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Westfield Public Hearing

Agenda

Tuesday, November 12, 2024 6pm

Westfield Community Center, 59 North Hill Rd., Westfield, VT

Continuance → December 3, 2024 → 6 pm
@ Community Center

Pursuant to Title 24 VSA §4464 there is a Public Hearing before the Town of Westfield Development Review Board (DRB) Tuesday, November 12, 2024 at 6:00 pm at the Westfield Community Center to consider:

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∞Application 2024-19 submitted by Cyrus Eastman and Anastasia Rousseau for a Change of use to a single family dwelling at 922 Crawford Trail. Before approval of the change of use may be granted the applicants must obtain Access by Right-of-Way. The property is in the Rural/Ag district. Access by Right-of-Way is subject to Conditional Use Review and requires a hearing by the Development Review Board.

The application is available for inspection at the Westfield Town Offices, 38 School Street, or online at www.westfield.vt.gov. For more information contact the Zoning Administrator at westfieldzoning@gmail.com or (802) 715-3077.

Participation in this Hearing is a prerequisite for the right to file an appeal.

Hearing process:

- A. Welcome participants
- B. Define admissible evidence/germane comments.
- C. Disclosure of conflicts of interest and ex parte communications.
- D. Review the definition of interested persons in 24 V.S.A. § 4465(b).
- E. Pursuant to 24 V.S.A. § 4471(a), only an interested person who has participated in this proceeding may take an appeal of any decision issued in this proceeding.
- F. Interested persons identify themselves, demonstrate why they qualify for interested person status, and provide contact information.
- G. The board may grant or deny interested person status, subject to the definitions established by 24 V.S.A. § 4465(b). The board may hold a short deliberative session to consider interested person status, and shall issue its decision immediately upon returning to open session.

About DRB Hearings: The purpose of a warned Hearing is to collect evidence. It is not an informational meeting. It is not a Town Meeting.

There is a public right to a “reasonable opportunity” to comment and express “opinion” on any matter under consideration at an open meeting, **“as long as order is maintained”** and “subject to reasonable rules established by the chairperson.” 1 V.S.A. § 312(h).

How we maintain order:

- Wait to be recognized before speaking
- State your name
- Address your comment or suggestion to the DRB not the permit applicant
- Adhere to established speaking times
- No comments about permits not under DRB jurisdiction
- No side conversations
- Suggestions for permit conditions are welcome
- The Chair will stop the speaker if they raise issues not under DRB jurisdiction
- Failure to abide by these procedure guidelines may result in removal from the Hearing.

**WESTFIELD DEVELOPMENT REVIEW BOARD HEARING
MINUTES**

**November 12th, 2024 @ 6:00 p.m.
Westfield Community Center, 59 North Hill Road**

Town Officials in Attendance: Pat Sagui, Development Review Board Chair; Loren Petzoldt, Development Review Board Vice Chair; Ellen Fox, Development Review Board; Kitty Edwards, Development Review Board; Brian Dunn, Development Review Board; Will Young, Zoning Administrator; Niki Dunn, Development Review Board Clerk; Jacques Couture, Selectboard Chair; Dennis Vincent, Selectboard; Richard Degre, Selectboard; LaDonna Dunn, Town Clerk

Others In Attendance: Anastasia Rousseau, Applicant; Cyrus Eastman, Applicant; Mike Piper; Rosemary Croizet; Gerard Croizet; Dan Backus; Jan Degre; Dean Porter; Tim Austin; Kerry O'Brien, Vermont Land Trust (zoom), Ann Holdridge; David Holdridge; Brad Austin (zoom); Jimmy Crawford; Dennis Bathalon

- A. Welcome Participants:** Pat Sagui brought the meeting to order at 6:04pm. This hearing is regarding application 2024-19 for the property located at 922 Crawford Trail, which is in the rural agriculture district, brought forth by Cyrus Eastman and Anastasia Rousseau. A joint selectboard meeting was held at the same time.
- B. Admissible Evidence:** The admissible evidence is: Exhibit A – Information packet which includes the permit application, letter from Cyrus Eastman and Anastasia Rousseau, site visit summary from Wheeler Environmental Services, Eastman/ Rousseau Deed, Prue Deed, town maps, certificate of highway mileage 1990, certificate of highway mileage 2023, Crawford deed, Austin deed, photos of road work, letter from Dan Pepin Excavating and Trucking, letter from Wayne Chalker and Jennifer Grimaldi, letter from Dorothy Sheltra and Dennis Fournier, VT Statute Title 19, Letter from Beth and Joe Berchick, Town Attorney legal opinion. Exhibit B – Daigle Deed, Book 19, Page 364. Exhibit C – Book 17 Petition for Alteration of Certain Highways and Report of the Doings of the Selectmen, 1961. Exhibit D – Testimony from Rosemary Croizet as well as photographs and copies of newspaper articles from 1997 flood.
- C. Interested Parties:** Parties who gave testimony separate from the applicants, DRB Board, Zoning Administrator and Selectboard: Rosemary Croizet, Gerard Croizet, Tim Austin
- D. Oath:** Pat read the oath aloud and it was signed by Pat Sagui, Loren Petzoldt, Ellen Fox, Kitty Edwards, Brian Dunn, Cyrus Eastman, Anastasia Rousseau, Jacques Couture, Dennis Vincent, Richard Degre, Will Young, Rosemary Croizet, Gerard Croizet, Mike Piper and Tim Austin
- E. Questioning Period:**

Anastasia Rousseau gave a statement and began by explaining that when they put their packet together it was not determined whether Crawford Trail was a legal trail or a town highway. It has since been determined that it is a legal trail. She also noted that the town attorney 's interpretation of the Eastman deed is incorrect. The 14-foot right of way (ROW) referenced in the deed is for the Porters to pass through the Eastman's property and has no bearing on Crawford Trail. She is aware that state statute requires a 20-foot right of way and the town's zoning bylaws require a 25-foot right of way to the property. She noted that in both the Chalker and Bathalon deeds a 25-foot right of way is stated. The applicants would like to maintain the road and are also looking for guidance on how they should go about this. They submitted photos showing the work they have

already done to the road (Exhibit A). They had a wetland advisor come out and have also hired Dan Pepin to do some of the road work. Eric Kennison has also looked at the road and had no issues with the work being done. They are working to prevent erosion and help with the flow of water. Their end goal is for emergency vehicles and larger vehicles like fuel delivery trucks to be able to reach their home.

Pat questioned if the deeds for the rest of the properties along Crawford Trail show a similar ROW as the Chalker and Bathalon deeds. She specifically questioned if the Austin and Croizet deeds have the same language. Anastasia explained that they have no language regarding the ROW. Her belief is that if there is no language about the ROW it defaults back to the 50-foot ROW according to the state statute. Will Young noted that in the town lawyer letter on page 3, paragraph 2 they note that the Austin deed references language mentioning "twenty feet in width" regarding the ROW. Anastasia questioned how it works if the Austin side of the road has a 20 feet ROW, and the Bathalon side has a 25-foot ROW. Loren Petzoldt explained that it would be a 45-foot ROW, 20 feet on one side from center, 25 feet on the other side from center. Will questioned if the Bathalon deed gives a 25-foot ROW all the way to Ballground Road. Loren noted that it states from point A to point B and does not mention the rest of the property.

Loren questioned what the description of Crawford Trail is and does the .67 miles it is listed as get you to point A. Will explained the .67 miles does get you past point A. Ellen Fox noted the ROW would be 3 rods (49.5 feet) by default, unless a deed says otherwise. The deed that says 20-feet is from center. Will explained that it is because at the time the owners owned land on both sides of the road.

Jacques Couture had some hypothetical questions including how someone selling pieces of the land would have the right to restrict the ROW of the road when the road was there before the deeds existed. Ellen explained that the town attorney is referring to the deeds because if they have ROW access it needs to be named in the deeds according to the towns zoning bylaws. Jacques questioned if in the future someone shortens the ROW of any of that land, does that then become the law. Ellen explained that it becomes an agreement between the two property owners. Will noted that "a width now evidenced by past travel" is the wording the lawyer put in their letter regarding the width of Crawford Trail which references when it changed from a town highway to a legal trail in 1961.

Anastasia questioned that if the town attorney is referencing Westfields zoning bylaws and stating that the road needs to be at least 25 feet in width then wouldn't that be at least the width of Crawford Trail. Ellen explained that just because that is the width required it doesn't necessarily make the ROW that width. If it was determined that the ROW was less than 25 feet it wouldn't qualify for certain kinds of development.

Ellen noted that there is a letter stating that wetlands consultant Brad Wheeler came out to look at the road, but she wondered if anybody from the State of Vermont came out. Cyrus Eastman noted that he spoke with Shannon at the state who told him he needed to get a delineator to come out, which is why they got in touch with Brad. Ellen noted that each wetland boundary is usually digitized into a map, and she questioned if Brad did this and gave them a copy of the map. Anastasia noted that he marked out all the wetlands with flags, but did not provide a map. Cyrus explained that the wetlands are primarily through the Croizet section of Crawford Trail, which is why he decided not to expand the road width in that area.

Pat wondered if the applicants have a plan for various sections of the road and how they will maintain them and if they could provide this maintenance plan to the board if needed. Cyrus said they could provide that.

Ellen noted that the road crosses a waterway at one point with a culvert and wondered if any fill was added in that area. Cyrus noted that in June of 2023, shortly after he moved to the property, a flood washed out that culvert. He got fill from Eric Kennison and rebuilt that area to be able to pass through the road. He used the same culvert.

Ellen explained that there is a need to think about the domino effect if other residences on the road decide to become permanent residences. She would like a wetland map of the area. She noted that creating ditches along the roadway will change the flow of the water. Cyrus would like to walk the road with the board to help give them a better idea of the work he has done. The DRB looked at the road prior to the hearing. Cyrus also noted that he has not redirected any of the water flow, he is just helping to improve the flow.

Questions were opened to abutting landowners and members of the public:

Gerard Criozet noted that water over time is going to create ditches. The problem he is facing is the risk of damage from floodwaters on their farm. Rosemary Croizet questioned what the recourse would be if the road maintenance plan the applicants submit is not followed.

Tim Austin noted that he and his brother own a camp on Crawford Trail and his understanding is they own to the centerline of the road and their deed does not talk about any ROW but talks about where the pin placement is. He does not understand why the ROW is different on different deeds when they are all referencing the same road. Ellen explained that it is usually up to the attorney and whatever is historically in the deed as to what is included when a new deed is created. She explained that they can change the ROW when a deed is updated. Tim questioned if he wanted to give Cyrus a larger ROW how he would do that. Ellen explained that he would have a surveyor come out and record a new deed with the town.

Anne Holdridge had a question about the ability to change the ROW from 12 feet to 50 feet and would that have to go through the town first, would a permit need to be applied for. Will noted that only if the land is changing ownership would that need to happen. Granting easements does not require a permit. Pat did note that it does need to be recorded with the town though.

Will explained that they are looking at two different things. The legal trail, in which the town owns the ground of the legal trail, in a certain ROW which is currently unknown. You can also have private ROW deeded to anybody to use or you can give only certain landowners and their successors ROW. The town and private ROW do not have to match. The selectboard could make a statement in reference to what the town attorney found if they wanted to and the DRB could reference the town attorney letter in their decision on this hearing.

Ellen also noted that if the selectboard makes a determination on the ROW of legal trails in town after the DRB decision on this hearing then that changes the circumstances, and a new application could be brought forth by the applicants.

Anastasia believes that because the road was a town highway that turned into a legal trail then according to statute it should retain the width of the town highway. Ellen explained that all towns were given the right to take action on trails at a certain time and Westfield did not seem to take advantage of that. The original intent was to keep towns from taking more ROW from landowners. Jacques believes that at the time the ask was to give the roads up completely and the selectboard decided not to do that. He also noted that this hearing could be repeated many times throughout this town on other legal trails and the selectboard needs to come up with a policy for all legal trails for future instances. Ellen also noted that there are no minutes from the time when

the roads were changed to legal trails. Jacques feels that the decision was not to shut the public out from those roads. LaDonna Dunn provided the certificates of highway mileage showing when the roads changed from being town highways to legal trails.

Ellen noted that there is a lot of documentation around the deeds on Crawford Trail, but not any on the Croizet property portion. Rosemary noted that their deed has no reference of a ROW but does mention the existence of the legal trail. Loren also noted that the town attorney does acknowledge the .67 miles of legal trail which goes through the Croizet property.

Rosemary gave testimony and the full statement is included as Exhibit D. She noted that the road was upgraded prior to this permit application, and she feels they only submitted the permit application now that they are asking for a change of use. There is no reference in her deed about ROW. She believes that the road has already been upgraded with a 50-foot clearing and that the trees on their property were cut. She and her husband asked for documentation on the ROW and were told to wait until this hearing. The water runoff affects everyone in town, and she feels that the applicants could use Carmel Road to access their property if they wanted to. She believes there is an increased risk of flooding with any land changes and that wildlife will see their homes destroyed. She noted that this will set a precedent for subsequent development in this watershed and other legal trails in town. She believes that this past winter this was a barely passable trail and now is a 50-foot-wide path that funnels water directly onto their property. In July of 1997 their property flooded. Water went through the Villeneuve logging land just north of the property currently in question. She presented photos of the flooding and copies of the newspapers during the time of the flood (Exhibit D). There was \$170,864 in damage to Westfield, which was four times the budgeted maintenance cost for that year. Berry Creek Farm had a moat of water around it, and they lost the use of their septic and plumbing. They also lost their strawberry crop, fencing and livestock, and lost the ability to replant until soil testing was done. This was caused by Mill Brook and the creek that runs off Crawford Trail. Last year they lost crops in one greenhouse due to silt from runoff causing dams. She is asking the DRB to keep the area around Crawford Trail zoned as rural agriculture and not allow it to be changed to residential use. She also believes the entire village should have been notified of the hearing as it endangers all of them, not just the landowners on Crawford Trail. Their farm supplies food to many people and organizations in the area. They employ 3 Westfield residents and 1 Newport resident. She believes the whole community benefits from their farm. She also noted how much water could run off Crawford Trail given different rainfall amounts if the road was expanded to a 50-foot width for the entire length.

Ellen noted that abutting neighbors are notified in writing of these hearings and the rest of the town is notified in the normal ways, such as the town website, the newspaper, etc.... This complies with the laws they are required to follow.

Ellen questioned if any hydrologic analysis of the road was done. Anastasia noted that they have not hired anybody like that, but also clarified that they have not cut a 50-foot swath of road. She noted that there are very narrow areas still, and in some areas the road has not been widened at all. She also explained that their intention is not to open a huge expanse of land.

Ellen questioned if there is an application or thought to change the camp that currently exists on the property. Anastasia noted there is not at this time.

Ellen questioned the issue of doing the road work prior to getting a permit. Cyrus noted that he spoke with Will around April of this year and then got started with the wetland work. Anastasia explained they were not aware they needed one or they would've applied for a permit sooner. Cyrus also noted he did speak with all the landowners on Crawford Trail and let them know what he was doing.

Ellen questioned if access to the property via Carmel Road had been explored as an option. Anastasia explained that it is not passable at some points. They would have to cross a couple of streams to reach their home via Carmel Road. She also noted that when they bought the property the water was running down Crawford Trail and with the work they have done it has stopped that and they believe it will make the water runoff better. The most recent floods did not have any effect on the road. She also noted the soil was eroding on the side of the road before, where now it has vegetation helping to stop that.

Ellen questioned if they knew whether the fire department could get a truck up to their home. Anastasia said they did not know. Loren explained that just because you may have a 25-foot ROW doesn't mean you need to use the whole ROW for the road.

Jacques noted that there would be no decision tonight from the selectboard. He feels that the selectboard likes to be welcoming to all people in town and they will need to investigate this issue further.

Will stressed the importance of being in a better situation the next time this comes up and would like to get a legal determination that can be recorded in the land records, with a width and length of all legal trails in town.

The selectboard adjourned their meeting.

Ellen motioned for the DRB to enter deliberation at 7:40pm, and invited Will Young, Zoning Administrator, to join them. Loren seconded. Motion passed.

Loren motioned for the DRB to exit deliberation at 9:01pm; Kitty seconded. Motion passed.

Ellen motioned for a continuance of the hearing on December 3rd at 6pm; Loren seconded. Motion passed.

Admission of evidence was not closed.

Continuance notice will go to anybody who gave testimony at the meeting.

Pat will contact Nathan Covey regarding standard road widths in 1961. Ellen will look for imagery from that same time period. Niki Dunn will ask LaDonna to get in touch with the town attorney to do more deed research on these properties and Will is going to contact the selectboard to okay the expenditure of funds for this further research.

Loren motioned to suspend the hearing at 9:04pm, until the continuation date of December 3rd; Kitty seconded. Motion passed.

Minutes respectfully submitted by Niki Dunn.