

TOWN OF CHESTER
DEVELOPMENT REVIEW BOARD
MINUTES

July 27, 2020

BOARD MEMBERS PRESENT: Carla Westine and Larry Semones at the Town Hall, Robert Greenfield, Gary Coger, and Phil Perlah via Zoom teleconference.

STAFF PRESENT: Michael Normyle, Zoning Administrator and Cathy Hasbrouck, Recording Secretary, at the Town Hall.

CITIZENS PRESENT: Roy Spaulding, Taylor Spaulding, Robert Bazin, Stanton Scott, and Michael Marquise at the Town Hall. Peter Hudkins and Cheryl Joy Lipton from the Chester Planning Commission via Zoom teleconference.

Call to Order

Carla Westine called the meeting to order at 6:00 PM via Zoom conference. She read the meeting's agenda. She noted that a site visit had taken place at 4700 Vermont Route 103 North at 5:00 and a second site visit at 786 Vermont 103 South at 5:25 that evening. She introduced the members of the Development Review Board attending the meeting and two members of the Planning Commission who were observing the proceedings. She invited all present to join her in the Pledge of Allegiance.

Agenda Item 1 Review draft minutes from the July 13, 2020 meeting.

These minutes were not sent out with the packet for the meeting. Larry Semones moved to postpone review of the minutes was deferred until the next meeting on August 10, 2020. Phil Perlah seconded the motion. A vote was taken and the motion passed.

Agenda Item 2 Citizen comments.

No citizen comments were made.

Agenda Item 3 Roy and Taylor Spaulding Conditional Use Application #554

Carla Westine asked the board members if they had a conflict of interest or any ex-parte communication to report. No members did. Roy and Taylor Spaulding were sworn in to give testimony. Michael Normyle gave a history of the application. He said he received the application on June 23, 2020 and it was final on June 30, 2020. He published a notice of the hearing on June 30 and sent notices to 3 abutters in early July.

Carla Westine began by accepting the documents offered as exhibits.

The first document was a Town of Chester Application for hearing before the Development Review Board dated June 23, 2020. Carla Westine read the following items aloud. The appellant name was Taylor G. and Roy E. Spaulding, the address of the appellant and the location of the property was 4700 Vermont Route 103 North. The parcel map number was 21-20-21. The description of the project was, "Used car sales as the repair shop scales back." The application was signed by Roy Spaulding on June 23, 2020 and by Zoning Administrator Michael Normyle on June 30, 2020. Larry Semones moved to accept the application as Exhibit

A. Gary Coger seconded the motion. A vote was taken and the application was accepted as Exhibit A.

The second document was a Town of Chester Notice of Public Hearing dated June 30 2020. Carla Westine read the following items aloud. The site visit was announced for July 27, 2020 at 5:00 PM. The property owner was Roy Spaulding, the applicants were Roy and Taylor Spaulding. The location was 4700 Vermont Route 103 North, and the district was Residential Commercial. The action requested was, "Open a used car sales business as the repair business scales back." The notice was signed by Zoning Administrator Michael Normyle. Larry Semones moved to accept the Notice as Exhibit B. Phil Perlah seconded the motion. A vote was taken and the Notice was accepted as Exhibit B.

The third document was a narrative from Roy Spaulding describing the history of the project and the plans for the used car sales business. Carla Westine read the narrative aloud. Larry Semones moved to accept the narrative as Exhibit C. Gary Coger seconded the motion. A vote was taken and the narrative was accepted as Exhibit C.

The fourth document was a two-page Articles of Organization document from the Office of the Secretary of State of the State of Vermont. The organization name was TGS Autoworks LLC. It was described as, "A Vermont Domestic Limited Liability Company, effective January 24, 2019." The second page was titled Motor Vehicle Dealer Continual Bond. The bond number was S-892590. The document states that TGS Autoworks of 4700 Vermont Route 103 North is indemnified with the state of Vermont by NGM Insurance Company for \$35,000 as a motor vehicle dealer. The document is signed by Taylor Spaulding and Robert M. Kendall. Larry Semones moved to accept the document as Exhibit D. Phil Perlah seconded the motion. A vote was taken and the document was accepted as Exhibit D.

The fifth document was a power of attorney authorizing Robert M. Kendall to execute, seal and deliver for NGM Insurance Company in the matter of a performance bond for TGS Autoworks LLC. Phil Perlah explained the nature of the document. Larry Semones moved to accept the power of attorney as Exhibit E. Gary Coger seconded the motion. A vote was taken and the power of attorney was accepted as Exhibit E.

The sixth document was a letter dated June 23, 2020 from Paul and Brian Newton regarding Spaulding's used car sales. Carla Westine read the letter aloud. In the letter Paul and Brian Newton, abutters to the Spaulding property, stated they have no objections to the proposed used car business. Larry Semones moved to accept the letter as Exhibit F. Gary Coger seconded the motion. A vote was taken and the letter was accepted as Exhibit F.

The seventh document was a letter dated June 18, 2020 from Ronald Gordon, an abutter to the Spaulding property. In the letter Ronald Gordon stated he has no objection to a car sales business at the Spaulding Garage. Carla Westine read the letter aloud. Larry Semones moved to accept the letter as Exhibit G. Phil Perlah seconded the motion. A vote was taken and the letter was accepted as Exhibit G.

The eighth document was a draft letter from Chief Richard Cloud of the Chester Police Department dated July 21, 2020 and addressed to the Development Review Board and Zoning Administrator Michael Normyle. Carla Westine read the letter aloud. The letter described the project and stated that the Police Chief did not think traffic safety or parking would be an issue. It was noted that the address given for the property in the letter, 4644 Vermont Route 103 North,

was incorrect. The correct address is 4700 Vermont Route 103 North. Larry Semones moved to accept the letter as Exhibit H. Bob Greenfield seconded the motion. A vote was taken and the letter was accepted as Exhibit H.

The ninth document was an 11” x 17” map of the area from the State of Vermont Natural Resource Atlas. The map showed that a bit of the parcel is in the flood hazard area, but the buildings on the parcel and the area where business will be conducted in front of the buildings is not. Larry Semones moved to accept the map as Exhibit I. Gary Cogger seconded the motion. A vote was taken and the map was accepted as Exhibit I.

The tenth document presented was a site plan of the property signed by Taylor and Roy Spaulding. The plan showed the existing buildings on the property and the area planned for displaying the cars for sale. The distances from the river at the back of the property to the second building from the left and from the front of the buildings to Route 103 North were shown. The plan was dated 7/21/2020. Larry Semones moved to accept the plan as Exhibit J. Gary Cogger seconded the motion. A vote was taken and the plan was accepted as Exhibit J.

Carla Westine noted that a signed version of Exhibit H, the letter from the Police Department was distributed at the meeting that evening. She did not choose to include it as an exhibit at this hearing.

Carla Westine began the discussion by turning to the Residential – Commercial Zoning District page in the bylaws (page 10) and reading the purpose of the district aloud. “To provide a mix of higher-density residential and commercial uses in an area that is centrally located within municipal water and sewer service areas.” She noted that municipal water and sewer were not present in this area. She then looked at the list of 21 Conditional Uses allowed in the district and concluded that use 3, Automotive Fuel/Service/Sales applied to this application, which seeks to add Automotive Sales to the current use of Automotive Service.

Carla Westine verified with Roy and Taylor Spaulding that no new buildings are planned for this use. Roy and Taylor Spaulding agreed that was true. The buildings they will use had been in place for years. Given that the buildings and lot are pre-existing, Carla Westine did not discuss the setback standards which are moot in this case. Phil Perlah pointed out that while the buildings were grandfathered, the use of Used Car Sales lot was not. He asked to have the lot size and setbacks entered into evidence to support the application. Carla Westine asked the Spauldings for the history of used car sales on the lot. Roy Spaulding said he had sold used cars at the lot from the 1960’s to the 1990’s. Roy Spaulding said he has been selling fewer than 12 cars per year since then. The State of Vermont does not require a dealership license for fewer than 12 sales per year. A dealership license is needed to participate in the used car auctions and Taylor and Roy Spaulding were now seeking a dealership license from the State of Vermont in order to attend the auctions and utilize dealer license plates for transporting unregistered cars.

Carla Westine referred to Exhibit J, the site plan and noted that the front and rear setbacks met the standards of 25 feet in the front and 30 feet in the rear for non-residential uses.

Carla Westine addressed Section 2.4.E, the Supplemental Standards. She noted that paragraph (b) Gassetts applied and read the text of the bylaw aloud, “New development and redevelopment in this area shall continue in the current moderate density, with a mix of commercial, light industrial and residential uses. All new driveways and substantially reconstructed existing driveways shall meet the Agency of Transportation’s *Access Management Program Guidelines*,

as most recently adopted.” She asked the applicants if they planned to change the existing driveway. The Spauldings said they did not.

Carla Westine reviewed the rest of the Supplemental Standards briefly, saying that landscaping and screening would be addressed under Performance Standards and that Rail-Oriented Uses and Building Elements did not apply to this application.

Next Carla Westine turned to the General Standards for Conditional Uses in section 4.8 on page 65. She read each item in the General Standards and asked the applicants for a reply.

1. General Standards

These general standards shall require that any conditional use proposed for any district created under these Bylaws shall not result in an undue adverse effect to:

a. The capacity of existing or planned community facilities;

Roy Spaulding said the property has its own water supply and septic system so it would have no impact on the municipal water or sewer system. Carla Westine noted that the Board had received a letter from the Chester Police Chief in support of the project.

b. The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located;

Roy Spaulding said the area was surrounded by the river and sparsely populated. He did not see any impact on his neighbors.

c. Traffic on roads and highways in the vicinity;

Roy Spaulding said the business did not generate much traffic at all compared to the volume of traffic heading to Ludlow for skiing in the winter.

d. Bylaws and ordinances then in effect; and,

Carla Westine said the Board had checked that the use is allowed in the RC district and looked at the setback distances as well. She said signage will be discussed later in the hearing.

e. Utilization of renewable energy resources.

Roy Spaulding said no renewable energy resource use was planned.

2. Specific Standards

Specific standards will include consideration with respect to:

a. Minimum lot size;

Carla Westine asked about the acreage of the lot. Roy Spaulding estimated the lot was 3.75 acres.

b. Distance from adjacent or nearby uses;

Taylor Spaulding estimated that the closest house was 1300 – 1400 feet away. There is also a quarry across the road and down a bit.

c. Minimum off-street parking and loading facilities;

Carla Westine noted that the DRB had not had any difficulty finding parking space at the site visit. Taylor Spaulding said the business would start with 6 - 7 cars on hand for sale, possibly increasing to as many as a dozen at one time. Carla Westine said two places would be needed for the two employees, Roy and Taylor Spaulding. The Spauldings said the residences on the parcel would need an additional 5 – 6 spaces, for a total of 20 vehicles needing a parking space. Carla Westine said she observed plenty of space on the lot for 20 cars at the site visit.

Carla Westine noted that the site plan showed a location for a dumpster and a parking area for the cars that would be for sale.

d. Landscaping and fencing;

Carla Westine asked the applicants if they had any plans for landscaping or fencing. Roy Spaulding said the parcel was surrounded by the river. Taylor Spaulding said there was woods between their buildings and Ronald Gordon's property. Both men said there was no fencing.

e. Design and location of structures and service area;

Carla Westine said the service area, meaning the dumpster, was drawn on Exhibit J, the site plan.

f. Size, location and design of signs;

Carla Westine said the Chester bylaws had specific requirements for signs. She asked the applicants if they planned to have any signs. The Spauldings said they would be advertising on the internet and would not have signs on the property.

g. Performance Standards under Section 4.9 and,

h. Other such factors as these Bylaws may include.

4.9 PERFORMANCE STANDARDS

In accordance with §4414(5) of the Act, the following standards must be met and maintained by all uses in all districts that are subject to a permit under these Bylaws.

A. Noise: noise volume shall be limited to the specified decibel levels listed below measured at the property line. (The sidebar is shown only as a reference to illustrate the decibel levels of typical activities.) Noise levels or frequencies which are not customary in the district or neighborhood or which represent a repeated disturbance to others shall not be permitted. Limited exceptions are allowed for incidental and customary activities, such as the occasional use of lawn mowers and snow blowers for regular property maintenance.

1. Noise shall not exceed 60 dB between 8:00 PM. and 7:00 AM;
2. Noise shall not exceed 70 dB during the day between 7:00 AM and 8:00 PM.

Taylor Spaulding said he thought there would be less noise from used car sales than there is now from vehicle repair.

Roy Spaulding agreed. Carla Westine asked if vehicle repairs were done inside a building. The Spauldings said they were.

B. Air Pollution: no use shall create emissions, such as dust, fly ash, fumes, vapors, gases and other forms of air pollution, which:

1. Constitute a nuisance to other landowners, businesses or residents;
2. Endanger or adversely affect public health, safety or welfare;
3. Cause damage to property or vegetation; or,
4. Are offensive or uncharacteristic of the area.

Outdoor wood-fired boilers are exempt from this provision.

Both applicants said there would be no air pollution produced by the used car sales.

C. Glare, Light or Reflection: illumination from lighting fixtures or other light sources shall be shielded or of such low intensity as not to cause undue glare, reflected glare, sky glow or a nuisance to traffic or abutting properties. Lights used to illuminate parking areas and drives shall be so arranged and designed as to deflect light downward and away from adjacent residential areas and public highways. Lights shall be of a "down shield luminaire" type where the light source is not visible from any public highway or from adjacent properties. Only fixtures which are shielded to not expose a light source, and which do not allow light to "flood" the property, are permitted to be attached to buildings. Searchlights are not permitted. The

Decibel (dB) Levels:

10 dB = normal breathing

30 dB = soft whisper

40 dB = quiet residential area, library

60 dB = normal conversation

70 dB = TV audio, human voice at 10 feet

80 dB = doorbell, machine tools, car at 10 feet

90 dB = lawn mower, tractor, blender

100 dB = snowmobile, factory machinery,

110 dB = leaf blower, power saw, nightclub band

120 dB = chain saw, rock concert, pain threshold

Development Review Board may require a lighting plan under conditional use or planned unit development review procedures.

Roy Spaulding said there were no lights on the exterior of the building and they had no plans to install lights. He said it was easier to see people coming into the parking lot when there were no other lights masking the lights of the vehicles driving in. Carla Westine said that if the Spauldings did want to install lights they would need to meet the standards of downward facing shielded exterior lights.

D. Safety Hazards: Fire, explosive and similar safety hazards which would substantially increase the risk to an abutting property, or which would place an unreasonable burden on the Fire Department, shall be prohibited.

The Spaulding said they did not know of any safety hazards. In response to Carla Westine's question about fire extinguishers, they said the building met the Vermont Division of Fire and Safety Standards.

E. Electromagnetic disturbances: any electromagnetic disturbances or electronic emissions or signals which will repeatedly and substantially interfere with the reception of radio, television, or other electronic signals, or which are otherwise detrimental to the public health, safety and welfare, beyond the property lines of the property on which it is located, except as specifically licensed and regulated through the Federal Communications Commission.

Roy Spaulding did not know of any sources of electromagnetic disturbance in the building.

F. Underground Storage Tanks, Ground/Surface Water Pollution: No use shall result in burying or seepage into the ground of material which endangers the health, comfort, safety or welfare of any person, or which has a tendency to cause injury or damage to property, plants or animals. Commercial, industrial or institutional facilities having underground fuel storage shall maintain all tanks and related equipment with leak detection and spill control systems incorporating the best available safety practices and technology, consistent with government and industry standards.

The Spauldings said they knew of no underground storage tanks or other sources of pollution on the property.

Carla Westine turned to the Special Criteria for the Residential Commercial District.

3. Special Criteria

The following Special Criteria shall be considered by the Development Review Board when considering an application for a conditional use permit in the (VC) Village Center, (SV) Stone Village, (R-C) Residential-Commercial, Districts:

The applicants said they had no plans to build anything for this use. Since there was no construction planned, Carla Westine said the Special Criteria did not apply. However, if there was construction in the future the Special Criteria would apply.

Carla Westine asked the Board if they had any questions for the applicant. They did not. She asked the applicants if they had anything further to say. Roy Spaulding said he was glad to be passing the business on to his son and daughter-in-law.

There being no further questions, Larry Semones moved to close the hearing. Phil Perlah seconded the motion. A vote was taken and the hearing was closed.

Agenda Item 4 Burtco, Inc. Conditional Use Application (#555)

Carla Westine began the hearing by asking the Board members if they had had any ex-parte communication about the hearing. None had. She then explained that she had discussed the warning for the hearing published in the *Vermont Journal* with Zoning Administrator Michael Normyle and Town Manager Julie Hance, who had held the job of Zoning Administrator in the past. Carla said she was concerned about the description of the project in the warning.

Carla Westine then asked the Board members if they had any conflict of interest in the matter. None did.

The applicant Stanton Scott, and citizens Michael Marquise and Robert Bazin were sworn in to give testimony. Carla Westine then began accepting the documents presented as evidence for the hearing.

The first document was a Town of Chester Application for hearing before the Development Review Board dated May 28, 2020. Carla Westine read the following items aloud. The project number was 555, the appellant name was Stanton Scott, the appellant address was Westminster Station, VT, the location of the property was 786 Vermont Route 103 South. The landowner name was Burtco, Inc, the landowner address was 185 Route 103 Box 40 Westminster Station, VT. The parcel map number was 43-20-07. The description of the project was, "Sand & gravel extraction of 14,000 cubic yards to level site grade." The application is seeking conditional use approval. The application was signed by Stanton Scott on May 28, 2020 and by Zoning Administrator Michael Normyle on July 2, 2020. Larry Semones moved to accept the application as Exhibit A. Gary Coger seconded the motion. A vote was taken and the application was accepted as Exhibit A.

The second document was a Town of Chester Notice of Public Hearing before the Development Review Board dated July 2, 2020. Carla Westine read the following items aloud. The site visit was announced for July 27, 2020 at 5:25 PM. The property owner was Burtco, Inc., the applicant was Stanton Scott. The location was 786 Vermont Route 103 South, and the district was Residential – Commercial. The action requested was, "Sand and gravel extraction of 14,000 cubic yards to level site grade." The notice was signed by Zoning Administrator Michael Normyle. Phil Perlah moved to accept the Notice as Exhibit B. Gary Coger seconded the motion. A vote was taken and the Notice was accepted as Exhibit B.

The third document was a 3-page project narrative and review of conditional use standards on Marquise and Morano II LLC letterhead, addressed to Michael Normyle, Zoning Administrator. Michael Marquise, the author of the letter, read the Project Narrative paragraphs aloud. The rest of the document was a written response to the General Use, Extraction Operations, Landscaping and Screening, and Lot and Yard Requirements in Article 3 of the bylaws and responses to Conditional Use and Performance Standards in Article 4 of the bylaws. This information would be read from the document during the hearing as the board discussed the requirements. Larry Semones moved to accept the document as Exhibit C. Gary Coger seconded the motion. A vote was taken and the document was accepted as Exhibit C.

The fourth document was a letter on Marquise and Morano II LLC letterhead dated July 17, 2020 from Michael Marquise to Michael Normyle in regard to updating the narrative submitted in the

June 15, 2020 document. Carla Westine explained that the letter was written after she had expressed reservations to Michael Normyle and Julie Hance about the project as described in the Notice of Public Hearing. Julie Hance had suggested that the applicant withdraw the application for an extraction permit and reapply with a new use. The letter was written in response to that suggestion. Michael Marquise read the letter aloud. Gary Coger moved to accept the document as Exhibit D. Phil Perlah seconded the motion. A vote was taken and the document was accepted as Exhibit D.

The fifth document was an e-mail sent by Michael Marquise to Michael Normyle dated July 22, 2020. Carla Westine read the e-mail aloud. The e-mail documents the reasons the applicant did not want to withdraw the application as noticed. Larry Semones moved to accept the e-mail as Exhibit E. Gary Coger seconded the motion. A vote was taken and the e-mail was accepted as Exhibit E.

The sixth document was a Project Review Sheet from the Vermont Department of Environmental Conservation and Natural Resources Board dated November 26, 2013. Carla Westine read several items on the Review Sheet aloud. The Project name was Gravel removal from car wash site. The project town was Chester, the project location was 786 Route 103. The contact was the landowner was Stanton Scott, the organization was Burtco, Inc. the consultant organization was Marquise & Morano. The Project Description was “Additional work on the 5.3-acre site at 786 VT Route 103 S, Chester, VT Ot143 (just south of the driveway entrance to the Green Mountain High School). Proposal is to bring down the grade of the southern portion of the site to better match the finished grade from his recent car wash development. Applicant further proposes to screen, crush and sell the excess gravel from the site. There is already gravel stockpiled from the car wash project. The remaining work is on the southern 1.8 acres ± of the site.” The Wastewater system and potable water supply permit number is WW-2-4426, the project is a commercial project, but an Act 250 permit is not required. The reason for not requiring an Act 250 permit was given as, “Construction of improvements for commercial properties on 10 acres or less in Chester does not trigger Act 250. 10 V.S.A. Section 6001(3)(A)(1).” A wastewater water system and potable water supply permit/approval was not required. Other permits that may be needed were Air pollution control, stormwater, access to state highways and local permits. The sheet was signed by Linda Matteson, Chris Tomberg and Jackie Carr. Larry Semones moved to accept the review sheet as Exhibit F. Gary Coger seconded the motion. A vote was taken and the review sheet was accepted as Exhibit F.

The seventh document was a letter dated June 15, 2020 on Marquise and Morano letterhead to the Chester Fire Department. The letter sought input on the proposed project from the Fire Department and gave some details of the application. Carla Westine read the letter aloud. Phil Perlah moved to accept the letter as Exhibit G. Gary Coger seconded the motion. A vote was taken and the letter was accepted as Exhibit G.

The eighth document was an e-mail note from Matt Wilson to Michael Normyle in response to Exhibit G, the letter from Michael Marquise. In the e-mail, Fire Chief Matt Wilson said he saw no impact to the Fire Department from this proposed excavation. Carla Westine read the e-mail aloud. Phil Perlah moved to accept the e-mail as Exhibit H. Gary Coger seconded the motion. A vote was taken and the e-mail was accepted as Exhibit H.

The ninth document was a letter dated June 15, 2020 on Marquise and Morano letterhead to the Chester Police Department. The letter sought input on the proposed project from the Police

Department and gave some details of the application. Carla Westine read the letter aloud. Larry Semones moved to accept the letter as Exhibit I. Gary Cogger seconded the motion. A vote was taken and the letter was accepted as Exhibit I.

The tenth document presented was a letter on Town of Chester Police Department letterhead dated July 23, 2020 from Police Chief Richard Cloud to Zoning Administrator Michael Normyle. The letter was in response to Exhibit I. Carla Westine read the letter aloud. In the letter, Richard Cloud said it was his opinion that traffic safety would not be an issue for this project. Larry Semones moved to accept the letter as Exhibit J. Phil Perlah seconded the motion. A vote was taken and the letter was accepted as Exhibit J.

The eleventh document was a letter dated June 15, 2020 on Marquise and Morano letterhead to Brian McAvoy, Permit Coordinator for the State of Vermont. The letter asks to have a permit for work within the highway right of way issued in 2017 to be extended through July 2020. Carla Westine read the letter aloud. Larry Semones moved to accept the letter as Exhibit K. Phil Perlah seconded the motion. A vote was taken and the letter was accepted as Exhibit K.

The twelfth document was a site plan titled Burtco, Inc. 786 Vermont Route 103 South, Chester Vermont. Grading and Restoration Proposed Site Plan. The plan was dated 10/23/2017. Larry Semones moved to accept the site plan as Exhibit L. Gary Cogger seconded the motion. A vote was taken and the site plan was accepted as Exhibit L.

Carla Westine began the discussion by noting that the warning of the hearing was for an extraction of 14,000 cubic yards of gravel. In Exhibits C, D, and F, letters from Michael Marquise and Exhibit F, the Project Review Sheet, identify the reason for the hearing as something else. She was concerned that the difference could result in a flawed notice and invalidate the hearing. For that reason, she consulted Zoning Administrator Michael Normyle and Town Manager Julie Hance before the meeting.

She turned to the Residential – Commercial Zoning District page in the bylaws (page 10). and read through the list of conditional uses available in the Residential - Commercial District. She asked who had composed the description of the project on the application for a hearing, Exhibit A. Michael Marquise said he had written the description. She asked who had written the Action Requested entry on the Notice of Public Hearing, Exhibit B. Michael Normyle said he had copied the description from the application filed by the applicant.

Carla Westine asked if Michael had checked the list of conditional uses available in the Residential – Commercial district to see if any matched the request. Michael Normyle said he thought the Heavy Construction Trades matched the narrative and Heavy Construction Trades was a conditional use in the RC district. Carla Westine said she was concerned that the warning for the hearing gave extraction as the use but at the hearing Heavy Construction Trades will be the use considered.

Michael Marquise said he had described the action he had wanted to take and entered that as the description of the project. He didn't feel it was his responsibility to enter the zoning bylaw use. Michael Normyle asked if entering Heavy Construction Trades in the description would have been a possible way to compose the Notice. Carla Westine said she didn't want to discuss the appropriateness of Heavy Construction Trades as the use needed here. She was concerned that the warning for the hearing listed one use and the hearing will be discussing a different use. She said the Board may need an opinion from the town lawyer on that point. She suggested that the

hearing continue and the Board decide in deliberative session at the end of the hearing whether the lawyer needs to be consulted.

Phil Perlah asked if it would be appropriate to consider this an application for a temporary use. Carla Westine said the notice didn't indicate that a temporary use would be considered and the application did not request a temporary use. None of the exhibits address a temporary use. Carla Westine read Section 4.4, Temporary Use on page 64 as follows:

A permit may be issued by the Development Review Board for non-conforming uses, providing that the use demonstrates a unique and special circumstance. It is a requirement of this section, that any permit issued has been reviewed under the conditional use criteria of these regulations. The non-conforming use shall be temporary and shall be discontinued within 6 months from the date of the permit. Such permits may be renewed for two additional periods not to exceed three months each, upon application to the Development Review Board.

She then read the definition of non-conforming use from page 133 of the bylaws:

NON-CONFORMING USE: Use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the Zoning Administrator.

Carla Westine said the current bylaws were adopted in 2017. The previous set of bylaws was adopted in 2014. To consider extraction a non-conforming use one of the previous bylaws would have to have allowed extraction as a conditional use for that property. The 2014 bylaws did not allow extraction as a conditional use in the district in question.

Larry Semones asked what the problem was with the warning given. Carla Westine said the warning used the word extraction to describe the action requested. Extraction is not a use allowed in the Residential – Commercial district. She said it was allowed in the R40, R120, CR and F districts. Larry Semones said extraction would be a normal part of site preparation for a project. He asked why the applicant could not clear the site he owns without specifying the use he planned for the site at some point in the future in his application. Carla Westine said the discussion Larry wanted to have needed to take place in deliberative session. She wanted to continue the hearing and gather information.

Carla Westine turned to the General Standards for Conditional Uses in section 4.8 on page 65. She read each item in the General Standards and asked the applicants for a reply.

1. General Standards

These general standards shall require that any conditional use proposed for any district created under these Bylaws shall not result in an undue adverse effect to:

a. The capacity of existing or planned community facilities;

Michael Marquise said he had presented letters from the Police and Fire Departments saying the project would not be a problem for their departments. He said this part of the project will not require other community facilities. Carla Westine noted that the

Michael Marquise had discussed this in Exhibit C. On page 2 of that document Item B discusses the requirements for Article 4 of the bylaws.

b. The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located;

Carla Westine read the purpose of the Residential and Commercial Uses aloud. “To provide a mix of higher-density residential and commercial uses in an area that is centrally located within municipal water and sewer service areas.” She noted that the Residential – Commercial District has Supplemental Standards and that the paragraph 2.E.1.c, VT Route 103 South applied to this parcel. She read the paragraph aloud, “new buildings and modifications to existing buildings shall extend the historic pattern of higher density, mixed use village development that includes single and multi-family dwellings, civic and mixed-use buildings (e.g., residential apartments over commercial storefronts), and new public greens all interconnected via pedestrian paths or sidewalks. The desired character of this area requires a shift from vehicle-oriented development allowed under the former Zoning Bylaws, to a more pedestrian-friendly form of mixed-use development. All new driveways and substantially reconstructed existing driveways shall meet the Agency of Transportation’s *Access Management Program Guidelines*, as most recently adopted.” She asked Michael Marquise how the project would affect the area. Michael Marquise said the applicant has not decided on a final use for the land. The impact of that use will be determined at a future time. He said cleaning up the property so that it is graded and seeded would be an improvement for the neighborhood.

c. Traffic on roads and highways in the vicinity;

Michael Marquise read paragraph B.1.e on page 2 of Exhibit C as follows, “It is estimated that approximately 675 truck loads from the site will occur during regular business hours throughout the duration of the project. The excavation, screening, crushing and removal are expected to take less than 3 months, weather permitting. Total project duration with restoration is estimated to be 6 months (completion in Fall 2020).” Carla Westine noted that the letter from the police chief said he did not think there would be any adverse effect.

d. Bylaws and ordinances then in effect; and,

Carla Westine said the Board had discussed the bylaws and the difficulty finding a use allowed in the district that fit the project. Michael Marquise said Heavy Construction Trades was mentioned as a use early in the application process but then was left off of the application paperwork.

e. Utilization of renewable energy resources.

Michael Marquise said no renewable energy resource use was planned for this project. The car wash used solar energy.

2. Specific Standards

Specific standards will include consideration with respect to:

a. Minimum lot size;

Stanton Scott said there had been four lots in the area of the parcel. The area to be cleared consisted of two of those four lots and the two lots were to be considered a single lot.

b. Distance from adjacent or nearby uses;

Michael Marquise quoted Exhibit C saying Green Mountain Union High School was 500 feet from the lot, the Chester Andover Family Center was 390 feet from the lot, Drew's manufacturing facility was 540 feet from the lot, the Heritage bakery and deli was 570 feet from the lot, the self-storage facility was 300 feet from the lot and a residence was 300 feet from the lot.

c. Minimum off-street parking and loading facilities;

Michael Marquise said no business was proposed and no parking was necessary.

d. Landscaping and fencing;

Michael Marquise said there would be no fencing, the ground would be seeded and mulched. Stanton Scott said a gate blocking access to the property may be installed.

e. Design and location of structures and service area;

Michael Marquise said there would be no structures or service area.

f. Size, location and design of signs;

Michael Marquise said there would be no signs.

g. Performance Standards under Section 4.9 and,

h. Other such factors as these Bylaws may include.

4.9 PERFORMANCE STANDARDS

In accordance with §4414(5) of the Act, the following standards must be met and maintained by all uses in all districts that are subject to a permit under these Bylaws.

A. Noise: noise volume shall be limited to the specified decibel levels listed below measured at the property line. (The sidebar is shown only as a reference to illustrate the decibel levels of typical activities.) Noise levels or frequencies which are not customary in the district or neighborhood or which represent a repeated disturbance to others shall not be permitted. Limited exceptions are allowed for incidental and customary activities, such as the occasional use of lawn mowers and snow blowers for regular property maintenance.

1. Noise shall not exceed 60 dB between 8:00 PM. and 7:00 AM;
2. Noise shall not exceed 70 dB during the day between 7:00 AM and 8:00 PM.

Stanton Scott said, “We will have noise.” He introduced Bob Bazin of Bazin Brothers to talk about the noise from the crusher, back up alarms and noise from the loaders and excavators. Bob Bazin said he has portable crushers on tracks which are late model machines and have their own permits. They have air pollution controls. He said he had recently done some crushing for the town of Chester. He said most towns have regulations about noise. He said this project was not like a quarry, there was no ledge involved. He said his equipment had chirp backup alarms which were appropriate for residential areas.

Bob Bazin said for a project like this there would be digging for four or five days before the crusher was brought in. The crusher uses water to control dust. He usually sets up the machinery and then tests for noise. Carla Westine read the noise standard for Chester which needs to be measured at the property line. She asked Bob Bazin if he had any noise figures for his equipment that evening. He said that he did not. He noted that the Chester noise standard was very low. He thought his equipment would be more like 85 decibels at the property line.

Carla Westine said that, in the past, people have mitigated noise with products such as Acoustifence, an outdoor fence that absorbs sound. She cited a dog kennel on Elm Street that used multiple mitigation techniques including Acoustifence. Bob Bazin said he could understand putting up a fence for a permanent business, such as the kennel, but not a temporary project like removing gravel.

Larry Semones asked if part of the plan was to crush the gravel on the site. Stanton Scott said if they could not crush the gravel on site, they would still want to excavate it.

Decibel (dB) Levels:

10 dB = normal breathing

30 dB = soft whisper

40 dB = quiet residential area, library

60 dB = normal conversation

70 dB = TV audio, human voice at 10 feet

80 dB = doorbell, machine tools, car at 10 feet

90 dB = lawn mower, tractor, blender

100 dB = snowmobile, factory machinery,

110 dB = leaf blower, power saw, nightclub band

120 dB = chain saw, rock concert, pain threshold

B. Air Pollution: no use shall create emissions, such as dust, fly ash, fumes, vapors, gases and other forms of air pollution, which:

1. Constitute a nuisance to other landowners, businesses or residents;
2. Endanger or adversely affect public health, safety or welfare;
3. Cause damage to property or vegetation; or,
4. Are offensive or uncharacteristic of the area.

Outdoor wood-fired boilers are exempt from this provision.

Stanton Scott said the will use water to control the dust. There would be exhaust from the equipment, but the project would only last 3 to 6 weeks. Bob Bazin said the crushing equipment processes so much per hour that the state of Vermont requires dust control features on it. Carla Westine asked if the equipment would be creating dust clouds that would be drifting across Route 103. Bob Bazin said that was not likely. He said the equipment has dust filters.

C. Glare, Light or Reflection: illumination from lighting fixtures or other light sources shall be shielded or of such low intensity as not to cause undue glare, reflected glare, sky glow or a nuisance to traffic or abutting properties. Lights used to illuminate parking areas and drives shall be so arranged and designed as to deflect light downward and away from adjacent residential areas and public highways. Lights shall be of a "down shield luminaire" type where the light source is not visible from any public highway or from adjacent properties. Only fixtures which are shielded to not expose a light source, and which do not allow light to "flood" the property, are permitted to be attached to buildings. Searchlights are not permitted. The Development Review Board may require a lighting plan under conditional use or planned unit development review procedures.

Michael Marquise said the work will be done during the daytime and no lights will be used.

D. Safety Hazards: Fire, explosive and similar safety hazards which would substantially increase the risk to an abutting property, or which would place an unreasonable burden on the Fire Department, shall be prohibited.

Michael Marquise said there will be no blasting or other safety hazards.

E. Electromagnetic disturbances: any electromagnetic disturbances or electronic emissions or signals which will repeatedly and substantially interfere with the reception of radio, television, or other electronic signals, or which are otherwise detrimental to the public health, safety and welfare, beyond the property lines of the property on which it is located, except as specifically licensed and regulated through the Federal Communications Commission.

Michael Marquise did not believe any equipment was a source of electromagnetic disturbance.

F. Underground Storage Tanks, Ground/Surface Water Pollution: No use shall result in burying or seepage into the ground of material which endangers the health, comfort, safety or welfare of any person, or which has a tendency to cause injury or damage to property, plants or animals. Commercial, industrial or institutional facilities having

underground fuel storage shall maintain all tanks and related equipment with leak detection and spill control systems incorporating the best available safety practices and technology, consistent with government and industry standards.

Michael Marquise said there were no underground storage tanks or other sources of pollution on the property.

Carla Westine turned to the Special Criteria for the Residential Commercial District.

3. Special Criteria

The following Special Criteria shall be considered by the Development Review Board when considering an application for a conditional use permit in the (VC) Village Center, (SV) Stone Village, (R-C) Residential-Commercial, Districts:

The applicants said they had no plans to build anything for this use. Since there was no construction planned Carla Westine said the Special Criteria did not apply. However, if there was construction in the future the Special Criteria would apply.

Carla Westine turned to Section 3.7, Erosion Control and Development on Steep Slopes as mentioned on page 1 of Exhibit C. Michael Marquise stated that none of the land in question is a steep slope. He said compost filter socks would be used in place of silt fencing. Carla Westine said she noticed a deep swale between the site and the highway. She asked if it would trap any water flowing from the site. Michael Marquise said it would.

Carla Westine asked the applicant whether they were prepared to attest that they could meet the noise standards in Section 4.8 Performance Standards. Bob Bazin said he was not prepared to say he could meet the standard. Carla Westine and Bob Bazin discussed the measures taken to obtain a permit for the town gravel pit south of the site in question on Route 103 and how the sound was measured there. Carla noted that the information about that application is public record and available to be consulted. Bob Bazin said he would talk to Town Manager Julie Hance and Highway Superintendent Kirby Putnam about this. Michael Normyle said he thought the difference in distance to the property line between the two sites was a key in obtaining the permit for the town gravel pit.

Michael Marquise asked whether if crushing were not part of the application, would excavation fall under the “customary activities” cited in section 4.9.A Noise. Carla Westine read the paragraphs associated with the Noise standard. Michael Marquise said excavating at a property must be a customary activity for any lot being developed. Bob Bazin said he had never in his long career been questioned about excavation noise on a site during development.

Michael Normyle said other applicants with small lots have hired a sound engineer to manage the noise requirement. He gave the dog kennel on Elm Street as an example. Larry Semones said that the excavation would be a temporary situation. He asked if consideration could be given to that. Carla Westine said that could be discussed in deliberative session. She asked the applicants whether they wanted to recess the hearing and bring more testimony on sound at a later date or if they wanted to close the hearing that evening and have the DRB consider the application based on the testimony received. She recapped the application being considered as extracting 14,000 cubic yards of gravel and crushing it on-site. She said the applicant could measure sound and decide whether crushing exceeds the noise limit but the excavation machinery meets the noise limit.

Cathy Hasbrouck said she thought permits ran with the land and a permit to extract and crush gravel would run in perpetuity. Once the permit was granted the holder had no obligation to stop. Larry Semones said the activity would continue until the site ran out of material. Carla Westine said the problem was that the warning for the hearing was not for a temporary permit or a heavy construction trades permit, it was warned for extraction. She asked the applicant again if they wanted to close the hearing or leave it open so they could provide more testimony on noise levels.

Stanton Scott said he thought he needed to leave the avenue open. He said it would be helpful if the Board or the Zoning Administrator would tell him where they think he should be going. He was having difficulty getting through the process. He said he just wanted to get rid of the material on that lot. He had other places where he could use the material.

Carla Westine said that if, as a property owner, Stanton Scott wanted to hire Bob Bazin to move the material from the Route 103 site to some other site Mr. Scott owned, he did not need a permit from the Development Review Board at all. Stanton Scott said he had removed about 6,000 cubic yards of material off the site currently. Carla Westine said he could continue to remove material as long as he did not sell it. Stanton Scott said he thought he had to have a permit. Carla Westine explained that as long as the material was not sold, no permit was necessary to hire someone to re-grade the lot. She said if the property is under Act 250, he may still need a permit from the state.

Michael Marquise recapped his understanding of Carla's statements. He said Mr. Scott could remove the material, not crush it and not sell it without a permit. Carla Westine agreed to the summary. She asked whether the applicant wanted to close the hearing or continue it. She said the hearing could be continued while the applicant considered the issues. Stanton Scott said he understands that the issue is about crushing and selling the gravel from that piece of property. He then withdrew his application.

At the request of Michael Normyle, Mr. Scott confirmed that he was withdrawing the application. Michael asked if Mr. Scott could remove the gravel from his property. Carla Westine said he could remove it but not sell it. Michael Normyle asked if Stanton Scott could remove it to another piece of property. The reasons for the confusion about needing a permit were discussed briefly. Michael Normyle asked how much gravel may be removed. Carla Westine said there was no limit as long as a hazard such as flooding was not created. She said the state may have some concerns about how deep the excavation went, but the town did not. Bob Bazin said the planned gravel removal would take 3 or 4 weeks.

Phil Perlah moved to accept the applicant's withdrawal. Larry Semones seconded the motion. Carla Westine gave a summary of the discussion on withdrawing the application as the Zoom participants had not been able to hear all of it clearly. She said that some years back Stanton Scott went before the Development Review Board and said he wanted to reduce the grade on the property and sell the gravel off the site. The DRB told him it could not issue a permit for that because extraction is not allowed in the Residential – Commercial district. However, as a private landowner, if he wanted to regrade his property, and it is under 10 acres and not under Act 250, he would be allowed to regrade as much as he wanted. He could not sell the gravel, but he could have it removed. Carla Westine said Mr. Scott was confused and thought he needed a permit to remove the gravel under any conditions. Carla Westine said that as long as he wasn't going to sell it, Mr. Scott could have the gravel removed and have a level lot.

Phil Perlah said this is what Larry Semones was saying earlier in the meeting and Phil agreed with Larry that Mr. Scott ought to be allowed to do site work on his property to make it more desirable for sale or development. Bob Greenfield agreed as well, as long as the gravel is not being sold. It is private land and the landowner is allowed to develop his land. Michael Normyle said he hoped the applicant would be a good neighbor and do this work during normal business hours and as quietly as possible. There were no controls on noise or hours in the bylaws on a private landowner doing work on his or her land.

A vote on the motion was taken and the motion passed.

Michael Marquise asked if there would be a Finding of Fact document for the hearing. Carla Westine said the record would be in the minutes of the hearing, which would record the proceedings and the requirements that the gravel not be sold from the lot or crushed on the lot as part of the removal process. Michael Marquise said he was concerned about the Agency of Transportation. He wanted to be sure they would not object to the gravel being removed. He said he would submit a copy of the minutes to them to explain why he does not have a permit from the town for gravel removal. Carla Westine said that if the AOT questioned Michael Marquise about this, he can say that the hearing was warned as an extraction which is a use not allowed in the Residential – Commercial zoning district. Carla Westine said she didn't think a permit could have been approved unless the meeting was re-warned as something else. Carla Westine said she understood the applicant had obtained AOT approval for the car wash and she thought that would also cover this part of the property. Michael Marquise said the AOT approval was given in conjunction with the town of Chester permit for the car wash. He asked that the minutes be very clear on what was said at this hearing. Carla Westine assured him that they would be thorough and a tape of the hearing would also be available.

Carla Westine asked Michael Normyle if there were any hearings coming up. He said there will be a final hearing for the Carlo Kapp subdivision on August 10, 2020. He said there were a couple of other projects under discussion, but nothing was decided yet. Carla Westine asked that in the future, the notice for a hearing specified the zoning district in question and the name of a use that was available in that zoning district, so there would be no confusion for abutters and citizens about what was being proposed. Some discussion of the hearing just closed began, but the discussion was suspended until a deliberative session could be entered.

Phil Perlah moved to close the hearing. Michael Normyle suggested that the Planning Commission members be invited to join the deliberative session while the hearing just closed was being discussed. Michael Normyle was invited to join that deliberative session as well. Peter Hudkins of the Planning Commission had already left the Zoom session. Cheryl Joy Lipton thanked the Board for the invitation, but said she had other matters to attend to and left the meeting. Bob Greenfield declined to join the session as well.

The Board then went into deliberative session and the meeting was adjourned at the end of it.