

## Town of Bolton Development Review Board

Bolton Town Office  
3045 Theodore Roosevelt Highway  
Waterbury, VT 05676  
802-434-5075

In re: **2012-05-AP**  
Appeal/ ZA Determination re Flood Review  
May 16, 2012

### Appellant

Mark A. Bean, Owner  
Bean's Mobile Homes, Inc.  
PO Box 1375  
Lyndonville, VT 05851

### Appeal

(Notice of appeal and supporting documents are on file at the Bolton Town Office.)

The appellant, Mark A. Bean, is the owner of Bean's Mobile Homes, Inc., located at 3608 Theodore Roosevelt Highway (Route 2) in the Town of Bolton, Vermont (Tax Map ID #14-4160423). The property in question is a 4.6-acre lot that includes a mobile home sales office, an accessory structure, and an outdoor area for the display and storage of mobile home inventory. The property, located in the Village (V) and Village Flood Hazard Overlay (FHO I) Districts, sustained flood damage in August 2011 during Tropical Storm Irene. After this event, the sales office was closed for repair, and the mobile home inventory was removed from the property.

Bolton Zoning Administrator Miron Malboeuf issued a written determination on January 17, 2012, based on a damage assessment filed by Mr. Bean, that the damages to the property were substantial and, as such, conditional use review and approval from the Bolton Development Review Board would be required for substantial repairs or improvements, and to re-establish the mobile home inventory on the lot, in conformance with the town's permanent and emergency flood hazard area regulations.

Mr. Bean then filed a letter of appeal of this determination with the Secretary of the Bolton Development Review Board (DRB), dated February 1, 2012, within the required 15-day appeal period. Specifically in reference to this appeal, the DRB has been asked to consider and determine whether:

1. The repairs and improvements to the property are "substantial" as defined under the BLUDRs in conformance with National Flood Insurance Program definitions, which would therefore require conditional use review and compliance with relevant standards for substantial repairs and improvements; and
2. Whether the mobile home inventory can be re-established on the property within a mapped flood hazard area under the town's flood hazard area regulations.

The DRB has reviewed this matter under applicable sections of Bolton Land Use and Development Regulations, including the town's permanent flood hazard area regulations (Table 2.8, Section 5.5) as amended, effective August 9, 2010, and the Bolton Emergency Flood Hazard Area Regulations as adopted by the Bolton Select Board on October 3, 2011 and in effect through February 23, 2012. **In sum, we reverse the Zoning Administrator's determination, and remand this for administrative review as required for the issuance of a zoning permit for needed repair work and for secured storage of mobile home inventory on the lot, to be conditioned as necessary to ensure that applicable municipal and National Flood Insurance Program standards are met.**

### Hearing Process

(Warnings, hearing minutes and materials are on file at the Bolton Town Office.)

The DRB held an initial public hearing, warned in accordance with the Bolton Land Use and Development Regulations (BLUDRs) and state statutes, on February 28, 2012, with a quorum of the DRB, the appellant Mark A. Bean and Zoning Administrator Miron Malboeuf present. Abutters Rodney and Kathie Pingree also attended and participated in the hearing process. No conflicts of interest or ex parte communications were reported.

The following materials were filed with the DRB in association with this appeal:

- Transmittal letter and flood damage assessment form, completed and signed by Mark A. Bean, dated December 8, 2011.
- Letter of determination issued by Miron Malboeuf, Bolton Zoning Administrator, dated January 17, 2012.
- Letter of Appeal, dated February 1, 2012, signed and submitted by Mark A. Bean.
- A copy of the Digital Flood Insurance Rate Map (DFIRM), dated 6/30/09, showing the location of the property in relation to mapped flood hazard areas and floodway.
- Initial correspondence from Rebecca Pfeiffer, CFM, VT DEC River Corridor and Floodplain Management Section, dated February 6, 2012 regarding the potential application of NFIP standards and bylaw standards to the property and use in question.

The following were submitted by the Zoning Administrator for the record, and provided to the DRB and appellant:

- NFIP information regarding the definition of “substantial damage” and “substantial improvement” as referenced in the BLUDRs, and a list of the costs to be considered, and excluded, in calculating the cost of repairs or improvements.
- A copy of the property’s assessed value (CAMA System Report, dated December 5, 2007) from town property records.

The hearing was continued to March 27, 2012 and then to May 8, 2012 pending the submission of additional documentation from the appellant itemizing the cost of repairs, from the zoning administrator and listers regarding the fair market value of the office structure prior to damage, and additional guidance from the state regarding the storage of mobile homes within the floodplain. The following additional materials were entered into the hearing record for DRB consideration:

- A cost estimate for repairs to the office, dated March 12, 2012, submitted by Mark A. Bean.
- An estimate of the fair market value of the office (structure) submitted by the Zoning Administrator, based on the property’s assessed value adjusted by the town’s 2011 Common Level of Appraisal (CLA), as determined for Bolton by the Vermont Department of Taxes, Division of Property Evaluation and Review.
- Correspondence from Ned Swanberg, VT DEC River Corridor and Floodplain Management Division, to Sharon Murray, DRB Chair, dated March 12, 2012.

Given this information, the DRB officially adjourned the hearing on May 8, 2012.

10. Because the damage is associated with Tropical Storm Irene, and is not substantial, administrative review is authorized for the repair work, as specified under Section 4(A)(2) of Bolton's Emergency Flood Hazard Area Regulations. Conditional use review and approval, as typically required under the town's permanent regulations, do not apply in this circumstance.
11. Other relevant requirements of the regulations remain in effect, including provisions pertaining to damaged structures under Section 3.1 (Abandoned and Damaged Structures), and applicable flood hazard area regulations under Section 5.5 (Flood Hazard Area Review).

### **Findings: Mobile Home Inventory**

1. The Bean Mobile Home sales property is located in the Village (Table 2.1) and Flood Hazard Area Overlay I (Table 2.8) Zoning Districts under the Bolton Land Use and Development Regulations, as amended effective August 9, 2010 to include updated flood hazard area regulations.
2. "Mobile Home Sales" is an allowed use subject to conditional use review in the Village District (Table 2.1). As defined in the regulations (Section 10.2), this use includes "land and/or a building, for which the principal use is the sale of mobile homes" and may include "customary accessory structures or uses, such as an office, an enclosed sales room, and a parking area."
3. Mobile home sales, as allowed in the underlying district, is also an allowed use in the Village Flood Hazard Area Overlay (FHO I) District; however, under the flood hazard area regulations as amended effective August 9, 2010, outdoor storage yards are prohibited in all designated special flood hazard areas, as indicated on current Flood Insurance Rate Maps (FIRMs) for the town [BLUDR Section 2.1, Table 2.8(E)(5)(a)]. Prior to this, only salvage yards and the outdoor storage of hazardous materials were specifically prohibited.
4. According to property records on file at the town office, use of the property for mobile home sales, including outdoor storage and display, began in 1979 and has continued uninterrupted except during transfers of ownership. This use therefore predates the town's zoning and flood hazard area regulations, including the town's 2010 flood hazard area regulations. As such mobile home sales, including outdoor storage and display, is a conforming use in the Village District, and a pre-existing, nonconforming use in the FHO I District that was legally in existence at the time the regulations were enacted, and at the time flood damage occurred.
5. Under the BLUDRs (Section 3.8) a nonconforming use legally in existence as of the effective date of the regulations may be continued indefinitely, unless it has been changed to or replaced by a conforming use, or it has been discontinued for a period of one (1) year, regardless of the intent to resume the use.
6. Mobile homes were removed from the site following the flood event of August 28, 2011. According to the letter from Mr. Bean, dated December 8, 2011, the display homes were temporarily moved to their Lyndonville location as a matter of convenience, for cleaning and repair, to be returned to the Bolton sales center in the spring of 2012. As such, use of the property for outdoor storage has not been discontinued, and the stated intent of the appellant is to re-establish this use of the property within the one-year period.
7. Applicable flood hazard area development standards, as necessary to minimize flood hazards to life and property, apply to the use of the property for mobile home storage as re-established under the

**Findings: Substantial Damage**

1. The property, as damaged by flooding during Tropical Storm Irene, is clearly located within the AE Zone but out of the mapped floodway, as indicated on the Digital Flood Insurance Rate Map (DFIRM), effective July 18, 2011, issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program and the state. As such the town's permanent and emergency flood hazard area regulations apply to this property; and, as an NFIP participating community, the Town is also required to adhere to minimum NFIP program requirements.
2. The damage assessment and accompanying letter dated December 8, 2012, as filed by Mr. Bean, generally describe but do not include an itemized list and associated cost estimate of needed repairs to the sales office.
3. In his letter of determination, dated January 17, 2012, Bolton Zoning Administrator Mr. Malboeuf indicated that, based on the initial damage assessment filed by Mr. Bean, it was his determination that the damage was substantial in nature, and therefore repairs would require DRB review and approval under the town's Emergency Flood Hazard Area regulations. In subsequent testimony, Mr. Malboeuf explained that because the office was a mobile home, according to NFIP guidance, flooding typically results in substantial damage, based on the cost of repair work relative to the value of the structure. Given the description of needed repair work, he determined that the damage, as described, would qualify as substantial.
4. The National Flood Insurance Program definition of "substantial repair" mirrors that of "substantial improvement" as included in the Bolton Land Use and Development Regulations, i.e., a substantial improvement (or repair) includes: "Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure...before the damage occurred" (BLUDR, Section 10.3, Flood Hazard Area Regulation Definitions).
5. "Substantial Damage" is further defined under the Emergency Flood Hazard Area Regulations as "Damage sustained by a structure whereby the cost of restoring the structure to its before-damaged condition is equal to or greater than 50% of the market value of the structure before the damage occurred" (EFHAR, Section 7).
6. As indicated in related NFIP technical guidance, associated calculations to determine substantial damage in this context apply only to the value and cost of repair of the principal structure (the sales office) and not to that of associated accessory structures, land, equipment or inventory.
7. The appellant's itemized list of repairs and associated costs, as accepted by the DRB based on an independent review by DRB member (and contractor) Michael Rainville, totaled \$12,297 including the cost of labor and materials.
8. The assessed value of the principal structure (sales office) at the time of damage (August 28, 2011), as determined from Bolton property records, was \$30,400. The estimated fair market value, based on Bolton's state-determined 2011 common level of appraisal (99.67%) was \$30,500.
9. The value of needed repairs (\$12,297) represents 40.3% of the fair market value of the office (\$30,500) before it was damaged. As such the cost of repairs is less than 50% of the value of the structure, and do not qualify as "substantial" under regulatory or NFIP program definitions.

regulations. Typically mobile homes used for residential or other purposes must be elevated above the base flood elevation, but in this case the mobile homes stored on site are intended only for display. Under current and previous flood hazard area regulations (Section 5.5(E)), and guidance received from the Vermont River Corridor and Floodplain Management Division specific to this appeal (March 12, 2012 correspondence), all display homes stored on site must at minimum be adequately anchored to prevent structural flotation, collapse, release or lateral movement during occurrences of the base flood. They may not be occupied for any purpose, or connected to utilities and services. Continued storage below the base flood elevation may also result in the denial of flood insurance or higher flood insurance premiums on the property.

**Conclusion**

Conditional use review and approval by the Development Review Board is not required under the Bolton Emergency Flood Hazard Area Regulations in effect at the time of appeal, as applicable to this property and use, because the damage sustained to the sales office is not "substantial" as defined under the regulations and National Flood Insurance Program (NFIP) requirements. **We therefore reverse the Zoning Administrator's determination that conditional use review is required, and remand the application for administrative review under Section 4(A)(2) of the emergency regulations, with the understanding that applicable standards under the Bolton Land Use and Development Regulations for damaged structures (Section 3.1) and for flood hazard areas (Section 5.5) will be incorporated under conditions of administrative approval.**

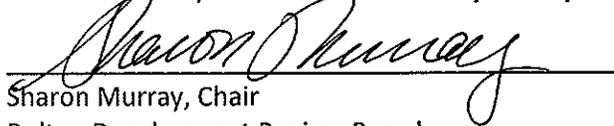
Use of the property for mobile home sales, including the outdoor storage of display homes was legally established in 1979, prior to the town's adoption of zoning and flood hazard area regulations, and as such represents a pre-existing nonconforming use under the town's current (2010) flood hazard area regulations. This use has not been abandoned or discontinued for a year or more, and can therefore be re-established to its previous extent, as provided under Section 3.8 of the Bolton Land Use and Development Regulations. **The appellant is therefore authorized to re-establish outdoor storage of display homes on the lot to its previous extent. Display homes stored on the lot, however, must meet requirements under the town's current flood hazard area regulations (Section 5.5) for adequate anchoring to prevent flotation, collapse, release or lateral movement, as well as other applicable standards, including required setback distances for the Village District. These requirements are to be incorporated under administrative conditions of approval.**

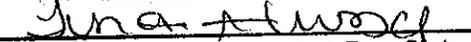
**Issued by the Bolton Development Review Board (4-0):**

Michael Hauser – Yea  
Sharon Murray – Yea

Margot Pender – Yea  
Michael Rainville – Yea

Dated at Bolton, Vermont this 16th day of May 2012.

  
Sharon Murray, Chair  
Bolton Development Review Board

**Bolton Town Clerk's Office**  
**Received For Record**  
MAY 29 2012 A.D.  
at 8 o'clock 00 minutes A M  
Recorded in Book 83 Page 893-897  
Attest:   
Asst Town Clerk

**NOTICE:** This decision may be appealed to the Environmental Division of the Vermont Superior Court by an interested person who participated in the proceeding before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Division Proceedings.

**Bolton Town Clerk's Office  
Received For Record**

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