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## #DRAFT

### 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 Oct 31, 2006  
Conditional Use Permit, Variance and Site Plan Review.  
Issue: The five year status review of and compliance with  
the conditional usage requirements established in  
the DRB decisions of March 12, 2007, April 5,  
2010 and February 21, 2011 for the gravel  
extraction process at the SB Land Partnership, Inc.  
Winter Bell site.

The matter came before a duly warned public hearing of the Dummerston Development Review Board (DRB) held on May 15, 2012, at the Town Office, Dummerston Center, Vermont.

Prior to the meeting, a site visit was carried out by the full panel of the DRB membership, the zoning Administrator, the applicant and the interested party as documented and identified below.

Present and participating in meeting were the following members of the Development Review Board: Jack Lilly, Herb Rest, Lew Sorenson, John Warren and Cynthia Wilcox; seated as a non-voting member was alternate Hugh Worden. Also present were Charlotte Neer Annis, Zoning Administrator, David Baxendale (applicant) and Thomas E. Simeon.

The public hearing was adjourned following testimony of the applicant and the conclusion of DRB organizational matters. 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.
8. 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.
9. 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.
10. 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.

11. 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.
12. 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.
13. The Select board, on March 16, 2011, accepted Reclamation Agreement of SB Land Partnership, Inc. as described in the DRB decision of February 21, 2011 for a \$40,000.00 reclamation cost guarantee in lieu of the originally stipulated Bond requirement documented in the DRB March 12, 2007 decision. The \$40,000.00 amount represents the proposed \$32,000.00 reclamation cost projection and an \$8000.00 allowance for cost under projection and inflationary factors. The Select board acceptance of the Reclamation Agreement represents the final approval of the DRB on the issue of reclamation cost guarantees.
14. The current review of site plan status and compliance with the conditional use stipulations are in conformance with the Dummerston Zoning Bylaw sections 721-727 providing for a 5 year review of all conditional use permits and site plan approvals and reflective of the DRB decisions of March 12, 2007 and March 16, 2010.
15. All required noticing has been executed as required by Dummerston Zoning bylaws.
16. In testimony to the Board, the applicant stated (findings 15 through 19) that the extraction process continues on a lease to an excavating contractor, Zaluzny Excavating.
17. Extraction activities continue 3 to 4 days per week.
18. Because of rock out-copings, the projected total extraction remains below original expectations with a total remaining 60,000 cubic yards to be extracted over, approximately, the next 2 years.
19. The sources of ongoing extraction processes are the eastern end of the south wall and the pit base which will be brought down to the 50 - 60 foot below property line elevation, a final 354 foot elevation, as previously proposed.
20. Adequate materials are available on site to accomplish the required final re-

contouring as required by the conditional use stipulations documented by the Board and as proposed in the contour plan submitted by the applicant.

21. Site visit discussions prior to the meeting established that the roadway easement to adjoining properties/building lots has not been encroached upon.
22. The Board finds that focus of extraction activities is the east end of the south wall of the pit. The resulting grade is more acute than the 2:1 required final contour.
23. The contour of the south wall (eastern end) impinges well within the required 200 foot property line setback but is in conformance with the outer dimensions accepted by the Board in the “finished condition” document of August 10, 2010.
24. The pit base final elevation has been realized at the western section of the operation but significant additional extraction remains available for harvesting at the eastern section to accomplish the 354 foot final elevation as allowed in the previous DRB decisions.
25. Fill material and topsoil material continues to be stored on-site though the amount seems questionably adequate to accomplish the required 2:1 final contouring of the current south wall profile.
26. There appears to be no further excavation occurring within the pit except at the southeastern section, including the east wall immediately adjacent to the south wall and extending northward approximately 200 feet.
27. Winter bell and Station Road maintenance and rain water run-off appear satisfactory and is supported by the testimony of Thomas Simeon.
28. There was no adverse testimony relating to noise, dust, traffic, lighting and the like.

As a point of interest, the applicant testified that an exploratory proposal to merge the operational aspect of the SB Land gravel with an adjoining similar operation is being considered. The proposal would potentially merge the operations across the present south wall thus increasing the extractable amount of gravel and potentially reconfiguring the south wall finished contour configuration.

## **CONCLUSIONS OF LAW AND DECISION**

1. Section 727 applies for the review of the conditional use and site plan permit on a recurring basis every 5 years unless a shorter time has been defined by the antecedent DRB decision. The original decision was rendered March 12, 2007.

2. Sections 720-722 apply for the granting of a Conditional Use and sections 724 through 726 apply for site plan approval. These requirements have been adequately considered in rendering the decisions of March 12, 2007, April 5, 2010 and February 21, 2011.
3. The Board concludes that the operation of the pit is in conformance with previously defined parameters for conditional use, including the filing of final contour site plans, provision of a Reclamation Agreement (in lieu of the originally required Bond) and improved road maintenance.
4. The Conditional Use Permit and the Site Plan approvals continue and are subject to the conditions previously outlined and as modified by the decision of February 21, 2011 and accepted by the Selectboard March 16, 2011 redefining the reclamation assurances.
5. SB Land partnership, Inc. shall submit to the DRB a final reclamation plan no later than March 12, 2015. Such plan shall include contour details and completion dates.
6. The Administrative Officer shall review the conditional use compliance and site plan status March 2017 when the operational permission for the extraction operation terminates. Such review shall be presented to the Board.

The following members of the Dummerston Development Review Board participated and concur in this decision: Jack Lilly , Herb Rest, Lew Sorenson, John Warren and Cynthia Wilcox . The Decision is subject to appeal as provided by Vermont statute.

Herbert F. Rest

Dated: May 25, 2012

DUMMERSTON DEVELOPMENT REVIEW BOARD