

BK 132
 pgs 434-
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Those present in the conference room of the Town Clerk's office for the 7 p.m. public hearing and meeting were Board Members, Kathleen Crown, Bruce Denio, William Biddle, Shane Stevenson, Ben Adams, Jonathan Carpenter, Gary Briggs and Dennis McLam; Secretary, Shirley Warden; Gail Aloisio from NVDA and others as on the attached list;

ATTENDANCE ZONING/PLANNING MEETING December 2, 2014	
NAME (Legal)	MAILING ADDRESS (Full)
John Cook	828 Somers Hill Rd BARNET VT 05821
Sally Cook	" " " " " "
MICHAEL VERELINE	190 CAMBERS LANE BARNET VT 05821
Jac Sherma	722 Hawley Int Rd
W. Berge	" " " "

Chairman, McLam called the public hearing to order at 7 p.m. and read the notice as it appeared in the November 15 & 16 issue of THE CALEDONIAN RECORD and was posted in four places and as follows;

WEEKEND EDITION, NOVEMBER 15 & 16, 2014

RECORD B11

**TOWN OF BARNET
 NOTICE OF PUBLIC HEARING**

The Barnet Planning/Zoning Board will hold a public hearing in the conference room of the Town Clerk's Office at 7:00 p.m. on December 2, 2014 to consider the following appeal:

#A01-14 from Blue Sky Builders, Inc. / Michael Vereline appealing the Zoning Officer decision.

All interested parties will be heard and MUST participate in this hearing to have "the right to take any subsequent appeal." (Chapter 117, Title 24 §4471)

A business meeting will follow the hearing. For further information contact Shirley Warden, Secretary at (802) 633-4993.

Barnet Planning/Zoning Board

Mr. Vereline had no arrived but discussion was begun on his appeal.

Warden had gotten the definition of a condominium from State Statue and handed out copies. Biddle had the same information, and felt that was the only issue for the appeal.

Mr. Vereline arrived at 7:20 p.m. with a letter dated December 1, 2014 from C. Daniel Hershenson, attorney with his opinion that creating condominiums is not a change of use. That letter is part of these minutes. He also presented a copy of his declaration of condominiums dated June 4, 2013 for lot #20-21-32.12 that is also part of these minutes.

Biddle moved to grant the appeal finding that a change from camp-ground to condominiums is not a change of use, and would not need a permit. Briggs seconded and all except Stevenson voted to uphold the appeal.

HERSHENSON, CARTER, SCOTT and McGEE, P.C.

C. Daniel Hershenson
Peter H. Carter *
Catherine W. Scott *
P. Scott McGee

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December 1, 2014

VIA ELECTRONIC MAIL ONLY

Michael Vereline
Cabins on Harvey's Lake
190 Campers Lane
Barnet, VT 05821
info@tharveyslakecabins.com

RE: Harvey's Lake Cabins and Campground Condominium Conversion and Permitting

Dear Mike:

As per your request, we have reviewed the Town of Barnet permitting requirements, if any, necessary for the construction of nine new cabins on existing RV sites; the merger of two adjacent lots into one 39.1 acre lot; and the conversion of the combined properties into a condominium form of ownership.

Based upon the plans prepared by John Thetford, P.E., it is our understanding that the project, when completed, will consist of an existing four-bedroom, single-family residence, 18 seasonal cabins, and one existing structure currently used as a recreation hall. Of the 18 seasonal cabins, 9 cabins are currently in existence (Cabins 1-5, Cabins 6 and 7, and Cabins 13 and 14) and 9 cabins are proposed to be built on existing or near pre-existing RV sites (Cabins 8 and 9, Cabins 10-12, and Cabins 15-18). All nine of the new cabins are to be located beyond the 100-foot zoning setback from Harvey's Lake. The existing four-bedroom, single-family residence is serviced by an individual on-site wastewater system, as is the existing recreation hall. All other cabins, either existing or proposed, are, or will be, serviced by community wastewater systems as approved by the Department of Environmental Conservation in Permit #WW-7-1511-1. Similarly, all structures on the property are serviced by an approved public transient non-community water system, which system is referenced and approved in Permit #WW-7-1511-1 and WSID #20927. Copies of these permits are recorded in the Town of Barnet land records at Book 135, Page 319.

It is our opinion that the property, located in the rural residential district, when developed as a condominium form of ownership, will consist of 19 individual, single-family dwelling units. Pursuant to Table 305.03 of the Town of Barnet Zoning Regulations, one-family dwelling units are permitted uses in the rural residential district and, pursuant to the Zoning Regulations, no site plan review is required for their construction. (See Section 306, "As indicated in Tables 305.01 - 305.04, certain uses require site plan approval prior to the issuance of a zoning permit.") In the instant matter, Table 305.03 does not indicate that dwelling units in any form require site plan review.

Michael Vereline
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Initially, it should be noted that the property has had multiple uses and structures for numerous years prior to the current Zoning Regulations, and the multiple uses and structures on the site plan are therefore grandfathered. It should also be noted that, pursuant to Section 404 of the Zoning Regulations, more than one building on a lot is permitted under the Town of Barnet Zoning Regulations, thereby precluding the need to secure a PUD or PRD for multiple single-family dwellings on the same lot. Specifically, Section 404 states that, "When there is more than one principal building on a parcel, the space between such buildings shall be no less than the combined setbacks that would be required if each building were on a separate lot. Minimum lot area requirements shall apply to each principal building." In the rural residential district, the minimum setback is 25 feet, which means that each dwelling/cabin would need to be separated by a minimum of 50 feet from any other dwelling/cabin. As demonstrated in the plan, all such dwellings/cabins are at least 50 feet apart, as required under Section 404. In addition, the minimum lot size per dwelling unit in the rural residential district as shown on Table 305.03 is one acre for lots with "off-lot water." "Off-lot water" is defined in the Zoning Regulations as "water supplied by a state-approved municipal or private water supply system which serves two or more structures." In this case, all water is supplied to all structures through a private water supply system which has been approved by the state in Permits #WW-7-1511-1 and WSID #20927. Consequently, the property, which consists of approximately 39 acres, would be permissible with a density of 39 units. In the instant matter, only 20 structures (18 cabins, the four-bedroom house, and the recreational hall) are proposed and, consequently, are well within the density requirements as identified in Section 404.

The conversion of the units from campsites or seasonal camps to a condominium form of ownership has been held by the Vermont Supreme Court to be outside the statutory jurisdiction of local zoning boards, and does not constitute a subdivision or a change in use. The Vermont Supreme Court has held that the condominiumization of property is a form of ownership and not zoning, and towns do not have the authority to enact zoning regulations or interpret their existing regulations in a manner that would prohibit or impede such condominiumization. *See In Re Lowe*, 164 Vt. 167, 666 A.2d 1178 (1995).

Finally, the District Environmental Commission has reviewed the site plan and has issued a Jurisdictional Opinion confirming that the conversion of the RV sites to small dwellings/cabins does not constitute a material or substantial change under the Act 250 statute or regulations and, consequently, no permit or permit amendments are required for the project as proposed.

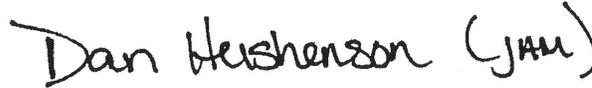
The above does not necessarily mean that no zoning permits are required for the construction of the dwelling/cabins. The construction of the dwellings/cabins is clearly "development" as defined in the Zoning Regulations since it involves the "construction, reconstruction, conversion, or structural alteration" of a building or structure. Pursuant to Section 202.01 "no person shall commence any land development without a permit issued by the administrative officer." Nevertheless, Section 202.04 provides that, if the proposed construction or alteration "is in conformity with the provisions of this ordinance and other ordinances for the town of Barnet, the administrative officer *shall* issue a zoning permit therefor." In the instant matter, as demonstrated, the conversion of the RV sites to dwellings/cabins is clearly in conformity with the Zoning Regulations and a zoning permit for the conversion and construction of these uses should be issued by the zoning administrator upon application.

Michael Vereline
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On October 8, 2014, the Town Zoning Administrator sent you a letter which stated as follows: "Because you have stopped calling your area a campground and submitted the map with the area labeled "condominiums" I feel this is a change of use and requires a permit." Based upon the Superior Court's decision in *In Re Lowe, supra*, this determination is clearly erroneous.

If you have any questions with regard to any of the above, please do not hesitate to contact me.

Very truly yours,



C. Daniel Hershenson
dhershenson@hcsmlaw.com

CDH/jam

20-21-32.17
Campground
includes Bldg 5

BARNET

DECLARATION OF CONDOMINIUM

FOR THE

DBA

THE CABINS ON HARVEY'S LAKE CONDOMINIUMS

THIS DECLARATION OF CONDOMINIUM FOR THE CABINS ON HARVEY'S LAKE CONDOMINIUMS (this "Declaration") dated as of JUNE 4, 2013, shall be effective upon recording and is made by Blue Sky Builders, Inc. a Vermont corporation (the "Declarant").

**ARTICLE 1
FORMATION OF CONDOMINIUM**

Section 1.1 Intentions of Declarant. Declarant is the owner of certain real property situated on Harvey's Lake in Barnet, Vermont, consisting of approximately 39.1 acres. Declarant intends to develop the property as a seasonal community of no more than 18 seasonal detached units and one year-round unit to be numbered Units 1-19. Declarant intends to develop the units in multiple phases pursuant to development rights reserved by Declarant in this Declaration.

Section 1.2 Purpose. The purpose of this Declaration is to form a "condominium" under the Vermont Common Interest Ownership Act with respect to those buildings which have already been constructed. This includes the first phase of the development, consisting of ten (10) buildings, Units 1,2,3,4,5,6,7, 13, 14, and 19. This Common Interest Community is to be known as "The Cabins On Harvey's Lake Condominiums."

Section 1.3 Property. The real property made subject to this Declaration is more particularly described in Exhibit A of this Declaration (the "Property").

Section 1.4 Submission and Declaration. To carry out and accomplish the purpose recited above, Declarant hereby submits the Property, together with all buildings, improvements, amenities, facilities and infrastructure located on or appertaining to the Property now and in the future, and all easements and rights benefiting the Property, to be governed by and regulated in accordance with the provisions of the Vermont Common Interest Ownership Act. Further, Declarant hereby imposes upon the Property the covenants, conditions, restrictions, easements, reservations and other provisions of this Declaration, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, used and improved subject to the provisions of this Declaration.

Section 1.5 Covenants Running With the Land. All provisions of this Declaration shall be deemed to be equitable servitudes and covenants running with the land. The benefits, burdens and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, and all owners, tenants and other holders of any right, title or interest in or to the Property, and their respective heirs, executors, administrators, personal representatives, successors and assigns.

Section 17.5 Captions. The caption to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 17.6 Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the articles of incorporation of the Association and the Bylaws of the Association, this Declaration shall control. In case of conflicts in the provisions in the Articles of Incorporation of the Association and the Bylaws of the Association, the Articles of Incorporation of the Association shall control.

Section 17.7 Exhibits. All the Exhibits attached and referred to in this Declaration are incorporated in this Declaration by this reference and are a part of this Declaration as if fully set forth in the body of this Declaration.

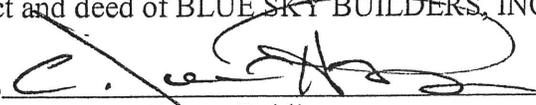
IN WITNESS WHEREOF, the Grantor, **BLUE SKY BUILDERS, INC.**, has caused these presents to be signed in its name by its duly authorized agent this 4th day of JUNE, 2013.

BLUE SKY BUILDERS, Inc.

By: 
Michael P. Vereline, President

STATE OF VERMONT
Windsor COUNTY, SS.

At Hartford, in said county, this 4th day of June, 2013, personally appeared Michael P. Vereline, President and duly authorized agent for BLUE SKY BUILDERS, INC, and he acknowledged the foregoing instrument, by him subscribed and sealed, to be his free act and deed and the free act and deed of BLUE SKY BUILDERS, INC.

Before me, 
Notary Public

My Commission Expires 2/10/15

The minutes for October 7, 2014 were approved with a change requested by Stevenson that on the second page "5" be changed to "several".

Warden had done the year end report and gave copies to the Board.

Warden gave the correspondence as a letter from Timothy Ruggles that he had inspected the Septic and well for Carl Doener and they were installed according to the permit plans; letter from Andrew Fraser confirming that the septic & water system for John & Janet Hartson is exempt from a permit under rule #10; from the Town of St. Johnsbury notice of a public hearing for amendments to their Zoning By-law; from the Agency of Natural Resources that Andy Mosedale change of use did not need a permit; that Frances Fissette, Elaine Gray and Howard Stahler Jr. were issued a 3 lot subdivision for lot#25-01-17; and from the Conant Family Trust that a permit was issued to repair the failed septic system on lot #04-01-01; From Primmer Law firm that New England Power's McIndoe Switchyard Breaker replacement, they requested a waiver of the 45 day advanced notice requirement to receive the required certificate of public good from the public Service Board, With the approval of the Board McLam signed the letter; and also from Primmer notice the New England Power Company d/b/a National Grid to receive a Certificate of Public Good to remove a 5.2 mile line near Comerford dam in Barnet and Waterford.

Gail Aloisio started her presentation by telling the Board she is leaving NVDA on December 17, 2014 so we will have a new staff planner from NVDA to complete the grant work. She then presented copies of the draft flood resilience plan for the Town Plan, a notice that ANR has released the river corridor base map and would like to meet with the Board to review it. January 6, 2015 was suggested.

She also presented a copy of the Flood Resilience Planning Project components and suggested that the Board hold an informational meeting before the public hearing to adopt it to the Town Plan.

The meeting adjourned at 9:40 p.m..

Shirley Warden
Shirley Warden, Secretary
Barnet Planning/Zoning Board

*Approved as
Presented 1-6-15
SW.*