

**Town of Middlebury
Development Review Board (DRB)
Meeting/Hearing conducted online via Zoom
Minutes of March 22, 2021**

Approved 4/12/2021

Members Present:, Gary Baker, acting V. Chair, Rick Emilo, David Hamilton, Jason Larocque, , Anne Taylor and Mark Wilch

Members Absent: Kevin Newton and John MacIntyre (both recused due to conflict)

Staff Present: Jennifer Murray, Dave Wetmore

Others Present: Charlie Kireker, Holly Killary, Amey Ryan, Jeremy Palmer (representing HOA), Jim Brown, Jill Fraga, Nicole and Vance Bishop, Elise Shanbacker (ACCT),

MEETING AGENDA

1. Continued MRV hearing from 3/8/2021- Application is a request by Middle Road Ventures (MRV) for amended site plan/subdivision approval to the previous decisions dated 2006, 2009, 2011 and 2014 and to consider modifications to the lot reconfiguration as approved by Act 250. The MRV subdivision amendment request is specifically related to the lots formerly identified as #401-#412, of parcel # 007003.100. The MRV property is located at 490 Middle Road North in the Medium Density Residential district.

I. Call to Order- Gary Baker, acting DRB Chair, called the meeting to order at 7:00 pm. Gary reviewed the night's agenda.

II. Approval of minutes-

Motion by David Hamilton- Dave moved to approve the minutes of March 8, 2021 as amended, 2nd by Anne Taylor. It was noted that Charlie "Kireker" and Jeremy "Palmer" names were misspelled. No further discussion, **Motion to approve minutes as amended, 6-yes and 0-no**

III. MRV public hearing, application (file #2021-07:003.100-amend PUD/SD) – continued from 3/8/2021.

Gary Baker- reopened the MRV hearing by stating this is a continuation from 3/8/2021.

Gary- reminded those who had taken the oath on March 8th are still under that oath and he further administered the oath to those present ~~Holly Killary~~. Jim Brown and Nicole Bishop indicated they were interested in listening to the discussion only.

Gary – asked if there were any conflicts of interest or ex-parte communications that needed to be disclosed- non expressed.

Gary- invited Jennifer Murray to review the Staff memo that had been sent earlier on Monday.

Jennifer- shared that there a several issues that Staff, MRV and their attorney Eben Punderson are still addressing and gathering documentation for. For that reason, Staff is recommending that the DRB allow more time to finalize the issues before final review by Board. Specifically, the discussions center on the following:

Conservation Easements

Jennifer- Staff reviewed several documents related to conserved lands and trails, but more information is needed to conclusively determine if these lands and easements have been properly conveyed. Staff has asked MRV's attorney to compile a complete submission, including drafts of any deeds/easements that have not yet been filed. We have provided them with guidance about requirements based on previous conditions of approval.

Charlie- expressed that conservation easements have all been conveyed. The exact amount of the Candido acreage is not known because it was not surveyed. Starr Park and trail easement to Otter Creek is being finalized.

Jennifer- noted that Staff needs to verify that these transfers have been completed/recorded. Eben Punderson is working to furnish the recorded documentation.

Homeowner's Association (HOA) Documents

Jennifer- Staff reviewed a version of the HOA documents dated 2007, which needs updating. We have provided review comments on the HOA documents to MRV's attorney, who will be drafting a revised document for review by the HOA, their attorney and the Town. We have requested that a final draft of the updated HOA documents be submitted to our office prior to the next hearing date scheduled.

Jennifer- Thinks we should leave some time for the HOA and their attorney to review and feel comfortable with the final HOA documents are drafted by MRV's attorney before they are ready for review by the DRB at their next hearing and suggests April 26th might be more realistic than April 12th.

Final Survey Plat/ As- Built Drawings

Jennifer- presented the following updates

1. Staff has requested that the applicant submit a Final (overall) Survey Plat for review by the DRB at the next scheduled hearing.
2. Staff proposes creating a condition requiring a Final as-built set of engineered drawings be submitted within 180 days of the issuance of a building permit for the last house in the subdivision.
3. At the next hearing, Staff hope to use the Final (overall) Survey Plat look again at the 5-lot plan and resolve any remaining concerns.

Charlie- asked if the DRB wanted the final survey from DuBois and King (DK) for the next meeting? DRB expressed that a draft final survey plat is usually required for the final review. Both Holly and Charlie expressed that they had previously understood the Final (overall) Survey

Plat would be a condition of approval, but they will get DK working on it. Charlie also expressed that the orphan triangle of land on the back of lot #56 has been sorted out and the final survey will reflect a change to lot #56.

Solar Farms

Jennifer recommended that the following be provided by MRV and the DRB agreed

1. Staff has requested copies of the agreements between MRV and the developers for two solar farms on this property, to determine ownership of these facilities and access roads, and any easements affecting them.

Affordable Housing

Jennifer provided the following update

1. Staff has determined that the calculations and supporting documentation provided by MRV in support of the South Ridge Projects affordable housing compliance looks good and they appear to have satisfied the requirements (# of affordable lots) of the 2012 stipulation agreement.
2. Separately, MRV's attorney is working directly with ACCT on their portion of the 2012 agreement. It is staff's opinion that this is more of a title issue than a DRB issue, but she

Charlie- expressed that Eben is working on a release to clear up the 2012 ACCT Stipulation condition.

David H.- asked if the ACCT release is a DRB question/concern or more of a legal question? Jen expressed that it is a legal question which could affect the marketability of the lots if not cleared up.

DRB- discussed with the applicant whether they can provide all the information requested for an April 12th meeting? Charlie and Holly thought they could. Staff expressed reservation and noted that the final survey, ACCT release and HOA documents will need to be reviewed by the appropriate parties and staff. Staff felt that continuing the hearing on 26th would be better.

Jeremy Palmer- asked when the draft HOA documents will be available for their review? Charlie expressed maybe early next week. Jeremy noted that minor changes to the HOA may be able to be approved by the HOA Board. More complex changes may require a vote by the HOA members. The HOA generally meet annually in January. If a special meeting is required, the HOA Board can call one. Benj Deppman is attorney for the HOA. He will provide legal counsel for the Board.

Landscaping/tree replacement

Jennifer- asked for DRB input on 2006 condition related to replacement and maintenance of trees located in the Town right-of-way? DRB felt the condition should remain the responsibility of the HOA.

Charlie and Holly- stated that MRV nor the HOA never expected the Town to accept responsibility for these trees. It is part of the HOA budget.

Accessory Apartments

Jennifer- expressed concern that allowing people to live in detached structures such as garages was prohibited by the HOA Documents, Section 14.16. Accessory apartments are important for improving housing affordability.

Holly expressed that she didn't believe that section 14.16 prevented the development of accessory apartments. Charlie shared that there are already some accessory apartments established presently. Jennifer suggests that the language in that section be clarified.

Wetlands

Jennifer-asked the DRB and MRV for input on how wetlands and special natural features are identified and delineated on individual lots. Section 14.21 of the HOA Documents encourage property owners to avoid wetlands, but how will they know where those are? Is some type of physical fence or barrier showing the edge of the delineation in order? Is that something already required by State permits/Act 250?

Charlie shared that these natural features are shown on the DK survey. The placement of the building envelopes excludes these sensitive areas. The areas are monumented with single split rail fence posts or stones. The State Wetlands permit requires that these monuments be in place at the time of the sale of a lot. Amey also thought this was part of the stormwater permit requirements.

Holly- expressed that Wetland rules have changed over time and so have the delineations required. Each new lot owner is given a survey of the lot with the wetlands and other significant natural features identified, as landowners they are expected to preserve these areas.

Anne- noted that the Wetland permit expired in 2019, has this been renewed? Holly stated that the new Wetlands permit is valid through 2024.

Jeremy- asked if the wetlands delineation will be updated on the final DK survey of the entire South Ridge PUD? Charlie stated yes.

Dave H.- asked who has responsibility for the wetlands and stormwater permits? Holly explained the permitting process. The HOA as was MRV will be a co-permittee of these permits.

Jennifer- briefly explained stormwater management practices in South Ridge, which (rather than traditional curb and gutter systems) utilize swales and specific driveway design standards including paved driveways to manage stormwater and conduct it to catch basins that lead to stormwater ponds. She feels ongoing maintenance of pitch and pavement conditions for driveways is important. There is a driveway construction specification in the full plans set, which her office provides to builders when a permit is obtained. Jennifer would like to ensure that the responsibility for working with homeowners to maintain driveways and aprons/ conduct stormwater management are transferred to HOA.

Charlie points out the exception to the rule is- driveways that don't exit on paved roads don't need to be paved. They are beyond the shared stormwater system.

Other concerns/issues- Amey Ryan asked about approval process from here forward? Jennifer and Dave outlined that timeline.

No further comments were made- 7:50 PM

Motion by David Hamilton- I move to continue the hearing for the South Ridge Subdivision (application # 2012-07003.100 amend PUD/SD) requested by Middle Road Ventures, to April 26, 2021 to allow staff and the applicant time to assemble and process additional materials requested in support of the pending application. 2nd by Rick Emilo.

No discussion. **Motion approved 6-yes and 0-no.**

IV. DRB- Other Business

Dave W. – noted that the DRB has a hearing scheduled on April 12, 2021

V. Adjournment

Motion by Dave Hamilton- moved the DRB to adjourn at 9:05 PM, 2nd by Mark Wilch.

Motion passed, 6-yes, 0-no. Meeting adjourned at 8:00 PM.

Minutes Submitted by Dave Wetmore