

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: **Hermitage Inn Real Estate Holding Company, LLC and the Town of Wilmington**

Agent(s) Mailing Address: **Robert Rubin & Robert Harrington, P.O. Box 2210, West Dover, VT 05356**

Owner/Applicant(s) Mailing Address: **James Barnes, P.O. Box 2210, West Dover, VT 05356**

Address of the subject property: **69 Airport Road, West Dover, VT 05356**

Tax Map #**002-02-049.000**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2013-075

Description of Case per Public Notice:

Application # 2013-075; owner: Hermitage Inn Real Estate Holding Company, LLC and the Town of Wilmington; Agent, Robert Rubin and Robert Harrington. Application being made for Conditional Use review to allow expansion of an existing airport runway; Zoning Ordinance Sections 3.A.2 & 7 & 14; location: 6 Airport Road, Dover, VT.

Notice for a public hearing was published in the Valley News on: **8/30/2013 & 10/4/2013**

Notice was posted in three public places on: **8/30/2013 & 10/4/2013**

A copy of the notice was mailed to the applicant on: **8/30/2013 & 10/4/2013**

A copy of the notice was mailed to the abutters on: **8/30/2013 & 10/4/2013**

The public hearing was held on: **9/16/2013 & 10/21/2013.**

A site visit was held on 10/21/13

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: December 5, 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.)

Interested Parties:

Barbara and John O'Mara, 40 Airport Road, Dover
Laurie Newton, representative of Mount Snow
Kenneth Bell, 60 & 77 Partridge Run, Dover
David Buckley, owner of several lots that abut the airport in Wilmington
J P Pibouin, 18 & 26 Partridge Run

Witnesses for the Applicant:

Ken Kaliski, RSG
Jennifer Conley, Conley Associates
Ben Joyce, Surveyor
Robert Fisher, Attorney for the Applicant

Others:

Richard Covey, Wilmington Fire Department
Alice Herrick, Zoning Administrator

Letters were received from Paul Pessia and George & Nancy McMahon

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:

The initial application was submitted as a bound booklet with a green cover. Items in the green booklet have been given exhibit labels as follows:

- A Consulting Affiliates
- B Table of Contents
- C Application form (7 pages)
- D Warranty Deed (9 pages)
- E Purchase and Sale Contract (4 pages)
- F Town Owned Property list (7 pages)
- G Resolution
- H General Description of Proposed Airport Safety Improvement Project by Harrington Engineering.
- I E-mail from Robert Harrington to Ken Kaliski, June 26, 2013. (4 pages)
- J E-mail from Chris Campany to Bob Harrington, June 26, 2013.
- K Name and address list (3 pages).

- L Letter from Bob Harrington to Wilmington and Dover Fire Departments, June 19, 2013.
- M E-mail from Ken March to Bob Harrington, July 3, 2013.
- N Traffic report by Conley Associates (14 pages plus 4 pages of traffic volume figures).
- O Plan set “Deerfield Valley Airport Safety Improvements 2013 Stormwater Set” by various consulting firms.
 - a. Cover sheet
 - b. General Area Layout, S-1.
 - c. Airport Layout Plan and Profile, S-2.
 - d. Existing Conditions & Plot Plan, S-3A.
 - e. Erosion Control Plan, C4-D.
 - f. Erosion Control Plan, C4-E.
 - g. Erosion Control Plan, C4-F.
 - h. Stormwater Plan, C5-C.
 - i. Stormwater Plan, C5-D.
 - j. Stormwater Plan, C5-E.

The following exhibits were submitted as individual documents:

- P. Authorization signature.
- Q. Wilmington Abutters List.

The following exhibits are bound in a white booklet with a two-page cover letter from Bob Harrington dated October 11, 2013:

- R. Deerfield Valley Airport Runway Expansion / Noise levels analysis, 30 September 2013 by Resource Systems Group.
- S. State of VT Land use permit pb-2-1072 / 2w073. (3 pages)
- T. FAA deficiencies list. (3 pages)
- U. Lighting and wind cone details. (6 pages)
- V. Act 250 permit. (1991) (7 pages)
- W. Photos of the existing Haystack East roads. (20 pages)
- X. Photos showing fill placed at end of runway on 1990's. (7 pages)
- Y. E-mail from Mike Owen to Robert Harrington on fuel information, Sept 23, 2013.
- Z. E-mails between Robert Fisher and Jason Owen on airport closure. (2 pages)

The following exhibits were submitted as individual documents:

- AA. State of VT Aeronautics Board decision on the request to establish a public airport, 14 January 1969.
- AB. Conley Associates Memorandum, Aug 22, 2013.
- AC. Lead emissions from Deerfield Valley Airport Runway Expansion by RSG Inc., Sept 13, 2013.
- AD. Property location map. (aerial photo)
- AE. Letter of agency for Laurie Newton, September 12, 2013.
- AF1. Existing Land Use map, 2005.
- AF2. Existing Land Use Map, 2003.
- AG. Abutter list for the Town of Dover.
- AH. Memo from Fisher re historical use.
- AI. Map of East Tract – 1970s, book 165, page 338 of the Wilmington Land

Records.

AJ. Letter from Paul Pessia, September 9, 2013.

AK. Letter from George & Nancy McMahon, September 4, 2013.

DRB member Frank Sprague attended the September 16th hearing but was unable to attend the October 21st hearing or site visit.

The Application was submitted by both the Town of Wilmington and the Hermitage Inn Real Estate Holding Company, LLC. At the time of the Application the Hermitage Inn Real Estate Holding Company, LLC owned the airport parcel but the Town of Wilmington owned land in what is referred to as the East Tract. On September 19, 2013 the subject lands owned by the Town of Wilmington were sold to the Hermitage Inn Real Estate Holding Company, LLC.

At the September 16th hearing two abutters with property in Dover (Mount Snow and the O'Maras) requested Interested Party status. No Dover property owners with parcels abutting the airport in Dover had received written notice. Notices were subsequently sent to all Dover abutters on October 4, 2013 and the hearing and site visit were re-warned for October 21, 2013. The new warning was also sent to Applicant, posted in three public places and printed in the Deerfield Valley News.

1. The subject property is in the Residential District of the Town of Wilmington. The property is identified as Tax Map 002-02-049.000. The airport parcel extends across the town line between Wilmington and Dover. Much of the existing runway, the terminal building and parking and all the hangers are in Dover but there is also part of the runway in Wilmington. Vehicular access to the airport is along Airport Road in Dover. There are private homes along Airport Road and a housing development named Partridge Run at the end of Airport Road that abuts the northern end of the airport near the terminal. All of these residences were constructed after the opening of the airport. The Mount Snow Golf Course abuts the runway at its northern end. East Tract lands that abut the southern end of the runway and contain the proposed southern access road were originally part of the Haystack development and were taken over by the Town of Wilmington at a tax sale and then sold to the Hermitage Real Estate Holding Company on September 19, 2013. This land is entirely in Wilmington and consists of lots, utilities and roads (Exhibit AH).
2. **History:** Interested Party and pilot Buckley said that he and others used the airstrip in the mid to late 1960s. Both Ken Bell and Dave Buckley stated that the airport has run continuously since that time. At first it was a private airport and then on January 14, 1969 it received authorization from the FAA to become a public airport. There were improvements made to the runway in 1969. No Town permits have been found for those improvements. Although an Act 250 permit was granted in 1991 (Exhibit V) to extend the runway, this work was never done. No Town permits have been found for this proposed extension. Zoning was enacted in Wilmington on March 5, 1968.

3. **Proposed Expansion:** The present paved length of the runway is approximately 2,650 feet. The paved width is approximately 70 feet. There is a 250 foot wide “Object Free Zone” that includes the runway and land on either side of the runway with all trees removed. The expansion would extend the runway an additional 1,800 feet, entirely in Wilmington. The width of the runway would be increased to 75 feet and the 250 foot wide Object Free Zone would remain around the present runway and added around the new section. An area beyond the southern end of the runway would be cleared for an Object Free Zone (See Map S-1 and S-2). Fill will be brought in to level the area to the south. All of the expanded runway would be on the existing airport parcel. The FAA requires a runway length of 3,700 feet for jet landings. This expansion is being proposed in order to accommodate small jets.

A B-1 rating by the FAA will be retained. This rating controls the size of planes to those with a wing span of less than 49 feet and a height of 20 feet maximum (Exhibit I).

4. **Hours of Operation:** Presently, planes may land and take off 24 hours a day although the majority of the activity takes place during daylight hours. Because of the surrounding mountains most pilots prefer to land during the day. The Applicant is proposing to limit regular use from 7 am to 10 pm. From 10 pm to 7 am the airport would be used for emergencies only. Types of emergencies might be medi-vac helicopters or private planes that are experiencing an emergency. It was also noted that the Air Force uses the airport for training. While the planes do not land, they come low to the ground. The Applicant expects this practice will continue and that it is not allowed to limit Air Force use.

Although there would be an employee on-site at times, the airport would not be staffed at all times but staff would be available on a “on-call” basis. Pilots presently register before take-off or after landing and records are kept as to types of planes, destinations, etc. This practice would continue.

5. **Noise:** An updated noise study dated September 30, 2013 was completed by Ken Kalski of Resource Systems Group (RSG) (Exhibit R). He used “historical usage” from the mid 1980s of six to ten landings and take-offs as a basis for his analysis. He also used the methods employed by the FAA to determine sound levels.

Mr. Kalski analyzed two options: A “No Build” scenario which “corresponds to average daily aircraft operations with the current runway configuration, and flight operations close to the 1980’s operations” and a “Build” scenario that “corresponds to the extended runway (3,700 feet or more) to accommodate the addition of jets.” This scenario used the same usage but included jets. Both scenarios assumed that “75% of operations occur northbound and 25% occur southbound.” (Page 9 – Exhibit R). While some jets are slightly noisier than prop planes, some are quieter. A jet generally is able to take off and land in less time and make a steeper ascent so that the impact of the noise is shorter in duration.

Figures 5 and 6 of Exhibit R show a comparison of jets and propeller planes.

A 60 decibel (dB) sound level is “marginally compatible” with dwelling units. There are approximately 19 dwelling units within the 55dB to 60 dB zone for the Build option. These dwellings are along Airport Road, Pheasant Lane and Partridge Run (Figure 8 of Exhibit R).

The Applicant, along with Interested Parties Bell and Buckley, believe that the number of planes using the airport will not be much greater than in the 1980’s and that the change will be mainly in the types of planes.

Mr. Kaliski concludes that the sound levels for the “Build” option present a slight improvement over the “No Build” option (Page 11 of Exhibit R).

6. **Lighting:** The proposed new runway would be lit with runway lights consistent with those presently being used and required by the FAA (Exhibit U). These lights are small fixtures on top of an approximately three foot tall pole. The lights turned on only when a pilot turns them on from the plane for a night landing. The lights are lit only during landing and take off. No other additional lighting is proposed.
7. **Access Road:** Presently, there is a rough road that starts at the end of Haystack East Village Road. This road was laid out as the access road for the East Tract properties but is in poor condition (Exhibit W). A bridge along the road was also washed away by Tropical Storm Irene so that presently the road is impassable. On September 19, 2013, the Hermitage Inn Real Estate Company purchased a large number of East Tract lots from the Town of Wilmington. It also purchased the road and utilities. The Hermitage Club would like to rebuild and improve this road and use it for access to the south end of the runway. The road would also continue around the southern end of the runway and connect with the terminal and hanger area (Maps C-E & F in Exhibit O). It would be used initially for construction vehicles. If there is no access from this direction construction vehicles would have to drive down Airport Road to get to the construction area and the noise would have an impact on the residential properties along the Airport Road and in the Partridge Run development. After construction completion the East Tract road will be a direct access for Wilmington emergency vehicles. Richard Covey of the Wilmington Fire Department testified that the Department wants a southern access to the runway so that response time would be quicker. Presently, any Wilmington emergency vehicles must go into Dover and access the airport from the north. The improved road might also provide access for airport personnel and limited private vehicles but that it is not intended to be a public road.
8. **Traffic:** Jennifer Conley of Conley Associates reviewed the expected traffic impact of the proposed improvements to the airport. All traffic to the airport will come from Airport Road. She concluded that there will be a minimal impact on

traffic even during the busiest times.

During construction of the proposed runway there are two possible ways for vehicles to get to the construction area at the southern end of the runway. If the East Tract road is repaired construction vehicles, some of which will be carrying fill from the Haystack/Hermitage Base Lodge area, will be coming off of Coldbrook Road onto Haystack East Village Road. They would go past residences until they enter the East Tract road. There are no residences along the East Tract road. If the East Tract road is not improved then all construction vehicles will turn off Route 100 in Dover, travel on Country Club Road or Crosstown Road and then access the airport from Airport Road. There are residences on Country Club Road, Crosstown Road and Airport Road that would be exposed to this traffic noise.

9. **Training:** Richard Covey, representing the Wilmington Fire Department (WFD), testified that the WFD will need training in responding to plane crashes or other aviation emergencies. The Department is in the process of finding someone to do the training and he is, at this point, unsure of the cost. In addition to the initial training, on-going refresher courses will likely be needed. Mr. Covey and Mr. Buckley also stated that if there were scheduled flights to the airport there would be additional safety requirements and possible training needs. Mr. Rubin will investigate further.
10. **Interested Parties:** All the Interested Parties identified above gave testimony. Laurie Newton, Agent for Mount Snow, the O'Maras and J. P. Pibouin asked questions and expressed concerns regarding the noise of planes landing and taking off. They also expressed concerns with the hours of operation. Ken Bell and Dave Buckley spoke in favor of the application and also gave testimony regarding the history of the airport and, as pilots, gave information on types of planes and FAA requirements.
11. There are inconsistencies in the various Wilmington Town Plan maps for the airport area. In the 2003 Plan it was shown as commercial/industrial and in the 2005 and 2010 Plans it was shown as open land.

II. The Board CONCLUDES:

The Procedures for the Wilmington DRB state that any written in-put regarding the Application shall be notarized if the authors are to be considered Interested Parties. The letters received from Paul Pessia and George & Nancy McMahon were not notarized and, therefore, they are not Interested Parties. Their in-put was considered by the Board as community comments.

The Board concludes that the airport began operating before the enactment of zoning in the Town of Wilmington and, therefore, is considered as a Non-Conforming Use. It has

operated continuously since that time and has never been closed for more than a few weeks at any one time. The Ordinance does not prevent the expansion, extension or alteration of any Non-Conforming commercial use existing at the time of adoption of the Ordinance. Although the airport was apparently expanded in 1969 without a Town permit, that expansion has been in existence for more than 15 years without any enforcement action by the Town. According to state law, no enforcement action can now be taken on that expansion.

Airport is a Non-Conforming Use in the Residential District and in order to expand 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?** With the addition of a road access from Wilmington to the southern end of the runway Wilmington emergency vehicles will have better access to the airport. Condition #3 below will mitigate the cost to the Town for additional training and possible additional equipment that might be needed. No other existing or planned facilities will be impacted.
- B. **Will the proposed Conditional Use have an undue adverse effect on traffic on roads and highways in the vicinity?** Although the runway will be longer and jets will now be able to land, the number of planes using the airport will likely be similar to historical usage. There may be some increase in traffic compared with recent years but that increase would be minimal. If heavy construction vehicles are not able to access the runway through the East Tract there will be a negative impact on the Dover residences near airport during the construction process. If heavy construction vehicles access the runway through Haystack East Village there will be a negative impact on the residents in that area during the construction process.
- 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 airport has been in existence for more than 40 years and all the abutting residential units (all in Dover) were built after the airport existed. While the runway will be longer, the number of planes will not significantly increase and the intensity of the usage should not increase. The noise during landings and take offs will be similar to what is presently experienced. Although the Wilmington part of the airport is now in the Residential District it should be noted that the proposed zoning presently before the Selectboard creates a new district for this area and lists “airport” as a conditional use.
- D. **Will the proposed Conditional Use comply with specifically stated policies and standards of the Town Plan?** The 2010 Town Plan mentions the airport but

notes only that it is located in Dover. The 2005 map used in the 2010 Plan shows the area as open land rather than an airport but the 2003 map has the airport as commercial/industrial. Since the Plan and Maps give incorrect and contradictory information, the Board concludes that this criteria is not applicable to this application.

- E. **Will the proposed Conditional Use comply with other sections of the Zoning Bylaw?** Yes, as there are no other sections of the Bylaw that apply.

III. CONDITIONS:

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

1. The hours of operation for public landings and take-offs shall not exceed 7 am to 10 pm. Landings and take-offs in emergency situations may take place 24 hours a day.
2. The yearly average number of landings per day shall not exceed ten (10). A daily record of the number of landings shall be kept. Within 30 days of the anniversary date of the opening of the runway extension the owner of the airport shall report in writing the average number of landings to the Wilmington Zoning Administrator. If the average number exceeds ten there shall be a further application to this Board.
3. The owner of the airport shall pay for any specialized emergency training needed by the Wilmington Fire Department and/or Deerfield Valley Rescue in order to respond to aviation emergencies. The owner shall also pay for any continued training. If either department requires specialized equipment the cost shall be borne by the owner.
4. The East Tract road shall be open for emergency vehicles.
5. During the construction of the runway all travel by heavy construction equipment over Haystack East Village Road and Airport Road shall occur between 7 am and 5 pm on weekdays only. All owners of residential dwelling units on Haystack East Village Road, Airport Road and Partridge Run shall be sent a letter by the Applicant with contact information for a person who can answer questions or respond to complaints. The letters shall be sent out before construction begins. Other people in the neighborhood shall be given the information upon request.
6. The airport shall continue to have a B-1 rating.
7. The total paved area of the runway shall not exceed 4,450 feet in length and

75 feet in width. There shall be an Object Free Zone as required by the FAA around the paved runway area.

Thus, the Development Review Board does approve the application for **Conditional Use review to allow expansion of a non-conforming use of an Airport and the repair and extension of a private road 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:

Nicki (Polly) Steel
Andrew Schindel
Gil Oxley
Sheila Osler

OPPOSED:

None

ABSTAINING:

Frank Sprague

For the Board: Polly Steel, Chairperson

Date: 11/5/2013

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.