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South Burlington VT: New Urbanist South Village¹



Retrovest Companies, Inc. Promotional Image of New Urbanist Concept

A case from the library of “smart growth” leadership case studies prepared by the New England Environmental Finance Center and available at http://efc.muskie.usm.maine.edu/pages/case_study_library.html

Abstract: The 220 acre master plan for South Village, the largest project in the City of South Burlington’s history, encompasses multiple housing types and innovative provisions for affordable housing. It integrates housing with open space and natural resource conservation, including a major Community Supported Agriculture project developed by a nonprofit partner, the Intervale Foundation. While not a mixed-use project (that is, commercial as well as residential development), South Village nonetheless represents a qualitative change in approach for South Burlington by incorporating large-scale open space preservation as part of development and multiple housing-types in one project. The case study recounts events leading up to the developer’s project application in 2002; reviews the context and process by which the City of South Burlington received the proposal; and tells how the final obstacles to South Village’s formal approval were surmounted.

¹ Prepared by Jack Kartez for the New England Environmental Finance Center’s “Next Communities Initiative,” Richard Barringer, ed., Edmund S. Muskie School of Public Service, University of Southern Maine, Portland ME, June 2009. Copyright © 2009 by the Muskie School of Public Service.

The Evolution of a Smart Growth Project. David Scheuer has been a developer for 25 years. As a young man he was a staff member for Senator Patrick Leahy of Vermont and continues to be an active supporter of Democratic politicians, including the two presidential campaigns of William Jefferson (Bill) Clinton. Scheuer became aware of new urbanist ideas about growth and redevelopment on a visit to the community of Seaside, Florida in its early years, “when there were eight buildings, he recounts” Seaside, of course, is the seminal new urbanist project that launched the design form of Duany and Plater-Zyberk into leadership in this design movement.

Scheuer participated in many modestly-scaled infill and redevelopment projects in Oregon, Washington, and northern California before settling in Vermont. But the road to proposing South Village did not truly begin until the early 1990s in Stowe, Vermont’s oldest ski resort community and an iconic New England village landscape.

In 1991, an associate in Scheuer’s firm, the Retrovest Companies, Inc., proposed a project to use its options on a half-dozen small parcels in Stowe that together comprised a site of about 6 acres. Scheuer envisioned a new commercial center of 55,000 square feet that would greatly expand Stowe village’s commercial opportunities. Scheuer reflects now that he thought there was no downtown housing market in Stowe – that is, no consumer demand for it. At the time, Stowe’s zoning allowed no commercial development greater than 15,000 square feet. Scheuer wanted to create a new, walkable commercial center in Stowe village, and had seen a like project succeed in South Hadley, Massachusetts.

A combination of factors, including Stowe’s contentious project approval process, led to delay, and the project “lost the market” and was shelved. However, Scheuer remembered his Seaside visit and began to think that a residential project might in fact succeed as an exit strategy from the Stowe property. His company changed its thinking about the market demand for residential development within an existing New England village and launched the Palisades Village Homes Project on the 6-acre option site. Palisades includes single family “Village Homes” which integrate privacy with central location on the streetscape (as shown in Figure 1) and “The Lofts at Palisades Village,” a set of two-story condominiums likewise sited on the street and replicating the accessibility and density of historical village development.



Figure 1. Streetscape of completed and occupied “Village Homes” component of the Palisades project in Stowe, VT.

By 2003, the Palisades had succeeded and raised interest around the state in close-in, higher density redevelopment projects in a traditional village center. Ski Magazine noted the “surging popularity of village-style living in Vermont—ironically the traditional built environment of the state’s 300-year history.

Palisade’s mix of townhouses and single family units raised sustained interest from both consumers and those hopeful of moving Vermont away from suburban sprawl. “It’s an old story,” says Scheuer, “supply created its own demand. Palisades gave us comfort that we could succeed on a larger scale . . . it was a good pilot.” He began to look for suitable sites for 30 to 40 unit residential projects in Stowe, but little land was available.

What came next was triggered by a call Scheuer received from Will Raap, founder of a Burlington-based nonprofit that promotes community agriculture and natural resource protection, the Intervale Foundation. Raap called because Scheuer now had a reputation as an innovator in Vermont, and Raap had become aware of a 220-acre abandoned farm tract in South Burlington owned by a family with whom he had done

business previously. Raap envisioned a “cluster development” of some kind, along with agriculture.

Scheuer was concerned about whether so large a project could work. He had been looking for a smaller site, to push on with the ideas piloted by Palisades. Still, the project was intriguing for several reasons. The site was “the best in Chittenden County,” says Scheuer, and it was relatively flat for its size. The South Burlington location also suggested that the politics of development approval might be better than in Stowe, given the former’s history of higher density housing and its well-regarded, professional planning staff.

Finally, Will Raap’s and Intervale Foundation’s involvement could help in the approval process, dealing with prime farmland issues. “That was a very interesting aspect,” says Scheuer, “because Intervale was getting to the end of their ability to penetrate the more urban market for community-supported agriculture (CSA), and they wanted to take it to a new suburban context. The polemic in Vermont is that ‘it’s housing versus farmland retention,’ but this is dumb sometimes. This was a chance to show that housing and agriculture are compatible.”

“This appeared to be one project I would regret not doing,” Scheuer reflects. “In this area, we talk the talk, but don’t walk the walk on smart growth.” Still, there were concerns.. “Fragmentation of decision processes on the public side and lack of regionalism are obstacles,” Scheuer observes. But after closing arrangements for the 220 acres, the next step was to find a lead designer. In early 2001 Scheuer and Raap joined LRK, a Tennessee design firm, and environmental consultant Steve Applebaum in Prairie Crossing, Wisconsin, for a closed charette² to explore local development and ecological restoration strategies. This experience led directly to South Village’s development goals, including design integration, housing diversity, environmental stewardship, and community agriculture, among others.

Scheuer began the design process with consultants from LRK and Vermont-based firms, and held two rounds of neighborhood meetings to introduce his general ideas to the community. When Retrovest finally took the South Village concept to the city of South Burlington to begin the “sketch plan” review process, Scheuer felt it was a “lucky turn of

² That is, not a public participation event.

events that the city planning staff embraced the idea of innovative projects,” because South Village would require more than 50 waivers from existing zoning standards, to be buildable. Action by the city as well as some fortuitous timing would create the context in which South Village might progress.

The eventual project, embodied in its 2005 approved Master Plan, included 334 units, a mixture of 8 residential owner and renter-occupied building types, and affordable housing as required by Vermont state law for a 25 percent density bonus. Retrovest also made a voluntary commitment to provide mid-range, workforce-priced housing, a need that was still not addressed by Vermont’s famous 35-year-old state planning law. The project includes open space in substantial buffers for the three clusters of development, 30 acres for the Intervale community farm, and about 40 acres of preserved wetlands, resulting in more than 50 percent of the site in open space or resource use. It also proposed to incorporate a private elementary/middle school that would move from rented space in a commercial retail area; but this would eventually not remain part of the project. Table 1 (below) presents a Retrovest release about the project’s eventual scope and new urbanist concept.

South Village and the Sketch Plan Stage. On June 14, 2002, Retrovest made its initial request for sketch plan review, and the design process became subject to the public and regulatory environments. In South Burlington (SBVT), major projects such as “planned unit developments,” large subdivisions, and master-planned communities must undergo informal review of a sketch plan with City staff. This is equivalent to the pre-application review step that was a zoning administration innovation in the 1960s, to help avoid unnecessary delay. After sketch plan endorsement by staff, a project of South Village’s scope requires master plan approval, preliminary plat approval, and final plat approval. All of these approvals are formal legal actions under City codes, with published hearing notices. (See Table 2 below, “South Village Timeline.”)

Table 1: Description of South Village’s ‘New Urbanist’ Concept
(from Retrovest promotional materials)

Traditional Neighborhood Development Makes Friends with Neighbors and Nature, Alike.

Traditional Neighborhood Development. Don't worry, TNDs are more exciting than they sound. With winding paths, narrow streets, a variety of beautiful homes, and a ton of amenities within walking distance, Traditional Neighborhood Developments are where it's at. And it just so happens that South Village is the first, and only, TND in Vermont. Talk about being forward-thinking. South Village also has a community farm, a community center, and acres of wetlands and open space. And South Village is ideally located within minutes of Interstate 89 and the Burlington International Airport. And because South Village is such a great place to live, we're working hard to keep it that way. That's why we're dedicated to protecting and preserving the environment through education, innovative farming practices, and sustainable community development.

What is Traditional Neighborhood Development? The goal is to create new, pedestrian-friendly communities with vibrant streets, quality architecture, attractive parks and open spaces, and a strong sense of identity. Today there are over 300 new communities and many more redevelopment efforts that have embraced these principles. *South Village is patterned after the traditional design elements found in Vermont's most cherished villages and towns.*

What do Traditional Neighborhood Developments look like? While they are not all the same, they tend to have strong defining characteristics in common.

TND's have a compact pattern to promote efficient land use; Open spaces and natural areas are protected. The streets are designed on a grid-like pattern; they are generally narrower than those found in typical suburban neighborhoods. They are intentionally designed to reduce vehicle speeds and improve the environment for humans. The pedestrian experience is further enhanced through a network of continuous sidewalks, trails, and parks.

TND's usually contain several land uses. Some communities include retail and office uses. South Village expects to include agricultural, educational and recreational uses. TND's have a wide variety of housing types and a range of prices to accommodate the needs of a broad range of residents. The architecture of the individual homes is derived from, respects, and celebrates local building traditions of the region. Front porches are a prominent feature of most of the homes creating an inviting place for neighbors to meet and enriching the architecture of the streets.

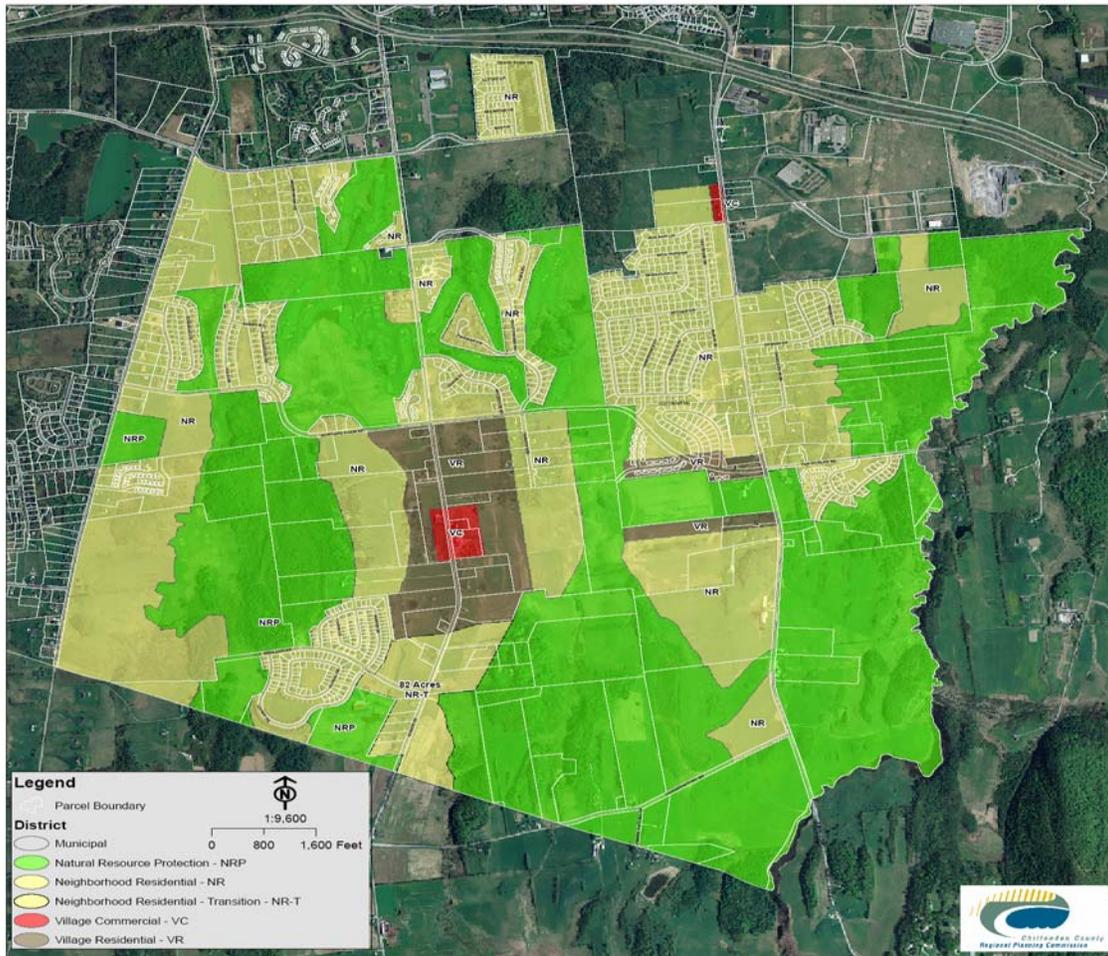
Table 2: South Village Timeline, including Relevant City Actions and Litigation Process in Vermont Environmental Court, leading to Voluntary Settlement

June 2002	Retrovest submits South Village master plan concepts for Sketch Plan review with City staff.
2002	City commissions BFJ, Inc. to revamp all land development bylaws.
2002	SBVT Planning Director and Retrovest President David Scheuer are both appointed by outgoing Governor Howard Dean to serve on “Chapter 117 Commission” to rewrite Vermont’s zoning enabling statutes.
May 2003	New SBVT LDRs adopted as bylaws.
2004	South Village concludes Sketch Plan process with City.
March 2005	Master Plan approved.
April 2005	Preliminary plat approved.
July, 2005	Procedural amendments to Master Plan.
Feb., 2006	Design Amendment to Master Plan to change extent of Midland connector road.
April, 2006	City, South Village and Appellant await Vermont Environmental Court Proceedings regarding abutter appeals of City approvals of project.
July, 2006	Vermont E-court denies a motion made by South Village to dismiss appeals made by South Village.
Sept., 2006	South Village motion to Environmental Court to amend July, 2006 decision and dismiss all appeals; Consolidated appeals of South Village; Approval by City awaits review by E-Court.
Late 2006- Early 2007	Mandatory E-Court requirement to consider potential for mediated settlement leads to a mediation process and settlement between City, South Village and two appellants; South Village approval stands with mediated changes.

Sketch plan review lasted almost two years, into 2004, during which time staff worked with Retrovest on traffic impact analyses and a large number of zoning design standard waivers. The process served the project well for one particularly crucial reason. The SBVT Planning Director at the time, Juli Beth Hinds, points out that “South Village could not have happened under our old zoning,” in force in 2002. This was because all of the neo-traditional town design features of the project, such as reduced building setbacks and elimination of road frontages for each individual housing unit, were simply not allowable under the older and outmoded codes.

But South Village occurred at a cusp in SBVT’s approach to smart growth, benefitting from City changes in land use regulations and providing an impetus to pursue such change. In 2002 SBVT commissioned Manhattan-based consultant Harlan Sexton

(of BFJ, Inc.) to undertake a comprehensive review of the City’s land use and subdivision regulations. The goals of the review were to protect and enhance residential character; address commercial needs in the intensely-developing northern, mall-centered part of the City; and to lay the groundwork for guiding growth in the partially-developed Southeast Quadrant (SEQ) of the City, the site of many significant wetlands and remaining farmlands. The City was committed to a broad, new urbanist neighborhood development scenario for this remaining area for major growth, as portrayed in Map 1 that shows the general zoning framework that would apply in the SEQ. As so often happens, however, it was the details of existing land use standards, as well as the process, that constituted obstacles to the vision of smart growth.



Map 1. South Burlington VT Southeast Quadrant Area Zoning showing new community center and greenways concept.

A purpose of the regulatory re-write was to also anticipate major changes coming in Vermont's zoning enabling laws, Chapter 117 of the Vermont Statutes Annotated. Both Planning Director Hinds and David Scheuer had been appointed to the Chapter 117 Commission, charged by then-Governor Howard Dean to make the state's land use laws work better at the local level. A key provision of the eventual Chapter 117 amendments was that any citizen with standing wishing to appeal a local decision to the state's Environmental Court³ must now show they took part in the local proceedings at some point, and did not simply hang back from the process until making a protest by appeal under the state's land use laws.

As part of this new standard for adversarial appeals of local action to the state level, towns and cities were now required to directly notice (or, notify) all abutters of a property on which an action is proposed for decision. Remarkably (compared to other states), this had not been a requirement of Vermont Act 250. Significantly, SBVT had begun to undertake noticing on an early, voluntary basis, given Hinds' understanding of the coming changes; and the City had provided notice for the South Village sketch plan process, which would not be required by the Chapter 117 amendments. "Noticing abutters in the long sketch plan stage of South Village has helped," says Hinds, "because people got informed about the key design ideas (being developed)."

The long sketch plan process facilitated South Village's master plan evolution during this period of change at both the state and local levels, says Hinds, because it allowed the Retrovest project team to develop its ideas without going to a formal submission that would have foundered on the need for *so* many waivers. The eventual progress of the South Village Master Plan after its formal application submission would still depend on the update of the City's land development regulations (referred to locally as the LDR).

Advocating Local Regulatory Change. Hinds emphasizes that the City Planning Commission, which proposes the regulations that the Development Review Board will

³ An innovative, specialized court in part spurred by Vermont's 36-year-old, statewide land use law, Act 250.

administer, had been “aggressive” in pursuing change. In addition to advocating for the City’s new, unified land development code, a major improvement in administrative efficiency, the Planning Commission vigorously championed residential up-zoning (that is, increased density) in appropriate areas of the city, especially the Southwest Quadrant. For example, High Density Residential zoning density was now increased from 7 DU/acre⁴ to 15 DU/acre; and 4 DU/acre medium densities, to a maximum of 12 DU/acre. At the same time, the Planning Commission refused to up-zone old World War II-era houses of modest size near the Burlington Airport (in SBVT) because such units represent irreplaceable, affordable housing. (New standards in that zone make it impossible to tear down and increase footprints with “McMansions,” Hinds points out).

On May 12, 2003, South Burlington adopted its new, comprehensive Land Development Regulations. South Village concluded the Sketch Plan process in early 2004. Because such depth of planning went into this long phase, Hinds points out, South Village had essentially been undertaking master plan development; but the actual City review and approval process remained to face.

On September 7, 2004, Retrovest submitted a combined application for both Master Plan approval and preliminary plat approval. Although the new LDR required that Master Plans be approved before preliminary plat review, the situation was quite different from what it would have been two years before. “We had a new code that was prepared to accommodate a project like this,” says Hinds. In addition to the more coherent and comprehensive Master Plan review process for large projects, the new LDR now allowed neo-traditional neighborhood design to actually occur in the zoning framework shown in Map 1 (p.7) by:

- Eliminating frontage requirements;
- Allowing flexible curbing, road surface width, ROW width and radius, and cul-de-sac standards as part of a master plan; and
- Providing for waivers of setbacks and height restrictions

The Master Plan would eventually be approved on March 10, 2005. On the following day the Burlington Free Press observed editorially that:

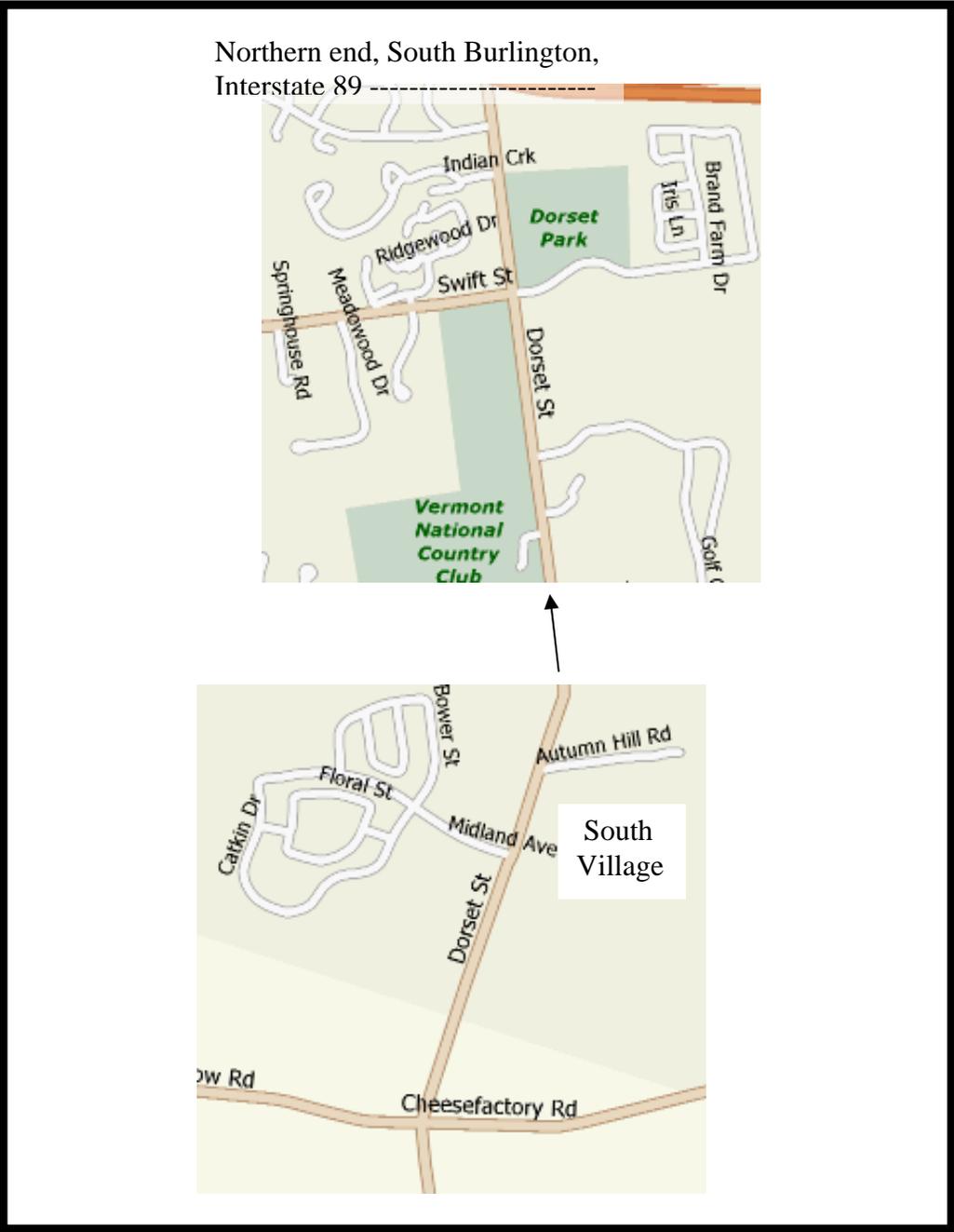
⁴ That is, dwelling units per acre.

Smart growth patterns of development will emerge when developers and investors make the decision to pursue such projects in the face of many known challenges to change—and when local jurisdictions have prepared to address such change. In this case, an experienced Vermont developer, David Scheuer of the Retrovest Companies has designed, proposed, and is near to final approvals of South Village, a 334-unit residential project in fast-growing South Burlington, Vermont. South Village has been described as ‘like no other’ in this small city of 17,000.

Due to the massive planning effort of the preceding three years, the preliminary plat was approved with unprecedented dispatch just a few weeks later on April 3, 2005.

Conflict Emerges. South Village would face yet another regulatory hurdle a year later. In April 2006, two linked issues that emerged in the master plan review and approval process became the object of appeals to the Vermont Environmental Court, a quasi-judicial state body that may overturn or affirm both state and local regulatory decisions, and order alternative dispute resolution between parties. Under the Chapter 117 reforms, consolidated appeals may be heard by the Environmental Court. In the South Village case, these would include appeals by one abutting landowner of *three* state and local decisions: the City’s approval of the preliminary plat and land use plan for South Village; the State Agency of Natural Resources’ approval of a Conditional Use Determination for a connecting road crossing a Class II state wetland; and a Vermont Act 250 District Environmental Board permit for the project.

The issue at hand in these appeals was the extension of a road that currently ended on the western edge of South Village to an existing road on the eastern edge that continues through a development called Dorset Farms and connects with Dorset Road, the major north-south arterial on the eastern half of South Burlington. Dorset Road continues to the north through major retail-mall centers and virtually all of the City’s civic, school, and public recreational centers. It then connects at its northern terminus with both Interstate 89 and the east-west Route 2 to downtown Burlington westward about ten minutes drive and to Burlington Airport eastward. (See Map 2).



Map 2. Dorset Road at northern end in vicinity of Interstate 89
Southward to area of Dorset Farms and South Village at Midland Avenue

Midland Avenue, the new connector road planned as part of South Village, is significant because it represents the last leg needed to afford connectivity from US Route 7 in western South Burlington to the City’s eastern side, and the major employment and

activity centers it harbors. Without completing this connection, it is unlikely that transit might ever be extended through South Burlington, according to a recent corridor study of the area that includes South Village and was completed at the City's request by the regional Metropolitan Planning Organization.

The appellant, a powerful abutting resident who had recently been named Ambassador to Slovakia by President George W. Bush, protested that Midland Avenue would unacceptably impact a wetland that it crosses. Intensive review and some design changes to mitigate these impacts had occurred throughout the long sketch, Master Plan, and preliminary plat approval processes. In particular, Retrovest's project team reluctantly agreed to alter the road design from a two-pronged connection to just a single-road alignment. This reduced the connectivity desirable in new urbanist and traditional community design but preserved some of the area-wide transportation functionality envisioned.

An important factor here is that the City has already identified the Midland Avenue connector in its "official map" and its approval of the Dorset Farms development that involved the building of part of this connector. Official maps are a traditional but now seldom-used planning tool in which a local government identifies its desired future road and public facility locations, as a means to structure urban form. Supporters of new urbanist town design argue that such public policy is essential to break sprawling patterns of roads that lack connectivity. The South Burlington planning staff believed the City may have had the only official map among Vermont localities at this time.

A serious question remained about how the state Environmental Court would treat this local policy tool, because its statute recognizes only "comprehensive plans" as having standing to represent local policy, and does not recognize local development codes as policy. Thus, South Village's plan for a connector road as part of a citywide smart growth concept is supported by local policy in a significant way, but could conflict with state policy. Then-Planning Director Hinds also notes that conflicts between wetlands regulation and connectivity planning have created obstacles to smart growth in numerous localities outside Vermont, as well.

Enter Mediation. As summer 2006 approached, these pending Environmental Court consolidation of all appeals delayed South Village's path to implementation. A motion by Retrovest to dismiss the appeals on the technicality that the new code precluded any appeals was rejected by the court in July and the appeals were to proceed. The court had, however, implemented a strong mediation alternative provision in its procedures, requiring that all appeals be evaluated for the potential for voluntary, mediated settlement among the appellant, defendant, and interested parties.

The E-Court judged that the consolidated South Village appeals to Act 250 permits was appropriate for a possible mediated settlement. The Ambassador, another adjacent party involved in the appeal, Retrovest, and the City agreed to participate in the mediation mandated by the E-Court. In this process that focuses on the disputants' most important interests and issues, as opposed to postures and positions, it was revealed that the Ambassador was most concerned about an issue that had not really been central to the years of deliberation and adjustment in the South Village project plan itself, according to former Planning Director Hinds.

The Ambassador had appealed the visual impact of four South Village development sites closest to his adjacent property, and the setbacks of those lots had been increased to mitigate that issue. The issue at the bottom of his opposition, it was finally revealed, was the public use of a walking/biking path built in 1992 in the nearby Dorset Farms development. The development of a connecting path in South Village, it was feared, would increase path traffic and consequent noise and privacy/security impacts on the Ambassador's nearby property. The real interest was in getting moved an existing path in a development *outside* South Village.

It is not unusual to have mediated exploration result in identifying problems not those originally raised as positions of opposition; but how was an issue *outside* the new south village development to be resolved? It turned out that, by chance, the Dorset Farms development covenants and exactions imposed by the City as conditions of approval years before had reserved the unusual right to an unmapped easement across the property. Thus, the City was able to move the public trail to a new alignment in the neighborhood and away from the complainant's property. The Dorset Farms

Neighborhood Association chose not to litigate this action; as a result, the settlement of this issue resulted in the appeals' being dismissed.

Today, South Village is slowly under development with the Community Supported Agriculture operation a prominently publicized feature. Map 3 (below) shows the limited scale of current development of the site and the extensive greenways and farm areas.



Map 3. South Village Current Promotional Site Plan showing extent of lot development (Colored lots have been developed and the two clusters of roads show the future phases of development)

TEACHING NOTES:

Important ideas illustrated in the South Village case include:

1. The roles played by leadership of various kinds, public, private, and nonprofit.
2. The need for preparation of the regulatory framework to enable change.
3. The means by which true interests can be surfaced and resolved when opposition to innovative smart growth development emerges.

A discussion exercise to explore with this case is to ask how the true sources of opposition can be surfaced and addressed as early in the process as possible. South Village's developer Retrovest and the City of South Burlington conducted a great deal of public review and participation as part of the elaborate master planning process under city regulations, yet one or two parties with standing still had the opportunity to challenge the resulting development under Vermont's state planning law. In this case, the state regulatory system under Act 250—Vermont's historic state planning law—had been recently modified to allow the Environmental Court to exercise a strong basis for asking appellants to try mediation as a means to find agreeable solutions short of the court itself. Where are the opportunities to find such solutions are different point sin the development review and regulation process in one's state system of planning and land use laws? What changes might be needed to facilitate innovative development projects that create smart growth opportunities? How can local (or state) leaders from different sectors be engaged to help bring about such outcomes?