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3 **Town of Charlotte**  
4 **DEVELOPMENT REVIEW BOARD**  
5 **Meeting Conducted at Town Hall and via Teleconference**  
6 **March 2, 2022**

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8 ***As approved by the Development Review Board 4.13.22***

9 **Development Review Board Commission:** Charles Russell (Acting Chair), JD Herlihy, Gerald  
10 Bouchard, Christina Asquith

11 **Staff:** Rebecca Kaplan, Clerk; Danielle Atherton, Recording Secretary

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13 **OTHERS:** via Zoom: Paul Plante, Scooter Macmillan, Chea Evans, Doug \_\_\_\_\_, Jim Donovan,  
14 Kyra Wegman, Lane Morrison, Carrie Spear, Kevin Burget, Peter Joslin, Janet \_\_\_\_\_; In-person:  
15 Frank Tenney, David Rugh, Barry Finette, Sharon Mount, Bill Stuono, Valerie Graham

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17 ***Posted Agenda:***

18 7:00 PM Call to Order; changes to agenda (if any)  
19 7:05 PM Public Comment (not pertaining to pending applications)  
20 7:10 PM Public presentation & discussion re: DRB norms, standards & rules of procedure re:  
21 member ethics, different meeting types (reconsiderations, hearings and  
22 deliberations), rules for public participation, and quasi-judicial role in land use  
23 permitting – with town counsel David W. Rugh, Esq. of Stitzel, Page & Fletcher, P.C.  
24 8:30 PM Resolve applicants' request to withdraw reconsideration of O'Donnell-Donovan  
25 decision (PC 21-241-SD); next steps  
26 8:40 PM Other business: Markup & approve draft findings re: OML complaints; review &  
27 approve pending draft meeting minutes for Feb. 17, Feb. 23 meetings  
28 9:00 PM Adjourn

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30 **CALL TO ORDER:** Charles Russell called the meeting to order at 7:06 pm

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32 **Public Comment:** Sharon Mount asked to discuss the complaint letter. Frank Tenney wanted to  
33 discuss procedures. Charles Russell and Christina Asquith responded that both are on the agenda.

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35 **CHANGES TO AGENDA:** There was none

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37 **Public presentation & discussion re: DRB norms, standards & rules of procedure:**

38 David Rugh, town attorney with Stitzel, Page & Fletcher, P.C., gave an overview of the Open  
39 Meeting Law. There are different classifications on what qualify as meetings and not meetings.

40 **Meetings:**

- 41 -Public hearings on applications  
42 -Warned agenda items not involving permit decisions (Open Sessions)  
43 -Executive Sessions (closed to public)

44 **Not-meetings:**

- 45 -Deliberations in connection with a quasi-judicial proceeding (the Board is sitting as an  
46 adjudicative body)  
47 -Communications among the Board to set the agenda, distribution of meeting material,  
48 coordinating the schedule for meetings are not

49  
50 David Rugh explained that deliberations do not need to be held in public, they can even occur  
51 over email, such as when draft decisions are circulated for review among board members.

52 Deliberations weigh evidence, facts, and law in relation to Applications and Motions in order to  
53 render a decision in quasi-judicial proceedings, but deliberations do not include the taking of  
54 evidence or arguments of the parties. Public testimony and comments are not allowed in DRB  
55 deliberations. Charlotte has a history of deliberating openly in public, but that is not a requirement.  
56 The Board can circulate a draft, track changes and review drafts of decisions via email. The only  
57 requirement coming out of a deliberation is that the Town records the vote of individual members  
58 on the decision issued.

59 Reconsiderations are legal proceedings requested by the applicant or interested parties for a  
60 second look. This does not reopen the entire case, just the items proposed for reconsideration. If the  
61 Board deliberates and agrees to reconsider, a public hearing is scheduled, which is then open for  
62 testimony. After the hearing, the Board chooses how to proceed based on what was presented at the  
63 reopened hearing.

64 Charles Russell explained the opposing party felt it was unfair to hear one side, and asked  
65 David Rugh how that is to be handled. David Rugh responded that the opposing party could submit  
66 in writing the reasons they felt the Board should not grant the request. However, being a  
67 deliberation, the letter does not need to be considered until it reaches the public hearing. The DRB  
68 could decide to reconsider just based on one party's argument or filing.

69 Frank Tenney asked if the Regulations state that all reconsiderations are not to be open to  
70 the public, and wants to know what makes it a deliberation. David Rugh referred to Section  
71 9.9(E)(4)(b) of the Regulations. That does not require public involvement, nor prohibit it. But per  
72 the Open Meeting Law, the Board's action on reconsideration requests are deliberations. It is rare  
73 that public testimony is allowed during the Board's deliberation on reconsideration requests, and it  
74 is not advised. Deliberations can also happen while a hearing is still open, which allows the Board  
75 to come back to it if something is missing.

76 JD Herlihy wanted clarification that there should not be any new evidence presented until  
77 there is a decision to reopen the hearing. David Rugh answered that the standards of a  
78 reconsideration should be followed regardless of whether there is evidence available now that was  
79 not available during the original application.

80 Barry Finette questioned why the applicant can request the Board to review new evidence.  
81 As an adjacent landowner, he feels he is an interested party; he had made a request to speak  
82 regarding the reconsideration and never received a response. David Rugh responded that  
83 interested parties are those defined by statute that have been granted party status by the Board.  
84 Interested parties include: Adjoiners, those who live in the immediate neighborhood who can  
85 demonstrate a physical or environmental impact from the project under the criteria reviewed,  
86 adjacent municipalities, and a group of 10 who have submitted a petition which was granted by the  
87 Board. He added that the Board's action on the evening Barry referred to was not a meeting; it was  
88 a deliberation so his request would not be granted. The interested parties and the Planning  
89 Commission could speak at the reopened hearing, if the Board feels reopening the hearing is  
90 warranted; it is not recommended for them to speak at the deliberation.

91 Christina Asquith asked, as a member of the Board, if she was allowed to seek information  
92 from the Planning Commission. David Rugh responded that what comes out of a deliberation can  
93 be a request for information. In a deliberation, it should be amongst the Board itself.

94 Bill Stuono from the Planning Commission added that since they compare a reconsideration  
95 to a court filing, why can't all people involved respond with a motion. He also wanted to know why  
96 an interested party can submit their concerns in writing, but are unable to speak at a meeting. He  
97 questioned why a reconsideration is automatically a deliberation. David Rugh explained that  
98 judges, like the Board acting in a quasi-judicial capacity, can issue a decision without hearing from  
99 anyone, if they so choose. Christian Asquith asked if written or public testimony can be allowed  
100 during deliberations. Rugh responded: the Board can decide whether or not to consider the written  
101 concerns, or to speak with parties, since it is a deliberation, not a meeting. The reconsideration is  
102 automatically a deliberation because it is a motion to the adjudicative body that needs to discuss

103 the reasons for or against an act or decision, in this case, whether to grant a reconsideration  
104 request. Barry Finette felt this is an opinion.

105 Chea Evans asked if there could be any exceptions since the Board has changed since the  
106 original decision was made. She asked if deliberations will now become private. David Rugh  
107 answered there are no requirements that gives the Planning Commission the right to participate in  
108 the deliberation. There are parts of deliberations that he strongly advises not to become public,  
109 particularly referring to attorney/client communications between the Board and the Town  
110 Attorney.

111 Kyra Wegman asked how deliberation via email is not considered ex parte communication.  
112 David Rugh answered the current Planning Commission does not sit in a quasi-judicial capacity.  
113 Kyra Wegman explained she was trying to correct non-facts that were in the reconsideration letter.  
114 She wanted to know the proper way, had she known she could have written a letter she would have.  
115 Christina Asquith responded it was a recommendation to not allow members of the Planning  
116 Commission to speak. She didn't understand the reason why, and as a result it has caused more  
117 problems and has taken more time. JD Herlihy responded the Board decided as a group to not take  
118 new testimony, and David Rugh added, testimony would be allowed at the re-opened hearing.

119 Bill Stuono asked if a reconsideration request can be appealed and if a motion can be filed  
120 that the reconsideration was reopened improperly. David Rugh answered that written decisions are  
121 appealed, not decisions to reopen hearings. The reconsideration is part of the original proceeding,  
122 so once the Board re-opens the hearing and acts on the request, the action that will get appealed is  
123 either the revised decision after the reopened hearing, or the original decision if the Board makes  
124 no changes. The Board's action of reopening the hearing is technically not appealable.

125 Barry Finette recommended the Board to take information prior to deliberations to avoid  
126 the conversations that are being had today. Charles Russell felt confident they made the right  
127 decision, and the Board is learning a lot from a very confusing issue. The Board will be better  
128 prepared now that the process has been clarified. David Rugh responded that the Board made the  
129 right decision and that they were under no obligation to allow anyone to speak.

130 Sharon Mount stated the reconsideration process was not understood by the parties who  
131 submitted complaints. She wanted to know which LUR was applied to the reconsideration by the  
132 DRB, if it was fraud, new evidence or oversight. She added the 4pm meeting time was very  
133 inconvenient. Charles Russell responded the reasons for reconsideration were discussed on each  
134 point. JD Herlihy added he considered the majority to be under the error or oversight category.

135  
136 **Resolve applicants' request to withdraw reconsideration of O'Donnell-Donovan decision (PC**  
137 **21-241-SD)**

138 Frank Tenney noted the reconsideration request has been withdrawn, however, the  
139 knowledge exists that a reconsideration should have been done due to errors and new information.  
140 He asked if the Board will continue with the reconsideration, or withdraw. David Rugh responded  
141 that upon the applicants request to withdraw, the proceeding should cease. However, the Board  
142 will likely have another hearing on this application (a final plan review) so those issues can be  
143 addressed. Gerald Bouchard added that applicants have up to 2 years to submit their Final Plan  
144 application. (See LUR 9.9(E)(5) Expiration)

145  
146 **MOTION by JD Herlihy to accept the applicant's request to withdraw the reconsideration for**  
147 **O'Donnell-Donovan decision; seconded by Gerald Bouchard. VOTE: 3 ayes, 1 abstain; motion**  
148 **carried.**

149  
150 **MOTION by JD Herlihy to approve the draft findings of the Open Meeting Law Complaints**  
151 **received on Feb 20, 2022 as amended; seconded by Gerald Bouchard. VOTE: 3 ayes, 1**  
152 **abstain; motion carried.**

153

154 **MOTION by Charles Russell; seconded by JD Herlihy, to approve DRB meeting minutes as**  
155 **amended for Feb. 17 and Feb. 23. VOTE: 3 ayes, 1 abstain; motion carried.**

156

157 Frank Tenney suggested on the agenda, under the OTHER category, to have those items  
158 broken up into separate topics and not lumped together. He added that Horsford was added to the  
159 agenda last minute and had it been known ahead of time, certain parties would have wanted to  
160 attend. Charles Russell agreed on both points.

161

162 **MOTION by Gerald Bouchard to adjourn the meeting. The meeting was adjourned at 8:55**  
163 **pm.**

164

165 ***Minutes respectfully submitted:***

166 Danielle Atherton, Recording Secretary, with edits by Rebecca Kaplan and Larry Lewack.