

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 of Cold Brook Fire District**

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

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

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

Tax Map #**HSDEERHI.000**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2012-065

Description of Case per Public Notice:

Application # 2012-065; Cold Brook Fire District; Agent: Michael Kimack. Application being made for Conditional Use review to allow construction of a well and pump and chlorination house, power poles and 3300 feet of 8" water main with hydrants and valves; Zoning Ordinance Sections 7.C & 512; location: off East Village Road.

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
Arthur Sobol, Interested Party
Frank Stoto, Interested Party
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 Cold Brook Fire District, Well 9 Control Building, Northeast Corner of “East Tract”, so-called, Wilmington, Vermont, by Joyce Land Surveying Corp., July 9, 2012, no revisions.
 - E Plan Set “Cold Brook Fire District No. 1, Well No. 9 and Water Main by Stantec, June 2012.
 - a. Overall Site Plan, C-101, June 2012
 - b. Water Main Plan and Profile, C-102, May 2012
 - c. Water Main Plan and Profile, C-103, May 2012
 - d. Water Main Plan and Profile, C-104, May 2012
 - e. Water Main Plan and Profile, C-105, May 2012
 - f. Water Main Details, C-501, May 2012
 - g. Water Main Details, C-502, May 2012
 - h. Erosion Control Details, C-503, May 2012
 - i. Well House, S-101, June 2012
 - j. Sections and Details, S-501, May 2012
1. The subject property is in the Residential District of the Town of Wilmington. The property is identified as Tax Map HSDEERHI.000.
 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 2,400 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 No. 2012-063 the Board approved the enlargement of two lagoons, construction of buildings and other improvements at the Base Area. In another recent DRB case, No. 2012-064, the Board heard testimony from the Fire District concerning additional improvements on a parcel off of Haystack and Forbush Roads which would result in the construction of a tertiary treatment plant, upgrading of existing treatment lagoons and installing piping and tanks. The instant case, No. 2012-065, is another step in the improvement and enlargement of the Fire District's facilities. The purpose of the proposed project is to provide municipal water to the proposed master plan development at the Haystack Club and Haystack Ski Area.

4. The main site of the proposed project is a 13 acre tract presently owned by the Town of Wilmington to which the Fire District has a blanket easement. On that tract is an existing well (Well No. 9) which has been approved by the State of Vermont as a public water supply. The well is not presently operating. An 8 inch water main will be constructed along Coldbrook Road from the entrance to the Haystack Club to East Village Road, a distance of 1,100 feet, and then along Village East Road for approximately 2,200 feet to Well No. 9. Village East Road is bisected by East Village Circle at two separate intersections. The Circle will provide an alternate route for some of the houses during some of the road excavation. The project will include the construction of hydrants and valves, a well house approximately 10 feet by 12 feet and a new well pump with stand-by chlorination. The proposed work also includes the extension of 3 phase power to the well site from Coldbrook Road primarily along existing poles with approximately 3 additional poles to reach the well site.

5. The 13 acre site has not been previously planned for any development as its primary value is in providing a water source that has State approval. The existing use of the land adjacent to the proposed water line is residential homes. The well will not provide municipal water to any existing homes since they have their own wells. However, the new water line will provide fire protection. The Applicant stated that he had worked with Wilmington Fire Chief Ken March to determine the number and placement of the hydrants. The proposed water line will contain potable water and the water will not be used for snowmaking purposes. At the entrance to the Haystack Club the new 8 inch water main will be connected to an existing 12 inch water main which will help keep a 426,000 gallon water storage tank filled. The location of the well house, the water main, the hydrants and other proposed improvements are shown in Exhibit E.a.

6. A narrow access road leads from Village East Road to Well No. 9 (an existing Well No. 10 will be capped) located on the subject property. Applicant testified that the access road will not be widened or improved, although some clearing may be

done to allow for construction. The access road is not a town road. The approximately 10 foot by 12 foot well house will have one parking space and a downward facing exterior light. The location is in a dense woods and the light will not be visible from traveled roads. The well will not require the hiring of additional employees.

7. Interested Person Arthur Sobel expressed concerns. He spoke of previous contentious issues between Haystack East homeowners and the Fire District. He stated that area is rural in nature and that the installation of fire hydrants would detract from its rural appearance. He also was concerned that excavation for the water main would disrupt traffic, especially at the narrow entrance where East Village Road meets Coldbrook Road. Excavations in front of individual homes and driveways would also be disruptive for periods of time. The Applicant stated that the excavated areas would be refilled to be in the same or better condition than they were before and that efforts would be made to inform residents concerning the excavation schedule.

8. Interested Person Frank Stoto owns an unimproved lot which borders on the narrow access road. He stated that in recent years a portion of his property has become swampy and believed that Well No. 9 might be the cause. The Applicant responded that the well was not in operation during this time and that it could not have been the cause. Mr. Stoto also stated that the project will pump 100,000 gallons of water each day and was concerned about a possible break in the water main. The Applicant responded that there would be a buried shut-off valve every 1,000 feet and that the water main would be continually monitored by trained staff who could detect any break in the line.

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 of the proposed project is within the boundaries of the Fire District.

The Board concludes that the concerns of Mr. Stoto and Mr. Sobel relating to the possible water issues related to the well and water main construction would be best addressed at the Act 250 hearings, as it has neither the expertise nor the authority to regulate this matter. Although excavation and construction can have adverse effects, they are temporary and the result will be enhanced fire protection for the residents and second home owners, as well as an increased water supply for the Haystack Club and Ski Area.

A municipal well and water main 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 provide an adequate water supply to the Haystack Club and Ski Area, as well as enhancing fire protection for the immediate community.
- B. **Will the proposed Conditional Use have an undue adverse effect on traffic on roads and highways in the vicinity?** No. There will be no increase in traffic, except during the construction phase.
- 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. The well and small building are in a heavily wooded area and will not be visible to the community. The water main and hydrant construction will be temporary and will not have an undue adverse effect on the character of the area.
- 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 placement of the well house, the water main and hydrants shall be substantially as shown in Exhibit E.a.
2. Applicant shall keep residents advised as to the excavation and construction schedule and shall fill in the excavations as soon as possible in order to minimize homeowners' inconvenience and disruption. This is especially important during the excavation on the section of Village East Road from Coldbrook Road to the first intersection of Village East Road and East Village Circle.
3. The well house exterior light shall be downcast and shall be controlled by motion detectors.

Thus, the Development Review Board does **approve** the application for **Conditional Use review to allow construction of a municipal well and water main in the Residential District.**

If unused, this Approval expires 1 year from the date of issue. 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:

Andrew Schindel
Nicki (Polly) Steel
David Kuhnert
Gil Oxley

OPPOSED:
None

NOT IN ATTENDANCE
Paul Tonon

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.