

Town of Middlebury
Development Review Board (DRB)
Meeting/Hearing conducted online via Zoom
Minutes of March 8, 2021

Approved on March 22, 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, Amey Ryan, Jeremy Palmer (representing HOA), Duffy Allen, John Thompson, Carol Harden, Gary Farr, Suzanne Stone, Fumiko Brown, Jill Fraga, Vance Bishop, Elise Shanbacker (ACCT), 8:00 pm- Gavin Noble and Richard Hopkins

MEETING AGENDA

1. 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- postponed to the end of the meeting.

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

Gary Baker- opened the MRV hearing and asked Dave Wetmore to read the public warning.

Gary- administered the oath and the following people acknowledged taking the oath: Charlie Kierker, Amey Ryan, Jeremy Parker (representing HOA), Duffy Allen, John Thompson, Carol Harden, Gary Farr, Suzzane Stone, Fumiko Brown, Jill Fraga, Vance Bishop, Elise Shanbacker asked if there were any non-agenda items/public communications. None expressed.

Gary – invited Charlie Kireker, MRV partner to provide a general overview of the Middle Road Ventures (MRV) and South Ridge Development project and explain what they are asking for tonight.

Charlie- expressed that MRV has obtained all permits to date, they have conserved over 200 acres of the project area, southerly of South Ridge development. The planning for this development goes back into the early 1990's. The South Ridge Development was approved as a PUD in 2005 and 2006. In 2005, John Illick (MRV partner) was the lead partner in the permitting of the

development. Charlie, shared the history and Phases of the PUD which included Phase 1 in 2006, Phase 2 in 2011 and other minor amendments in 2009, 2010, 2012 and 2014. The amendment requested tonight is the re-subdivision of the area identified as lot 40, which is where townhouses had been approved 2009 and 11 lots had been approved in 2014. All the infrastructure for the 5 lots has been in place since Phase 1.

Property sales in 2020 started out very poorly but by late 2020 sales turned strong and all the available lots in the Development had sold. Single family home sales were what people wanted. Due to the expensive infrastructure costs associated with the buildout the 11 lots approved in 2014 and the wetlands and other natural features present in this area, MRV is proposing to convert lot 40 back to the 5-lot configuration originally approved in 2006. MRV applied to ACT 250 for the 5-lot amendment. Act 250 determined that the amended 5-lot subdivision has less impact on endanger plants, wetlands and stormwater and because the configuration had been previously approved, Act 250 administratively approved the amendment as a minor application.

Charlie shared that with the ACT 250 approval in hand, MRV approached the Town for the amendment for 5-lots. Based on conversations with Planning Staff and the fact that this amendment would be the final time MRV came before the Town regarding South Ridge, it was determined that this amendment should also look back on all previous approvals and conditions to assure compliance before turning it over to the Home Owners Association.

Gary- Thanked Charlie and opened discussion/questions to DRB members.

Affordable housing compliance- Gary began by asking Charlie to explain how they have complied with the 2012 Stipulation agreement regarding affordable housing?

Charlie- explained that MRV has sold lots that have then been developed by the owners of those lots. MRV has not been involved with new home construction within the South Ridge Development. Beginning with sales in 2010, Charlie reviewed the analysis outlined in the 2012 Stipulation Agreement (SA). Lot prices in the South Ridge Development have risen less than the average around Middlebury. What has risen greatly over the years is the cost of construction and MRV was not in the position to ensure affordability, that was in the hands of the builder and homeowner. Charlie shared that the SA required that MRV had the obligation to provide a total of 9 qualifying units of affordable housing, 3 of which are acknowledged to have been sold as of the date of the SA. MRV prepared calculations demonstrating that they have met this affordability requirement, and in fact made 18 sales that qualified. Of these sales one was directly to Habitat for Humanity and the other to ACCT.

Point of Order- Dave Hamilton and Jason Larocque- both acknowledged that they may have conflict as Dave is a now an ACCT Board member and Jason's firm has done work for ACCT in the past- Having disclosed this, both expressed confidence that they can objectively review this application. MRV has no issues with their participation and no one else expressed a concern.

Discussion of ACCT option- Charlie expressed that the Option outlined in the SA was never formally executed. He believed that it was ACCT's responsibility to come to them to exercise their

option. He acknowledged that MRV failed and should have provided notice to ACCT as the SA required.

Anne Taylor- asked how should the issue of ACCT's option be addressed? Who decides what type of home can be built? Charlie stated that he has shared their analysis with Jennifer and Dave and is happy to share with ACCT. The option piece is a legal issue and attorneys need to sort it out. As for what type of home are allowed, Charlie explained that there is a "South Ridge Design Review Committee" that reviews and approves housing plans, with specific guidelines and standards that address in part quality and characteristics of proposed plans. Charlie noted that there is a variety of building architecture and, quality of construction throughout South Ridge. Development on the 5 remaining lots, being reviewed in this application, will be required to go through the same review.

Elise Shanbacker- shared that she has only recently become aware of the Option. She noted that the SA does not provide a mechanism to keep a parcel affordable once a home is built, the exception being the Habitat for Humanity home. She expressed concern that this SA did not achieve the goal of affordability. Even if ACCT had been given the opportunity to purchase one or more lots, they don't have a program in place to help people with construction costs given the exceedingly high construction costs seen in recent years.

Jennifer Murray- clarified that ACCT was involved with the development of the SA and knew what was being agreed too at that time. This agreement is quite different than the affordable housing requirements outlined in the Zoning Regulations presently and maybe even in 2012. Jennifer expressed that staff would like the opportunity to check MRV's affordable analysis and perhaps Elise would also assist in Staff's review? Charlie agreed to work with Jen and Elise to verify affordable housing analysis.

David Hamilton- asked if accessory apartments allowed? Charlie stated they are, like in an attached garage. These lots are primarily for single-family homes.

Mark Wilch- asked about the common association land that had been part of the 2014 approval and now included in the 5-lots. Charlie expressed that that common land lot had been established for stormwater purposes and that with less density it was no longer needed. He also noted that common land is available at Star Park (7 acres of land) and then pedestrian trail to Otter Creek Road. MRV is in the process of final conveyance these areas/easements to the HOA and Town.

Emergency Road- Gary asked if Dave Wetmore had talked with Chief Shaw? Dave acknowledged that he spoke with Chief Shaw that Chief Shaw had conducted a site visit and determined that the emergency road has been greatly improved since he last looked at it. It's width and overhead clearances appear to be adequate and it has been plowed. However, he is concerned that it is not sanded (emergency vehicle ready) and expressed that he would not take his equipment

over the road unless it was vehicle ready. He also asked that a Knox Box or lock be used on the gates. He is happy to discuss with contractors of HOA how this road needs to be maintained.

Anne- asked how can we be assured that the Emergency Road will be vehicle ready? Charlie expressed this is the responsibility of the HOA and that this road was required as part of the original approval. The HOA contracts with the same person to plow and sand the 3 private roads in the Development as well as the emergency road. He believes it is about communicating to the plowing contractor the expectations for that road.

Dave Hamilton- asked if all the management of the Developments private infrastructure and maintenance has been turned over to the HOA? Charlie stated that most responsibilities have and that Eben Punderson is working on the final pieces.

DRB- acknowledged that maintenance of the Emergency Road is a priority and that HOA should ask Chief Shaw for his guidance. Charlie expressed that MRV will assist the HOA with standards for plowing maintenance and that MRV will place acceptable locks on the gates.

8:00 PM Gavin Noble and Richard Hopkins join meeting

Final Survey- Charlie stated that each phase of the South Ridge Development approvals have been recorded. Planning Staff has requested a final complete as-built compiled survey of the entire SD. Jon Ashley of DuBois and King will provide this once this final approval is complete. Charlie expressed that this will be completed in late April or early May.

Anne-asked if this complete final survey is required before DRB approves? Jennifer shared that it is usually a condition of approval and the survey will need to be signed by the DRB and recorded with 180 days of DRB approval. This is required per State Statute and Middlebury Zoning.

Mark- asked about the lot lines shown for lot # 56? He noted that there is a triangular piece that appears on previous surveys but not the one by Tim Short showing lot #56presently. Dave W agrees that there is a discrepancy. Charlie will review with Tim Short.

Conservation land easements- Charlie noted that they have provided and executed all agreed upon easements to MALT and the Town.

Citizen comments/concerns-

Jeremy Palmer- Jeremy is representing the HOA and is here to convey member concerns mostly related to affordable housing. He expressed that it is a complex issue especially because MRV is

selling lots and that construction costs drive the affordability discussion. Members expressed that they felt the 11 lots approved in 2014 were to specifically address affordability, but it seems the SA is the document that outlines how MRV would comply with the affordable housing issue. HOA members have clearly expressed the need for more affordable housing in Middlebury.

Maintenance of Emergency Road- Jeremy expressed concern with the liability that the HOA assumes if the road is not maintained to a vehicle ready standard. Who would determine this? He would like some guidance and clear expectations that the HOA can place upon their plowing contractor. Dave Wetmore expressed that Chief Shaw would like to assist with the standards and expectations for emergency road maintenance.

Chris Robbins- asked if there is such a high demand for the lots, why not leave the 11 as approved in 2014? Charlie responded that the cost of new infrastructure and roads would be expensive, and it would not make the smaller lots any more affordable or desirable. In addition to the infrastructure costs, fewer lots will have less impact upon the existing endangered plant species, wetlands and stormwater resources. Fences currently delineate the endangered plants and larger lots provide more protection. Building envelopes are laid out to avoid any of these sensitive natural resources.

Duffy Allen- Expressed that she would like to see more dense development that results in better design and use of resources. Middlebury needs more affordable housing. Duffy asked about public access to Star Park? Charlie acknowledged that Star Park bounds a public road and that pedestrian access to the Park or to Otter Creek is open to anyone on foot.

Richard Hopkins- Before Richard offered comments Gary administered the Oath to him. Richard echoed Duffy's comments and was looking forward to a group of smaller homes in this area. He suggested that the neighbors are motivated to advocate for more affordable housing.

John Thompson- John expressed that he is pleased with the 5-lot configuration as proposed. He was not supportive of the smaller denser configuration. John asked what is allowed on these lots, would an apartment house be allowed? Jen shared that as a PUD there is flexibility in how the Regulations are applied. Jen stated that an apartment house may be possible but that DRB approval would be required. Charlie explained that South Ridge is a PUD which allows for flexibility in housing types and other uses. He used the example of the solar arrays as a use that had not been considered at the beginning. An amendment to Phase 2 of the Developments plans allowed the solar array. Charlie reassured John that the 5-lots are being sold for single-family homes only.

No further comments were made- 8:55 PM

Motion by David Hamilton- I move to **continue** the hearing for a PUD Amendment for the South Ridge Subdivision (application # 2012-07003.100 amend PUD/SD) requested by Middle Road Ventures, to [March 22, 2021] to allow staff and the applicant time to assemble and process additional materials requested in support of the pending application.

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

II. Approval of minutes-

Motion by Rick Emilo- Rick moved to approve the minutes of November 23, 2020, 2nd by David Hamilton. No discussion, **Motion to approve minutes, 6-yes and 0-no**

DRB- Other Business

DRB asked Dave W. to email whose positions are expiring this year.

David Hamilton asked Jennifer and PC to review affordable housing requirements. Jennifer expressed that the Regulations include very specific incentives for Affordable Housing.

VI. Adjournment

Motion by Rick Emilo- moved the DRB to adjourn at 9:05 PM, 2nd by David Hamilton. **Motion passed, 6-yes, 0-no.** Meeting adjourned at 9:05 PM.

Minutes Submitted by Dave Wetmore