

FILE COPY

MORRISTOWN/MORRISVILLE DEVELOPMENT REVIEW BOARD

P.O. BOX 748
MORRISVILLE, VT 05661
Phone (802) 888-6373
Fax (802) 888-6378

Minutes of January 8, 2004

Members Present: Gary Nolan, David Silverman, Paul Trudell, Carl Fortune, Carol Jennings, Theresa Breault

Members Absent: Jean Wickart

Recorder: Mark Leonard, Zoning Administrator

Guests: Dean Whittemore, Charles & Shaune Gregory, Scott Corse, Douglas & Leah Bronner

Chairman Gary Nolan called the meeting to order at 7:30 PM. Paul moved to approve the minutes of December 11, 2003. Carl seconded the motion and it passed unanimously.

WARNED HEARING: ADVENT CHRISTIAN CHURCH, 2-LOT SUBDIVISION, MAPLE ST

Gary gave an overview of the application. A pre-application review was conducted on December 11, 2003. The application will be reviewed under Sections 254, 740, and 810 of the Zoning Bylaws. Theresa administered the sworn oath to Dean Whittemore, representing the applicant. Advent Christian Church proposes to subdivide a 0.6-acre parcel on the corner of Maple and Main Streets into two lots of 0.4 and 0.2 acres, respectively. The portion to be subdivided, a 75'x110' section fronting on Maple Street, contains the church's parsonage, which they wish to sell. The balance of the parcel contains the church and an attached structure with offices and other meeting areas and a parking area. The proposed lot is 8,250 square feet, just above the 8,000 square foot minimum, and has a lot width of 75 feet. Mr Whittemore estimated that the parsonage structure exceeds the 10-foot side setback and 15-foot rear setback to the new property lines but admitted that it had not been measured.

Paul asked why they were not proposing to extend the new property line behind the parsonage all the way back to the existing rear property line. Mr Whittemore replied that the area behind the parsonage along the existing boundary is used for snow removal for the parking lot so they wished to retain that area as part of the church property.

David moved to approve the application with the condition that a survey plat showing that the new lot conforms to minimum dimensions and setbacks for the Medium Density Residential zoning district be submitted for final approval within 90 days. Paul seconded the motion and it passed unanimously.

FILE COPY

WARNED HEARING: CHARLES GREGORY, 6-LOT SUBDIVISION, 1174 PARK ST

Gary explained that this is a new hearing on an application previously reviewed and approved by the DRB. That previous decision was appealed to the Environmental Court, which vacated the board's decision due to an incomplete record of the hearing caused by a malfunction of the recording device. The Court remanded the case back to the town for such proceedings as the parties wished to pursue.

The application will be reviewed under sections 264, 300-305, 740, 770, 780, and 800-870. The applicant resubmitted all information presented at the previous hearings and any related correspondence. Theresa administered the sworn oath to Charles Gregory, Gunner McCain, Scott Corse, and Douglas and Leah Bronner.

Gunner McCain, of McCain Consulting, detailed the application. Charles Gregory owns a 93-acre parcel off Park Street (VT Route 15A) in the Rural Residential with Agriculture zoning district. He proposes to create five single family home lots ranging in size from 3.8 acres to 7.0 acres. The balance of the existing parcel, 63.7 acres, would remain undeveloped and subject to a deferral of development state permit. The proposed new building lots would be located on the upper elevations of the property in the southwest corner of the parcel. The new lots would be accessed via an existing private driveway on Park Street that crosses the Bronner property by a 50-foot right of way. The portion of the driveway that serves more than three lots would be brought up to town road standards, although the roadway would remain a private road.

The bulk of the Gregory property, except a small section at the southwest corner, lies within a designated public ground water source protection area (SPA) that provides water to the Village of Morrisville. The Morrisville Water & Light (MWL) department is responsible for oversight of the SPA. Gunner explained that he and his client had met with Scott Corse of MWL and his consulting engineers from Dufresne & Henry (D&H) to review the proposal and try to mitigate any potential risks to the SPA. The proposal located five primary and five replacement leachfields (one each for each building lot) in a common area on Lot #6 in the area that was identified as being outside the defined area of the SPA. The D&H engineer felt that the SPA boundary was actually closer to the property line, leaving less space to site the leachfields outside the SPA. Gunner stated that he would relocate the leachfields to fall outside the line D&H identified and would likely reconfigure the septic system design to create a single, community leachfield. The new design takes into account recent changes in the state wastewater system rules. He further stated that he would submit an amendment to the previously approved state wastewater permit for the five building lots to reflect the redesigned septic system.

Gunner noted that Section 304 of the zoning bylaws specifically allows on-site sewage disposal systems within a SPA as a conditional use when the DRB determines that such use will not pollute or have an undue adverse effect on the groundwater supply, as determined by the Agency of Natural Resources Water Supply Division. Gunner solicited comment from the Water Supply Division on whether the project presented any threat to the SPA. The initial response was that since the leachfields fell outside the limits of the SPA, it was not subject to the Division's review. At MWL's request, the Division reviewed the proposal a second time using the SPA boundary as identified by D&H and again found that the project fell outside its jurisdiction as the leachfields were still outside the SPA.

Gunner further noted that the bylaws (section 305) only prohibit on-site sewage systems within a SPA that have a capacity of more than 900 gallons per day. He said that while they could meet the bylaw requirements even if they placed the leachfields inside the SPA, they chose to put them in the available area outside the SPA in consideration of MWL's concerns.

David addressed a January 4, 2004 letter from the Morrisville Fire Department chief outlining roadway and access requirements for emergency vehicles getting to the new lots. He asked whether the plan would comply with those requirements. Gunner explained that the existing driveway would be widened to meet town standards, thus complying with the chief's request. A short segment of the existing driveway, approximately 75 feet long, exceeds the 10% grade specification in the road standards. Due to the topography in that area and the limitations of the 50-foot wide right of way, they would be unable to meet the grade requirement for that segment. David acknowledged that the town road standards required a roadway at least 20 feet wide and said all driveways longer than 100 feet will be at least 14 feet wide, as requested by the chief. The requested 40x40 turnarounds at each residence would be the responsibility of the eventual lot owners, but the applicant would accept a condition of approval requiring such turnarounds be included in the property covenants.

Carl asked whether the project complies with the construction general permit requirements for erosion control and stormwater runoff. Gunner replied that those requirements were still being finalized by the state, but that the project would comply with them once they were in place.

David asked whether there would be any restriction on further subdividing the five building lots. Gunner said that they would accept a condition prohibiting any further subdivision of these lots, while retaining the option to apply to subdivide the deferred 64 acres.

David asked whether the individual lot wells could affect the SPA. Gunner explained that the wells would not draw from the same water source as the MWL wells and that their zone of influence was well beyond the MWL wells' water source. He said that groundwater from the lots initially flows away from the MWL wellheads, before turning back toward the Lamoille River. The distance to the MWL wells from the nearest building lot was estimated as at least 2000 feet, with the distance from the leachfields being approximately 3000 feet. The elevation difference between the building lots and leachfields and the MWL wells is about 200 feet. David reviewed how various substances (ground water, wastewater, gasoline, oil, etc.) would infiltrate the soils in this area, traveling vertically below the surface until hitting a solid layer then moving downslope horizontally along that layer. He said that given the soil conditions and distances involved, these potential contaminants would not reach the wellheads.

Adjoining property owner Doug Bronner voiced a concern that the additional usage of the existing driveway from the new lots would require additional maintenance of his driveway. He asked if the developer would be required to bring the portion of the road that crosses his property up to town road standards. Gunner replied that they would do so.

Gunner concluded by saying that he and his client had done everything they could to accommodate MWL's concerns, going beyond the requirements for SPAs in the bylaws. He felt that all potential adverse impacts from the project had been addressed and eliminated.

Scott Corse, general manager of the Morrisville Water & Light Department, prefaced his comments with a statement of his belief that the applicant and his consultant would not

FILE COPY

intentionally develop this property in a way that could adversely affect the village water supply. He stated that MWL has no financial interest or gain from whether the project goes forward or not. Their sole concern is preserving the quality of the water they supply to over 1,000 households, the community schools, Copley Hospital, and village businesses.

Scott presented the Source Protection Plan, prepared in 1996, for this groundwater source protection area. It identifies where the water in this SPA comes from, what are the risks to the water supply, and how his department manages or minimizes those risks. It includes reviews of the risks posed by previous development proposals on this property. The results of a 1988 report commissioned by MWL by a hydro-geologist for review of a planned 20-lot subdivision was inconclusive as to whether such development would or would not adversely impact the SPA.

Scott said the department had three main concerns or issues regarding the proposal. The first is that the proposal is inconsistent with the Town Plan and the zoning bylaws. Citing the Community Facilities, Utilities, and Services section of the 2003 Town Plan, it quotes the MWL general manager/superintendent (Scott Corse) in stating that the most important consideration for the village water system is protection of the village's water sources. The Planning Commission established a policy in this section of the Town Plan that "no development should occur within the wellhead protection areas except in strict accordance with the wellhead protection area zoning bylaws".

Scott noted that section 303 of the zoning bylaws allows development in a SPA as a permitted use provided sewage disposal facilities are not located over, or impacting on, the SPA. He pointed out that while the leachfields may be located outside the SPA, each home site will have a septic tank and pipes to the leachfield within the SPA. He said that section 305 prohibits on-site sewage systems with a daily capacity greater than 900 gallons. In his view, the co-location of ten leachfields (five primary, five replacement) with a combined capacity of more than 2800 gallons per day clustered together in an area of approximately 0.4 acres constitutes a single system and thus violates this bylaw.

The second issue is that MWL feels that the DRB has previously established a standard for SPA protection based on the impact of vehicle activity within the SPA. In 1998, MWL applied for conditional use approval to build two baseball fields and associated structures and a 60-car parking lot on its land directly across from the Gregory property. This parcel contains the two wells that are the basis for the source protection area. As part of its application, MWL hired consulting engineers to assess the possible impacts of this project on the SPA and the wells. The consultants noted that any potential risk from automotive contaminants could be mitigated by placing an impervious plastic liner beneath the parking area. Despite this measure, the DRB denied MWL's application, in part, due to concerns about the risk of polluting the wells. Scott presented figures purporting to show that the estimated level of automotive activity within the SPA in the proposed subdivision would be as much or more than the ballfield that was rejected.

Finally, MWL is concerned that there are no provisions in the Gregory application for remediation of any wellhead contamination resulting from the development. The department is not just concerned about potential risks from sewage disposal systems in the SPA. Scott cited a previous report in the Source Protection Plan from a state hydro-geologist identifying various other potential contaminants that are commonly associated with household activities. If the DRB finds there is not sufficient cause to deny the application, as MWL believes to be the case, the

FILE COPY

department asks that conditions be put on the approval to re-mediate the risk of contamination. Specifically, it requests that monitoring wells along the down slope periphery of the new lots be required to test for any sign of contaminants and requiring the lot owners to pay for re-mediation of any contamination revealed by those wells through the purchase of liability insurance that names Morrisville Water & Light as the beneficiary.

David asked if the D&H report this past spring offered any opinion as to the risks posed by the proposed development. Scott said no, the report only looked at the delineation of the SPA boundary and the impacts of locating the septic system leachfields at the edge of the SPA.

Paul inquired as to the prior uses of the land within the SPA. Both Scott and Gunner said it was reasonable to assume that it had been used for farming in years past, though they had no definitive knowledge of that. The area owned by MWL across Route 15A from the Gregory property, directly over the wellheads, is still hayed, though Scott indicated that the use of pesticides or other potential contaminants is prohibited.

At the conclusion of Scott's comments and responses to questions from the board, the recording device reached the end of its available space. Gunner McCain made the following unrecorded comments in response to those of Scott Corse.

Gunner is aware that a much larger subdivision project on the same property was rejected in 1988. He believes that the current application fully complies with the town's bylaws regarding protection of public groundwater sources.

Gunner agreed with Scott's characterization of the clustered individual leachfields constituting a large single system but reiterated that it lies outside the source protection area boundary as identified by MWL's consulting engineer. He stressed that the new state wastewater system design rules are more favorable for community systems with a common shared leachfield serving multiple single family homes.

Gunner acknowledged that sewage lines from the individual home sites will cross the SPA, but noted that they will comply with all applicable test standards to ensure that they do not pose a hazard from breaks in the lines.

Gunner does not believe the rejected ballfield application and the Gregory subdivision application are comparable. The proposed uses in both applications are distinctly different. The distance from the proposed subdivision from the wellheads is far greater than the ballfields, which were essentially on top of the wellheads. It's an 'apples and oranges' comparison.

He stated that the conditions of approval requested by MWL were 'deal-killers' that would make the project economically unfeasible. He concluded by saying again that he believed he had provided compelling technical information to show that the project does conform to the town plan and the zoning bylaws. He sees nothing in the proposal that would present a hazard to the source protection area.

David stated that the board had been presented with a great deal of information to consider and would need to take time before rendering a decision. He moved to close the public hearing and meet at a later date in deliberative session. Paul seconded the motion and it was approved unanimously.

FILE COPY

David made a motion to adjourn. Carl seconded the motion and it passed unanimously. The meeting adjourned at 9:30.

Respectfully submitted,

Mark Leonard, recorder

Minutes approved on: 2/12/04

The meeting was adjourned at 9:30 PM.

Respectfully submitted,
Mark Leonard, Recorder