

TO: Select Board Members, Town of Bolton

FROM: Residents of Bolton, Mountain View Association

DATE: October 13, 2015

RE: Converting the Association's Roads from Private to Town Managed

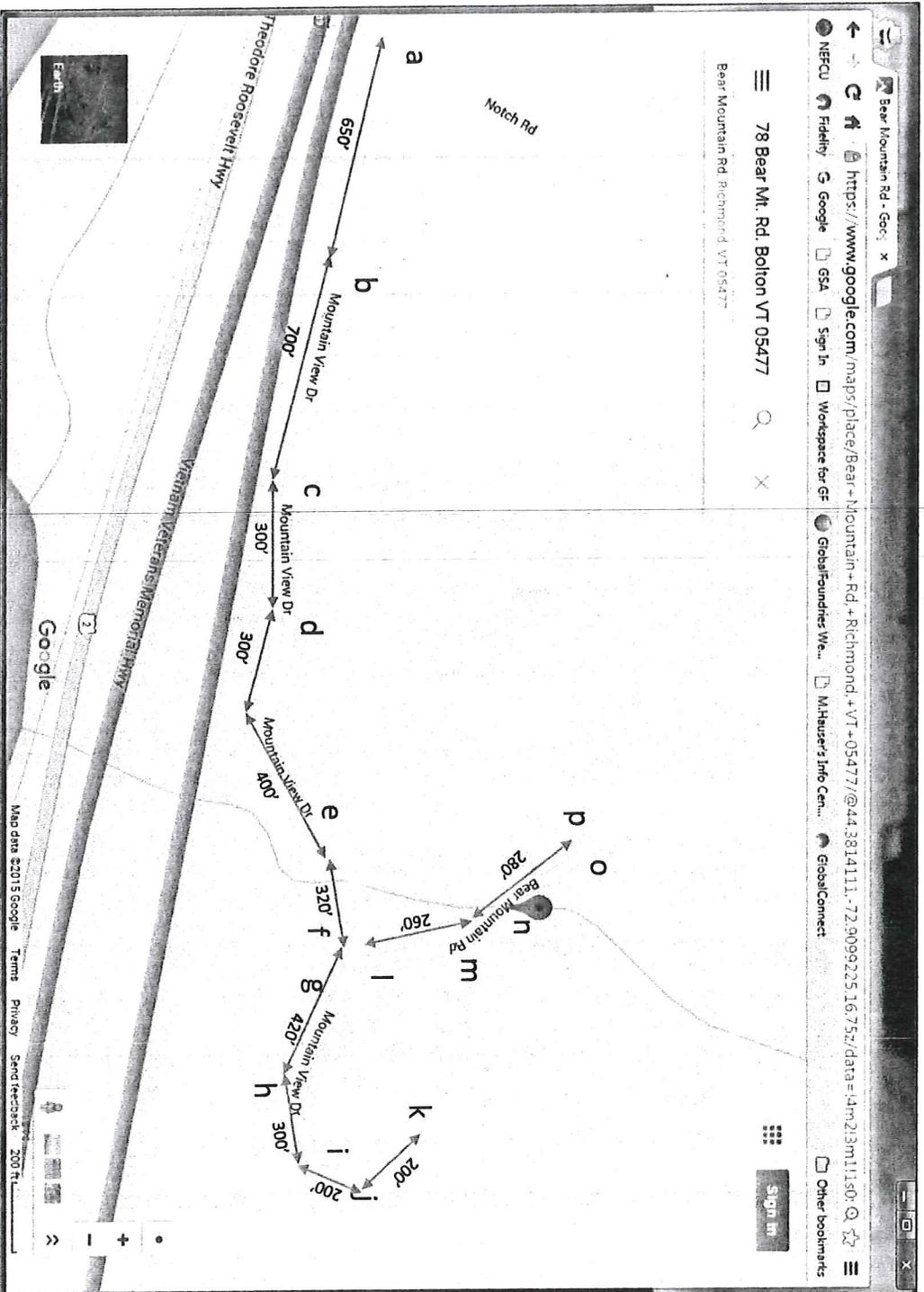
As a follow up to the initial request on June 15, 2015 and the required petition signatures, we would like to continue to pursue the request that the roads of Mountain View, Bear Mountain and Fern Hollow become town roads and are plowed, maintained and repaired by the town of Bolton.

Our request is based on the following:

Facts

1. The Roads in discussion include: Mtn View, Bear Mtn and Fern Hollow roads
2. Roads are built to the A-76 standard with Mtn View being provided a waiver by the Bolton DRB prior to the houses being built on Bear Mtn and Fern Hollow.
3. We are taxed at an equal rate of other houses of similar value but that are on public roads.
4. Mtn View is listed as a public road in the town plan.
5. There is 1.5 miles of road with 20 houses, 1 landowner (147 acres) and Green Mtn Power, Green Mtn. Club and the United State Postal Service all that have access to and use of the roads in discussion.
6. The school bus comes onto Mtn View Road. Several residents have seen the bus and have had their kids get on the bus on Mtn View Rd. Houses on Mtn View have stated the bus has turned around impacting their lawn.
7. Because it is a private road we cannot apply for FEMA when a natural disaster happens, yet the town can to help off set costs.
8. Green Mtn Club and Green Mtn Power appraised value for taxes is: \$2,780,800 some of which is for land off of the roads in discussion.
9. The appraised value and therefore taxed value of the houses on the roads in discussion:
\$4,643,700 = \$25,075.98 in town taxes
10. The appraised value and therefore taxed value of the houses on Bear Mtn. and Fern Hollow:
\$2,180,800 = \$11,776.32 in town taxes
11. It takes 15 minutes to sand and plow the roads in discussion
12. There are about 11 other roads in Bolton that have less than 20 houses on them and are considered public and plowed, maintained and repaired by the town.

Attached is a map that describes the width of the roads in discussion



Road Width/ROW:

Mountain View Dr.

a = 18'

b = 18'/25'

c = 18'

d = 18'

e = 18'

f = 23'

g = 12'/25'

h = 18'

i = 18'

Bear Mt. Rd.

l = 32'

m = 18'/30'

n = 18'

o = 18'/30'

p = 20' X 50'

(Turn-around)

Fern Hollow Rd.

j = 18'

k = 20' X 50'

(Turn-around)

December 5, 2001 Public Hearing
Patrick Smith Subdivision/Bolton Valley Sketch Plan Review

Town of Bolton
3045 Theodore Roosevelt Highway
Bolton VT 05676
802-434-5075

Development Review Board Public Hearing Minutes

December 5, 2001

Development Review Board members present: Rob Heimbuch, Mike Rainville, co-chair, Ken Richardson, Susan Vita, Shirley Zundell, co-chair

Development Review Board members absent: None

Bolton Zoning Administrator: Dick Ward

Clerk: Amy Grover

Also present: Patrick Smith, John Stuart, William Bullock, Dan Champney, Rod and Doris Wheelock, Rodney Pingree, Alan Douse, Pete and Kelly Gosselin, Sean and Kristen Rup, Ann and Don Whitman, Joe Vita, EJ Ned Hamilton, Daniel Izor, Bernie Chenette

Call To Order

Mike Rainville called the hearing to order at 7:02 p.m.

Public Hearing

This hearing was convened to consider the application of Patrick Smith for final plat approval for an eight (8) lot subdivision located on Mountain View Drive. Proposal includes division of two hundred and sixty (260) acres into seven (7) lots averaging twelve (12) acres or greater in size, and one (1) lot approximately one hundred and sixty (160) acres, Tax Map parcel #8-904049 (AR - 1 and R - 2 Districts).

Patrick Smith and John Stuart appeared on behalf of the application.

Mike Rainville swore in all parties who would be giving testimony.

Development Review Board Report

Mike Rainville asked Misters Smith and Stuart for more information regarding the proposed eight-lot subdivision.

Applicant Comment

Patrick Smith stated that he was proposing an eight-lot subdivision. He stated that there would be one common drive that would serve four lots, and four other driveways. His lot

would be approximately 190 acres; the other seven lots 10+ acres. With regard to septic systems, there would be four conventional systems, and four mound systems. Mr. Smith then turned the floor over to the project engineer, John Stuart.

John Stuart noted the piece of property is in excess of 260 acres, and directed the Board's attention to a site plan map on display. Mr. Stuart stated there would be a common road to access four properties, which would be single family dwellings. Mr. Stuart stated that there would be minimal disturbance to the entire piece, and that houses would be concentrated down toward the front of the property to minimize the visual impact of where houses were placed. Mr. Stuart noted that there are a number of areas designated for waste systems with medium and coarse sands, entailing pumping to conventional fields. He added that two areas would have mound systems, with pump stations. Each lot would have its own drilled well for water.

Mr. Stuart stated that the amount of disturbance to the site from the common road and driveways would be at a minimum, as the road and drives would follow the existing terrain wherever possible, to minimize cuts and fills. He stated that ninety to one hundred acres of the land is a major drainage area, which would involve stonelined ditching on the uphill side of the roads/drives, and silt fencing to trap sediment so it would not move offsite and impact surface water or water supplies such as Mr. Douse's. Mr. Stuart stated this was the overall view of the proposal.

Mike Rainville stated that he had a letter from Eric Andrews, the Bolton Road Commissioner to enter into record. In the letter Mr. Andrews wrote that the road must meet minimum base requirements of Vermont A-76 road standards. Mr. Stuart stated that the road would have an 18-inch gravel base with 6 inches over that, and that was the A-76 standard. Ken Richardson asked why the term common driveway was being used instead of road. Mr. Stuart replied the term could be a common road or roadway, serving 4 lots, 400 - 600 feet in length. Mr. Richardson asked if it was then really a road and not a driveway. Mr. Stuart replied right.

Rob Heimbuch asked what length the driveways were. Mr. Stuart replied one was 300 feet, another 400 feet, the others were over 400 feet in length. Mr. Heimbuch stated that one issue that the Bolton Fire Chief has is that any road over 400 feet must have a turnaround area at the house large enough to turn around a 33 foot fire truck, and asked if that had been allowed for. Mr. Stuart replied yes. Mr. Heimbuch stated that some of the areas looked too steep to be able to turn a fire truck around, and questioned lot #8, which appeared to have two houses. Mr. Stuart replied that was a duplication, that there was only one house planned for lot #8. Mr. Heimbuch stated that all but lots #1 and #2 might be too steep to turn a fire truck around. Mr. Stuart stated that there were 5-foot contours on the plan, and that actually the areas around the house sites were flatter than represented. Mr. Heimbuch asked if the darker lines were not indeed 10-foot contour lines. Mr. Stuart replied that they were 25 foot contours lines, but then noted that Mr. Heimbuch was correct, they were 10-foot contour lines. Mike Rainville noted that Misters Smith and Stuart needed walk the site with the fire chief to look at and explain

the area to him. Mr. Rainville then noted that although this hearing had been warned as the final hearing, it was going to become more of a work session.

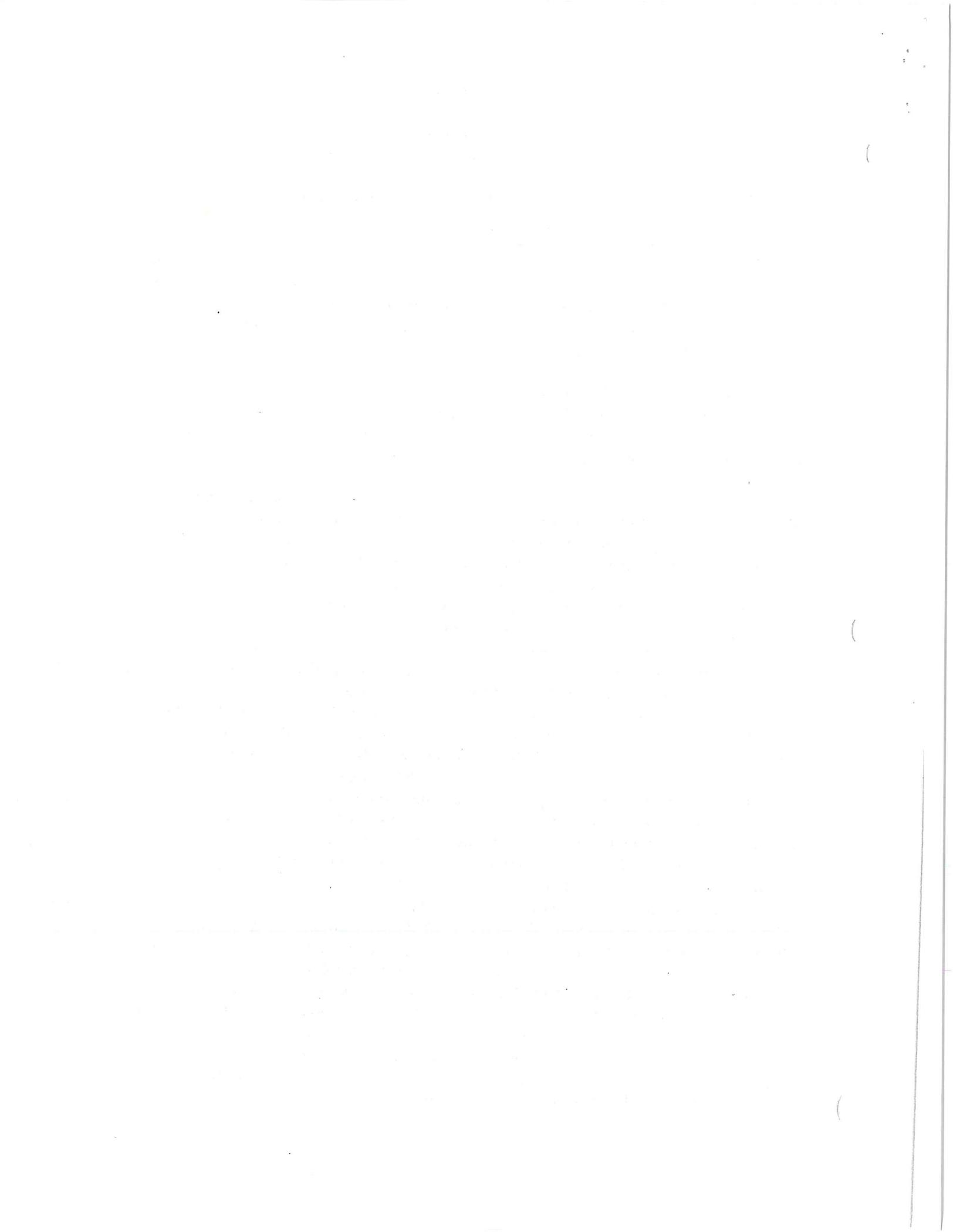


Mike Rainville stated that when Mr. Smith had come in for the sketch plan review, he was told that it would be necessary for him to form an association, and asked if he had spoken with residents on the road. Mr. Smith replied that yes, he had spoken with people, but that he could not force an association if the residents didn't want to join. He stated that he could force his lots into an association by putting that in the deed, but as far as people already living on the road, he couldn't force them to join. He added that his eight lot association would have to take over taking care of the road, and that there was only so much that he could do.

Ken Richardson noted that the wastewater easement for lots #7 and #8 appeared to be only about 50 feet from the back of the Whitman and Douse properties. Mr. Stuart replied that it was about 100 feet to the corner, and that the actual systems would be about 200 feet from the properties.

Mike Rainville asked if Mountain View Drive currently meets Vermont A-76 road standards. Mr. Stuart replied that it probably didn't. Mike Rainville noted that the road was built before regulations were in effect. Shirley Zundell asked how far it was on Mountain View Drive to the subdivision area. Mr. Smith stated it was about 1/2 of a mile. Dick Ward noted that Mountain View Drive is a sub standard road with a 30-foot right of way and a 15-foot travel way. He added that an additional 8 lots on a private road would seem to require at least some increase in road width. Mr. Ward stated that he had no idea what Mr. Smith's right of way was to his land, adding that if the right of way is across Mt. View Drive, the Board could force a road upgrade. Mr. Smith stated that it was something he could look into, but as far as widening the road, he didn't know what his rights were to do it, that he must need to get permission from someone. Mr. Rainville noted that Mr. Smith had to address the road issue, stating that by adding 8 lots the road would fall apart. Mr. Smith replied absolutely, and noted that an association fee based percent wise on where one lived on the road would take care of the road. Rob Heimbuch asked if Mr. Smith was only going to be maintaining the road to in front of where his access areas were. Mr. Smith replied yes. Shirley Zundell asked how long the road was. Mr. Smith replied about 600 feet. Ms. Zundell asked if the road would meet all specifications and standards. Mr. Smith replied absolutely, that was the easy part, and that the road ended where it split to lots #7 and #8 to become driveways. Susan Vita asked if lot #8 had a right of way through lot #7. Mr. Stuart replied correct, there was a 60-foot right of way over lots #7, #6 and #5. Dick Ward stated that was a legal question, and he had concerns if Patrick Smith had the legal right to convey his right of way over Mountain View Drive to others, and that it is up to the applicant to respond to that. He noted that adding an additional eight lots without a conveyance is an issue, and stated that he did not know if Mr. Smith had researched this. Mr. Ward also noted that typically one would not see sixteen lots on a private road, noting that South Burlington allows five. He stated that a 30-foot right of way is substandard even to A-76 standards, and that there are no pull offs on the road without using a private driveway. Mr. Ward also noted that was why the Bolton Fire Chief had concerns, no pull offs and a road with steep inclines. Mr.

Widening
Mt. View
DRIVE
Adding
8 Lots
Poor
Condition
of
existing
Road
30' ROW



Ward stated that he told the applicant in June that he needed to answer to some of these issues, and they had not been responded to. Mr. Ward stated that the Board might be able to call Mr. Smith's application incomplete, but that the process needed to move to the hearing stage before the application could be deemed incomplete. Mr. Ward noted that the Town of Bolton might need to address the issue of how many houses are allowed on a private road.

Rob Heimbuch asked who owned the road. Mr. Smith stated that Danny Champney owned the road. Shirley Zundell asked who maintains the road. Danny Champney replied that their policy was neighbor helping neighbor, and that worked for them. Mike Rainville asked if there was a possibility of all the residents and Mr. Smith getting together to maintain the road, noting that he knew that money was an issue. Mr. Rainville noted that he saw heads shaking "no," and Mr. Smith stated it was possible for him. Mr. Rainville stated there were ten residences on the road now, Mr. Smith would add eight, and asked if Mr. Smith's residences would rule over the ten already there. Mr. Smith replied that his association would be on a percent basis, depending on where the person lived on the road. He added that the current residents have an informal association, he would have a formal association. Shirley Zundell asked if it was possible to come through the Bolton Notch Road. Mr. Smith replies it would be quite a trick, and tough, but possible. Dick Ward stated that for the record he saw a tow along grader and a personal pick up truck for a plow, and asked if that was what was used to maintain the road. Danny Champney replied yes.

Ken Richardson asked if everything was ideal, the roads, septic, power, would there still be objections from the ten residents. Don Whitman replied yes, there would be additional traffic worrisome to children riding bikes, water drainage and proximity to water source issues, and the surface water issue, which could not be overlooked. Alan Douse stated that he could not be convinced the effect of the surface run off to the two streams was not going to be incredibly affected by a minimal amount of clearing and redirection of water, his biggest concern. Rob Heimbuch asked if the streams were on the map. Dick Ward replied they were highlighted on the map on display. Ann Whitman stated that the map was missing many natural features, adding that one of the streams runs 20 feet from their septic field, a grandfathered substandard situation, but that the subdivision could have significant effect in changing that stream flow. Ms. Whitman continued that the map was also missing houses, streams, septic fields, natural features, property lines, rights of way for roads and power lines. Don Whitman stated the property lines on the map were incorrect. Mike Rainville asked if the Whitmans would like all of that information on the map. Ann Whitman replied that would be helpful.

Mike Rainville stated that the Bolton Road Foreman would like information on the drainage issue also, and noted that the drainage issue was a big issue for the current residents.

Rob Heimbuch asked if the existing water systems were all wells. Ann Whitman replied no, some residents had dug springs.

Mike Rainville stated that Mr. Smith does have the right to add eight units, if he meets all of the criteria. Mr. Rainville added that the road is a big issue, and it appeared that the situation had reached "Hatfield and McCoy" status. Patrick Smith stated that if no one wanted to join his association, he could maintain the road with his eight people, adding that it is done now with ten people.

Mike Rainville asked Dick Ward for his insight into why Mr. Smith's application might not be complete. Mr. Ward stated that some issues that needed to be addressed were;

- Access and conveyance. Mr. Smith has access, but conveying his rights to seven other people may be prohibited. Mr. Smith stated that he did have the right to convey his access, and that information would be forwarded from his lawyer.
- Fire.
- Water.
- Turnarounds at the houses.
- The possibility of 18 units on a road with only springs and wells, and no ponds. Mr. Ward stated that he believed from an insurance company standpoint, Mr. Smith would need to have ponds to provide water, especially for house which are 600 feet up a hill.
- No pull off areas on the road, at least a couple are needed to allow cars to pass.
- No information regarding power and utilities. Mr. Ward asked if the power was going to be overhead, if the current number of poles was enough for 8 additional houses, if it would be underground, or crossing other properties, and that that information was needed for the record. Mr. Smith stated he had that information. Mr. Ward replied the letter from Green Mountain Power should have been entered into the record.
- The culverts under I89, are they large enough for additional run off.
- Plugged culverts on the road, which lead back to drainage issues.
- How and where would a transition from a fifteen' wide road to a twenty' wide road take place. Mr. Ward added ideally the whole road would be uniform size.

Mike Rainville stated that Mr. Smith also needed to talk with Richmond Rescue regarding ambulance access.

Pete Gosselin stated that he did not believe that the road was even capable of meeting A-76 standards. He stated he did not believe that the road could be widened to meet A-76 road standards without purchasing land, especially near the Whitman's property, adding that then snow would be plowed onto lawns, and some trees would have to be removed. He added that 2 cul de sacs needing a 100' radius, and overhead utilities were not shown on the map. Dick Ward stated that the road has a 30-foot right of way, and asked if everyone owns a piece of that right of way. He added that it was not his job to find out.

Shirley Zundell asked if Mr. Smith had undertaken any other developments in the last 5 years. Mr. Smith replied no.

Dick Ward asked if a state permit was needed for onsite waste disposal. John Stuart replied no, because all of the lots were over 10 acres.

Rodney Pingree stated that if more than 500' of a road is developed, it requires ACT 250 approval. Dick Ward stated that it was more than 800' on a Town Road. John Stuart stated that the 800' rule went away the last legislative session, and that ACT 250 comes in at the 10th unit now with zoning regulations in place, or the 6th unit without zoning regulations in place. Rob Heimbuch stated the applicant needs to check on the ACT 250 issue to be sure that no permits are required.

Ann Whitman stated that the property falls into two different zones, Agriculture and Rural I, and Rural II, and asked what applies to the area as far as frontage and lot size. Dick Ward replied that what applies depends upon which district it lies in. Ann Whitman stated she would like to see the boundary marks for the 2 zones on the map.

Shirley Zundell stated she would like a list of variances requested for the development. Patrick Stuart replied he was requesting none. Ms. Zundell stated that there was no frontage on a public road for one, and stated that Mr. Smith needed to check the Town's ordinances and regulations and let the Board know what variances Mr. Smith would be requesting.

Pete Gosselin stated that something not discussed was the need for drainage easements from three properties, Champney, Whitman and Douse. He added that all of the drainage would go through their properties. John Stuart replied that they did not need drainage easements, the water is presently going through the area. Mr. Stuart stated that they had to show that the development would not impact on the properties.

Shirley Zundell stated that mobile homes and clear cutting needed to be addressed. Patrick Smith replied that he would put into the deeds that mobile homes and clear cutting would not be allowed. Dick Ward noted that the Town could not discriminate on those issues, however Mr. Smith could add those restrictions to the deeds.

Rob Heimbuch asked if culverts or bridges would be used where the road crossed streams. John Stuart replied there were only two crossings, and that culverts and headwalls would be used. Danny Champney asked what size. Mr. Stuart replied that it depended on the drainage area, it would be indicated on the plan.

Dick Ward asked if there were other issues that people wanted to comment on. Danny Champney stated that between lots #5 and #6 there was a main brook. He stated that there was a 30-inch culvert there now, and that the water was at the top of the culvert. He stated there also was only a 30 inch culvert under I89 and asked what Mr. Smith would do. Mike Rainville stated that Mr. Stuart would demonstrate some retention ponds. Mr. Gosselin stated that Mr. Smith was supposed to submit a 50-year storm plan, and that the drainage easement issues needed to be clarified. He added that he believed that everyone downhill would see increased drainage. Mike Rainville stated that the engineers could take care of drainage issues, the lawyers could take care of the access issues, but stated he felt it was best for Mr. Smith and the residents to be talking to work out the road issue. Mr. Smith stated that he was unclear how much of a right he has to widen the road if he

needs to. Dick Ward stated that the current 30' right of way belongs to ten people, and that probably at least a majority of the ten must agree to the widening. Mr. Ward added that Mr. Smith needed to explore the possibilities the best that he can, and then it is up to the Board to approve or deny the subdivision. He stated that if the subdivision is approved there is a 30-day appeal period if the current residents do not agree with the approval, and that then it would be out of the Board's hands at that point. Mr. Ward stated that the Board was doing its best as lay people to satisfy the town and the residents. Mr. Ward added that Mr. Smith had heard within the last 4 days there are a number of issues that need to be resolved.

Shirley Zundell asked what Mr. Smith's plans were for the rest of the property. Mr. Smith replied that he hoped to live there on his lot. Ms. Zundell asked if there would be more development on his lot. Mr. Smith replied he did not think so, but maybe 2 more lots at the most, if that.

Rodney Pingree stated that the concern for the current private drinking water supplies should not be underestimated. He stated that the proposed development is in the recharging area for those water supplies, and that anything that disrupts the subsurface area there could limit both the quantity and the quality of the water. Rob Heimbuch asked if the map could identify where the abutters draw their water source. John Stuart stated that they would do that, as well as identify it as a spring or well.

Dick Ward asked how many acres Mr. Smith had logged. Mr. Smith replied he had had selective cutting done, anything valuable.

Mike Rainville asked if there were any other comments. There were none.

Dick Ward stated that January 16, 2002 would be the next scheduled meeting of the Board, and that Mr. Smith needed to notify him whether or not he was ready to come back before the Board on that date with the requested documentation and information.

Deliberation and Decision

Rob Heimbuch made a motion to continue the Smith application on or about January 16, 2002. Mike Rainville seconded the motion. Approval was unanimous.

The hearing was adjourned at 8:03 p.m. until a continuance at a later date.

Sketch Plan Review

The Sketch Plan Review meeting convened at 8:10 p.m.

Request of Bolton Valley Holiday Resort, for a Sketch Plan Review. Proposed 18-lot subdivision off of the Bolton Valley Access Road. Sketch Plan approval required by the Development Review Board, Section 4, Article II, Section 250 of The Town of Bolton Subdivision Regulations.

Ned Hamilton, Bernie Chenette, and Daniel Izor appeared on behalf of the application.

Applicant Comment

Bernie Chenette gave an overview of the project, and explained the map of the project on display to the Board. Mr. Chenette stated that Bolton Valley Holiday Resort was showing an 18-lot single residence subdivision on the Bolton Valley Access Road. As a reference point, Mr. Chenette noted that the "Bolton Valley" sign is close to lot #1, and that the sugarhouse is approximately in the middle of the project. The lots range in size from approximately 30 to 80 acres. Mr. Chenette stated that this was the first cut on the subdivision, and that some preliminary soil checking had been completed. Mr. Chenette stated that the houses would share septic systems, using a cluster system for wastewater, and that water would be on site. Mr. Chenette said he was hopeful that building spots would be located down low on the lots near the road, with less than 400' driveways, and that the back of the lots would be conserved, possibly with deed restrictions. He stated that at this point they were still working with different ideas, such as clustering. Mr. Chenette stated that they also must decide what would happen to the sugarhouse. Mr. Chenette stated that from listening to the previous hearing, he knew that the steep grade might be an issue for firetrucks, and that the frontage on a public road was an issue. With regard to driveways, Mr. Chenette stated that they would try to utilize a common road/drive to serve four to five lots, others might be one drive for two lots, and that they would try to minimize curb cuts by maximizing common drives, but some sort of loop road would be impossible.

Ken Richardson asked why Bolton Valley was selling such large lots, as opposed to a 5 – 7 acre piece. Mr. Chenette replied that it was a marketing technique to provide a feeling of controlling a larger piece of land. Ned Hamilton added the larger lots would allow room for horses, tennis courts or the like. Dan Izor stated that a smaller lot would landlock the land behind it. Mr. Chenette stated that the steepness and the ledge on the land would restrict developing the land on the higher side of the lots, adding that the land is unforgiving further up toward the back of the lots.

Shirley Zundell asked if Bolton Valley had applied for ACT 250 yet. Bernie Chenette replied that they had not as of yet. Mike Rainville asked if they would go through the ACT 250 process before they came back to the Board. Mr. Chenette replied that they would be sitting down and talking the project through, and estimated it would take three to four months. He added that it would be an amendment to Bolton Valley's permit and that issues at the ski area would not transfer down.

Mike Rainville asked if they would be requesting variances from the Board for the project. Bernie Chenette replied that he did not see any variance issues right now except for the frontage on a public highway.

Susan Vita asked if they would be marketing the lots for primary residences or second homes. Bernie Chenette replied that was an unknown, and realized that could provide a concern with regard to the educational facilities in Bolton. Shirley Zundell asked if they would be building the homes in addition to selling the lots. Ned Hamilton replied they would only be selling the lots. Dick Ward stated that they needed to speak with the School Board, that at a cost of \$7,500 per student per year, it could be a serious impact. Mr. Ward stated that they also needed to go to Camel's Hump Middle School and Mount Mansfield Union High School to find out if it would be a burden. Ned Hamilton stated that they couldn't control the type of home built, but he envisioned it as the home of grandparents with no children to impact the educational facilities, with the home price in the 300 - 500 K range. Mike Rainville stated homes in that range would generate approximately 8,000 to 10,000 dollars per year in property taxes. Ned Hamilton stated that he was certain there would be covenants and restrictions on the deeds to keep the value of the property, but their intent was to keep it simple, with no homeowners' association.

Rob Heimbuch asked about the current V.A.S.T. trail running near lots #8 and #9. Daniel Izor replied it would be up to V.A.S.T. and the landowner to secure the trail. Amy Grover asked about the future of the sections of the Catamount and Long Trails near the proposed lots. Bernie Chenette replied it might be a possibility to incorporate feeder trails into the existing network to further enhance the marketability of the lots, but that would be their choice.

Shirley Zundell asked if hunting would be allowed. Daniel Izor replied that currently it would take a monumental effort to post the land, and that the land is not posted. Ned Hamilton stated that each homeowner would have the right to post their own lot.

Susan Vita asked if the smaller lots on the east would be more affordable, and asked about their position in relation to Joiner Brook. Ned Hamilton replied the smaller lots might be more expensive because of the views. Bernie Chenette stated that they would have to take a hard look at the configuration of the lots on that side.

Mike Rainville asked if the abandoned tower dating from 1947 on Mount Stimson was in one of the proposed lots. Daniel Izor noted that the tower was on Bolton Valley land, and that it was no longer in use of any sort. Mike Rainville stated that there might be a need for future access to that area.

Dick Ward asked about a timetable for the project. Bernie Chenette replied that there was a lot of design and fieldwork still to do. He stated they hoped to design over the winter and receive needed permits by spring. Ned Hamilton asked what some of the issues they needed to address were. Mr. Ward replied, water, sewer, curb cuts, and building envelopes. Mr. Ward asked what the applicants thought about impact fees to

offset costs to the Town. Mr. Ward addressed the Board and stated that assessing an impact fee was an issue that needed to be addressed.

Mike Rainville asked if there were any more questions or comments. There were none.

The sketch plan review meeting adjourned at 8:50 p.m.

Rob Heimbuch made a motion to approve the minutes from September 19, and 24, 2001, October 17, and 18, 2001. Susan Vita seconded. Approval was unanimous.

Other Business

Mike Rainville stated that the Town must address the issue of how many houses are to be allowed on a private road, and asked Amy Grover to forward the issue to the Planning Commission.

The Board noted that the process of applying for a subdivision must be scrutinized carefully, and noted that at in the least, a provision for a preliminary hearing must be added to the process. As the Subdivision Regulations now stand, an applicant goes directly from sketch plan review to a final hearing.

Dick Ward noted that the possibility of an impact fee must be explored, noting that between the two subdivisions that have been applied for, Mr. Smith's on Mountain View Drive, and the Bolton Valley subdivision, there was the possibility of 26 homes being built within a very short period of time. Mr. Ward also noted that Ralph DesLauriers had applied for an ACT 250 permit extension for a subdivision on Snow Pond Road.

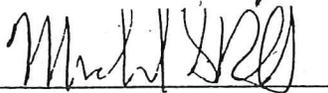
The meeting was adjourned at 9:08 p.m.

Amy Grover
Clerk, DRB

Minutes are unofficial until accepted.

These minutes were read and accepted by the Bolton Development Review Board on

2/20, 2002



Shirley Zundell and/or Mike Rainville, Co-Chairs Bolton Development Review Board

To: Dick Ward, Z.A.
From: Amy Grover, DRB Clerk
January 11, 2002

I went through the minutes and culled this list of issues that either you, the Development Review Board, or the current residents of Mountain View Drive asked Mr. Smith to address. Of course, these are in addition to (although some may be duplications of) the Final Subdivision Requirements contained on pages 8 – 13 of the Town of Bolton Subdivision Regulations. I thought this might be useful to you, and also to Mr. Smith, to serve as a reminder of the necessary additional information and documentation that the Board would like Mr. Smith to provide.

- Access and conveyance. Mr. Smith has access, but conveying his rights to seven other people may be prohibited. Mr. Smith stated that he did have the right to convey his access, and that information would be forwarded from his lawyer.
- Fire. Mike Rainville stated that Misters Smith and Stuart needed to walk the site with the Bolton Fire Chief. Areas too steep to turn a firetruck around are of a concern.
- Water and drainage issues. Many concerns from the residents, and the Bolton Road Foreman. One resident asked about drainage easements for the Douse, Whitman and Champney properties. Another commented that the current culverts have water running to the top now. Culverts running under I89. A 15-year storm plan to be submitted.
- Richmond Rescue access, Mike Rainville asked Mr. Smith to speak with Richmond Rescue.
- Turnarounds at the houses. A resident stated that 2 cul de sacs were not shown on the map.
- The possibility of 18 units on a road with only springs and wells, and no ponds. Mr. Ward stated that he believed from an insurance company standpoint, Mr. Smith would need to have ponds to provide water, especially for house which are 600 feet up a hill. Retention ponds.
- No pull off areas on the road, at least a couple are needed to allow cars to pass.
- No information regarding power and utilities. Mr. Ward asked if the power was going to be overhead, if the current number of poles was enough for 8 additional houses, if it would be underground, or crossing other properties, and that that information was needed for the record. Mr. Smith stated he had that information. Mr. Ward replied the letter from Green Mountain Power should have been entered into the record.
- Plugged culverts on the road, which lead back to drainage issues.
- Road width increase issues. How and where would a transition from a fifteen' wide road to a twenty' wide road take place. Mr. Ward added that ideally the whole road would be uniform size. A resident stated he believed land would need to be purchased to widen the road.
- ACT 250 issues. Rib Heimbuch asked that Mr. Smith check to be certain no permits are needed.

- Variances requested. Shirley Zundell asked that Mr. Smith check the town's ordinances and regulations and advise the Board what variances will need to be requested. She stated that no frontage on a public road was one variance.
- Map issues. Residents had a list of things they would like to see added to the map; Boundary lines for the zoning districts. Correct property boundary lines. Identify the areas from where the abutters draw their water, and note it as a spring or well, concern about disturbing the recharging area for water sources. Identify houses, streams, septic fields, natural features, rights of way for property lines, rights of way for power lines.

Development Review Board Public Hearing
February 20, 2002
Rooney Variance, Smith Subdivision and LaFreniere Sketch Plan Review

Town of Bolton
3045 Theodore Roosevelt Highway
Bolton VT 05676
802-434-5075

Development Review Board Public Hearing Minutes

February 20, 2002

Development Review Board members present: Rob Heimbuch, Mike Rainville, Co-Chair, Susan Vita, Shirley Zundell, Co-Chair

Development Review Board members absent: Ken Richardson

Zoning Administrator: Dick Ward

Clerk: Amy Grover

Also present: Joe Obuchowski, Patrick Smith, John Stuart, Ann Whitman, Don Whitman, Roderick Wheelock, William Bullock, Peter Gosselin, Charles Rooney, Ron Lafreniere, Joseph Vita

Agenda

1. Charles and Susan Rooney – Variance Request
2. Patrick Smith – Eight Lot Subdivision
3. Ronald LaFreniere – Sketch Plan Review Three Lot Subdivision
4. Minutes, December 5, 2001
5. Any other business or communications.
6. Adjournment.

Call To Order

Mike Rainville called the hearing to order at 7:02 p.m.

Agenda Item #1 Charles and Susan Rooney Variance Request

This hearing was convened to consider the appeal of Charles and Susan Rooney for a variance from Section 1, sub-section D, Dimensional Requirements. Request is for permission to construct an 18' x 22' two story garage to within ten (10) feet of the rear yard, property located at 3017 Theodore Roosevelt Highway, Tax Map parcel 315-2024 (Village I District).

Charles Rooney appeared on behalf of the application.

Mike Rainville swore in Mr. Rooney.

Development Review Board Comment

Mike Rainville asked Mr. Rooney to explain his proposed construction project to the Board.

Applicant Comment

Mr. Rooney stated that he wanted to construct a two-story garage between his house and the store, and added that he needed twelve feet, as the required setback is twenty-five feet.

Questions and statements from the DRB and/or other hearing attendees

Rob Heimbuch asked if it was ten or thirteen feet to the property line. Dick Ward stated that he and Mr. Rooney had measured the distance, but because of the railroad tie bank measuring was difficult, and that it was ten to twelve feet to the property line. Mr. Ward stated that the lot is sixty-five feet deep, the frontyard setback requirement is thirty-five feet, the rearyard setback requirement is twenty-five feet, and regardless of where Mr. Rooney proposes construction he will need a variance.

Rob Heimbuch asked what would be on the top floor of the two-story garage. Mr. Rooney stated that from the road, the building would look like a one-story garage, and that there would be one car on the top floor, two cars on the bottom floor.

Mike Rainville asked if the garage would look like the drawing provided to the Board, and if it would be for residential use only, not for working on vehicles. Mr. Rooney replied that the garage would look like the drawing, it would be built between the diesel pump at the store and the house, and that it would only be for residential use. Mr. Rainville noted that no matter where Mr. Rooney wanted to build the garage, he would be in violation. Mr. Rooney stated that if he tried to build the garage at the other end, he would have two violations. Mr. Rainville asked if the garage would be any closer to the property line than the existing structures. Mr. Rooney replied no.

Dick Ward asked if there would be a driveway in the back to access the bottom story of the garage, noting that the railroad tie wall is Mr. Rooney's property line. Mr. Rooney replied that he would be driving across the lawn in back to access the garage, as he does with the garage that is currently there. Mr. Rooney stated that he had been driving across the back for twenty years, and that was told many years ago by the railway that it was okay. Mr. Ward stated that without an easement from the railroad, it could be a legal problem. Mr. Rooney stated that he would be doing nothing different from what he is doing now, and added that he would be digging into his own property to construct the garage. Mr. Rooney noted that Harbor Freight in Jonesville is charged \$300 to use railroad property to park vehicles on.

Shirley Zundell asked Amy Grover if the abutting landowners were contacted. Amy Grover replied no. Mr. Rooney stated the railroad was the only abutting landowner.

Mike Rainville asked if there were any more comments or questions. There were none.

Mr. Rainville stated that the Board would notify Mr. Rooney of their decision shortly, although legally the Board has forty-five days to reach their decision. 7:12 p.m.

Agenda Item #2 Patrick Smith Eight Lot Subdivision

This hearing was convened to consider the application of Patrick Smith for final plat approval for an eight (8) lot subdivision located on Mountain View Drive. Proposal includes division of two hundred and sixty (260) acres into seven (7) lots averaging twelve (12) acres or greater in size, and one (1) lot of approximately one hundred and sixty (160) acres, Tax Map parcel #8-904049 (AR-I and R-2 Districts).

Patrick Smith, John Stuart, and Joe Obuchowski appeared on behalf of the application.

Mike Rainville swore in Misters Smith, Stuart, Obuchowski, and all others who would be giving testimony.

Development Review Board Comment

Mike Rainville asked Patrick Smith if he would be able to provide the Board with the information the Board had asked for resulting from the December 5, 2001 public hearing. Mr. Rainville stated that he had letters from the following to enter into record, and gave a brief synopsis of each letter.

1. Green Mountain Power. Stated that power requirements were not a problem.
2. Crag Vermont. Stated they had a verbal agreement with Mr. Smith to keep the cliffs open for climbing.
3. Richmond Rescue. Stated there were no objections if drives were kept plowed and maintained.
4. Bolton Volunteer Fire Department. Stated the driveway sites were adequate, but needed to check the fire pond, and walk the property once it was staked.
5. Tim Eustace - Attorney with the law office of Stitzel, Page and Fletcher, P.C. (Town attorney) no foreseen problems with right of way issues.

Applicant Comment

Patrick Smith stated that he wanted to finish resolving the issues that had risen at the December 5, 2001 public hearing. He introduced his engineer, John Stuart, and lawyer, Joe Obuchowski. John Stuart gave an overview of the current status of the proposed subdivision, and his comments are as follows;

A new map of the proposed subdivision was explained to the Board. The map showed the drilled and shallow wells existing in the area. The protection zone around each well was identified, showing that there were no disposal fields/sewers that impact these protection zones.

Green Mountain Power and Velco lines were shown on the map, as well as zoning districts boundary lines.

There was a change made in creating the common private road serving many of the lots. It was re-routed to more favorable terrain, would be 720 feet long, with a grade of 9%. The common private road also allows for access to a newly designated fire pond, a pull off for fire trucks, and a hydrant for the fire trucks. The pond would hold 35,000 to 40,000 gallons of water. Driveways would have turnouts at the end for emergency vehicles.

With regard to drainage issues, there were two drainage courses identified, with two pipes running under I89. The first drainage area was approximately 176 acres, using a 36" pipe under I89. The second drainage course was further down, at the base of the hill leading to Mr. Smith's property, a smaller area of 47 acres. This drainage area utilizes a 4' pipe under I89. The projected flows of both areas, both developed and undeveloped, using the TR 55 method sanctioned by the Soil Conservation Service were calculated. This method takes into consideration the slopes and type of land cover, and applies storms to project run off. The current residents of Mountain View Drive expressed an interest at the previous hearing of wanting to see the results a 50-year storm plan. In using the TR 55 method for a 50 year storm there was no projected increase of runoff in the larger drainage area of 176 acres, and in the smaller area there was no increase in runoff until reaching the 50 year storm level, where flows increased from 94 CFS to 99 CFS. The majority of the project would not increase runoff, and a real plus of the project is how individual house sites were treated. Twelve inch driveway culverts would be put in with heavy rip rap for stability, driveways would be gravel which would absorb more than pavement, silt fencing would be utilized below the house and driveway construction areas until the area was revegetated to keep sediment from leaving the areas and affecting downstream properties. The water flow would be channeled off to areas with crushed rock, to protect water quality and mitigate increase in runoff.

An orthophoto was presented to the Board to help indicate the stations along Mountain View Drive. The road upgrade would replace culverts with corrugated poly pipe of the same size, inlets and outlets would have blasted rock to stabilize the culvert, the culvert would be cushioned with sand or peastone. The road itself would have 6" of crushed gravel on the surface, with 18" of bank run gravel as a base. Crushed stone in the ditching would serve to slow the water down before the stream. From the Bolton Notch Road 1700' in, the road would have two 10' lanes, each with a 2' shoulder, allowing for 24' of travel surface. From 1700' to 2200', the "hill," would have two 8' lanes, each with a 2' shoulder allowing for 20' of travel surface. From 2200' to Mr. Smith's property the road would return to two 10' lanes, each with a 2' shoulder. This provides substantial improvement, allowing for two vehicles to pass. The hill section was narrower because of constraints, and all materials would be to AOT standards.

Mr. Stuart stated that was where the proposed project currently stood, and asked if there were any questions.

Questions and statements from the DRB and/or other hearing attendees

Firepond

Mike Rainville asked if the firepond would need maintenance because of filling in with silt, and asked how that would be provided for. Mr. Stuart stated that the firepond would be carved out of the terrain and lined with heavier material, and that silt would help to seal it off. Mr. Stuart stated that the pond may need to be cleaned, and that the association would maintain it. Mr. Rainville asked if the proposed pond would be full all year. Mr. Stuart replied that would be hard to say, that there was water in the stream whenever he saw it. Mr. Rainville asked the current Mountain View Drive residents if the stream ran all year. Danny Champney answered that yes; the stream did run all year. Rob Heimbuch asked if the pond could be used at the discretion of the fire department, and for the existing houses. John Stuart replied absolutely, if was available for anyone's need in an emergency. Susan Vita asked if the neighbors had a problem with the pond. Danny Champney stated that there was one pond currently there, his, and that the stream feeding his pond would not supply two ponds, that the firepond would be taking water away from his pond. Mr. Champey stated that he raised waterfowl, and that the fire department could use his pond, but that there was not easy access to it because of fencing. Mr. Stuart stated that it didn't matter to Patrick Smith where the firepond went – Mr. Smith would be willing to build it further down if someone wanted to donate the space.

Schools and Busing

Mike Rainville asked Mr. Smith if he had contacted the schools. Mr. Smith replied no. Dick Ward stated that he had contacted the schools. Mr. Ward stated that Smilie Elementary School in Bolton currently has 78 students with a capacity of 120 students, and that MMU is not at capacity. Mr. Ward noted that the bus currently does not go onto Mountain View Drive, so that busing for schools was not an issue.

Right of Way

Mike Rainville stated that he wanted to clarify the right of way issue. Joe Obuchowski stated that Timothy Eustace had done a good job (making reference to the letter that Mike Rainville entered into record at the start of the hearing), that the right of way is there and there is width, and that it was not necessary to rehash it. Mr. Rainville asked if there were conveyances outside of Mr. Smith's. Mr. Obuchowski stated that at one time all of the land was one big parcel. When the lower parcels were first cut out, or the current resident's parcels, there were references to a 30' right of way and a 32' right of way, and that there was a map in a sale showing a 30' right of way.

Road and Driveways

Shirley Zundell asked if every driveway over 400' had a turnaround. John Stuart replied yes. Mike Rainville asked if where firetrucks could turn. Mr. Stuart replied they could turn at the houses, and between lots # 7 and 8

Shirley Zundell noted that Mr. Stuart had stated that only the materials used for the road were AOT standards, and asked if the road meets A-76 and B-71 standards, as well as the Bolton Public Works Specifications. Mr. Stuart stated that the driveways meet B-71 standards, and that the road absolutely meets A-76 standards in materials and design.

Susan Vita asked the residents if the road improvements would benefit them. Ann and Don Whitman stated that although the road improvement and firepond may be a benefit, they didn't see how the development would improve their quality of life in anyway, noting the increase in traffic that would come, and the significant taking of property to widen the road. Pete Gosselin noted that the widening would take out trees planted on the edge of the road. Ms. Whitman noted that there was buried cable 5' off the road and pedestals 10' off the road. John Stuart stated that the road increase only amounted to four feet on each side. Dick Ward addressed the Whitmans and stated that the present road was nonconforming, and that improving the situation could only help.

Rob Heimbuch asked who would maintain the road. Patrick Smith stated that the eight people to whom he sold lots to would pay equally through the formation of an association, and that if any of the current residents chose to join the association, they would pay on a percent basis. Ann Whitman stated that she did not receive any information regarding this issue. Rob Heimbuch stated that Mr. Smith was saying that he would maintain the entire road, which must be a benefit to the current residents. Shirley Zundell stated that if there were to be a language change in Patrick Smith's homeowner's association document, he needed to come back to the DRB for the amendment. Joe Obuchowski replied that would not be difficult, that no amendments would be effective until approved by the DRB.

Mike Rainville asked if the road would be turned over to the Town. Patrick Smith replied no, the road is not up to standard, and to bring it up to standard the right of way would have to change, which was not going to happen.

Susan Vita asked if traffic was an issue for the current residents. Ann Whitman stated that the increase in the number of cars is an issue, and that the current residents are respectful of speed. Pete Gosselin asked if the hill conformed to A-76 road grade standards, stating that the grade must be between 15 - 18%. John Stuart stated the road does not conform because it is preexisting. Ms. Vita asked if there was an engineering solution to this concern. Mr. Stuart replied that they could perhaps add fill at the base, cut down at the top, and flatten the shape out, but noted the difficulty of having I89 on one side of the road and a ravine on the other. Mr. Gosselin stated that there is no line of site from the top of the hill, the most dangerous spot, and that if that area can't be upgraded, the standards aren't being met. Shirley Zundell stated that she thought Mr. Stuart stated that the road met all standards. John Stuart noted that only the new portions of the road, not the preexisting road would meet the standards. Shirley Zundell stated that she would like to know what portions of the road would not meet the A-76 and Bolton standards. Mike Rainville noted that there are no rules for the existing road. Mr. Gosselin and Ms. Whitman expressed their concerns of having plows coming down the

hill with no site line and an increase in traffic, of firetrucks not being able to access the firepond.

Ann Whitman asked where the road goes in from Mountain View Drive. John Stuart stated that it goes in just east of the log landing, approximately 50 feet to the south.

Pete Gosselin asked if construction on Mountain View Drive and the driveways would be done at the same time. Patrick Smith replied the construction on Mountain View Drive would be done first.

Rod Wheelock noted that if the road was raised when it was upgraded it would cause more drainage problems where it intersected Meadow Lane, and noted concern about the differing road levels at the intersection.

Wells and Drainage

Ann Whitman asked if the map showed all the current wells, where was the well on her property. John Stuart replied that the well is on Patrick Smith's property. Ms. Whitman stated that their survey shows the spring is on their property, but that she realized that property line disputes were not a part of this hearing. Ms. Whitman stated that she appreciated the drainage plan that was done, but she had concerns: about the size of the culverts under I89, that her property is dead flat, noting Bill Atwood (local excavator) could not get water to run anywhere, that the stream already runs above their cellar, that if the water comes any faster or higher it will take out their property and flood their basement, that in the spring the stream is out of its banks, and that channelization was an issue. Danny Champney stated that in the spring the water won't go into the Winooski, that even a bridge instead of a culvert wouldn't help.

Pete Gosselin asked whom did the 50 year storm survey. John Stuart replied he did. Mike Rainville asked how much rain constitutes a 50-year storm. John Stuart replied 4.6 inches.

Mr. Gosselin asked how many acres would be cleared to build the houses. Mr. Stuart stated no more than one acre per house, and a total of 2 acres including lawn. Mr. Gosselin expressed his concern about water being channeled into an area where the streams are currently at maximum, and stated that the project would be increasing water flow no matter how one looked at it. Don Whitman stated that the culverts back up now onto their property, pooling and ponding, the area that floods is a grandfathered leach field, and that they are 1" above it. Danny Champney stated they had lost the road twice, and that the river won't let any more water go into it. Rob Heimbuch noted Mr. Champney was referring to the I89 culvert. Ann Whitman's response that their property might benefit from a berm suggested by Mr. Champney was that a berm would increase channelization and take out their leach field, and that they were presently looking at installing a mound system.

Mr. Gosselin stated that Mr. Smith had good plans, but the residents know the situation, and that water would be added to a maxed out system. Mr. Stuart stated that the idea was

not to let the water build volume and speed, that water would be coming through an area of rocks and out across the land. Mr. Stuart added that the condition of the Winooski River in the spring occurs whether the development is constructed there or not, and that provisions have been made to not make the situation worse. Mr. Stuart noted there were two different interpretations to the drainage issue; upstream and downstream.

Mike Rainville asked the residents if they were advising the Board to hire a consultant, to get 2 or 3 other proposals. Shirley Zundell stated that an applicant would be responsible for paying 75% of the consultant's fee, the Town the remaining 25%. Joe Obuchowski stated there was no preliminary indication that Mr. Stuart's methodology was faulty, stating that Mr. Stuart calculated and designed the plan, and asked why between an expert and a concerned neighbor, it was suggested that the expert is wrong. Mr. Rainville asked what it would cost to have a peer of Mr. Stuart's check his work. Mr. Stuart stated it would take several thousand dollars to double-check his work. Mike Rainville stated he was thinking perhaps it would cost \$500 for a peer to look at the work, and noted that the Board would check the numbers and look into the issue.

Shirley Zundell asked if there would be adequate quantities of potable water. John Stuart stated that seven wells in the area on record with the VT Water Supply Division showed between 6 to 150 gallons per minute from ranges of 155' to 400' deep. Mr. Stuart stated that averaged to 30 gallons per minute, and that the smallest supply was more than enough for a single-family dwelling. Rod Wheelock noted that his well was 602 feet down, supplied 2 gallons per minute, and was the highest up on the hill. Mr. Stuart noted that Mr. Wheelock's well was not included in the Water Supply Division database. Mike Rainville noted that typically well depths are less on hills than below.

Lot Development

Ms. Whitman asked that if Mr. Stuart was just selling the lots, what kind of control could he have past that point, since he is not developing the lots. Joe Obuchowski replied there would be covenants and restrictions, and that plans would come back to the Town for approval and permitting. Mr. Obuchowski noted that the Town could not issue a permit in violation of what is approved through the hearing. John Stuart stated that there could be an inspection performed as houses get started, and that certification could provide some means of protection. Rob Heimbuch asked if the road and the driveways would be going in before the houses, and when silt fencing would be put in. John Stuart replied the roads and drives would be constructed before the houses, and that silt fencing would be put in prior to construction of both the drives and houses, and that there would be two silt fences.

Pete Gosselin asked if there was a limit placed by the Town on the number of houses that could be built in a year. Mike Rainville replied there was no limit imposed, and no limit

of the number of houses allowed on a private road, although the Bolton Planning Commission was currently reviewing that issue.

Shirley Zundell asked if all the house sites comply with all of the zoning regulations with regard to setbacks, water sources and sewage. John Stuart replied yes. Dick Ward noted that a site technician or engineer would have to sign off on the septic designs. Rob Heimbuch asked if all of the leach fields were away from water source protection areas. Mr. Stuart replied yes, that was why well protection areas had been identified.

Ann Whitman asked Mr. Smith what he would be selling the lots for. Mr. Smith replied approximately 80K.

Act 250

Mike Rainville asked about issues with regard to Act 250. John Stuart stated they still needed to obtain the project review sheet stating that there were no Act 250 issues.

Timeframe

Dick Ward asked Mr. Smith about his time frame. Mr. Smith replied that ambitiously he would like to sell all the lots in 2002. Mr. Ward stated that Misters Smith and Stuart would be ideal members to sit on a Design Review Board for a couple of years, to protect their own interests and the interests of others, and asked if they would have a problem serving on that Board. Misters Stuart and Smith both replied no, not at all.

Mike Rainville asked if there were any additional comments or questions. There were none. 8:45 p.m.

Agenda Item #3 Ronald LaFreniere Sketch Plan Review – 3 Lot Subdivision

Application of Ronald LaFreniere for a sketch plan review for a three (3) lot sub-division located on Duxbury Road. Proposal includes a division of a one hundred and seventy two (172) more or less acre parcel, into three lots, located at 895 Duxbury Road, Tax Map parcel #8-1007.

8:50 p.m.

Ronald Lafreniere appeared on behalf of the application.

Mr. LaFreniere stated that he wanted to give two of his boys a lot. He noted that one of the two lots had been occupied for 25 years, and that a lot had previously been given to his daughter. Dick Ward noted that that lot was on the other side of the road.

Mr. LaFreniere stated that the lots had already been perked, and that Todd Hill would be acting as his site technician. Dick Ward stated that unless the perk tests had been done fairly recently, they would need to be done over.

Mike Rainville asked if there would be anything non-conforming. Mr. LaFreniere replied no. Mike Rainville asked if all lots would be able to be built on with respect to the zoning regulations. Mr. LaFreniere replied yes.

A short discussion between Dick Ward, Shirley Zundell, and Mike Rainville ensued with respect to the process of subdivision, and the subdivision regulations. Mike Rainville reviewed the sketch plan review checklist with Mr. LaFreniere and noted that he needed a map of the entire property. Dick Ward stated that the sketch plan view is informal, and that a formal public hearing date will be set when all of the data is submitted. 9:10 p.m.

Results of Deliberative Session Agenda Item #1 - Rooney Variance Request

Dick Ward stated that access in the back of the property is an issue because of the railroad. Mike Rainville noted that Mr. Rooney needed to have the right of way issue resolved before building.

Rob Heimbuch made a motion to approve Charles and Susan Rooney's request for a variance to build the proposed garage subject to the following condition;
Access to the garage with the abutting landowner, Central Vermont Railway, is resolved.

Susan Vita seconded the motion.

All were in favor.

Results of Deliberative Session Agenda Item #2 – Smith Subdivision

Rob Heimbuch made a motion to continue deliberations on the Smith application to March 20, 2002.

Susan Vita seconded the motion.

All were in favor.

Agenda Item #4 Minutes December 5, 2001

Rob Heimbuch made a motion to accept the minutes of December 5, 2001 as amended; Amended on page 6, "15 year flood plan" changed to "fifty year flood plan".

Susan Vita seconded the motion.

All were in favor.

Agenda Item #5 Any Other Business or Communications

Shirley Zundell formally resigned as co-chair, and provided the Board with a memos outlining her concerns, and information with regard to rules of procedure. Shirley Zundell said she wished to go on the record as being opposed to closing the Smith hearing.

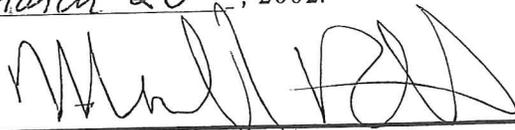
Agenda Item #6 Adjournment

The hearing was adjourned at 9:45 p.m.

Amy Grover
Clerk Development Review Board
These minutes are unofficial until accepted.

These minutes were read and accepted by the Development Review Board on

March 20, 2002.



Michael Rainville, Chair

TOWN OF BOLTON
DEVELOPMENT REVIEW BOARD

NOTICE OF DECISION

This matter came before the Development Review Board (DRB) on the application of Patrick Smith (Landowner and Applicant) for final plat approval for an eight (8) lot subdivision located on Mountain View Drive, prepared by JH Stuart Associates of Essex VT dated August 2001, revised February 2002 and March 2002. Proposal includes division of two hundred and sixty (260) acres into seven (7) lots averaging twelve (12) acres or greater in size, and one (1) lot of approximately one hundred and sixty (160) acres, Tax Map parcel #8-904049 (AR-1 and R-2 Districts).

The DRB conducted a duly warned public hearing on February 20, 2001 to which Applicant Smith was present. Based upon the testimony provided at the public hearing and the documents submitted to the DRB (contained in the documents of file for this application), the DRB decides as follows:

DECISION

The DRB unanimously approves the Applicant's request for final plat approval for an eight (8) lot subdivision located on Mountain View Drive with the following conditions:

1. That the Town attorney must approve any legal documents.
2. That the Bylaws of Homeowners Association Inc. agreement must be signed and recorded.
3. That the Declaration of Shared Roadway Covenant must be signed and recorded.
4. That any amendments to legal documents must be reviewed and approved by the DRB.
5. That the subdivision Mylar will be recorded in compliance with the Town Clerk within ninety (90) days of subdivision approval.
6. That the Developer shall secure all State Environmental Board permits if required.
7. That any further subdivision of the land in question will be considered a re-subdivision and must be reviewed by the DRB.
8. That the Mountain View Drive road upgrade, proposed roads, pull-offs and turn-arounds must be approved by the Highway Foreman, as referenced in the 11/15/01 letter entered into record at the December 5, 2001 public hearing.
9. That all roads meet A-76 VT AOT standards (the DRB recognizes that the pre-existing road right of way on Mountain View Drive does not meet the standard, and waives the right of way standard for Mountain View Drive).
10. That existing roadside vegetation will be relocated or replaced as much as possible.
11. That the Fire Chief must approve the construction of the fire pond.
12. That power is supplied in compliance with Green Mountain Power specifications.
13. That all lots will be surveyed and corner markers installed prior to construction of any residential units.

790342

- 14. That permits for buildings and sewage are required for each lot at the time of proposed construction.
- 15. That the developer and project engineer will be held responsible for adherence to individual lot site development.
- 16. That no permits will be issued until proper access is complete.

Approved by the DRB on March 20, 2002, and issued on March 26, 2002

Michael Rainville
Michael Rainville, Chair DRB

Members present and voting in favor: Susan Vita, Rob Heimbuch, and Michael Rainville.

Bolton Town Clerk's Office
Received For Record
October 20 2009 A.D.
 at 2 o'clock 30 minutes P.
 Recorded in Book 79 Page 341-342
 Attest: Jen Atwood
 Asst. Town Clerk

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

9229 6222 0000 0277

Postage	\$ 34
Certified Fee	210
Return Receipt Fee (Endorsement Required)	150
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 394

Sent To Mr. Patrick Smith
 Street, Apt. No., or PO Box No. RR Box 907

JONESVILLE VT 05466
 Postmark Here
 MAR 26 2002
 USPS

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Received by (Please Print Clearly) <u>Patrick Smith</u> B. Date of Delivery <u>3-29-02</u></p> <p>C. Signature <u>Patrick Smith</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p><u>Mr. Patrick Smith</u> <u>P.O. Box 907</u> <u>Richmond VT 05477</u></p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Copy from service label)</p> <p><u>7000 1670 0007 2239 6268</u></p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

ARTICLE III

Site Owner's Rights and Obligations in the Wastewater Disposal Areas,
the Private Roadway and the Fire Pond

3.1 Wastewater Disposal Area Use Restrictions. As set forth on the Survey Map, Lot 1 has an easement onto Lot 2 for the construction, maintenance and repair of a Wastewater Disposal Area together with its necessary pipelines and appurtenances. Lot 2 similarly has such an easement for its benefit on Lot 3. Lot 6 similarly has an easement for its benefit on Lot 5. The Wastewater Disposal Areas shall be used only for the purposes contained in their definitional provisions and for which they are intended in the furnishing of facilities for the use of the Site Owners, and are further subject to the following regulations:

A. No use or practice shall be permitted upon the Wastewater Disposal Areas which is the source of annoyance or which interferes with the peaceable possession or proper use of the wastewater disposal infrastructure located thereon.

B. No Site Owner shall use or permit use of the Wastewater Disposal Areas and facilities which would increase the rate of insurance upon any improvements or facilities located in the Wastewater Disposal Areas.

C. There shall be no dumping of ashes, lawn clippings, brush, trash, garbage, sawdust, or other unsightly or offensive material on the Wastewater Disposal Areas and no changing of the topography through the placing of soil or other substance or material such as landfill or dredging spoils.

D. There shall be no operation of snowmobiles, dune- buggies, motorcycles, all-terrain vehicles, or other vehicles on the Wastewater Disposal Areas.

3.2 Shared Private Roadways.

A. To facilitate the shared maintenance, use and enjoyment of Mountain View Drive, this Declaration sets forth the rights and obligations of the Declarant and Site Owners purchasing from the Declarant and their heirs, successors and assigns.

B. For driveways accessing Mountain View Drive or internal roadways not part of Mountain View Drive, the users thereof shall share equally the costs associated with such driveways and internal roads for those portions of same which they use.

3.3 Maintenance and Repairs. As a condition of the approval of the Subdivision creating the Sites the costs for regular maintenance and repair of the entire length of Mountain View Drive until it leaves the Property at its southeasterly border shall be shared equally by all Site Owners as part of their Association obligations and may be shared by such other users whose title does not derive from the Declarant as join the Association to contribute for that part of Mountain View Drive which they use. A maintenance schedule shall be agreed upon by the Site

emergency exists which reasonably precludes such notice in exercising such rights. Declarant may not interfere with any structures or improvements, including landscaping, located on an existing home site.

I. **Garages.** Garages and carports shall only be used by the occupants of the residences to which they are appurtenant and shall be constructed in the Proposed Clearing Limit.

J. **Reserved Easement.** Declarant reserves a right of way across Lot 8 to Bolton Cliffs.

K. **Proposed Clearing Limit.** As shown on the Survey Map, the Proposed Clearing Limit contains the location for the construction of homes and vehicle parking structures. Setbacks for these homes and structures shall be in accordance with the Town of Bolton Zoning Regulations.

L. **Nuisances.** No Site shall be used in whole or in part for the storage of rubbish, trash, or scrap of any character whatsoever; nor for the storage of any property or thing that will cause such Site to appear in an unclean or untidy condition or obnoxious to the eye; nor shall any substance, thing, or material be kept on any Site that will emit foul or obnoxious odors or cause any noise that will or might disturb the peace, quite, comfort, and serenity of the occupants of surrounding Sites.

M. **Signs.** No billboards or advertising signs of any character shall be erected, placed, permitted, or maintained on any Site nor on any improvement situated on a Site, except that an Owner or his agent may erect or display one sign of not more than six (6) square feet advertising the Site for sale. This prohibition shall not apply to the Declarant who may post signs for promotional or marketing purposes.

N. **Municipal Regulations.** Each Site is subject to the terms, conditions, easements, rights of way, and restrictions contained in all municipal permits and approvals obtained for the approval of Patrick Smith Subdivision.

O. **No Filling or Excavating.** After completion of any improvements and their construction, there shall not be any filling, excavating, mining or drilling, removal of topsoil, sand, gravel, rock, minerals, or other materials nor any building of roads or change in the topography of the lands in any manner excepting that which is necessary for the maintenance of existing improvements.

P. **No Clear Cutting.** After completion of any improvements and their construction, there shall be no cutting of live trees or plants provided, however, that the Site Owner shall have the authority to act with the advice and consent of the County Agent, County Forester, or other appropriate governmental official or agency.

exterior painting, or other exterior finish work is inappropriate because of winter weather conditions, then said landscaping, painting and exterior finish work shall be completed as soon as practicable during the subsequent spring season.

D. **Design Review Committee.** Until such time as the final Site shown on the Survey Map is sold by Declarant, the Declarant reserves the right and power to control the location of any buildings, roadways and other improvements which materially alter the existing on each Site. The Declarant shall exercise this power through a Design Review Committee consisting of Declarant and John Stuart. In the event of the death or resignation of any member of the Committee, the remaining member shall designate as a successor a person who has the knowledge and experience of an experienced homebuilder or otherwise has like qualifications. All such improvements shall be completed in accordance with the approved plans.

E. **Subdivision Prohibited.** No Site other than Lot 4 shall be subdivided except for boundary adjustments approved by the Town.

F. **Shared Driveways.** As shown on the Survey Map, Lots 1, 2 and 3 share a driveway; Lots 4, 5 and 6 share a driveway; Lots 7 and 8 share a driveway. Each such lot shall be benefitted and burdened by reciprocal easements to accomplish such shared access. Each such group of lots shall share equally in the maintenance and repair for that portion of their driveway which is used by them. Any disputes shall be resolved by the Board of Directors of the Homeowners Association whose decision shall be final.

G. **Outdoor Lighting.** Any outdoor lighting on lots shall be designed to reasonably minimize glare and lighting levels and to illuminate only the lot in which it is located and not extend onto other lots.

H. **Grading, Drainage and Declarant's Reserved Drainage Easement.** The grading and/or drainage patterns of any Site shall conform with the site plans, grading, and all specifications as submitted and approved by the Town of Bolton. No other changes in the grade, topography, or other existing features of any Site which will have the effect of altering or interfering with the normal flow of surface waters across a Site are permitted. For a period of two (2) years from the date of Declarant's conveyance of the first Site, the Declarant reserves an easement and right of way on, over, and under the ground of all the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety, and appearance. Such reserved easement and right expressly include the rights to cut any trees, bushes, or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary. Following any exercise of such right and easement, the Declarant shall restore the affected lands to their original condition as nearly as practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners and to the Town, unless an

Map, as the same may be amended from time to time and shall apply to the use, maintenance and operation of the Fire Pond, which said covenants, conditions, rights, and restrictions shall be the affirmative obligation and responsibility of each Site Owner with respect to each Site and the Roadway.

A. Residential and Related Uses. Each Site is for permanent single family residential purposes only with only one kitchen including, however, customary home occupations permitted by the Town of Bolton Zoning Regulations. No building or structure intended for or adapted to business, commercial, or industrial purposes and no apartment house, lodging house, rooming house, or other multiple family dwelling shall be erected, placed, permitted, or maintained on a Site or any part thereof. No improvements or structure other than a private residence and garage or carport, pet housing, a patio, hedging or fencing, swimming pool, or storage shed may be erected, placed, or maintained on any Site. Residences and vehicle parking structures shall be built within the Proposed Clearing Limit. Notwithstanding these limitations, any more restrictive provision in the Town of Bolton Zoning Ordinance shall apply, unless such provision has been waived by the Town. Any improvements or structures of any kind constructed by a Site Owner on a Site shall be deemed Property owned by the Site Owner, appear in the Town Grand List under the Site Owner's name, and be assessed and taxed to the Site Owner. If an improvement installed or constructed by a Site owner is listed, assessed, or taxed to the Association, and such listing or tax cannot be changed, then the Site Owner shall reimburse the Association for taxes paid by the Association for such improvements and any such amount not reimbursed by any Site Owner shall be a lien in favor of the Association against the Site and its Owner as provided below.

B. Limitation on Habitation. No outbuilding, garage, shed, tent, trailer, mobile home, or temporary building of any kind shall be erected, constructed, permitted, or maintained prior to commencement of the erection of a residence. No outbuilding, garage, shed, tent, trailer, mobile home, basement, or temporary building shall be used for permanent or temporary residence purposes.

C. Occupancy. No permitted private, single-family dwelling house erected on any Site shall be occupied in any manner while in the course of construction, nor at any time prior to its being substantially completed; nor shall any residence when completed be, in any manner, occupied unless in complete compliance with all covenants, conditions, reservations, and restrictions herein set forth and all applicable governmental regulations. All construction shall be completed within twelve (12) months from the start thereof except in instances where construction cannot be completed or reconstructed within said time frame due to strikes, material shortages, casualties, or other acts of God. If the applicability of said time frame to landscaping,

ARTICLE I

Definitions

1.1 "**Association**" shall mean and refer to "Patrick Smith Subdivision Homeowners' Association, Inc.", a Vermont non-profit corporation, its successors, and assigns.

1.2 "**Owner**" shall mean the record Owner, whether one or more persons or entities, of fee simple title to any Site, but excluding lien holders and those holding title or an interest merely as security for the performance of an obligation.

1.3 "**Site**" shall mean and refer to each one of those Sites or lots depicted as Lots 1-8 on the Survey Map. The location of each Site, and its proposed clearing limits are depicted on the Survey Map, as the same may be amended from time to time.

1.4 "**Proposed Clearing Limit**" shall mean and refer to that named area as shown on the Survey Map. The Proposed Clearing Limit is the area on each Site on which the homes will be constructed; clearing on each Site is limited to the greatest extent reasonably practical to the area designated as Proposed Clearing Limit.

1.5 "**Property.**" The Property is all and the same lands conveyed to the Declarant by Warranty Deed of Joseph Berger, Herbert Hartinger and Murry Nusbaum dated October 12, 2000 and of record in Volume 54, Page 627 of the Town of Bolton Land Records.

1.6 "**Wastewater Disposal Areas**" shall mean and refer to those areas as shown on the Survey Map indicating locations for wastewater disposal.

1.7 "**Roadway.**" Shall mean and refer to the private roadway shown on the Survey Map and designated as Mountain View Drive.

1.8 "**Fire Pond**" shall mean a pond located on lands adjacent to the Property and owned by Daniel Champney. The Property has the benefit of an easement to use, construct, reconstruct, keep, maintain, repair, expand and upgrade that pond for use as the Property's fire pond.

1.9 "**Town**" shall mean the Town of Bolton.

ARTICLE II

Covenants, Conditions, Easements, Obligations,

Rights, and Restrictions Applicable to Sites and Yards

2.1 **General Covenants, Conditions, and Restrictions.** In order to insure the use of the Sites for attractive residential purposes, to prevent nuisances, and to secure to each Owner the full benefit and enjoyment of his home with no greater restriction on the free and undisturbed use of his Site than is necessary to insure the same advantages for other Owners, the Declarant does hereby declare that the following protective covenants, conditions, rights, and restrictions shall apply to each and every Site, Roadway and Wastewater Disposal Area depicted on the Survey

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, OBLIGATIONS,
LIENS, RIGHTS, AND RESTRICTIONS
FOR
PATRICK SMITH SUBDIVISION
BOLTON, VERMONT**

THIS DECLARATION is made and dated as of the 24 day of July, 2002, by Patrick Smith of Richmond, County of Chittenden, and State of Vermont identified as the "Declarant".

WITNESSETH:

WHEREAS, Declarant is the Owner of certain Property in Bolton, Vermont, which Property was acquired by Declarant by Warranty Deed of Berger, Nusbaum and Kartiganer dated October 12, 2000 and recorded in Volume 54 at Pages 627-628 of the Land Records of the Town of Bolton (the "Property"), together with one certain Easement Deed from Daniel Champney for the use, creation, recreation and maintenance of a fire pond to benefit the Property which is depicted on a Survey Map (the "Survey Map") entitled "Survey of Land of Patrick Smith, Mountain View Road, Bolton, Vermont, August, 2001" prepared by T. Bass Land Surveys, Ltd., Waterbury, Center, Vermont, and recorded in Map Slide _____ of the Land Records of the Town of Bolton, which Survey Map is incorporated herein by reference;

WHEREAS, in order to conform with representations made by Declarant to the Town of Bolton, and to provide for the continuous and harmonious ownership, occupancy, use, and enjoyment of the Property, Declarant hereby establishes covenants, conditions, easements, obligations liens, rights and restrictions benefitting and burdening the Property and the Owners and occupants thereof; and

NOW, THEREFORE, the Declarant hereby declares that all of the Property or portions thereof as particularly described hereinafter as well as interests in the fire pond are subject to and shall be conveyed in accordance with the contents hereof, and thereafter shall be held, sold, and conveyed subject to the following covenants, conditions, easements, obligations, liens, rights, and restrictions, all of which shall run with the Property (real and otherwise), and shall be binding on all parties having any right, title, or interest in the Property or any part thereof, and their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof jointly and severally.

Owners as necessary.

3.4 Insurance. The Site Owners agree to obtain and share equally in the cost of any insurance the Association deems reasonably necessary to protect them against potential liability arising from damages to persons, property or the environment arising from or out of their maintenance and repair obligations.

3.5 Access. The Site Owners and such other users as may join the Association agree that no impediments to access will be constructed, installed or placed in the way of any of the Site Owners or other users which will interfere with their enjoyment of Mountain View Drive.

3.6 Assignment of Rights. Nothing herein shall prevent or limit the right of any of the Site Owners to mortgage any or all of their property subject to and benefitted by the provisions hereof. In case of a foreclosure of a mortgage, the Site Owners' rights and obligations under the provisions of this Declaration shall pass to, and be acquired and assumed by in the foreclosure and subsequent sales.

3.7 Merger with Lot. No user Owner shall convey or transfer any of their rights hereunder except in conjunction with the transfer of their lot, or in the case of Lot 4 any subdivision of that lot. In the event of such subdivision each lot created shall become a separate Site Owner and shall become equally obligated hereunder to the same extent as any other Site Owner.

3.8 Fire Pond Provisions and Obligations. Annually the Association shall adopt a budget sufficient to include all costs, whether capital or recurring necessary to maintain, repair, expand as necessary and preserve the availability of the fire pond for its designated purpose.

ARTICLE IV

Membership and Voting Rights in the Association

4.1 The initial member of the Association shall be the Declarant and it shall be deemed to be the only member until such time as the eighth Site has been sold, or earlier if so decided by the Declarant pursuant to Article VIII.

4.2 Every Owner of a Site shall be a member of the Association. Membership shall be appurtenant and may not be separated from ownership of any Site. Other users of the Private Roadway may become members of the Association for the limited purpose of contributing to the costs of maintaining that Roadway. Other users shall not be voting members of the Association for any purpose.

4.3 Membership in the Association shall be established by the recording in the Town of Bolton, Vermont, of a deed or other instrument establishing record title to a Site. The share or entitlement of a member in the funds and assets of the Association cannot be assigned,

502
hypothesized, or transferred in any manner except as an appurtenance to a Site.

4.4 Voting Rights. There shall be one person with respect to each Site ownership who shall be entitled to vote in any meeting of the Association. Such person shall be known as a "Voting Member." Such Voting Member may be the Owner, or one of a group composed of all Owners of a Site, or may be some person designated by such Site Owner or Owners to act as proxy on his or their behalf and who need not be an Owner. Such designation shall be made in writing to the Board of Directors of the Association and shall be revocable at any time by written notice to the Board by the Site Owner or Owners. All Owners may be present at any meeting of the Voting Members, but only a Voting Member may vote or take any other action, either in person or by proxy. The total number of votes of all Voting Members shall be eight (8), and each Site Owner or group of Owners shall be entitled to one (1) vote.

ARTICLE V

Covenant For Maintenance, Repair, and Replacement

5.1 **Creation of a Lien and Personal Obligation of Assessments.** Declarant, for each Site owned within Patrick Smith Subdivision, hereby covenants, and each Owner of any Site, by acceptance and recordation of a deed therefore, or by acquisition of an interest in a Site by any other voluntary or involuntary method, whether or not it shall be so expressed in such deed or instrument effecting conveyance, is deemed to covenant and agree to pay to the Association:

A. Annual assessments or charges including replenishment of operating reserve, to be billed on a monthly basis, or such other billing cycle as determined by the Association or by the Declarant prior to transferring ownership of the Sites.

B. Special assessments for capital improvements, such assessments to be established by the Declarant or the Association, as the case may be, and collected as hereinafter provided.

C. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a continuing charge on the Site and shall be a continuing lien upon each Site against which each such assessment is made. In addition, such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person(s) who was the Site Owner at the time when the assessment was made.

D. Notwithstanding the foregoing, the Association and its lot owners shall not be responsible for any of Declarant's development costs.

5.2 **Purpose of Assessments.** The assessments levied by the Declarant or the Association shall be used exclusively to maintain, repair, and/or replace Mountain View Drive and to provide for the operation, inspection, maintenance and replacement of the fire pond and to meet any and

all other expenses and obligations incurred by the Association, including, but not by way of limitation, professional and other fees, taxes, and insurance premiums.

5.3 Annual Assessment. The Board of Directors of the Association, after a meeting duly warned and called, shall fix the total annual assessment necessary for the forthcoming year to be divided pro rata among the Sites.

5.4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, additional assessments for capital improvements may be levied as follows:

A. Private Roadway and Fire Pond. The Association, through its Board of Directors may, in every assessment year, levy a special assessment to be applied for future capital improvements projected as reasonably foreseeable in conjunction with the continued operation of Mountain View Drive and the fire pond. Such special assessment for projected capital improvements shall be based, in part, upon recommendations for future replacement projected by licensed Vermont engineers retained by the Board of Directors of the Association, but ultimately, shall be at the discretion of the Board of Directors.

B. This Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Private Roadway and the fire pond, provided that any such assessment shall be approved, by the membership, at a duly warned meeting at which a quorum is present, by vote in favor by more than eighty percent (80%) of the votes cast.

5.5 Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of one percent (1%) per month, or at a higher rate of interest if adopted by the Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the same, and may in addition, or in the alternative, take any other legal or equitable action including by way of example, but not limitation, a foreclosure action against the Site and any improvements thereon. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Private Roadway or the Fire Pond or abandonment of a Site. Sale or transfer of any Site shall not affect the assessment lien, which shall continue in existence as a lien against the applicable Site.

5.6 Subordination of the Lien to Mortgages. Any lien arising from the assessments provided for herein shall be subordinate to the lien of any first mortgage.

ARTICLE VI

Severability

In the event that any portion of this Declaration or one or more of the covenants, conditions, reservations, or restrictions herein contained shall be declared to be null and void or unenforceable by a court of competent jurisdiction, such judgment or decree shall not, in any manner whatsoever, affect, modify, change, abrogate, or nullify any other portion of this Declaration or any of the covenants, conditions, reservations, and restrictions not so declared to be null and void or unenforceable, but all of the remaining portions of this Declaration and the covenants, conditions, reservations, and restrictions not so expressly held to be null and void or unenforceable shall continue unimpaired and in full force and effect.

ARTICLE VII

Declaration of Real Covenant, Duration and Enforcement

7.1 Declaration. The covenants, restrictions, easements, rights of way, and conditions of this Declaration are covenants real and shall run and bind the land and shall inure to the benefit of and be enforceable by the Site Owners acting through the Association, their respective legal representatives, heirs, successors, and assigns. The Property is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, rights of way, charges, and liens herein.

7.2 Duration of Covenants. The herein covenants are to run with the land and shall be binding upon all parties claiming such land for a period of thirty (30) years from the date of recording of this Declaration, after which time said covenants shall be automatically extended for successive ten (10) year periods unless and until an instrument agreeing to terminate said covenants, and signed by all of the then-site owner members of the Association has been recorded in the Town of Bolton Land Records.

7.3 Enforcement. This Declaration or any portion therein may be enforced by the Association. In consideration of the approval of this development and upon its request, the Town of Bolton shall have concurrent power to enforce Article II Section 2.1 H and Article III Section 3.3 but shall be under no requirement to do so, and may not be compelled to do so by any action of the Association or any of its members. The above noted provisions to which the Town is hereby granted enforcement authority, shall not be altered, amended or eliminated without the prior express written consent of the Town. Should the Association or the Town employ counsel in order to enforce any of the foregoing covenants, conditions, reservations, or restrictions, or any other provision of this Declaration, then all costs incurred in such enforcement, including a

reasonable fee for counsel, shall be paid by the Owner of any Site found in violation by a court of competent jurisdiction. Further, no delay or omission on the part of the Association or the Town in exercising any right, power, or remedy herein in the event of any breach of this Declaration or any of the covenants, conditions, reservations, or restrictions herein contained shall be construed as a waiver thereof or acquiescence therein. Further, no right of action shall accrue nor shall any action be brought or maintained by the said Association, or by any Owner against the Declarant for or on account of its failure to bring any action on account of any breach of this Declaration or any of the covenants, conditions, reservations, or restrictions herein contained, or for imposing restrictions which may be unenforceable at law or in equity.

ARTICLE VIII

Amendments

8.1 Except as otherwise provided, this Declaration may be amended by the membership of the Association, at a duly warned meeting at which a quorum is present, by vote in favor by more than seventy-five percent (75%) of the votes cast. Every approved amendment shall be prepared, executed, recorded, and certified by the Association and shall be effective only when recorded in the Land Records of the Town of Bolton.

8.2 **Amendment by Declarant.** Notwithstanding the provisions of Section 8.1 immediately hereinabove, this Declaration may be amended by the Declarant without the consent of any other Site Owner in order to comply with any provision of law. Upon execution and certification by the Declarant any such amendment shall become effective upon recording in the Land Records of the Town of Bolton, so long as such amendment does not affect the ownership, access, or reasonable enjoyment of any Site or the Roadway, or the security interest of any mortgagee in any Site. Specifically allowed is the continuing amendment of the Survey Map by the Declarant as the final location, measurements, area, and dimensions of the Sites are established.

ARTICLE IX

Miscellaneous

9.1 **Reserved Easements for Completion.** The Declarant hereby reserves easements through the Private Roadway for the purpose of completing or making improvements described in this Declaration and over the Sites to make improvements in the Sites and to show the Sites for sale.

9.2 **Utility Easements.** The Property is and shall be subject to easements for electrical service and other utilities, the location of which shall be determined by Declarant and evidenced by appropriate instruments duly recorded in the town of Bolton Land Records in exercising such rights, Declarant may not interfere with any structures or improvements, including landscaping located on an existing home site.

9.3 **Successor Declarant.** Acquisition of eighty percent (80%) of the Sites by the same person or legal entity shall entitle that person or legal entity to all of the rights of the Declarant as contained herein and in the Bylaws of the Patrick Smith Subdivision Homeowners' Association, Inc.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 24 day of July, 2002.

IN PRESENCE OF:

Karen A Bombardier
Witness

Patrick Smith
PATRICK SMITH

Joseph F Church
Witness

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington this 24th day of July, 2002 personally appeared PATRICK SMITH, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed.

Before me, Karen A Bombardier
Notary Public
My Commission Expires: 2/10/03

Bolton Town Clerk's Office
Rec'd. for record July 24 20 02 A.D.
at 4 o'clock 00 minutes P M
Recorded in Book 57 Page 553-64
/ test Jana Atwood
Asst. Town Clerk

042

FIRST AMENDMENT TO DECLARATION OF COVENANTS
CONDITIONS, EASEMENTS, OBLIGATIONS, LIENS,
RIGHTS, AND RESTRICTIONS
FOR
PATRICK SMITH SUBDIVISION
BOLTON, VERMONT

Patrick Smith, the original Declarant of the Patrick Smith Subdivision, hereby amends pursuant to authority contained in Article VIII Sections 8.1 and 8.2 thereof the Declaration of Covenants, Conditions, Easements, Obligations, Liens, Rights and Restrictions for Patrick Smith Subdivision, Bolton, Vermont dated July 24, 2002 and of record in Volume 57, Page 553 of the Town of Bolton Land Records as follows:

1. Article I Section 1.3 is hereby amended to read:

"Site" shall mean and refer to each one of those Sites or lots depicted as Lots 1-8 on the Survey Map but shall not include an additional lot hereby referred to as Lot 9. Lot 9 is created for the sole purpose of conveyance by the Declarant to Climbing Resource Access Group of Vermont, Inc.; after such conveyance Lot 9 and its owners, successors or assigns shall not be subject to this declarations of covenants. The remainder of this section is unchanged.

2. Article II Section 2.1 (E) is hereby amended to read:

No Site other than Lots 4 and 8 shall be subdivided except for boundary adjustments approved by the Town except that Lot 8 may be subdivided only in order to constitute a portion of Lot 9 for transfer to Climbing Resource Access Group of Vermont, Inc.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set his hand and seal this 7th day of February, 2003.

IN PRESENCE OF:

Joseph F. Duchowski
Witness

Carol A. Duchowski
Witness

Patrick Smith
PATRICK SMITH

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, this 7th day of February, 2003 personally appeared PATRICK SMITH, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed.

Before me, Joseph F. Duchowski
Notary Public
My Commission Expires: 2/10/03

Bolton Town Clerk's Office
Rec'd. for record February 10 2003 A.D.
at 9 00 minutes A M
Recorded in Book 39 Page 692-693
/test Jane Atwood
Asst. Town Clerk

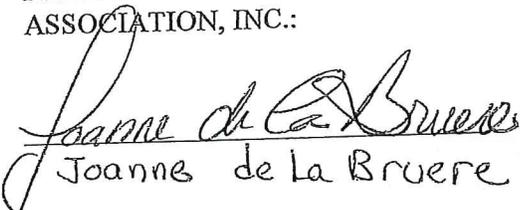
SECOND AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS, OBLIGATIONS, LIENS,
RIGHTS, AND RESTRICTIONS
FOR
PATRICK SMITH SUBDIVISION
BOLTON, VERMONT

Pursuant to authority contained in Article VIII Sections 8.1 and 8.2 of the Declaration and further to a duly warned meeting of the voting members of the Patrick Smith Homeowners Association, Inc. (the "Association") held on December 19, 2004, at which meeting a quorum was present and by a vote in favor thereof by more than seventy-five percent (75%) of the votes cast, the Association prepares, executes and certifies for recording in the Land Records a Second Amendment to the Declaration of Covenants, Conditions, Easements, Obligations, Liens, Rights and Restrictions for Patrick Smith Subdivision, Bolton, Vermont dated July 24, 2002 and of record in Volume 57, Page 553 and as amended by the First Amendment thereto dated February 7, 2003 and recorded in Volume ____, Page ____ of the Town of Bolton Land Records as follows:

1. Article I Section 1.1 is hereby amended to read:
"Association" shall mean and refer to "Patrick Smith Homeowners Association, Inc.," a Vermont not for profit corporation, its successors and assigns.
2. Article I Section 1.7 is hereby amended to read:
"Roadway" shall mean and refer to the private roadways shown on the Survey Map and known or designated as Mountain View Drive and Bear Mountain Lane.
3. Article I Section 2.0 is hereby added to read:
2.0 "Mountain View Drive" shall mean that "Roadway" sometimes also referred to herein as Private Roadway, shown on the Survey Map, or commonly known or designated, or shown on the Survey Map and commonly known or designated as Mountain View Drive and shall in addition mean that "Roadway" sometimes also referred to herein as Private Roadway, shown on the Survey Map, or commonly known and designated, or shown on the Survey Map and commonly known or designated as Bear Mountain Lane.

IN WITNESS WHEREOF, the undersigned, being the President of the Association herein, has hereunto set his hand and seal this 16 day of March, 2005.

CERTIFICATION OF AMENDMENT
BY SECRETARY OF THE
PATRICK SMITH HOMEOWNERS
ASSOCIATION, INC.:


Joanne de La Bruere

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

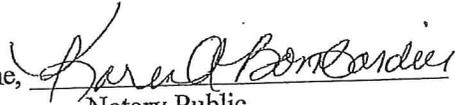

PATRICK SMITH HOMEOWNERS
ASSOCIATION, INC., By Its Duly Authorized Agent

At Burlington, this 16th day of March, 2005 personally appeared the President and Secretary of the PATRICK SMITH HOMEOWNERS ASSOCIATION, INC., and they acknowledged this instrument, by them sealed and subscribed, to be their free act and deed and that of the Association.
Bolton Town Clerk

Received For

March 16 2005 A.D.
at 1 o'clock 20 P M
Recorded in Book 106 Page 984
John A. Atwood

Before me,


Notary Public

My Commission Expires:

**THIRD AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS, OBLIGATIONS, LIENS,
RIGHTS, AND RESTRICTIONS FOR
PATRICK SMITH SUBDIVISION,
BOLTON, VERMONT**

Pursuant to authority contained in Article VIII Sections 8.1 and 8.2 of the Declaration and further pursuant to authority contained in Article IV Section 4.1 of said Declaration, the Association prepares, executes and certifies for recording in the Land Records of the Town of Bolton a Third Amendment to the Declaration of Covenants, Conditions, Easements, Obligations, Liens, Rights, and Restrictions for Patrick Smith Subdivision, Bolton, Vermont dated July 24, 2002 and of record in Volume 57, Page 553 and as amended by the First Amendment thereto dated February 7, 2003 and recorded in Volume 59, Page 642 and as further amended by the Second Amendment thereto dated March 16, 2005 and recorded in Volume 66, Page 784 in the Land Records of the Town of Bolton as follows:

1. Article I Section 1.7 is hereby amended to read in its entirety:
"Roadway" shall mean and refer to the private roadway shown on the Survey Map and designated as Mountain View Drive.
2. Article I Section 2.0 is hereby deleted in its entirety.
3. Article III Section 3.3 is hereby amended to read in its entirety:
3.3 Maintenance and Repairs. As a condition of the approval of the Subdivision creating the Sites the costs for regular maintenance and repair of the entire length of Mountain View Drive until it leaves the Property at its southeasterly border at the intersection of the Property with lands now or formerly of Douse and lands now or formerly of Champney shall be shared equally by all Site Owners as part of their Association obligations and may be shared by such other users whose title does not derive from the Declarant as join the Association to contribute for that part of Mountain View Drive which they use. A maintenance schedule shall be agreed upon by the Site Owners as necessary.
4. Article IV Section 4.1 is hereby deleted in its entirety upon the recording of this Amendment in the Land Records of the Town of Bolton.

CERTIFICATION OF AMENDMENT BY
PATRICK SMITH HOMEOWNERS
ASSOCIATION, INC.



PATRICK SMITH,
Its Duly Authorized Agent

TOWN OF BOLTON

An All-Season Community

Municipal Office (802) 434-3064 or 434-5075
Highway Department 434-3930 Volunteer Fire Department 434-3968
3045 Theodore Roosevelt Highway
Bolton, Vermont 05676

The Town Of Bolton
Development Review Board

November 15, 2001

Dear Board Members:

With regard to the Patrick Smith's proposed eight-lot sub division, I have several concerns. The Town of Bolton Zoning Regulations require that all structures have the appropriate road frontage whether a town highway or private road. All rights-of-way and private roads must meet the minimum base requirements of the A-76 Vermont AOT road construction standards.

With the construction of additional dwellings on Mountainview Drive, drainage and the installation of culverts become an issue. If the final plan is approved I will make an extensive site and a detailed account for culvert placement and ditching.

If you have any other questions, please feel free to contact me.

Sincerely:

Eric Andrews
Road Foreman
Town of Bolton



Bolton Town Clerk's Office

Rec'd. for record October 6 2004 A.D.
at 1 o'clock 00 minutes P M.
Recorded in Book 65 Page 705
Test Jana Atwood

TOWN OF BOLTON
An All-Season Community

Municipal Office (802) 434-3064 or 434-5075
Highway Department 434-3930 Volunteer Fire Department 434-3988
3045 Theodore Roosevelt Highway
Bolton, Vermont 05676
www.boltonvt.com

Patrick Smith
PO Box 907
Richmond, VT 05477

April 24, 2002

Re: Proposed Sub-Division

Dear Mr. Smith:

On the advice of Richard Hoising District 3 Vermont Agency of Transportation Supervisor, and the Town's Attorney, rather than set guidelines for the construction of and subsequent inspection of your proposed road and driveways, the town will accept a certification from your engineer stating that the construction of the road and driveways meet the specifications set forth in the plans drafted by him or his firm.

Additionally, we are requesting a copy of the complete set of plans showing the road, driveways and position of the dwelling.

If you have any questions, please give Dick Ward a call.

Sincerely:

Eric Andrews
Eric Andrews
Road Foreman

M. Peter Siegel
M. Peter Siegel
Chairman, Bolton Selectboard

Rm. Rodrigue Lafreniere, Sr.
Rodrigue Lafreniere, Sr.
Selectboard

David Johnson
David Johnson
Selectboard

John Devine
Selectboard

Gerard A. Mullen
Selectboard

706

EXHIBIT I c.

Feb 05 03 03:44p

JHSTUART

8028785171

P.1

JHSTUART

CIVIL/ENVIRONMENTAL ENGINEERS

February 5, 2003

Town of Bolton
Attn: Richard Ward, Zoning Administrator
3045 Theodore Roosevelt Highway
Bolton, VT 05676

Re: Patrick Smith Subdivision

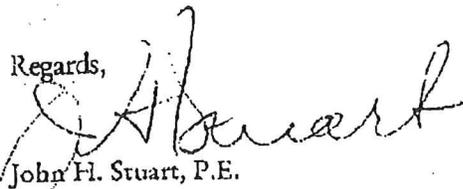
Dear Dick:

I have received a copy of a letter issued by town officials on April 24, 2002 regarding the roadway improvements connected with the Smith subdivision.

In accordance with the main condition of that letter, I am providing certification that the road upgrade, road construction within the project proper, driveway entrances, and related roadway improvements (culverts, erosion control, etc.) have been completed as indicated on the approved plans. Field adjustments were necessary in isolated instances to better preserve stream channels and other natural resources.

Feel free to contact me if you have any questions or comments.

Regards,



John H. Stuart, P.E.

JHS/ov10

Bolton Town Clerk's Office

File for record October 5 2004 A.D.
_____ o'clock _____ minutes P
65 Page 706
Jana Atwood

EXHIBIT J

Maintain Mt View Road.

grader 4 or 5 Times a year ^{\$}84.00 hr
3-4 hours

\$ 1,680.00 grader

415.68 man.

\$ 2095.68 TOTAL

Crusher Run

950 yard 10 Loads a year

\$ 1,330.00

^{\$}Grader 2095.68

Crusher run 1330.00

TOTAL 3,425.68

Plowing

35 Plowing

1505.00 TRUCK

1820.00 man.

1380 Sand

8,030.00 TOTAL

TOTAL All

\$ 11,455.68

1. 1,800.00
 2. 1,800.00
 3. 1,800.00
 4. 1,800.00
 5. 1,800.00
 6. 1,800.00
 7. 1,800.00
 8. 1,800.00
 9. 1,800.00
 10. 1,800.00
 11. 1,800.00
 12. 1,800.00
 13. 1,800.00
 14. 1,800.00
 15. 1,800.00
 16. 1,800.00
 17. 1,800.00
 18. 1,800.00
 19. 1,800.00
 20. 1,800.00
 21. 1,800.00
 22. 1,800.00
 23. 1,800.00
 24. 1,800.00
 25. 1,800.00
 26. 1,800.00
 27. 1,800.00
 28. 1,800.00
 29. 1,800.00
 30. 1,800.00
 31. 1,800.00
 32. 1,800.00
 33. 1,800.00
 34. 1,800.00
 35. 1,800.00
 36. 1,800.00
 37. 1,800.00
 38. 1,800.00
 39. 1,800.00
 40. 1,800.00
 41. 1,800.00
 42. 1,800.00
 43. 1,800.00
 44. 1,800.00
 45. 1,800.00
 46. 1,800.00
 47. 1,800.00
 48. 1,800.00
 49. 1,800.00
 50. 1,800.00
 51. 1,800.00
 52. 1,800.00
 53. 1,800.00
 54. 1,800.00
 55. 1,800.00
 56. 1,800.00
 57. 1,800.00
 58. 1,800.00
 59. 1,800.00
 60. 1,800.00
 61. 1,800.00
 62. 1,800.00
 63. 1,800.00
 64. 1,800.00
 65. 1,800.00
 66. 1,800.00
 67. 1,800.00
 68. 1,800.00
 69. 1,800.00
 70. 1,800.00
 71. 1,800.00
 72. 1,800.00
 73. 1,800.00
 74. 1,800.00
 75. 1,800.00
 76. 1,800.00
 77. 1,800.00
 78. 1,800.00
 79. 1,800.00
 80. 1,800.00
 81. 1,800.00
 82. 1,800.00
 83. 1,800.00
 84. 1,800.00
 85. 1,800.00
 86. 1,800.00
 87. 1,800.00
 88. 1,800.00
 89. 1,800.00
 90. 1,800.00
 91. 1,800.00
 92. 1,800.00
 93. 1,800.00
 94. 1,800.00
 95. 1,800.00
 96. 1,800.00
 97. 1,800.00
 98. 1,800.00
 99. 1,800.00
 100. 1,800.00

Total
 180,000.00

EXHIBIT J

Mountain View Drive et al Petition – mileage

10/14/2015

Mountain View Drive: .68 miles

Bear Mountain Road: .17 miles

Fern Hollow: .06 miles

Total: .91 miles

Class 3 SOV aid: 1521.357985 per mile

Total Class 3 aid would be \$1,384.44

May 21, 2012
Bolton Town Plan

1. Work with the Agency of Transportation and the CCMPO to locate and build park and ride facilities, for example near the intersection of Bolton Valley Road and Route 2.
 2. Work with the Agency of Transportation and the CCMPO to develop a plan for bike lanes to be created along existing roads.
- f. Review the classification of existing town roads to determine if some can be downgraded from Class 3 to Class 4 trails as appropriate to land uses they serve.
- g. Continue the existing Town practice of not accepting new, privately built roads to town ownership and maintenance.
- h. Support the road maintenance crew through Town-provided training sessions.
- i. Ensure that owners and managers of recreational areas provide and maintain adequate and safe parking facilities.
- j. Investigate long term access opportunities to gravel and sand deposits for future road maintenance use.

I am not able to attend tonight's public hearing on taking over several private roads, but hope that my following comments can be included in the record of this hearing. If only oral testimony can be included in the record, I would ask that these comments be read out loud at the hearing on my behalf.

The Town of Bolton is financially stretched thin, and I have concerns about adding private roads to our existing public road system.

First, these roads were constructed with the clear understanding that they would remain private roads after completion. I do not believe the town would have permitted the development on these roads if the Town had to maintain them.

Second, property owners on these private roads would realize considerable savings in road maintenance, and increased property values, with such costs borne by the other taxpayers in town. And increased taxes from any increased property values won't begin to cover the additional town costs

Third, the state will be instituting a new town road permitting system in a couple of years, intended to reduce phosphorus pollution going into Lake Champlain. Complying with this new process - armoring ditches, replacing culverts, constructing sediment settling ponds, and more - will be expensive. It would place a significant burden on our town to have the additional costs of retrofitting these private roads added to the challenge of retrofitting our existing roads.

Finally I doubt that these private roads are constructed to town standards - it would be unfair for other town taxpayers to finance improvements to this private road system to bring it up to standard. In addition, the roads are steep and prone to problems when it rains hard, and there is little to be done about relocating them to moderate grade - they will continue to be a maintenance problem, and in flood events will again wash out with significant expense to the town.

Obviously these roads are a problem for the homeowners, or the petition to take them over would not have been submitted. But the developer knew these would be private roads when he got his permits. Purchasers knew these were private roads when they bought their properties, and these properties were priced accordingly. Subsequent purchasers knew these would remain private roads. To have the town take them over would place considerable challenges on our road crew, and give a financial benefit to the few homeowners who live on these roads at the expense all other taxpayers. For these reasons, I encourage the selectboard to not take over the roads under consideration

Joss Besse
Bolton, VT

