

WEST WINDSOR DEVELOPMENT REVIEW BOARD

Draft Minutes
August 11, 2009

Present: Glenn Seward, Shannon Harrington, Hal Pyke, Phil Arvidson, Pete Ladd, Genevieve Lemire, Martha Harrison, Tom Kenyon, Steve Plausteiner, John Plausteiner

Absent: John McNamara

1. Call to Order: Vice Chair Shannon Harrington called the meeting to order at 7:00 PM.
2. Changes or Additions: Tom Kenyon said he would like to discuss permit #2353.
3. Informal Review – Reconfigured Subdivision: Snowdance LLC, d/b/a Ascutney Mountain Resort (Parcel #3-51, 3-53, 3-102, 3-103, 3-104, 3-105, 3-106, 3-107, 3-108, 3-109, 3-110, 3-111, 3-113, 3-208, 3-216) - Glenn Seward recused himself from the discussion. Shannon noted that this is an informal review and read a memorandum of understanding to that effect, which Shannon signed on behalf of the town and Steve Plausteiner signed on behalf of Snowdance LLC. Steve said this is a 17-lot subdivision which was approved in 1979 and includes Mountainside Drive. Steve said he would like to eliminate one lot and reconfigure the remaining lots so all accesses are on Mountainside Drive. Steve said he would like the DRB to decide that his proposal is a lot-line adjustment so Martha can approve it. Steve showed the DRB three maps depicting the subdivision “as is” and “as proposed.” Tom Kenyon said that Bridge #7 (the Route 44 bridge that spans Mill Brook on the east end of West Windsor) has problems and is going to have to be replaced at some point. Tom said when the bridge is closed, the Fire Department won’t be able to access the Resort quickly. Tom suggested that the applicant consider using his right-of-way onto Route 44 as an alternate access when the bridge is closed. Steve said the right-of-way is his brother’s driveway right now, but he’s sure they could work something out. Steve said the bridge in the right-of-way is adequate for the Resort’s groomers, which are heavier than most of the Fire Department’s equipment. Steve said the winter might be a challenge. Tom said emergency access doesn’t need to be addressed right now, but it should be addressed. Shannon asked how a fire truck would maneuver at the end of Mountainside Drive. Steve said the subdivision has already been approved and he’s not looking to add a second entrance or do anything new, he just wants to change the configuration of the lot lines. Shannon asked about the current water and sewer approval for the lots. Steve said he doesn’t think any of the lots have wastewater permits at this point. Shannon asked if there is an Act 250 permit for the subdivision. Steve said he thinks so. Steve said it’s possible that the lots might be able to connect to the existing sewer line, but he doesn’t know for sure yet. Glenn said when he applied for a permit for an accessory dwelling unit, he talked with April Hensel who said there was no Act 250 permit for that area. Shannon said there must be an “EC” permit or a subdivision permit. Shannon asked about the water supply. Steve said all the wells in the area seem to be doing fine. Phil said he would like to walk the area before expressing any conclusive opinion on the subject. Shannon agreed. Shannon said the DRB will have to determine whether they consider Steve’s proposal a lot line adjustment or not. Shannon said according to the zoning regulations, any development in the Resort area needs to have Planned Unit Development (PUD) approval. Steve said the subdivision is already done and the proposed changes would just reduce the impact. Hal said it seems like we’re talking about multiple boundary line adjustments to reconfigure existing lots. Martha said she can only approve a boundary line adjustment if no new or non-conforming lots are created and at least one of the proposed lots is non-conforming. Martha pointed out the non-conforming lot, which lacks adequate frontage, and noted that the DRB has more latitude than she does. Steve said if that were the only sticking point, he could probably increase the frontage for that lot. John Plausteiner said the features of the land dictate where some of the lines are. Shannon asked about the access into Mile Long Field. Steve said he doesn’t know if they would ever extend that road and they may just eliminate the lots in Mile Long Field altogether. Tom asked about the minimum lot size for

the area. Shannon said it's quarter-acre with connection to the sewer and one acre with on-site septic. Tom asked if the lots that are two acres or more could be further subdivided in the future. Steve said that is not their intention. Phil said you could take care of that with covenants. Steve said there are covenants on the resort property now, which may or may not be extended and which do not allow people to subdivide, regardless of how much land they have. **Pete made a motion that the DRB walk the site on Saturday, August 29th at 9:00 AM. Phil seconded the motion, which passed unanimously.** Shannon said she can scan one of the maps and make copies. Phil said after the site visit the DRB will either have the basis for an informal opinion or they will have some specific questions that need to be answered. Shannon added that, as part of their informal opinion, the DRB will let Steve know whether he should apply for a lot line adjustment or a conventional subdivision. Hal noted that Martha has the right to refer boundary line adjustments to the DRB. Martha said she hadn't anticipated that the DRB might refer it back to her. Phil said he thinks the DRB should decide on boundary line adjustments that are referred to them. Shannon said an administrative lot line adjustment is typically a single adjustment, not multiple adjustments. Phil said he thinks it makes sense to have the DRB review it. Martha gave Steve a copy of the signed Memorandum of Understanding.

4. Other Business: Application #2353 and #2363 - Tom said when the DRB granted a variance to Gary and Vickie Neiduski for application #2353 one of the conditions of the approval was that there was to be an agreement between the applicant and Mr. Kenyon (himself) by August 11, 2009. Tom said he wants the record to show that application #2353 is null and void because the agreement did not take place. Tom said it is his understanding that the Neiduskis have a new application in. Martha said the Neiduskis did reapply for a 200 square foot shed, not attached to the house, twenty feet from the stone wall. Martha said the Neiduskis plan to move the furnace so that it will be under the shed. Phil said it would seem to him that, since no agreement has been reached, the original variance application is void. Tom said the new application is #2363 and he would like to get some assistance on whether he should appeal or not. Tom said the application sketch shows the proposed building exactly 20' from the property line and exactly 200 square feet in size. Tom asked what happens if, when the applicant applies for a Certificate of Occupancy, the building is only 19' from the line or is 11' x 21'. Tom said when his brother was ZA, he used to suggest that people add a few feet to the setback to make sure there's no question that the setback is adequate. Tom said the Neiduskis are cutting it pretty close. Glenn said if Tom felt that the shed was built too close to the boundary line, the next step would be to appeal it to environmental court. Phil said the first appeal would be to the DRB. Martha said it's fine for the Neiduskis to build a 10' x 20' shed that is 20' from the line; if they build an 11' x 21' shed that is 19' from the line, then they have a zoning violation. Phil said that's the last thing you want to have happen; you want to solve the problem before it's built. Shannon said the regulations allow what the Neiduskis have proposed. Genevieve agreed that you can't ask someone to go beyond the regulations. Phil said if he were in that situation he would appeal it unless the applicant brought in a surveyor to measure the distance. Shannon said she thinks the Neiduskis were given an approval, and rightfully so, and now we're just trying to prevent something. Tom said he can appeal to the DRB. Martha said Tom would be appealing her decision. Phil agreed. Tom said that wouldn't cost him any money. Martha said yes, it would cost \$150. Hal said Tom would be appealing a permit that was properly issued by the Zoning Administrator. Phil said \$150 is a small sum compared to what it costs to appeal to Environmental Court. Glenn said the section on appeals, Section 6.7, is pretty clear. Tom asked if the Selectboard set the \$150 fee. Martha said yes. All agreed that Tom has the right to appeal. Martha said she just isn't sure what it is about the decision that could be appealed. Tom said it appears, from the survey, that he owns the wall. Martha said she can advise the Neiduskis of that. Certificates of Occupancy: Tom read from Section 6.4 of the zoning regulations. Tom asked how many Certificates of Occupancy (COs) have not been completed. Martha said there were around 130 before she started reminding people and she has reminded about 40 people. Tom said those without COs do not have clear title to their

property. Tom said the Neiduskis can't use their shed until it's finished and they have a CO. Tom asked if the board has the right to grant a certificate of occupancy to someone who just applied or should the oldest ones be done first. Phil said the board has the discretion to do either one. Hal agreed. Tom said people who don't have COs don't have clear title to their property and he thinks we need to be far more aggressive about getting these things done. Phil said that Cathy Archibald brought it to the Selectboard's attention that a number of attorneys had pointed out, in the course of a title search, that there were some permitted structures without certificates of occupancy. Phil said if a CO is required and you don't have one, it raises a question about your title. Phil said the Selectboard felt that if you're going to have rules, you ought to enforce them so they asked Martha to address the issue but, given her work load, she can't do everything at once. Shannon asked if the applicants are notified of the need for a CO when the permit is issued. Phil said yes. Shannon said so they're in violation if they don't apply for a CO. Tom said they can't use their property. Phil said the problem is the potential cloud on the applicant's title. Tom said if Martha needs someone to go and take the measurements and report back, then the town should hire somebody to do that so we can clean this up by the first of the year. Phil said he's not sure he would go that far. Shannon asked Tom if the DRB had answered his question about the Neiduski permit. Glenn asked Martha if she is going to contact the Neiduskis. Martha said she would be happy to do that. Martha asked Tom if he owns to the Neiduski's side of the stone wall. Tom said it's not clear, but what if the setback on the shed ends up being off by 6 inches. Hal asked if somebody is going to spend the money to appeal over 6 inches. Shannon said the person appealing would have to hire a surveyor, which would be expensive. Tom said the town is going to spend the money if the setback is off by 6 inches. Tom asked if the DRB would ask the Neiduskis to move the building. Phil asked if the line has been surveyed. Tom said he has a survey but it's not clear whether he owns the wall, to the middle of the wall, or up to the wall and the deed does not say. Shannon said the DRB should word decisions carefully so the town is not taking responsibility for verifying the accuracy of the property line. Phil said the parties could agree that, for this purpose, the stone wall is the property line. Shannon agreed that a boundary line agreement would be a good idea. Tom said the Neiduskis obviously own to the wall, but they shouldn't measure to the middle or far side of the wall. Shannon suggested that Martha write a letter to the Neiduskis suggesting that they either measure from the inside of the wall or formulate a boundary line agreement with Tom. Phil suggested that Tom call the Neiduskis and try to work something out. Martha said the Neiduskis permit is effective this Thursday or Friday so someone should talk to them before then. Phil suggested that Martha call the Neiduskis. Martha agreed.

5. Minutes: April 14, 2009 – **Phil made a motion to approve the minutes of April 14, 2009, as written. Glenn seconded the motion, which passed with Shannon and Pete abstaining. June 29, 2009 - Phil made a motion to approve the minutes of June 29, 2009, as written. Genevieve seconded the motion, which passed with Shannon and Pete abstaining. July 14, 2009 (site visit) - Phil made a motion to approve the minutes of the July 14, 2009 site visit, as written. Glenn seconded the motion, which passed with Hal and Pete abstaining. July 14, 2009 (regular meeting) – Genevieve made a motion to approve the minutes of the July 14, 2009 regular meeting, as written. Phil seconded the motion, which passed with Hal abstaining.**
6. Other Business - None
7. Adjourn – **The DRB adjourned by consensus at 8:35 PM.**

Respectfully submitted,

Martha Harrison