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**MORRISTOWN/MORRISVILLE**
**DEVELOPMENT REVIEW BOARD**
**P.O. BOX 748**
**MORRISVILLE, VT 05661**
**Phone (802) 888-6373**
**Fax (802) 888-6378**

# Minutes of May 13, 2004

Members Present: Gary Nolan, Carl Fortune, Theresa Breault, Jean Wickart, Paul Trudell

Members Absent: David Silverman, Carol Jennings

Recorder: Mark Leonard, Zoning Administrator

Guests: Roy Marble, Wayne Demar, Alan & Colette Golden, Steven Leach, William Danforth, Don Ostler, Helen Schneider, Dean Whittemore, Linda Wood, Jeff Lively, Wilhelm Jaremczuk, Martha Ansly, Betsy & Martha Bernhard, Donald Swain, Gretchen & Al Besser, Dwayne & Karen Lanphear

Chairman Gary Nolan called the meeting to order at 7:35 PM. Theresa moved to approve the minutes of April 8, 2004. Paul seconded the motion and it passed unanimously.

## WARNED HEARING: CONDITIONAL USE PERMIT REVIEW AND PERMIT AMENDMENT, NORTH COUNTRY ANIMAL LEAGUE, 3524 LAPORTE ROAD

Gary gave an overview of the existing Conditional Use permit, which will be reviewed under sections 630-636 of the zoning bylaws as a condition of approval. Theresa administered the sworn oath to Linda Wood, Jeff Lively, Wilhelm Jaremczuk, and William Danforth.

North Country Animal League (NCAL) was granted a conditional use permit to construct and operate an animal shelter at 3524 Laporte Road. At the time of its application, there were considerable concerns voiced by neighboring property owners about the potential negative impacts from such an operation. The primary concern had to do with noise from barking dogs. The DRB's approval of the permit application included several conditions designed to mitigate any adverse impacts from the shelter and to prevent any undue noise from it. After a lengthy appeal process to the Vermont Supreme Court, the permit was upheld and the shelter began operations in April 2003.

Jeff Lively, NCAL's attorney explained that in addition to reviewing NCAL's compliance with conditions set down in the Conditional Use permit, and a subsequent modification of some of those conditions, NCAL was requesting to modify the hours during which the shelter could be open to the public and when dogs could be outside for walking and obedience training. The existing permit conditions established public operating hours as 10:00AM to 5:00PM five days a week, 10:00AM to 7:00PM one day a week, and 11:00AM to 3:00PM on Sundays. They are

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requesting to expand these hours to 10:00AM to 7:00PM seven days a week in order to make the shelter more accessible to the public for animal adoptions and public outreach and education activities. The permit conditions specifically allow NCAL to request an extension of public operating hours at the one-year permit review.

The shelter is also currently restricted to the hours of 10:00AM to 4:00PM Monday through Saturday and 11:00AM to 3:00PM Sundays for when dogs may be outside the shelter for exercise. Additional conditions require that no more than three dogs at a time may be outside, with one dog per handler, and that any dogs barking while outside must be immediately returned to the shelter. Linda Wood explained that these limited hours caused dogs to be inside for a very long time overnight and could have adverse health impacts on dogs that would not relieve themselves in their kennels. She said that the extended hours would not increase noise as the handlers were following the other conditions to prevent that now.

Carl asked why the original permit contained the restriction on outdoor hours. Linda said that an earlier operating plan envisioned use of a walking area surrounded by a large berm. As the plan evolved, that fell out, but the restriction on outdoor hours remained.

Theresa asked how often dogs are allowed outside. Linda said they were usually out 2-3 times a day and that this would not increase with the expanded hours. Paul asked if there had been any noise complaints since the shelter opened; the ZA said he had not received any.

Adjoining property owner William Danforth said he had occasionally observed dogs being walked outside of the currently prescribed hours and seen the shelter door left open on more than one occasion. Paul emphasized to Linda Wood that the NCAL staff needs to be aware of and comply with conditions put in place to avoid noise from the shelter disturbing the neighbors. She replied that this would continue to be stressed to all staff and volunteers and that to her knowledge, automatic door closers were installed as required in the permit conditions.

Wilhelm Jaremczuk, owner of the adjoining Farm Resort, stated that existing conditions requiring landscaping and keeping doors closed at all times have not been complied with and that the board should not consider easing restrictions while existing conditions remain unmet. He stated his objection to any extension of operating hours due to the potential for more noise. Martha Ansly suggested that a smaller expansion of outdoor hours might be more acceptable to the neighbors.

Jeff Lively acknowledged that the required landscaping has not been installed, due to a lack of funds. Carl said a deadline for compliance with the landscaping requirement needs to be set. Jeff said that the requested changes were reasonable and can be monitored and enforced.

William Danforth raised an objection to the large tent that NCAL sets up during the summer months when it holds a kids' summer program. Theresa asked how long the tent is in place. Linda said it was up from late May through early August.

Theresa moved to meet in deliberative session on this request following the remainder of this evening's applications. Jean seconded the motion and it passed unanimously.

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**WARNED HEARING: CONDITIONAL USE & SITE PLAN APPROVAL, STELLAR PROPANE SERVICES CORP. BULK FUEL STORAGE & TRANSFER FACILITY, STAFFORD AVE EXTENSION**

Gary gave an overview of the application, which will be reviewed under sections 233-234, 300-305, 481, and 630-636 of the zoning & subdivision bylaws. A site walk of the proposed project preceded the hearing. Theresa administered the sworn oath to Wayne Demar, Roy Marble, Don Ostler, Dean Whittemore and Helen Schneider.

Roy, representing the applicant, outlined Stellar Propane's proposal to purchase a .44-acre lot on the west side of Stafford Avenue (just before the Hearthstone facility) and construct a storage and transfer facility for home heating oil. The parcel is a pre-existing non-conforming small lot created by the town's subdivision of the Eva Perry property for the Stafford Avenue extension. It may be developed under the provisions of section 421 of the zoning bylaws.

The facility will consist of four 25,000 gallon vertical steel tanks located within a concrete containment area approximately 50'x 50' in size. Additionally, there will be concrete loading/unloading ares with spill grooves and spill containment facilities. The project will be designed to meet or exceed all federal and state environmental and safety regulations. The proposed facility would be contiguous with the applicant's existing propane gas storage & transfer facility, allowing for better facility management and supervision.

Referring to section 481 of the bylaws, governing bulk fuel storage, Roy expressed the opinion that the minimum lot size requirement (5 acres) side and rear setbacks (100 feet), and requirement for a landscaped berm not less than 25 feet deep far exceeded those required by state and federal environmental and safety regulations and do not take into account the existing industrial and fuel storage facilities adjacent to the proposed site. Several board members agreed with this assessment.

Roy addressed the issue of the site's possible location within the Cadys Falls Water Co-Operative's source protection area (SPA). He said there was conflicting information available as to the exact boundary lines of the SPA; one map shows the site just outside the lot while the map used in the current zoning regulations shows the boundary line running directly through the lot.

Don Ostler, a member of the Cadys Falls Water Co-Op, said the Co-Op was obviously concerned about the potential adverse impacts to their source protection area. He noted that the project location is approximately 1,500 feet upslope from their springs. He explained how the SPA boundaries had been established and presented an aerial photo of the SPA boundaries as they are currently identified by the VT Agency of Natural Resources Water Supply Division which shows the boundary line bisecting the parcel under consideration. He asked what provisions were in place to contain a spill.

Wayne Demar, speaking for Stellar Propane, identified the concrete containment area around the tanks and the concrete loading area outside the tanks, which would have channels to funnel any spillage from the dock back into the tank containment areas. The tank area would be secured by a chain link fence.

Carl asked what other permit were required for this type of facility. Wayne replied that they must meet state Labor & Industry safety and construction standards and federal fire safety codes. Carl then inquired as to the height of the tanks. Roy responded that the tanks would

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extend 24 feet above grade, which is lower than the nearby ST Griswold concrete plant tower.

Paul asked if the loading area would be covered and illuminated; Wayne said it would be.

Paul moved to meet in deliberative session on this request following the remainder of this evening's applications. Theresa seconded the motion and it passed unanimously.

**WARNED HEARING: 9-LOT SUBDIVSION, MICHAEL & ABIGAIL BABCOCK, STAGECOACH ROAD**

Gary gave an overview of the application, which will be reviewed under sections 264, 740, 780, 800-870 of the zoning and subdivision bylaws. A pre-application review of the proposal was held on February 26, 2004. A site walk of the property preceded the public hearing. Theresa administered the sworn oath to Donald Swain (representing the applicants), Betsy Bernhard, Martha Bernhard, Wilhelm Jaremczuk, and Al and Gretchen Besser. Gary read a letter from adjoining property owner Michael Sorkin into the record.

The Babcocks recently purchased two adjoining parcels totaling 117 acres. They propose to create nine single family home lots, ranging in size from 3.5 to 6.9 acres, on 55 acres. The remaining 62 acres will remain undeveloped under conservation easements.

Two lots, including the existing farmhouse, will access Stagecoach Road directly. The remaining seven lots will be accessed via a private road, to be built to town road standards, approximately 1700 feet long coming off Stagecoach Road. The applicants propose to plant trees along the portion of the road that cross an open meadow. Paul asked whether the planned roadway met the 10% grade requirement. Don Swain replied that the average grade over the length of the roadway was 7%, but a short segment (less than 100 feet) was 11%.

Each lot will have its own water and wastewater disposal systems, with leachfields for lots 7 and 8 located on adjacent lots by easements. Don Swain stated that the Fire Chief was satisfied that a dry hydrant on the Bernhard property across the road from the proposed subdivision would provide an adequate water source for fire protection to the new homes.

Al Besser asked if a homeowners association would be formed and what, if any, covenants would apply to the new lots. Don replied that there would be a homeowners association formed to be responsible for maintenance of the private road and any other common facilities within the subdivision. He said there would be a covenant prohibiting any further subdivision of the lots, with the possible exception of allowing the conservation area to be subdivided from the home lot attached to it.

Al Besser also inquired whether the previously approved private airstrip on the open meadow would continue to exist. Don said that the area of the airstrip would be split up among several lots, rendering it unusable for that purpose.

Carl moved to approve the application as presented with standard subdivision conditions and the condition that the conditional use permit for the private airstrip be rescinded. Theresa seconded the motion and it passed unanimously.

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**OTHER BUSINESS:**

Dwane and Karen Lanphear presented a plan to subdivide a 2.04-acre lot from their 59 acre parcel on Fitzgerald Road for a pre-application review. Theresa moved that the proposal conforms to the Town Plan for development in this area. Jean seconded the motion and it passed unanimously.

The board met in deliberative session on the NCAL request to expand their public operating hours and outdoor dog exercise hours. Carl moved to approve the request for extended outdoor hours, but to restrict them to 8:00AM to 5:00PM (vice 7:00PM), and to approve the expanded public operating hours to 10:00AM to 7:00PM, as requested, but make that approval contingent on the applicant submitting, within 30 days, a landscaping schedule showing the required landscaping being completed within 12 months. Paul seconded the motion and it passed unanimously.

The board met in deliberative session on the Stellar Propane request for a fuel storage and transfer facility. Theresa made a motion to recess the public hearing pending receipt of written comments from the ANR Water Supply Division, as required in Section 304 of the bylaws, regarding the location of the Cadys Falls SPA boundary and potential impacts on the SPA from the proposed facility. Jean seconded the motion and it passed unanimously.

On a motion by Theresa, seconded by Paul, the meeting was adjourned at 10:00PM.

Respectfully submitted,
Mark Leonard, Recorder

Minutes approved on: 6/10/04 (TB/JW)