TOWN OF UNDERHILL
APPLICATION OF TIMOTHY AND THERESA POTVIN
FOR A 5-LOT SUBDIVISION
PRELIMINARY FINDINGS AND DECISION

In re: Timothy and Theresa Potvin
27 Moose Run
Underhill, VT 05489

17 November 2011

Docket No. DRB-10-11: Potvin

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Timothy and Theresa Potvin's preliminary hearing application for a 5-lot subdivision of property located at 27 Moose Run in Underhill, VT.

A. On September 21, 2011 Larry Young of Summit Engineering, Inc. filed a preliminary application for subdivision on behalf of Timothy and Theresa Potvin for the project. A copy of the application and additional information are available at the Underhill Town Hall. A sketch plan hearing was held on March 21, 2011 and accepted.

B. On October 7, 2011, a copy of the notice of a public site visit was mailed to the applicants, Timothy and Theresa Potvin, P.O. Box 135, Underhill Center, VT 05490, and to the following owners of properties adjoining the property subject to the application:

1. Reynolds/Bryant, 354 Pleasant Valley Rd., Underhill, VT 05489
2. Becker, 309 Pleasant Valley Rd., Underhill, VT 05489
3. Ely, P.O. Box 235, Underhill Center, VT 05490
4. Wursthorn, P.O. Box 143, Underhill Center, VT 05490
5. UVM Campus Planning Services, Attn: Linda Seavey, Director, 109 South Prospect St., Burlington, VT 05405
6. Hathaway/Greene, P.O. Box 211, Underhill Center, VT 05490
7. Boudah, 318 Pleasant Valley Rd., Underhill, VT 05489
8. Wyman, 16 Pomeroy, Burlington, VT 05401
9. Russell, P.O. Box 218, Jericho, VT 05465
10. Potvin, 285 Pleasant Valley Rd., Underhill, VT 05489
11. VT ANR, 103 South Main St., Waterbury, VT 05676
12. Howard/Macarelli, 366 Pleasant Valley Rd., Underhill, VT 05489
13. Dragon, P.O. Box 104, Underhill Center, VT 05490

A copy of the notice was also emailed to Larry Young, Summit Engineering, Inc. at lyoung@summitengvt.com and to Sheila McIntyre, Summit Engineering, Inc. at SMcIntyre@summitengvt.com.

C. On October 7, 2011 notice of the public site visit and preliminary hearing on the proposed Potvin subdivision was posted at the following places:

1. The property to be developed, MO027;
2. The Underhill Town Clerk's office;
3. The Underhill Country Store;
4. Wells Corner Market;
5. The Underhill Center Post Office;
6. The Underhill Flats Post Office;
7. Jacobs IGA;
8. The Deborah Rawson Memorial Library;
9. The Town of Underhill website.

D. On October 7, 2011, notice of a public site visit and preliminary hearing was published in the *Burlington Free Press*.

E. A site visit was held at the property on October 22, 2011 at 8:45 AM. Present the site visit were:

- Will Towle
- Penny Miller
- Matt Chapek
- Charles Van Winkle, Chair

Zoning & Planning Administrator Kari Papelbon; Larry Young of Summit Engineering, Inc.; Sheila McIntyre of Summit Engineering, Inc.; Timothy Potvin, Applicant; and two neighbors also attended the site visit.

F. The preliminary hearing began at 6:30 PM on October 24, 2011.

G. Present at the preliminary hearing were the following members of the Development Review Board:

- Chuck Brooks
- Matt Chapek
- Penny Miller
- Will Towle
- Charles Van Winkle, Chair

Kari Papelbon, Zoning & Planning Administrator; Larry Young, Summit Engineering, Inc.; Sheila McIntyre, Summit Engineering, Inc; Timothy Potvin, Applicant; and Tammy Boudah, neighbor, also attended the hearing.

H. At the outset of the hearing, Chairperson Charles Van Winkle explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Those who spoke at the hearing were:

- Timothy Potvin, P.O. Box 135, Underhill Center, VT 05490
- Tammy Boudah, 318 Pleasant Valley Rd., Underhill, VT 05489

Consultants who spoke on behalf of the Applicants:

- Sheila McIntyre, Summit Engineering, Inc., 50 Joy Dr., South Burlington, VT 05403
- Larry Young, Summit Engineering, Inc., 50 Joy Dr., South Burlington, VT 05403

I. During the course of the hearing the following exhibits were submitted to the Development Review Board:

1. A staff report sent by Zoning & Planning Administrator Kari Papelbon to the Development Review Board, Timothy and Theresa Potvin, and Larry Young and Sheila McIntyre of Summit Engineering, Inc.;
2. Timothy and Theresa Potvin's Application for Subdivision: Preliminary (dated 9-9-11);
3. A copy of the completed Subdivision Checklist: Preliminary Hearing;
4. A copy of the plans prepared by Larry Young of Summit Engineering, Inc. for Timothy and Theresa Potvin (Drawings B1, S1, S2, PP1, D1, D2 dated 9-9-11);
5. A copy of the letter from Larry Young of Summit Engineering, Inc. (dated 9-9-11);
6. A copy of the email from Patti Green-Swift of the State of Vermont to Sheila McIntyre of Summit Engineering, Inc. (dated 8-24-11);
7. A copy of the letter from John Alberghini of Chittenden East Supervisory Union to Sheila McIntyre of Summit Engineering, Inc. (dated 9-16-11);
8. A copy of the letter from Sheila McIntyre of Summit Engineering, Inc. to the Underhill-Jericho Fire Department (dated 8-26-11);
9. A copy of the responses to the Evaluation Considerations (dated 9-9-11);
10. A copy of the Roadway Maintenance Agreement;
11. A copy of the Proposed Easement Language;
12. A copy of the minutes from the 3-21-11 Sketch Plan Meeting;
13. A copy of the tax map for MO027;
14. A copy of the hearing notice published in the *Burlington Free Press* on 10-7-11;
15. A copy of updated Drawings S2 and PP1 (dated 10-24-11).

These exhibits are available in the Potvin, MO027, subdivision file at the Underhill Zoning Office.

II. FINDINGS

Background

The Minutes of the meetings written by Kari Papelbon are incorporated by reference into this decision. Please refer to these Minutes for a summary of the testimony.

Based on the application, testimony, exhibits, and other evidence, the Development Review Board makes the following findings:

A. The Applicants seek a permit to subdivide land. The subject property is a ±130-acre parcel located at 27 Moose Run in Underhill, VT (MO027).

B. The property is located in the Scenic Preservation and Soil & Water Conservation zoning districts as defined in §VIII and §IX of the 2003 Underhill Zoning Regulations.

C. Subdivision approval is requested for the project pursuant to review under the following sections of the 2002 Town of Underhill Subdivision Regulations:

- Preliminary Plat Submission Requirements, pages 7-9, "Preliminary Plat for Subdivisions"
- Planning Standards, pages 11-12, "Evaluation Considerations"

D. Road and driveway approvals are requested for the project pursuant to review under the 2002 Underhill Road Policy. The Board recognizes that final approval of the road, driveways, and any waivers of the Road Policy will be made by the Selectboard, and that DRB recommendations will be submitted for consideration.

E. Preliminary Application Submission Requirements, "Preliminary Plat for Subdivisions" – The preliminary plat shall be drawn to a scale of not more than two hundred (200) feet to the inch, and shall show or be accompanied by the following information:

1. Proposed subdivision name or identifying title and the name of the town.

2. Name and address of record owner, sub divider and designer of Preliminary Plat.

3. Number of acres within the proposed subdivision, location of property lines, existing easements, buildings, water-courses and other essential existing physical features, natural features and resources.

4. The location of natural features or site elements to be preserved.

5. The names of all subdivisions immediately adjacent and the names of owners of record of adjacent acreage, including those directly across any road adjoining proposed subdivision.

6. The provisions of the zoning Regulations applicable to the area to be subdivided and any zoning district boundaries affecting the tract.

7. The location and size of any existing sewerage systems and water supplies, culverts and drains or underground cables on the property to be subdivided.

8. Location, names and present widths of existing and proposed roads, easements, building lines, parks, and other public open spaces as well as similar facts affecting adjacent property.

9. Contour lines at intervals of ten (10) feet of existing grades and of proposed finished grades where change of existing ground elevation will be five (5) feet or more.
10. Typical cross sections of the proposed grading and roadways.
11. Date, true north point, scale, and legend.
12. Complete survey of subdivision tract by a licensed registered engineer or surveyor.
13. Means of providing water supply to the proposed subdivision.
14. Means of on-site disposal of septic wastes including location and results of tests to ascertain subsurface soil, rock and ground water conditions, depth to ground water unless pits are dry at depth of seven (7) feet; location and results of preliminary percolation tests for plat.
15. Provisions for collecting and discharging storm drainage, in the form of drainage plan.
16. Preliminary designs of any bridges or culverts which may be required.
17. The proposed lot lines with approximate dimensions and suggested locations of buildings.
18. The location of temporary markers adequate to enable the Commission to locate readily and appraise the basic layout in the field. Unless an existing road intersection is shown, the distance along a road from one corner of the property to the nearest existing road intersection shall be shown.
19. All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
20. The sub divider shall coincidentally with submitting the preliminary layout, also furnish a statement signed by him or her to the Commission reciting:

    a. The nature and extent of the proposed road or roads. These must meet Town highway specifications as established by the Selectmen;

    b. The nature and extent of any recreational features, parks, or playgrounds to be provided, if any, and whether or not and under what conditions they are to be dedicated to the Town;

    c. The way in which the proposed development relates to the Comprehensive Plan for the Town of Underhill.

21. The sub divider shall indicate if any of the proposed units are to be considered as public buildings.

22. The sub divider shall indicate the location of proposed underground cables.

23. List of waivers, if any, the sub divider desires from the requirements of these regulations, and justification therefore.

24. The preliminary Plat shall be accompanied by a vicinity map drawn to show the relation of the proposed subdivision to the adjacent properties and to the general surrounding area. The vicinity map shall show all the area within two thousand (2,000) feet of any property line of the proposed subdivision. Such vicinity map will be shown on a U.S.G.S. map at a scale of approximately one (1) inch to 24,000.

25. If the preliminary Plat submitted covers only part of the sub divider's entire holding, then the applicant shall submit an outline of the platted area, together with its road system and an indication of the future probable road system of the remaining portion of the tract.

F. Planning Standards, "Evaluation Considerations"

1. Whether land is unsuitable for subdivision or development due to flooding, improper drainage, steep slopes, rock formations, adverse earth formations or topography, utility easements or other features which will reasonably be harmful to the safety, health, and general welfare of the present or future inhabitants of the subdivision and/or its surrounding areas.

2. Whether the proposal includes due regard for the preservation and protection of existing features, trees, scenic points, brooks, streams, wetlands, rock outcroppings, water bodies, deer yards and other wildlife habitat, and other natural and historical resources.

3. Whether the proposal includes sufficient open space for active and passive recreation.

4. Whether the proposal includes adequate provision for the control of runoff and erosion during and after construction.

5. Whether the proposed development is in compliance with the Comprehensive Plan, Zoning Ordinance and any other By-Laws then in effect.

6. Whether any portion of the proposed development is located in a flood plain.

7. Whether the proposed development is compatible with surrounding properties.

8. Whether the site is suitable for the proposed density.

9. Whether the proposal contains adequate provision for pedestrian traffic in terms of safety, convenience, access to points of destination and attractiveness.

10. Whether the proposed development when viewed in the context of other developments in the town, will place an unreasonable burden on the ability of local governmental units to provide municipal or governmental services and facilities.

11. Whether there is sufficient water available for the reasonably foreseeable needs of the proposed development.

12. Whether the proposed development will cause unreasonable highway congestion or unsafe conditions with respect to the use of roads and highways in the Town.

13. Whether the proposed development will cause a significant increase in visual, air, noise or water pollution.

G. The following waiver has been requested:

1. Lot 2 – 100-foot building envelope setback to the Class III wetlands.

The Board recognizes that this request was modified to a variance request at the hearing in conformance with the 2003 Zoning Regulations.

H. The variance request is submitted for §III(V) of the Underhill Zoning Regulations: "No structure for human habitation...will be permitted within 100 feet of the streambank or any watercourse."

I. The variance requests require review under 24 V.S.A. §4469:

1. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

2. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

3. Unnecessary hardship has not been created by the appellant.

4. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property,

reduce access to renewable energy resources, or be detrimental to the public welfare.

5. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

J. The Board recognizes that the proposed road is closer than 100 feet to the wetlands on the property. Erosion prevention and sediment control plans have been submitted to address protection measures for the wetlands during construction.

III. CONCLUSIONS

Applicable Regulation Standards

Application Submission Requirements, "Preliminary Plat for Subdivisions" [as noted above in Section II (C)] – The Board finds that the application fulfills requirements (1), (2), (5), (9), (10), (12) through (14), (17), (18), and (23) through (25). The Board also finds that requirements (19), (20)(b), and (21) are not applicable to the proposed plan.

A. Requirement #3 - The Board finds that the preliminary survey is missing the wetlands, and that the preliminary survey and engineering plans are missing the 1500-foot elevation limit (see Section IV).
B. Requirement #4 – The Board finds that the preliminary survey is missing the wetland buffers (see Section IV).
C. Requirement #6 – The Board finds that the preliminary plans (survey and engineering drawings) do not show the zoning district boundary, and that the preliminary survey does not contain the zoning district information (see Section IV).
D. Requirement #7 – The Board finds that the plans do not contain underground utility locations (see Section IV).
E. Requirement #8 - The Board finds that a proposed road name has not been submitted (see Section IV).
F. Requirement #11 – The Board finds that the north orientation basis is missing on the engineering plan and that the label for the building envelope is missing in the Legend on Drawing S2 (see Section IV).
G. Requirement #15 – The Board finds that stormwater plans have not been submitted (see *Planning Standards, "Evaluation Considerations"* and Section IV).
H. Requirement #16 – The Board finds that design details for the proposed culverts are missing from the plans (see Section IV).
I. Requirement #20 – The Board finds that approval of the proposed road and driveways is the jurisdiction of the Selectboard, and that a statement indicating the way in which the proposed development relates to the 2010 Town Plan has not been submitted (see Section IV).
J. Requirement #22 – The Board finds that the location of underground utilities has not been shown on the preliminary plans, although the Applicants' consultant indicated at the hearing that they would follow the proposed road after coming off of the existing power pole near Lot 2 (see Section IV).

Planning Standards, "Evaluation Considerations" [as noted above in Section II (F)] – The Board finds that the application fulfills requirements (3) and (6) through (13).

A. Standard #1 - The Board finds that there are questions remaining regarding the suitability for the development of Lot 2 (see Section IV).
B. Standard #2 – The Board finds that the plan does not comply with the requirement to include due regard for the preservation and protection of existing wetlands on Lot 2 (see Section IV).
C. Standard #4 – The Board finds that the proposal as presented at the preliminary hearing does not provide convincing evidence of adequate provision for stormwater runoff during and after construction (see Section IV).
D. Standard #5 – The Board finds that the building envelope on Lot 2 does not meet the 200-foot front setback requirements from Pleasant Valley Road and the proposed road, nor do the building envelopes on Lots 3-5 meet the 200-foot front setback requirement to the proposed road and right-of-way (see Section IV).

Variance

A. The Board finds that the request for a 100-foot variance for the Lot 2 building envelope setback to the existing Class III wetlands meets the statutory criteria as a letter from the State Wetlands Office indicates that the Class III wetlands provide no significant function for the protection of groundwater or wildlife habitat.

IV. DECISION AND FINAL HEARING REQUIREMENTS

Based upon the findings above, and subject to the final hearing requirements below, the Development Review Board (Charlie Van Winkle, Penny Miller, Chuck Brooks, and Matt Chapek voting in favor; Will Towle did not cast a vote) grants preliminary approval for the 5-lot subdivision as presented at the preliminary hearing.

Additional Final Hearing Application Requirements

1. The survey shall be revised to include the locations of wetlands and wetland buffers, the 1500-foot elevation limit, the zoning district boundaries and information, underground utilities location(s), and building envelopes.
2. The engineering drawings shall be revised to remove bearings and to show the 1500-foot elevation limit, zoning district boundaries, underground utilities location(s), and the north orientation basis used. Drawing S2 shall be revised to include the label for building envelopes in the Legend.
3. All building envelopes shall be revised to comply with the 200-foot setback requirement from all roads/rights-of-way.
4. The proposed road name shall be submitted for review by the Selectboard prior to submission of a final hearing application. Parcel codes will be provided by the Zoning Administrator and shall appear on the final plans.
5. Stormwater plans shall be submitted with the final hearing application package.
6. Culvert design details shall be submitted with the final hearing application package.

7. A statement detailing how the proposed subdivision relates to the 2010 Town Plan shall be submitted with the final application package.
8. Evidence of submission to the State for all required permits shall be submitted with the final hearing application package.

Dated at Underhill, Vermont this 17 day of NOVEMBER, 2011.

Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental Division of Superior Court by an interested person who participated in the proceedings before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. §4471.