

1 **TOWN OF CHESTER**  
2 **DEVELOPMENT REVIEW BOARD**  
3 **DRAFT MINUTES**

4 *March 27, 2023*

5 **BOARD MEMBERS PRESENT:** Harry Goodell, Phil Perlah, Scott MacDonald, Bob  
6 Greenfield and Gary Coger at the Town Hall

7 **STAFF PRESENT:** Zoning Administrator Preston Bristow at the Town Hall, Sue Bailey on  
8 Zoom.

9 **CITIZENS PRESENT:** Jack Kennelly, Elizabeth Merritt, Thomas Merritt, Naomi Johnson,  
10 Randall Haskell, Meghan Peters

11 **Call to Order**

12 Bob Greenfield called the meeting to order at 6:00 PM. The group recited the Pledge of  
13 Allegiance. Bob introduced the members of the Development Review Board and staff.

14 **Agenda Item 1 Review draft minutes from the March 13, 2023 meeting.**

15 The Board considered the minutes from March 13, 2023. Harry Goodell moved to accept the  
16 minutes as written. Phil Perlah seconded the motion. There was no discussion. A vote was taken  
17 and the minutes were accepted as written.

18 **Agenda Item 2 Citizen Comments**

19 There were no citizen comments.

20 **Agenda Item 3 Flood Hazard Review Hearing for bridge over the Great Brook between**  
21 **1337 and 1497 VT Route 10**

22 Bob Greenfield swore in all citizens in attendance Jack Kennelly, Elizabeth Merritt, Thomas  
23 Merritt, Naomi Johnson, Randall Haskell and Meghan Peters, to give testimony.

24 Bob Greenfield asked if any DRB member had a conflict of interest to report. None did. He  
25 asked if any member had had ex-parte communication on the topic. None had.

26 He then accepted the documents offered as exhibits.

27 The first document was an application for a hearing before the Town of Chester Development  
28 Review Board. The application was seven pages and included a photograph of where the bridge  
29 will meet VT Route 10, a survey of the parcel, a tax map of the parcel, a map from the VT  
30 Agency of Natural Resources showing the flood hazard area and the parcel, a FEMA map  
31 showing the Flood Hazard Layer FIRMette and the proposed driveway location, and a map of  
32 Lidar contours at the proposed driveway location. Harry Goodell moved to accept the application  
33 for hearing as Exhibit A. Phil Perlah seconded the motion. A vote was taken and the application  
34 was accepted as Exhibit A.

35 The second document was a Development Review Board Notice of Public Hearing for a Flood  
36 Damage Prevention Review, dated March 2, 2023. The DRB case number was 582. Harry  
37 Goodell moved to accept the Notice as Exhibit B. Phil Perlah seconded the motion. A vote was  
38 taken and the Notice was accepted as Exhibit B.

1 The third document was a list of abutting landowner names and addresses who were mailed a  
2 Notice of Hearing on 3/6/23. Harry Goodell moved to accept the List of Abutters as Exhibit C.  
3 Gary Coger seconded the motion. A vote was taken and the list was accepted as Exhibit C.

4 The fourth document was a Vermont Agency of Transportation State Highway Access and Work  
5 Permit number 45404 issued 8/18/22 to Thomas Merritt. There were 4 pages in the exhibit.  
6 Harry Goodell moved to accept the Notice as Exhibit D. Phil Perlah seconded the motion. A  
7 vote was taken and the permit was accepted as Exhibit D.

8 The fifth document was a permit entitled, “Authorization to Conduce Stream Alteration  
9 Activities” from the Vermont Department of Environmental Conservation Watershed  
10 Management Division Rivers Program. The permit was dated 9/13/2022 and was number SR-  
11 3099. It was accompanied by a drawing of the proposed bridge. Harry Goodell moved to accept  
12 the permit as Exhibit E. Phil Perlah seconded the motion. A vote was taken and the permit was  
13 accepted as Exhibit E.

14 The sixth document was an e-mail from Scott Jensen, River Management Engineer at the  
15 Vermont Department of Environmental Conservation Rivers Program to Preston Bristow,  
16 Chester Zoning Administrator, dated October 4, 2022. The email discussed how the bridge will  
17 be anchored to prevent it from floating away in a flood. Harry Goodell moved to accept the  
18 email as Exhibit F. Phil Perlah seconded the motion. A vote was taken and the map was accepted  
19 as Exhibit F.

20 The seventh document was a 20-page Hydrology and Hydraulics Report dated February 9, 2023  
21 for the Merritt Driveway Crossing over the Great Brook. The report was signed by Naomi  
22 Johnson of the Dufresne Group. Harry Goodell moved to accept the Report as Exhibit G. Phil  
23 Perlah seconded the motion. A vote was taken and the report was accepted as Exhibit G.

24 Preston Bristow explained the history of the project, saying that the Merritts have a house on  
25 this property and had built a driveway on their neighbor’s land. After litigation, the Vermont  
26 Supreme Court found no evidence that building an access route from Route 10 would be  
27 impractical or infeasible. Preston Bristow acknowledged that building an access across a flood  
28 plain and a flood way is not easy. Preston said some people at the site visited felt the location on  
29 Route 10 was not ideal, but he noted that the state highway agency has given a permit for the  
30 driveway. Harry Goodell asked if the applicant provided a bridge design to approve and Preston  
31 said there is nothing in Chester’s bylaws that requires the DRB to approve bridges. The state has  
32 also given a stream alteration permit for the bridge.

33 Preston said in Vermont, boards like the Chester DRB who have little experience with floodplain  
34 issues are required to make decisions about floodplain issues. Preston said the state district  
35 floodplain administrator is asked to make comments on the project to help the DRB make this  
36 decision. The floodplain administrator has 30 days to comment. This hearing was scheduled  
37 after the 30-day period so that comments could be received.

38 The state floodplain administrator, John Broker Campbell spoke with Scott Jensen, the state  
39 floodplain engineer and Naomi Johnson of Dufresne Group about the bridge. The only concern  
40 about the bridge he mentioned to Preston Bristow was whether the bridge was anchored  
41 sufficiently so that it would not float away in a flood. Preston said he had attempted to contact  
42 John Broker Campbell to confirm he had no other comments to make.

1 Phil Perlah asked Preston Bristow what the DRB is being asked to do at the hearing. Preston  
2 said the DRB must decide, based on the expert testimony and documents presented, that there  
3 will be no net rise in flood level as a result of the bridge.

4 Preston described the planned path of the driveway: leaving the highway, ramping up 5 feet to  
5 the level of the bridge deck and over the stream, then down to grade level and across the  
6 floodplain. He noted that, at the site visit, Naomi Johnson said during a true flood event water  
7 was likely to flow over Route 10 and on both sides of the bridge. Bridges of this type are more  
8 likely to survive a flood because debris will flow around the bridge and not be trapped by it.

9 Preston said it was possible that during a flood the Merritts may not be able to reach their house  
10 because the bridge may be under water. Preston said he spoke to a neighbor on Route 10 who  
11 had an on-grade crossing of the floodplain. The neighbor said there are a few times a year when  
12 he has to drive his car through standing water crossing his bridge, but it was not rushing water.

13 Preston explained that, during a flood, no net rise would mean that the surface of the flood  
14 waters would not rise at all. Preston said Naomi Johnson had analyzed the stream flow and  
15 concluded that if the flood plain was cleared, the bridge would not create a rise in the flood level.  
16 Naomi Johnson then addressed the Board. She gave a summary of her analysis of what would  
17 happen in a 100-year flood. She said she used a computer to model the existing stream using the  
18 FEMA flood elevation data. She added the structure of the bridge to the model to judge its  
19 effects. She said the bridge did have an effect, but the channel clearing necessary to construct  
20 the bridge offset the impact of the bridge structure. She said they did enough simulations to  
21 conclude that clearing a 32-foot-wide swath of vegetation at the bridge site would offset the  
22 presence of the bridge. She said the clearing must be maintained as long as the bridge is present.  
23 The driveway and the bridge itself are smooth surfaces. An additional 32 feet of bank must be  
24 cleared.

25 Bob Greenfield asked if Route 10 was in the floodway. Naomi said it was. The 100-year flood  
26 zone was drawn on the maps presented. She said Route 10 has been flooded a few times in her  
27 memory. She said the bottom of the bridge must be 1 foot above the base flood elevation.

28 Phil Perlah asked Naomi if her report showed the location of the bridge piers. She said it did  
29 not.

30 Preston Bristow clarified the statement of 35 feet being cleared to meet the requirement of no  
31 rise in the flood. He said 17 feet of ground must be cleared of vegetation on either side of the  
32 driveway to meet that requirement. Jack Kennelly asked to have that statement repeated.  
33 Preston said he was trying to clarify the location of the land to be cleared to offset the presence  
34 of the bridge. He said it was the land along the driveway that needed to be cleared for a width of  
35 35 feet, or 17 feet on each side of the driveway, and not the land between the bridge and the  
36 road. Naomi Johnson corrected the width of the area to be cleared. It was 32 feet, not 35 feet  
37 along the axis of the driveway. Scott MacDonald noted the cleared area must be maintained.

38 Harry Goodell asked how wide the ramp to the bridge would be and how far the new fill would  
39 extend. Naomi Johnson said the modeled bridge was 12 feet wide.

40 Bob Greenfield said Chester's issuing a permit depended on the state-issued permits. Preston  
41 said the way he saw it, the state highway department issued an access permit and the state issued  
42 as stream alteration permit. The stream alteration permit addresses changes to the width of the  
43 bridge opening. The state permit said Mr. Merritt needed to obtain a flood damage review permit

1 from the town. The flood damage review permit looks at how high the bridge is and whether it  
2 obstructs the flow of the water. Thomas Merritt had hired Naomi Johnson to perform that  
3 analysis. 32:48Preston said the town's decision would be affirming Naomi's work on whether  
4 the bridge would make a flood event worse.

5 Scott MacDonald asked how the DRB would ensure the bridge is built according to the plan.  
6 Preston said the DRB's permit conditions would require that the bridge is built according to the  
7 design submitted in the application. The Zoning Administrator's job is to ensure compliance  
8 with those plans. Preston said the portions of the bylaw that address this issue are section 2.14,  
9 the Flood Damage Prevention district, section 4.11 Flood Damage Prevention Review  
10 Procedures and Article 6, Flood Damage Prevention Standards.

11 Bob Greenfield read aloud and commented on Section 2.14 of the bylaws. He said the  
12 requirements put forth in paragraph 2.14.A were addressed by Naomi's report.

13 He then addressed Section 4.11 as follows.

14 **4.11 FLOOD DAMAGE PREVENTION REVIEW PROCEDURES**

15 **A. Applications and Hearings**

16 1. All applications for permits for development in the FHA must be heard as a conditional  
17 use by the Development Review Board (DRB). Those hearings shall be scheduled,  
18 noticed and heard in accordance with 24 VSA Chapter 117, Subchapter 11, Sections  
19 4465 et seq.

20 Bob Greenfield said the notice of hearing was posted as required.

21 **2. Submission Requirements.** Applications for Flood Hazard Review shall be submitted to  
22 the Zoning Administrator on the approved blank available from the Town office and  
23 shall be accompanied by:

24 a. Two (2) copies of a map drawn to scale showing:

25 1. The dimensions of the lot;

26 Preston Bristow pointed to the survey included in the application, Exhibit A.

27 2. The location of existing and proposed structures;

28 3. The elevation of the lowest floor, including basement, either

29 a. in relation to mean sea level where base flood elevation data in relation to  
30 mean sea level is available, or

31 b. in relation to the elevation determined pursuant to Section 7B, or

32 c. if neither (a) or (b) apply for lack of a determined elevation, in relation to  
33 highest adjacent grade of all new or substantially improved structures and  
34 notations as to whether or not such structures contain a basement; and

35 4. The relationship of the above to the streambank and, based upon the best  
36 information available (including Federal Insurance Administration data, if  
37 issued), the elevation and limits of the SFHA.

1 b. If any portion of the proposed development is within a designated Floodway, the  
2 application must show that the development standards in Section 6 A. and B. are  
3 met.

4 Bob Greenfield said he believed this requirement is met by the report from the Dufresne  
5 Group.

6 c. If the proposed development is in the Floodway Fringe Area(s), the application must  
7 show that the development standards in Section 6 A and C. are met.

8 d. All permits required for the proposed development by municipal law.

9 e. The applicant shall contact a permit specialist at ANR and request the specialist to  
10 complete a permit review for the project. The permit review sheet, which informs  
11 the applicant of all governmental agencies from which permit approval for the  
12 proposed development is required by federal or state law, shall be filed as a  
13 required attachment to the Town permit application.

14  
15 Bob Greenfield said these permits and the permit review were included in the exhibits.

16  
17 Jack Kennelly said he wanted to be sure he had a chance to air his clients concern before  
18 a vote was taken. Bob Greenfield acknowledged the request and continued to read the  
19 bylaw aloud.

20 **3. Review Procedure.** The DRB shall review the application, comments from the State  
21 National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural  
22 Resources, Department of Environmental Conservation, River Management Section, if  
23 available, and other pertinent information available to insure compliance with the  
24 development standards set forth in Article 6 Development Standards, and:

25 a. The DRB shall review the application and assure that all permits required for the  
26 proposed development by municipal law have been received by the applicant.

27 b. The DRB may, in its discretion, require that a consultant be hired to aid in the  
28 permitting process. Should a consultant need to be hired, the expense of said  
29 consultant will be the sole responsibility of the applicant.

30 c. If the DRB approves the proposed project, among other conditions, the DRB shall, in  
31 its decision, make the approval contingent on the applicant obtaining all permits  
32 required by federal or state agencies, as shown on the project review sheet.

33 d. The permit issued by the Zoning Administrator after the DRB approval shall contain,  
34 among other conditions, a statement that the validity of the permit is contingent on  
35 the applicant obtaining all permits required by federal or state agencies, as shown  
36 on the ANR permit review sheet.

37  
38 e. Applicant is required to obtain the legally required permits from the entity indicated  
39 on the permit review sheet, or, if it is determined by that agency that a permit is not  
40 required, a letter so stating from the agency, and as received provide copies of the  
41 permit or letter to the Zoning Administrator for the applicant's file.  
42

1       **4. Permit Expiration.** Any permit issued for development within the SFHA shall become  
2       void if the work described therein is not commenced within a period of one (1) year  
3       from the date of issuance and diligently prosecuted thereafter.

4  
5       Bob Greenfield then read parts of Article 6

6  
7       **Article 6**

8       **A.** Where available, base flood elevations and floodway limits (or data from which a  
9       community can designate regulatory floodway limits) provided by the National Flood Insurance  
10      Program in the Flood Insurance Study and accompanying maps, referred to in Section 2.14(B),  
11      shall be used to administer and enforce these Bylaws.

12  
13      **B.** In areas where base flood elevations and floodway limits have not been provided by the  
14      National Flood Insurance Program in the Flood Insurance Study and accompanying maps, the  
15      Zoning Administrator shall obtain and reasonably utilize base flood elevations and floodway  
16      data provided by FEMA or available from State or Federal agencies or other sources, including  
17      data developed pursuant to Section 6.2(C)3 or 4, to administer and enforce these Bylaws.  
18      “Available” base flood elevations and floodway data means existing and readily available from  
19      State or Federal agencies or from data previously obtained pursuant to 6.2 (C).3 or 4. The  
20      reference for this action is to be FEMA 265 “Managing Floodplain Development in Approximate  
21      Zone A Areas: A Guide for Obtaining and Developing Base Flood Elevation,” dated July 1995.

22  
23      **C.** In special hazard areas with base flood elevations (Zones AE and A1 – A30) but without  
24      floodways, no encroachments, including fill material or structures, shall be permitted unless  
25      certification by a registered professional engineer is provided demonstrating that the  
26      cumulative effect of the proposed development, when combined with all other existing and  
27      anticipated development, will not increase the water surface elevation of the base flood more  
28      than one foot at any point within the community. The engineering certification must be  
29      supported by technical data that conforms to standard hydraulic engineering principles.

30      Bob Greenfield asked Naomi Johnson if the report she prepared covered these requirements.  
31      Naomi said that base flood elevations and floodway limits are available from FEMA and her  
32      report covers those requirements.

33      **6.2 DEVELOPMENT STANDARDS**

34  
35      **A. All Development.** All development within the SFHA shall be reasonably safe from flooding  
36      and:

- 37      1. designed (or modified) and adequately anchored to prevent flotation, collapse, or  
38      lateral movement of the structure during the occurrence of the base flood,  
39      2. constructed with materials resistant to flood damage,  
40      3. constructed by methods and practices that minimize flood damage, and  
41      4. constructed with electrical, heating, ventilation, plumbing and air conditioning  
42      equipment and other service facilities that are designed and/or located so as to prevent

1 water from entering or accumulating within the components during conditions of  
2 flooding.

3  
4 Bob Greenfield said he assumed that none of item 4 applies to this application.  
5

- 6 5. New mobile home parks, junkyards and storage facilities for floatable materials,  
7 chemicals, explosives, flammable liquids, or other hazardous or toxic materials are  
8 prohibited within the SFHA. There are no existing mobile home parks in the SFHA.  
9

10 Bob Greenfield asked how the DRB could guarantee that the bridge as built would meet the  
11 above criteria. Phil Perlah said the state permits included a drawing of the proposed bridge that  
12 met those standards. The applicant is responsible for building the bridge to that drawing and the  
13 Zoning Administrator would inspect the work to see that it matched the drawing. Zoning  
14 Administrator Preston Bristow said John Broker Campbell had asked to verify that the bridge  
15 abutments were sufficiently anchored. Preston had asked Scott Jensen about that matter to verify  
16 what properly anchored abutments were.  
17

18 The Board discussed whether Chester's Zoning Administrator could be reasonably expected to  
19 evaluate whether the bridge was constructed properly. Preston pointed out that the stream  
20 alteration permit requires that the River Management Engineer be notified by phone or email  
21 when construction has begun and when the project is complete. He said this requirement could  
22 be restated in the conditions for the permit.

23 Having resolved these issues the chair recognized Jack Kennelly.

24 Mr. Kennelly said he represented a neighbor, David Palumbo. Mr. Palumbo's family has owned  
25 the land on Chandler Road since 1973. Mr. Kennelly voiced concern that the bridge which will  
26 be built will not meet the standards set forth on the permit. He noted that Mr. Merritt had built  
27 his driveway on Mr. Palumbo's land, without consulting a surveyor or engineer. This began a  
28 years-long conflict that was resolved by the Vermont Supreme Court. Mr. Kennelly wanted to  
29 know who would be building the bridge, as Mr. Merritt was not an engineer. Mr. Kennelly  
30 thought he heard Mr. Merritt say at the site visit that he intended to build the bridge himself.

31 Mr. Kennelly asked for time to have an engineer inspect a copy of the Hydrology report prepared  
32 by Dufresne Group. He requested 2 weeks to study it. After more discussion it was determined  
33 that the hearing could be recessed until the next DRB meeting on April 10 to allow time for  
34 inspection of the report. Harry Goodell moved to recess until April 10, 2023. Phil Perlah  
35 seconded the motion.

36 **Agenda Item 5 Deliberative Session to review previous or current matters**

37 Harry Goodell moved to go into Deliberative Session. Phil Perlah seconded the motion. The  
38 meeting went into deliberative session and was adjourned at the end of it.

39  
40