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**MORRISTOWN/MORRISVILLE  
DEVELOPMENT REVIEW BOARD  
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**Minutes of July 26, 2007**

Members Present: Gary Nolan, Jean Wickart, David Silverman, Paul Trudell, Theresa Breault, Karyn Allen

Members Absent: Carl Fortune

Recorder: Mark Leonard, Zoning Administrator (ZA)

Guests: see attached list

Chairman Gary Nolan called the meeting to order at 7:35PM. On a motion by Theresa, seconded by Jean, minutes of the June 28, 2007 meeting were approved. On a motion by Karyn, seconded by Jean, minutes of the May 10, 2007 meeting were approved.

Gary noted that the Board had conducted site visits on July 12, 2007 to the Tomlinson wind turbine tower site, the Down to Werth property at 1541 Walton Road, and the proposed Manosh Planned Unit Development (PUD) site off Jersey Way.

**WARNED HEARING: DAVID MARVIN, CONDITIONAL USE APPROVAL, 884sf  
OFFICE ADDITION, 37 INDUSTRIAL PARK DRIVE**

Gary reviewed the application, to be considered under sections 233 and 630-635 of the zoning and subdivision bylaws. Paul recused himself from this hearing this application as his firm is doing the design work for the proposed addition while David recused himself as his employer has a business relationship with the applicant. Theresa administered the sworn oath to applicant David Marvin. There were no interested parties present for this application.

David Marvin described the plans to add a 24x36 office addition to the existing office space at the Butternut Mountain Farm production facility. The exterior of the addition would be similar in appearance to the existing structure. The siting of the addition requires relocating an existing sewer line, for which he has obtained an amended water & wastewater permit. He will also add another septic tank.

Theresa asked if he anticipated any additional traffic or parking due to the added office space. David said he has no plans to add additional employees as a result of this addition.

Theresa moved to approve the application as presented. Jean seconded the motion and it passed unanimously.

**WARNED HEARING (RECESSED): B&B NURSERIES, CONDITIONAL USE  
APPROVAL, 100-FOOT HIGH WIND TURBINE TOWER, 1056 STAGECOACH ROAD**

Gary reviewed the application, to be considered under sections 263 and 630-635 of the zoning and subdivision bylaws, noting that this was a resumption of the hearing that was recessed on June 28, 2007. He also noted that the Board had conducted a site walk of the proposed site on July 12, 2007 during which the applicant had, at the Board's request, flown a balloon at the approximate height of the proposed tower. He also said that several members had viewed similar structures located in nearby towns since the last hearing.

Theresa administered the sworn oath to Bruce & Tina Tomlinson, representing the applicant, and the following interested persons: Rhoda Bedell, Leon Whitcomb, Dale & Elizabeth Cookson, Nancy Currier, Debbie Kennison, Dana Borg, Michael Caldwell, Gert & Jeannette Lepine, David & Lisa Vilord, Rhonda Schriber, Mark & Peg Struhsacker, and Kevin Lane. Gary read letters supporting the application from Richard Barnett, Kevin Lane, Merlyn & Geanette Beckley, Alexandra Heller, Monte & Shirley Mason, Dan & Anne Shackett, Howard & Mindy Coen, James & Marilyn Bradley, Efficiency Vermont, and the Lamoille County Planning Commission into the record.

Bruce Tomlinson reviewed information on fact sheets published by the wind turbine manufacturer which addresses some the concerns raised at the previous hearing regarding noise, tower height, structural safety, impact on birds & bats, and property values. He explained that using a shorter tower would significantly reduce the turbine's power production. In response to a question from Paul, he said the tower was sited to maximize the wind in the area and to be clear of his home in the very unlikely event it should fall over. He stressed his concern about the global problem of climate changes and said he wanted to do what he could to reduce both pollution and the country's dependence on unsustainable energy sources, as well as lowering his electric bill.

Paul observed that the balloon test during the site walk showed that the tower and turbine would be clearly visible from both Walton Road and Stagecoach Road. He asked if the turbine would provide power to both the Tomlinson residence and the nursery business. Bruce said it would serve both, estimating that he could generate up to 50% of his power requirements.

Rhoda Bedell repeated the concerns in her letter regarding the precedent approving this application might set. She asked if there was a maximum allowable height for structures in the zoning bylaws. Gary said that this was the first such application, that there are no maximum heights listed in the bylaws, and that he expects that as a result of this application the Planning Commission will adopt some set of criteria for this type of structure as he would expect more people to consider installing similar systems. Bruce noted that the high initial cost of the system and wind patterns in various areas of town would likely limit the number of similar systems that might be installed.

Gert Lepine asked if the system would be net-metered (where excess power is fed into the public electric power system). Bruce said it would. Gert said many people will be watching to see how this works for Bruce and would follow his example if it proves to be a cost-effective way to reduce their electric bills.

Deb Kennison said where she lives she can hear most noises from her neighbors'

properties and asked what would be her recourse if the turbine turns out to be noisier than Bruce had stated. Gary responded that the board relies on the technical data and information on noise provided by a number of objective sources and based on that information he does not foresee that noise from the turbine will be at an unacceptable level. Karyn added that she could not hear any noise at the other wind turbine sites she visited, which were at roughly the same distance away from neighbors as this one is proposed to be.

Dean Parker asked how the Town could control or limit the proliferation of such towers. Gary said the zoning bylaw amendment that he expects to be considered as a result of this application would establish criteria on siting, height, and other factors that would determine where they could, or could not, go.

Nancy Currier asked what could be done if the tower is not aesthetically pleasing. Gary said the Board takes aesthetics into account and can impose conditions, such as requiring the tower to be painted a neutral color. He noted that the Board has done this for the telecommunications antennas that have been mounted on the radio station tower on Cote Hill. He said the applicant has proposed to paint the tower and turbine grey in order to minimize its visual impact. David added that aesthetics is an entirely subjective criteria, with some people objecting to the appearance of the tower while others had expressed support for it.

Peggy Struhsacker said that the environmental and economic costs of most of our existing power sources are going to force people to find alternative, non-polluting, renewable energy sources. She said this may require tradeoffs between the benefits of systems like the one proposed and their possible aesthetic impacts. She envisions groups of neighbors pooling their resources to install renewable energy systems. Bruce said that the system he hopes to use is projected to save 2.5 tons of carbon emissions over its 30-year lifespan.

Mark Struhsacker recalled that there was strong opposition initially from adjacent property owners when the Cote Hill radio tower went up, mostly over its perceived negative visual impact, but that it blended into the view with little, if any, problem. He added that during the application process for this tower, it was determined that there is no requirement by the FAA for a lighted beacon on towers less than 200 feet above ground level.

Leon Whitcomb read his letter expressing concern about setting a precedent for other towers.

David Vilord said he supports the project as a way to improve the environment and to help homeowners and businesses reduce their energy costs.

Paul moved to recess the hearing to a deliberative session at the end of the meeting. David seconded the motion and it passed unanimously.

**WARNED HEARING: DOWN TO EARTH LANDSCAPING, APPEAL OF ZONING VIOLATION NOTICE, 1541 WALTON ROAD**

Gary reviewed the appeal, to be reviewed under sections 260-263, 622-624 and 640-642 of the zoning and subdivision bylaws. Theresa administered the sworn oath to Zoning Administrator (ZA) Mark Leonard, Martin Werth, representing the subject property owner Down to Werth Farm LLC, Wayne Wheeler, agent for Appellant Down to Earth Landscaping, and attorney Brice Simon, representing both the Appellant and the property owner. Gary noted for

the record that the Board conducted a site walk of the subject property on July 12, 2007, with the ZA, Mr Werth and Mr Wheeler present.

Gary read the zoning violation notice into the record. In the June 29, 2007 notice, the Zoning Administrator cites Down to Werth Farm LLC for operating a commercial business, Down to Earth Landscaping, on its property at 1541 Walton Road, where such commercial activities are not permitted under the Town's zoning bylaws.

Attorney Simon described the relationship between Down to Werth Farm LLC and Down to Earth Landscaping, providing the Board an agreement between the two entities whereby Down to Earth Landscaping is contracted by Down to Werth Farm to establish and maintain a commercial nursery on the Down to Werth property. He said the nursery is in its initial start-up phase of what will be a long-term process of growing plants and trees and described the nursery as an agriculturally-exempt use under state statute (24 VSA section 4413d).

Attorney Simon noted photos taken by the ZA and submitted to the Board of the property with a number of vehicles and equipment on the premises. He said these were on the property in order to carry out the services Down to Earth Landscaping is contracted to perform on an ongoing basis. He stated that there was no office or employee facilities at the farm and that Down to Earth's principal business address is at another location (645 Walton Road, Mr Wheeler's residence). He further stated that there is no retail sales of nursery products currently or planned in the future.

Gary asked Wayne Wheeler where his landscaping vehicles and equipment were stored. Mr Wheeler replied that they were kept at various job sites, including at times the Down to Werth Farm, and at his home.

The ZA explained the basis for the violation notice. He stated that the planting and growing of trees and the nascent nursery is clearly an agricultural activity exempt from zoning. The violation notice is for a landscaping business that is being conducted from the same property as the nursery. He cited numerous reports from residents of the area, as well as his own personal observations, of trucks and landscaping equipment leaving the premises in the morning and returning in the late afternoon or early evening on a daily basis. He identified a number of commercial-sized lawn mowers and snow plowing and sanding equipment on the premises that are not consistent with the agricultural activity.

Paul asked Mr Wheeler to confirm that all the vehicles and equipment seen in the photos taken by the ZA are there to perform the services Down to Earth Landscaping is contracted for at the farm. Mr Wheeler stated that they are there for work on the farm, as well as for work he is doing at other locations, but denied using the farm as a base of operations for his other clients.

Mr Wheeler said the ZA had been 'persecuting' him and his employees since the fall, saying that the ZA had been verbally abusive to one of his employees over the phone and had come to the property once in the spring demanding to know what his employees were doing.

The ZA denied being verbally abusive or harassing anyone regarding this matter. He said that Mr Wheeler and Mr Werth had met with him several times in the fall to discuss what was and was not possible at the property under the zoning bylaws. He said they asked if they could establish and operate a nursery and related landscaping business. He advised them that the nursery would be an agriculturally exempt allowable use, but that any landscaping work would have to be incidental to the nursery, such as delivering and planting trees or shrubs grown at the

nursery, or would otherwise be subject to local zoning. He cited the November 2006 letter from the state Attorney General's office, which made the same distinction.

Mr Wheeler and his attorney objected to the fact that the photos of vehicles and equipment submitted by the ZA were taken on the premises without their permission. Mr Wheeler inferred that the ZA had snuck onto the property on a weekend, when he or the property owner were not present, to get these photos.

The ZA responded that during a site visit in May, Mr Wheeler had invited him to 'stop by anytime' to check out the operation; Mr Wheeler denied making that statement. The ZA said he went to the site on a weekend to document what vehicles and equipment were on the premises as they would typically be off site at their landscaping clients during the work week. He listed the number and types of vehicles and equipment observed at that time.

Attorney Simon stated that the number of vehicles and equipment seen in the photos is not typical of what is normally on the premises. Paul asked him to confirm that all the vehicles seen in the photos are there in conjunction with the work to establish the nursery. Mr Simon responded that vehicles and equipment belonging to Down to Earth Landscaping and Martin Werth Excavation seen in the photos were indeed there as part of the farm operation and when not so engaged would not be there.

Brian Bucheck, a Morristown resident who regularly drives by the Down to Werth farm, stated that he did not feel the nursery and other activities he's seen at the site were out of character with the area and that he regards the activity as being a productive part of the town's economy, providing jobs for local people.

David moved to recess the hearing to a deliberative session at the end of the meeting. Theresa seconded the motion and it passed unanimously.

## **WARNED HEARING: HA MANOSH INC, CONDITIONAL USE & SUBDIVISION APPROVAL, 17-LOT, 44-RESIDENTIAL UNIT PLANNED UNIT DEVELOPMENT (PUD), JERSEY HEIGHTS**

Gary reviewed the application, to be reviewed under sections 258g, 510-517, 632-635, 780m and 800-870 of the zoning and subdivision bylaws. Gary then recused himself as the applicant is his employer. David assumed the chair for this application. He noted that the Board had conducted a site visit at the subject property on July 12, 2007. Theresa administered the sworn oath to Howard Manosh and Sam Ruggiano, project engineer.

Sam Ruggiano reviewed the project plans, describing a 44-unit PUD consisting of sixteen single-family home lots ranging in size from one-half to one and a half acres and fourteen duplex condominiums in a 28.75-acre common lot. The project is located on a 40-acre parcel just behind the Jersey Heights subdivision. The project will require a state land use (Act 250) permit, in addition to water & wastewater and stormwater permits.

The PUD would be served by municipal water, sewer, and electric utilities. Sam noted that they had obtained sewer allocation for 20 units from Morrisville Water & Light Dept, which would accommodate the first phase of the project, the sixteen single-family home lots, and water allocation for all 44 units. He also said a sewer pump station would be needed to connect to the existing lines in Jersey Heights.

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The development would be accessed at two points: from Jersey Way across a fifty foot wide strip of land between two lots in Jersey Heights that had been reserved for this purpose and at the south end of Jersey Way, where it intersects with Cottage Street. The development roads would be constructed to town road standards, with the expectation that they would be taken over by the town at some point. A sidewalk would extend throughout the development, connecting to the existing sidewalk on Jersey Way.

The project would have three stormwater detention ponds. Sam noted the locations of Class III wetlands and pointed out 25-foot buffers around them and a 50-foot buffer around the smaller wetlands on Lots 10 and 12. He said approximately five acres of the 28-acre common lot would be cleared, although there would be no clearing within the wetland buffers. The sixteen single-family lots are in a predominantly open area, with little clearing expected. He also described planned street lighting and landscaping.

Theresa asked when did they plan to begin construction. Sam said they hoped to start in spring 2008, assuming all state and local permits were approved by the end of 2007. Howard added that he is planning for a 10-year build out, constructing homes as lots or units are sold.

David asked if they had done any analysis of expected traffic. Sam provided a preliminary analysis showing 24 trips in the morning peak hour, 31 trips during the evening peak hour and a total of 317 trips per day.

Sam reviewed comments provided by the Town Administrator in a memo to the Board. He disagreed with the proposed depth of the road section, saying it should meet town road standards. He said the planned roads would exceed state A-76 road standards for this type of residential development.

Dean Parker, property owner next to the Jersey Way access point, said he was made aware of the plan to put an access road next to his home when he purchased his property. He expressed some concern about placement of the new road within the 50' wide access corridor, noting that it would come very close to his driveway. He asked to review the road/sidewalk plans for this specific area.

Connie Wong, who owns the other property along the access corridor, also said she was concerned that the road would be too close to her home and that there would be too much noise and traffic along her property.

Donald Matura, who lives in the adjoining Belanger subdivision, noted the location of the condominium area and asked if it would be visible from his property. He also asked if the common lot might be subdivided further at some point. Sam observed that his property was about 500' from the condo area and elevated above it, with trees providing additional screening. He said there were no plans to further subdivide this lot and the topography did not lend itself to doing so.

Dorothy Reeve expressed concern about the additional traffic that would be created on Jersey Way, noting that they have a speeding problem on that road now and many children living there. She wants to see Jersey Way, currently a private road, taken over by the town so that a speed limit can be set and enforced by the town. Howard said he is close to an agreement with the town for Jersey Way to be taken over.

Larry Bliss asked what would happen if the town did not take over Jersey Way; could the new development road, as a town road, then connect to a private road? Howard said in the

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unlikely event that the town did not take over Jersey Way, he would proceed with the plan without the Jersey way access, using only the Cottage Street access.

Clark and Lucy Callender asked about the possibility of creating a direct access to the development from Route 100 so as to avoid going through Jersey Heights. The ZA read a letter from the adjoining property owner, where any such direct access would have to cross, opposing the project, indicating it would be unlikely they would entertain a discussion on this access point. They noted the location of the Class III wetland on Lot 12 would limit placement of the house to the rear of the lot, near a rising slope behind their property. Sam Ruggiano suggested establishing specific building envelopes to avoid conflicts with adjacent properties. They asked what the purpose and need for the detention ponds was; Sam said they were mandated by state rules to control stormwater runoff from the development. They expressed satisfaction that the new development would be adequately lit, unlike what they regarded as insufficient street lighting along Jersey Way.

Connie Wong questioned whether the detention ponds would create stagnant water that would attract bugs and other undesirable creatures. Sam said there was additional landscaping planned around the ponds to mitigate any standing water and repeated that the ponds were required by the state.

Theresa moved to recess the hearing to a deliberative session at the end of the meeting. Jean seconded the motion and it passed unanimously.

The board concluded the public hearings and moved into deliberative session. Theresa moved to approve the B&B Nurseries application for a wind turbine tower, with the condition that no lighted beacon or other lighted device was permitted. Jean seconded the motion and it passed unanimously.

Owing to the length of the public hearings, the Board postponed the deliberative sessions on the zoning violation appeal and the Manosh PUD until August 9<sup>th</sup> at 7 PM

On a motion by Paul, seconded by Jean, the meeting adjourned at 10:45 PM.

Respectfully submitted,  
Mark Leonard, Recorder

Minutes approved on: 8/9/07 TB/JW