



PLANNING FORUM #1

Meeting Type:.....**Special Meeting**
Date:.....**Wednesday, February 1, 2017**
Time:.....**6:00 p.m.**
Place:.....**Municipal Building Community Room**
Address:.....**43 Bombardier Road Milton, VT 05468**
Contact:.....**(802) 893-1186**
Website:.....**www.miltonvt.org**

MEETING MINUTES

1. CALL TO ORDER

The meeting was called to order at approximately 6:05 p.m.

2. ATTENDANCE

Members Present: Lori Donna, Julie Rutz, Tony Micklus, John Lindsay, Louis Mossey, Bruce Jenkins, Bob Brisson, Tony Micklus, Erin Demers.

Members Absent: Henry Bonges, Jessica Groeling, Donna Barlow Casey, Ann Bradshaw, Bob Lombard, Jaime Parent, Dan Gaherty, Bonnie Pease, Laurie DiCesare, Judy Kinner, Nathaniel Carner.

Staff Present: Jacob Hemmerick, Planning Director; Jeff Castle, Town Planner; Amanda Pitts, Zoning Administrator; Kristen Treanor, Planning Assistant; David Rugh & Amanda Lafferty of Stitzel Page & Fletcher, P.C. (hereafter referred to as "counsel").

Public Present: Courtney Lamdin, Milton Independent.

3. AGENDA REVIEW

None.

4. PUBLIC FORUM

None.

5. FORUM #1

The topic of this Planning Forum was "Best Practices in Development Review." An informal question-and-answer session led by Town attorneys Lafferty and Rugh was held; the following questions were addressed:

- *"What are some tactics the Town could consider in framing defensible Town Plan policies?"* Counsel advised that though the Town Plan is not a bylaw, it is an important tool that is often given weight when an appeal advances to Environmental Court proceedings. Therefore, the use of mandatory language ("shall" vs. "should") is important when writing the Town Plan, and the language should be clear and specific. It's also crucial that the goals of the Plan are carried over in to, and supported by, the Zoning Regulations.
- *"How can the Development Review Board (DRB) conduct hearings and frame sound decisions that are less likely to be appealed or overturned by the Environmental Division of the Superior Court?"* Counsel noted that the DRB doesn't really have any control over whether or not a decision is appealed, and that even the most sound, well-written decisions can be appealed. That being said, it is still important to write a detailed decision that lays out facts and findings, and clearly states the reasoning behind the decision. They also noted

1 the importance of going through all the criteria and addressing each one, even if a denial
2 is apparent at the first criteria.

- 3 • *“What are some best practices for the DRB to consider when exercising discretion, such as when
4 applying Comprehensive Plan policies or discretion written into the regulations?”* Counsel
5 noted that one of the most important parts of exercising discretion is consistency:
6 consistency in decisions, consistency with the Town Plan, consistency with the character
7 of the neighborhood, etc.
- 8 • *“When conditional use review is at hand, and therefore greater discretion, how can the
9 regulations best identify why something has been classified as conditional, and how might the
10 DRB effectively balance conditional use impacts when such impacts are not addressed by the
11 regulations in a cut-and-dry standard?”* Counsel stated that best practice is to include
12 specific language in the regulations that addresses what the Town wants to see in any
13 given area, which gives a background that conditional uses can be compared against.
14 The DRB can employ a variety of techniques to manage the impacts, via conditions of
15 approval.
- 16 • *“What are some of the long-term legal troubles that can emerge when approving variance
17 requests?”* A lively discussion of variances followed this question. Counsel advised that
18 the criteria for a variance are very strict, and that a variance should almost never be
19 granted. For example, if there is a use in place on the property, no variance is needed:
20 the owner already has reasonable use of the property. Counsel stated that perhaps 99%
21 of all variance applications should likely be denied. Counsel made clear that, contrary
22 to some beliefs, the owner is not entitled to use the property the way they’d always
23 wanted to, nor to the best use, nor the most profitable use. They are entitled to
24 **reasonable** use of the land.
- 25 • *What limit does the DRB have to request or suggest changes at sketch plan without overstepping;
26 are there times when denial of a sketch plan is appropriate?* Counsel explained that sketch
27 plan is specifically designed to allow the DRB to suggest changes they’d like to see made
28 to the sketch plan, and to identify issues that might pose a problem at Preliminary or
29 Final plan review. To avoid overstepping, DRB members should make suggestions that
30 are in line with and supported by the Zoning Regulations. If a request is made for
31 something not supported by the regulations, the reason for the request should be made
32 clear. For example, in regards to landscaping: requesting maple trees instead of elms
33 because they provide better screening for a location is clearly a better reason than
34 requesting maples because you like maple syrup.
- 35 • *“If subdivision sketch plan is done administratively (as proposed in the draft regulations), should
36 staff ever deny an application – or only identify issues for correction?”* Counsel advised that
37 sketch applications do not require a decision, reiterating that they are an opportunity to
38 comment.
- 39 • *“For larger projects, could the DRB condition approval on inspection by the Town Engineer or
40 Zoning Administrator at certain points in the project, before a certification application?”*
41 Counsel advised that an engineer, working on behalf of the Town, can and should
42 inspect work, particularly if it will be turned over to the Town as public infrastructure.
43 However, the Zoning Administrator should not be conducting inspections for which
44 they are not professionally qualified.
- 45 • *“How can the DRB use continuance as a tool to avoid denial or avoid approving an application
46 with too many conditions?”* Counsel advised that the DRB should not hesitate to continue
47 a hearing, multiple times if need be, particularly if members feel that there are

1 unanswerd questions or concerns. Staff explained how decisions with many conditions
2 can create undue confusion following the approval for the applicant, and much work for
3 Staff. For example, if a decision has 30 conditions, it's probable that some of those
4 conditions should have been addressed – and resolved – before the approval was issued.

- 5 • *“How can the DRB make the most of Site Visits?”* Counsel recommended that the DRB
6 conduct as many site visits as possible, adding that the value of a site visit cannot be
7 overemphasized. Counsel suggested continuing the hearing and doing the site visit
8 between meetings, in order to gather info, questions and thoughts before arriving on
9 site. Ex-parte communication during site visits is not allowed; a discussion followed of
10 what qualifies as ex-parte communication, as well as how to prevent it and the need to
11 disclose it if it should occur. Counsel recommended a firm statement such as, “I’m
12 sorry, but as a member of the DRB deciding the outcome of this application, I am not
13 allowed to discuss any aspect of the application with you outside of a formal hearing.”
- 14 • *“What are best practices in framing and using a Staff Report? How can the DRB use this as a
15 resource to drive effective outcomes – even when a potential issue is not addressed as a
16 recommended condition?”* The group went over the contents of a typical staff report, with
17 counsel reminding them that all of the information – versus just the numbered items -- is
18 important and will be helpful in forming a decision. DRB members need not hesitate to
19 address a potential issue even if the Staff Report did not identify it.

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21 **6. ADJOURNMENT**

22 The meeting was adjourned at approximately 8:30 p.m.

23 Filed with the Town Clerk this 6th day of February, 2017.
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