

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**

Owner/Applicant(s) Mailing Address: **Robert Harrington PO Box 248 North Pomfret, Vt. 05053**

Address of the subject property: **183 Gatehouse Trail, Wilmington, Vt. 05363**

Tax Map: **#HAYSTACK.SKI**

A copy of the request is filed in the office of the Board and is referred to as: **Case#: 2014-113**

**Description of Case per Public Notice:**

Application #2014-113: Owner; Hermitage Inn Real Estate Holding Company, LLC. Application is being made to amend the Planned Unit Development (P.U.D.) for the update of the master plan in the Conservation, Resort-Commercial/Residential and Resort-Residential zoning districts; Zoning Ordinance Section 270 E. (4) & Section 320 & 330; location Haystack Base area & East Tract.

Notice for a public hearing was published in the Valley News on: **November 27, 2014**

Notice was posted in three public places on: **November 26, 2014**

A copy of the notice was mailed to the applicant on: **November 24, 2014**

A copy of the notice was mailed to the abutters on: **November 24, 2014**

The public hearing was held on: **December 15th, 2014 - January 26th and February 23rd, 2015**

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: May 9, 2015**

**Approval expires on: May 9, 2017**

In *addition* to the Applicant/Agent the following persons, heard by the Board in connection with this request, were determined by the Board to be “interested persons”: Copies of this decision have been mailed to those persons listed below.

Ken March	Fire Chief	Participated in Hearing
Joseph Szarejko	Police Chief	Participated in Hearing
Craig Ohlson	Zoning Administrator	
Ben Joyce - Joyce Land Surveyor		Witness for Applicant
Robert Fisher		Witness for Applicant
Robert Harrington		Witness for Applicant
Robert Rubin		Witness for Applicant

The following Exhibits were placed in evidence by the Applicant or Interested Person:

- Application (Three Pages, not numbered)
- Abutters List
- A. Overall Layout Plan - Dated 01/05/15
- B. Haystack Mountain Recreation Map - Dated 09/01/14
- C. Wetlands Impacts- Lower Mountain - Last Review Dated 10/30/14
- D. Site Layout, Grading, & Utility Plan - Dated 06/13/14
- E. Proposed Electric Service Plan / Ongoing House Siting Plan - Last Review Dated 09/09/14
- F. Putting Green & Sprinkler System - Dated 07/23/14
- G. Mountain Coaster Layout - Dated 01/05/15
- H. UTV Course Layout; Golf Driving Range & Putting Greens - Last Review Dated 01/21/15
- I. Chamonix Trail Bridge Over Tunnel Ski Trail - Dated 05/30/12
- J. Act 250 Application for the Hermitage Club Amendment to LUP 700002-19 Dated July 2014

Department

K. Agreement between the Stratton Resort and the Windhall Police

L. DRB decision case # 2013-044

M. DRB decision case # 2012-051

N. Act 250 Application for UTV Operation

**I. The Board FINDS the following:**

1. Application 2014-113 was bifurcated into Base and East Tract Applications.
2. The subject property is in the following Districts of the Town of Wilmington. Base Tract: Resort-Commercial/Residential District and Conservation Districts, East Tract: Resort-Residential District. The Property is identified as Tax Map HAYSTACK.SKI. The Base Tract includes property known as the Glebe Land, owned by the Town of Wilmington, in the Conservation District.
3. The applicant is requesting approval to amend the Planned Unit Development (P.U.D.) for an update of the Master Plan.
  - A. Realignment of 8 lots for single family structures in the Stags Leap area, removing one from wet land. Effecting lots 19, 22, 25, 27, 29, 34, 36, and 38. Stags Leap will consist of a total of 14 single family homes, 6 are under construction at this time. These lots were previously permitted in DRB Case # 2013-044 page 3 item 5.
  - B. Construction of 8 quad Townhouse Units in Chamonix Village; Unit 5 is contingent upon well #9 going on line so that the current well head can be capped and effectively eliminating the needed buffer area.
  - C. UTV trail system utilizing existing work roads and ski trails within the ski area. No cutting of trees or clearing of vegetation will occur in the construction of the trail system. The UTV trail system will remain below the 3,000' elevation as to not affect the nesting of the protected Bicknell Thrush and will not encroach on the bear habitat. The UTV trail system is laid out on Map UTV-101. Trails in red are proposed to be active summer 2015, those trails in yellow are conceptual and proposed to be active upon approval from Act 250.
  - D. Conceptual approval for a Mountain Coaster to be constructed to the South of the Barnstormer Lift. The Mountain Coaster is proposed to be built on Private Hermitage owned land below the Glebe land which is leased from the Town of Wilmington.

E. Development of a Golf Driving Range westerly and a Putting Green north westerly of the Base Lodge. The proposed area will be irrigated, fertilized, and developed in such a way as to ensure storm water runoff is directed to existing storm drains to the south. No lighting other than ambient from the base lodge would be installed. Signs would be installed along the work road running westerly of the proposed driving range to prevent injuries. Netting will be installed westerly and southerly along the Barnstormer Lift. The Driving Range will be approximately 3,000 square feet and the Putting Green approximately 4,200 square feet.

F. Applicant testified that they are seeking a permit to construct a skiers underpass along Chamonix Trail. Detail of this construction is depicted on Sheet Title SP-5E, dated 05/30/12. Approval of this skiers underpass has a pending Act 250 application.

4. Testimony was given by Wilmington Police Chief Joseph Szareko regarding the lack of security staff on duty at the Hermitage Club. Chief Szarejko is seeking round the clock professionally trained security staff. He felt professional security staff would help to minimize the impact of the resort development on municipal police resources. He used an agreement between the Stratton Resort and the Windhall Police as an example of what he would like to develop between the two parties (Exhibit K). DRB Case #2012-051 Condition, page 14, #11.

5. Testimony was giving by Chief Ken March regarding the lack of agreement between the Hermitage Club and the Wilmington Fire Department as required in DRB Case 2012-051 Condition #5, page 14. Chief March also stated concern regarding access and ability to determine accident locations for rescue personal on both the UTV and Mountain Coaster.

6. Some elements of this proposed application are subject to ACT 250 review. The applicant testified that both the UTV trail system denoted in yellow and the skiers underpass will need final ACT 250 approval before construction can begin.

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

The Board approves the proposed Stags Leap Development. This development will meet required dimensional requirements of the ordinance, included setbacks. Stags Leap use will be Residential. This is an allowed Conditional Use in the Resort - Commercial/Residential District. The 14 single family units of Stags Leap count as 14 units in overall resort density of 450 as approved in decision DRB Case #2013-044.

The Board approves the Townhouse Units in Chamonix Village. This development meets the requirements as previously approved in decision DRB Case #

2013-044 as a Residential use, an allowed Conditional Use in the Resort-Commercial/Residential District. Chamonix Village has been approved at an increase density as allowed for in PUD's in accordance with provision 3 of section 335 of the zoning ordinance. The Chamonix Village 8 units of this application count as 8 units in overall sort density of 450 as approved in decision DRB Case # 2013-044.

The Board approves the proposed additional uses of a UTV trail system and the golf driving range and putting green. These 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/ Resort District as Recreation, Outdoor.

The Board approves the Skier Underpass that will offer safe access to the public leading to the lower Mountain.

The Board concludes that the Mountain Coaster is strictly conceptual in its current stage and will require detailed specifications in order to consider the Mountain Coaster for DRB approval at a future date. The DRB is not conceptually opposed to a Mountain Coaster.

With regards to the criteria for the Planned Unit Developments, the Board concludes that this proposal as presented, is in conformance with the conditions listed below. It will conform to the requirements of the Wilmington Zoning Ordinance and the stated purpose of the PUD provisions. The proposal will continue to meet the intent of the original Haystack PUD and will continue to meet the required density and open space criteria of no more than 450 units and no less than 40% 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 following standards of the Wilmington Zoning Ordinance:

**Will the proposed Conditional Use have an undue adverse effect on the capacity of existing or planned community facilities?** Hermitage resort development does have the potential to adversely impact both the fire and police community facilities. Establishing professional security staff to satisfaction of the Wilmington Police Chief and establishing needed fire and safety services to the satisfaction of the Wilmington Fire Chief will ensure no undue adverse impact on community facilities. Agreements must be established and services put in place. Both the realignment of Stags Leap Lots and the construction of the Chamonix Village Townhouse are in keeping with the previously approved DRB decisions. The Skiers underpass will prove positive to both vehicle and skier safety. The golf driving range and putting green are consistent with a four-season resort. The UTV

guided tours will have little effect as they will be utilizing existing work roads and have a strict code of standards.

**Will the proposed Conditional Use have an undue adverse effect on traffic on roads and highways in the vicinity?** The proposed changes to the Stags Leap Lots and the commencement of Chamonix Village have already been considered in the previously permitted 450 dwelling units. The golf driving range, putting green and UTV tours will create negligible new traffic but will be able to utilize the parking lot created for the base lodge. The skiers underpass will be a positive effect on the separation of pedestrian and automobile traffic for greater pedestrian safety.

**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?** This area is a recognized resort area of concentrated recreational and residential development. The proposed modifications are all consistent with a Resort District.

**Will the proposed Conditional Use comply with specifically stated policies and standards of the Town Plan?** Residential Development in the Resort-Commercial/Residential District conforms with the Town Plan by expanding the population of the town in a manner consistent with the provisions of the zoning ordinance. Development of recreational opportunities conforms with the Town Plan by enhancing the economic development of the town utilizing the towns natural resources. In order to be in full conformity with the Town Plan the recreational development must preserve natural vegetation, prevent the transmission of vegetation from one area to another, preserve wildlife habitats and migration corridors, and seek to preserve and provide recreational opportunities for the residents of the town. The Town Plan calls for economic development in a manner that preserves “those things that make the town unique”. Use of the Glebe Land must be in conformance with the agreement established between Haystack and the Town of Wilmington June 21, 1994 recorded at book 147, page 214 of the Wilmington Land Records and amended on October 24, 2011, book 290, page 471. This agreement requires prior written agreement from the town on all land development within the watershed area. It also remains unclear whether this agreement contemplated summertime activities as recreational use it is not defined in the original agreement, but the amended agreement specifically refers to winter-snow related recreation.

**Will the proposed Conditional Use comply with other sections of the Zoning Bylaw?** Although some of the Base Tract Area is located in the Flood Hazard Area, all proposed projects are not and therefore are not subject to review.

**Will the proposed Conditional Use have an undo adverse effect on the utilization of renewable energy resources?** No.

### III. CONDITIONS:

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

1. All buildings in the Stags Leap Area shall be at least 65' from any road center line.
2. Nets for the golf driving range shall be installed easterly along the Barnstormer lift and Southerly along uphill work road for public safety.
3. Signage shall be installed along uphill boundary area of driving range for public safety.
4. Only UTV trails as showing on map UTV-101 laid out in Red shall be used until final approval from ACT 250 allows use of those laid out in Yellow.
5. Only trained Hermitage employees shall lead UTV activity and follow standards set in the ACT 250 guidelines.
6. Hermitage shall take such actions as is necessary to ensure that all UTV's stay on trails as depicted on Map UTV-101.
7. Applicant must return to this Board for approval of the Mountain Coaster.
8. All applicable conditions from previous cases are still in force.

The Development Review Board approves the application for the update of the Master Plan in the Resort-Com/Res Zoning 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 or permitted use on leased lands.

Town of Wilmington, Zoning Administrator reserves the right to monitor compliance with this decision and all decisions issued by the Development Review Board

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

Peter Wallace

Wendy Manners

Fred Houston

Meg Streeter

OPPOSED:

None

ABSTAINING:

None

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For the Board: Peter Wallace, Chairperson

Date: April 9, 2015

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.*