

May 21, 2020

Ron Bomer and HOA Directors  
90 Madison Drive  
Williston, VT 05495

**RE: Decks/Patios, Landscaping/Stormwater, Other HOA Responsibilities  
The Hamlet**

Dear Mr. Bomer and HOA Directors,

I am writing to you in response to your email dated May 12, 2020. We look forward to the Zoom meeting at 2:00 pm on May 22<sup>nd</sup> to review the contents of this memo, answer follow-up questions, and provide next steps. Disclaimer: the answers in this letter are subject to change as new information becomes available and are intended to guide the conversation. Permit requirements (administrative vs. DRB approval) are also subject to change.

**Question #1 Decks and Patios**

*"Is there a DRB process to allow wood decks to be built in our part of the Hamlet? I anticipate you will tell me they are not allowed? The question my homeowners ask is how has the Developer been able to construction both patios and decks over the last 12 years? If decks and some larger patios are not properly permitted, how do we get them collectively removed?"*

**Answer #1:** Deck and patios are allowed residential improvements per Chapter 20. Decks are only in violation if they were built without a permit. The most efficient way to resolve this issue to file a corrective permit.

**Next Steps:**

- Decks on common land without an administrative permit: the homeowner, with should request a corrective administrative permit. The HOA approval is the responsibly of the homeowner and not enforced or checked by the town for town permits. This will ensure that the deck does not create a problem when the owner goes to sell or refinance as banks often verify that a permit corresponds to residential improvements.
- Patios in the Hamlet: Homeowners in the hamlet from 2008-2018 were advised by the Zoning Administrator at the time that they could not build decks at all but could build patios without a permit. The current bylaw requires a permit for a patio. The current Zoning Administrator will honor the advice given to those homeowners who built patios without a permit in that time period and will not treat them as needing a permit going forward. However, for patios on common land without an administrative permit: the homeowner, with written approval of the HOA, may request a corrective administrative permit. This will ensure that the patio does not create a problem when the owner goes to sell or refinance as banks often wish to verify that residential improvements are "covered" by permits on file.
- Decks/patios with a permit: if the HOA does not want individual homes to have decks/patios, the HOA may amend and/or enforce their covenants/bylaws, and/or enforce ownership rights of common land and force removal of private improvements. A zoning permit from Williston has no bearing on private agreements and the rights and responsibilities conveyed/imposed by them.
- Decks with an administrative permit, but no HOA permission: This is a private enforcement matter between the homeowner and the HOA. The administrative permit

form includes a disclaimer than private agreements may apply, but are not reviewed/enforced by the town.

- Other Outcomes (Footprint Lots, Revising the Plat, Areas of Exclusive Use): The HOA should seek legal counsel about the rights, responsibilities, and liabilities of private-use features (like decks/patios) extending outside a footprint and into the common land. The HOA may choose to file a corrective plat to extend footprint lots beyond the house foundation to include back, front, and/or side yard space. With legal assistance, the HOA may consider establishing "Areas of Exclusive Use" to allow individual homes to have responsibility of private improvements- such as decks, patios, garden space- that exists on common land, likely without a formal revision of the plat.

#### **Question #2A Landscaping Plan**

*"We have approved final plans which specifies specific plants at certain locals. The problem is the Developer has erroneously place plants in the wrong locations according to the approved plans. Are the landscape plans enforceable by the town permit or are they a contract dispute for the association to resolve?"*

**Answer #2A:** The HOA may request a final Certificate of Compliance for landscaping and private improvements. This will help "close out" the Hamlet development and clean up the record. The early permit record for Hamlet is quite disorganized and dates back 10+ years with several amendments. For the most part, Planning staff inspections are general when it comes to landscaping. If a birch was planted where a maple was shown on plans, that's okay. But if an entire landscape bed or buffer is missing, the plan set will need to be amended in such a way it is brought into compliance. Planning staff is mindful of the fact that the Hamlet is "lived-in" and residents have made personal improvements. For example, garden beds or their own front yard plantings. That is okay. What is not okay would be removing a required street tree or screening buffer of an exterior parcel line. We assume the hotel and commercial buildings are a part of a different HOA than the residential houses, so Planning staff can be very specific with the certificates to align with HOA jurisdictions.

Next Steps:

- Where there are discrepancies between the final plans and actual plantings there are a couple options: Submit a revised landscaping plan that identifies as-built plants and species. This could be as simple as a handwritten edit on a copy of the approved landscaping plan sheet(s). For example, where a maple tree was proposed but a birch was planted. If a tree or shrub is missing here or there, that is an acceptable level of discrepancy (especially as now were discussing enforcement of a 15+ year subdivision). But if there are significant areas when an entire landscape buffer or landscaped bed with several plant and species was required but not planted, then plantings would need to be installed.
- Amending the landscaping plan: How the landscaping plan is amended and physical plantings installed is up to the HOA. The HOA could take up the cost & responsibility or privately pursue the developer to assist with the cost and work. These types of amendments to final plans can be approved administratively, without DRB review.

#### **Question #2B Management of Green space**

*"Can we turn our large grass open areas into meadows and not large lawns? I believe the answer is yes given storm watershed guidelines. Are there grants available to improve the*

Hamlet green space and community walkways? We will be proposing to the DRB an updated plans to create a New England Cottage Gardens environment ranging from a more formal neat appearance for front beds to more private organic beds and structure in our “backyards” with a common meadows, grass pathways, and small mowed, manicured play field for dogs and kids. This is a preliminary design idea which will be more fully developed between now and the DRB final review process.”

**Answer #2B:**

Using the common land for “common meadows, grass pathways, and small mowed, manicured play field for dogs and kids” achieve or exceeds the goals for useable common land and/or an urban park. It is expected that the landscaping will evolve as a development transitions from the developer to individual owners. Establishing meadows does not require DRB approval. If the HOA wanted to add fences or structures smaller 1,000 SF to the common space, those activities are likely approved with an administrative permit.

The greenspace between the sidewalk and street is owned by the town. HOA and private improvements or agreements cannot remove or undermine the street trees, which are a town responsibility. Bruce Hoar, DPW Director, is also the town tree warden. Required elements of landscaping – street trees, buffers along exterior parcel boundaries should not be removed. Exterior buffers can be enhanced.

**Next Steps:**

- **Stormwater:** As mentioned by Christine Doherty, the Blue grant is only eligible for individual homeowners. This [State Stormwater Guide for Homeowners](#) describes some activities that would be considered routine maintenance that the HOA could conduct around houses or on common land to improve infiltration and reduce stormwater flow. According to Page 12, aeration, longer grass height, low mowing zones (meadows) and trees can help with lawn management. How the stormwater system is upgraded, or state permit is amended, is up to the HOA. The HOA could take up the cost & responsibility or privately pursue the developer to assist with the cost and work. These types of amendments do not require DRB review.
- **Stormwater and Fire Safety:** Where routine maintenance improvements such as infiltration trenches, rain gardens, or rain barrels are proposed, such improvements shall not interfere with the Fire Departments ability to access windows and siding on the side of houses. This is not a requirement of zoning, but a suggestion that the HOA receive input from the Fire Department before making changes that could impact emergency access.

**Question #3 Building Envelopes and Plat**

*“Could you share an example of how you determine a building envelope? I have a copy of the tax map and the final plans. However, I do not see a clear statement, scheme, or drawing to determine each lots envelope especially our duplexed & carriage garage units.”*

**Answer:**

The definition of building envelope usually applies only to tradition lot subdivisions, **“46.3.21 Building Envelope.** A ‘building envelope’ is the space on a lot within which development may occur. All development, including land clearing, but with the exception of driveways and utility lines that serve development within the building envelope, is confined to the building envelope. Where they are required by this bylaw, building envelopes will be shown on approved plans and marked on the lot by permanent survey monuments.”

Next Steps:

- If the plat and deeds for the Hamlet do not sufficiently define private vs. common ownership, the HOA should seek legal assistance. How the recorded plat or footprint lots are amended is up to the HOA. The HOA could take up the cost & responsibility or privately pursue the developer to assist with the cost and work. These types of amendments do not require DRB review.

**Staff Comment #1: DRB vs. Administrative Approval**

Some of the next steps may or may not need DRB approval. Whether DRB approval is required for changes to the final plans governing the Hamlet will be determined, based on the scale and scope of the changes, in compliance the Williston Unified development Bylaw's provisions regarding final plans amendments.

Should you have any questions or need any additional information, you may reach me at (802) 878-6704.

Yours Truly,

Matt Boulanger, AICP  
Planning Director and Zoning Administrator

CC: File