

Town of Bolton
3045 Theodore Roosevelt Highway
Bolton VT 05676
802-434-5075

Development Review Board
Meeting Minutes

May 28, 2008

DRB Members Present: Sharon Murray (Chair), Jerry Chabot, Mike Hauser, Margot Pender, Mike Rainville, Jen Andrews (Alternate)

Staff Present: Miron Malboeuf (Zoning Administrator); Jeremy King (Clerk)

Applicants Present: Doug Nedde (Bolton Valley Resort), Mike Hopwood (Bolton Valley 4x4 Driving School)

Others Present: See attached attendance list.

Locations: Bolton Town Office / Smilie Memorial School

Warned Agenda:

1. Public Comments – opportunity for public comment.
 2. Public Hearings (see hearing notices):
 - (a) Town of Bolton/Site Plan Review (continued) – Landscaping Plan
 - (b) Michael Kokell / Final Subdivision, PRD Approval (continued) – 6-lot, 7-unit PRD
 - (c) Mountain Operations and Development LLC (dba Bolton Valley)/Conditional Use Review – expansion of pre-existing, nonconforming off-road vehicle course.
 - (d) Mountain Operations and Development LLC (dba Bolton Valley)/Amended Conditional Use Review –year-round use of “The Ponds” events facility.
 3. Mountain Operations and Development LLC (dba Bolton Valley) / Sketch Plan Review (pre-application review) – conceptual master plan for Bolton Valley Resort
 4. Meeting Minutes – October 24, 2007, December 12, 2007, March 26, 2008.
 5. Other Business
 6. Adjournment
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Call to Order

Sharon Murray, Chair called the meeting to order at 7:05 pm and reviewed agenda items. Mr. Malboeuf noted that Mr. Kokell had asked for a continuance of his hearing until June 25, 2008.

Ms. Murray announced that, due to the large number of people present for the Bolton Valley Resort hearings, the Board would recess the meeting and reconvene at the Smile Memorial School following the Bolton Town Office hearing. She asked that public present for those hearings move over to the school.

1. Public Comment

Moved until after hearings and all parties are present at the school.

2. Public Hearings

2(a) Public Hearing –Town of Bolton / Amended Site Plan Approval (continuance)

Ms. Murray reconvened the public hearing concerning the Town of Bolton's request for amended site plan review and approval for the landscaping plan submitted as a requirement of prior DRB site plan approval issued on July 18, 2007. She added that this hearing was a continuance of the hearing initially warned for, convened and recessed on March 26, 2008, pending the submission of a detailed landscaping plan and list of species. She added that DRB member Jerry Chabot had agreed to work with the Selectboard to prepare a revised landscaping plan, and had therefore recused himself from these proceedings. No other conflicts of interest or ex parte communications were identified.

Mr. Chabot, speaking on behalf of the town, noted the following regarding the landscaping plan submitted for Board consideration:

- The location of a future 5-foot wide public pathway was now shown on the road side of the building, to extend across the property from the cemetery lot to the Town Office, though only the town office portion of the lot is depicted on the plan.
- The "green-way" is now shown.
- The town talked about a sign, but didn't have any firm plans. Consideration had been given to lettering on the façade of the building.
- The landscaping plan shows the relocated monument, the potential location for a new monument, the ski-chair, proposed parking lot screening, and existing trees, including those recently planted.
- All setbacks were noted on the drawing.
- Planting beds were removed from the drawing.

Ms. Murray inquired about a few trees that were missing from the drawing, and the raised planting beds that had been removed from the drawing but were still in existence, in accordance with the approved site plan. Mr. Chabot said that he drew what had been described to him and what he found actually existing on the property. Ms. Murray wanted to know if a vegetation list had been submitted. One had not. Ms. Murray indicated that they needed to be clear about what the board was approving and that she'd consider approving the landscaping plan contingent upon the submission of a vegetation list, clarification whether the raised beds were going to be removed, and identification of all trees on the lot, including those missing from the plan.

Ms. Pender noted that at the last meeting the board had decided not to require a lot of planting. Ms. Murray agreed, but wanted to make sure everything was included on the map in order for the board to be able enforce any conditions of approval. Mr. Rainville added that the big concern was the walkway, and that the corridor for a future path was protected. The Board also discussed regulatory requirements regarding the use of native species and long-term maintenance.

MOTION: Ms. Pender motioned that the Board approve the landscaping plan with conditions that the Town provide a planting list, that the new trees be shown on a final landscaping plan, that the planting beds be shown on the plan, and that if anything died within three years, it must be replaced with appropriate salt resistant, native species. **SECOND:** Michael Hauser. Motion passed unanimously. Mr. Chabot did not vote.

2(b) Public Hearing – Kokell/Final Subdivision, PRD Review (continuance)

Mr. Malboeuf reported that Mr. Kokell had requested a continuance until June 25, 2008 as noted in opening remarks, and noted that by that time they should have at least a draft of the Act 250 findings.

MOTION: Jerry Chabot moved to recess the hearing to June 25, 2008, 7:00 pm, Bolton Town Office. **SECONDED:** Michael Rainville. Motion passed unanimously.

The Chair then recessed the meeting at the Bolton Town Office, which was reconvened at the Smilie School at 7:35 pm.

#1– Public Comment

There were no public comments.

Ms. Murray noted that the following hearings were open to the public, but that certain people, including adjoiners, qualified under state law as “interested persons” with rights to appeal any decision of the Development Review Board if they participated in the hearing process by submitting oral or written comments. She asked that anyone who spoke during the hearing process identify themselves for the record, and make sure that they signed the attendance list as a potential interested party.

2(c) Public Hearing – Bolton Valley/ Conditional Use Review to expand Off-Road Driving School

Ms. Murray read the hearing notice for the request by Bolton Valley to expand their off-road vehicle course using existing alpine ski trails, and noted that as such, the DRB would review this under conditional use criteria and steep slope provisions of the regulations. No conflicts of interest or ex parte communications were identified. Ms. Murray then turned the floor over to Doug Nedde, standing in for Larry Williams, representing Bolton Valley.

Mr. Nedde introduced himself as a partner of Larry Williams at Redstone and would be speaking on the resort’s behalf. He explained that they are a Burlington based development company, have owned Bolton Valley since June of 2007, and had been working with the previous owner, Bob Frees, for the preceding three years. Mr. Nedde explained that the resort was working on ways to make the resort a viable business – for the past 12 to 15 years the resort had been losing approximately one million dollars per year.

Mr. Nedde explained that Mike Hopwood, the operator of the driving school, came to them approximately two years ago to open the school. He added that at that time, they came to the Town and received approval from them, as well as Act 250 approval, to open and run the school. With Act 250 approval came many requirements that they had to abide by in order to keep the school running, including the maintenance of over 170 water bars which have to be checked following use of the ski trails and roads by the school.

Mr. Nedde noted that they were at the meeting today because there seemed to be a disagreement as to whether this was a permitted use or not. He added that there was no construction involved with the expansion they were seeking, and that they considered it to be an outdoor recreational use.

Ms. Murray noted that Mr. Malboeuf had provided the letter from former ZA, Dick Ward, stating that the use conformed to town regulations that were in place in 2004. She added that since that

time, a whole new set of regulations had been adopted by the town, and that the Zoning Administrator had determined that the off-road course was now a pre-existing nonconforming use under the new regulations, as warned for hearing. Mr. Malboeuf added that his interpretation of this use required conditional use approval from the DRB as an outdoor recreational use.

Mr. Hopwood explained the operation of the school as follows:

- The school runs from May 1st until October 31st.
- It operates anywhere from 2 to 4 times a week, with approximately 6 vehicles at a time with up to 18 people on board.
- It uses the trails around the mountain for about 3 to 4 hours of drive time.
- A lot of the activities happen around the Timberline lodge.
- 95% of the training they do is for emergency services, military and tire companies. Occasionally they have an individual that comes to them for training if they are going on a trip to Africa for example.
- Occasionally, for the military, they will run training sessions at night.
- All driving is done at very low speeds allowing the vehicles to maximize traction.

Linda Baker, Chair of the Bolton Planning Commission (PC), reported that the PC knew nothing about the driving school until recently. Ms. Baker noted that the letter from the former ZA indicating that the driving school conformed to local regulations and did not need local DRB approval was incorrect. She also noted that their Act 250 permit application indicated that no local permits were needed. Ms. Baker supplied written comments from the PC that were also submitted to Act 250. Ms. Murray noted that, because the former ZA's decision had not been appealed, it likely applied to the existing use.

Mr. Rainville indicated that the existing letter from the ZA established the base for their operations and asked them to elaborate on their proposed expansion. Mr. Nedde explained that they weren't planning on adding vehicles, but wanted to extend the trail network they currently use by 20 to 25 percent.

Ms. Murray asked for clarification given that the numbers in their application to the DRB were different than the numbers in their Act 250 application. She noted that under the DRB application they currently use 4.1 miles of trail and are proposing 6.6 miles. The Act 250 application says they currently have 3.9 miles and are proposing 5.7 miles. Mr. Nedde indicated that he hadn't seen those figures before.

Warren Kirshbaum, who lives at 58 Snowdrift Lane, raised the following issues:

- The school is using Snowdrift Lane as access to some of their trails.
- They use the road from 8 AM to 9 PM.
- The road is owned by himself and two other parties.
- The deed states that the access is not for use by the mountain or the 4x4 school.
- The road is not on the existing trail or proposed trails.
- Nighttime use occurs, every week, all of the time.
- He is against running at "inappropriate" times of the day and access through private roads.
- Their application state that access for the off road school will be up Timberline Trail.

Walter Duda, who lives on the Wentworth Road, raised the following issues:

Bolton Development Review Board Meeting Minutes
May 28, 2008

- The installation of water bars, rip rap and trenches along the trails have resulted in erosion on his neighbor's property that has cut sharply into their land, and that
- A bulldozer came onto the property without permission, gouged the land and knocked down trees.

Mr. Duda added that property owners William and Elaine Miles sent a complaint letter to the DRB on April 25, 2008 about their concerns. He noted that a letter regarding the issue was also sent to Mr. Williams. Ms. Murray asked if they had received the letter. Mr. Malboeuf indicated that it was on file.

Andrew Crowder, who also lives on Wentworth Road, added that the water bars built now go across his and his neighbor's properties and he is now receiving more water than he should be from the mountain. A huge trench was dug last year and the series of water bars have been created over the past few years.

Bill Miles added that Mr. Williams was aware of these issues and a watershed person from the state, Krista Reinhardt, had made a site visit. Mr. Miles met with her, and indicated that she would be writing Mr. Williams a letter.

Ms. Pender asked about the time frame of the meetings. Mr. Miles responded that he met with Krista on May 2, 2008 and with Larry a week before.

Ms. Murray asked Mr. Nedde if he'd like to respond to the concerns raised. Mr. Nedde noted that it appeared that Larry had met with the watershed people and visited the site, and is working on a recommendation to solve the issues.

Peter Fenn, who also owns property on Wentworth Road, indicated that he has raised these issues with Mr. Williams in the past and that nothing has been done. He added that his that his property has been damaged by the water bar system that Mr. Williams has been looking into for three years.

Ms. Murray explained that the off-road school as permitted is a nonconforming use in part because of the steep slopes limitations under the new regulations that were not in place when the original permit was issued.

Mr. Nedde suggested that the slope limitations apply only to development and that what they are doing is not development. He cited skiing, snowmobiling and logging as uses and not development subject to review. Ms. Murray noted that use of land is a form of land development as defined under state statutes, and that under the regulations only alpine ski trails intended for skiing are specifically exempted from the prohibition of development on slopes in excess of 25%. Logging is exempt from local regulation under state law. Mr. Nedde suggested that it was just a legal difference, because under Bolton's regulations development is limited to building structures and roads and parking –it's not using land. He then submitted an opinion from their attorney that no local permits or approvals were required. Ms. Murray noted that Bolton Valley did not appeal the zoning administrator's initial determination, but rather applied for expansion of a nonconforming use. As such, the DRB has been asked to hear and decide the expansion request under applicable criteria of the regulations, including the effect the expansion may have on steep slopes. Mr. Hauser referred to applicable sections of the regulations.

Sharon asked the board if they have any additional questions for Mr. Nedde.

Mr. Chabot, asked when the current permit went into effect given errors in the first submittal. Ms. Murray explained that to date the board had only the letter from the former ZA to go on, and that they would need to determine associated jurisdictional issues, including whether or not the driving school was legally in existence when the new regulations went into effect.

Rodney Pingree, speaking on behalf of the Planning Commission, noted that that they have observed that that some of the off road trails go into the Bicknell Thrush habitat and asked what was being done to protect the habitat. Mr. Nedde noted that Act 250 had sent experts into the area before their permit was issued. Mike Hopwood added that the school's vehicles travel a considerable distance from the habitat and do not travel above 2,800 feet until August 1st, which is when they are done breeding. Ms. Murray noted that the portion of habitat conserved through easements, as required by the DRB under previous approvals, had not been shown in application materials.

Brett Lister, a resident of Thatcher Road, raised questions about how close the expansion would come to drilled wells, and what impact vehicle traffic may have on the wells.

There being no other questions or comments, Ms. Murray asked for a motion to recess the hearing pending additional information from the applicant, adding that the board would draft a letter requesting additional information and possibly schedule a site visit.

MOTION: Margot Pender made the motion to recess the hearing until the next regular meeting of the Development Review Board, scheduled for June 25, 2008, 7:00 pm at the Bolton Town Office. **SECOND:** Mr. Chabot. Motion passed unanimously.

2(d) Public Hearing –Bolton Valley/The Ponds (Events Facility) Request for Amended Conditional Use Approval.

Ms. Murray read the hearing notice, noting that the hearing was being convened to consider a change in the use of "The Ponds" events facility, a conditional use under the regulations, from three seasons as approved under a decision issued by the DRB in October of 2005, to year-round use. No conflicts of interest or exparte communications were reported.

Doug Nedde, representing Bolton Valley, explained the requested change to allow use of the Ponds facility during the winter as follows:

- Weddings could be held throughout the winter
- Receptions at the facility would start around 5 PM, and normally occur on Saturdays.
- Ceremonies would not be held at the facility, but rather at a local church.
- It may also be used for corporate retreats or holiday parties.
- There is more than enough parking to accommodate the normal wedding/retreat.
- Incoming water is served by a drilled well.
- Wastewater will go into their sewer treatment plant.

Mr. Nedde added that the main issue they are aware of is parking lot space, to be shared by the Timberline Lodge and the Ponds facility, and they don't believe there would be a conflict because the Timberline lift closes at 3:45 PM. Mr. Chabot noted that in the initial permit filings, there wasn't enough wastewater allocation for both the Timberline Lodge and The Ponds facility – the board needs to see information on this. Mr. Nedde informed the board that they have received a state permit allowing that and he would share it with the board.

Ms. Murray noted that there were three issues regarding capacity for year-round use, parking, pedestrian access, including crossing at the intersection, and waste water management. Under previous applications, it was stated that parking at Timberline was used for skiers, and during peak periods, employees as well. She noted that resort has received local approval for a specified number of spaces, as documented to date, and that the DRB stipulated under previous approvals, that a parking plan could be required. She also noted that there are discrepancies between the number of spaces identified in submittals and findings, and the number included in the application.. Ms. Murray explained that under the regulations for shared parking the DRB may require documentation regarding the number of spaces, and how they are to be used.

Walter Duda raised the issue of being stopped by the resort's traffic control people when he is going home. This can be difficult given the slope of the road, especially under winter conditions. Several people discussed the crosswalk and whether it had been adequately marked.

Ms Murray noted that a parking analysis and an update of previous recommendations for traffic management at the crosswalk should be submitted for review by the board

MOTION: Mr. Hauser moved to recess the hearing, pending the submission of additional information, until the next regular meeting of the board scheduled for June 25, 2008, 7:00 pm at the Bolton Town Office. **SECOND:** Jerry Chabot. Motion passed unanimously. A letter will be sent to Bolton Valley specifying additional information to be submitted.

3. Bolton Valley/Sketch Plan (Pre-application) Review – Conceptual Master Plan

Ms. Murray noted that this is a pre-application review of the Bolton Valley Master Plan – as such it is not a formal public hearing. The board does not expect complete information as part of a sketch plan – this review is intended to identify what the applicant wants to do, and to allow the board to provide some initial guidance regarding the local review process.

Mr. Nedde, representing Bolton Valley, highlighted some of the ideas included in their master plan, which are in a conceptual phase of plan development:

- Snow making and night lighting on Nordic trails.
- Expanding the beginner ski area and adding a magic carpet.
- Adding more gladed ski areas to the mountain.
- Blasting ledge out-croppings to reduce the cost of snow making on trails.
- Expanding snow making capacity and efficiencies in terms of storage and piping equipment.
- Establishing a chowder or hot chocolate house at the top of the Timberline Trail in the existing Ski Patrol shed.
- Expanding the trail network for mountain biking and the 4x4 off-road school.
- Adding 100 to 200 condominium units to the core area, in phases of 20 to 30 units.
- Building some slope-side housing, e.g., next to Snowflake.
- Building 30 to 60 wilderness cabins throughout the Nordic Center area.
- Building 20 to 30 single family homes further down on accessed from Broadway.
- All projects proposed will be environmentally friendly.
- Looking to develop zero-carbon communities using solar, wind and micro-hydro.

Brian Drinkwater, owner of the Black Bear Inn, voiced concerns regarding the Villager and that it appears from their plans that they may be cutting it off. Mr. Nedde noted that Villager is important to the resort and would probably be relocated around the new construction because it doesn't make sense for them to disconnect their two mountains.

Howard Douglass, a resident at 277 Wentworth Road, raised the issue of deforestation and run-off sensitivity and is concerned that such a high-density development and removal of the forest is just going to add to the run-off problems that already exist.

Peter Fenn raised the issue of property devaluation along Wentworth Road because their views would change to the backs of new condos rather than their current views.

Walter Duda raised the issue that new residency would be primarily tourists and seasonal residents rather than year-round residents, and that noise and light encroachment would result from the slope-side development.

Pat Duda noted the following issues:

- Hydrology issues related to erosion.
- Impact on wildlife, particularly fish in Joiner Brook.
- Damage to the Bolton Access Road caused by increased construction and traffic.

Warren Kirshbaum noted that two issues that came up at the Act 250 hearing, water supply issues and increased security needs, had not been addressed in the plan. Mr. Kirshbaum also cited access to the new developments as an issue. Mr. Nedde explained that they could go over or under slopes or around developments to access new housing, but since they are in the conceptual phase, no engineering has been done to show where access would be made.

Peter Fenn asked Mr. Nedde what their time-frame was for starting construction. He explained that the part they have been focusing on is their wilderness community, which would be a very “green” carbon neutral community, and they hoped to be able to start applying for those permits within the next 12 months. He added that that this phase could include the wilderness cabins as well as a 30 room inn/lodge. Mr. Nedde indicated where the proposed wilderness cabins area was located on the maps.

Ms. Pender asked Mr. Nedde to elaborate on their wind plans and the viability of wind energy. He explained that they hired a wind consultant who has done an analysis for them that indicates Bolton has a great wind resource. He was unsure if it is a viable cost option.

Sandy Douglas notes that the master plan calls for 260 condos and asked where they would be located, as it wasn't noted well on the maps. Mr. Nedde explained that the condos would be spread out in three areas –wilderness, slope-side next to Snowflake/Bentley and in the core. Ms. Pender asked about the slope-side residential area on the map around the wilderness lift. Mr. Nedde explained that this designated condominiums, but he was not sure that this is what they would finally propose.

Neil Villaneau asked Mr. Nedde about access to the new condos. He explained that they haven't done any engineering yet and everything was in the conceptual stage.

Peter Fenn asked about how much septic would be installed. Mr. Nedde explained that the plan is to increase the capacity of the current plant and add additional septic fields.

Ms. Pender asked Mr. Nedde to elaborate on any upgrades planned for the base lodge. He explained that they don't have anything planned for the base lodge yet. He noted that the current lodge is crowded on busy days and that they would like to enlarge it at some point in the future.

Wendy Farrell, a resident at 296 Wentworth, raised the issue of construction hours – she had heard that construction could run from Monday through Saturday, possibly starting as early as 6am.

Warren Kirshbaum noted that the terrain up there is really rocky and asked what would be done for blasting. Mr. Nedde explained that a lot of the projects they do require blasting and they always hire professional blasters that have protocols they must follow, including making the neighborhood aware of the blasting times. They also video tape inspections of each home to look for damage after blasting.

Lisa Stanton, a resident on ThatcherRoad, suggested to Mr. Nedde that a cabin at the very top of Wilderness may be something to consider in order to bring in winter weddings.

Ms. Murray noted to Mr. Nedde that the DRB is not Act 250, and that the DRB would have to consider and make findings under Bolton’s regulations. These should be addressed in the application Town regulations are on the Bolton website. She added that the Master Plan would likely be reviewed under the regulations as a planned unit development, requiring both subdivision and PUD approval.

Ms. Murray asked Mr. Nedde if they are planning on submitting something to the planning commission for review in relation to any proposed changes in the regulations. Mr. Nedde noted that he believed Mr. Williams would be working with the town’s ad hoc committee formed for this purpose. Ms. Pender added that the ad hoc committee had met regarding the resorts expected expansion plans three years ago and had advised Mr. Williams that a detailed Master Plan would be needed before they could consider changing any regulations to accommodate development. Mr. Chabot noted that the Master Plan should be tailored to the regulations so it would be more useful to the Ad Hoc committee.

Mr. Malboeuf noted for the record that written comments had been submitted by the Planning Commission and Conservation Commission.

There being no further discussion, Ms. Murray indicated that, unless additional information is submitted, the board will issue a sketch plan review letter based on information provided that is non-binding, but would outline how the board would consider the master plan, and any initial issues to be addressed in the application under the regulations, such as steep slopes. Amendments of the regulations may be required in order to allow the resort to do some of the things they are proposing to do. The DRB letter is public and will be posted on the Bolton web site, and mailed out on request.

4. Meeting Minutes

Given the late hour, and lack of draft minutes, it was decided to postpone approval of minutes until the next regular meeting of the Board.

5. Other Business

No other business was brought to the attention of the Board.

6. Adjournment

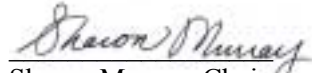
The meeting was adjourned at 9:35 pm.

Bolton Development Review Board Meeting Minutes
May 28, 2008

Respectfully submitted,

Jeremy King, Clerk

These minutes were accepted by the Development Review Board on September 24, 2008.


Sharon Murray, Chair