

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: **James Barnes of Hermitage Inn Real Estate Holding Company, LLC**

Agent(s) Mailing Address: **Robert Rubin, Haystack Operating Co., LLC, PO Box 2210, West Dover VT, 05356**

Owner/Applicant(s) Mailing Address: **PO Box 2210, West Dover VT, 05356**

Address of the subject property: **125 Gatehouse Trail, Wilmington, VT 05363**

Tax Map #**HAYSTACK.SKI, 001-01-007.000 (Glebe land owned by the Town of Wilmington), HAYSTUTL.000, 02-01-003.000, 02-01-002.000, 02-01-043.000, 02-01-001.000, 02-01-044.000, HSHIGHCO.LND, HSSUMMIT.LND.**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2012-051

Description of Case per Public Notice:

Application # 2012-051; owner: Hermitage Inn Real Estate Holding Company, LLC; Agent: James Barnes. Application being made for Planned Unit Development review to allow revisions to an existing PUD and subdivision of 9 additional lots; Zoning Ordinance Section 3(e), 7.E; location: 125 Gatehouse Trail.

Notice for a public hearing was published in the Valley News on: **5/18/2012**

Notice was posted in three public places on: **5/18/2012**

A copy of the notice was mailed to the applicant on: **5/18/2012**

A copy of the notice was mailed to the abutters on: **5/18/2012**

The public hearing was held on: **June 4, June 18 and June 25, 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: August 30, 2012

In *addition* to the Applicant and 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
Robert Fisher, attorney for Applicant
Robert Harrington, engineer for Applicant
Bruce Wyman, witness for the Applicant
Ken March, Wilmington Fire Chief

Agent Bob Rubin and owner Jim Barnes spoke for the application.

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 (three pages)
- A Consulting Affiliates list
- B Deeds of Hermitage Inn Real Estate Holding Company, LLC (three pages)
- C Resolution of Hermitage Real Estate Holding Company, LLC (authorization)
- D General Description of Proposed Amendment Application for Wilmington DRB
- E Summary of requested changes/additions to existing permits (6 pages)
- F E-mail from Jennifer Conley dated May 10, 2012 on the traffic study
- G Applicant's Abutters List for Wilmington and Dover properties (6 pages)
- H Haystack & Hermitage Inn plan set by Harrington Engineering, Joyce Land Surveying Corp. and Trinity Engineering, 5/14/12.
 - 1. Updated Master Plan, MP-1, 5/14/12.
 - 2. Site Plan, SP-1, 5/14/12.
 - 3. Single Family Dwelling Conceptual Layout, SP-2, 05/14/12.
 - 4. Proposed Hermitage Lift, SP-3, 05/11/2012.
 - 5. Preliminary Site Plan 10 Unit Building, C-1, 2/13/2012.
- I Photographs of Temporary Sales Office/Rescue Building (4 pages)
- J Elevations for Toboggan Shed, John Guminak Design Services, 12/13/11. (5 pages)
- K Abutter's List for Wilmington properties as provided by Zoning Administrator. (2 pages)
- L-1 Findings for Case 922
- L-2 Findings for Case 922 Mod A
- L-3 Findings for Case 922 Mod B
- M Assignment of Lease with the Town of Wilmington, Oct 21, 2011.
- N Lease agreement with the Town of Wilmington, June 1994.
- O Agreement between the Town of Wilmington and Haystack Club/1 Cornell

- Inc.
- P Letter from Wilmington Water District dated June 13, 2012
- Q Description (3 pp) and drawings of Base Lodge. Drawings replaced by Ex. BB.
- R Haystack Club Trails and Winter Activities, SP-4, [by Harrington Engineering], no date and description.
- S Site Plan, SP-1 [by Harrington Engineering], 05/23/12, revised 6/18/12 to add 3 parking spaces for Glebe land access, showing base area and listing proposed density mix.
- T Haystack & Hermitage Inn [by Harrington Engineering]
- a. Updated Master Plan, MP-1, 05/24/12, revised 6/18/12 to show construction timing with narrative.
 - b. Site Plan, SP-1, 05/14/12
 - c. Single-Family Dwelling Conceptual Layout, SP-2, 05/14/12
 - d. Proposed Hermitage Lift, by Joyce Land Surveying, 05/22/2012
 - e. Preliminary Site Plan, 10 Unit Building, C-1, by Trinity Engineering, 2/13/2012
- U Zoning Study of Land Parcels, 1 Cornell Inc., by Richard Joyce, SP-9, 7/8/05, submitted to show the 26 acres set aside make up acreage for village density.
- V Boundary Survey & Subdivision Plat, Rushing Creek Village, Hermitage Road & Fannie Hill Road by Joyce Land Surveying Corp., SP-10, Feb. 10, 2010.
- W Letter from Wilmington Fire Chief dated 6/14/12. 2 pp.
- X Single Family Dwelling Water & Sewer Plan & Grading Plan, [by Harrington Engineering], SP-2, 05/23/12, revised 6/18/12.
- Y Proposed Lift & Trail, by Joyce Land Surveying Corp., 5/11/2012, no revisions.
- Z Proposed Restoration, by Trinity Engineering, C-1, 5/21/2012, no revisions.
- AA Letter from Wilmington Police Chief dated June 25, 2012
- BB Haystack Club - Base Lodge by Austin Design, Inc. and John Guminak Design Services. These replace drawings in Exhibit Q
- a. Index of Drawings
 - b. 1st Floor Plan, A3.1
 - c. 2nd Floor Plan, A3.2
 - d. Basement Plan, A3.3
 - e. Sub-Basement Plan, A3.4
 - f. East Elevation, A4.1
- CC Cover letter from James Libby, Jr. dated 12/27/06 (1 p) and Affordable Housing Mitigation Agreement between 1 Cornell, Vt. Housing and Conservation Board and Town of Wilmington (9 pp)

1. The subject property is in the Commercial District of the Town of Wilmington. The proposal includes properties identified as Tax Map #s HAYSTACK.SKI, 001-01-007.000 (Glebe land owned by the Town of Wilmington), HAYSTUTL.000, 02-01-003.000, 02-01-002.000, 02-01-043.000, 02-01-001.000, 02-01-044.000,

HSHIGHCO.LND, HSSUMMIT.LND

2. Robert Fisher stated that he was at the hearing as the attorney for the Applicant, not as the attorney for the Town of Wilmington. DRB members Paul Tonon and Andy Schindel stated that they both have memberships at the Haystack Golf Club but had no financial interest in the Haystack development and would not recuse themselves in this case.

3. DRB member Paul Tonon was unable to attend the June 4 hearing but listened to the tape. He attended the June 18 and 25th hearings.

4. The area under consideration is covered by agreements between previous owners of Haystack and the Town of Wilmington, a PUD and many decisions by the Zoning Board (now DRB) going back to 1970. There are other areas such as the golf course and “villages” that are not part of this application but that are included under the agreements, PUD and zoning decisions. The area being considered in this application is referred to as the Base Tract.

5. The most recent DRB cases that address development at Haystack Ski Area Base Tract are DRB Case #922, 922 Modification (Mod) A and 922 Modification (Mod) B. These decisions were issued in 2005 and 2006. Some of the work approved in these cases has been done and some has not been started. There is also approved work that the Applicant is not intending to do. This decision is based on those previous decisions and evidence given as a part of the hearing for this case. Many of the proposed changes are a result of the ski area and surrounding property being purchased by Hermitage Inn Real Estate Holding Company, LLC in October of 2011. The mountain reopened for skiing during this past ski season (2011-2012). Owner Jim Barnes stated that due to the fact that the Hermitage Inn abuts much of the ski area and already has a clientele it makes sense to have greater connections between the inn and ski area but also results in the need to change some of the aspects of the development.

6. **Work that has been done since Case #922, 922 Mod A & B** is as follows:

- Lower Base Lodge has been demolished
- Upper Base Lodge has been demolished
- Gatehouse has been constructed
- Two townhouses with a total of 8 units have been constructed with one more building of four units permitted but not yet constructed
- Sewer and water have been updated
- Snowmaking facilities have been added
- Roads have been paved and lighting has been added
- Some blasting in hotel and base lodge areas has been done

7. **Work that was approved in Case #922, 922 Mod A & B** but has not been done:

- Maintenance Building to be demolished
- Snowmaking Building to be demolished

- Hotel to be built – it was approved for 4 stories and 200 units in #922 but was changed to 5 stories and 162 units in #922 A & B. Revised plans for the hotel are not available at this time
- Condo building approved in #922 A & B with 89 units
- Townhouses in 2 different areas (Upper and Lower) approved for a total for 118 units in #922 B. (As noted above, 8 units have been constructed to date with 4 more permitted)
- New maintenance and snowmaking building approved in #922. The size and location of these building would remain as approved in #922.
- Two new pump stations in #922. The size and location of these building would remain as approved in #922.
- Not more than 3 tennis courts approved in #922 B. There are no plans to build three tennis courts. Their location is now where the proposed nine lot subdivision will be.

8. **Proposed work/changes** for the coming year is as follows:

- Remodel rescue shed on Glebe Land. This building will be used for sales and warming hut.
- Construct 12 foot by 24 foot building to be used for storage of ski patrol toboggans at the top of the mountain on Glebe Land.
- Construct access road to go from Chamonix Trail to the upper parking lot. As this lot will serve visitors and employees in the near future, the road will have regular to moderate traffic. In the future, this road will also lead to the hotel. To accommodate future increased traffic, the road will be paved to 24 feet with two foot wide shoulders (28 feet total) and will have guardrails.
- Construction of a vehicular bridge over the Tunnel Ski Trail. This bridge would connect the upper townhouse area with the proposed condominium area. Conditions regarding the height of the area below the bridge have been addressed by the Wilmington Fire Chief in Exhibit W.
- Construction of base lodge. (See below for additional information)
- “Trade in” 81 condo units in the lower area that were approved in #922 Mod B and instead construct nine single-family dwellings on the proposed nine individual lots.
- Change number of units in hotel to 200 units. The exact plans for the hotel are in development.
- Change number of townhouses to 40 units in the upper area and 52 units in the lower area for a total of 92 dwelling units. The units in the upper area will consist of two two-unit dwellings (4 units) and nine four-unit dwellings (36 units).
- Construct a new ski lift that would begin at the Hermitage Inn in West Dover and cross into the Town of Wilmington. (Exhibit Y)
- Construct new ski trail that would be served by the new lift. A portion of the trail would be in Wilmington. (Exhibit Y)
- Replace snowmaking pipe. The pipe would be in the same location but would be slightly bigger in diameter.
- Reroute snowmobile trail so that it no longer goes along Fannie Hill Road.

9. **Proposed additional uses** are as follows (Exhibit R – description and map):
- A. **Uses that take place entirely in the Town of Dover and do not require review or approval from this Board:**
- (1). Ice skating
 - (2). Tubing/Sledding
 - (3). Sleigh rides
- B. **Uses that will take place in solely in Wilmington or in both Wilmington and Dover:**
- (1). Cross country skiing – The trails will be open on weekends and during the week as needed.
 - (2). Base Lodge/Amenities Center (Exhibit Q – narrative and Exhibit BB - drawings) – Expected opening is November, 2013. Hours of operation will be 7 am to 7 pm Sunday through Thursday and 7 am to midnight on Friday and Saturday. Besides serving as a base lodge for skiing activities (including but not limited to locker rooms, restaurant and bar facilities, bathrooms, ski school, ski patrol rooms, etc.), the building will also serve as an amenity center and include such activities and services as fitness rooms, sales area, entertainment areas, nursery, teen center and spa. Parts of the building will be used for receiving, food delivery and preparation, commissary, mechanical areas, shipping office and general storage. There may be a temporary warming hut erected in this area for the 2012-13 ski season but it is not part of this application.
 - (3). Snowmobiling – The only snowmobiling by individuals or small groups in the Town of Wilmington will be on VAST trails. There will be snowmobiling off of VAST trails but that will only be in areas near the Hermitage Inn that is located in Dover.
 - (4). The Applicant is proposing to have not more than two organized snowmobile race weekends per year. These events will occur at the beginning and end of the ski season and will be sited on Haystack Ski Area trails. These races will be open to the public as spectators and be similar to the races that Rock Maple used to run at the ski area.
 - (5). The existing building at the top of the mountain on the Glebe Land will be repaired and used for sales and a small warming hut. The new building will be used for ski patrol toboggan storage.
10. The original Agreement with the Town of Wilmington established an average density for dwelling units throughout all the areas of the PUD. In case #922 the DRB concluded that “The remaining 255.03 acres shall be dedicated for the approved 190 townhouse dwellings, 60 condominium dwelling units and 200 hotel units proposed under this application. At least 100 acres of the 255.03 acres shall remain Undeveloped Common Land. This land is mainly located between the hotel and the land leased from the Town of Wilmington.” There were a total of 450 units approved in #922. Cases #922 Mod A & B changed some of the types of dwelling units but neither case approved more than 450 units.

The Applicant would like to change the allotment to the dwelling units listed below

(Ex. S):

Hotel	200 units
Condominium	89
Townhouses (Upper-40/Lower-52)	92
9 Single Family Dwelling on 9 individual parcels	<u>9</u>

Total 390 units

The Applicant would like to reserve the right to propose, at a future date, an additional 60 dwelling units. The type and location of these units is not defined at this point. This would bring the total units to 450 and that total would not exceed the total approved in Case #922.

11. **The public hiking trail** leading up along the ski trails to the Glebe Land will remain and will continue to be open to the public. Three parking spaces will be available near the Gatehouse and parking will also be allowed in the upper parking area for people using the trail.

12. On December 31, 2005 an agreement was signed by Robert Rubin for Haystack Club/1 Cornell Inc. and the Town Manager and the Fire Chief of the Town of Wilmington. (Ex. O) This agreement covered Water Supply, Fire Prevention/Hazard Mitigation, Village Buildings, Fire Equipment and the purchase of a Quint fire apparatus. The agreement also stated that two payments of \$125,000 each were to be paid to the Town on December 1, 2006 and September 1, 2007. These payments were never made. Mr. Rubin stated that Mr. Barnes is willing to make these payments. He requested that the first payment of \$125,000 be due upon receipt of the State Certificate of Occupancy for the Base Lodge and the other payment of \$125,000 upon receipt of the State Certificate of Occupancy for the hotel. Fire Chief March stated that he does not like the Quint and it would not fit into the present firehouse. Also, the price for aerial trucks has increased in the six and a half years since the agreement so that a used big truck in decent condition would cost about \$500,000. At this point, Wilmington has no truck that could reach the top of the Base Lodge although the Town of Dover does. The Wilmington Fire Department can only reach up a maximum of 35 feet using “ground ladders” (individual ladders that are placed on the ground). Chief March also stated that additional training for volunteers and more volunteers will be needed. This need will increase with further Haystack development. Case #922 Mod A makes reference to a Benefit Fund that would contribute “\$25.00 per/man per/fire for equipment and training with a potential of \$5,000.00 per year, based on average historical, not actual, calls.”

13. Wilmington Fire Chief Ken March also submitted a letter dated June 14, 2012 (Ex. W). It referred to a meeting with Mr. Rubin, Mr. Harrington and Mr. Fisher regarding recent changes to the development plan and items concerning fire

safety, water supply and access of emergency vehicles. All parties agreed to the general format. The letter stated that if there are any changes by the Applicant, new plans would be given to the Fire Department for review and approval before that construction phase begins.

14. In 2006 the plan was to have two base lodges. The proposal now is to have only one base lodge that would function as a base lodge and amenities center. The Applicant noted that exact plans are not available and that the information regarding square footage on page 1 of the Narrative of Exhibit Q is not correct but page 3 of the narrative is very close. The square footage would be increased to approximately 66,290 square feet of interior space (p. 3 of Narrative of Ex. Q.) There are also exterior porches and balconies that would add another approximately 4500 square feet. Up-dated drawings were submitted in Exhibit BB that replaced the drawings in Exhibit Q. The approximate dimensions of the building are 200 feet by 112 feet. The placement of the Base Lodge is in the same area as the base lodge that was approved in #922. It was noted that the drawing of the footprint in Exhibit S represents the location but not the size of the Base Lodge. The building would include a sub-basement, basement, first floor and second floor. The basement would be a “walk-out” on the downhill side, making it four stories tall on that side and three stories tall on the uphill or mountain-facing side. The roofline would be approximately 60 feet above grade on the easterly side or downhill side and about 48 feet on the westerly or mountain side.
15. There are no architectural plans for the hotel at this time but the Applicant stated that it would be in the same location that was approved under #922. The Applicant will need to come back when plans are further developed. A water park is under consideration but also would be subject to a future application.
16. No recent **traffic** studies were submitted but Exhibit F is a copy of an e-mail from Jennifer Conley of Conley Associates dated May 10, 2012. Conley and Associates conducted traffic studies in 2005 and 2006 for 200 hotel units and 250 residential units plus 250 day skiers. She stated in the e-mail that “the impacts of that development were significantly less than the traffic generated in the area during the 1980’s.” She also noted that there has been no traffic growth in the region in recent years.
17. **Parking:** As the townhouses are built, each building will have its own adjacent parking area with three 10 foot by 20 foot spaces per unit. As specified in #922 Mod A, each condominium unit will have two spaces per unit. Until the hotel is built there will be a large parking area near the hotel site that will be used for employee and visitor parking. At this point, the parking area will accommodate at least 250 cars. When the hotel plans are submitted, further information will be submitted regarding this parking area and the number of spaces will be revisited.
18. **Lighting:** Presently, there are lantern style fixtures along the existing roads. The lights are on poles and are no more than 10 feet above grade. The Applicant will

continue to use the same fixtures along the new road. Each townhouse unit has two lights on poles in the front yard and newly constructed townhouses will also have two lights. The style will be the same as the ones previous installed. All road and townhouse lighting are on timers to come on during the night-time hours.

19. The Applicant's intent is to have the use of the ski trails remain private, although there will continue to be 275 tickets per day available to Wilmington residents. There will be no night skiing. At this point, the Applicant plans to offer skiing on Saturday and Sundays and either Friday or Monday with expanded days during the holiday times. It is possible that these days will be expanded in future years. The public will be able to access the Base Lodge with its amenities, have access to the trail that leads to the Glebe Land and the National Forest and use the amenities at the Hermitage in Dover. When the hotel and possible water park are built they will also be open to the public.
20. Wilmington Police Chief Joe Szarejko submitted a letter dated June 25, 2012 (Exhibit AA) in which he expressed concerns regarding "security or lack thereof" and the burden of additional calls, especially after hours call-outs. He requested that there be an on-site security force and that one security officer during the evening and night shifts could handle many of the calls at the present level of development. As the project is built out, more security would need to be put in place. Mr. Rubin said that they would have at least one security officer in place by November 15, 2012.
21. **Rebuilding and construction on the Glebe Land:** One existing building will be repaired and used as a sales office and warming hut. Another new building will 12 feet by 24 feet and used for storage of ski patrol toboggans. The agreement (Exhibit N) states that if there is construction or installation of structures in the watershed area of the Glebe Land then permission must be received from the Town of Wilmington and the Wilmington Water District. Although both the Town of Wilmington and the Wilmington Water District have been informed of the construction, the Applicant stated that the buildings are not in the watershed area (Exhibit H).
22. In the next couple of years the **number of employees** will remain fairly small. During 2012-13 ski season there will be approximately 30 to 35 employees at the Base Tract at any one time. These employees would include lift operators and other ski area-related jobs such as ski patrol and ski school, as well as sales and warming hut employees. When the Base Lodge is completed, possibly in the 2013-14 ski season, additional employees will be needed. The total number would be about 50 to 60. While there will be a relatively small number of employees for the next couple of years, testimony in Case #922 was that the complex will eventually employ 200 to 300 people.
23. Mr. Harrington stated that the any information and maps in Exhibits Q through Z supercedes the information and maps in the green booklet.

24. The Applicant has submitted an Act 250 application and is in the process of hearings before the Dover Development Review Board.
25. **Construction Timeline – Exhibit T:** The construction will begin in late summer/early fall of 2012 depending upon receipt of numerous permits. Some of the major construction planned for 2012 through 2013 are the base lodge, summit building, some or all of the nine single-family dwellings, ski lift and trail and additional infrastructure. The hotel and condominium building are slated for 2014-15 and the townhouses from 2013 to 2020. Infrastructure improvements will continue through 2020.

II. The Board CONCLUDES:

The subject property is an existing Planned Unit Development and requires Conditional Use review for revisions to the PUD and Subdivision review.

1. The Board concludes that the previously approved 450 dwelling units for the Base Tract still meet the requirements of the density required under the original Agreement. The current proposal is for 390 units with an additional 60 units “on reserve”. Although the proposed configuration of the types of units differs from #922 and #922 Mod A & B, the Board concludes that they still meet the necessary criteria and approve the reconfigured types of units, including the nine single family dwellings. The total of the units is 390. The Board concludes that there are still 60 unassigned units that could, at a future date, come before this Board. The total of 450 units meets the density requirements that were confirmed in Case #922. The common land continues to be primarily the 25 +/- acre lot and the acreage extending up the mountain.
2. The Board concludes that the proposed additional uses are consistent with a ski area and a four-season recreation development and are uses that are allowed under the Wilmington Zoning Regulations in the Commercial District.
3. While the Base Lodge is significantly larger than what has been proposed in previous cases, the number of base lodges has been changed from two to one. Its uses will be consistent with both a ski area and an amenity center. The Board concludes that this is an approvable change.
4. The reconstruction of one building and the construction of another building at the top of the mountain on the leased Glebe Land are accessory buildings to a ski area with residential dwelling units. The Board concludes that both buildings are outside of the Wilmington Water District drainage boundary and do not need written approval from the Town of Wilmington and the Wilmington Water District.
5. The expansion of the ski area in the form of another trail and lift is consistent with

growth within a ski area. The Board concludes that these are approvable additions.

6. The vehicular bridge will improve flow of traffic around the Base Tract as it will connect the upper townhouse area to the proposed area for the condominium building. As the condominium building is approved for 89 units and there will also be 40 townhouse units using the road, the Board concludes that the road and the bridge will carry significant traffic and both the road and the bridge should be wide enough to accommodate this traffic. (See Condition #10 for PUD below) The Board approves this construction.
7. The change of the snowmobile trail off of Fannie Hill Road will increase the safety for both snowmobiles and the vehicular traffic. Snowmobiles on Fannie Hill Road have been a concern for those who live on the road and the Board concludes that this change will result in a significant improvement in safety.

With regards to the criteria for Planned Unit Developments, the Board concludes that this proposal as presented in conformance with the Conditions listed below *will* conform to the requirements of the Wilmington Zoning Ordinance and will be consistent with the stated purpose of the PUD provisions. The proposal will also continue to meet the intent of the original Haystack PUD and will continue to meet the requirements for density and open space.

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?** The Board concludes that the greatest impact as this project continues to be built out is in the areas of affordable housing, fire safety and police calls and without the conditions cited below, the project would have an undue adverse effect.

With a large number of employees who will eventually be needed, there will be a significant impact and need for housing for both year round and seasonal employees. This need for housing will also impact the housing inventory for other residents in the Town.

The build-out of at least 190 dwelling units, a 200-unit hotel, and a base lodge/amenity center will increase the number of calls to both fire and police. The planning of such things as interior roads, hydrants and the installation of fire safety equipment is necessary to insure that existing town departments can provide for public safety. The heights of the larger buildings (base lodge, condominium building and hotel) could also present serious issues for fire safety and for the equipment that the Wilmington Fire Department presently owns. At this point, the Town of Dover owns an aerial truck but in the future, the Town of Wilmington cannot be sure that Dover will continue to have that truck. The height of any building should not exceed the reach of available fire equipment as this could result in extensive property damage and possible loss of life. Increased fire calls will result in a greater need for volunteers and training.

As the build-out continues and a greater number of residential units are built and occupied, the base lodge/amenity center is up and running and eventually the hotel is open, the number of calls to the police will rise. It is reasonable to assume that many of the calls will be in the evening and night hours. The impact on the local police department needs to be minimized. A local on-site security force would lessen the adverse effect of the police department as the private force could handle many of the more routine calls, especially those that occur in the evening and night hours when the Wilmington Police Department only has one officer on call.

- B. Will the proposed Conditional Use have an undue adverse effect on traffic on roads and highways in the vicinity?** Jennifer Conley in Exhibit F said that the project as private club with limited public access would generate less traffic than the ski area did when it was a public area in the 1980s. The Board agrees and concludes that the changes proposed under this Application will not have an undue adverse effect on the traffic on roads and highways in the vicinity. The Board also notes that although the interior roads such as the main access road and Chamonix Trail with its new bridge are private roads and are conditioned as such, they also serve as quasi-public roads and will carry significant amounts of traffic to the ski area, the hotel with possible water park, townhouses, the base lodge/amenity center and the condominium building. It is important that these major arteries are built in such a manner that will insure the safety of private vehicular traffic. The hotel and the base lodge will also have significant number of trucks delivering items for the use of the restaurants, etc. and these trucks must also use these roads in a safe manner.
- 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?** The Board concludes that, in the original Agreement and in the decisions and agreements made since by the Town, this area was approved 42 years ago for dense commercial and recreational development with accompanying high densities of residential dwellings and accompanying common land. Although at times the ski area has not been open, there are many years in the last 40 years when it has been open. A number of condominiums and private houses have been built in the immediate neighborhood. Although this application will affect the character of the neighborhood as it exists now, it is still a part of previously approved PUD which laid out the general uses and density. The density will not increase from what was originally allowed.
- D. Will the proposed Conditional Use comply with specifically stated policies and standards of the Town Plan?** The Town Plan has long recognized the Haystack Ski Area as being a Commercial District and Policy 3 under the goal regarding development states “Encourage higher density commercial growth in the Commercial District.” The Board concludes that the “build-out” of the Base Tract supports that goal. The Town Plan also lays out policies and

recommendations regarding the importance of affordable housing for the residents of Wilmington. The Conditions listed below will help achieve those policies.

- E. **Will the proposed Conditional Use comply with other sections of the Zoning Bylaw?** The Board concludes that part of the land is in the Flood Hazard Area. However, none of the proposed development is in the Flood Hazard Area. Therefore, this Application does comply with other sections of the Zoning Bylaws.

III. **CONDITIONS for Planned Unit Development and Conditional Use:**

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

1. **The allocation of dwelling units** shall be:

Hotel	200 units
Condominium	89
Townhouses	92 (40 in Upper Area and 52 in Lower Area)
Single Family	<u>9</u>
Total	390 assigned dwelling units

60 units held in reserve

Potential total of dwelling units in the Base Area shall not exceed 450.

2. Any proposed assignment of the 60 “reserved” dwelling units or other changes in the type of units in the Base Tract shall require further application to the board.
3. **Agreement and payment to town:** An updated Agreement shall be written and signed by the Town of Wilmington and the Hermitage Inn Real Estate Holding Company LLC. The Agreement shall include two payments of \$125,000 plus an amount representing the cost of inflation from December 31, 2005 to the date of each payment to the Town of Wilmington for the use of the Wilmington Fire Department. Payment dates shall be agreed upon by the Town of Wilmington and the Hermitage Inn Real Estate Holding Company LLC as part of the Agreement. The monies shall be used by the Fire Department for purchase of equipment and/or vehicles. The Agreement shall also include a structure of fees for training and fire calls similar to the agreement signed on December 31, 2005. A copy of any further agreement with accompanying plans shall be filed by the Applicant with the Zoning Administrator within 30 days of signing.
4. If at any time in the next 20 years the Town of Wilmington does not have access to an aerial truck that would be tall enough to reach the upper stories of the hotel, base lodge or condominium building, the owners of these buildings shall be required to pay for the additional cost of a larger aerial truck as compared to a smaller truck that could reach a three story building.

5. Specifications and conditions laid out in the 6/14/12 letter from Fire Chief Ken March shall be adhered to unless there is a written change or amendment that is signed by both the Fire Chief and a representative of the Haystack Club. A copy of any further agreement with accompanying plans shall be filed by the Applicant with the Zoning Administrator within 30 days of signing.
6. There shall be year round pedestrian access to a hiking trail to the "Glebe Land" owned by the Town of Wilmington and to the Green Mountain National Forest. The public shall be able to park either next to the Gatehouse by Coldbrook Road or in the upper parking lot. Signs shall be erected and maintained that indicate public parking and trail access.
7. The snowmobile races shall be limited to no more than two weekends in any calendar year. The races shall take place on existing ski trails.
8. All other snowmobiling shall be on the VAST trails only and shall abide by the rules regulations and curfew of VAST.
9. There shall be no night skiing without further application to this Board.
10. The new road leading to the upper parking area shall be at least 28 feet wide (paved for 24 feet with 2 foot shoulders) and shall be designed to meet standards set by the Wilmington Road Standard Ordinance. Chamonix Trail and newly permitted bridge and other major access roads shall also be at least 28 feet wide (paved for 24 feet with 2 foot shoulders).
11. There shall be at least one security officer on-site during the evening and night starting no later than November 15, 2012. As further construction occurs, a larger security force shall be employed. Before the opening of the base lodge there shall be an agreement between the Wilmington Police Department and the Applicant regarding the private security force.
12. Any newly constructed roads for this project shall remain under private ownership and maintenance.
13. **Parking:** The condominium building shall have at least 178 parking spaces as previously specified in #922 Mod A. The townhouses shall have at least 3 adjacent parking spaces per unit. At least 250 parking spaces shall be available in the upper parking area. The parking area shall be used by employees, day skiers and visitors. Parking requirements for this upper lot will be updated and may be changed when the plans for the hotel and/or water park are presented to this Board. All parking spaces shall be at least 10 feet by 20 feet. All parking areas shall be maintained and cleared year round.
14. The 25.86 acres identified in Exhibit B-2 in Case #922 shall continue to be

assigned as Restricted Common Land for The Base Tract. At least 100 acres of the 255.03 acres shall remain Undeveloped Common Land.

15. **The Affordable Housing Mitigation Agreement** (Exhibit BB) shall remain in effect and shall be re-signed by the Vermont Housing and Conservation Board, the Town of Wilmington and the Applicant no later than six (6) months after the signing of this decision. If all three parties agree on minor changes those changes may be made without re-application to this Board. However, any changes shall be filed within 30 days by the Applicant with the Wilmington Zoning Administrator in the form of an amended agreement. Payments for the townhouse units that have already received State Certificates of Occupancy shall be made to the Housing and Conservation Board within 90 days of the signing of this decision. The rate paid per unit shall be in accordance with the Agreement signed in December of 2006.

16. All structures that are being replaced with another building used for the same purpose shall be demolished and removed within 60 days of the completion of the new structure.

17. **Lighting:** Pole height for lighting shall not exceed 12 feet and no halogen lights shall be used. All exterior light fixtures for roadway, sidewalk and general area lighting shall be consistent in design with the lighting fixtures that have already been installed. Placement and type of lighting on site shall be designed to reduce light pollution from the project.

18. No structures as defined by the Wilmington Zoning Ordinance shall be built in the flood fringe or flood way without further application to this Board.

19. All townhouse buildings shall be allowed to have setbacks of 20 feet from the interior roads. In addition, up to 11 of the 92 townhouses may have a setback of between 10 and 20 feet from interior roads. No townhouse building shall have a setback of less than 10 feet.

20. Any emergency services access (fire road) shall be of 20 feet (twenty feet) in width.

21. All buildings, structures and roads shall be sited as shown on Map SP-1 in Exhibit S.

22. Applicant shall file with the Wilmington Zoning Department, Vermont-licensed Engineer/ Surveyor stamped and signed " AS BUILT " plans of Buildings, Roads, Lifts, and all other infrastructure as each phase of construction is completed. No further construction shall be started until the AS BUILT Plans have been submitted.

23. Minor changes to the plans may be approved administratively; significant modification shall require approval of the Development Review Board.

24. Approval for any building construction that is not substantially completed

according to the following schedule shall expire and the Applicant shall be required to submit a new application to the Development Review Board for review under the zoning bylaw in effect at that time. For the purpose of this condition "substantially completed" is defined by this Board as having at least 75% of the proposed building(s) ready for occupancy.

Upper Parking Lot	Nov. 30, 2012
Access Road to Upper Parking Lot	Nov. 30, 2012
Sales Office and Toboggan shed	June 30, 2013
Hermitage Ski Lift & Trail	Dec. 31, 2013
Base Lodge/Amenity Center	Dec. 31, 2014
Maintenance & Snowmaking Buildings	Dec. 31, 2014
Hotel	June 30, 2016
Condominium Building	Dec. 31, 2016
Chamonix Townhouses (40)	Dec. 31, 2017
Lower Mountain Townhouses (52)	Dec. 31, 2020

25. Individual zoning permits shall be required for each building within the PUD and shall be issued after payment of the applicable construction fee to the Town of Wilmington.

III. Regarding the request for subdivision for nine new lots, the Board CONCLUDES:

With regards to the request for a subdivision with right-of-way approval the Board concludes that this proposal **will** conform to the requirements of the Wilmington Zoning Ordinance.

IV. CONDITIONS for Subdivision of nine parcels:

1. Each new parcel shall have no more than one single-family dwelling along with any accessory buildings.
2. The total ground floor area of all buildings on each lot shall not exceed twenty-five per cent of the lot area.
3. All buildings shall meet or exceed the required setbacks for all side, front and rear property lines for a residential building in the Commercial District.
4. All nine parcels shall be at least one acre and the property lines and placement of the single family dwellings shall be substantially as shown in Exhibit X.
5. All newly created nine parcels shall have at least 150 feet of frontage on a public road.

6. The nine new parcels shall constitute nine dwelling units in the assigned 390 dwelling units.
7. The nine new parcels, even when under private individual ownership, shall be considered part of the Haystack PUD and shall be covered by any and all decisions regarding the Base Tract. This includes housing density requirements under that PUD.
8. All driveways shall be a minimum of sixteen (16) feet wide at the public road limits.
9. Permitted development on the nine parcels may be approved administratively; any other proposals shall require approval by the Development Review Board.

Thus, the Development Review Board *does* **approve** the application for **revisions to a Planned Unit Development in the Commercial District and to allow construction and changes summarized below and for Subdivision approval to allow the creation of nine (9) new lots.**

Summary of approved changes:

- Remodel rescue shed on Glebe Land. This building will be used for sales and warming hut.
- Construct building to be used for storage of ski patrol toboggans on Glebe Land.
- Construct access road to go from Chamonix Trail to the upper parking lot.
- Construction of a vehicular bridge over the Tunnel Ski Trail.
- Construction of base lodge/amenity center.
- “Trade in” 81 condo units in the lower area that were approved in #922 Mod B and construct nine single family dwellings on the proposed nine individual lots.
- Change number of units reserved for hotel to 200 units
- Change number of townhouses to 40 units in the upper area and 52 units in the lower area for a total of 92 dwelling units. The units in the upper area will consist of two two-unit dwellings (4 units) and nine four-unit dwellings (36 units).
- Construct a new ski lift that will begin at the Hermitage Inn in West Dover and cross into the Town of Wilmington.
- Construct new ski trail that will be served by the new lift. A portion of the trail will be in Wilmington.
- Replace snowmaking pipe.
- Reroute snowmobile trail so that it no longer goes along Fannie Hill Road.
- Uses: Snowmobiling, cross country skiing, two weekends of snowmobile races
- Subdivision of nine lots.

Major work that was approved in Case #922, 922A and 922B that has not yet been done but is still approved:

- Maintenance Building to be demolished
- Snowmaking Building to be demolished
- Hotel to be built in same location and approximate size as previously approved.

Plans for the hotel are not complete at this time and will require further application to this Board. 200 dwelling units have now been assigned to the hotel.

- Upper Condominium building approved in #922 A & B with 89 units
- Townhouses in 2 different areas (Upper and Lower)
- New maintenance and snowmaking building approved in #922. The size and location of these building will remain as approved in #922.
- Two new pump stations in #922. The size and location of these building will remain as approved in #922.

If unused, individual Approvals expire at the date noted in CONDITION for Planned Unit Development and Conditional Use #24 listed above. 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:

Dave Kuhnert
Gil Oxley
Andy Schindel
Nicki (Polly) Steel
Paul Tonon

OPPOSED: None

For the Board: Polly Steel, Chairperson

Date: 7/26/2012

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.