

TOWN OF RANDOLPH, VERMONT
DEVELOPMENT REVIEW BOARD
MEMORANDUM OF DECISION
(Findings of Facts, Conclusions, and Decision)

PERMIT NO.: Z09-66

PROPERTY ADDRESS: VT Route 66 (at I-89)

PROPERTY OWNER: Randolph I-89, LLC
Interstate 89 at Randolph, LLC
c/o Jesse F. Sammis III
2 Park Street
Randolph, VT 05060

Parcel nos. and size¹: 106022 and 69.66 acres
106025 and 14.85 acres

I. INTRODUCTION

On August 31, 2009, John Benson, on behalf of the **Randolph I-89, LLC and Interstate 89 at Randolph, LLC** ("Applicant"), filed an application for a zoning permit for a project generally described as a **15-lot² planned unit development (PUD) with light manufacturing, office space, hotel and conference center and recreational facilities**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on September 1, 2009.

Under the Randolph Zoning Regulations and the Randolph Land Subdivision Control Regulations ("RZR" and "RSR", respectively, or "Regulations" collectively), projects are reviewed based on the site plan, conditional use and/or any other applicable criteria of the Regulations. Before the Administrative Officer ("Administrator") may issue a permit, the Board must find that the project complies with all applicable criteria and approve the subdivision, site plan, conditional use and/or provide any other approval, as required.

Also under the Regulations, the Board is authorized to undertake local Act 250 review of Criteria 6, 7 and 10 for all projects that require a new land use permit or an amendment to an existing land use permit under 10 VSA Chapter 151 ("Act 250").

Decisions must be stated in the form of Findings of Facts and Conclusions of Law. In rendering this decision, the Board relied on the following:

1. Sworn testimony presented to and evidence received by the Board during the public hearings held on September 29, October 27 and November 18, 2009;
2. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records.

¹ [These sizes are as shown on the municipal records and total 84.51 acres. The application indicates the total size of the two parcels is 83.83 acres.](#)

² The PUD application indicates that there are 16 lots created, which counts the road as a separate lot. As this is not a lot to be developed, per se, the Board does not count it as a lot.

The Board closed the public hearing on November 18, 2009 and completed deliberation thereafter. This written decision was prepared as required in 24 VSA Ch. 36 §1209.

II. DETERMINATIONS BY THE ADMINISTRATOR

The Administrator has made the following determinations:

1. The subject property is in the Mixed Use (MU) District.³
2. As the project is not either a one- or two-family dwelling, site plan approval is required.
3. The uses of office space, light manufacturing, hotel and conference facilities are permitted uses in the MU District. In January 1992, use of the property for recreation was granted a variance. Therefore, no approvals for the proposed uses are required.
4. The proposed project is a planned unit development (PUD) therefore approval pursuant to RZR §3.5 is required.
5. As more than 2 lots are to be created and pursuant to RZR §3.5.1b, subdivision approval pursuant to the RSR is required.
6. The Applicant has also requested local Act 250 review.

On September 1, 2009, the Administrator referred the application to the Board for review and approval as determined and requested.

III. PARTICIPANTS

For the purposes of this application, “interested persons” are those who fulfill the requirements of 24 VSA Ch. 117 §4465. The attached Service List for this project includes the Applicant and persons⁴ who participated at the public hearing and/or submitted written comments on the application.

Participating Board members were John Becker, Samuel Lincoln, Frank Reed, Krista Rumrill, Joel Tillberg and Christopher Recchia.

IV. FINDINGS OF FACTS

The following findings are facts that were entered into the record for this application and relied upon by the Board in formulating its conclusions and decisions. While other evidence may have been or is also entered into the record, if it is not included herein, the Board has determined that it is either not relevant evidence or that it is not a fact.

Project Description and Required Approvals

1. A “planned unit development” means one or more lots, tracts, or parcels of land to be developed as a single entity, the plan for which may propose any authorized combination of density or intensity transfers or increases, as well as the mixing of land uses. (24 VSA §4303 (19))

³ On September 16, 2009, new zoning regulations for the subject property were adopted by town-wide vote. However, as the application was deemed complete prior to the vote, the regulations in effect at the time of the application was deemed complete are in effect.

⁴ By inclusion in this section of the Memorandum of Decision, the Board does not address the status of any of the people listed above as “interested persons” as defined in the above-referenced state statute.

2. Applicant proposes to create a 15-lot planned unit development (PUD) on two parcels in the MU District. The lots, numbered #18 – 32 on the exhibits, range in size from 1.18 to 21.85 acres as shown on the map included in tab #2 of Exh. #26. Specifics on the parameters of the PUD such as uses, buildings, lot and building coverages and setbacks for each lot are shown on the table included in tab #4 of Exh. #26.
3. The PUD is a subdivision with the main road to be designed such that it could become a public road and one lot of open space that will be common land owned by the property owners' association. (tab #4 of Exh. #26)
4. The Applicant intends to sell individual lots to perspective developers who, in turn, will construct the lot improvements. (tab #7 of Exh. #26)
5. It is anticipated the project will be built-out in 20 years. (tabs #4 and 7 of Exh. #26)
6. Lot #32 is common property which will be owned and maintained by the property owners' association following sale of all lots. Until that time, lot #32 will remain the property of the Applicant. (tab #5 of Exh. #26)
7. The proposed project is a PUD and therefore requires approval pursuant to RZR §3.5.1b. This subsection also requires site plan approval pursuant to Article IV⁵ and subdivision approval pursuant to the RSR. (RZR)
8. All of the proposed uses (office space, light manufacturing, hotel and conference facilities) are permitted uses. The existing use (golf driving range) received approval in 1992 (RZR and municipal records).
9. The Applicant has requested local Act 250 pursuant to RZR §3.4.2.

Concentration of density (PUD criterion a)

10. The PUD is a total of 83.83 acres in size and located entirely within the MU District. (application and RZR)
11. RZR lists the following yard and lot requirements for the MU District:

Minimum Lot Size	5 acres
Frontage	*
Front Yard Setback	*
Side Yard Setback (each)	*
Rear Yard Setback	*
Maximum Lot Coverage	
<u>buildings</u>	20%
<u>buildings and parking</u>	35%
Maximum Height of Buildings.....	30'

The Board may waive and/or vary these requirements in order to encourage creativity in design and planning of projects.

* As established by the Board.

12. According to RZR §3.5.1b, the Board is empowered to vary certain zoning regulations under the criteria and procedures established in §4407(3) of the Development Act when reviewing a PUD application.

⁵ §3.5.5 erroneously refers to §3.5.6 as the site plan provisions.

13. With a 5-acre minimum lot size, the subject properties could be subdivided into 16 lots. The Applicant is proposing to create 15 lots. Of the 15 lots, 11 are less than 5 acres in size. (application and tab#4 of Exh. #26)
14. RZR §3.5.5a allows for a greater concentration of density within some sections of the development than within others. Approval for such may be contingent upon an appropriate reservation of common space. Of the 15 lots to be created, the largest is the 21.85-acre open space lot. (RZR and application)

Modification of width, yard, coverage and height requirements. (PUD standard b)

15. RZR §3.5.5b allows the Board to vary the requirements for width, yard, coverage and height to allow for innovative design and effective land use. There are no established requirements for width or yards. (RZR)
16. While the building coverage on 4 of the 15 lots exceeds the maximum of 20%, building coverage is applied to the entire PUD. The building coverage for the entire PUD is 8.6 %. (tab #4 of Exh. #26)
17. While the building and parking coverage on all but 3 of the 15 lots exceeds the maximum of 35%, building and parking coverage is applied to the entire PUD. The building and parking coverage for the entire PUD is 25.7%. (tab #4 of Exh. #26)
18. The office buildings will be 30 feet tall, the light manufacturing buildings will be 40 feet and the hotel/conference center will be 45 feet tall. The maximum height of buildings is 30 feet in the MU District but the Board may waive and/or vary these requirements in order to encourage creativity in design and planning of projects. Because this development is of such size and complexity, there is a need to acknowledge and allow for a design that innovatively gives a varying height for buildings to encourage creativity in planning for such projects. Consequently, to maintain the relationship of the building height to distance from the nearest property line, the board finds that the setback for the light manufacturing buildings must be 20 feet more than the realized setback for the office buildings and 30 feet more for the hotel/conference center. (RZR, application and tab #4 of Exh. #26)

Development possibilities. (PUD standard c)

19. There is an existing stream running east to west along the southern boundary of the project. The only steep slopes and forested areas on the property are along this stream, which is almost, in it's entirety, within the open space lot, lot #32. No development will directly impact this stream and the forested areas will be preserved. (tabs #1 and 4 of Exh. #26)
20. There are no mapped wetland areas, historic sites nor unique natural or man-made features within the project. (tab #4 of Exh. #26)

Mixed uses. (PUD standard d)

21. As there is no residential component to this PUD, RZR §3.5.5d is not an issue in this case. (RZR and application)

Proposed streets. (PUD standard e)

22. All The internal roadways will be constructed to Town of Randolph standards. (tab #4 of Exh. #26)

Phased development. (PUD standard f)

23. The project is proposed to be phased over a 20-year period. The actual phasing will be dependent upon the rate at which developers purchase, develop and locate to the property. The infrastructure to support development of a lot will either be in place (constructed as an element to serve a previously-developed lot) or be constructed concurrently with a lot's development. (tabs #4 and 7 of Exh. #26)
24. The primary open space (lot #32) and the driving range (lot #29) already exist. (tab #4 of Exh. #26)

Use of open land. (PUD standard g)

25. The open space lot (#32) will not be donated to the Town for municipal purposes. Rather, this common property, at build-out, will be owned and maintained jointly by each property owner within the PUD through the Property Owners' Association. (tab #4 of Exh. #26)
26. To assure the preservation of the open spaces on lots #29 and 32 for their intended purpose, as a condition of approval, these areas are to remain free of building and parking coverage. (RZR and tab #4 of Exh. #26)

Town ordinances and Plan. (SP criterion A and Act 250 criterion 10)

27. See facts #10 – 18 for compliance with development standards.
28. Exh. #8 demonstrates that the off-street parking requirements for each of the lots are met. (RZR and Exh. #8)
29. Although there is no clear and unambiguous language in the Town Plan that directly relates to this proposed project, Exh. #5 demonstrates the PUD conforms to several goals, purposes and policies outlined in the Town Plan. (Town Plan and Exh. #5)

Orderly development of the surrounding area. (SP criterion B)

Effect on adjacent land. (SP criterion D)

30. The orderly development of the surrounding area is defined by the purpose of the district. The MU District regulations state the following: "Due to its proximity to Interstate 89 and Route 66, this district is uniquely qualified to provide a combination of selective commercial, residential and industrial development as approved under a comprehensive mixed use development plan." The proposed PUD is a combination of commercial and industrial development. (RZR and application)
31. The adjacent uses are single-family residences, offices, a fast-foot restaurant and a convenience store/gas station. Lot #32 provides a buffer between the adjacent properties used for residences and offices. This buffer includes an existing wooded area between the PUD and the residential properties. (tab #1 in Exh. #26)
32. No construction within this development is proposed to be closer than 150 feet from an adjacent property line, excluding the interstate property. (tab #1 of Exh. #26)

On-site vehicular and pedestrian traffic. (SP criterion C)

33. This PUD only has access frontage on VT Route 66. There is no reasonable access to this land other than directly from VT Route 66. (tab #4 of Exh. #26)
34. The main internal roadway takes access from VT Route 66. This internal road will serve all of the lots except for lot #31, which has a separate access from VT Route 66. However, if

- the proposed access to lot #31 is not approved by the Vermont Agency of Transportation (VTrans), Lot #31 shall be accessed via the internal roadway. (tab 10 of Exh. #26)
35. A secondary access to the internal roadway is provided between lots #19 and 20 at approximately the existing access to the existing barn. This secondary access will be used for emergency access only. It will be gated with sufficient space provided between the VT Route 66 travel lane and the gate to safely pull a truck off the road to open the gate. The access code to open the gate will be provided to the Randolph fire departments, the Town and the White River Valley Ambulance. (tabs #1, 4 and 10 of Exh. #26)
 36. The proposed internal roadways will be designed and constructed to the standards as specified in RSR §6.2, the Town of Randolph Road Adoption Policy, Vermont State Design Standards (Vtrans A-21 and A-22), and the Randolph Fire Services Advisory Committee guidelines. It is intended that this roadway will be accepted by the Town as a public road. Until such time, the road will be maintained by the Applicant and/or the property owners' association. (tab #9 of Exh. #26)
 37. All accesses to the internal roadway will meet VTrans standard B-71. (tab #10 of Exh. #26)
 38. No sidewalks along the internal roadway are proposed. Sidewalks are proposed within each lot to provide walkways from parking areas to the buildings. (tab #10 of Exh. #26)
 39. If sufficient space for snow storage is not available on each lot, sufficient space exists within the common property. (tab #9 of Exh. #26)
 40. The internal roadway system is looping, thereby minimizing the need for snow plows to have to turn around or back up. However, until this roadway is complete, a temporary "Y" will be provided at the dead end of the road to facilitate the turning around of vehicles, including snow plows. (tab #9 of Exh. #26)

Municipal and educational services. (Act 250 criteria 6 and 7)

41. The proposed project will not add any additional students to the school district. (Brent Kay, Superintendent)
42. The subject property is not within the Randolph Police District therefore this service is not provided by the Town. (Randolph municipal records)
43. The subject property takes access from a state highway therefore road maintenance is not provided by the municipality. (Randolph municipal records)
44. The subject property is in the Randolph Center Fire District. The Randolph Center Fire Department was not provided with enough information to make a determination as to their capacity to provide fire protection to the subject property. Based on the information provided, the Randolph center fire department believes it does not have the capacity to provide fire protection to the subject property. (Albert J. Floyd, Randolph Center Fire District Chief)
45. The Randolph Center ladder fire truck can traverse through the development. (tab #10 of Exh. #26)
46. It is proposed that the PUD will utilize the public water and sewer systems. Currently, there is sufficient capacity in each of these systems to meet the needs of this PUD. However, there is no guarantee there will be capacity in either of the systems at the time of application to connect. And if system upgrades are required to serve the property, the cost of such upgrades shall be the responsibility of the property owner(s). (Exh. #15)

V. CONCLUSIONS

Based on the foregoing Findings of Fact, the Board concludes the following regarding the project described in the application referred to above and including the Applicant's representations at the public hearing.

1. Act 250 Criteria⁶

- A. The proposed project will not cause an unreasonable burden on the ability of the Town of Randolph to provide educational services (criterion 6).
- B. The proposed project will utilize the following municipal or governmental services: fire protection and public water and sewer service. At the present, the PUD will not cause an unreasonable burden on the ability of the Town of Randolph to provide public water and sewer services. However, water and sewer allocations for the uses proposed have not been obtained.

The Board cannot conclude that the PUD will not cause an unreasonable burden on the Town's ability to provide fire protection services. (criterion 7).
- C. The proposed project is in compliance with the Randolph Town Plan adopted in accordance with 24 VSA ch. 117 on December 21, 2004.⁷ (criterion 10).

2. Planned Unit Development Criteria

- A. The Board may allow for greater concentration of density, or intensity of land use within some sections of the development than within others. The approval for greater concentration of density in one section shall be offset by a lesser concentration in another or by an appropriate reservation of common space as long as the overall density requirements of the total area are not exceeded. In deciding whether to not to allow for a greater density, the board shall consider the type of water and sewerage facilities and other proposed utilities and their ability to handle greater density or intensity of use.

The PUD does propose a greater concentration of density and it is offset by an appropriate reservation of common space (the 21-acre lot #32).
- B. Width, yard, coverage and height requirements for the district in which the {PUD} is to be located shall normally be met. The Board may vary these requirements to allow for innovative design and effective land use.

In the MU District, the width and yard requirements are undefined and established by the Board, and all of the requirements may be waived or varied in order to encourage creativity in design and planning projects. Basically, the above criterion and the MU District provision allow the same modifications for essentially the same reasons. The Board concludes that the project utilizes innovative design and provides for the effective use of land and therefore authorizes the modification of the width and height requirements.
- C. The PUD is an effective, unified treatment of a development possibility of the project site. The development plan makes appropriate provisions for the preservation of

⁶ This conclusion/decision regarding local Act 250 review is a rebuttable presumption under the provisions of 10 VSA Ch. 151 and this presumption may be overcome in proceedings under 10 VSA Ch. 151

⁷ Although this Plan has expired by the time this decision was signed, it was effective at the time the application was deemed complete.

streams and streambanks, steep slopes, wet areas, soils unsuitable for development, forested areas, historic areas, unique natural and man-made features, where they exist.

- D. The criterion regarding mixed uses (they shall be arranged so as to be compatible and ensure visual and aural privacy for project residents) is not applicable in this case as there is no residential component to the PUD.
- E. Proposed streets are in harmony with existing or approved thoroughfares.
- F. The development is proposed over a reasonable period of time. The developer shall be responsible for ensuring that adequate municipal services and facilities are provided. The open spaces are already in place.
- G. The Board is not requiring as a condition of approval the donation of the open lands for municipal purposes. However, it is establishing such conditions on the ownership, use and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes.

3. Site Plan Criteria

- A. The proposed use, design and layout meets the provisions of the zoning ordinance, other regulations and ordinances of the Town and is in conformance with the Town Plan.
- B. The proposed use, design and layout is of such a location and in such a size and character that it will be in harmony with the appropriate and orderly development of the surrounding area.
- C. The proposed use and layout is of such a nature that it will not make vehicular or pedestrian traffic hazardous when considering turning movements, relationship to intersections, sight distances, location and access of off-street parking, pedestrian traffic and pedestrian-vehicular contact points.
- D. The proposed height and location of buildings, walls, fences, parking, loading and landscaping will not interfere with or discourage the appropriate development in adjacent land or unreasonably affect its use.

VI. DECISIONS⁸

Based upon the foregoing Findings of Facts and Conclusions, the Board hereby makes the following decisions regarding the PUD as applied for in zoning permit application #Z09-66 and including the evidence and testimony entered into the record as Findings of Fact.

- A. PUD is approved with the following modifications and/or conditions:
 - 1. The lots within the PUD shall be as shown on tab #2 of Exh. #26.
 - 2. The dimensions, size and use for each lot shall be as shown on tabs #2 and 4 of Exh. #26.

⁸ An interested party (as defined in 24 VSA §4465) who participated in this proceeding may appeal this decision to the Vermont Environmental Court within 30 days of the date of the decision, for a fee of \$250 and a notice in writing, certified mailed to the Environmental Court, giving reasons for the appeal, and a copy mailed to the Zoning Administrator. Failure to appeal this decision may prevent any party from arguing against its elements in a future hearing or appeal. 24 VSA §4472.

3. The proposed development standards for each lot (i.e. building coverage, lot coverage, number of parking spaces, height of buildings, building elevations, setbacks, etc.) as shown on tab #4 of Exh. #26 shall be the maximum allowed. (see also condition C(1) below.)
 4. Lot #32 and the open space portion of lot #29 shall remain open.
 5. The secondary/most western access will be used for emergency access only. It shall be gated with sufficient space provided between the VT Route 66 travel lane and the gate to safely pull a truck off the road to open the gate. The access code to open the gate shall be provided to the Randolph fire departments, the Town of Randolph and the White River Valley Ambulance.
- B. The subdivision of the property into 15 lots is approved with the condition that any changes to the subdivision shall require re-approval under the regulations in effect at the time of the application for re-approval. If any of the lots have been sold and are under individual ownership, consent of the modification and application from all property owners in the PUD shall be required.
- C. The site plan approval is granted with the following conditions:
1. Prior to the development of a lot, a zoning permit shall be obtained. Such permit shall be issued administratively if the aforementioned developments standards for the lot and site plan are as proposed in this application and if all applicable conditions of approval for this application are met. Otherwise, the application for the zoning permit shall meet the requirements of the regulations in affect at the time of application.
 2. All landscaping shown on tab #1 of Exh. #26 shall be maintained in a healthy, living condition. Changes to the species of trees shall be allowed provided the species are native to Vermont. Additional ornamental landscaping around buildings and parking areas are allowed and any such supplemental landscaping shall be shown on a landscaping plan that is submitted with the zoning permit application for development of that lot (see condition above).
 3. All infrastructure (i.e. roads, stormwater system and water and sewer systems) shall be in place sufficient to serve a lot prior to its development.
 4. Any significant modifications to the approved site plan shall require re-approval by the Board pursuant to the regulations in effect at the time of re-application.

Dated at Randolph, Vermont this 31st day of December, 2009.

RANDOLPH DEVELOPMENT REVIEW BOARD

Concurring Board Members

/s/ Joel Tillberg, Chair

/s/ John Becker

/s/ Frank Reed

/s/ Krista Rumrill

/s/ Samuel Lincoln

/s/ Christopher Recchia

SERVICE LIST

Zoning Permit Application #Z09-66
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Bold listings indicate applicants and/or their representatives.