materials shall be submitted with the application for final subdivision review and approval:
 - Any requested modifications to approved plans, and supporting documentation.
 - A final subdivision plat that shows the locations and dimensions of all lot lines, building envelopes, rights-of-way and easements, and associated survey monuments or markers. The survey plat shall document the agreed upon locations of the southern property boundary and proposed trail easement.
 - The identification of Lot #6 on the final subdivision plat as protected open space, for which no further subdivision shall be allowed.
 - Building envelopes, as clearly shown on both the final site plan and subdivision plat, that have been delineated to exclude all areas of very steep slope (>25%), surface waters and associated setback and buffer areas, and related notes that require all principal and accessory buildings, lawn and parking areas to be located within designated building envelopes.
 - The identification on final site and construction plans of all designated open space areas, including areas of very steep slope (>25%) and required surface water setbacks and buffer areas, and related notes that these protected areas shall be clearly marked on the ground as necessary to avoid any disturbance prior to and during site preparation and construction. The buffer area along Joiner Brook shall extend to the top of slope (25% slope grade line) as shown on EC1.
 - Revised road specifications, travel lanes reduced in width from 20 feet to 18 feet, and cross-sections for that portion of the road over 7% grade that is to be paved.
 - Written documentation, from a qualified wetlands specialist, regarding the classification and functions of the wetlands located on the property.
 - Written documentation (e.g., state permits) confirming or approving wastewater system capacity and connections to the Catamount/Bolton Wastewater Treatment Facility.
5. The application for final subdivision approval shall also include legal documentation – including all proposed covenants, restrictions, easements, and association agreements – as necessary to:
 - address long-term management and maintenance of all common land and infrastructure, including Lot #6, the shared access road, and any shared utility corridors and driveways;
 - limit buildings, parking and lawn areas to designated building envelopes;
 - restrict cutting outside of designated building envelopes;
 - prohibit any disturbance within designated open space areas except for approved trail corridors;
 - restrict siding and roofing materials as necessary to limit the visibility of dwellings from The Ponds, as agreed to under preliminary subdivision review;
 - limit outdoor lighting;
 - require that utilities be placed underground, and
 - specify that zoning permits shall be required for the subsequent development of subdivided lots.

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6. The final subdivision plat shall carry the following endorsement, “Approved by the Development Review Board of the Town of Bolton, Vermont, on the ___ day of _____, 200_, subject to all requirements and conditions of subdivision approval. Signed this ___ day of _____, 200_, by _____, Chairperson.”

Members voting in favor of preliminary subdivision approval: Jerry Chabot, Michael Hauser, Sharon Murray, Margot Pender and Michael Rainville.

Dated at Bolton Vermont, this 6th day of December, 2007.

Sharon Murray, 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.