

**TOWN OF WALLINGFORD, VT
DEVELOPMENT REVIEW BOARD (DRB)
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER**

Applicant(s): Thomas & Kim Phillips Town of Wallingford
Address of Applicant(s): 188 Haven Hill Rd, Wallingford VT 75 School St, Wallingford, VT

Address of Property: 90 Waldo Lane, Survey recorded on Slide #70-1, in Wallingford Land Records

Tax Map: # 12 **Parcel:** #0130090

Permit: # 15-01 **Appeal:** to DRB

INTRODUCTION

This application for a Lot Line Adjustment was received by the Zoning Administrator (ZA) on December 22, 2014 and approved January 8, 2015. An Appeal to the Zoning Administrators' Decision was received by the ZA, from the Highland Homesites Association, Inc. (as representatives to a group of abutting ownerships) on January 23, 2015. The ZA notified both Applicants of the Appeal by 1/26/15, by Certified Mail or Hand Delivery, and received signature receipt of notice. A Warning of a Public Hearing was published in the Rutland Herald on March 4, 2015. Adjoining landowners were notified of this Hearing by certified mail on March 2, 2015. Public Notice was posted on the property, at Town Office, and Wallingford Village Post Office. A hearing was held on March 19, 2015. Both Applicants and a number of Interested Parties were present or had submitted written testimony; represented themselves before the Board; and were sworn in.

A quorum of the DRB was in attendance; documentation was available for review and believed to be in proper form. Based on the pleadings and papers on file in this matter, and the testimony presented at said Hearing, the Wallingford Development Review Board hereby issues the following Findings of Fact, Conclusion of Law and Order(s):

FINDINGS OF FACT

1. The subject property is located in the Towns' Forest-Recreation zoning district. The Town owns other adjacent area that is identified to be in the Industrial zoning district; and this was noted on the Appeal to ZA Decision. This change in the zoning districts proves to be immaterial to this Appeal; as VT statute provides for any abutting ownership to qualify as an "Interested Party", permitting an Appeal of a ZA decision.

2. Prior to the permit application, the Phillips' property was a 3.8+/- acre parcel, enclosing frontage on Elfin Lake Rd & Waldo Ln. (both Town Right-of-Way road corridors), and a legal Right of Way (ROW) to VT Rt. 140. The Elfin Lake Rd & Waldo Lane Road locations have steep topography, and are difficult to develop as access. The most practical and well-established access to the Phillips property was by the legal ROW to VT RT. 140. Although the VT Rt. 140 ROW may border the north boundary of this property, the present topography limits practical access to the existing ROW. There are prior permits of record that impact this property.

Prior to the permit application, the Town of Wallingford (Town) owned surrounding acreage to the east, south, and west of the Phillips property. Access to Town property was via historic and deeded Right of Ways though east & west corners of the Phillips ownership.

3. From September 22, 2014 through December 15, 2014, Town Select Board Minutes reflect discussions between T. Phillips (a Select Board member at that time) and the Town, to reach an agreement to exchange portions of each ownership. Meeting minutes only reflect that Mr. Phillips recused himself as Select Board member at meeting of November 3, 2014, and it is not clear if he recused himself on other occasions discussing this issue. The Town would transfer ownership of 0.6+/- acres to the Phillips; which enabled them to improve their VT Rt. 140 access and access to utility service. In exchange, the Phillips would transfer two portions of their ownership, totaling 0.6+/- acres to the Town. The acreages transferred would include the existing roadway corridors for Elfin Lake Rd. and Waldo Lane. However, these specifics were not included in the meeting minutes, but discussed in the testimony at the DRB meeting of March 19, 2015.

The Town would acquire "fee simple" ownership of the land that encloses the two road corridors, and add waste disposal area to the existing Transfer Station facility. The Lot Line Adjustment offers a potential solution for the Town to comply with (recent) VT statutory requirements to provide stump & debris disposal services by mid-2015.

Deeds and Survey mylars were recorded in the Town land records on December 1, 2015, prior to submitting a Lot Line Adjustment Application to the ZA. The deed was signed by N. Tift and notarized by S. Switzer.

4. The Lot Line Adjustment Application did not create a new or separate parcel of land, and is not considered a subdivision under local rules. The acreage transferred did not create any new "non-conforming or less-conforming" parcel issues, per present zoning rules.

5. The transfer of Ownership was reviewed by VT licensed Attorneys (?), who had (per testimony presented at the Hearing,) advised their clients that the transfer was researched and legal, and proceeded to process and close this transaction.

CONCLUSION OF LAW

Based upon the above Findings, the Development Review Board has concluded:

1. That the Town of Wallingford Permit process was not strictly followed in this Lot Line Adjustment permit. Per Article V of Wallingford Zoning Regulations, the Lot Line Adjustment permit should have been secured prior to the real estate transfer, providing advance warning notice and appeal period.
2. The Town Select Board believed it was within its authority to execute the transaction prior to obtaining a Permit from the ZA. The DRB has to defer on this legal issue, but notes that a transfer of Town real property may also be subject to VT procedural guidelines.
3. That present Town Zoning Rules do not (clearly) exclude the Town from being subject from its own (Town) Rules, including issues that address essential services.
4. While the testimony presented by Appellants, and considered at the Public Hearing did express a number of application and permit process issues, it did not present definitive or statutory reasons to reverse the decision of the Zoning Administrator.