

1 **TOWN OF CHESTER**
2 **DEVELOPMENT REVIEW BOARD**
3 **DRAFT MINUTES**
4 *October 5, 2023*
5

6 **BOARD MEMBERS PRESENT:** Robert Greenfield, Phil Perlah, Scott MacDonald and Gary
7 Coger all at the Town Hall.

8 **STAFF PRESENT:** Zoning Administrator Preston Bristow and Cathy Hasbrouck, Recording
9 Secretary, at the Town Hall.

10 **CITIZENS PRESENT:** Greg, James and Barry Goodrich, Eric Kallio and Ty Murray at Town
11 Hall. Ronie and Thomas Humphrey, and John and Beth Thommen on Zoom.

12 Chair Bob Greenfield called the meeting to order at 6:45 PM after at least 2 technical problems
13 were resolved. He led the group in the Pledge of Allegiance. He introduced the members of the
14 Development Review Board and staff.

15 **Agenda Item 2 Citizen’s comments**

16 There were no citizen comments.

17 **Agenda Item 1 Review minutes of the September 25, 2023 meeting.**

18 Gary Coger moved to accept the minutes of the September 25, 2023 meeting. Scott MacDonald
19 seconded the motion. There was no discussion. A vote was taken, and the minutes were
20 accepted as written.

21 **Agenda Item 3 Subdivision Permit Hearing 466 Sugarbush Road. DRB Case #599**

22 Bob Greenfield opened the hearing and asked the board members if they had any conflict of
23 interest to report or any ex-parte communication with the applicant. None had. He then swore in
24 Eric Kallio to give evidence. Eric Kallio explained the request for subdivision. The company he
25 represents, Industrial Tower and Wireless, LLC, wants to lease 10,000 square feet of land near
26 Whitmore Brook Road for 99 years. Under Vermont law, a 99-year lease is treated as a minor
27 subdivision. Eric Kallia noted the 10,000 square feet is considerably less than the 5-acre
28 minimum lot size required in the Conservation – Residential Zoning district, where the parcel is
29 located. Eric said he was asking for a waiver on the lot size under section 7.16 of the Chester
30 Unified Development Bylaws. There was no reason to make the proposed parcel any larger than
31 10,000 square feet. There were no plans for any other towers. Eric offered to answer any
32 questions the board had about the tower or access.

33 Bob Greenfield entered the documents submitted as exhibits into evidence:

34 The first document was an application for Subdivision from the Town of Chester dated
35 September 5, 2023. Gary Coger moved to accept the application as Exhibit A. Phil Perlah
36 seconded the motion. A vote was taken and the motion passed unanimously.

1 The second document was a Town of Chester Notice of Hearing for a Subdivision Permit dated
2 September 14, 2023. Gary Coger moved to accept the Notice as Exhibit B. Phil Perlah seconded
3 the motion. A vote was taken and the motion passed unanimously.

4 The third document was a portion of the Chester Tax Map showing the parcel in question and all
5 abutters within 100 feet of the parcel. Gary Coger moved to accept the map as Exhibit C. Phil
6 Perlah seconded the motion. A vote was taken and the motion passed unanimously.

7 The fourth document was a list of all abutters within 100 feet of the parcel. Notices were mailed
8 to the abutters on September 18, 2023. Gary Coger moved to accept the list as Exhibit D. Phil
9 Perlah seconded the motion. A vote was taken and the motion passed unanimously.

10 The fifth document was a narrative describing the proposed 99-year lease and the resulting
11 subdivision. Gary Coger moved to accept the narrative as Exhibit E. Phil Perlah seconded the
12 motion. A vote was taken and the motion passed unanimously.

13 The sixth document was an e-911 viewer map of the parcel and surrounding land dated
14 September 7, 2023. Gary Coger moved to accept the map as Exhibit F. Phil Perlah seconded the
15 motion. A vote was taken and the motion passed unanimously.

16 The seventh document was a survey plat from DuBois & King dated August, 2023 showing the
17 proposed subdivision. Gary Coger moved to accept the list as Exhibit G. Phil Perlah seconded
18 the motion. A vote was taken and the motion passed unanimously.

19 The eighth document was an application for a highway access permit dated October 2, 2023. Eric
20 Kallio is the applicant. The permit was signed by Kirby Putnam. Gary Coger moved to accept
21 the application as Exhibit H. Phil Perlah seconded the motion. A vote was taken and the motion
22 passed unanimously.

23 The ninth document was a schematic drawing of the proposed tower dated January, 2023. Gary
24 Coger moved to accept the list as Exhibit I. Phil Perlah seconded the motion. A vote was taken
25 and the motion passed unanimously.

26 Bob Greenfield asked whether the lot being subdivided was non-conforming. Preston Bristow
27 said it would not be non-conforming if the DRB creates it, and the DRB had the power to create
28 it. Bob asked if the facility would be a broadcast facility as mentioned in the bylaws. Preston
29 and Scott MacDonald said it was not considered a broadcast facility the way a radio station
30 would be.

31 Phil Perlah asked if the proposed facility had a certificate of public good. Eric Kallio said it did
32 have a certificate of public good, which was part of the public record. A copy of the certificate
33 was not an exhibit for the hearing. Eric said he thought the town had a copy of the certificate.

34 Phil read a portion of Section 7.16 waivers, “where the Development Review Board finds
35 extraordinary and unnecessary hardship may result from strict compliance with these Bylaws and
36 /or where there are special circumstances of a particular Plat, it may waive portions of these
37 Bylaws so that substantial Justice may be done. . .” He asked where the extraordinary hardship
38 was in this case. He said he understood that only 10,000 square feet was needed for the tower.
39 At the same time there are many people who would like to have a small house on 10,000 square

1 feet in a 3-acre zoning district, and he wondered why their wish for a small piece of property was
2 not considered extraordinary hardship, but the tower subdivision was.

3 Eric Kallio said his company did not want to lease a 5-acre parcel and only use 10,000 square
4 feet of it. He saw no reason to take up 5 acres, or encumber the property owner. Eric said
5 traditionally power sites were 100 feet by 100 feet.

6 Phil said he heard, “want, like need”, in Eric’s statements, but he didn’t hear “hardship”. Eric
7 said requiring 5 acres would be more expense and take more land away from the homeowner,
8 which could be a hardship. Scott MacDonald said he thought Eric was talking about his
9 company’s hardship and he thought Phil was asking about the Goodrich’s’ hardship. Phil thought
10 the question of whose hardship was being considered was interesting, but he didn’t hear any
11 hardship anywhere being discussed. Scott wondered whose hardship the DRB was intended to
12 consider. Scott said he thought if the corporation just wanted to expand, there was no hardship
13 there. Scott thought the Goodriches, being the landowners or the taxpayers should be
14 considered. He thought they might have a hardship. Phil thought the applicant, Industrial Tower
15 and Wireless should be considered.

16 Phil asked Preston Bristow what he thought. Preston cited, “special circumstances of a particular
17 Plat” as another way to look at what should be considered. He went on to quote Section 7.16, “it
18 may waive portions of these Bylaws so that . . .the public interest (may be) secured; provided
19 that such waiver will not have the effect of nullifying the intent and purpose of the Chester Town
20 Plan.” Bob Greenfield pointed out that the hardship could be the lack of wireless communication
21 in the area, which can be a life-threatening situation. Phil wondered if improved cell service
22 justified creating such a small lot. He felt the problem was that the Industrial Tower company
23 only wanted one-tenth of an acre and that was a problem because the bylaws require 5 acres. He
24 said he didn’t understand how the need for better cell service merits waiving bylaws.

25 Preston read aloud the purpose of the Conservation-Residential district, “To conserve large
26 parcels or tracts of land that are valuable for working landscape related uses, including forestry.
27 In keeping with the Town Plan goals to retain rural character as well as to serve as habitat for
28 wildlife and outdoor recreational uses, these areas are designated for very low-density
29 development. This may be accomplished through cluster development or development for
30 residential purposed of that land that is marginal for agricultural use.” Preston thought a 5-acre
31 lot for a tower does not accomplish the purpose of the district. Phil asked if by accepting the
32 small lot the DRB would eviscerate the minimum lot size zoning requirement. He cited the
33 example of someone wanting only one acre for a house, and that a citizen could claim the 5-acre
34 requirement is a hardship.

35 Gary reread aloud the portion of Section 7.16 that mentions the public interest and asked if the
36 cell tower served the public interest because it had a certificate of public good. Bob Greenfield
37 read the last part of section 17.16.A, “provided that such waiver will not have the effect of
38 nullifying the intent and purpose of the Chester Town Plan, or the municipal bylaws in effect.”

39 Phil was not convinced this was sufficient. Bob Greenfield said granting an exception for a cell
40 tower that has a certificate of public good was not the same thing as granting an exception for
41 someone who simply wanted a small lot for a house. Phil said the state of Vermont had

1 determined the tower was in the public interest. Scott MacDonald asked whether the certificate
2 of public good requirement was how the Board would be protected from waiver requests for
3 private homes or other private purposes.

4 Phil read this phrase from the bylaw, “so that substantial justice may be done and the public
5 interest secured” with an emphasis on the word ‘and’. Phil asked whether it would be a
6 substantial injustice if the 5 acres were required. Scott said it was possibly being unjust to the
7 landowners to take that much land out of a program such as current use.

8 Preston said the minimum lot size was set at 5 acres to accomplish the purpose the district. The
9 purpose was to keep large lots for forestry and wildlife. Bob Greenfield said there was no reason
10 to take more than 10,000 square feet if that was enough land to support the tower. One of the
11 purposes of the district was to limit development. Only using 10,000 square feet would limit
12 development. Scott liked Bob’s reasoning. Bob said he understood Phil’s reasoning and he
13 didn’t have a good answer for it. He felt the certificate of public good was sufficient reason to
14 allow the waiver. He said that if someone got a certificate of public good for building a house on
15 a quarter of an acre, the Board could consider granting that waiver. Scott asked whether
16 substantial justice requirement was met by the certificate of public good certificate.

17 Phil said, at a minimum the board would need a copy of the state determination of public good.
18 Eric said that document was available online and he would get that to the Board.

19 Bob Greenfield then led the Board through the standards for a subdivision plat, Section 4.12.F.1

20 **1. Preliminary Plat. The Preliminary Subdivision Plat shall consist of a pdf copy as**
21 **well as seven (7) copies of one or more maps or drawings which may be printed**
22 **or reproduced on paper with all dimensions shown in feet or decimals of a foot,**
23 **drawn to a scale or not more than one hundred (100) feet or more to the inch,**
24 **showing or accompanied by information on the following points unless waived**
25 **by the Development Review Board**

26 **a. Proposed subdivision name or identifying title and the name of the Town.**
27 Bob located these items in the lower right corner of the Plat

28 **b. Name and address of record owner, subdivider, and designer of**
29 **Preliminary Plat.**

30 The Board members found DuBois and King, the designer of the Preliminary Plat
31 in the upper right corner.

32 **c. Number of acres within the proposed subdivision, location of property**
33 **lines, existing easements, buildings, water courses, and other essential**
34 **existing physical features. Bob located the total area of the parcel, 52.62 acres.**

35 **d. The names of owners of record of adjacent acreage.**

36 **e. The provisions of the zoning standards applicable to the area to be**
37 **subdivided and any zoning district boundaries affecting the tract. Preston**
38 **said that information was in Note 3 at the bottom of the sheet. He pointed out that**

1 the zoning district was given as Commercial-Residential, when it was actually
2 Conservation-Residential and that needed to be changed.

- 3 **f. The location and size of any existing sewer and water mains, culverts,**
4 **and drains on the property to be subdivided.**

5 Bob Greenfield said there were none. Scott MacDonald asked if there was a
6 culvert associated with highway access. Eric Kallia confirmed that a culvert was
7 required by the access permit.

- 8 **g. The width and location of any existing roads within the area to be**
9 **subdivided and the width, location, grades, and road profiles of all roads**
10 **or other public ways proposed by the Subdivider.**

11 Bob noted that the existing roads were present on the plat.

- 12 **h. Contour lines at intervals of five (5) feet of existing grades and of**
13 **proposed finished grades where change of existing ground elevation will**
14 **be five (5) feet or more.**

15 Phil Perlah moved to waive the contour line requirement. Gary Coger seconded
16 the motion. A vote was taken and the motion passed unanimously.

- 17 **i. Date, true north point, and scale.**

18 The board only found a true north point in the locus map.

- 19 **j. Deed description and map of survey of tract boundary made and certified**
20 **by a licensed land surveyor tied into established reference points, if**
21 **available.**

22 Bob found this information in Note 1.

- 23 **k. Location of connection with existing water supply or alternative means of**
24 **providing water supply to the proposed subdivision.**

25 Bob Greenfield said there is no water supply.

- 26 **l. Location of connection with existing sanitary sewage system or**
27 **alternative means of treatment and disposal proposed.**

28 Bob Greenfield said there is none.

- 29 **m. Provisions for collecting and discharging storm drainage, in the form of**
30 **drainage plan.**

31 Bob Greenfield said there is none.

- 32 **n. Preliminary designs of any bridges or culverts which may be required.**

33 Bob Greenfield said a culvert was required on the highway access permit.

- 34 **o. The proposed lots with surveyed dimensions, certified by a licensed land**
35 **surveyor, numbered and showing suggested building locations.**

36 Bob Greenfield said there is only the one 10,000 square foot lot for the cell tower.

1 p. The location of temporary markers adequate to enable the Development
2 Review Board to locate readily and appraise the basic layout of the field.
3 Unless an existing road intersection is shown, the distance along a road
4 from one corner of the property to the nearest existing road intersection
5 shall be shown.

6 Bob Greenfield said the easement and the existing road were shown.

7 q. Locations of all parcels of land proposed to be dedicated to public use
8 and the conditions of such dedication.

9 Bob Greenfield said there were none.

10 r. Names identifying roads and streets; locations of street name signs and
11 description of design of street name signs.

12 Bob Greenfield said there were no new roads on the survey.

13 s. The Preliminary Plat shall be accompanied by:

14 1. A vicinity map drawn at the scale of not over four hundred (400) to the
15 inch to show the relation of the proposed subdivision to the adjacent
16 properties and to the general surrounding area. The vicinity map shall
17 show all the area within two thousand (2,000) feet of any property line
18 of the proposed subdivision or any smaller area between the tract and
19 all surrounding existing roads, provided any part of such a road used
20 as part of the perimeter for the vicinity map is at least five hundred
21 (500) feet from any boundary of the proposed subdivision.

22 Bob Greenfield said there were no other properties within 2,000 feet.

23 2. A list or verification of the applications for all required State permits
24 applied for by the Sub-divider. Approval of the subdivision application
25 by the Development Review Board may be conditioned upon receipt of
26 these permits.

27 Bob Greenfield said the Board had asked Eric for the certificate of public
28 good.

29 t. Endorsement. Every Plat filed with the Town Clerk shall carry the
30 following endorsement:

31
32 "Approved by the Development Review Board of the Town of Chester,
33 Vermont as per findings of fact, dated ____day of _____, ____ subject to all
34 requirements and conditions of said findings.

35 Signed this ____day of _____, _____ by

36 _____

37 _____, Development Review Board"

1 Bob Greenfield said the block was present. He asked if the corrections named were made to the
2 plat would there be any need for a final plat hearing. Preston said he would agree to that.
3 Phil Perlah asked whether the parties involved, Industrial Tower and Wireless and the Goodrich
4 family, could have structured the transaction as a 99-year easement instead of a lease. Preston
5 said he didn't know the answer. Phil said if it was an easement then no property boundaries
6 would have to be adjusted. Preston said he could ask the question of the Industrial Tower and
7 Wireless attorney in Rutland, Stephen Cassarino the attorney who was handling the closing,
8 Preston said the application had been entered as a 99-year lease, but in the future, a 99-year
9 easement might be simpler. Gary Coger said an easement would have to be added to the deed.
10 Scott MacDonald pointed out that the title on the Survey was Easement Plan.
11 Phil Perlah moved to close the hearing. Gary Coger seconded the motion and the hearing was
12 closed.

13 **Agenda Item 4, Conditional Use Permit Hearing for 665 Vermont Route 10, DRB Case**
14 **#600**

15 Bob Greenfield began the meeting by asking if any of the Board members had a conflict of
16 interest to report. None did. He asked if any Board member had had any ex-parte
17 communication about the hearing. None had. Ronica Sikes and John Thommen were sworn in
18 to give testimony.

19 Bob Greenfield entered documents presented as exhibits

20 The first document was an application for hearing before the Development Review Board. Gary
21 Coger moved to accept the application as Exhibit. A. Phil Perlah seconded the motion. A vote
22 was taken and the motion passed unanimously.

23 The second document was a Notice of Hearing for Conditional Use Permit dated September 14,
24 2023. Gary Coger moved to accept the Notice as Exhibit. B. Phil Perlah seconded the motion.
25 A vote was taken and the motion passed unanimously.

26 The third document was a portion of the tax map showing all abutters within 100 feet of the
27 parcel in question. Gary Coger moved to accept the map as Exhibit. C. Phil Perlah seconded the
28 motion. A vote was taken and the motion passed unanimously.

29 The fourth document was a list of the names and mailing addresses of 100-foot abutters who
30 were mailed a notice of the hearing on September 18, 2023. Gary Coger moved to accept the list
31 as Exhibit. D. Phil Perlah seconded the motion. A vote was taken and the motion passed
32 unanimously.

33 The fifth document is a narrative written by Ronica and Thomas Humphrey describing their
34 plans for the building. Gary Coger moved to accept the narrative as Exhibit. E. Phil Perlah
35 seconded the motion. A vote was taken and the motion passed unanimously.

36 The sixth document was a parking plan for the property with 33 parking spaces drawn in
37 showing there was parking available for 6 B&B rooms, 2 owner's vehicles and 25 wedding guest
38 cars. Gary Coger moved to accept the map as Exhibit F. Phil Perlah seconded the motion. A
39 vote was taken and the motion passed unanimously.

1 The seventh document was a Wastewater System and Potable Water Supply Permit number
2 WW-2-1324R issued to Michiko Yoshida-Hunter dated November 6, 2018 indicating the project
3 was approved for 9 bedrooms and a 25-seat restaurant. Bob Greenfield asked if the permit
4 expires? Scott MacDonald confirmed that the current owner of the land is Catherine Johnson and
5 that the permit was issued to Michiko Yoshida-Hunter. Preston Bristow said the state-issued
6 permit runs with the land and not the owner and the permit does not expire. Preston said he
7 provided the permit so the Board would see that the system is a robust system. Scott MacDonald
8 questioned whether it could handle 100 wedding guests. Phil Perlah suggested that the wedding
9 venue issue be considered separately from the Bed and Breakfast. Gary Coger moved to accept
10 the permit as Exhibit. G. Phil Perlah seconded the motion.

11 The eighth document was and ANR map of wetland areas on the parcel dated October 2, 2023.
12 Gary Coger moved to accept the map as Exhibit H. Phil Perlah seconded the motion.

13 The ninth document was an e-mail from Patricia and John Thommen expressing concern about
14 the proposed use of the property. Gary Coger moved to accept the email as Exhibit I. Phil
15 Perlah seconded the motion.

16 The tenth document was the text of e-mails received from Thomas Williams, Chester Police
17 Chief and Matthew Wilson Chester Fire Chief. Gary Coger moved to accept the map as Exhibit
18 J. Phil Perlah seconded the motion.

19 Ronica Sikes said she was planning on using 3 of the nine bedrooms for her family, six
20 bedrooms for a Bed and Breakfast. She would not operate the 25-seat restaurant. She said would
21 like to host 10 weddings per year inside the barn for 75-100 guests.

22 Bob Greenfield asked how the septic system would handle so many wedding guests. Ronica
23 asked how the septic capacity for the 25-seat restaurant would be utilized. Could that septic
24 handle the waste from the wedding guests? If not, they would bring in a trailer with portable
25 toilets. Bob Greenfield said he didn't know whether the waste water system was robust enough
26 to handle the load from a wedding. Preston Bristow said that for a wedding of that size extra
27 septic capacity would be needed.

28 Phil Perlah said he had read Tom William's e-mail which addressed parking. Phil asked if a
29 parking attendant would be hired to steer the cars into parking spaces off Route 10? Ronica
30 agreed that would be possible.

31 John Thommen asked to speak. He said he had been a resident of Chester for 22 years and is an
32 abutter to the property. He said there was a lot of pristine natural habitat in the area and he was
33 concerned about noise, and infiltration of vehicles on the property and on Route 10. He did not
34 think 33 spaces was enough to accommodate 100 guests, figuring 2 guests per parking space. He
35 wanted to know where the parking overflow would be. He didn't want noise from the wedding
36 to impact his property.

37 Scott MacDonald said the bylaw has standards for noise. The limit for noise at the property line
38 was 70 decibels until 8:00 PM. John Thommen said conversation was measured at 25 dB. Scott
39 MacDonald said if someone exceeds the decibel level of the bylaw they would be in violation.
40 Scott MacDonald recalled a permit issued to a wedding venue on the south end of town. In that

1 case, the abutters and the applicant got together and worked out an agreement about noise that
2 seems to have worked well. John Thommen said 10 weddings with 100 guests was more than
3 just a casual relationship and doubted whether such an agreement was appropriate in this case.

4 Scott MacDonald asked Ronica how she picked a 100-guest limit. Ronica said 75 to 100 guests
5 was a typical wedding. She didn't want to handle anything larger. Scott referred to the police
6 chief concern for the number of cars and the speed of traffic on the road at that time. Preston
7 Bristow said the Chester bylaw requires 1 parking space for every four people expected at an
8 assembly such as a wedding. Preston said the 33 spaces on the parking plan represent 25 spaces
9 for wedding guests, 1 space for the owners, 1 ADA accessible space and 6 spaces for B&B
10 guests. Ronica Sikes confirmed that no cars would be parking close to the pond on the property
11 at any time. Gary Coger asked if there was any other area on or near the property for overflow
12 parking. The Board speculated about removing an existing wooden fence which might allow
13 enough space to move the proposed parking near the pond away from it.

14 Phil Perlah said he thought there was room behind the main building for parking and an attendant
15 could direct cars there. He had no confidence in the estimate of four people per car. Preston
16 agreed with Phil's skepticism, but the bylaw specified the figure of 4. Phil said the parking plan
17 met the bylaw requirements. He believed a parking attendant could direct any parking overflow
18 to spaces on the property and keep vehicles off Route 10. Scott MacDonald asked if people
19 leaving the event en masse would exceed the noise standard. Phil Perlah did not think that
20 wedding guests typically left in large groups. He felt it was more a continuous dribble of guests
21 leaving.

22 There was some discussion of whether weddings or receptions were being hosted at the property,
23 and when guests would be leaving. John Thommen said he was concerned about noise, traffic
24 and lighting from a reception. Ronica said the lights would be no different for a wedding or a
25 reception. The lights would be downward facing. Gary Coger asked if there was any lighting
26 planned for the back of the building where cars would be parking. Ronica said there would be
27 some lighting and it might be at ground level.

28 Scott MacDonald asked whether anyone remembered what time the other wedding venue
29 planned to shut down events. He thought it was a late afternoon venue because of the neighbors.
30 Gary Coger said he thought it was 8:00 PM. Preston Bristow said the agreement in the findings
31 for the other venue was 10:00 PM. Gary and Scott said acoustic music only was allowed after a
32 certain time at that venue. Ronica said she had no problem with such a limit.

33 Gary Coger asked about the barn. Would there be any insulation for noise suppression in the
34 barn? Ronica said they would consider that. Scott MacDonald said, in his experience with music
35 festivals, a small band inside the barn would probably not exceed the noise limit at the property
36 line. Ronica said her 80-year-old father living there and she was not planning on disturbing him
37 with loud music.

38 Bob Greenfield said the board would work on noise limits during a deliberative session and
39 present a proposal to the applicant. John Thommen asked if the applicant was leasing the inn or
40 would they be an owner. Ronica said her family was buying the property and would be living
41 there.

- 1 Phil Perlah moved to close the hearing. Gary Coger seconded the motion. A vote was taken and
- 2 the hearing was closed.
- 3 Gary Coger moved to go into deliberative session. Phil Perlah seconded the motion. The Board
- 4 entered deliberative session at 7:48 PM. When they returned from deliberative session the
- 5 meeting was adjourned.