

Development Review Board
P.O. Box 296
Newfane, VT 05345
(802) 365 7772
Fax (802)365 7692

May 10, 2021

Subject:

Minutes of Development Review Board (DRB) April 28 site visit and first segment of Zoom-based hearing for natural burial ground within the Manitou project at 300 Sunset Lake Road.

Appellant Present

Michael Mayer representing Higher Ground Conservation Cemetery Association

Development Review Board Members Present

David Cotton Chairman; Walter Dadik, Secretary; Hendrik van Loon; Samantha Harlow; Lynn Forrest

Others Present

Merle Tessier, Newfane Zoning Administrator; Ken Estey, Chairman Newfane Planning Commission; John and Linda Walker, abutters; Joshua Dillingham, abutter.

Abutters Testifying through Written Comment

Judith A. Strom; Gordon and Jean Bristol.

Background

Proposed project is located in the resource district where natural burial grounds are a permitted conditional use. Any conditional use application requires DRB approval.

Site Visit

Mr. Mayer gave a short tour of the proposed 5 acre site which is currently undeveloped. He noted development of the cemetery would be as non-invasive as possible. Access would be via a right of way through the Walker property. The Walkers noted the right of way proposed by Mr. Mayer conflicts with their interpretation of its location.

Hearing: held remotely via Zoom

Mr. Cotton opened the hearing at 6:30 pm. and all who expected to testify were sworn-in. He said he would begin by asking for comments from Mr. Mayer and the abutters.

Mr. Mayer gave an overview of the project as described in his application.

The Walkers said they are concerned about the right of way from Sunset Lake Road to the proposed cemetery parcel. There are differences between their map and Mr. Mayer's interpretation that must be resolved. They also worry about the effect of the cemetery and

related activities on the character of the area. (In addition to their oral testimony, the Walkers submitted written testimony which supplements these minutes as exhibit C.)

Gordon and Jean Bristol and Judith Strom submitted written testimony which supplements these minutes as exhibits A and B respectively. The Bristols endorsed the concept of a green burial ground but expressed concerns about the subdivision, compliance with act 250 and compliance with state cemetery regulations. Judith Strom endorsed the project.

Mr. Dillingham said he had no concerns about the project

Mr. Mayer said he values the character of the area and plans to work to maintain it. He and his attorney have also established a 501 C (3) corporation to govern the cemetery and ensure compliance with applicable laws and regulations including act 250. He agrees the right of way issue must be resolved. He noted that he presented a large survey map to the Zoning Administrator with a clearer view of the right of way but it wasn't included in the pre-hearing package.

Mr. Cotton asked Mr. Mayer to work with his attorney to resolve the right of way situation. Mr. van Loon reminded the group that the DRB is responsible for conditional use review of the project; but, the Zoning Administrator is handling the subdivision issue.

Mr. Mayer answered a number of questions about operations and policies to maintain the area's character. He didn't mention specific rules and restrictions; but, cited his history of maintaining the character and philosophy of the Manitou project.

Mr. van Loon made a motion that DRB close the hearing and adjourn to deliberative session. There was no second.

Mr. van Loon then made a motion that the hearing be recessed and continued on Wednesday May 12 at 6:30 pm via Zoom. The motion was seconded by Ms. Harlow and passed unanimously.

Mr. Cotton recessed this session of the hearing for the project at 8:30 pm.

Newfane Development Review Board
Walter Dadik, Secretary

Abutter Testimony Letters

Exhibit A Gordon and Jean Bristol 4-22-2021

Exhibit B Judith A. Strom 4-28-2021

Exhibit C John and Linda Walker 4-20-2021

To: Newfane Development Review Board
From: Gordon and Jean Bristol
Subject: Zoning Application 21-003
Date: April 22, 2021

Honorable Board—Jean and I are unable to be in attendance in person due to a long standing obligation for this evening.

We wish for this note to serve as our participation in the meeting and give us standing as a person who presented evidence at this meeting.

Background—Jean and I are fully in favor of an appropriately licensed green burial site within the Town of Newfane. We are favorable to the philosophy of green burial.

That notwithstanding, we at this point of time, with the information provide by the applicant encourage the DRB to vote NO on this application or to take no action until a full and completed application is presented with enough evidence to ensure the safety of the community and the deceased who will be buried at this location.

History—Cemeteries are governed by State Statute for particular reasons. The largest is the deceased is no longer able to defend themselves so therefore society must defend them via State Statute. These are carefully crafted and meticulously reviewed and pondered. Passing House and Senate scrutiny and finally the ability to be a veto by the Governor. There is a reason this is so painstaking done.

Current application—What you have before you is an application that does not rise to the standard of an application capable of being voted upon this evening.

Testimony—Allow me to bullet some of the points I would make if we were there in person.

First, The application does not talk about creating a new lot. However, the concept is exactly that. The property is currently two lots and this action tonite would create three lots. This application does not abide by the application which does not reference the creation of a new lot.

Second, based on the creation of another plot the application is in violation of Act 250. The current Act 250 for this property is very clear that it created TWO lots. It also specified in the creation that any burial grounds was to be a FAMILY burial grounds. This application does not abide by that. I have attached State of Vermont, Act 250 District Commission, Application 2W1278-1 Exhibit 9, dated 7-17-2-17. I do not see any evidence that Act 250 has reviewed this application.

Third, Site Plan. There is no site plan available that I am aware for this proposed development. Let us be clear, this is a development. It will create a large parking area. There is no written evidence of that parking area. Is it paved? Is it gravel? Is it

surepak? Where will the run off go. Will there be lighting? Will there be signs? What kind of signs?

A site plan with proper contours is needed.

Four, Access. The applicant does not show where the access to the parking and development is done. There is some indication it is via a questionable Right of Way across Mr. Walkers property. We join Mr. and Mrs. Walker in opposing this interpretation of their right of way. There needs to be serious inquiry and interpretation by an impartial audience (possible Court) to fully understand the intent of the right-of-way should one really exist. Clearly 100 years ago it was not an intent to have a right-of-way to go toward a commercial venture in that area. Clearly that was not the intent.

Five, Does the applicant plan on conforming to the Laws fo the State of Vermont re: burial. From what I read in the application the applicant DOES NOT plan to abide by the rules of the State of Vermont for burial. Please define for the DRB how bodies will actually be buried and ensure that they will be buried according to STATE LAW!!! The application is not clear.

Six, The land is currently in the hands of the Vermont Land Trust. This land was entrusted to the Land Trust with certain expectations. Those expectations aside the applicant has not shown that they have come to agreement with the Vermont Land Trust. Reference: November 20, 2020 Vermont Land Trust letter page 2, highlights as prerequisites to operation of a Cemetery....See highlight sheet.

Seven, I have attached a Act 250 District Commission Application 2W1278-1 Exhibit 011, dated 8/1/2017 that clearly states and is highlighted, ANY FUTURE GROUND DISTURBING ACTIVITIES WILL REQUIRE REVIEW BY VDHP TO ACCESS EFFECT ON THE EXISTING HISTORICAL ARCHAEOLOGICAL SITE AND OTHER ARCHAEOLOGICALLY SENSITIVE AREAS WITHIN THE PROJECT PARCELS.

I see no evidence that Vermont Division of Historic Preservation has reviewed this application.

Summation: Again, it would not seem like it from our writing but we ARE in favor of green burial. It just has to be done right. This application does not reach the level, in our opinion, of a proper application that addresses the concerns expressed in this letter.

We again, request to have party status to this proceeding.

Regards, Gordon and Jean Bristol



ACT 250 District Commission #2,3

State of Vermont
Department of Environmental Conservation

Application #: 2W1278-1

Exhibit #: 009

Date Received: 7-17-2017

Agency of Natural Resources

WASTEWATER SYSTEM AND POTABLE WATER SUPPLY PERMIT

LAWS/REGULATIONS INVOLVED

10 V.S.A. Chapter 64, Potable Water Supply and Wastewater System Permit
Wastewater System and Potable Water Supply Rules, Effective September 29, 2007
Chapter 21, Water Supply Rules, Effective December 1, 2010

Landowners: Ann S. Mayer
P.O. Box 475
Dragoon AZ 85609

Michael D. Mayer
P.O. Box 161
Williamsville VT 05362

Rebecca L. Mayer
60 East Manning Street
Providence RI 02906

Permit Number: WW-2-4880
PIN:

ACT 250

This permit affects property identified as Town Tax Parcel ID # Newfane: F173 referenced in a deed recorded in Book 82 Pages 474-475 of the Land Records in Newfane, Vermont.

This project, consisting of a two-lot subdivide whereby Lot #1 will retain an existing single family dwelling with onsite water supply, wastewater disposal and newly designated replacement area, and Lot #2 will be held in deferral, located on 300 Sunset lake Dr in Newfane, Vermont, is hereby approved under the requirements of the regulations named above subject to the following conditions.

1. GENERAL

1.1 The project shall be completed as shown on plans and/or documents prepared by Michael Marquise P.E., with the stamped plans listed as follows:

Sheet 1 of 1: "Replacement Water Supply & Wastewater System Plan for Ann, Michael & Rebecca Mayer"; dated 5/29/2015

- 1.2 This permit does not relieve the landowner from obtaining all other approvals and permits PRIOR to construction including, but not limited to, those that may be required from the Act 250 District Environmental Commission; the Drinking Water and Groundwater Protection (DWGWP) Division; the Watershed Management Division; the Division of Fire Safety; the Vermont Department of Health; the Family Services Division; other State departments; or local officials.
- 1.3 The conditions of this permit shall run with the land and will be binding upon and enforceable against the landowner and all assigns and successors in interest. The landowner shall record and index this permit in the Newfane Land Records within thirty, (30) days of issuance of this permit and prior to the conveyance of any lot subject to the jurisdiction of this permit.
- 1.4 The Division relied upon the Vermont Licensed Designer's certification that the design-related information submitted is true and correct and complies with the Wastewater System and Potable Water Supply Rules and the Vermont Water Supply Rules. This permit may be revoked if it is determined that the project does not comply with these rules.
- 1.5 Lot #1, being ±5 acres in size, has been reviewed in accordance with Section 1-311 Special Permit Standards for the Subdivision of Improved Lots and is approved with an existing 3-bedroom single family residence with a maximum of 6-occupants. Construction of additional nonexempt buildings, including commercial and residential buildings, is not allowed without prior review and approval by the DWGWP Division and such approval will not be granted unless the proposal conforms to the applicable laws and regulations. No construction is allowed that will cause non-compliance with an existing permit.
- 1.6 Lot #2, being ±2.4 acres in size is NOT approved for construction at this time. Any deed for this parcel shall contain the following language until a permit has been obtained from the DWGWP Division:
"Notice of permit requirements. In order to comply with applicable state rules concerning potable water supplies and wastewater disposal systems, a person shall not construct or erect any structure or building on the lot of land described in this deed if the useful occupancy of that structure or building will require the installation or connection to a potable water supply or wastewater disposal system, without first complying with the applicable rules and, if necessary, obtaining the required permit. Any person who owns this property acknowledges that this lot may not be able to meet state standards for a potable water supply or wastewater disposal system and therefore this lot may not be able to be improved."



November 20, 2020

Manitou Project, Inc.
Attn: Michael Mayer
P.O. Box 161
Williamsville, VT, 05360

8 Bailey Avenue
Montpelier, VT 05602
(802) 223-5214
(802) 223-4223 fax
vLorg

RE: Request for Higher Ground Conservation Cemetery Mayer (Manitou Project, Inc.)

Dear Michael,

REGIONAL OFFICES

Central Vermont
8 Bailey Avenue
Montpelier, VT 05602
(802) 223-5234

Champlain Valley
P.O. Box 850
Richmond, VT 05477
(802) 434-3079

Northeast Kingdom
171 Scott Farm Road
Newport, VT 05855
(802) 748-6089

Southeast Vermont
54 Linden Street
Brattleboro, VT 05301
(802) 251-6008

Southwest Vermont
10 Furnace Grove Road
Bennington, VT 05201
(802) 442-4915

You have submitted requests (1) for a 5.3-acre subdivision from the Mayer property in Newfane ("Mayer 1") currently owned by Manitou Project, Inc. at House Site Area B; (2) to operate a natural burial ground ("Higher Ground Conservation Cemetery") on the subdivided land; and (3) for reciprocal rights-of-way for pedestrian access between the newly subdivided parcel (henceforth "Mayer 5") and your residential land ("Mayer 3"), which was subdivided from the main Mayer 1 property in 2015. You outlined your requests in a proposal dated July 31, 2020 and submitted a preliminary site plan dated July 23, 2020.

The Mayer land is conserved under a 1995 Grant of Development Rights and Conservation Restrictions ("the Grant") held by Vermont Land Trust (VLT). Per the Grant, all past and future subdivisions of the original Mayer property are perpetually subject to its terms.

Section III-15 of the Grant permits one single family dwelling at House Site Area B on Mayer 1, and Section III-17 permits its subdivision from Mayer 1, up to an area equaling minimum zoning (or two acres, whichever is larger). These rights must be exercised with the prior written approval of VLT. Mayer 1 is located in the town of Newfane's "Resource District," which currently has a minimum zoning of five acres.

Section III-19 of the Grant permits, with prior written approval at VLT's sole discretion, accessory uses of the Mayer property that are related to agriculture, forestry, education, and open space. Approval requires that the use be consistent with purposes of the Grant as set forth in its section I.

2020 Mayer Preliminary Approval: Higher Ground Conservation Cemetery

The July proposal you submitted states the cemetery will operate solely within the subdivided lot, and will host approximately 120 burial sites, a parking area for about 24 cars, an unpaved access road, and walking trails. Higher Ground Conservation Cemetery will be operated by a nonprofit and will offer burial sites on a sliding fee scale.

By this letter, VLT provides preliminary approval for requests 1, 2, and 3. Preliminary approval means that VLT agrees that, in concept, these requests can be approved, but that additional requirements must be met to receive final approval.

The final approvals for these requests are subject to Manitou Project, Inc. meeting the following conditions:

Related to the subdivision (1):

1. The parcel size of Mayer 5 may not exceed five acres per the requirements of Section III-17 of the Grant. Please submit to VLT an updated site plan that meets this requirement.
2. VLT must review the deed prior to conveyance of Mayer 5 to Higher Ground Conservation Cemetery. It must reference the Grant.

Related to the operation of Higher Ground Conservation Cemetery (2):

3. Higher Ground Conservation Cemetery may not operate (i.e., inter human remains) beyond the five-acre Mayer 5 parcel as approved by VLT and recorded in the Newfane Town Records.
4. Higher Ground Conservation Cemetery will develop a succession plan to map out the future of the parcel should the cemetery organization dissolve.
5. VLT must review any legal instruments that will be utilized in the transaction of burial plots at Higher Ground Conservation Cemetery.
6. VLT has approved the proposed parking area, which will be entirely contained within the proposed Mayer 5 parcel, and the paths and access roads. If there are changes, please submit the plans for additional review and approval.
7. Construction of boardwalks, privies, and other infrastructure may be permitted if consistent with the purposes of the Grant; please obtain prior written approval by VLT.

Related to the reciprocal easements (3):

8. VLT has reviewed the proposed route of the reciprocal rights-of-way for pedestrian access between Mayer 3 and proposed Mayer 5. If there are changes, please submit the plans for additional review and approval.
9. Please submit both rights-of-way deeds for VLT review. VLT must sign each deed.

Upon satisfaction of these requirements, VLT will provide a letter of a final approval. This preliminary approval is valid for two years, expiring on November 20, 2022. If the conditions



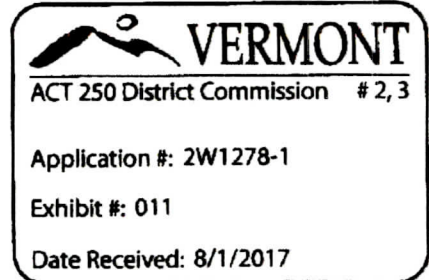
State of Vermont
Division for Historic Preservation
 Deane C. Davis Building, 6th Floor
 One National Life Drive, Montpelier, VT 05620-0501
<http://acd.vermont.gov/historic-preservation>

[phone] 802-828-3540

*Agency of Commerce and
 Community Development*

August 1, 2017

Linda Matteson, District Coordinator
 District 2 Environmental Commission
 100 Mineral St., Ste. 305
 Springfield, VT 05156-3168



Re: Mayer Family Irrevocable Trust, Subdivision. District #2 Environmental Commission. LUP #2W1278-1.

Dear Ms. Matteson:

Thank you for the opportunity to comment on the above-referenced project. The Division for Historic Preservation (VDHP) has reviewed this proposed undertaking for purposes of Criterion 8, 10 V.S.A. Chapter 151 (Act 250). Project review consists of evaluating the project's potential impacts to historic buildings and structures, historic districts, historic landscapes and settings, and known or potential archeological resources. The purpose of the VDHP's review under Act 250 is to provide the District Environmental Commission with the information necessary for them to make a positive finding under the "historic sites" aspect of Criterion 8.

The proposed project is located at 300 Sunset Lake Road, Newfane, Vermont. The project is described as the subdivision of an existing 229-acre parcel. Lot 1 will include an existing house constructed in 1995 and 5.5 acres including a family cemetery. Lot 2 will consist of the remaining 223.5 acres. No development is proposed at this time.

A review of the proposed project area identified several areas of Precontact archaeological sensitivity. In addition, the Bowker Homestead, site number VT-WD-0363, is located on the parcel and will be bisected by the new property subdivision. Steven Bowker was born October 18, 1788, and settled in Newfane around 1814. He lived on the farm first owned by himself, and later his son S. W. Bowker, for nearly sixty years. The site consists of stone walls and foundations remaining from this very early hill farm.

Based on the information available in the application, it is our opinion and recommendation to the Act 250 District 2 Commission that the project, as currently proposed, will have **No Effect** on any historic sites that are listed on or eligible for inclusion in the State Register of Historic Places. Any future ground disturbing activities will require review by VDHP to assess effects on the existing historic archaeological site and other archaeologically sensitive areas within the project parcels.



From: judith strom <jaymatadi@gmail.com>
Sent: Wednesday, April 28, 2021 9:57 AM
To: tnewfane@newfanevt.com
Subject: Zoning Permit Application 21-003

Exhibit B 1/1

Hello!

My name is Judith Strom. I own Parcel # 00F162 or 245 Sunset Lake Road in Williamsville, VT. My road frontage is across the street from the road frontage of the land that belongs to Higher Ground Conservation Association.

When I learned about green burial in the 90's, I immediately thought it was a great idea and something that I would be interested in when my time came to die. Many who are approaching death, as well as their loved ones, could find great comfort in knowing that their bodies can have a place to decompose naturally in a way that gives back to the environment instead of polluting it.

Having Manitou across the street from me was one of the major reasons why I purchased my property. I hoped that if it remained the way it was, my property would be safe from pesticides and inorganic fertilizers leaching into my ground water for a very long time. I have a chronic illness that is made worse by exposure to chemicals. Several years ago, I was delighted when Mike Mayer told me about his initial plans to build a natural burial ground on what used to be part of Manitou. I was certain that his parents would have thought that this was an honorable use of the land that they made a plant sanctuary, especially as Mike's mother is buried on that land.

The proposed natural burial ground will be an asset to the community in that it is a responsible use of a natural resource as well as a conservation strategy. I heartily and gratefully welcome its establishment without any reservations. Please join me in approving of this proposal. If you have any questions, please call me at 802-275-7087.

Yours truly,

Judith A Strom, LICSW, IAAP

April 20, 2021

To The Members of the Development Review Board:

We own the property adjoining the proposed cemetery. We have owned the property known as the Cook Lot for over 50 years and for the last 30+ years enjoyed a good relationship with Pam Mayer, founder of Manitou. We were taken by surprise when we received notification by priority mail that Mike Mayer had been denied an application for a change of use from protected forest land to a commercial venture. This was when we learned that Mike Mayer wanted to create a cemetery on land that adjoins the Cook Lot. We had no prior knowledge or notification other than the letter sent to us by the DRB.

The proposed access to the cemetery passes over land that we own. We have questions concerning the right-of-way and have not had sufficient time to have matter researched.

The proposed burial yard is very near the border between the Mayer property and the Cook Lot. Where exactly are the boundaries of the land upon which the proposed cemetery is located? We have no idea. On the last page of the proposal, there is a preliminary map of the project but it lacks sufficient detail. Will there be a finished map of the project for the Development Review Board to review?

What are the boundaries of the parking lot. Where will the hiking trails, boardwalks and handicap paths be located? How exactly will the land be contoured for access by vehicles. Is there a site map?

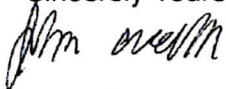
Who will oversee day-to-day operations of the cemetery? Is there a board of directors? Is the cemetery open to the public all year round? If a cemetery is created, we assume it will remain one forever. Is there a succession plan to map out the future of the cemetery should the cemetery organization dissolve?

On page 3 of your proposal, you state that the graves will be hand dug to minimize damage or disturbance to the roots. On page 1, you speak of footpaths, accessible trails and access for a light excavation vehicle to dig plots. Are you going to hand dig the plots or use an excavator? It's not clear.

On page 2 of the proposal you state that the land may be used for "responsible recreation" Who decides what is "responsible recreation"?

These are some of our concerns. As an adjoining landowner, we thank the DRB for the notification and the opportunity to voice our concerns.

Sincerely Yours,



John & Linda Walker

