

Town of Bolton Development Review Board

3045 Theodore Roosevelt Highway
Waterbury, VT 05676
(802) 434-5075

In re: Kokell – Final Subdivision, PRD & Conditional Use Approval
September 15, 2008

Findings & Decision

INTRODUCTION & PROCEDURAL HISTORY

1. This proceeding involves a request by Michael Kokell for consolidated final subdivision and conditional use approval for a 6-lot, 7-unit Planned Residential Development (PRD) under:

- Section 6.5 (Final Subdivision Review),
- Article 7 (Subdivision Review Standards),
- Article 8 (Planned Development), and
- Sections 5.4 (Conditional Use Review), 3.16 (Steep Slopes), 3.17 (Surface Waters)

of the Town of Bolton Land Use & Development Regulations (BLU&DRs) as adopted on 1/05/05 (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.

Sketch Plan Review

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. Then 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.

Preliminary Subdivision/PRD Review

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

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by the DRB at its 9/26/07 meeting, as reflected in the meeting minutes. 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.

5. A warned 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.
6. The application for preliminary subdivision review was considered by the DRB at a warned 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.
7. 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.

8. 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.
9. Materials entered into evidence on 9/26/07 and 10/27/07 are listed in the DRB decision granting preliminary subdivision and PRD approval, dated 12/6/07, on file at the Town Office.
10. Following hearing adjournment on 10/24/07, the Development Review Board considered this application in deliberative session and, in a written decision issued on 12/6/07 on file at the Town Office, approved (5-0) the request by Michael Kokell for preliminary subdivision approval of the 6-lot, 7-unit planned residential development, subject to the following conditions:
 - 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.
 - 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.
 - 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

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permits or approvals should be incorporated in final subdivision plans, as submitted for review by the DRB.

- 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.

- 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 the subsequent development of subdivided lots.

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11. An application for final subdivision review of a 6-lot, 7-unit planned residential development and associated fees were received on 1/14/08, and deemed incomplete by the Zoning Administrator in a letter issued on 1/19/08 pending the receipt of additional information from the applicant, including municipal and state permit information. Following the submission of additional materials, a public hearing was scheduled and warned for 3/26/08, but then postponed, rewarned and reconvened on 6/25/08 at the request of the applicant's representative, John Pitrowiski of TCE.
12. The application for final subdivision and PRD review was considered by the DRB at a warned public hearing on 6/25/08, attended by John Pitrowiski of TCE, representing the applicant. The hearing was recessed, pending the submission of a final plat, and was reconvened on 7/30/08. The application for conditional use approval was also warned on 6/26/08 for hearing on 7/30/08.
13. The following members of the DRB were present on June 25th and July 30th, representing a quorum of the Board:
- Sharon Murray, Chair
 - Michael Hauser
 - Margot Pender
 - Michael Rainville
 - Jen Andrews, Alternate

No ex parte communications or conflicts of interest were declared at either hearing.

14. At the outset of these hearings 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 (under preliminary subdivision review)
 - Bolton Valley Resort, Abutter (under preliminary subdivision review)

No other persons participated or requested interested person status.

15. During these proceedings the following persons testified under oath, as reflected in meeting minutes on file at the Town Office:
- John Pitrowiski and William Park of Trudell Consulting Engineers, representing the applicant.
16. The following materials, on file at the Town Office, were entered into evidence on 6/25/08:
- Application form and transmittal letter, dated 1/14/08, outlining modifications to subdivision plan and plat as requested by the DRB.
 - Letter from Michael Kokell, dated 1/9/08, granting John Pitrowiski of TCE authorization to represent him in these proceedings.
 - Updated plan maps SP1: Overall Site Plan (amended through 5/9/08), Preconstruction Plan (10/15/07), EPSC 1 (amended through 1/08/08), ESPC 2 (amended through 1/08/08), D4 (amended through 1/08/08), D5 (10/15/07), D6 (10/15/07), D7 (10/15/07).
 - Letters from Earl Briggs, Gilman & Briggs Environmental, dated 4/26/07 and 5/6/08, regarding wetlands and wildlife habitat, including bear habitat and use.
 - Letter from Redstone, dated 1/8/08, confirming right to connect to the Catamount/Bolton wastewater treatment system.

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- State wastewater and potable water supply permit application, dated 1/14/08.
 - Completed Act 250 Municipal Impact Questionnaire, signed by Deborah LaRiviere, Town Clerk, dated 2/16/08.
 - Act 250 application materials, dated 2/22/08 (as filed on 2/26/08).
 - State wastewater system and potable water supply permit, dated 3/14/2008.
 - Letter from Michael F. Gervia, Bolton Fire Chief, dated 3/26/08.
 - Completed VANR Project Review Sheet, dated 3/28/08.
 - Bolton Highway Access (Curb Cut) Permit, dated 6/7/08.
 - Letter from John Pitrowiski, TCE, dated 6/3/08, indicating that Mr. Kokell has agreed to pay the municipality \$3,500 to install a dry hydrant, as required by the Fire Department.
 - VDEC Notice of Intent (#5802-9020) for authorization to discharge stormwater runoff (5/14/08),
 - TCE Response to Act 250 prehearing conference report and order #4C0436-11F (5/20/08), and
 - Engineered Earth Systems slope stability assessment report (5/12/08).
17. The following materials, on file at the Town Office, were entered into evidence on 7/30/08:
- Final subdivision plat, dated 7/29/08 as revised.
 - Overall Site Plan (SP1), dated 7/9/08 as revised.
 - Legal documents, prepared by Robert Perry Esq. (dated 1/24/08) including revised “Language to be Included in the Deed from Kokell to Joiner Brook Homeowner’s Association Inc.” (re Lot #6, Access Road) and “Deed Language to be Included in each of the Five Lot Deeds”
 - Vermont Nonprofit Certificate of Incorporation for the Joiner Brook Homeowners Association Inc. (dated 11/15/07), articles of association and bylaws.
 - Agreement, dated 1/18/08, between Michael Kokell, Mountain Operations and Development LLC, Catamount/Bolton Land LLC, and Catamount/Bolton Water & Sewer LLC settling boundary issues, allowing connection to the water and sewer system, and granting a trail easement across Lot #6 for use by Bolton Valley Resort and VAST.
18. Following hearing adjournment on 7/30/08, the Development Review Board considered this application in deliberative session, pending the issuance of a written decision within 45 days of the date of adjournment.

FINDINGS

Based on application materials, 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 preliminary and final subdivision plats. The parcel is largely forested and borders Joiner Brook to the west. It includes areas of steep (15+%) and very steep (>25%) slope, seeps, drainage and streams (identified as drainage swales) into Joiner Brook, and two wetland areas. The wetland areas have been documented in filings as Class III wetlands. According to information included in application materials, the property includes beech stands but no evidence of use by black bear; the portion of the property along Joiner Brook, however, may be used as a wildlife corridor. No other rare, threatened or endangered species were identified on the property.

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2. The location of the southern boundary has been resolved with the Mountain Operations and Development Corporation (Bolton Valley Resort) as indicated in the agreement dated 1/18/08. The Ponds event facility and snowmaking pond are located on the adjoining parcel.
3. The Joiner Brook Trail, part of Bolton Valley's existing Nordic trail network, loops across the property (shown as "existing trail" across Lots #4 and #6). This trail will be abandoned, to be replaced by a trail along Joiner Brook (across Lot #6), for use by Bolton Valley and VAST, as shown on the final subdivision plat. Kokell has granted an easement to Bolton Valley as indicated in the agreement dated 1/18/08.
4. The proposal is to subdivide the property into a 6-lot planned residential development, as shown on final plat and site plans, including five lots intended for subsequent residential development (ranging in acreage from 1.31 acres to 2.17 acres), and one 7.59-acre undeveloped lot bordering the length of Joiner Brook (Lot #6) to be held in common ownership as protected open space.
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 Overall 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. As presented in testimony, 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. A town highway access (curb cut) permit was issued on 6/7/08. The project was approved by the Bolton Fire Chief on 3/26/08 with the stipulation that the applicant pay for the installation of a dry hydrant at the snowmaking pond, which was agreed to by the applicant on 6/3/08.
8. Act 250, state wastewater and potable water supply, and stormwater management and erosion control permits are also required. The project has been revised to address associated slope stability and stormwater management concerns. Act 250 and stormwater permits are pending.

Zoning District Criteria (Table 2.3):

9. 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.
10. 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):

11. **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 and unstable

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 (Lot #6). 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.

12. **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.
13. **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.
14. **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).
15. **Building Envelopes.** Proposed building envelopes have been designated on Lots 1-5 that are scheduled for subsequent residential development, as shown on the final site plan (SP1) and subdivision plat. Building envelopes as proposed have been configured to exclude areas of very steep (>25%) and potentially unstable slopes as identified through field investigation, and required surface water setback and buffer areas. All principal and accessory buildings and lawn and parking areas will be located within designated building envelopes as shown on the final site plan and subdivision plat.
16. **Survey Monuments.** The location of existing and proposed boundary, lot, building envelope and road right-of-way markers are shown on the final subdivision plat. Building envelopes will be marked with iron pins as requested by the DRB.
17. **Landscaping & Screening.** The parcel is largely forested, providing natural screening from the road and adjoining properties. Lot and building envelope locations, cutting restrictions outside building envelopes, and materials specifications (as included in deed restrictions) 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.
18. **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.
19. **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 plans (SP1, EC1) include forestland, steep and very steep slopes, wetlands, surface waters and drainage into Joiner Brook. No designated floodplains or cultural or historic features were identified by the applicant, or by the DRB from available maps and information. The potential wildlife corridor along Joiner Brook identified by the applicant's consultant is incorporated in required open space and buffer areas (Lot #6). According to information

presented in hearing, the wetlands on site are Class III wetlands with limited functional value, one of which will be disturbed by road construction. Building envelopes as shown on the final subdivision plat and site plan have been reduced in extent and reconfigured to avoid areas of very steep (>25%) and potentially unstable slope (Lot #4), and required surface water setback areas which are to remain undisturbed. 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 right-of-way will follow an existing trail limiting the need for additional cut and fill. Fifty-foot setback areas, to remain undisturbed except for stream crossings, are shown along unnamed streams and drainage swales. At the request of the DRB, the applicant has 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 final site plan (SP1).

20. **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 setback 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 final 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 relocated trail corridor. Other proposed common land includes the shared road/utility corridor right-of-way, to be maintained by the Joiner Brook Homeowners Association, as described in supporting legal documents.
21. **Stormwater Management & Erosion Control.** Final stormwater management and erosion control plans submitted by the applicant (EPSC-1, EPSC-2, detail sheets) incorporate accepted state design standards and management practices, including riprap and the installation of splash pools in specified locations. A state general stormwater permit is required for the project, but has not yet been issued. The project will be phased to limit areas of disturbance. 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. The culvert size for the stream crossing has been increased from 24" to 30" as required by the state to handle drainage from anticipated storm events.
22. **Transportation Facilities & Infrastructure.** Mr. Pitrowski 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 final subdivision plat, and 300 +/- feet of common, 12-foot wide driveway, as shown on the final site plan (SP1). The exact location of driveways will depend on final building sites. 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 to 18 feet (as allowed under Section 7.6(D) of the regulations based on projected traffic volumes), as shown on the final plat and site plan. The proposed access was reviewed and approved by the Bolton Fire Chief on 3/26/08. A curb cut permit was issued by the town on 6/7/08.
23. **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 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 state permits and the agreement with Bolton Valley Resort. An amended state permit has been obtained. The Bolton Fire Chief stipulated that \$3,500 be paid to the town to cover the cost of installing a standpipe in the snowmaking pond, as agreed to by the applicant, and that any multi-unit

housing have a sprinkler system. Utilities serving the subdivision, except for service boxes, will be buried within the road right-of-way.

24. **Legal Requirements.** Articles of Association and bylaws were submitted for the Joiner Brook Homeowners Association Inc., incorporated by the applicant's attorney on 11/15/2007. The bylaws, as submitted, require that common land (Lot #6), the access road and any other facilities owned by the association be maintained in accordance with state permits and approvals. Deed restrictions specify that the homeowners association is responsible for road maintenance and repair, and for maintaining Lot #6 in its present, undeveloped condition. The removal of dead or diseased trees on Lot #6 (but not within other stream setback areas) is allowed only with prior approval of the Tree Warden or County Forester. Other deed restrictions include cutting restrictions outside of proposed house sites (not building envelopes) and road and driveway rights-of-way, building height and lighting restrictions, and siding, roof material and lighting restrictions intended to address concerns raised by Bolton Valley Resort. They also limit the construction of all structures, parking and lawn areas to designated building envelopes.

Planned Development Review Criteria (Section 8.5)

25. **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.
26. **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.
27. **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.

Conditional Use Review (Section 5.4) -- as required for development on steep slopes, within stream setbacks

28. **Capacity of Existing and Planned Facilities and Services.** As documented above (findings #22, 23) the subdivision will have no undue adverse effect on existing or planned community facilities and services. The applicant has approval from Bolton Valley Resort and the state to connect to Bolton Valley's wastewater system. Lots will be served by individual wells, as shown on the final site plan. A stand pipe is to be installed at the snowmaking pond for fire protection. No other municipal impacts were identified by the Town Clerk or the Bolton Fire Chief in supporting documentation.
29. **Character of the Area.** As documented above (Findings #13, #17), the proposed subdivision will have no undue adverse effect on the character of the area or adjoining properties, including the Ponds events facility at Bolton Valley Resort.
30. **Traffic on Roads and Highways in the Vicinity.** As documented above (finding #22) the subdivision will have no undue adverse effect on traffic or highways in the vicinity. Access to the subdivision has been reviewed and approved by both the Bolton Fire Chief and the Bolton Road Foreman, and has been issued a curb cut permit by the Town.

31. **Bylaws in Effect.** The proposed subdivision/planned residential development complies with all municipal bylaws currently in effect, including applicable provisions of the town's zoning and subdivision regulations, and highway ordinance. In particular, the subdivision design:
- Incorporates shared access onto a town highway (Bolton Valley Access Road) as required under Sections 3.2 (Access & Driveways). A town highway access (curb cut) permit has been issued.
 - Specifies shielded exterior lighting, as required under Section 3.9 (Outdoor Lighting).
 - Avoids development on slopes greater than 25%, and incorporates accepted state practices for stormwater management and erosion control on slopes of 15% or more, as required under Section 3.16 (Steep Slopes). A state stormwater permit has been applied for, but has not yet been obtained.
 - Incorporates stream setbacks as required under Section 3.17 (Surface Waters & Wetlands), including increased stream setbacks and buffers along Joiner Brook. Only an unpaved trail along Joiner Brook and one stream crossing for the access road are to be located within designated setback and buffer areas, as shown on final the final site plan (SP1) and subdivision plat.
 - Meets state requirements for wastewater and potable water supply systems as required under Section 3.18 (Water Supply & Wastewater Systems). An amended state wastewater and potable water supply system permit has been issued.
32. **Utilization of Renewable Energy Resources.** See finding #18 above. Required cutting restrictions to protect water quality, provide screening, and to prevent soil erosion and bank failure may necessarily limit solar access and the use of wood from the site as a renewable energy resource-- a tradeoff that the DRB has agreed to accept in this circumstance.
33. **Site Plan Review Standards.** The proposed planned residential development complies with applicable site plan review standards. Specifically, proposed subdivision design:
- Incorporates and protects significant existing site features, including areas of very steep or unstable slope, surface waters and associated setbacks, and a potential wildlife travel corridors along Joiner Brook, and includes these areas as permanently protected open space, as shown on the final subdivision plat, site plan, and in supporting documentation.
 - Consolidates and limits vehicular access onto the Bolton Valley Access Road.
 - Provides for required parking areas only within designated building envelopes, as shown on the final subdivision plat.
 - Incorporates landscaping and screening (see finding #17 above).
 - Includes deed restrictions for exterior lighting to limit impacts to adjoining properties.
 - Incorporates accepted stormwater management and erosion control practices, as required by the state (permit pending).

DECISION & CONDITIONS OF APPROVAL

Based upon the above findings, the Development Review Board **APPROVES** (5-0) the request by Michael Kokell for final subdivision and conditional use approval for a 6-lot, 7-unit planned residential development as proposed and documented in submitted materials and testimony, subject to the following conditions:

1. The final plat, dated 7/29/08, and all supporting legal documents, as herein approved by the DRB, shall be submitted for recording in the land records of the Town of Bolton within 180 days of the date of this approval, or the approval shall expire and reapplication for final subdivision approval shall be required. The applicant shall file the Mylar plat, signed by the Chair of the Development Review Board, with the Town Clerk in accordance with the requirements of 27 V.S.A. Chapter 17, and provide two paper copies and one digital copy of the recorded plat, and one copy of all supporting documentation to the Zoning Administrator. The final subdivision plat shall carry the following endorsement:

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“Approved by the Development Review Board of the Town of Bolton, Vermont, on the 15th day of September, 2008, subject to all requirements and conditions of subdivision approval. Signed this ___ day of ____, 2008, by _____, Chairperson.”

2. All lots, building envelopes, road rights-of-way, trail easements and associated boundary markers shall be as shown on the approved plat and supporting documents, and as described in accompanying surveyor’s notes.
3. Lot #6 shall be maintained as common, undisturbed open space, identified on the plat as “Protected open space, for which no further subdivision shall be allowed.” This lot shall be maintained by the Joiner Brook Homeowners Association in accordance with specified deed restrictions and conditions of approval.
4. All structures, including principal dwellings and accessory structures, and all lawn and parking areas, shall be located within designated building envelopes as specified and shown on the approved plat, and marked on the ground.
5. No cutting, damage or removal of any trees or other vegetation is allowed on Lot #6, or within other required 50-foot stream setbacks, except within approved trail corridor and stream crossing areas as shown on the final site plan or, with prior approval from the Town Tree Warden or County Forester, to remove dead or diseased trees. Deed restrictions shall be revised accordingly to also limit the removal of vegetation within required stream setbacks.
6. In all areas outside of Lot #6, required stream setbacks, designated building envelopes, road, driveway and trail rights-of-way as shown on the approved plat and site plan, no trees larger than 4” at breast height shall be cut, except for the removal of dead or diseased trees, as specified in accompanying deed restrictions.
7. Stream setback areas and areas of very steep slope (>25%), as shown on the final site plan and plat, shall be clearly marked on site by fencing or flagging tape to avoid any disturbance of these areas during site preparation work and construction.
8. Required improvements, including the common access road, utilities, stormwater management and erosion control infrastructure and the standing pipe as required for fire protection, shall be installed by the applicant, at the applicant’s expense, as shown on the approved plat and in accompanying plans, notes, details, and specifications. All improvements, including the access road, shall be maintained by the applicant or the Joiner Brook Homeowners Association, at no expense to the Town of Bolton.
9. Final subdivision plat and plan approval by the Bolton DRB shall not be construed to constitute acceptance by the Town of Bolton of any street, easement, utility, or other open space area shown on the final plat. Acceptance of any dedications by the applicant may be accomplished only by formal resolution of the Bolton Town Selectboard, in accordance with adopted town policies and state law.
10. A certificate of compliance shall be obtained from the Zoning Administrator, based on the submission of remaining state permits and approvals (stormwater, Act 250), and an as-built plan certifying that all required improvements have been installed in accordance with the conditions of subdivision approval. No zoning permit for the development of a subdivided lot shall be issued until a certificate of compliance has been issued.
11. No further approval from the DRB is required for the development of subdivided lots that meet conditions of subdivision and conditional use approval, including the construction of dwelling units and accessory structures within designated building envelopes, and access driveways, which require only administrative review and the issuance of zoning permits.

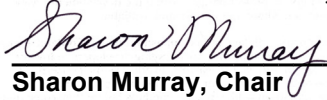
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Copies of this decision, the subdivision plat, site plan and supporting legal documents shall be provided to the buyers and subsequent owners of subdivided lots.

12. No changes, modifications or other revisions that alter the approved plat, including the location of subdivision boundaries, lot lines, building envelopes, road rights-of-way, trail easements, or utility corridors, or other associated conditions of approval, shall be made without prior approval from the DRB. Any changes, modifications or revisions recorded without DRB approval shall be considered null and void.

Members voting in favor of final subdivision, planned residential development and conditional use approval: Michael Hauser, Sharon Murray, Margot Pender, Michael Rainville, and Jen Andrews (Alternate).

Dated at Bolton Vermont, this 15th day of September, 2008.



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.