

# DORSET ZONING BOARD OF ADJUSTMENT

P O Box 715  
East Dorset, VT 05253-07145

802-362-4571  
Fax: 802-362-5156

Date: July 30, 2018  
 Hearing: #18-05  
 Applicant: Kaye Manly  
 Location: 132 Church Street  
 Request: Two appeals of the decisions of the Administrative Officer (ZBL §12.9.1 & §12.8)

Board Members Present: J. LaVecchia (Chairman), D. Wilson (Vice Chairman), T. Rawls, S. Jones, K. O'Toole, Martha Merwin,  
 Board Members Absent: B. Bridges, Ed Tanenhaus, R. Stewart  
 Also, Present: Greg Sukiennik (Manchester Journal)

J. LaVecchia, Chairman, opened the meeting at 7:00 p.m. and the Board moved to the continued Deliberative Session from July 23, 2018 at 7:02 p.m.

The Deliberative Session was ended at 7:10 p.m. by a motion of T. Rawls and second of K. O'Toole. Motion carried 6-0.

K. O'Toole moved and T. Rawls seconded to reverse the acting Zoning Administrator's decision of May 18, 2018 and order the Dorset Field Club to remove the extensions to the containment structure returning the driving range site to the pre-2017 state within thirty (30) days of this decision ~ September 30, 2018. Motion carried 6-0.

It was the consensus of the ZBA Board to adjourn the meeting at 7:20 p.m.

A signed Findings of Fact document is included with these minutes.

Respectfully submitted,  
Nancy Aversano

**Town of Dorset ~ Zoning Board**

Date 7/30/18

Regular Meeting   
Special Meeting

(Please Print) Name	Address	Representing	Testifying (Yes or No)
<u>Greg Sukiennik</u>		<u>Manchester J.</u>	<u>NO</u>

## **Town of Dorset Zoning Board of Adjustment Appeal by Kaye Manly of Decision by Acting Zoning Administrator**

On Monday, July 16, 2018, the Dorset Zoning Board of Adjustment heard an appeal by Kaye Manly of Acting Zoning Administrator Robert Gaiotti's May 18, 2018, decision not to issue a violation to the Dorset Field Club (DFC) because it had not obtained a permit prior to attaching extensions to the existing containment structure bordering its driving range. For the reasons set forth below, the Board unanimously reverses the Zoning Administrator's decision and orders DFC to remove the extensions and return the site to its pre-2017 state.

Seven of the eight members of the Zoning Board of Adjustment attended, namely: Steve Jones, John LaVecchia, Martha Merwin, Kevin O'Toole, Tuck Rawls, Ruth Stewart and David Wilson. Board members Bill Bridges and Ed Tanenhaus were unable to attend the meeting. Because Ruth Stewart had to leave prior to the end of the meeting, she did not participate in the decision.

Representing the appellant was attorney Allan J. Sullivan. Representing the Dorset Field Club was attorney Lisa Shelkrot. Acting Town of Dorset Zoning Administrator Robert Gaiotti appeared but was not represented by counsel at the hearing.

Board Chairman John LaVecchia opened the meeting by granting interested party status to the Town of Dorset, appellee Dorset Field Club, Inc., and Kaye Manly, whose property abuts the relevant portion of the DFC property on the west. At the hearing, the Board heard testimony from each party through counsel or, in the case of the Town of Dorset, through Acting Zoning Administrator Robert Gaiotti. The Board also took testimony from Kaye Manly, DFC President Rocco Maggiotto, DFC General Manager Patrick Maguire and some of the members of the public in attendance.

Upon motions made, seconded and passed, the Board then closed the meeting to further testimony and went into deliberative session. Emerging from deliberative session, the Board, in a vote of six in favor and none opposed, determined as follows:

1. The DFC is located at 132 Church Street in Dorset. The portion of its property at issue is situated within the Agricultural and Rural Residence (A&RR) zone, as well as Dorset's Historic Village District, a design review area. All new construction and all modification and alteration of any existing structure at the DFC are subject to the Town of Dorset zoning by-laws relating to the A&RR zone and Historic Village District.
2. The DFC property also is subject to the requirements of Act 250, mandating the issuance of a permit from the Act 250 District Commission -- in addition to any necessary local zoning permits -- for any work done at the course or of "any change . . . to the design, operation or use" of prior permitted uses or structures.
3. On or about May 14, 2015, the DFC filed with the Zoning Administrator a Zoning Permit application seeking, among other things, to add a multipurpose building to: a) serve its paddle tennis, tennis and yoga and exercise activities; b) to relocate paddle tennis courts;

and c) to add a driving range instruction shelter.

4. No mention was made in the application of any plan to heighten the driving range containment structure.
5. Thereafter, a site plan was submitted in support of the application for consideration by the Planning Commission, the Design Review Board and, ultimately, the Zoning Board of Adjustment. (Manly was at that time a member of the Planning Commission.) The plan reflected a proposal to lengthen the driving range by relocating the far end of the golf ball containment structure further to the north by approximately 120 feet. No mention was made in the site plan and architectural drawings and renderings submitted to the Town of Dorset, however, of any intention to heighten the driving range containment structure.
6. The Design Review Board considered the site plan at its meetings on May 20 and June 17, 2015. Representatives of DFC have since conceded that it did not, directly and through drawings or renderings, express to the Design Review Board any intention to heighten the driving range containment structure.
7. The Zoning Board of Adjustment approved the issuance of a conditional use permit after meetings on June 8, 2015, and July 13, 2015. At the July 13 meeting, the ZBA voted to approve the application subject to the DFC obtaining Act 250 approval. The Minutes do not reflect that the Dorset Field Club expressed to the Zoning Board of Adjustment any intention to heighten the driving range containment structure. When asked if the DFC intended to widen the driving range, DFC General Manager Patrick McGuire responded specifically that “the driving range would only be lengthened.”
8. A Zoning Permit for the project was ultimately issued by Town Manager Robert Gaiotti on September 22, 2016. Nothing on the face of the permit addressed heightening the driving range’s containment structure.
9. Work to lengthen the range by approximately 120 feet was commenced and completed in or around late 2016. The work involved physically relocating some of the poles and existing netting northward. At the ZBA hearing on July 16, 2018, DFC General Manager Patrick Maguire and current DFC President Rocco Maggiotto stated that after the work to extend the length of the range was completed, with the poles and netting actually being raised in height to approximately 63 feet, no additional extensions in height were then contemplated.
10. Thereafter, on or about February 17, 2017, construction contractors arrived at the DFC and increased the height of the entirety of the containment structure by what appears to be at least 10-15 feet by affixing extender poles, popsicle stick style, to the existing poles and by adding another layer of black netting and guide and supporting wires.
11. DFC’s driving range containment structure -- a horseshoe-configured construction several hundred yards in length -- consists of a “collection of materials [poles, netting, guide

wires]...for use [as a device to contain golf balls]” and is plainly a “structure” within the definitions used in the zoning by laws. See Dorset Zoning By-Law at page A-7.

12. DFC’s driving range containment structure was first erected in or around 1995. The Town of Dorset required in 1995 that a permit be obtained for the placement of the driving range netting around the driving range. See Permit F-34-95 (8/10/95).
13. No structure in the Dorset Village Historic District can be constructed, extended, enlarged, moved or altered absent compliance with the Town’s By-Law and the obtaining of a permit. See Dorset Zoning By-Law 3.1.1; 9.4.4.2.
14. At the ZBA hearing on July 16, 2018, all of the interested parties agreed that no Town of Dorset permit was sought or obtained authorizing the February 2017 construction and modification of the then existing containment structure.
15. Appellant Manly stated at that hearing and in materials filed with the Board through her attorney, Allan J. Sullivan, that she did not object to the work performed pursuant to the 2015 conditional use permit issued to DFC, including the increase in the height of the poles to approximately 63 feet.
16. In Acting Zoning Administrator Robert Gaiotti’s May 18, 2018, written decision not to issue a violation to the Dorset Field Club (DFC), it is stated that Kaye Manly’s opportunity as an adjoining landowner to appeal the issuance of the conditional use permit issued to DFC in 2015 had ended and therefore the appeal of that permit was denied as untimely.
17. Again, Manly did not object to the work performed pursuant to the 2015 conditional use permit issued to DFC, including the increase in the height of the poles to approximately 63 feet in late 2016. Manly had no basis or ability or interest in “appealing” the ZBA’s approval of the DFC’s 2015 application for conditional use permit at that time. She was not provided any notice -- as an abutting land owner, as a resident of the Town of Dorset or as a member of its Planning Commission having reviewed the DFC’s site plan -- that DFC would further heighten the containment structure in February 2017.
18. This Board expressly finds that the 2017 increase in height of the poles and netting to their present height of approximately 80 feet constituted a separate act that was not even tacitly approved as part of the 2015 conditional use permit. It further finds that the poles and netting constitute “an assembly of materials for . . . use” and therefore are to be considered a structure for purposes of the Dorset Zoning By-Law.
19. The 2017 alteration of the height of the poles and netting to their present height required review of a conditional use permit application before the Design Review Board, the Planning Commission for site plan review and, finally, this Zoning Board of Adjustment. DFC did not seek or obtain those further approvals before proceeding.

DFC is hereby ordered, within thirty (30) days of the issuance of this decision, to remove the extensions to the containment structure and return the site to its pre-2017 state.

Date: July 30, 2018

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John LaVecchia, Chairman

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Tuck Rawls

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Steve Jones

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Kevin O'Toole

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David Wilson

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Martha Merwin