

**TOWN OF MARSHFIELD
DEVELOPMENT REVIEW BOARD**

Subdivision application of :

Gruss & Co.
667 Madison Ave. - Floor 3
Marshfield, VT 05658

SUBDIVISION PERMIT

The Marshfield Development Review Board (hereafter "DRB") held Final Hearing October 19, 2006 and November 30, 2006 on the subdivision of property owned by Evergreen Timber, LLC. Upon deliberation, the DRB approves this plan, with a number of conditions, as described below.

Subdivision Plan

This subdivision plan creates 9 lots. The DRB has waived the requirement to include a survey of the largest of these lots (the "ninth lot"), which consists of approximately 2,080 acres. Applicants Gruss & Co, represented in this matter by Scott Prosser (hereafter "Applicants"), have made both oral and written presentation to the DRB that this remaining acreage is to be retained as working forest land, and that they are taking steps to preserve it in perpetuity against further development. To this end, the Applicants are currently pursuing an application to grant a conservation easement through the Vermont Land Trust and the Forest Legacy Funding program. They have also reiterated their commitment to keeping this land open for recreational use by the public.

The other 8 lots created by this project are offered as building lots along the easterly side of Laird Pond Road. They are depicted on a survey drawing prepared by Robert A. Townshend, LS, dated May 19, 2006. The largest of these lots is approximately 50.9 acres. The other 7 range in size from 5.9 acres to 15.1 acres. All lots have sufficient road frontage for their size under the Zoning Regulations, and the front of each building lot lies in the Agricultural and Rural Residential zoning district. A substantial portion of 5 of these lots (#4-#8, as depicted on the survey) lies in the Forestry and Conservation zoning district as well.

The Applicants have clearly stated that they mean to sell each of these 8 parcels as building lots, and have no intention of constructing any homes themselves. They have not committed themselves to this position as part of their application to the DRB, however, preferring to reserve their right as property owners to seek permission to build on the property themselves, should their current plans change in this respect. The Applicants *have* committed themselves, as part of this application, to give neighboring landowners the right of first refusal to purchase any of these building lots at market price.

The application here approved includes septic designs intended to provide sewage disposal for a single family residence on each of the 8 building lots. As depicted on these designs, the outflow from the septic tanks on Lots #4 and #5 will be piped to separate leach fields located on Lot #6. In order to ensure that the lots here created will be suitable for their residential purpose, deeded easements must be created on lots 5 & 6 for the benefit of lots 4 & 5 to accommodate this septic plan.

To address a concern of many of the neighboring landowners who testified at Hearing in this matter, the Applicants have offered as part of their proposal to include deed restrictions on these building lots to help minimize the visibility of new homes. These restrictions will require the preservation of vegetative screening along the public road, and prohibit the installation of new lighting that would illuminate surrounding properties. The DRB is also imposing a requirement that utility service to the new homes be installed underground, in furtherance of the objective of minimizing visibility (and pursuant to section 4023 of the Town of Marshfield Amended Subdivision Regulations). Should the Town decide it would like to install a dry hydrant in this area to improve fire protection for nearby residences, the Applicants have offered to provide a portion of Lot #4 for the purpose. Presumably, such a hydrant would be fed by water from Laird Pond, which itself is not owned by the Applicants. Design details for this type of facility can be found as exhibit E in the written submission of Gruss and Co. to the DRB, dated October 18, 2006.

Basis for Approval

It is the responsibility of the DRB in Final Plan Review of a subdivision application to determine “whether or not the plan conforms to subdivision review standards, or would be in conflict with the Town Plan and Zoning Regulations...” (Subdivision Regulations, Section 2030(C)).

In the public hearings on this Application, many neighboring residents expressed their misgivings regarding the effect its approval could have on the character of the area. There was much concern that the advent of 8 new homes, established along one stretch of road in just the next few years, would be out of character with the settlement pattern established in the area. The DRB was urged to consider this threat in light of the Town Plan’s stated objectives regarding density of development, use of available resources, etc.

In evaluating this type of application, however, the DRB must look first to Marshfield’s Zoning Regulations. The current Regulations have been established pursuant to the adoption of our Town Plan, with the specific purpose of ensuring that development activity conforms to its standards and objectives. They have also been ratified by majority vote of the Town as a whole. Wherever the Zoning Regulations directly address a particular objective of the Town Plan, they provide an objective standard by which development proposals should be measured. For instance, when a proposed lot meets the minimum lot size and frontage dimensions for its Zoning District, as provided in the Regulations, it can generally be presumed to conform with the intent of the Town Plan with regard to density of settlement. The Regulations have, in effect, defined what constitutes acceptable density in each zoning district.

Where a given objective is addressed by the Zoning Regulations in this way, the DRB should, in most cases, defer to the guidance of the Regulations, and not attempt to substitute its own judgment of how that same objective might better be met. Relying on the standard supplied by the Regulations means it can be applied uniformly and predictably to any development proposal which calls it into play.

On the other hand, where a development is proposed which requires some modification of (or deviation from) the Zoning Regulations — the case of a Planned Residential Development (PRD), for instance — the DRB has no such objective standard to apply. It must then bring its own sensibility to bear on that specific proposal, comparing it directly with the Town Plan and exercising its own best judgment as to how the proposal conforms to the stated goals and objectives. Marshfield’s Subdivision Regulations outline a variety of means which the DRB can employ to fairly and accurately make this determination with respect to individual applications.

Such is not the case with the proposal before us here. As noted in the DRB’s Preliminary Plan Approval, dated September 6, 2006, this subdivision application does not seek to modify or deviate from any express provision of our Zoning Regulations. There has been no clear showing that, in order to comply with the Town Plan, new building lots on this stretch of road should be prohibited, or otherwise subjected to dimensional requirements which are much stricter than those which apply in other parts of the Agricultural and Rural Residential zoning district. Therefore, to the extent that the Zoning Regulations address the relevant provisions of the Town Plan with regard to residential settlement, the DRB finds that those standards have been met by this subdivision plan.

The DRB does not necessarily accept — and certainly does not base its Approval on — the representations of the Applicants that this development will constitute an improvement on the neighborhood of Laird Pond Road. For any of us who value the quiet, the slow pace, and the abundance of natural space that life in Marshfield affords, the introduction of these 8 new building lots represents another incremental step in the direction of suburbanization. The DRB does not discount for a moment the sentiment held by many in the neighborhood that something will be lost to them when these new homes are built. The acceptance or rejection of any individual zoning application, however, cannot be made the subject of popular referendum.

It should be noted here that our Zoning Regulations themselves *are* a matter of popular referendum. If the Town as a whole comes to believe that its current Regulations provide insufficient protection of its values in the face of future land development, it has the opportunity and the duty to amend those Regulations accordingly.

It has been widely observed that traffic is an ongoing problem on this section of Laird Pond Road. The road is narrow, with several blind curves, and yet it is used heavily by drivers traveling between Route 2 and Maple Hill. A lot of these cars are traveling at an unsafe rate of speed, according to the local residents. The Marshfield Better Backroads Plan, prepared in 1999 at the direction of the Select Board, noted this problem, and found that the road bed needs to be reconstructed and widened. Some of the local residents, however, fear that widening and improving the road to make it safer would only serve to invite still more traffic.

Whether or not the road will be widened in future, there has been no showing here that adding 8 new homes along this stretch of road would so aggravate the traffic problem that it must be prohibited. It may be just as likely that drivers coming down from Maple Hill would travel more slowly in the presence of additional driveways along the east side of the road. In any case, the traffic problems identified are those presented by the through traffic, and if we are to limit otherwise acceptable development to address this problem that limitation should probably begin on Maple Hill.

The DRB has also heard testimony that water runoff is a frequent problem along this road. Of particular concern is the drainage along the road directly above and into Lye Brook. The Better Backroads document identified this problem as well, and offered a plan to remedy it. That plan comes with a substantial price tag, and to date the Town has not pursued the recommended improvements. For the purposes of this subdivision proposal, the DRB does not see that the addition of 5 single family homes sited along a 2,000+ foot stretch of road above Lye Brook will materially add to the runoff. We will, however, require that any new driveways are installed with appropriate culverts.

Approval and Conditions

The Development Review Board hereby grants approval for the project as presented at Final Hearing, and on the above referenced survey and associated written submissions.

Within 180 days of the date of this Permit, the Applicants must record the plan survey with the Town of Marshfield Land Records (24 VSA §4463). The drawing as filed shall conform to the requirements of Vermont state law for the filing of plats.

This Approval incorporates all of the following conditions, and failure to comply with any of them shall constitute a violation of this Subdivision Permit:

Septic Easements. Within 30 days of filing the plan survey with the Town, the Applicants shall file the following with the Town of Marshfield Land Records—

- a deed or deeds granting both Lot #4 and Lot #5 separate easements to construct a leach field on Lot #6, including a reserve leach field area for each, and providing a permanent 25 foot maintenance easement around each leach field installation.
- a deed granting Lot #4 the right to cross Lot #5 with a pipe to its leach field on Lot #6, as provided above, and including a permanent 25 foot maintenance easement for this pipe.

Details of the septic design for these lots are depicted on plan drawings prepared by Brad Washburn, Certified Site Technician, submitted as attachments to the survey plan here approved. These deed provisions may be incorporated into other deeds, so long as it is clear that the easements so created are permanent, to run with the land.

Screening Restrictions. Any deed granting ownership of any of the 8 building lots herein approved shall include a permanent restriction providing that “no trees or other vegetation greater than two (2) inches in diameter, as measured at three (3) feet above grade, may be cut, trimmed or otherwise removed from within 65 feet of the centerline of the public road, except as necessary for the construction of driveways, for the placement of wells, septic or wastewater systems, for the removal of fallen vegetation, and to eliminate or alleviate a safety hazard to people or property, including any public road. Clearing for the construction of a driveway shall not exceed 25 feet in width.” In addition, any deed granting ownership of Lot #4 shall include a requirement that the natural vegetation shall be allowed to grow back in any cleared portion of the lot which lies within 65 feet of the center line of the public road, subject to the same exceptions listed in the “no-cut” restriction listed above.

Utility Line Restrictions. Any deed granting ownership of any of the 8 building lots herein approved shall include a permanent restriction providing that any utility service to any construction on the lot shall run underground. An exception may be allowed for any service, such as a satellite receiver dish, which requires above-ground installation to function. Storage tanks for gas or other fuel are also exempt from this requirement.

Lighting Restrictions. Any deed granting ownership of any of the 8 building lots herein approved shall include a permanent restriction preventing the installation of any exterior lighting, including lighting along roads or driveways and fixtures attached to a house or other structure, unless such lighting is downcast and shielded from direct view of neighboring properties and the public road.

Driveways. Any new driveway established on the subject property along Laird Pond Road will include a culvert of at least 15 inches diameter, unless the Road Foreman for the Town of Marshfield issues a written finding that such a culvert would be of no benefit for any particular driveway installation.

This Subdivision Approval is issued pursuant to the DRB’s authority under Marshfield’s Zoning Regulations, associated bylaws, and state law. Nothing in this Approval shall relieve the Applicants of their obligations to obtain any other required permits or authorizations from the Town of Marshfield or the State of Vermont for any aspect of their development plan. These obligations include — but are not limited to — obtaining a Zoning Permit from the Zoning Administrator for any construction on the subject property, and curb cut approval from the town Select Board for any driveways created on the subject property.

Dated Marshfield, Vermont, this 8th day of January, 2007.

For Marshfield Development Review Board members:

James Arisman	Tom Daley
Paul Brierre	Mike Fritz

Thomas T. Daley, DRB clerk

Note: Board member Martin Johnson votes to deny this subdivision, on the grounds that the inclusion of substantial Forest and Conservation district land in the building lots violates the goals of the Marshfield Town Plan for the preservation of forest land.