

June 23, 2025

Keith Oburne  
Director of Planning and Zoning  
Town of Richmond  
203 Bridge Street  
Richmond, VT 05477

**Re:    DRB Reconsideration of Pre Sub 2025-06, Jessica and Michael Sipe**

Keith:

I would like to express appreciation to the DRB for reconsidering the Sipe preliminary subdivision denial dated June 5, 2025. Reconsideration is likely the most cost and time efficient way to reach the appropriate outcome, both for the Sipes and the Town. I would like to briefly address two procedural issues with you.

First, I want to alert you that I intend to file a notice of appeal to the Environmental Court so that it does not catch you by surprise. Please understand that this is only to preserve the Sipes' ability to seek Environmental Court review, if necessary, which must be filed within 30-days of the DRB decision. The Sipes hope DRB reconsideration resolves the matter and that pursuing an appeal will not be necessary.

For reference, the Vermont Supreme Court recently addressed the interplay between a DRB reconsideration and an appeal to the Environmental Court. They held that the Applicant's submitting a request for consideration did not toll the 30-day Environmental Court appeal period, at least where the municipal bylaws did not provide for a specific reconsideration procedure and the DRB did not act on the reconsideration within the 30-day appeal period. *In re 2078 Jersey Street Reconsideration Denial*, 2024 VT 20. In our case, the Richmond Subdivision Regulations do not provide a clear reconsideration process and the DRB is not scheduled to assess the reconsideration request until July 9, 2025 – more than 30 days after the initial denial. Hence the notice of appeal.

Second, I am also aware there may be confusion regarding: (1) if the DRB or Environmental Court has authority to amend a permit condition; and (2) how to evaluate a condition amendment request. I offer the following guidance and, if needed, request you consult the Town Attorney on the DRB's behalf so that the DRB is able to effectively and efficiently serve the residents of the Town in this matter.

*The DRB has authority to amend the permit condition.* As you are aware, Richmond Subdivision approval is a multi-step process – sketch plan (optional), preliminary, and final. Preliminary Subdivision review is intended to identify issues, explore options, and provide the

June 23, 2025

Page 2 of 2

applicant with guidance. Preliminary determinations are generally not binding.<sup>1</sup> The Judgment Order dated April 19, 2006 approved Preliminary Subdivision review. The Sipes are not asking the DRB (or anyone) to amend the Preliminary Subdivision approval, nor is it required.

Final Subdivision review is required to approve the application and impose conditions. The condition relevant to the Sipes' application was imposed by the DRB in a final subdivision approval dated July 21, 2006. A referral to the Environmental Court to amend this permit condition is unnecessary because the DRB's authority extends to amending prior permit conditions imposed in its own prior approvals. *See In re Application of Lathrop Limited Partnership I*, 2015 VT 49, ¶104 (finding the Environmental Court authority is no larger than the DRB).

Standards for assessing a permit condition amendment. Courts instruct that the first step in evaluating a request to amend a permit condition is to determine if the condition was critical to issuing the permit, and if it was not critical, then to evaluate the proposed change on its merits. *In re Parker*, No. 6-1-20 Vtec., 2020 WL 57183 (Vt. Env'tl. Ct. Nov. 17, 2020) (finding a condition not addressing an articulated bylaw purpose, but instead offered by the applicant, was not critical to issuing the permit). If the condition was critical to issuing the permit, *the Stowe Club Highland / Hildebrand Test* applies. *Id.*

The Sipes asked the DRB to apply this analysis and make determinations, which is missing in the June 5, 2025 Preliminary Subdivision Application denial. If the DRB chooses to accept additional materials, I can provide a succinct summary as to why the permit condition was not critical to the subdivision and merits being removed.

Please let me know if I can be of any assistance or if you would like to discuss.

Best regards,



Adam Miller

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<sup>1</sup> Unappealed threshold determinations – such as minimum lot size and district allowed uses – can be final, but not applicable to the Sipes' application. *In re Simpson Development. Corp.*, 2006 WL 4605356 (Vt. Env'tl. Ct., Sept. 7, 2006)