TOWN OF ST. GEORGE
DEVELOPMENT REVIEW BOARD MINUTES
February 13, 2008

Board members in attendance: Marie Mastro, chair; Scott Baker; Lisa Beliveau; Matt Palmer; Connie Kendall; Ron Arms.

Also in attendance: Dan Pillsbury; Todd Pillsbury; Dennis Hill, attorney for applicants; Jeff Hardy, Trudell Consulting Engineers; Ed Hanson, Zoning Administrator.

The meeting was called to order at 7:00 pm

Agenda Item #1: Final Plat Plan Review for the Pillsbury Subdivision.

A description of the application was read and after reviewing the order of events, Marie Mastro, chair, asked for disclosure of any conflicts of interest. There were none.

Marie stated that there was ex parte communications in the form of a packet of information submitted by Ed Hanson.

Marie then requested that the applicant and their representatives take the oath. Dan Pillsbury, Dennis Hill and Jeff Hardy stepped forward to take the oath.

Marie asked if there was any additional written information that the applicant would like to submit other than what was received from John Klesch. Dennis stated that the written information had already been submitted; three items 1) Zurn Sisters Development, Environmental Court Docket No. 233-9-06; 2) Guidance Document #2007-01 by Christine Thompson, Director WWMD; 3) Section 3-A-01 (b)(2) Wastewater System and Potable Water Supply Rules.

Marie turned the hearing over to Dennis.
Dennis started by saying that the permits from the state for wastewater have been submitted to the board. Marie said that copies of the permits were in the packet from Ed. Dennis reported that the name of the subdivision will have to be changed because there is a "Breezy Valley Farms" subdivision in another town in Vermont. It has been changed to King George Homes/ Homeowners Association.

Marie asked Dennis Hill to review the letter he submitted to the board on December 5, 2007. Dennis said that he has had several conversations with the town attorney to discuss the issues and to make sure everyone had the information that they needed. Marie requested that those discussions be added to the testimony since the board members had not heard what was discussed.

Dennis first thanked the board for their time and effort and for paying close attention to the project. He then began to review the board's Preliminary Plat Review Findings, Conclusions and Decision dated October 26, 2007 – starting with findings #2 which states that the lots 1-7 are non-conforming. Dennis said that the lots are conforming in a PUD district – that they clearly fit within the criteria of a PUD subdivision.

Dennis then moved to findings #4 – "the issue about VELCO". "The lines that run through this project – we don't believe that the potential for them to replace the larger line exists because they only have a 300 foot right-of-way. They had asked for a larger one but from the golf course on down, they were turned down and they would be coming through a different way. . . . John Klesch has indicated to me that one of the concerns of the town was that if VELCO does come in and ask for a larger right-of-way or a higher line – that the lot owners can't require the town to come in and defend them in a proceeding. We don't have a problem with that view." Dennis added that they are willing to put in "a notice" but that they could not ask the lot owner to waive a future claim - it would be understood that lot owners could not force the town to defend them against an expansion. They were willing to incorporate language, or a notice, to the lot owner that VELCO could come through with some new technology. "They do have that 300 foot right-of-way" Marie asked for clarification – Is it a 300 foot right-of-way or 150 foot right-of-way? Dan said that it is 150 foot right-of-way. Scott added that it is 150 feet now and that there was talk that it could go up to 300 feet. Dennis agreed and made that correction – it was the 300 foot right-of-way that was rejected.

Dennis then referred to the area designated for future development. Dennis stated that it is an area where future lots could fit in and meet all of the criteria for approval. The reason that they don't want to develop this area now is because they don't want to go through the Act 250 process. They also don't want the owners of the seven lots to have veto power - to say that the additional area could not be subdivided. "The seven lot owners would have the right to participate in the process and we would have to come back for approval". . . "we were trying to come up with a way to put them on notice – put everyone on notice that we might want to do this down the road". Dennis pointed out the case law from the environmental court that he supplied to the board, the Zurn Sisters Development, "that clearly says that the law says that if you are not doing more than 10 lots within a 5 year period, you don't have to go through Act 250 – with the intention that if you wait that 5 year period, then you can go ahead and do it".

Marie said that since the board received the information on the Zurn Sisters Development just yesterday, she had not had the opportunity to study the document fully – but it appeared to her that it was more related to Act 250 –"if the decision had to go to Act 250 rather than this language on the plat plan that says reserved for future development – I couldn't draw the connection". Dennis answered that the connection is that the environmental decision provides solid case law that you do have a right to have future subdivision on property that you own that you are not doing a particular project at the time. Dennis said that they could come in and ask for additional lots now before this board "but we also would have to go through the Act 250 process. We want to come in with the seven lots but reserve the right – we don't know if we ever will, but we might

come back in 5 or 6 years and seek the additional lots – which would entail coming back before this board but it would not entail going back to Act 250".

Marie said that the intention of the board's decision was not to say that lot 8 could never be developed but the board has to decide on subdivided land. The board does not grant permits for future reserved development, the board grants permits for subdivision of land. The board was not comfortable with "granting something when we didn't know what we were granting". Marie stated again that she did not see the connection to the Zurn case. The lot referred to in the Zurn case was already a subdivided lot – they did not have an area reserved for future development. Dennis said that the Pillsburys' future development lot will remain open unless they come back for further subdivision and that they intend to deed it to the association. It will be subject to the rights of the declarants, the Pillsburys, to seek further development of that section of the property. "So, we're not really subdividing it - but we are reserving rights in terms of a restriction or a covenant on the property which is completely doable. It's not a separate lot. There is one phrase in the declaration that needs to be clarified – but we will be deeding all of the open space other than the 7 lots to the association, subject to restrictions – for example subject to the septic fields, the power line right-of-way, subject to our right to establish the snow mobile trails, etc. – the declarants do that. And it is not unusual for the declarants to reserve the right to further develop. We want to identify the only land that we want to do further lots – that section is shown on the map so that we are clearly designating it. That is the only way to put the lot owners on notice that we will not go outside those boundaries."

Scott agreed that it was a good idea to put the lot owners on notice. Scott added that by having an area reserved for future development, it may imply that the board is approving that future development – but the Pillsburys would still have to come back before the board. Scott said that he was concerned that if the future development area is not delineated and lot 8 is shown as open space then if the Pillsburys come back to try to modify it, the lot owners are going to say "wait a minute, when you approved this PUD, it had all of this as open space and that was part of the deal – but now you want to come back and take away some of the open space to develop more". Scott also added that it was his understanding that it was not the intent of the board to make it hard to develop that area down the road. It makes sense to make the potential buyers aware of the future development otherwise it is misleading. Scott said that he would like to find some appropriate legal way to "include that without everybody thinking that we are approving a free-for-all out there".

Matt offered that the future development area could be made into a separate lot – "that is the way it should be done". Marie agreed. Marie offered a possible option: the 9.7 acres marked for future development could be made a part of the larger lot # 9 so that lot #8 could remain recreational, open space for the 7 house sites. The Pillsburys could later come back in and subdivide lot #9. This would still meet the 50 acre requirement for a PUD subdivision. Dennis thought that the difficulty with this idea could be that a small sliver of land would have to be created west of lot #8 to create access to the 9.7 acre area. Scott asked if it is possible to have a single lot that is discontiguous and still be

considered a part of lot #9. Matt added that if the two parts are not connected, would this be a 10 lot subdivision that would trigger Act 250? Marie thought that it could be considered a part of the remaining land so the subdivision would remain at 9 lots. Ron questioned if the 9.7 acres could be considered land-locked if an access road is not designated.

Marie stated again that there is concern with having an area designated or reserved for future development and that she also understood that the Pillsburys were trying to avoid Act 250. She added that the board is trying to work with the Pillsburys but this seems to be a self-created problem. Dennis agreed that it is a "bit of a self-created problem- but the case law recognizes that we have the right to do planning upon that basis". The covenants state that Lot #8 would be deeded to the homeowner's association with rights reserved. Marie asked who would pay the taxes on this land – who would own lot #8? Dennis answered, the association. Scott offered that while the homeowners association was using the land, they would be paying the taxes on it – when someone puts a house up on this land, they would begin to pay the taxes.

Matt asked for more information on the case law that Dennis referred to. Dennis said the Zurn Sisters Development is an example. Connie asked for additional case law that Dennis may have been referring to in his December 5th letter to the board when he stated "case law is clear that our clients have the ability to so designate areas" (possible future development areas).

Connie pointed out that the General Standards requirement, on page 15 of the town's zoning regulations, requires that the location be shown on the plat plan of all buildings, open spaces, streets, etc. – all physical features.

Connie made the suggestion that the 9.7 acre future development area be taken out of the PUD and added to the parent lot #9 and increased to 10 acres to allow for two 5 acre lots in the future. Currently, the area is zoned 5 acres per lot. Lots 1-8, "the development", will still meet the zoning regulation's requirement of 50 acres. Marie added that if the Pillsburys' goal is to try to avoid Act 250, making the 9.7 acre future development area 10 acres and a part of the parent lot #9 would work. The Pillsburys could later decide to develop lot # 9 as they would like to. If the future development area is increased to 10 acres, it would not have to be developed as a PUD and there would not be a 50 acre requirement. It is also possible that the 50 acre minimum will not be a requirement in the future. Connie agreed that if the Pillsbury's want to do another PUD on lot #9, they would then have to develop a minimum of 50 acres, if the requirement is still in existence at that time.

Ed Hanson said that the proposed additional lots in the future development area are set up to use the infrastructure of the current proposed PUD – the wastewater disposal, for instance. Connie said that the state permits are for lots 1-7, Dennis agreed that the permits are for lots 1-7 because that is all they are proposing at this time. Ed said that he recalled Deb Bell saying that there was potential capacity to serve the additional lots. Jeff Hardy confirmed that there was septic capability for up to 12 lots.

Connie stated her difficulty with the future development area – "we have to demonstrate to the residents of St. George that what you want to subdivide meets the town's regulations. I feel I am being asked to say that this future development area will meet the town's regulations now before I know what you will be doing with it". Dennis said that it is an area that they may want to come back to develop. Marie said that they could come back – the decision does not say they can't come back. The decision says that references to future potential development be deleted. There is nothing in our subdivision regulations that says we can permit for an area marked reserved for potential development. We permit for subdivision only. How do we permit for reserved potential development?

Dennis said the purpose was to put the owners of the seven lots on notice that the land could be subject to a proposal down the road and that they would not have legal power as members of the association to block that. Scott asked is there a way to communicate that without putting it on the plat? Matt said that he didn't think that the 9.7 acre reserved for future development area "had any business being part of the association and being reserved for future development. Those two can't coexist in my mind". Ed asked if the notice could be put in the articles of the association as a covenant? Connie said that now the declaration reads "The Declarant intends to convey the open space on Lot 8 (with the exception of the space designated for future development) to the Association." Dennis said that they meant there will be restrictions on the area – that they reserved the right. They are not subdividing that land now, the land will be given to the association, but we are going to reserve the right to build four or five homes in that area. Connie asked if they want to continue to keep a specific boundary to that area – 9.7 acres? Dennis answered, yes – that is the area we want to identify and we would not go outside that area. Connie then said that she could not see how it would not be considered another subdivided lot. Dennis answered that there are other areas with specific boundaries such as the septic easements or the road right-of-ways. Connie said that those are specifically located on the final plat plan but the potential building lots are not specifically located – "so I don't have a way of approving that".

Scott offered that we keep the wording in the covenants to alert the potential buyers that there might be development but we don't mark anything on the plat and we treat lot 8 completely as open space. Scott said that the covenants "don't mean anything to the board" Marie said that the covenants of the association have to be approved by the DRB as part of the conditions of the decision. If the board is requesting that all references to the reserved for potential development be removed then we have a conflict between the covenants which would have the references and a plat plan that does not. Matt said "can't the covenants be changed later?" Marie said that they would have to come back before the board if changes are made.

Scott asked if we strike every reference to the reserved for potential development, 5 years from now would lot 8, based on our decision, be required to remain as open space or would it still be legally possible to further develop lot 8? Could the permit be amended? Ed answered that it would have to come back before the DRB. Marie said that it could be

an amendment to an existing PUD. Ed said that it would require another hearing. Ed also requested more information on the conveyance of lot 8 to the homeowners association.

Marie said that since this clearly is a complex issue, what would be helpful is a written memo from Dennis outlining the argument for why the Zurn Sister's case, or any other case, supports the Pillsburys' desire to have an area outlined as reserved for potential development.

Scott offered another idea – that the current lot 7 be eliminated at this time and the reserved for potential development area be made a new lot 7 with specific boundaries. Then at a later time this new lot 7 could be subdivided and the other lot could be added back in. It would mean sacrificing one lot now – adding it back in five years.

Connie pointed out an area next to lot 7. On the top of chart SP1 the key shows that this area is marked as developable area. Connie said that Deb Bell had stated at an earlier hearing that two additional homes could be built in this area. Marie said that this area is part of the 9.7 acres and is what makes this so complicated. Marie asked everyone to continue to give this some thought and asked Dennis, Jeff, Dan and Todd to consider the ideas discussed.

Marie asked Dennis to continue with any other issues that he wanted to bring before the board. Dennis talked about the issue of a back up well - a community water source using Larry Pillsbury's well. "The problem with that situation is that it becomes a community water source system with all kinds of regulations and that well would not meet the set back regulations." Jeff said that "once you increase the demand on that well, the cone increases to double what it is here. Instead of 100 feet, on the up-hill side of any wastewater disposal, it now becomes 200 feet and you encompass all of Larry's house almost up to the road which means his existing septic system would be within that well cone. So, it would not be a fully complying well – if you increased it to a community water system. Making his well a community well is not an option".

Dennis said that the individual wells are approved by the State. The State sets the water yields that they are going to require. The wells will need to meet the State requirements for the number of rooms these homes will have. When the wells are drilled, Trudell has to certify that the yields meet the requirements – "otherwise we don't have a permit for a house". Dan and Larry feel that based on their knowledge of the area they are not going to have problems but you don't know until you drill the wells for a 100% certainty. Scott said that the board was instructed by Craig Heindel of Heindel & Noyes that provided there is 200 feet minimum separation between wells, there is minimal likelihood for interference between the wells. Jeff verified that all wells were further than 200 feet apart. Jeff said that he designed the well locations to adhere to the state guidelines that the well cones would not cross into neighboring well heads. There is a problem when there is a well head within another well's cone. He verified that every proposed well head location is outside the neighboring well cone.

Marie asked "where on the permit does it talk about adequacy of water"? Jeff said that it is not shown on the permit but that it is talked about on the site plan. Dennis said that the permit refers to the site plan. Jeff pointed out item # 9 on page two – the certification statement. "Trudell will have to certify that the water and wastewater has met the State standards." Marie asked "how do you certify that"? Jeff said that they monitor the installation process and after the well has been drilled and the wastewater is complete, they will have to certify that they have met the standards. The permit will not be issued unless they certify that they have met the standards. Marie asked "in the case of certifying water adequacy, do you provide the ANR report saying we drilled seven wells and these were the yields and this is where they are located - then stating the adequacy per the state requirements"? Jeff said that in this case, they will certify one well at a time.

Marie asked "say I want to buy lot 5 and I drill a well and I don't get water – what happens then"? Jeff said that he could not certify it then. Marie said "but I already bought the lot". Jeff answered that we would have to find a new location for a well – that would be the first step. Marie asked then, "what if you can't find a new location for a well and I have already bought that lot". Jeff said "I have never come across that so I can't tell you – the nine years that I have been working with septic designs, I have never had a water problem". Dennis said that "the practice among the attorneys that do a lot of real estate work is when you search a title you would say that this is subject to these permits and this is a private well. If the well is not in, I would never advise a client to buy a lot until it is agreed. . ." Marie said "so who is going to drill the well". Dennis answered "we will probably drill the wells". "Someone could come in and buy a lot without having the well drilled – that's not the practice now a days". It is most likely that people buying lots will say that it is subject to the well meeting the yield requirements – they will need the permit to get a loan. Most likely, Dan and Larry will enter into a contract and will go through the expense of drilling the wells and if the wells don't meet the yields, the buyer can get out of the contract. Matt added that it would be a contingency on the purchase agreement – Dennis agreed.

Marie said that it was represented to the board in past hearings that the Pillsburys were going to drill these wells prior to the sale of lots. Dan said "it is to our advantage to have the water and calculate the math of how much more you are going to have to pay for the lot – if we drop $15,000 into a hole in the ground and have water, it escalates the price of the lot because you're guaranteed your water".

Dennis said that the maintenance road cannot be entirely deleted as requested in the board's decision. It has to extend to the surge tank for inspection and maintenance – Jeff agreed. The maintenance road needs to be sufficient to get a truck close enough so they can run their hoses up to the tank to drain it. Marie asked "so it is just a maintenance road"? "What is the least amount of development that will provide reasonable access to the tank?" Jeff said that they are showing a 10 foot wide gravel road – and added a description of how the surge tank works. At some point in time, the surge tank will need to be pumped out. Marie said that at one point the road was labeled and given a name which made it appear to be more than just a maintenance road – more like a road leading to a subdivision. Connie added that the road on the plan goes past the septic area.

Connie pointed out that Dennis's letter says that the proposal is for the road to be kept at "less than 1,000 feet in length". Dennis said that the road needed to be within 300 feet of the surge tank. Connie added that she didn't think any board member had a problem with a maintenance road and asked if they knew the specific length of road? Jeff said that the disposal field plan shows the road to be 1,000 feet in length, just before the hammerhead starts. The length of the hammerhead appears to be about 40 feet beyond.

Dennis said that they would like the management and removal of the trees to be overseen by a county forester. Connie asked if any portion of lot 8 is under a land use plan at this time. Dan and Dennis answered no. Connie asked how it works, then. Dennis answered that a county forester will come out to assist the homeowners association – walk the land and talk about what they should be doing with the trees. Dennis said that they were requesting that this approach be acceptable. Connie said that the homeowners association could then, following the county forester's advice for good management practices, be able to cut trees for sale as well. Dennis agreed.

Dennis asked about the condition that required a conservation area on lot 9. Dan said that he wanted the area referred to in the decision to be left as lot 9 without any restrictions on it. The land conservancy was not able to pay him anything for this land. Scott said that, "in evaluating this as a PUD, one of the things that we are charged with protecting are ridgelines and natural resources – we have identified that ridge or hill up there as a natural resource for the town. As we are evaluating this PUD, we have the opportunity to protect that ridgeline and not see a string of houses up there in the future. Part of gaining the density bonus for a PUD is preserving natural resources that are identified. I'm not sure the board will be willing to recant that". Marie said that the board could be flexible on what mechanism is used. It does not have to be a conservation easement but it needs to be something that will meet the goal – the choice is Dan and Larry's but the mechanism will have to be approved by the board. Scott added that it could be something that is just shown on the plat as an area that will not be developed – it does not have to be given over to the land trust. Todd stated that he felt that the open space already provide the needed area to be set aside for no development. Dan reminded the board that he did not request a density bonus and that no density bonus was granted.

Connie asked Dennis to explain further his response to conditions 6 and 7 in his December 5th letter "These conditions are not acceptable and seriously affect the economic viability of the project". Dennis said that the area considered is the "nicest piece of the property up there". Requiring no development in this area is taking away an economic asset for the Pillsburys that is needed to help defray the expensive costs of developing – they are looking at what they will have left afterwards. Dan said that it seemed the board was asking him to conserve an area that is outside the 60 acre PUD development area, lots 1-8. Scott said that the PUD addresses the entire parent parcel. Matt asked how many acres were being considered on lot 9 as the conserved area – it was determined to be about 10 acres. Marie offered that if the Pillsburys later decide to subdivide lot 9, they could come to the board and point out that, as a part of the first subdivision's conditions, 10 acres were conserved on lot 9. The Pillsburys could then

request a density bonus as compensation for conserving 10 acres that the town identified as a significant resource.
Dan requested that he be allowed to conserve the land at that later time rather than now. . . "why would I have to conserve it now". Scott answered because we are going through the PUD process now – and now is the town's opportunity to protect one of the town's natural resources. Dan said that the land is not the town's "it's ours". Scott said, "yes you own it but a natural resource for a town is not only town owned property". Matt asked Marie and Scott if they were saying that they don't ever want any homes to be built on this hill top – "is that the goal?" Scott said that the condition in our preliminary plat decision states that that portion shall be preserved in its natural state. Other portions of lot 9 could be developed – keeping development off of the ridge. Matt asked why that particular area would be conserved – Scott answered because of its elevation and visibility – also because it connects to other land that is either conserved now or could be conserved in the future. Matt said that he recognized that this area is the most valuable land – Marie answered that every hillside or ridgeline in the town is the most valuable land. Matt said that the homes do not have to be visible and sited the example of the Martel's subdivision.

Marie said that what would be helpful to wrap this up would be for Dennis to meet with the Pillsburys and craft a response to the issues discussed and to supply the additional written feedback requested. Marie then made a motion to recess the hearing to March 12, 2008. Connie seconded the motion. The motion passed unanimously.

Dennis thanked the board for taking a positive procedural approach to this application.

Agenda item #2 - Ed Hanson's report.

Ed reported that, at the planning commission's public meeting on January 23, it became very clear to him that one of the issues in the new zoning bylaws will be the village center. As a result, Ed began to organize a "huge box" of information that has been compiled on the village center to date. After cleaning out the box of information, he will turn it over to Scott. Ed felt that the meeting on January 23 showed that no one had a clear or complete knowledge of what was going on in the village center and he thought it was important to understand the information that we have in our files before we proceed. Ed suggested that maybe a subcommittee could be appointed to read through the material since there is so much information to go through. He will have this clean-out and organization process done in the next several weeks.

Agenda item #3 – Other business

Marie confirmed that Lisa will maintain the town's website.

Ed asked if anyone has done the CCMPO bicycle path survey. He continues to get phone calls asking for the results. Ron said that he would take a look at it. Marie said that CCRPC has also sent out a survey to be completed and that she will complete that survey.

Marie said that she was officially resigning as a member of the planning commission due to her work and school load. A new vice chair will need to be appointed. With Marie's resignation, the board membership is 5. Two new members will need to be recruited.

Lisa said that she is forming a committee to study the recreational use of the town land. She already has several people signed up and she will make the announcement at the town meeting.

Connie asked if either the DRB or PC had any announcements to make at the town meeting. It was decided that a notice for recruitment of board members could be made at the meeting.

The meeting was adjourned at 9:10