

**TOWN OF RANDOLPH, VERMONT
DEVELOPMENT REVIEW BOARD
MEMORANDUM OF DECISION**

January 10, 2012 appeal of William Kevan from the January 4, 2012 decision of the Administrative Officer regarding Storm Water Discharge Retention Pond

PERMIT NO.: Z09-17
PROPERTY ADDRESS: 25 Salisbury Street and 34 School Street
PROPERTY OWNER: Randolph Area Community Development Corp.
PO Box 409
Randolph, VT 05060

Parcel No.: 244010
Parcel Size: 4.3 acres

I. BACKGROUND

On March 30, 2009, Julie Iffland, on behalf of the Randolph Area Community Development Corp. (“Applicant” or “RACDC”), filed an application for a zoning permit for a project generally described as a planned unit/residential development with 36 dwelling units and office space. The application was deemed complete pursuant to the Development Review Board (“Board”) Rules of Procedure Section 301 on April 14, 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”).

A *MEMORANDUM OF DECISION* was issued by the Development Review Board on September 29, 2009 approving the application for the zoning permit, for subdivision and for site plan pursuant to the terms and conditions contained therein. No appeal of the Decision of the Development Review Board was filed within the time limits required by 24 V.S.A § 4465.

The *MEMORANDUM OF DECISION* included each of the following provisions which are relevant to the instant appeal of William Kevan:

A STATEMENT OF PARTICIPANTS:

For the purposes of this application, “interested persons” are those who fulfill the requirements of 24 VSA Ch. 117 §4465.

A FOOTNOTE QUALIFYING ITS STATEMENT OF PARTICIPANTS:

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.

A PREFACE TO ITS NUMBERED FINDINGS OF FACT:

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.

FINDINGS OF FACT, WHICH INCLUDED ONE RELATING TO STORM WATER:

An adequate system of surface runoff control is not required.

The drainage system for the project will utilize the public storm water system.

A NOTICE OF THE RIGHT TO APPEAL:

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.

II. CURRENT PROCEEDINGS

A. On December 15, 2011, William Kevan wrote to the administrative office for the Town of Randolph stating:

1. During the hearing on the permit application the engineer for the Randolph Area Community Development Corporation had stated, under oath, that the project would include a storm water retention pond.
2. That the project, as built, does not include a storm water retention pond.

Exhibit A attached.

- B. On January 4, 2012, the Administrative Officer replied that storm water systems were not under preview of the Development Review Board. While there may have been representation made regarding a storm water retention pond during the hearings on the application, the Development Review Board did not make any findings relating to a storm water retention pond nor imposed any requirement for a retention pond.

Exhibit B attached.

- C. By letter dated January 10, 2012, and addressed to Joel Tillberg, Chair of the Design [sic] Review Board, Mr. Kevan gave notice of his appeal "from the decision of Mardee Sanchez, Zoning Administrator, dated January 4, 2012".

Exhibit C attached.

- D. The appeal was initially scheduled to be heard by the Development Review Board at its February 28, 2012 meeting. However, after the recusal of three members of the board for this appeal, there was not a quorum. The matter was continued to the March 28, 2012 meeting.
- E. By letter dated March 5, 2012, Mr. Kevan requested a fourth member of the Development Review Board recuse herself from hearing his appeal.

Exhibit D attached.

- F. By letter dated March 29, 2012, Mr. Kevan requested the hearing scheduled for March 28, 2012 be continued for thirty (30) days.

Exhibit E attached.

March 28, 2012 Hearing

The Development Review Board considered the matter of the appeal of William Kevan at its March 28, 2012 meeting. Joel Tillberg and Christopher Recchia recused themselves from consideration of this matter. Samuel Lincoln, acting chair, John Becker, Frank Reed, Thomas Malanchuk and Gregg McCurdy considered the appeal.

William Kevan did not appear for the meeting.

The board first considered Mr. Kevan's request to continue the hearing for thirty (30) days after discussion regarding the jurisdiction of the Board to hear the appeal, the Board, on motion made, seconded and unanimously carried the request for continuance was denied.

The board next considered the appeal itself.

The Development Review Board, in its initial consideration of the application, did not make an express determination as to whether any of the persons who appeared at those hearings on the application for a permit were “interested persons” as defined by 24 V.S.A. §4465. 24 V.S.A. §4465 reads in pertinent part:

§ 4465. Appeals of Decisions of the Administrative Officer

- (a) An interested person may appeal any decision or act taken by the administrative officer in any municipality by filing a notice of appeal with the secretary of the board of adjustment or Development Review Board of that municipality or with the clerk of that municipality if no such secretary has been elected. This notice of appeal must be filed within 15 days of the date of that decision or act, and a copy of the notice of appeal shall be filed with the Administrative Officer.
- (b) For the purposes of this chapter, an interested person means any one of the following:
 - (1) A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
 - (2) The municipality that has a plan or a bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality.
 - (3) A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person’s interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.
 - (4) Any ten persons who may be any combination of voters or real property owners within a municipality listed in subdivision (2) of this subsection who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.
 - (5) Any department and administrative subdivision of this state owning property or

any interest in property within a municipality listed in subdivision (2) of this subsection, and the agency of commerce and community development of this state.

Paragraph (a) of Section 4465 provides a right to appeal to a “interested person.” An interested person, in turn, must qualify under one of the five criteria listed in Section 4465(b). Since William Kevan did not appear at the March 28, 2012 hearing on his appeal, he was not able to provide the Development Review Board with any information as to how he qualified as an “interested person.” The board did note that Mr. Kevan has represented 896 Stock Farm Road, Randolph, Vermont as his home. That property is not in the immediate neighborhood of the Salisbury Square project. Neither is there any indication that Mr. Kevan owns property within the immediate neighborhood of the Salisbury Square project. Therefore the Development Review Board was not able to determine how Mr. Kevan qualified as an “interested person” for the purposes of taking an appeal.

Absent having status as an “interested person”, Mr. Kevan had no right to appeal and the Development Review Board has no jurisdiction to hear his appeal.

The Development Review Board then reviewed the notice of appeal itself. 24 V.S.A. §4466 sets forth requirements for the contents of the notice of appeal.

§ 4466. Notice of Appeal

A notice of appeal shall be in writing and shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant, and the alleged grounds why the requested relief is believed proper under the circumstances.

Neither the December 15, 2011, letter to Mardee Sanchez, nor the January 10, 2012, notice of appeal to the Development Review Board provides any reference to regulatory provisions applicable to the appeal, any indication of the relief requested by the appellant, or any grounds as to why the requested relief is believed proper under the circumstances.

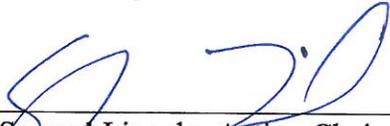
CONCLUSION

Because William Kevan is not an interested person as that status is defined by 24 V.S.A. §4465(b), and because William Kevan did not provide the Development Review Board with any specific information as to the basis of his appeal, the regulatory provisions applicable to that appeal, the relief requested by William Kevan and the grounds on which the requested relief is believed proper, the Acting Chair of the Development Review Board, with the agreement of its members, ruled the board without jurisdiction to hear the appeal.

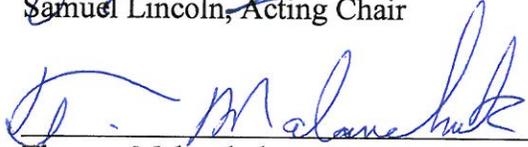
Therefore the appeal was denied for lack of jurisdiction.

DATED at Randolph, Vermont this 17th day of April, 2012.

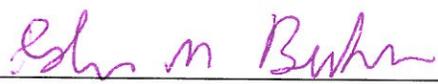
Randolph Development Review Board
Concurring Board Members



Samuel Lincoln, Acting Chair



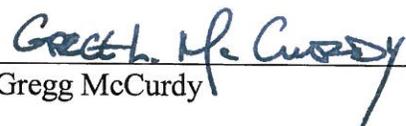
Thomas Malanchuk



John Becker



Frank Reed



Gregg McCurdy

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