



# Village of Manchester, Vermont

## **Minutes of the Regular Meeting of the Development Review Board Held August 3, 2022 at 10:00am**

**Members Present:** Chair Craig Powers, Donald Brodie, Orland Campbell, Jack Morris, Dana McCloskey

**Member(s) Absent:** Renee Waller, Gordon McClellan

**Others Present:** Zoning Administrative Officer Curan VanDerWielen

The meeting was held both in person at the Village Offices and via Zoom.

Chair Craig Powers called the meeting to order at 10:03am.

### **Announcements:**

Chair Powers announced that Tom Deck was no longer serving on the Development Review Board (DRB) in lieu of focusing on his duties as the newly appointed President of the Board of Trustees. Powers added that Orland Campbell, the previous President, now joined the DRB as a member and that both Jack Morris and Gordon McClellan had been reappointed to their current roles.

### **Meeting Minutes:**

Powers asked if everyone had had the chance to read the June 1<sup>st</sup> draft meeting minutes. Morris responded that he had. Powers asked for comments, and there being none, then asked for a motion to approve the draft minutes. Donald Brodie motioned to approve the draft meeting minutes, and Morris seconded the motion. The DRB then approved the draft meeting minutes with all members for except Campbell, who abstained.

### **Applications:**

**22-37** Powers began by stating that they would move first to discuss permit application 22-37. Brodie asked whether DRB officers would be elected during this meeting. Powers responded that he had decided to defer such an election until September.

Powers then introduced permit application 22-37 for a change of use at 3738 Main Street. Powers asked if the applicants were present over Zoom, as they were not present in-person. Hearing no one, Powers indicated that they would defer the application review until a later date.

**22-39** Powers then moved to review permit application 22-39 for a solar panel installation at 115 West Road. Powers asked VanDerWielen to introduce and provide an update on the application's status. VanDerWielen began by introducing the permit as a solar panel

installation at 115 West Road, which had begun before being permitted by the DRB or the Zoning Administrative Officer (ZAO). VanDerWielen continued, stating that he had asked the contractor Same Sun of Vermont to file for a zoning permit before continuing work, which they soon after submitted, but later had been contacted by the owner of the contractor who contested the need to file for a zoning permit at all. VanDerWielen was informed that a Certificate of Public Good had been obtained by the applicant from the Vermont Public Utility Commission (PUC), and upon checking with the PUC, he confirmed that the Village did not need to issue a zoning permit before installation could continue. VanDerWielen clarified that normally municipalities gain an opportunity to comment or present additional zoning items at PUC hearings on Certificates of Public Good, but two issues had prevented the Village from obtaining prior notice. These included: (1) the application made by Same Sun of Vermont had been filed in the incorrect municipality, the Town of Manchester and not the Village, and (2) the Village lacked an Energy Plan incorporated into its Plan of Development, meaning it could not participate in PUC hearings until such a Plan had been formally incorporated into the Plan of Development.

Powers added that he understood that it was a particularly minor permit in the consideration of the PUC, being under 15 kilowatts. VanDerWielen added that he understood the measure to be kilowatts per annum. Powers then asked if the Village was unable to participate in minor PUC hearings. VanDerWielen explained that he believed they could based on his conversation with staff at PUC, but that he would like to do more research on how this would interact with the upcoming Energy Plan. Powers commented that this was interesting. VanDerWielen then stated that he had also referenced a previous case in the Village similar to this from 2016 or 2017, in which the Village had retracted its claim to require a zoning permit when a resident obtained a Certificate of Public Good from the PUC. Powers clarified that he believed the PUC was only involved in permits regarding solar installations which fed into the power grid, otherwise it fell to municipalities. VanDerWielen stated he believed that was the case too.

Brodie commented that he understood this to be the reason for why the Planning Commission (PC) had developed the Energy Plan, so as to qualify the municipality for participating in PUC proceedings, adding that it would show the state that we cared about solar energy. Powers asked if fighting the PUC on the matter was worth it. Brodie responded that he believed it was not, but that the Energy Plan would remedy this type of disconnect. Powers then asked when the Energy Plan would be adopted. VanDerWielen responded it was headed to a public hearing with the Planning Commission on the 17<sup>th</sup> of August. Campbell then commented that the Board of Trustees had already approved of the Energy Plan. Powers asked if the public hearing was necessary because of the Board's approval. Campbell answered, stating that it was a legal requirement in the Zoning Bylaw. Campbell then asked VanDerWielen about the statutory references concerning the matter, adding that he believed something smelled fishy about the ordeal. VanDerWielen stated he had reviewed Titles 24 and 30 of Vermont state statute.

Campbell then stated that he understood that PUC approval was only for large scale projects, but that he was unsure. Campbell added he wished to check. Powers commented that it sounded like a lot of work, and that the case had been strange. Campbell then stated that while in the case of state permitting it was likely the municipality had little say, he did not understand how the PUC could ignore zoning.

Morris asked VanDerWielen whether he was satisfied with the withdrawal of the permit. VanDerWielen stated he was considering the small size of the installation and added that he had understood relatively little about the state-municipal relationship on solar installations prior to engaging with this permit. VanDerWielen also stated that from what he had discussed with PUC, this appeared legally appropriate. Morris commented that he had understood it to be a larger installation from the attached supplementary documents, but did not know if the municipality had the ability to challenge a PUC permit. Brodie commented that the Village did have that ability, but was unsure if it would be worth the time, effort, and cost. Powers asked if McCloskey wished to comment, to which she responded no before adding that it appeared the DRB had very little to say on the project given the PUC decision. Powers responded that it appeared that way, and that he was interested to see how the future Energy Plan would change the interaction between the Village and PUC on future permits.

**22-37**

At this point, Powers stated he wished to circle back to permit application 22-37 before asking for a motion to table the review for the upcoming September regular meeting. Brodie motioned to table the review, with Morris seconding the motion. Permit application 22-37 was then tabled unanimously by the DRB pending review for their next regular meeting in September.

Morris asked a question about the status of an updated site plan and elevations regarding the new construction to replace the structure to be demolished under a different application for the property, 22-30. VanDerWielen responded that he had requested but not received any update on the supplementary materials for application 22-30, but that he had spoken with the architect last month who had informed him that preliminary elevations and a site plan were forthcoming. Powers commented that it had taken a while since filing the application for the applicant to formulate finalized plans. Campbell asked if application 22-37 was, as marked, actually for a subdivision. VanDerWielen responded no, it was not, but had been marked incorrectly by the applicant to that end. VanDerWielen then stated he had spoken with the applicant, confirmed this was not the case, and corrected it within the master zoning log. Campbell followed up, asking about a change of use for the new construction. VanDerWielen responded that he was unsure they required one, given the permitted uses listed under the Zoning Bylaw for the B-1 District. Powers asked how the existing building was being used. VanDerWielen responded he was unsure and believed it had been neglected for a few years at minimum. Powers commented that he remembered vaguely that it had been used as offices in the past. VanDerWielen then stated that, for clarity, the only permitted work on site was that of window and siding replacement for the rear structure. Additional

activity on-site was limited to internal renovations. Powers indicated that that was his understanding as well.

Campbell then commented that he believed that VanDerWielen should make clear to the applicant that the DRB required a full plan, not a stream of items presented in piecemeal, as done so far. VanDerWielen responded that he had already had multiple conversations on the topic with them, but little change had been observed. Morris commented that it appeared construction was already underway on the property. VanDerWielen stated that the work underway only constituted that which was already permitted. Powers commented that he believed the application for a deck on the property, 22-38, would likely not pass the DRB. VanDerWielen stated that he had also been in conversation with the applicant about 22-38. Campbell commented again that he wished to see a more concrete and whole plan, moving forward. McCloskey then asked whether the property was to be converted into condos or apartments. VanDerWielen then stated that the applicant had described to him several arrangements but hoped it would be clarified in the statement of intent he had requested from them.

### **Zoning Bylaw Modernization Review:**

Powers indicated that the DRB would now move to begin reviewing the Zoning Bylaw Modernization edits, commenting that in lieu of ending around 11:00am, the DRB would only review two chapters in this meeting. McCloskey commented that she could stay until 11:15am.

Brodie asked whether Section 3.6 would be covered completely by V.S.A. Title 24 or if it was necessary to include the information in the Zoning Bylaws. VanDerWielen explained that it was covered, but also needed to be covered or at least referenced to in the Bylaws.

Campbell then commented on the altered definition of 'submerged land'. VanDerWielen indicated that no changes to Section 2.4 had been made structurally, outside of the changed definition. Powers stated that he believed 'submerged land' should remain clearly defined. Campbell agreed, adding that it would otherwise be unclear in the Zoning Bylaws. Brodie commented that it could also include temporary flooded lands. Campbell then stated that he was unsure how such a clarification would work before commenting that he believes the proposed change to the section should not be kept. Powers agreed with Campbell, commenting that he preferred how it had previously been written. Morris asked whether they had had a similar issue in defining streams. Campbell stated he did not remember, as it was a long time ago. Power asked McCloskey if she had any thoughts. McCloskey stated she did not, before adding that she did not see why distinguishing between permanently submerged land and temporarily submerged land would be helpful. Campbell stated that he did not believe that temporarily submerged land should apply in this case. Brodie commented that such

flooding would likely disappear before a zoning application could be filed, reviewed, and issued, in any case. Campbell agreed with Brodie. Powers summarized, stating that the DRB did not want the definition of 'submerged lands' changed, that such regulation would stay tied to zoning districts, and that they would recommend no changes be made.

Powers then indicated that the DRB would now move on to Section 3.6. Campbell commented that he had a problem with changes made in this section as the language as existing came from statute. Powers asked about the language highlighted in yellow under Section 3.6. VanDerWielen responded that his understanding was the change was designed to avoid potential conflicts with future updated language in state statute. Brodie commented that he preferred to see the language reflect that of statutory law. Campbell commented that for average people, having to search for the correct statutory language, rather than have it simply included in the Bylaws, would obstruct accessibility. Brodie commented that it appeared everyone agreed to not change Section 3.6. Campbell stated he wished to see the statute referenced accordingly. Powers asked whether the Board was in agreement on reverting to the originally written language. Campbell stated he agreed assuming that it reflected the correct statutory language. VanDerWielen stated he would check ahead of the next meeting.

Powers then stated that under 3.5.2, it appeared that the original language stated nearly the same thing as that of the highlighted new text, with the exception of pre-existing structures. Powers indicated that this appeared to broaden the clause. Campbell too commented on this aspect of the new text. Powers commented that it was difficult to say of the change was good or bad. Morris asked a question and McCloskey then stated she could not see the screen. VanDerWielen apologized and displayed the correct page on the display screen present. Powers then stated that he believe the crux of the new text was that when constructing new buildings, an applicant would still need to meet the requirements of the Zoning Bylaw and that no buildings sold or split due to a subdivision would be exempt from this. Powers then asked Campbell for help, as he was unsure if he understood it correctly. Campbell stated he had not looked at these passages for a while and would need more time to review. Campbell then stated that it appeared that the changes made it fairly similar to the original text and he was unsure what the change was trying to accomplish. Campbell continued, stating that he believed the original language was actually clearer. Powers asked if anyone had any further questions or comments. Morris asked VanDerWielen if application 22-37 would be covered under the clause due to its conversion into condominiums. VanDerWielen stated he believed it would be grandfathered in due to the property's prior use as a residence.

Powers asked VanDerWielen to display 3.5.3. Powers commented that the only change appeared to be to add 'warned' before 'public hearing'. Campbell commented that he believed the change was unnecessary. VanDerWielen stated he was unsure if the distinction was necessary under statute. Powers indicated that he did not believe it was a necessary but that he thought the change was alright. Campbell commented that

conditional uses could not, not be conducted as a public hearing. Powers reiterated that he believed the change was fine as the meetings had to be warned, in any case.

Powers then introduced 3.5.4 before commenting on the term 'Open Space Plan' and searching briefly for its definition in the existing Zoning Bylaws. Powers then indicated that he believed the changes made were good. VanDerWielen commented that it appeared to reconcile potential differences in interpretation between this Section and Sections 3.7 and 4.6.1. Powers reiterated that he believed the change looked good. Morris then asked about the definition of an 'Open Space Plan'. VanDerWielen stated he was unsure, but could check to see if it was a statutory term. Powers asked if it could be a reference to a landscaping plan. VanDerWielen explained he believed it was linked to the Village's requirement that a certain percentage of each lot remain undeveloped, to preserve historical settlement patterns in future development. Brodie then asked, hypothetically, if the Equinox Hotel were to build something on existing green space but preserved other green space elsewhere on a property, if it would operate as maintaining open space. VanDerWielen explained that they would have to indicate such a move on an approved site plan with the Village, and that it all depended on the percentage of space, not necessarily the arrangement. Powers agreed with VanDerWielen. Brodie commented that it sounded like the requirement could affect businesses. Powers commented that as the open space requirement was defined elsewhere, references to an 'Open Space Plan' should be nixed. VanDerWielen commented that he would like to check to see if the term was somehow statutory before it was changed.

Powers indicated that the DRB would now be moving to Section 3.6. Powers commented that he believed it was handy to have the statutory language in the Bylaws, but that it could be undercut by changes to statute in the future. Powers indicated that perhaps VanDerWielen could comment before asking the DRB how they felt. Campbell commented that he believed what was crossed out correctly corresponded to existing statute. VanDerWielen stated he believed it could be changed in the future, which is why he believed the Planning Commission had made the change. Campbell reiterated that the language was already correct. VanDerWielen responded that the Zoning Office would have to check regularly to ascertain that the statutory language had not changed. Campbell commented that he believed the stricken text should be kept to offer better accessibility to citizens. Powers commented that providing clarification on statutory and municipal legal language was a common task handled by the municipal offices. Campbell stated that while anyone could simply tell an applicant to look up the correct statute, that he believed it was not right and that the municipality had a responsibility to provide easier access to citizens. Brodie and Morris both agreed with Campbell. Brodie then commented that Subsection number 2 probably referred to silviculture instead of 'silver culture' as written. Powers then summarized, stating that it appeared the DRB agreed that the language should be preserved, and that for applicants wishing for updated or technical clarifications, they could always ask the Zoning Administrative Officer or DRB.

Powers then indicated that the DRB would move on to review Section 3.7, on Site Development Plans. VanDerWielen noted that it appeared the subsection numbering was incorrect, and should be corrected. The DRB went through changes to the first two subsections, Campbell being the only to comment that it appeared the changes stated the same thing as original. Powers commented that it appeared anything stricken in this Section appeared in later sections of the Bylaws anyway, and that the changes looked okay. VanDerWielen then explained the Commission's recommendation to move Section 4.6 to create a new Section 3.8 so as to streamline readings of the Bylaws. Powers stated he believed the idea to be a good one, and that it would reduce the amount of jumping around a reader would have to do to understand the Bylaws completely. McCloskey stated she liked the changes. Morris asked why the Site Development Plan had been included in the General Review section of the Bylaws in the first place. VanDerWielen explained that he believed the logic to be that if a stipulation applied to the loosest regulated design review sub-district, then it would *ipso facto* apply to all other sub-districts. Campbell stated that he believed Section 4.6 needed changes. Powers indicated that Brodie had already pointed out that changes had been made to Section 4.6 of the Bylaws in another document. VanDerWielen then explained again the changes made to replace Section 4.6 with a Section 3.8.

Campbell stated that he wished to see much better coordination between DRB and Planning Commission on future efforts on Bylaw Modernization, as there appeared to be a lot of confusion on the logic or purpose of many changes made in review. Powers asked whether after the DRB review, that the changes should go back to the PC. Campbell responded that his perspective was that the DRB needed to look at the existing Bylaws and go through what they believed should be changed and then pass those recommendations to the PC for further review and discuss together. VanDerWielen asked whether Campbell meant to do this piecemeal or as full drafts of the Zoning Bylaws or as full drafts of certain Sections. Campbell stated that after their review had finished, the DRB should address the existing Bylaws to search for additional changes they wished to be made which the PC had not made. Powers stated that years ago the DRB had performed a review of the Zoning Bylaws, and that he believed the PC was reviewing those old drafts made by the DRB back then. Campbell responded that he understood, but that the Bylaws needed a fresh look over as very few existing DRB members were on the Board in 2018, and there was a new Zoning Administrative Officer. Powers stated that he understood and that he was going to table the Bylaw review at this time due to the present time.

Powers asked if any further business needed to be addressed. Campbell motioned to reappoint Powers as Chair of the DRB. Brodie asked if they were going to wait on appointments until September. Powers stated yes, appointments would occur in September. Campbell withdrew his motion.

There being no further business before the Board, Powers closed the meeting at 11:09am.

The next regular meeting of the Development Review Board will be held on September 7<sup>th</sup>, 2022, at 10:00am.

Respectfully Submitted,  
Curan VanDerWielen, Zoning Administrative Officer

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