

TOWN OF WILMINGTON
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT AND STATEMENT OF FINDINGS
WILMINGTON, VERMONT 05363

A request for a permit was made to the Board by: **Michael Kimack, Agent for Cold Brook Fire District**

Agent(s) Mailing Address: **29 Heights Road, Fort Salonga NY, 11768**

Owner/Applicant(s) Mailing Address: **18 Coldbrook Road, Wilmington VT, 05363**

Address of the subject property: **off Haystack Road, Wilmington, VT 05363**

Tax Map #**001-01-009.000**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2012-064

Description of Case per Public Notice:

Application # 2012-064; owner: Cold Brook Fire District; Agent: Michael Kimack. Application being made for Conditional Use review to allow construction of a tertiary treatment plant of 3,300 sq. ft., upgrade treatment lagoons and install piping and tanks at an existing treatment lagoon facility; Zoning Ordinance Sections 7.C & 512; location: off Haystack and Forbush Roads.

Notice for a public hearing was published in the Valley News on: **8/3/2012**

Notice was posted in three public places on: **8/3/2012**

A copy of the notice was mailed to the applicant on: **8/7/2012**

A copy of the notice was mailed to the abutters on: **8/3/2012**

The public hearing was held on: **8/20/2012**

Action taken on this application may be appealed by anyone identified as an interested party, pursuant to Vermont Statutes Annotated. Said appeal shall be made to the Vermont Environment Court.

Appeal period for this Case expires on: October 4, 2012

In *addition* to the Applicant / Agent the following persons were heard by the Board in connection with this request: (Copies were mailed to those persons listed below as having been heard.)

Alice Herrick, Zoning Administrator
Russell & Jeanette Bishop, Interested Parties/Abutters
Stanley Bryce, Interested Party/Abutter
Susan Haughwout, Prudential Committee Member
Ben Joyce – Surveyor/Witness for the Applicant

I. The Board FINDS:

The following are the circumstances which give rise to the request, and the following are facts and opinions presented to the Board at the hearing and developed by the Board in independent evaluation.

EXHIBITS:

- Application (four pages)
- A Authorization letter
- B Property deed including blanket easement (seven pages)
- C Abutters List
- D Plot Plan Prepared for the Cold Brook Fire District No. 1, Haystack Golf Course Treatment Plant, Haystack Road, Wilmington, Vermont by Joyce Land Surveying, July 9, 2012, revised 08/06/12
- E Plan set for Cold Brook Fire District No. 1 by Stantec Consulting Services, Inc.
 - a. Golf Course Tertiary Treatment Plant, Overall Site Plan, C-102, June 2012
 - b. Erosion Prevention and Sediment Control Notes and Details, C-501, June 2012
 - c. Tertiary Treatment Building, Building – Concept Plans, Elevations and Sections, S-101, June 2012

1. The subject property is in the Residential District of the Town of Wilmington. The property is identified as Tax Map 001-01-009.000. This property is owned by the Cold Brook Fire District and is the location of most of the proposed development.
2. Cold Brook Fire District, formed in 1987 under the laws of the State of Vermont as a Special Benefits District, serves two tracts totaling approximately 2400 acres – the Haystack Golf Course and the 5 villages and the Haystack Mountain Ski Area Base Area. The District, which includes abutting lands in both Wilmington and West Dover, is incorporated to operate and maintain the water wells, pipelines, sewers, waste treatment and disposal facilities serving these lands under a blanket easement contained in the Cold Brook Fire District deed (Exhibit B). Its operations are overseen by the Prudential Committee.

3. In the recent DRB Case #2012-063 the Board approved the enlargement of two lagoons, construction of buildings and other improvements at the Base Area. This case is another step in the improvement and enlargement of the Fire District's facilities. The proposed improvements will allow the Fire District to serve planned further development at the Haystack Club and Haystack Ski Area.
4. Presently, development on the subject property includes:
 - A. Two lagoons
 - B. Spray lines located to the south and west of the lagoons. These lines were installed in 1971.
 - C. An open shed with roof that is used for storage.
 - D. A control building and job trailer.
 - E. Concrete tanks that sit mostly below ground level with about two feet projecting above ground level. These tanks are located to the west of the lagoons.
 - F. Sewer lines that head in a northerly direction and connect this facility with the facilities at the Base Area. These lines are buried, although there are manholes at ground level.
 - G. A force main that heads in a southeasterly direction and exits the property at Two Brook Village.
 - H. An access road that comes off Haystack Road, proceeds past the undeveloped "village" of High Peaks and enters the property on the eastern side. There are additional utility roads on the property that circle the lagoons and provide access to the buildings to the north of the lagoons. The only traffic on the access road is and will be employees.
 - I. An old camp and well located in the northwest corner of the parcel. Neither the camp nor the well has been used for many years and the Applicant has no intention to use them in the future.

All these elements are shown in Exhibit D.

5. The Applicant is proposing the following improvements on the property:
 - A. A 100,000 gallon effluent tank and a smaller sludge storage tank. Both of these tanks will be located to the north of the lagoons, about halfway between the lagoons and the northern border.
 - B. Six sludge drying beds. Each bed will measure 35 feet by 75 feet. The setback from the northern (nearest) property line to the closest bed will be at least 40 feet. The location shown in Exhibit D is the correct location and supercedes any other placement shown in any other exhibit.
 - C. Tertiary Treatment plant. The plant will consist of two connected buildings with a total square footage of approximately 3,300 square feet (Exhibit E). The buildings will be located to the north of the lagoons and will be set back at least 400 feet from any property line. Any exterior lighting will be downcast and shielded. The Applicant stated that it would make sense for the lighting to be controlled by motion detectors.

- D. Additional access roads will be built to serve the proposed tanks and drying beds.
- E. The number of employees on site will remain at two to three.
- F. The locations of all the proposed development are shown in Exhibit D.

6. The only development off the subject property is a new line from a 46,000 gallon water tank located on Fire District property near Haystack Road to the tertiary treatment plant. The access road will need to be excavated so that the new line may be installed. There are no residences that are accessed by this road.

7. The start date of construction is not known, as it is largely dependent on the development at Haystack Ski Area. The development will be in two phases. Phase 1 will be the tanks, bed and some piping. It is possible that this phase could start in early 2013. Phase 2 would be the construction of the tertiary treatment plant and that will be largely dependent on the hotel construction at the Base Area.

8. Interested Person Stanley Bryce expressed concerns. He is a full-time resident and the closest to the spray fields. Although there is a "buffer zone" of natural growth on the subject property along the border of his property, he sometimes smells an odor. He also has concerns that further development will impact his well that is located near the border of the subject property. The Applicant stated that there will be no additional spraying and that the new development is further from Mr. Bryce's property than the present spray lines and lagoons. There will be no cutting in the buffer zone. With regard to Mr. Bryce's well, the Applicant said that the Fire District is abiding by State standards and that the Act 250 hearings will be looking in depth at these issues before any permit is issued.

9. Mr. Bryce also had concerns with regard to construction noise. He wanted more information as to the type and duration of noise. The Applicant stated that the Phase 1 construction on the tanks would be mostly welding and might last one to two months. Most of the noise during Phase 2 will be from excavation and the construction of the treatment building. Although the Phase 2 construction could last nine to twelve months, much of that time will be interior work in the treatment building and will not be heard outside the building. The Applicant stated that most of the construction noise would be similar to noise one might hear during construction of a residence. There will be some blasting. The Applicant is willing to notify neighbors when blasting will occur. Construction will be not more than five days a week.

10. Mr. Bryce wanted to know if there would be any equipment or work on Forbush Road. The Applicant stated that there would be no work on Forbush Road.

11. Russell & Jeanette Bishop did not give any testimony but did seem to be in agreement with the questions asked by Mr. Bryce.

II. The Board CONCLUDES:

The blanket easement in the deed enables the Cold Brook Fire District to maintain and expand its facilities in Wilmington and West Dover. This easement allows the Fire District to make improvements and construct buildings even if the improvements and structures are not on Fire District property. All the proposed development is within the boundaries of the Fire District.

The Board concludes that Mr. Bryce's concerns relating to the possible impact on his well would be best addressed at the Act 250 hearings. The Board has neither the expertise nor the authority to regulate this matter. To lessen the impact of the project and its construction on neighboring properties the Board has placed conditions that are listed below. Although construction noise is an adverse effect, it is temporary and will not be significantly different in amount or volume than what could be expected in a residential area during a construction project. The majority of the construction will occur at least 600 feet from the residences on the southerly border.

Construction of a municipal sewage treatment with piping and additions to the lagoons is a Conditional Use in the Residential District and requires Conditional Use review. With regards to the criteria for a conditional use permit, the Board concludes that this proposal *will* conform to the requirements of the Wilmington Zoning Ordinance and the following standards:

- A. **Will the proposed Conditional Use have an undue adverse effect on the capacity of existing or planned community facilities?** No. These improvements will allow the Cold Brook Fire District to continue to supply water and sewer so that future development will not need to tie into municipal facilities.
- B. **Will the proposed Conditional Use have an undue adverse effect on traffic on roads and highways in the vicinity?** No. The number of employees will remain the same and the traffic, except during construction, will not increase.
- C. **Will the proposed Conditional Use have an undue adverse effect on the character of the area, as defined by the purpose or purposes of the zoning district within which the project is located?** No. Most of the improvements are on a 35 acre parcel Cold Brook Fire District land and are not visible from the public roadways or even abutting properties. A natural growth buffer zone also helps to shield the project from neighboring residences. The setbacks for new construction meet the requirements and the buildings will be at least 400 feet from any property lines. Once the construction is over there will be minimal impact on abutters.
- D. **Will the proposed Conditional Use comply with specifically stated policies and standards of the Town Plan?** Yes.

- E. **Will the proposed Conditional Use comply with other sections of the Zoning Bylaw? Yes.**

III. CONDITIONS:

This is granted subject to the following restrictions, requirements, limitations or specifications:

1. The placements and sizes of the new construction shall be substantially as shown in Exhibit D.
2. Blasting or outside construction shall occur no more than five days a week and shall not commence before 7:30 am or continue after 5:30 pm.
3. All exterior lighting on the tertiary treatment plant shall be downcast and shielded and shall be controlled by motion detectors. No other additional exterior lighting was requested or approved.
4. Any abutters who have residences on their property shall be notified at least 7 days prior to any blasting. The notification shall include the dates and general times of the blasting. They shall also be given contact information so that they may request further information.
5. The natural growth buffer zone along the southerly border shall not be reduced in area or in density of vegetation.

Thus, the Development Review Board does **approve** the application for **Conditional Use review to allow construction of storage tanks, sludge drying beds and a municipal sewage treatment with additional piping and access roads in the Residential District.**

If unused, this Approval expires 3 years from the date of issue for Phase 1 and 6 years from the date of issue for Phase 2. A request for extension may be made in writing to the Development Review Board before the expiration date. Such request shall be in the form of an APPLICATION FOR EXTENSION.

There is a thirty (30) day appeal period from the date of signature before this Approval becomes final. In addition, all fees must be paid and a Zoning Permit *must* be issued prior to the commencement of any work requested in this application. When a Zoning Permit is issued, there is an additional fifteen (15) day appeal period before the Permit becomes final. Work may commence when the Permit has been issued and all Appeal periods have ended.

This approval ***does not relieve you***, as applicant, from obtaining any and ALL applicable State and other local permits.

IN FAVOR of granting the APPROVAL FOR the above referenced application, with whatever restrictions, requirements, limitations or specifications are contained herein:

Nicki (Polly) Steel
Andrew Schindel
Gil Oxley
Dave Kuhnert

OPPOSED: None

For the Board: Polly Steel, Chairperson

Date: 9/4/2012

Appeal Rights: An interested person may appeal this decision to the Vermont Superior Court, Environmental Division, pursuant to 24 VSA 4471 and VRECP Rule 5, in writing, within 30 days from the date this decision is issued. If you fail to appeal this decision, your right to challenge this decision at some future time may be lost because you waited too long. You will be bound by the decision, pursuant to 24 VSA 4472(d) (exclusivity of remedy; finality).

This approval does not relieve the Applicant of the responsibility to obtain all other applicable approvals that may be required by Federal, State, and local laws and ordinances.