

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

PERMIT: **#Z16-8**
PROPERTY ADDRESS: **163 Admin Drive**
PARCEL NO.: **117002**
PARCEL SIZE: **13.12 acres¹**

PROPERTY OWNER: **Vermont State Colleges**
Vermont Technical College
PO Box 500
Randolph Center, VT 05061

APPLICANT: **Vermont Agency of Administration**
Dept. of Buildings and General Services
2 Gov. Aiken Avenue
Montpelier, VT 05633-5801

I. INTRODUCTION

On January 26, 2016, Vermont Department of Buildings and General Services ("Applicant") filed an application for a zoning permit for the Vermont State Agricultural and Environmental Laboratory (VAEL). The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on January 26, 2016.

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

Also under the RZR, 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 February 23, March 14 and April 26, 2016;
2. Documents contained in this application's file, the RZR, Town Plan and the Randolph municipal records.

The Board closed the public hearing on March 14, 2016. However, after the close of the hearing on March 14, the Applicant submitted a revised site plan. A new hearing was warned for April 26, 2016. The Board closed the hearing on April 26 and deliberated on this matter afterwards. The

¹ The overall holdings of the Vermont State Colleges is over 100 acres. The portion to be leased to the State of Vermont for this project is 13.12 acres.

results of the Board deliberations is this written decision as required pursuant to 24 VSA ch. 36 §1309.

II. DETERMINATIONS BY THE ADMINISTRATOR

On January 20, 2016, a public hearing to be held by the Randolph Selectboard for the proposed Land Use Regulations (LUR) was publicly noticed. 24 VSA §4449(d) requires that for a period of 150 days following the notice, "the administrative officer shall review any new application filed after the date of notice under the proposed bylaws and applicable existing bylaws."²

- A. The Administrator has made the following determinations with respect to the LUR:
1. The application is subject to the LUR.
 2. The subject property is in the Randolph Center Village (RCV) District.
 3. The use is categorized as "low volume office" because it involves providing a service which is not primarily retail, within an office setting to customers or clients who are primarily off site. Such a use is "Permitted" in the RCV District and has a 2,000 square foot (SF) size limitation on gross floor space for the use.
- B. The Administrator has made the following determinations with respect to the RZR:
1. The subject property is in the Rural Use-5 Acre (RU5) District.
 2. As the project is not either a one- or two-family dwelling, site plan approval is required.
 3. The use is categorized as "offices for governmental agencies." Such a use is listed as conditional on the Chart of Permitted and Conditional Uses.
- C. The proposed project is a state-owned and operated facility. As such, review of it is limited pursuant to 24 VSA §4413³.

On February 5, 2016, the Administrator referred the application to the Board for review and approval as determined.

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, his or her

² 24 VSA §4442(g) states that proposed regulations shall be considered disapproved if no action by the legislative body is taken within one year of the final hearing of the Planning Commission. The Commission's final hearing was May 27, 2015 and the Selectboard did not take action on the proposed regulations. Therefore, the proposed regulations were considered disapproved by the date this Decision was signed. The Board elected to include findings of facts and conclusions of law for the proposed regulations in the event a petition is submitted and a vote taken pursuant to 24 VSA §4442(g) and the proposed regulations are, in the end, approved.

³ 24 VSA §4413(a)(1) states: "The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use: (A) State- or community-owned and operated institutions and facilities."

representatives (if any) and persons⁴ who participated at the public hearing and/or submitted written comments on the application.

Participating Board members were Trini Brassard, Matthew Murawski⁵, Christopher Recchia, Michael Hildenbrand and Joel Tillberg. Members John Becker, David Miles and Thomas Malanchuk also participated during one or two of the public hearings held but not the final hearing and therefore did not participate in this Decision.

At the public hearing on March 14, 2016, participating members disclosed the following:

- Brassard works for the Vermont Agency of Transportation.
- Recchia works for the Vermont Public Service Board.
- Both Tillberg's and Hildenbrand's wives work for Vermont Technical College in clerical positions.
- None of the members, or members' spouses, have any involvement with the proposed VAEL.

Chair Tillberg allowed for discussion of potential conflicts of interest pursuant to the Board's Rules of Procedure and Ethics §305. As each member made his or her disclosure, the remaining Board members discussed the nature of the connection to the Applicant or the Property Owner. The public was allowed to comment, and Daniel LaLumia reiterated the reasons he stated in his letter (Exh. #7) as to why he feels there was a conflict of interest for Tillberg and Hildenbrand. Pierre LaFrance concurred with Mr. LaLumia's assessment of the conflict of interest. The Board examined the provisions of §305, as well as the provisions of the Conflict of Interest Policy for the Town of Randolph. The Board determined, in each case, that the incidental affiliations disclosed by each of the Board members did not rise to the level that any member would have a personal or pecuniary interest, either direct or indirect, in the outcome of the decision on this application that is greater than that of other persons generally affected by the decision. The Board further concluded that the continuing participation by members Brassard, Recchia, Tillberg and Hildenbrand is consistent with the purposes of the Town's conflict of interest policy, which provides:

"The purpose of this policy is to ensure that the business of this municipality will be conducted in such a way that no public official of the municipality will gain a personal or financial advantage from his or her work for the municipality and so that the public trust in municipal officials will be preserved. It is also the intent of this policy to insure that all decisions made by municipal officials are based on the best interest of the community at large."

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.

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.

⁵ Member Murawski did not attend the first hearing in February but did review the record and listen to the audio recording of the proceeding he missed.

Project Description

1. The applicant has filed an application for the construction of the Vermont Agricultural and Environmental Laboratory (principal building) and a detached woodchip heat plant (accessory building). The facility will have lab space for the testing of air, water, soil samples collected off-site and brought to the facility. The upper level is mostly office space, archive room, conference room and training center. The labs and other core areas are on the lower level. (application and testimony of S. Vitzthum and M. Kuhn)
2. The facility will include a 20' x 20' archive room that is open to the public but it is not expected to get much use. (testimony of S. Vitzthum and G. Roberts)
3. The facility will be open during regular working hours but clients and customers will be able to drop off samples to be tested after hours. (testimony of S. Vitzthum and M. Kuhn)
4. The lab facility is to replace the lab that was destroyed in Waterbury by Tropical Storm Irene. Currently, the lab functions of the state are located in several remote locations. The proposed lab will bring all lab functions of the state into one building centrally located. (testimony of S. Vitzthum)
5. The Vermont State Colleges owns over 100 acres, of which the State of Vermont will be leasing 13.12 acres for this project. This 13.12 acre area shall be herein referred to as the "leased lot" and the project shall conform to the regulations as if it were a separate lot.

Randolph Zoning Regulations

Consistency and compliance with Town Plan and ordinances. (site plan (SP) criterion A, conditional use (CU) criteria A and H, and Act 250 criterion 10)

6. The minimum lot size for the RU5 District is 5 acres. The leased lot is 13.12 acres. (application and RZR)
7. The front, side and rear setback requirement for principal structures in the RU5 District is 30 feet. The shortest setback distance for the lab is 25 feet and is at the southeast corner. (RZR and Exh. #22)
8. The side and rear setback requirement for accessory structures is 4 feet. The shortest setback distance for the heat plant is 25 feet. (RZR and Exh. #22)
9. The maximum allowable building coverage is 15% in the RU5 District. The proposed building coverage is 21,481 SF, or 3.75% of the leased lot. (application and RZR)
10. The maximum allowable building height is 30 feet in the RU5 District. Building height does not include the stack associated with the heat plant nor the equipment on top of the lab. The lab and the heat plant do not exceed 30 feet in height. (LUR and testimony of M. Kuhn)
11. The required off-street parking for office space is one space for every 250 SF of gross floor space. The proposed project provides parking spaces for 58 cars. There is approximately 38,000 SF in the lab which would require 152 parking spaces. (RZR and application)
12. The lab will have 32 full time employees year round. Additionally, there will be up to 39 part time and temporary employees, many of whom are seasonal and only there during the summer. Most of the temporary employees are in the field with only occasional – if any – visits to the facility. Meetings to be held in the facility are also mostly during the summer. This peak usage of the lab coincides with the off-season time for the College. There will be

available parking on the College campus during the summer. (application, RZR and testimony of M. Kuhn)

13. Compliance with the Town Plan and other ordinances of the Town is not applicable pursuant to 24 VSA §4413 (a)(1). (Although it is noted that compliance with the Town Plan is considered under Act 250 criterion 10 and is addressed below).

Traffic and nuisance considerations (SP criterion C and CU criteria B, C and G)

14. The proposed use within the lab will not generate any noise. However, there will be mechanical equipment on the roof of the structure for heating, cooling and ventilation of the facility. Such equipment will have noise attenuating components. Additionally, there will be some type of fencing or wall on 4 sides of the roof which is primarily for visual screening but will provide some additional degree of noise attenuation. (testimony of S. Vitzthum)
15. Noise travels more efficiently on a cold day than on a warm, humid day. Noises aren't as adverse when no one is camping. Nature noises from birds and trees rustling add a significant amount of ambient noise during the summer. (testimony of M. Sama)
16. Need for ventilation within the lab will go down significantly during non-business hours. (testimony of S. Vitzthum)
17. The proposed project is expected to generate 197 trips per day, 31 during the morning peak hour and 30 during the afternoon peak with the maximum seasonal levels of employment. This volume can easily be accommodated by the surrounding roadway network without resulting in any traffic congestion or safety impacts. (Exh. #3)
18. The lab will share its main access with Vermont Tech via Admin Drive. Two accesses have been approved by the Town from Furnace Street; one each to the upper and lower levels of the lab. These Furnace Street accesses will be used primarily for emergency services. The lower access will also be used for access for vehicles with trailers (for boats, etc.) (testimony of S. Vitzthum)
19. Trucks making deliveries to the heat plant will enter the Vermont Tech campus via the southern entrance off of South Randolph Road. They will continue along the loop road and back into the loading area of the heat plant and exit via Admin Drive. (testimony of M. Kuhn)
20. Truck deliveries to the heat plant will occur between one and two times a month during the cold months and rarely during the warm months. Each delivery takes about one hour to unload. (testimony of S. Vitzthum)
21. The parts of CU criterion B relating to anything other than noise and traffic are not applicable pursuant to 24 VSA §4413 (a)(1).

Continuous strip (CU criterion D)

22. The entire frontage on Furnace Street of the leased lot has buffer strip, as it were, that is over 50 feet wide. This strip is to be maintained with grass and a variety of trees. (Exh. #22 and 23)

Municipal services (CU criterion E and Act 250 criteria 6 and 7)

23. As the proposed use is not a residential use, it will not increase the enrollment in local public schools. (application)
24. The proposed use has been granted a wastewater allocation from the Town. (testimony of S. Vitzthum)

25. The proposed project will have new accesses off of Furnace Street, a town highway. The Town has the capacity to provide the proposed project with public road maintenance services without unreasonable or undue burdens. (sign-off of Melvin A. Adams, Town Manager)
26. The subject property is outside of the Randolph Police District and the Randolph Village Water District therefore these services are not provided by the Town. (Randolph Municipal Records)
27. The subject property is in the Randolph Center Fire District. The Randolph Center Fire Department has the capacity to provide fire protection to the subject property without undue burdens. (sign-off of Kenneth Preston, Randolph Center Fire District Chief)

Character of and effects on the area (SP criteria B and D, and CU criterion F)

28. The criteria related to character of development and the project's effect on the surrounding area are not applicable pursuant to 24 VSA §4413 (a)(1).

Renewable energy resources (CU criterion I)

29. The criterion related to renewable energy resources is not applicable pursuant to 24 VSA §4413 (a)(1).

Compliance with the Town Plan (Act 250 criterion 10)

30. There is no clear and unambiguous language in the Town Plan that relates or refers to the proposed project. However, it does support several of the goals of the Town Plan:
 - A. The project is within walking distance of Randolph Center village and the College thereby maintaining this Randolph's village as pedestrian-friendly center and a compact and efficient pattern of settlement.
 - B. The project supports economic development within the Town by providing up to 32 scientific jobs.

Proposed Randolph Land Use Regulations

The following findings are facts relevant to the applicable criteria in the proposed Land Use Regulations. Some of the facts listed above may also be relevant but are not reiterated below. The source of all the facts are Exhs. #22 and 23 unless specified otherwise.

Compliance with Regulations (SP criterion 1)

31. The front, side and rear setback requirement for principal structures in the RCV District is 50, 25 and 25 feet, respectively. The lab is over 50 feet from Furnace Street and the shortest distance to a side or rear property line for the leased lot is 25 feet at the southeast corner. The heat plant is 25 feet from the closest property lines of the leased lot. (LUR and Exh. #22)
32. The maximum allowable lot coverage is 30% in the RCV District, or 3.93 acres. The proposed building coverage is 21,481 SF and the total impervious area is 64,244 SF for a total lot coverage of 85,725 SF, or 15% of the leased lot. (LUR and Exh. #22 and 23)
33. The maximum allowable building height is 40 feet in the RCV District. Building height does not include the stack associated with the heat plant nor the equipment on top of the lab. The lab and the heat plant do not exceed 40 feet in height. (LUR and testimony of M. Kuhn)

34. The width of the proposed leased lot is over 200 feet wide.
35. The lab is categorized as a low-volume office which is limited to 2,000 SF of gross floor space in the RCV District. The lab facilities that this proposed project will be replacing (see Fact #3), was just under 36,000 SF. The average size of each of the 12 labs within the building (i.e. water quality, air, plant, etc.) is a little over 2,000 SF due, in part, to the size of the equipment. This facility cannot function within only 2,000 SF of gross floor space. (Exh. #2 and testimony of S. Vitzthum and G. Roberts)
36. The required off-street parking for commercial or business uses is one space for every business or employee vehicle plus one space for every 200 SF of floor area open to the public. The proposed project provides parking spaces for 58 cars, exclusive of spaces for state vehicles. There is very little floor area open for the public. As indicated in Fact #9 above, there is ample parking available on the Vermont Tech campus. (LUR and application)

Access (SP criterion 3)

37. All accesses conform to applicable VTrans standards. (application)
38. Proposed landscaping, curbing and topography provide effective barriers to control access of vehicles in areas not designate as an access.

On-Site Circulation (SP criterion 4)

39. For the upper parking area, a sidewalk is provided along the front of the building. Most of the daily traffic will be in the upper parking area. For the lower parking area, a crosswalk is provided to direct pedestrians to the main entrance on the lower level. (Exh. #22 and 23 and testimony of M. Kuhn)
40. Signage is provided that promotes vehicular and pedestrian safety.
41. The heat plant and the main entrance to the lab shall use an existing road network on the Vermont Tech campus.

Parking, Loading and Service Areas (SP criterion 5) and Landscaping and Screening (SP criterion 6)

42. The parking aisles are 24 feet wide.
43. Although the parking areas are flow-through, the accesses from Furnace Street are designated ingress only. This effectively makes them dead-end aisles. There is adequate room at the "end" of the aisles for vehicles to turnaround and exit through the southern accesses.
44. Two spaces are provided in the upper parking lot and one in the lower lot for people with disabilities. These spaces are closest to entrances to the building.
45. Drainage is provided for the parking areas and such drainage will be directed to a bioretention area for water quality treatment. (application)
46. Snow storage areas will not interfere with designated parking spaces nor sight distances at intersections.
47. Topography and landscaping shall minimize visibility of the parking, loading and service areas.
48. Trees are proposed along the sidewalk along the front/upper part of the lab building.

49. Proposed trees are of a variety of species, some of which are agricultural (crop trees) and year round (evergreens).
50. The landscaping for the site includes shrubs, groundcover plants, meadows and trees.
51. Evergreen trees are proposed by the heat plant to screen the loading area.

Outdoor Lighting (SP criterion 9)

52. Poles will have lights no more than 12 feet above grade. (testimony of M. Kuhn)
53. All lighting will have sharp cut-off fixtures. (Exh. #5 and 24 and testimony of S. Vitzthum)
54. Most of the lighting will be on motion that are activated by larger bodies (i.e. not small critters or dust) and photo sensors. Three lights are proposed to be on a preset dimmed setting all the time for the boat and state vehicle storage area. A light by the main entrance to the lab will also be on all the time for after-hours drop-off of samples. (Exh. #9 testimony of M. Kuhn)
55. Lighting will have minimal illumination impacts off-site (Exh. # 9 and 15)

V. CONCLUSIONS

Based on the foregoing Findings of Fact, it is the conclusion of the Board that the project described in the application referred to above and including the Applicant's representations at the public hearing, if completed and maintained in conformance with all of the terms and conditions of that application and as required in Section VI herein, will meet the criteria below. Criteria, either in whole or in part, that is not applicable pursuant to 24 VSA §4413 (a)(1) is ~~stricken through~~.

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 not cause an unreasonable burden on the ability of the Town of Randolph to provide municipal or governmental services (criterion 7).
- C. The proposed project is not in non-compliance with the Randolph Town Plan which was adopted in accordance with 24 VSA ch. 117 on February 16, 2013 (criterion 10).

2. Conditional Use Criteria⁷

- ~~A. The proposed use is consistent with the objectives of the Town Plan and is consistent with the purposes of the Randolph Zoning Regulations.~~
- B. The proposed use will not cause any hazard to health or property through fire, traffic, accident, unsanitary conditions, excessive noise, vibration, odor or other nuisances.
- C. The proposed use will not add a volume of traffic to the highways beyond their reasonable capacity.
- D. A continuous strip of not less than six (6) feet wide will be maintained between the right-of-way line and the balance of the lot which will be suitably landscaped.

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 Criteria A – D are from the RZR. Criteria E – I are required to be reviewed pursuant to 24 VSA Ch. 117 §4414(3).

- ~~E. The proposed use shall not have an undue adverse effect on the capacity of existing or planned community facilities.~~
- ~~F. The proposed use shall not have an undue adverse effect on the character of the area, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards in the Town Plan.~~
- G. The proposed use shall not have an undue adverse effect on the traffic on roads and highways in the vicinity.
- ~~H. The proposed use shall not have an undue adverse effect on the bylaws in effect.~~
- ~~I. The proposed use shall not have an undue adverse effect on the utilization of renewable energy resources.~~

3. Site Plan Criteria - RZR

- A. The proposed use, design and layout meets the provisions of the zoning ordinance, ~~other regulations and ordinances of the Town and is not in non-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.~~

4. Site Plan Criteria – LUR

- (1) Compliance with Regulations
- ~~(2) Natural Features (not applicable in the RCV District)~~
- (3) Access
- (4) On-site Circulation
- (5) Parking, Loading and Service Areas
- (6) Landscaping and Screening
- ~~(7) Grading and Drainage~~
- ~~(8) Outdoor Storage and Outdoor Facilities~~
- (9) Outdoor Lighting

5. Development Standard Size Limitation – LUR

The LUR have a 2,000-SF size limitation on low-volume offices (see §2.12) in the RCV District. Such a size limitation would have the effect of interfering with the intended functional use of the facility.

VI. DECISIONS⁸

Based upon the foregoing Findings of Facts and Conclusions, the Board hereby makes the following decisions regarding the VAEL as applied for in zoning permit application #Z16-8:

- A. Under the RZR, the off-street parking requirement is set at 58 spaces.
- B. Under the RZR, site plan approval is granted with the following conditions:
 - 1. The project shall be constructed as shown on the exhibits and completed and operated in accordance with the application and the findings of fact which are incorporated herein.
 - 2. The location of the southeastern boundary of the leased lot shall be adjusted so that it is no closer than 30 feet to any part of the lab.
 - 3. Construction shall be as shown on Exh. #22.
 - 4. To the extent feasible, the screening for the roof-top equipment on the lab shall be designed to provide some noise attenuation.
 - 5. All landscaping shown on Exh. #22 and 23 shall be maintained in a healthy, living condition.
 - 6. Snow from parking areas must not be plowed onto public highways, adjoining streams or waterways, or onto abutting properties. Snow must be plowed elsewhere on the subject property or removed. On-site snow storage shall not interfere with sight distances.
 - 7. The subject property shall have adequate entrance and exit for emergency vehicles at all times.
 - 8. 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. This notwithstanding, the boundaries of the leased lot may be adjusted provided the setback, coverage, lot size and lot width requirements are still met. Such adjustment shall be reviewed and approved administratively.
- C. Under the RZR, conditional use approval is granted with the following conditions:
 - 1. The project shall be operated in accordance with the application and the findings of fact which are incorporated herein.
 - 2. Any expansion of the use shall require approval pursuant to the regulations in effect at the time of re-application.
- D. Under the LUR, site plan approval is granted with the condition that the security lighting for the boat and vehicle storage area on the lower level shall be on motion sensors.

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 \$262.50 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.

Memorandum of Decision - VERMONT AGENCY OF ADMINISTRATION (applicant) AND
VERMONT STATE COLLEGES (property owner)
Zoning Permit # Z16-8

Dated at Randolph, Vermont this 8 day of June, 2016.

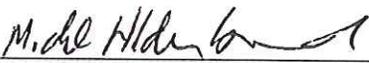
RANDOLPH DEVELOPMENT REVIEW BOARD
Concurring Board Members



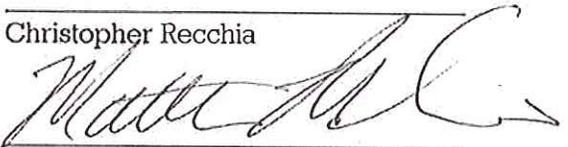
Joel Cillberg, Chair



Trini Brassard



Michael Hildenbrand

Christopher Recchia


Matthew Murawski

SERVICE LIST
Zoning Permit Application #Z16-8
Vermont State Agricultural & Environmental Laboratory

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Bold listings indicate applicants and/or their representatives.