

**TOWN OF DUMMERSTON
DEVELOPMENT REVIEW BOARD
LAND USE DECISION**

Applicant: SB Land Partnership Inc.
Mailing Address: 142 Aiken Road, Putney, VT 05346
Location of Property: Winter Bell Drive off Dummerston Station Road,
East Dummerston, VT.
Application: #3059 dated 10/31/06 Conditional Use Permit, Variance
and Site Plan Review.
Issue: Reconsideration of Conditional Use contingency issues:
The appeal requests reconsideration of the conditions of
financial guarantee for land reclamation upon completion
of the gravel extraction process at the Winter Bell site.

The matter came before a duly warned public hearing of the Dummerston Development Review Board (DRB) held on August 10, 2010, at the Town Office, Dummerston Center, Vermont. The matter was carried over subject to review by the Dummerston Select Board and the Town Attorney. The final conditions and document draft were considered at the February 15, 2011 meeting of the DRB

Present and participating on February 15, 2011 meeting were the following members of the Development Review Board: Cynthia Wilcox, Patricia Jaquith, Herb Rest, and John Warren.; seated as voting member, was alternate Rick Sullivan. Also present were Charlotte Neer Annis, Zoning Administrator, and Timothy Severance.

The public hearing was adjourned following testimony of the applicant. Following the public meeting, deliberations and motions of the Development Review Board took place.

FINDINGS OF FACT

The Board finds as follows:

1. A consolidated Conditional Use Permit, Site Plan Review and Variance was issued to the Applicant March 12, 2007 for the development and operation of an inactive gravel pit on Winter Bell Drive off of Dummerston Station Road in East Dummerston, VT.
2. The conditions of the permit provide for a maximum initial operation of 10 years and include operational and reclamation requirements. The DRB retained jurisdiction of the permit and provided for a 2 year review after notice to area property owners.
3. In recognition that the 2 year review had been missed, the Conditional Use requirements were reviewed at the DRB meeting of March 16, 2010, the review having been noticed by posting at three established locations in Town and published in the Brattleboro Reformer.

- Notification of the adjacent property owners was completed and certified by the applicant.
4. Conclusions of the March Board meeting included requirements to improve dust control and to provide continual maintenance of the access roadway. Also required were the filing of proposed final contour plans and roadway and easement documents for review, per the original Conditional Use approval. Identified also was the failure of S & B Land Partnership LLC (the original entity) to file a performance bond, per condition # 7 of the permit. Response to these issues was carried over for DRB review.
 5. On June 9, 2010 the Board was in receipt of a letter from the applicant identifying what was described as onerous terms required by the Bonding sources and proposed consideration of an irrevocable letter of credit as an alternative.
 6. The DRB reviewed and approved the final contour plans and easement documents at the August 10, 2010 meeting.
 7. The Letter of Credit for costs of reclamation was also reviewed at the August meeting. Mr. Severance, a principal in the SB Land Partnership Inc., further presented a revised and updated estimate for the restoration costs in the amount of \$31,472.00 (reflecting completed and remaining reclamation work). He also agreed to reimburse the Town for reasonable legal costs incurred by the Town in reviewing the SB alternate proposal.
 8. Conclusion of the Board indicated a willingness to work with the applicant in providing an alternate assurance for the cost of reclamation. Further, the Board directed that a second opinion be obtained relating to estimated reclamation costs. Contingent upon concurrence of cost estimates, the matter would be referred to the Select Board and Town Attorney for their approval.
 9. The Select Board identified a Select Board member (Wayne Emery) as an expert second opinion resource. Mr. Emery provided a site review of the Winter Bell operation and the estimated approximately \$31, 000 restoration cost was confirmed.
 10. The recommendation of the attorney and the Select Board in November 2010 was that a personal financial guarantee be obtained from the applicant as the S & B Land Partnership LLC entity could not be identified as a legal entity by the Attorney, Jodi French. This was information subsequently conveyed to Mr. Severance. He indicated that the legal structure was now known as SB Land Partnership Inc., thus explaining the difficulty in confirming the legality of S & B as a legal entity.
 11. At the February 17, 2011 meeting, the continued matter of providing a Bond alternative, having been re-warned, was again considered. The applicant represented that the Reclamation Agreement format of October 2010 be revised to reflect SB Land Partnership Inc. The amount of \$32,000.00 was proposed as adequate assurance to the Town of Dummerston for the site reclamation including grading, seeding and mulching and would be the stipulated amount inserted into the document.

CONCLUSIONS OF LAW AND DECISION

1. The Board finds that the amount of \$32,000.00 for site reclamation may represent a reasonable current estimate of costs but that inflationary contingencies and other unforeseen issues may escalate the final figure. Thus, to provide adequate protection for the Town, a figure of \$40,000.00 is being required.
2. The terms of the Reclamation Agreement, while seemingly acceptable to the DRB, will be the responsibility of and are thus referred to the Dummerston Select Board.
3. Mr. Severances' agreement to reimburse the Town for reasonable legal review costs are referred to the Select Board for final action.
4. Affirmative closure of the Reclamation Agreement proposal by the Select Board shall represent final approval of the DRB on the issue of reclamation cost guarantees in lieu of the original Bond requirement (DRB meeting March 12, 2007).
5. Permit #3059 will again be reviewed by the DRB and the Zoning Administrator after the 5th year, on or about April 2012, as defined in the initial conclusion relating to this application.

The following members of the Dummerston Development Review Board participated and concur in this decision. The Decision is subject to appeal as provided by Vermont statute.

Herb Rest, Patricia Jaquith, John Warren, Cynthia
Wilcox, members; and Rick Sullivan, Alternate

Herbert F. Rest

Dated: February 23, 2011

DUMMERSTON DEVELOPMENT REVIEW BOARD