

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: **Mount Snow for the Estate of James McGovern and Piggy and the Three J's LLC**

Agent(s) Mailing Address: **Laurie Newton, P.O. Box 2810, West Dover, VT 05356**

Owner/Applicant(s) Mailing Address: **Estate of James McGovern and Piggy and the Three J's LLC, c/o Lawrin Crispe, P.O. Box 556, Brattleboro, VT 05302**

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

Tax Map #s: **002-002-068.200 & 002-02-081.000**

A copy of the request is filed in the office of the Board and is referred to as:  
**Case #: 2013-052**

**Description of Case per Public Notice:**

Application # 2013-052; owner: EO James McGovern and Piggy and the Three J's; Agent, Laurie Newton. Application being made for Conditional Use review to allow the filling of two artificial ponds and the extension of a previous approval to allow construction of a snowmaking storage pond, access road, pipelines, pumphouse; Flood Hazard Area Regulation Sections 804, 811 & 820.B and the Zoning Ordinance Section 512; location: off Cold Brook Road.

Notice for a public hearing was published in the Valley News on: **7/12/2013**

Notice was posted in three public places on: **7/12/2013**

A copy of the notice was mailed to the applicant on: **7/18/2013**

A copy of the notice was mailed to the abutters on: **7/18/2013**

The public hearing was held on: **8/5/2013**

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: September 16, 2013**

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  
Mary & John Goetsch, Abutter and Interested Party  
Barbara & Richard Sherman, Abutter and Interested Party  
Gail Look, Abutter and Interested Party

## **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 Authorization letter
  - B Proposal summary
  - C Proposed West Lake Site, prepared by VHB Pioneers, June 23, 2010
  - D West Lake Update - Cold Brook Stream Enhancement Project
  - E Proposed West Lake Site - Cold Brook Post-Irene Site Conditions, prepared by VHB Pioneers, August 30, 2012.
  - F Abutters List (2 pages)
  - G Findings for Case 2010-034 (9 pages)
1. The subject property is in the Residential District of the Town of Wilmington. The property is identified as Tax Map 002-02-068.200 & 002-02-081.000.
  2. In two previous 2010 decisions (Nos. 2010-034 and 2010-045), the Board approved a number of improvements and enhancements to the subject property, including the construction of snowmaking storage pond (West Lake), a pump house, inflatable dam, access roads and pipelines. Both decisions expired within the past month or two. Applicant comes before the Board requesting a two-year extension of these expired permits.
  3. In August 2011, Tropical Storm Irene caused significant changes to the subject property. The streambed of Cold Brook was breached and the brook was “captured” by two nearby gravel pits, resulting in an increase in the water temperature at the gravel pit outlet of three degrees. After consultation with a number of State and Federal Agencies, including the Vermont Department of Environmental Conservation, The U.S. Army Corp. of Engineers, the Vermont Agency of Natural Resources and the Vermont Field and Wildlife Department, the decision was made to fill in the two gravel pit ponds by using the boulders excavated from the West Lake

site and restore Cold Brook to its original channel.

4. Applicant is requesting that the Board approve the above group decision to fill in the gravel pit pond with boulders from the excavation of West Lake and restore the streambed. Section 110 of the Wilmington Zoning Ordinance gives the Board authority over land development and the definition of land development includes “any ... excavation or landfill ... or use of land”. Furthermore, Section 7 (A.) 1. b. of the Ordinance includes “water impoundments” as a Conditional Use in both the Residential and Commercial Districts.
5. Applicant testified that many of the above agencies have signed-off on the proposed project and it is still awaiting a stream alteration permit from the Vermont Agency of Natural Resources as well as an Act 250 permit.
6. All of the Interested Parties listed above gave testimony. They expressed their concerns regarding a number of issues including increased silt in the stream during the construction process, potential earthquake issues, West Lake overflow runoffs and pump house noise. Applicant responded to all of the issues that were raised.

## **II. The Board CONCLUDES:**

A portion of the subject property is in the Flood Hazard zone. However, no structure is to be built in the Flood Hazard Zone and therefore review is not required under the Flood Hazard standards.

With regards to the criteria for Conditional Use review, 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. Issuing extensions of the two expired permits and restoring damage caused by Tropical Storm Irene will not have an undue adverse effect.
- B. **Will the proposed Conditional Use have an undue adverse effect on traffic on roads and highways in the vicinity?** No. There will be little or no additional traffic resulting from the proposed Conditional Use.
- 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 character of the area will not be altered by issuing extensions of the two expired permits and restoring Tropical Storm Irene damage.

- 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.

The Board therefore finds that:

1. The extension of the two expired permits meets the criteria for Conditional Use review and is approved by the Board.
2. The restoration of Cold Brook to its original streambed meets the criteria for land development and is approved by the Board.

### **III. CONDITIONS for Conditional Use:**

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

1. All of the Conditions contained in Cases 2010-034 and 2010-045 shall remain in effect.
2. No construction shall begin until Stream Alteration and Act 250 permits are obtained.

Thus, the Development Review Board *does approve* the application for **extensions of the previous approvals to allow construction of a snowmaking storage pond, one-story pump house, access road, pipelines, as well as the filling of two gravel pit ponds and restoration of a streambed in the Residential District.**

**If unused, this Approval expires 2 years 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  
Gil Oxley  
Sheila Osler  
Frank Sprague

OPPOSED:  
None

---

For the Board: Andrew Schindel, Vice-Chairperson

Date: 8/15/2013

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.*