

DEVELOPMENT REVIEW BOARD

TOWN OF GRAND ISLE

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

LAKE CHAMPLAIN TRANSPORTATION COMPANY

SITE PLAN REVIEW AND CONDITIONAL USE

HEARING #04-21SPR&CU

On March 8, 2021, Lake Champlain Transportation Co., (LCT) filed an application for Site Plan and Conditional Use Review for two parcels of land in Grand Isle, Vermont: 39 West Shore Road, Tax Map Parcel 080154, deed recorded in Vol. 133, Pages 92-93, of Grand Isle Records; and 41 West Shore Road, Tax Map Parcel 080155, deed recorded in Vol. 106, Pages 2-3, of Grand Isle Records. The current use of these parcels is residential; proposed use is for offices, storage, and repair facilities, in addition to residential. The application was filed by Dale C. Arango, CFO. Permission was granted to Buermann Engineering, LLC, to act as an agent for LCT during hearings with the Grand Isle Development Review Board (DRB).

On April 27, 2021, a letter was mailed to Jay Buermann, Agent, providing notice of Public Hearing for #04-21SPR&CU to be held on May 5, 2021. Copies of letter dated April 27, 2021 were mailed to all owners of properties adjoining the subject property of the applicant. Notice of the hearing was published in *The Islander* on April 21, 2021. On or about April 21, 2021, notice of public hearing was posted outside Grand Isle Town Office at 9 Hyde Road, at Grand Isle Post Office and Emmons Market, both located on U.S. Route 2.

On May 5, 2021, a public hearing was opened for #04-21SPR&CU. The hearing was conducted remotely, by Zoom. DRB members present were David Capen, Francis LaFromboise, Panos Lekkas, Joe Steffen, and Joe Longo (Alternate). The DRB Clerk, Marie Prescott, and ZAO, E. Scott Brown also were present. LCT was represented by Russell Fox, Marine Superintendent, and by Jay Buermann, Buermann Engineers. Twenty members of the public attended the hearing, most identifying themselves as Interested Persons. See Appendix A for Interested Persons and other members of the public who participated in hearings. The hearing on May 5 was recessed to June 2 at 6:10pm.

On June 2, 2021, at 6:14pm, the hearing was resumed, and was again conducted remotely by Zoom. All members of the DRB were present: David Capen, Francis LaFromboise, Panos Lekkas, Joe Steffen, Kristy Wheel, and Joe Longo (Alternate). The DRB Clerk, Marie Prescott, and ZAO, E. Scott Brown also were present. LCT was represented by Dale Arango, Beau Brosseau, and Jay Buermann, as well as

two consultants from Trinity Consultants, Christine Davies and Simone Wallace. Twenty-eight members of the public were present (Appendix A). The hearing on June 2 was recessed to July 7 at 6:10pm.

On July 7, 2021, at 6:11pm, the hearing was resumed in the Community Room of the Grand Isle Sheriff's Office and by Zoom. All members of the DRB were present: David Capen, Francis LaFromboise, Panos Lekkas, Joe Steffen, Kristy Wheel, and Joe Longo (Alternate). The DRB Clerk, Marie Prescott, and ZAO, E. Scott Brown also were present. LCT was represented by Russell Fox, Dale Arango, and their agent, Jay Buermann. Twenty-five members of the public were present (Appendix A). The July 7 hearing was recessed to August 18, 2021, at 6:00pm.

On August 18, 2021, the hearing was resumed in the Grand Isle Town Office and by Zoom. Five members of the DRB were present: David Capen, Francis LaFromboise, Panos Lekkas, Joe Steffen, and Joe Longo (Alternate). The DRB Clerk, Marie Prescott, and ZAO, E. Scott Brown also were present. LCT was represented by Russell Fox, Dale Arango, and their agent, Jay Buermann. Twenty-four members of the public were present (Appendix A). At 7:33pm on August 18, the hearing was closed.

FINDINGS OF FACT

GENERAL

Finding 1. Lake Champlain Transportation Co. owns three parcels of land adjacent to West Shore Road in Grand Isle, also known as State Route 314. These parcels are referred to as Lot 1, 2, and 3. Lot 1 is known as 1268 Gordon's Landing and is LCT's landing for the Grand Isle/ Cumberland Head ferry route. Although the Grand Isle tax maps show this parcel to be 11.1 acres, a recent survey confirmed that the acreage is 6.1. The Pecor family has owned this property and LCT since 1976, although the ferry business at this site dates back to 1796. Lot 2 is known as 41 West Shore Road, and was acquired by LCT on September 10, 2009, by Warranty Deed from Rodney and Donna Larrow. Calculated acreage for this parcel is 1.8 acres. Lot 3 is known as 39 West Shore Road, and was acquired by LCT on August 13, 2019, by Warranty Deed from Mary C. F. Journeaux. A recorded survey shows this lot to be 1.5 acres. LCT's application indicated that Lots 2 and 3 will be merged, a total of 3.3 acres. Lot 1 will remain separate.

Finding 2. The applicant submitted 16 pages of plans ranging from a property overview to details of wastewater disposal (See Finding 21). LCT proposes to build a 29,484-square-foot structure, facing West Shore Road. Outside dimensions of the building will be 252 feet X 117

feet; peak of the roof is to be 22 feet 10 inches on the east end (front), and 36 feet 10 inches on the west end (back). A covered porch and entrance on the front will lead to approximately

14,000 square feet of office space and storage on the second floor. The site plan shows the proposed building located on the northeastern corner of combined Lots 2 and 3, adjacent to Lot 1, with a service drive to Lot 1. South and west of the proposed building is a large, paved parking lot and access to six, garage-style doors. The parking lot and other paved surfaces on the site plan total 53,131 square feet (1.22 acres). An architectural drawing of the building, submitted with the application, depicts a metal-clad exterior, and a metal roof with moderate pitch.

Finding 3. The applicant did not submit architectural plans of the interior of the structure, but rather described use of the building's floor space, which reflected on the proposed use of Lots 2 and 3. The second floor of the building is intended to house offices for LCT employees. However, there has not yet been a decision about moving office staff from Burlington to Grand Isle (Russel Fox testimony). Most of the building will be allocated to workshops and storage. Shops will include specialty areas for wood work, metal work, electrical, sandblasting, painting, and auto repair. The primary function of this facility is for maintenance and repair of the company's ferry boats, docking spaces, ticket booths, etc. Maintenance and repairs of company vehicles also will occur in the building. LCT employs 14 engineers for such repair and maintenance, 12 of whom will work from this facility in Grand Isle, if approved. Despite the small number of employees expected to work at this facility initially, the wastewater system is designed for 40 persons to account for the 15 employees who work on ferry boats, the landing, and ticket booths at Gordon's Landing, and occupants of the house on Lot 2.

Finding 4. The principal proposed use of Lots 2 and 3 clearly is for repair, storage, and offices. The principal use of Lots 2 and 3 currently is residential, although buildings are not regularly occupied. LCT proposes to maintain residential use of one of the existing structures, the Larrow House on Lot 2, as an accessory use, but has no plans to occupy the second structure, which was described as in bad repair (Russel Fox testimony, August 18). Mr. Fox testified that the Larrow House is used only intermittently, when cadets from Maine Maritime Academy are training with LCT, and that there are no plans for more permanent occupancy. Accordingly, this use is clearly incidental and subordinate to the principal use of Lots 2 and 3 for repair, storage, and offices. LCT is proposing multiple uses for the property, but the dominant principal use is repair, storage, and offices.

DRB OVERSIGHT

The DRB finds the following sections of the Bylaws relevant to this application, and presents Findings for each section:

- Section 2.12.4. General standards for conditional use approval.
- Section 3.2.1.1. Development near state or local municipal facilities.
- Section 3.2.2. Zoning districts and dimensional requirements, especially 3.2.2.5, permitted and conditional uses in the Commercial Recreation Shoreline District, and 3.2.2.4.1, setbacks. Section 3.3. Minimum dimensional requirements.
- Section 4.1. Performance standards.

Section 4.4. Pre-existing non-conforming structures.
Section 4.4.3. Alteration of a non-conforming structure.
Section 4.7. Access to lots.
Section 4.10. Bulk storage of flammable liquids.
Section 4.11. Land alteration.
Section 4.12. Height limits.
Section 4.13. Signs.
Section 4.14. Parking requirements.
Section 5.2. Site plan and conditional use approval.
Section 5.3. Planned unit development.
Section 6. Wastewater disposal systems.
Appendix C. Stormwater management bylaw.

Section 2.12.4. Conditional Use Approval. “...the DRB may grant approval according to the Act if the DRB determines that that proposed use will conform to all the specific standards and provisions contained in these Bylaws and to the following general standards: (1) capacity of existing or planned community facilities; (2) traffic on roads and highways in the vicinity; (3) utilization of renewable energy resources; (4) character of the area affected as set forth in Title 24 VSA Section 4414(3)(A)(ii) and 4414(3)(B); and (5) other town bylaws in effect.”

Finding 5. The proposed use on Lots 2 and 3 does not adversely impact existing community facilities. To the extent that the Grand Isle Consolidated Water District manages a community facility, see Section 4.1, Finding 14.
Finding 6. The existing LCT ferry facility currently generates some of the heaviest vehicular traffic in the town, but Rt. 314 (West Shore Road) is a state highway and is adequately maintained for the existing traffic. The proposed use on Lots 2 and 3 will not add a significant amount of traffic. The applicant submitted a letter of intent from the Vermont Agency of Transportation for a commercial access on Lot 3.

Finding 7. The properties at 39 and 41 West Shore Road, Lots 3 and 2, respectively, comprise about 3.3 acres, and are predominantly vegetated, with a mix of mature trees, shrubs, and grasses that store carbon and consume carbon dioxide. The proposed development of the property involves removal of numerous mature trees, conversion of existing green space to paved parking, and construction of a 29,000+ square foot building. Approximately 60% of the property would be converted to impervious, heat-reflecting surfaces (roofs and pavement). The building is to be heated by propane. Cooling is planned for only the offices, by electric heat pump. No cooling is planned for most of the building, which is to be used for repairs and storage. Applicants indicated that the building would be “super insulated” and constructed to the Vermont Commercial Building Energy Code standards. Nothing in the application indicated any use of renewable energy for heating or cooling, other than a comment that the roof construction would support solar panels if installed in the future (Jay Buermann). Yet, one of

the five standards for conditional use approval (Section 2.12.4) specifies the utilization of renewable energy resources. A carbon offset to account for lost carbon storage is appropriate.

Finding 8. Title 24 defines character of the area in terms of the purpose of the zoning district in which the subject property is found and specifically stated policies and standards in the Town Plan. This is addressed in detail in Section 3 below, and this finding is deferred to that section.

Finding 9. The Board finds that the proposed development has no undue adverse effects on other town bylaws in effect.

Section 3.2.1.1 addresses the impact of any development on state or local municipal facilities, and cites 10 VSA Section 6068(a) (9) (K) and 24 VSA Section 4413(a) that might apply. The proposed development is within 1000 feet of the Ed Weed State Fish Hatchery.

Finding 10. After review of the statutes, 10 VSA Section 6068(a) (9) (K) and 24 VSA Section 4413(a), the Board finds that there is no relevance to this application. These statutes actually address development proposals on state or municipal facilities, not adjacent to such facilities. No one representing the Ed Weed hatchery participated in the hearings.

Section 3.2.2 outlines six Zoning Districts in Grand Isle: (1) Village, (2) Commercial/Light Industrial, (3) Rural Residential and Agricultural, (4) Commercial Recreation Shoreline, (5) Residential Shoreline, (6) and Small Off-shore Islands. Properties involved in the LCT application are located in the Commercial Recreation Shoreline District. Unlike the “Commercial/Light Industrial District,” there is no punctuation between “Commercial” and “Recreation” in the name of this district, indicating that commercial recreation is or was a primary feature of this small district, which includes lands within 500 feet of the lake shore along West Shore Road (Rt.314) from the town line north to Wilcox Cove. Until recently, portions of a campground and a small golf course were located in this district. The golf course has now been converted to residential use, which is the dominant use in this district. The district also includes LCT ferry docks, and a small pump house shared by the Ed Weed State Fish Hatchery and Grand Isle Consolidated Water District. The ferry terminal was in place long before Grand Isle zoning regulations, i.e., it is a pre-existing use, and has grown to be a defining feature of this district.

This section of the Bylaws has a table with a column for Permitted Uses and a column for Conditional Uses. Among the **permitted uses** for the Commercial Recreation Shoreline District are Marinas, Storage, Storage and Repair, Boathouses, and Business/Professional Offices. **Conditional uses** include Indoor/Outdoor Recreational Facility, Restaurant, Hotel and Motels, and Public Facilities. The applicant’s proposed use of the properties is for “Office, storage and repair facilities.”

The DRB has been asked to consider whether these permitted and conditional uses are intended to be a subset of Commercial Recreational, or are they intended to stand alone, unrelated to commercial recreation.

Finding 11. The DRB finds that the answer to this question can be determined by considering other permitted uses listed for the district: Agriculture, Single-family Dwelling, Two-family Dwelling, Accessory Use/Structure, Non-profit Club, Home Occupation, Bed and Breakfast. Although any of these uses might be associated with commercial recreation, they have been permitted frequently as stand-alone uses. It is also useful to note that these same uses are permitted in the Residential Shoreline District, but that Storage and Repair facilities are not allowed uses in the zoning district (except storage in pre-existing buildings). Notably, Business/Professional Offices are conditional uses in the Residential Shoreline District. The DRB concludes that permitted and conditional uses listed in table 3.2.2.5 are not intended to be tied to Commercial Recreation. Thus, we find that offices, storage, and repair facilities, unrelated to commercial recreation, are permitted uses in the Commercial Recreation Shoreline District.

Section 3.2.2 (cont'd). Industrial use is not permitted in the Commercial Recreation Shoreline District. Instead, Industrial is listed as a conditional use only in the Commercial/Light Industrial District and in the Rural Residential and Agricultural District. Grand Isle Zoning Bylaws (p. 49) provide a definition of Industrial: “includes manufacturing, and major vehicle or equipment repair establishments (such as body shops, electrical, mechanical and chassis repair shops, but not gas stations).”

Characterization of Industrial use generated substantial evidence submitted by interested parties and the applicant during hearings on this application. The most detailed presentation was by Laura Heaberlin, an adjacent property owner. Ms. Heaberlin submitted copies of correspondence between a State regulator, Allison Lowry, and Jay Buermann, engineer and agent for the applicant. In response to Lowry’s inquiry about what sort of repair/maintenance

will be occurring in the proposed building, Buermann responded: “This will be where the company does automotive maintenance/repair of their vehicle fleet, as well as welding, electrical shop, mechanical shop, wood shop, sandblasting, and a painting booth, to maintain their ferry docks, ticket booths, and removable/add-on components of the ferries.” Heaberlin emphasized similarities between the definition of Industrial in the Bylaws and the list of activities proposed by the applicant, characterizing these as industrial processes. The applicant responded to Heaberlin’s arguments by relating the definition of Industrial to size and scale, pointing out that many property owners with backyard garages might have body shops, electrical, mechanical, and chassis repair shops, as would a marina. The applicant presented definitions of “Industrial” and “Industry” from the New Oxford American Dictionary (2001), and concluded from these definitions that industrial uses relate to manufacturing, i.e., the making of goods...for sale.

Interested person Nathan Mauser (same address as Heaberlin) presented evidence relating to the definition of Manufacture (from Merriam Webster Dictionary, the standard for Grand Isle Bylaws), which is referenced in the definition of “Industrial”. The essence of this definition is “to make a product from raw material by hand or machine.”

LCT also provided an anonymous legal opinion on the interpretation of the meaning of the Bylaw's use categories of Storage and Repair vs. Industrial. Four key points and associated legal precedents were presented: (1) Plain Language, (2) Context and Common Sense, (3) Use Definitions Are Not Exhaustive, (4) Ambiguity Must Be Resolved in Favor of The Applicant.

Obviously, the issue of scale is important in considering the meaning of Industrial in the context of this application. The definition of Industrial in the Bylaws says "...major vehicle or equipment repair establishments..." The applicant correctly points out that small-scale equipment and repair shops abound in Grand Isle, even on residential properties. However, the applicant proposes a building that is industrial in size and appearance, with a large, paved parking lot consistent with an industrial building. Most of the floor space is allocated to repair, not storage. Significantly, industrial equipment will be housed in the building, such as an overhead crane, and a sand-blasting bay with Torif dust collector. Nevertheless, a majority of members of the DRB concluded that the proposed use was **not** industrial.

Finding 12. Despite the size of the building, the number of workers, and the sophisticated repair capabilities represented by the facility and personnel, the DRB considers the application to be for uses that are permitted in the Commercial Recreation Shoreline District, those of Business/Professional offices, storage and repair.

Section 3.3 is a table of Minimum Dimensional Requirements for all zoning districts: 1 acre minimum lot size, 150 feet of frontage, 40-foot setback from public road right-of-way, 25-foot setback from side and rear property lines, and 15-foot setback for driveway from side boundaries. The site plan application does propose two apparent intrusions into the side setback zone on the north side of the building. A below-ground propane tank is one such encroachment (See Section 4.10). The other is a concrete pad on the northwest corner of the building that also extends into the north setback. The pad is proposed to be 8 feet X 16 feet (128 square feet), and according to the applicant is "essentially a sidewalk." Section 4.2.4, however, establishes a 48-square-foot maximum for such ground-level structures in the setback zone.

Finding 13. The combined Lots 2 and 3 total 3.3 acres, with 301 feet of frontage along West Shore Road. Plans submitted with application do not show setback distances, but LCT's consultant, Jay Buermann, testified that the setback for the east side of the building would be 40 feet from the right-of-way along West Shore Road, and 25 feet on the north side of the building. These are minimum setbacks specified in Bylaws. On the southern property line, adjacent to a residential lot, a drainage swale will assure at least the required 15-foot side setback for the driveway will be met. The 128-square foot concrete pad proposed for the northern setback zone would require a variance, so it is not approved as part of this decision, and either must be relocated or approved separately through a variance application.

Section 4.1, Performance Standards, prohibits excessive amounts of odors, noises, smoke, dust/dirt/gases, and lighting. They also prohibit risk of fire, or explosion, and the discharge of

harmful wastes. These standards generated many comments from interested parties and other members of the public. Most were of a general nature, seeking assurances that any toxic materials would be properly handled, used indoors, and stored indoors. Spokespersons for the Grand Isle Consolidated Water District (a Municipal Interested Party) voiced concerns about hazardous substances specifically because the properties in question fall within the Source Protection Area for its water intake. GICWD urged the DRB to establish conditions that would prevent hazardous substances from reaching ground- or surface water. Among those suggested conditions: (1) all paint removal, sandblasting, and painting to take place indoors; (2) no outdoor use of oil, gasoline, petroleum-based products, chemical, herbicides, or pesticides; and (3) no drinking water contaminant regulated by the EPA or State of Vermont or appearing on the Safe Drinking Water Contaminant List be allowed to discharge or enter Lake Champlain.

Interested parties Haeberlin and Mauser presented to the DRB a wealth of information relating to generation of hazardous waste by LCT. Vermont's Department of Environmental Conservation (DEC) permits LCT's disposal of hazardous waste as a Small Quantity Generator, which allows between 220 and 2,200 pounds of hazardous waste disposal per month. Records obtained by Haeberlin and Mauser show that LCT has, in 2019 and 2020 respectively, shipped an average of 345 and 233 pounds of waste per month. Types of waste were primarily waste paint, paint-related materials, and oil waste. The same interested parties presented to the DRB documentation of a \$100,000 fine levied by the EPA onto LCT for violating air emission rules relating to spray guns used in painting ferry boats. The fine was levied in 2014, split between the King Street Dock in Burlington (\$62,000) and LCT's facility on Harbor Road in Shelburne (\$38,000).

The applicant responded to information about the EPA fines by stating that air pollution violations had not occurred despite having the inappropriate nozzles on spray guns because the spray nozzles had not yet been used. LCT also reiterated that all large-scale painting jobs, e.g., repainting ferry boats, are conducted at their Shelburne facility, not at King Street, and are not proposed for the Grand Isle facility. Paints and appropriate solvents will be stored in Grand Isle and used for smaller jobs such as painting parts, ticket booths, signs, etc. All of this activity, as stated by the applicant, will be done indoors with doors closed. There are no fuel storage tanks at Gordon's Landing, rather ferry boats are fueled by trucks that drive onto the boats before fueling. LCT's site plan for Lots 2 and 3 does include a double-walled waste oil storage tank under a shed roof on the west end of the building. Here, waste oil from ferries will be stored for various lengths of time before being transported off site (LCT has an approved vehicle for this). LCT uses waste oil for heat in their King Street facility. The only other outdoor storage proposed is a below-ground propane tank (see Section 4.10).

No evidence was presented that odors, smoke, dust, or dirt would be excessive as long as work is indeed done inside the building with closed doors. Likewise, there is no evidence that light or signage would be problematic.

Noise, however, may be an issue. Section 4.1.2 prohibits frequent uncharacteristic noises from operation of motors, saws, machinery, etc. that exceed 65 decibels at the property line. Again,

Interested Party Haeberlin submitted information relative to potential noises and the location of her property at 37 West Shore Road. She researched noise levels of sandblasting, welding, auto repair, and diesel trucks, which ranged from 80-120 decibels. She also presented a graph, developed by a physicist, that shows the decay of sound levels over distance from the source. Her conclusion is that any sounds over 80 decibels at the source would exceed the limit of 65 decibels at a distance of 150 feet, the nearest edge of her property. The DRB notes that occasional loud noises are characteristic of the neighborhood, mostly the clanging sound of docking ferry boats, which can sometimes be heard for miles.

Finding 14. LCT stated repeatedly that storage, repair, and maintenance activities proposed for the Grand Isle site would be conducted inside the proposed building, with doors closed (Russell Fox testimony). LCT's consultant, Jay Buermann, testified to a state regulator that there would be no floor drain in the building. If storage and use of hazardous materials are contained indoors, chances of water, soil, and air pollution would be minimal, assuming proper air filtration. The burden should be on LCT, as a condition of permitting, to assure that noise levels from their proposed activities on Lots 2 and 3 are within the 65-decibel limit at property boundaries. LCT should also be expected to present annual accounting of use, storage, and disposal of all hazardous substances to the Grand Isle Consolidated Water District and Grand Isle's ZAO.

Section 4.4 applies to pre-existing non-conforming structures. The application lists a structure built circa 1920. This would be the seasonal residence near the lakeshore at 39 West Shore Road. A newer and larger residence, also near the lakeshore, is found at 41 West Shore Road. Neither structure complies with town or state set-back distances from the shoreline. The applicant (via Jay Buermann) indicated initially that both structures are to be retained, and used as housing with plans to renovate the seasonal home for year-around use. More recent testimony, however, by Russell Fox, was that only intermittent occupancy is planned for one of the structures (See Finding 4). The applicant has no plans to demolish either structure, preferring to keep the "grandfathered footprints." Existing wastewater systems will be discontinued and replaced by lines leading to the master disposal system for the entire property (located on the LCT-owned Gordon's Landing property, Lot 1). Driveways to these two structures will be discontinued, and each will be accessed by a short foot-bridge over stormwater drainage structure.

Finding 15. The proposed site plan for Lots 2 and 3 is for intensive development of the combined 3.3 acres. Retention of these two residences only adds to this intensity and the resulting extent of non-permeable surfaces. Use of either structure for housing also creates a question of principal use of the property (See Section 5.3). The DRB finds that the seasonal dwelling on Lot 3 should be removed, allowing revegetation of this shoreline area.

Section 4.10 relates to bulk storage of flammable liquids. Storage of more than 1,000 gallons may be permitted upon conditional use approval by DRB. Conditions include tanks more than 75 feet from shoreline and more than 25 feet from adjacent property lines; and a permit from the Vermont Division of Fire Safety

Finding 16. The applicant proposes installation of a buried 2,000-gallon propane tank. Tentative location is on the north side of the proposed building, adjacent to the Gordon Landing property, Lot 1. If in this location, a variance would be necessary to locate the tank within the 25-foot setback of either lot. As a result, the 2,000-gallon propane tank is not approved by this decision. Also, a permit from Vermont Division of Fire Safety is needed.

Section 4.11 applies to land alteration which could cause change in the rate or direction of drainage. LCT submitted copies of four permits from the State of Vermont that relate to stormwater drainage and discharge:

- (1) Authorization to Discharge under General Permit 3-9020. This permit allows for low risk construction activity and requires implementation and maintenance of erosion prevention and sediment control measures.
- (2) A second Authorization to Discharge under General Permit 3-9020 relates to stormwater discharge after construction and considers the 1.847 acres of new impervious surfaces as a result of project completion, for a total of 2.091 acres of impervious surfaces. Disconnection of existing sidewalk, two level spreaders, and a connection to a vegetated buffer were found to meet applicable stormwater treatment standards. An annual inspection report on the operation, maintenance and condition of the stormwater management system is required. (3) Shoreland Protection Individual Permit 3303-SP. This permit addresses the 250-foot band of shoreland for the combined ownership of 1268 Gordon's Landing and 41 West Shore Road. At the time of application, these two parcels were combined in Grand Isle Town Records with the same SPAN number.
- (4) Shoreland Protection Individual Permit 3305-SP. The permit addresses the 250-foot band of shoreland for 39 West Shore Road, Lot 3. Vermont's Shoreland Protection Act, passed in 2014, is based on maintaining the natural stability of shorelines and protecting water quality and aquatic habitats. The Act focuses on protecting vegetation in a 100-foot shoreline zone, and to a lesser extent a second 150-foot zone. Applications for Shoreland Protection Permits involve a spreadsheet of aerial measurements (square feet) of impervious surfaces versus vegetative cover. Best Management Practices can compensate for development that increases impervious surfaces.

Because the Gordon's Landing parcel was included with 41 West Shore Road for one of the two SP permits, it was difficult to compute summary statistics for Lots 2 and 3. But, a portion of the permit for Lot 3 illustrates the extent of proposed conversion of the property:

"The subject parcel has a surface area of 38,410 square feet, 2,151 square feet of existing impervious surface, and 33,269 square feet of existing cleared area located within the protected shoreland area. The project and existing cleared area consists of no more than 35,678 square feet, 92.8% of the parcel within the protected shoreland area.... The permittee has demonstrated that best management practices will be used by establishing 2,425 square feet of vegetative cover consisting of a no-mow zone and native plantings located 29 feet from mean water level on the western portion of the parcel... Total resulting cleared area after

completion of the project and implementation of best management practices will be 33,253 square feet, 86.6% of the parcel within the protected shoreland area.”

Using numbers from both SP applications, impervious surfaces in the 250-foot shoreland protection area will increase 5.2 times, from 7,445 to 38,984 square feet, with the proposed development.

Finding 17. A major impact of the proposed building and its paved surfaces for driveways and parking is the extensive clearing of the property. This has implications for energy conservation

(Finding 7), but perhaps more importantly for stormwater runoff and shoreland erosion. We defer to the experts with the State’s Watershed Management Division and their approval of permits, and find compliance with Section 4.11. See Finding 22, however, for more on shoreland protection.

Section 4.12 addresses height limits. Structures must not exceed 35 feet in height above the average natural grade without CU approval from DRB. DRB may establish a maximum height less than 35 feet.

Finding 18. The peak height of the east end of the proposed building is 21 feet. Because the building is designed to be built into a sloped lot, the west end extends 36 feet, 10 inches from the ground to the peak of the roof. Nevertheless, height along the average natural grade does not exceed the maximum.

Section 4.13 regulates free-standing signs and establishes a 20 square-foot limit for signs in the Shoreline Residential Area and Rural Residential zoning district, but not in the

Finding 19. Architectural drawings illustrate the name of the applicant attached to face of the porch roof facing West Shore Road. No free-standing signs are proposed.

Section 4.14 addresses off-street parking. Interested party Haeberlin submitted evidence relating to parking space requirements of this section of the Bylaws and numbers of parking spaces proposed by the LCT Site Plan. Her conclusion was that far too little parking is proposed, and she presented several scenarios related to the table of parking requirements in the Bylaws (Pages 24-25). The applicant responded by stating that 45 parking spaces are available, including 23 in the vicinity of the front door.

Finding 20. The site plans illustrate fewer than 23 spaces near the front of the building, and the remaining paved surfaces on the south and west sides of the building do not provide enough space for a total of 45. Given 6-7 LCT-owned vehicles that might be parked on site, 12 engineers reporting to work at this site, and a possible 9 office workers (Russell Fox testimony), it is not clear that parking spaces are adequate to conform with Bylaws. However, office workers may not be moved from Burlington to Grand Isle, in which case proposed parking

paces are adequate. The applicant will be required to address parking spaces before the building is fully staffed with engineers and office workers.

Section 5.2 Site Plan approval and Conditional Use. **5.2.1** lists uses that require site plan and conditional use approval. At least three of the criteria apply to this application. **5.2.2** lists the seven requirements for site plan maps and supporting data.

Finding 2.1. The applicant submitted eight copies of the follow plans: architectural depiction of site and proposed building; property overview; site plan; external conditions plan; utility plan; grading plan; stormwater permitting overview; stormwater plan; wastewater disposal field plan; construction stormwater management; permanent stormwater management; and five more plans with details for water and wastewater handling. The plans included all seven required elements, and also a letter of intent from the Agency of Transportation confirming that application for work within the highway right-of-way meets requirement.

5.2.2 also lists five areas where the DRB may impose conditions for site plans: (1) Safety of vehicular access and circulation between the site and the road network...; (2) Adequacy of parking and loading facilities with particular attention to safety, noise, glare, odor...,(3) Adequacy of landscaping, screening and setbacks in regard to achieving maximum compatibility and protection of adjacent property; (4) Utilization of renewable energy resources, with particular regard to achieving maximum compatibility and protection of adjacent property; and (5) Adequacy of lighting facilities and the size, location and design of signs.

(1) Vehicular access was addressed in Finding 6. (2) Parking capacity remains an issue (See Finding 20). Loading facilities are adequate, and there is no reason to expect undue concerns about safety or disturbances. (3) Landscaping and screening are concerns, discussed below. (4) There is nothing in the application that would suggest potential interference with use of renewable energy by adjacent properties. (5) The applicant testified that lighting of the property would be modest and shaded such that adjacent properties would not be adversely affected.

Interested Persons Haeberlin and Mauser, 37 West Shore Road, clearly are property owners most affected by LCT's application to develop 39-41 West Shore Road (Lots 2 and 3). As interested persons, they have presented abundant testimony and evidence concerning potential harm to the enjoyment of their home and assumed value of the property. To that extent, the Board has considered performance standard in Section 4.1 (Finding 13). The other obvious adjacent property is Westview Village, across West Shore Road. To the west of 39-41 West Shore Road is Lake Champlain, public domain and also considered an essential adjacent property by the DRB.

LCT's proposal for Lots 2 and 3 calls for a major change in the property, both visually and ecologically. In its current state, Lot 2 is mostly forested with a mix of mature, planted trees and a large plot of second-growth shrubs and forest. Most of these will be removed. Lot 3 is more open, but still has a dozen or more landscape trees that will be removed. On Lots 2 and 3

combined, 22-25 black locust trees will remain in the 100-foot shoreland protection zone. Locust trees provide modest screening, at best, due to sparse foliage. Currently a double row of white spruce trees grows along a landscape fence between Lot 3 and the northern property line of 37 West Shore Road. All or most of these trees are slated for removal or will be subject to root damage during construction of a grass-lined swale that will drain the paved parking lot. The LCT plan also proposes to relocate a utility pole near the seasonal residence on Lot 3. This pole provides underground utilities to 37 West Shore Road, and the proposal is to move the pole to the property line or onto the adjacent property. Doing so would limit additional landscaping opportunities by the neighbors to further screen their property from noise and views of the LCT parking area and building.

Finding 22. Of the five criteria for evaluating site plans, the DRB finds no reason to establish conditions for (1), (2), (4), or (5). Regarding (3), LCT has proposed screening for the front of the proposed building to be provided by a row of white cedars, planted as 3-5-foot stock. No other plantings for screening are proposed, and there is little room for more trees or shrubs except in the 100-foot shoreland zone, where more extensive landscaping is needed, which should include erosion protection for the lakefront. More should be done to buffer the proposed development from Lake Champlain and the people who use the lake, to include assurances that LCT will not seek any future permits to use the waterfront of Lots 2 and 3 for any purpose other than recreation. In addition to removing the seasonal dwelling, dense plantings of coniferous trees and shrubs, e.g., white cedars and junipers, should be done in the shoreland zone. LCT should fund underground relocation of the power line to the satisfaction of adjacent property owners at 37 West Shore Drive.

Section 5.3. Planned unit development. Laura Haerberlin, adjacent landowner and interested person, submitted a well-researched written argument for requiring the application of LCT to be considered as a planned unit development (PUD). The essence of the argument is based on a contention that the Bylaws prohibit multiple principal uses on a single lot, and Haerberlin maintained that repair and storage constitute one use, offices another, and dwellings a third use. Her argument was largely based on the definition of Principal Structures/Use in the Bylaws (page 51): “A structure or use directly involved with the primary purpose of ownership on a particular lot, which, together with its accessory structures/uses, constitutes all structures and uses for said lot.” In short, the principal use of a lot (including an accessory structure) shall be the only permitted use of a lot unless an application is made for a PUD. The argument is reasonable, based on the definition of Principal Use.

LCT responded to this argument by stating that proposed offices are subsidiary to the primary uses of storage and repair. They also argued that the dwellings are subsidiary to the ferry operations.

Finding 23. While one could argue that it is appropriate to construe the definition of Principal Use in the Bylaws to prohibit more than one principal use on a lot, the Bylaws do not clearly or expressly prohibit multiple principal uses on a lot. Also, the Bylaws do not clearly require PUD approval, and there is nothing that prohibits more than one accessory use or structure on a

single development site like Lots 2 and 3. The Board does find that the principal uses of Lots 2 and 3 are for a building that houses offices, repair shops, and storage. The dwelling on Lot 2 constitutes an additional accessory structure. The seasonal dwelling on Lot 3 should be removed.

Section 6 is about Wastewater Disposal Systems. The applicant submitted a copy of WW-6-0260-3, Wastewater System and Potable Water Supply Permit issued on December 8, 2020. The permit affects Lots 1, 2, and 3, but notes that Lots 2 and 3 will be combined into a single lot of 3.3 acres. The permit provides for the expansion of an existing wastewater system on Lot 1, currently used for up to 15 employees at the ferry dock. The expanded system will have capacity for 40 employees at the proposed building on Lot 2 and 3, and the two existing residences on these lots. Total capacity of wastewater would be 1,585 gallons per day.

Permit WW-6-0260-3 also included potable water supply and notes that the project is approved for connection to the water supply system owned by the Grand Isle Consolidated Water District.

Finding 24. Applicant submitted five sheets comprising plans for wastewater disposal and potable water lines. The Board finds compliance with Bylaws Section 6.
Bylaws Appendix C. Stormwater Management

Finding 25. Plans for stormwater management, both during and after construction, address all relevant requirements of the Stormwater Management Bylaw. Two State of Vermont permits authorizing discharge of stormwater also comply with the Bylaw. (See Section 4.11 discussion, above).

CONCLUSIONS OF LAW

Conclusion 1. The Applicant properly applied for Conditional Use and Site Plan Approval under Section 5.2.2 of the Zoning Bylaws and Subdivision Regulations of Grand Isle, adopted December 18, 2017

Conclusion 2. The proposed uses, with conditions, are in compliance with Zoning Bylaws and Subdivision Regulations of Grand Isle, adopted December 18, 2017

DECISION

The Board hereby grants approval for the proposed uses and site plans for Application #04-21SPR&CU, subject to the following conditions.

CONDITIONS

Condition 1. The applicant must offset carbon sequestration lost by removing vegetation from the site by employing sufficient renewable energy to heat and cool the proposed building, by additional plantings, or by other means of offsetting loss of carbon capture and storage. Plans for doing so must be approved by the Grand Isle ZAO. (Finding 7)

Condition 2. On the final site plan submitted for approval, the applicant must either reduce the size of the proposed concrete pad encroachment into the north setback area on the northwestern corner of the building to meet the 48-square-foot maximum for such ground level structures in the setback zone, or remove it from the site plan entirely. The concrete pad may be approved in its proposed location and proposed size only if a variance application is submitted and approved. (Finding 13)

Condition 3. Any repair or maintenance activities that produce noise or dust, or involve petroleum-based products, pesticides, or other hazardous materials shall be conducted inside the proposed building with doors closed. The applicant shall not discharge any solid or hazardous wastes into Lake Champlain. The applicant must present annual accounting of use, storage, and proper disposal of all hazardous substances to the Grand Isle Consolidated Water District and the ZAO. (Finding 14)

Condition 4. The applicant must prevent frequent or consistent noises from the proposed repair and maintenance activities that exceed 65 decibels at southern and western property boundaries. (Finding 14)

Condition 5. The non-conforming structures at 39 West Shore Road must be removed, and the applicant shall reclaim and landscape the site for lakeshore protection and screening from Lake Champlain. The landscaping plan must be approved by the Grand Isle ZAO. The non conforming residential structure at 41 West Shore Road must be occupied no more than 183 days per year. (Findings 15, 22)

Condition 6. A variance is required to locate a buried 2,000-gallon propane tank on the north side of the proposed building, within the 25-foot side setback, adjacent to the Gordon Landing property. Applicant shall either submit a final site plan with the tank relocated outside the setback area, or shall apply for a variance to place it in the side setback as proposed. Also, before issuance of a zoning permit and commencement of construction, the applicant must file a permit from Vermont Division of Fire Safety with the ZAO. (Finding 16)

Condition 7. Before fully occupying the proposed building with both engineers and office staff, the applicant shall present, for approval by the ZAO, a more detailed analysis of available parking spaces and their allocation to company vehicles, employee parking, and visitor parking. (Finding 20)

Condition 8. The applicant must do more to reclaim and maintain all available area in the 100- foot shoreline protection zone for stormwater filtration, screening from Lake Champlain, erosion protection of the lakeshore bank, and aesthetics. No other uses of this portion of the shoreline zone will be allowed, other than recreation and use of the remaining residence at 41 West Shore Road as stipulated in Condition 5. (Finding 22)

Condition 9. The applicant must fund relocation of the underground power line currently serving the residence at 37 West Shore Road. A plan for relocating the power line shall be acceptable to owners of this property or to Grand Isle's ZAO. If the property owners do not find the plan acceptable, then the ZAO determines if the plan is reasonable and in the spirit of this condition. If the property owners do not accept the decision of the ZAO, then the applicant is released from terms of this condition. (Finding 22)

Condition 10. Prior to issuance of a zoning permit and commencement of development, the applicant shall record a Notice of Condition in the land records of the Town that states it will never expand its use of Lots 1, 2, or 3 into the 100-foot shoreline protection zone of Lots 2 and 3 or the adjacent shallow-water zone of Lake Champlain adjacent to Lots 2 and 3. This prohibition shall include floating or fixed docks and barges, unless used entirely for recreation. (Finding 22)

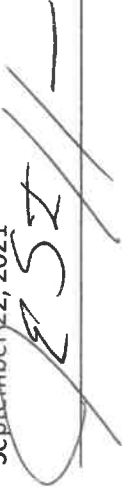
Condition 11. This approval shall expire two years from the date hereof unless a final revised site plan complying with this decision and its conditions is submitted to the ZAO for review and approval and unless all conditions precedent to the issuance of a zoning permit have been satisfied.

In accordance with Title 24 V.S.A. Section 4471, the Board's decision may be appealed to the Environmental Court within thirty (30) days of its decision.

Votes of Participating Members

David Capen NO
Panos Lekkas NO
Joe Longo YES
Joseph Steffen YES
Francis LaFromboise YES

September 22, 2021



Joseph Steffen, Chair

9-29-21

Date