

TOWN OF UNDERHILL
APPLICATION OF DAVID AND JANET ELY FOR SUBDIVISION
FINAL HEARING FINDINGS AND DECISION

In re: David and Janet Ely
14 Moose Run
Underhill, VT 05489

Docket No. DRB-07-18: David Ely

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns David Ely's final hearing application for a 2-Lot subdivision permit for property located at 14 Moose Run in Underhill, VT.

1. On January 17, 2008, David Ely filed a final application for subdivision for the project, which included engineering drawings, a survey, road design and profile plans, a proposed Shared Driveway Maintenance Agreement, proposed septic easement deed language, a copy of the letter from the Chittenden East Supervisory Union #12, a copy of the letter from the Underhill Jericho Fire Department, a copy of the Project Review Sheet from the State of Vermont, a copy of the State wastewater system and potable water supply permit #WW-4-2987, a copy of the completed Subdivision Checklist: Final Hearing, and Proposed Findings of Fact.
2. On January 23, 2008, a copy of the notice of a final hearing was mailed to the applicant, David Ely, 14 Moose Run, Underhill, VT, 05489. A copy of the notice of final hearing was mailed via certified mail to the following owners of properties adjoining the property subject to the application:
 - a. Suhadolc, P.O. Box 192, Underhill Center, VT 05490
 - b. Frisbie, P.O. Box 342, Jericho, VT 05455
 - c. Potvin, P.O. Box 135, Underhill Center, VT 05490
 - d. Martin, P.O. Box 147, Underhill Center, VT 05490
 - e. Linda Seavey, UVM, 109 S. Prospect St., Rm. 201, Burlington, VT 05405-0016
 - f. Russell, P.O. Box 218, Jericho, VT 05465
3. On January 30, 2008, notice of the final hearing was published in Seven Days. Additional notice of the final hearing was published in the Mountain Gazette on February 7, 2008.
4. By February 1, 2008, notice of the final hearing on the proposed Ely subdivision was posted at the following places:
 - a. The Underhill Town Clerk's office;
 - b. The Underhill Center Post Office;
 - c. The Underhill Flats Post Office;
 - d. The Town of Underhill website.
5. The final hearing was scheduled for 6:30 PM on February 18, 2008.

6. Present at the final hearing were the following members of the Development Review Board:

- Scott Tobin, Chair
- Stan Hamlet
- Matt Chapek
- Peter Seybolt

Zoning Administrator Kari Papelbon also attended the meeting. Board Member Charlie Van Winkle, also in attendance, recused himself from the hearing.

7. At the outset of the hearing, Chairperson Scott Tobin explained the criteria under 24 V.S.A. § 4465 (b) for being considered an “interested party.” Interested parties who spoke at the hearing were:

- David Ely, 14 Moose Run, Underhill, VT 05489
- Justin Willis, Willis Design Associates, Inc., P.O. Box 98, Richmond, VT 05477

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

1. A staff report sent by Zoning Administrator Papelbon to the Development Review Board;
2. Plans prepared by Justin Willis of Willis Design Associates, Inc. for David and Janet Ely (Sheets S1, S2, and D1 revised 1-4-08);
3. A copy of the survey prepared by Stuart J. Morrow for David and Janet Ely (dated December 2007);
4. A copy of the Road Design and Profile plans prepared by Trafton Engineering Associates, LLC for David and Janet Ely (Road Design Plan with Details revised 1-11-08, Road & Profile Plan dated 12-15-07);
5. A copy of the proposed septic easement language to be included in the deeds;
6. A copy of the proposed Shared Driveway Maintenance Agreement;
7. A copy of the letter from the Chittenden East Supervisory Union #12 dated 12-11-07;
8. A copy of the letter from the Underhill Jericho Fire Department dated 12-21-07;
9. A copy of the Project Review Sheet from the State of Vermont;
10. A copy of the wastewater system and potable water supply permit from the State of Vermont, WW-4-2987 (dated 1-17-08);
11. A copy of the Winter Stabilization chapter of the Low Risk Site Handbook for Erosion Prevention and Sediment Control;
12. A copy of the Proposed Findings of Fact;
13. A copy of the completed Subdivision Checklist: Final Hearing
14. A copy of the waiver request submitted by David Ely dated 2-18-08.

These exhibits and sketch plan information are available in the David Ely, MO014 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:

1. The building envelope for the proposed Lot 2 has been revised. This revised building envelope does not extend beyond the limits of the wetland delineation. Should the future owner of Lot 2 wish to build beyond the revised building envelope, a complete wetland delineation and hearing before the Development Review Board will be required.
2. A septic easement has been proposed to access the current septic area for the house on Lot 1. A replacement septic area has been identified on Lot 1, but a replacement septic area for Lot 2 is not required per the new State wastewater rules.
3. The septic easement deed shall include a provision that it runs with the land.
4. Lot 2 and the Frisbie lot (MO010) will share a driveway. Applicant has submitted a proposed Shared Driveway Maintenance Agreement.
5. The survey shall be revised to include the correct spelling of abutter names, the new property IDs (MO012 for Lot 2 and MO010 for the Frisbie lot), the zoning regulations applicable to the Scenic Preservation zoning district, and the correct building envelope (as depicted on the engineering drawing revised 1-4-08).
6. The Road Design and Profile plans show 15-inch culverts. All culverts shall be 18 inches wide as per the Underhill Road Policy.
7. A wastewater permit, WW-4-2987, has been obtained.
8. A request to waive the following requirement of the Underhill Subdivision Regulations has been submitted by the Applicant:

“There shall be submitted to the [Development Review Board] with the final plat the following supporting documents...A certificate from an engineer or other consultant approved by the Town as to the satisfactory completion of all improvements required by the [Board], or, in lieu thereof, a performance bond to secure completion of such improvements and their maintenance for a period of two years, with a certificate from the Board of Selectmen that it is satisfied either with the bonding or surety company, or with security furnished by the sub divider.”

9. The Board finds that public health, safety, and general welfare will not be affected by the waiver request in Finding #8 because the driveway will serve only Lot 2 and the Frisbie lot as depicted on the plans, the driveway shall be constructed according to the approved plans with the appropriate erosion controls in place prior to construction, a letter from an engineer certifying the construction of the driveway according to the approved plans will be required, and a Shared Driveway Maintenance Agreement has been submitted for the upkeep of the shared driveway. Therefore, the Board accepts the waiver request with the condition that prior to occupancy an engineer will supply a letter certifying that the

driveway has been constructed according to the approved plans (see 11d and Section III, Condition 2 below).

10. A copy of the “Winter Stabilization” chapter of the Vermont Department of Environmental Conservation Water Quality Division – Stormwater Section’s publication, *The Low Risk Site Handbook for Erosion Prevention and Sediment Control* has been submitted to the Applicant should he or future lot owners wish to commence construction prior to April 15.
11. The Board finds that the following conditions apply to this subdivision:
 - a. Final approval of this subdivision is conditioned upon approval of the driveway design by the Selectboard.
 - b. The survey shall be revised to include the correct spelling of abutter names, the new property IDs (MO012 for Lot 2 and MO010 for the Frisbie lot), the zoning regulations applicable to the Scenic Preservation zoning district, and the correct building envelope (as depicted on the engineering drawing revised 1-4-08).
 - c. Final approval of this subdivision is granted upon filing of the final subdivision survey in the Underhill Land Records. No transfer or sale of property may occur prior to recording the final plat and all applicable permits in the Town of Underhill Land Records.
 - d. Applicant must adhere to all State permit requirements including, but not limited to, wastewater and potable water.
 - e. The proposed driveway to Lot 2 and the shared driveway improvements shall be constructed per the approved plan and in compliance with the Town of Underhill Road Policy. The designer/engineer must perform an inspection during and upon completion of construction of these improvements to make sure that all the design elements, including but not limited to the drainage plan, have been constructed as designed. Prior to occupancy, a letter from an engineer certifying that the driveway has been constructed according to the submitted plans shall be submitted to the Zoning Administrator. Failure to provide such certification will result in a violation of this subdivision condition and will be enforced against the current landowner or subsequent heirs, successors and assigns by the Zoning Administrator.
 - f. A shared driveway maintenance agreement for maintenance of any shared traveled portion of the proposed driveway must be submitted to the Zoning Administrator for approval before filing of the final Mylar. The driveway agreement must include a provision that it runs with the land and this language must be included in the deeds to Lot 2 and the Frisbie lot (MO010).
 - g. The Mylars (engineering and survey) shall include the new property code for Lot 2 (MO012) and the Frisbie lot (MO010).
 - h. All building envelopes, driveway, and septic areas must be staked out by the designer/surveyor/engineer prior to any construction, and off-set stakes must be held in place until completion of construction and inspection by the Zoning Administrator or her agent for conformance with the approved plans. The designer/engineer must certify by letter to the Zoning Administrator that the

septic system for Lot 2 has been constructed as designed, with the letter filed in the zoning records for the Town of Underhill.

- i. Draft deed language for the easement over Lot 2 for the Lot 1 septic area must be submitted to the Zoning Administrator for approval before filing of the final Mylar. The Agreement must include a provision that it runs with the land and the Agreement must be included in any deeds to Lots 1 and 2.
- j. Prior to recording the final plan, the applicant shall submit a copy of the site plan in digital format. The format of the digital information shall require approval of the Zoning Administrator.
- k. Lot 2 shall post its 911 code prior to issuance of any building permit.
- l. All subdivision fees must be paid in full to the Zoning Administrator before filing of the final survey with the Town Clerk.

III. DECISION AND CONDITIONS

Based upon the findings above, and subject to any of the conditions set forth below, the Development Review Board grants final approval for the subdivision as presented at the final hearing.

Conditions for Subdivision

1. Per the Underhill Subdivision Regulations, final approval of the subdivision is granted upon filing of the final subdivision survey and any other documents as required herein in the Underhill Land Records.
2. The survey shall be revised to include the correct spelling of abutter names, the new property IDs (MO012 for Lot 2 and MO010 for the Frisbie lot), the zoning regulations applicable to the Scenic Preservation zoning district, and the correct building envelope (as depicted on the engineering drawing revised 1-4-08).
3. The proposed driveway to Lot 2 and the shared driveway improvements shall be constructed per the approved plan and in compliance with the Town of Underhill Road Policy. The designer/engineer must perform an inspection during and upon completion of construction of these improvements to make sure that all the design elements, including but not limited to the drainage plan, have been constructed as designed. Prior to occupancy, a letter from an engineer certifying that the driveway has been constructed according to the submitted plans shall be submitted to the Zoning Administrator. Failure to provide such certification will result in a violation of this subdivision condition and will be enforced against the current landowner or subsequent heirs, successors and assigns by the Zoning Administrator.
4. A shared driveway maintenance agreement for maintenance of any shared traveled portion of the proposed driveway must be submitted to the Zoning Administrator for approval before filing of the final Mylar. The driveway agreement must include a provision that it runs with the land and this language must be included in the deeds to Lot 2 and the Frisbie lot (MO010).

5. The Board recommends that the Selectboard grant approval for the proposed driveway. On February 21, 2008, the Selectboard granted approval for the driveway with the condition that the proposed 15-inch culverts be upgraded to 18-inch culverts per the Town of Underhill Road Policy.
6. The Mylars (engineering and survey) shall include the new property code for Lot 2 (MO012) and the Frisbie lot (MO010).
7. All building envelopes, driveway, and septic areas must be staked out by the designer/surveyor/engineer prior to any construction, and off-set stakes must be held in place until completion of construction and inspection by the Zoning Administrator or her agent for conformance with the approved plans. The designer/engineer shall certify by letter to the Zoning Administrator that the septic system for Lot 2 has been constructed as designed, with the letter filed in the zoning records for the Town of Underhill.
8. Applicant must adhere to all State permit requirements including, but not limited to, wastewater and potable water.
9. Draft deed language for the easement over Lot 2 for the Lot 1 septic area must be submitted to the Zoning Administrator for approval before filing of the final Mylar. The Agreement must include a provision that it runs with the land and the Agreement must be included in any deeds to Lots 1 and 2.
10. Prior to recording the final plan, the applicant shall submit a copy of the site plan in digital format. The format of the digital information shall require approval of the Zoning Administrator.
11. Lot 2 shall post its 911 code prior to issuance of any building permit.
12. All subdivision fees must be paid in full to the Zoning Administrator before filing of the final survey with the Town Clerk.

The subdivision as depicted on the final plans with the above stated conditions is approved.

Dated at Underhill, Vermont this _____ day of _____, 2008.

Scott Tobin, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental 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 and Rule 5 (b) of the Vermont Rules for Environmental Court Proceedings. No documents shall be recorded until _____, when the 30-day appeal period has expired.