

Town of Underhill
Development Review Board Minutes
Chairperson Charles Van Winkle

April 4, 2011

Board Members Present:

Will Towle
Matt Chapek
Penny Miller
Peter Seybolt
Scott Tobin
Charles Van Winkle, Chair

Also Present:

Kari Papelbon, Zoning & Planning Administrator

6:32 PM: Chairperson Charles Van Winkle called the Elena Shapiro 2-lot subdivision Sketch Plan meeting to order.

Applicant Present:

Elena Shapiro
647 Poker Hill Rd.
Underhill, VT 05489

Consultant Present:

Peter Lazorchak
McCain Consulting, Inc.
93 South Main St., Ste. 1
Waterbury, VT 05676

Identifier:	Contents:
ZA-1	Elena Shapiro's Application for Subdivision: Sketch Plan (dated 3-15-11)
ZA-2	A copy of the completed Subdivision Checklist: Sketch Plan
ZA-3	A copy of the site plan prepared by Peter Lazorchak of McCain Consulting, Inc. (Sheet 1 of 3 dated 3-10-11)
ZA-4	A copy of the mapped Class II wetlands and mapped deer wintering areas
ZA-5	A copy of the well yield logs
ZA-6	A copy of the Response to Article VIII
ZA-7	A copy of the Memorandum from Nicole MacHarg of McCain Consulting, Inc. to the Underhill Town Clerk and CCRPC (dated 3-16-11)

ZA-8	A copy of the completed "Routine Wetland Determination-Data Form" from the 1987 Army Corps of Engineers Wetland Determination Manual (dated 5-18-10)
ZA-9	A copy of the Vermont Wetland Permit/Determination Application
ZA-10	A copy of the letter to Elena Shapiro fro District Wetlands Ecologist Julie Foley (dated 3-2-11)
ZA-11	A copy of the tax map for PH647

- Chairperson Van Winkle began the meeting by explaining the procedure for sketch plan review.
- Peter Lazorchak, Consultant for Elena Shapiro, provided an overview of the plans. The proposal is for a 2-lot subdivision with one new building lot of 6.8 acres, to be accessed off of Bill Cook Road. The existing house will retain 4.1 acres. This subdivision had been denied under the old (2003 Zoning and 2002 Subdivision) regulations partially due to requests for wetland setback variance requests and several encumbrances on the proposed Lot 1. With the changes to the wetland setback distance in the effective (2011) regulations, a variance is no longer required as the building envelope is outside of the 50-foot buffer area. Additionally, the leachfield construction easement over Lot 1 to access the septic area on Lot 2 was reduced to a width of 25 feet (from 50 feet).
- Board Member Peter Seybolt asked if the construction easement was for a temporary road. Mr. Lazorchak stated that it was and while it would not necessarily be a road, it will need to be stable enough to support construction trucks. The area would be restored after the mound system is completed. Board Member Will Towle asked whether the easement would exist for maintenance and repair of the mound system on Lot 2. Mr. Lazorchak stated that it would, but that the construction "roadway" would not be permanent. Board Member Penny Miller asked if the legal documents for the easement would include restoration language. Mr. Lazorchak stated that they would.
- Mr. Lazorchak explained that due to the presence of wetlands, which wrap around the proposed house site on Lot 2, there was no other workable land to develop on the property according to McCain Consulting's wetland biologist. The field was mostly, if not all, wetland according to the wetland biologist. Board Member Towle asked for clarification of where the biologist looked for wetlands. Mr. Lazorchak showed on a tax map where the field studies were conducted (most of land was included).
- Board Member Towle asked if the open areas shown on the tax map were wet meadow areas. Mr. Lazorchak replied that they were, that he had begun to dig test pits and recognized a soil layer as being potentially wetland. He added that State Wetland Ecologist Julie Foley had visited the site. A Wetlands Permit application has been submitted for the proposed driveway disturbance of the 50-foot wetland buffer.

- Board Member Towle asked if a septic system could be sited completely on Lot 2 because the concern is for unduly burdening Lot 1. Mr. Lazorchak explained that no alternate locations on site look suitable for septic, and that the presence of a stream on the property creates a 100-foot undisturbed area for the State where septic systems could not be located. Mr. Lazorchak further stated that the only spot that was not researched was near Bill Cook Road adjacent to the stream, which will be researched further. Additionally, Mr. Lazorchak stated that the proposed location for a power easement over Lot 1 (as shown on the site plan) is expensive due to the fact that it is secondary power. He stated that his understanding, after speaking to the electric company, is that there is primary power in the northwestern side of the property. An alternate location for the power, possibly adjacent to the road, will be researched.
- Board Member Seybolt asked if there was a problem with the power crossing Bill Cook Road. Mr. Lazorchak explained that Regis Parent, neighbor across Bill Cook Road where the power pole is located, would have to grant an easement. Mr. Lazorchak added that his impression was that Mr. Parent did not want to dig up his front yard.
- Chairperson Van Winkle asked whether the power would be overhead or underground. Mr. Lazorchak stated that it would be underground, unless it was cost-effective and allowed to be overhead. Once the power was on the property it would be underground.
- Board Member Towle asked whether a house could be located on the other side of the stream closer to Bill Cook Road. Board Member Seybolt explained that he thought there was power along Bill Cook that could be brought to the lot from the northeast. Mr. Lazorchak stated that a representative from the electric co-op stated that primary power crosses the stream near the McPeters property. Ms. Shapiro indicated that the tubes can be seen on her lot. Mr. Lazorchak stated that this would have to be verified, but obtaining power from the pole on the Parent lot is not currently being proposed.
- Board Member Seybolt stated that one of the objections expressed by the DRB at the previous hearings included the fact that all of the easements encumbered Lot 1 and might cause difficulties for future development on that lot. If an alternate location for the power can be pursued, that would relieve the power easement concern.
- Board Member Towle stated that his impression from the hearing Regis Parent attended was that he was not entirely opposed to granting an easement, but that there might be costs associated with such. A very brief discussion ensued, including a summary of the DRB's concerns with easements.

- Board Member Miller asked whether the northeast corner of the property would be researched for power and septic for Lot 2. Mr. Lazorchak stated he would be reviewing the land for power options, but that he was not optimistic for septic capacity in that area as the property gets wetter.
- Board Member Towle stated that he would like to hear what Mr. Lazorchak started to discuss regarding the wetlands. Mr. Lazorchak stated that Julie Foley visited the site, the application has been submitted, the notification for the wetlands review has been completed, and that the public comment period would begin soon. He added that if the subdivision review process moved forward, the Wetlands Permit would probably be issued before the preliminary hearing. Board Member Towle asked if the permit was primarily for the driveway, to which Mr. Lazorchak replied that it was. Mr. Lazorchak further explained that he had worked with the Army Corps of Engineers for the combination of the stream crossing and wetlands impacts.
- Board Member Miller asked if there was more of a concern with a driveway crossing the wetland than crossing a stream. Mr. Lazorchak stated that he did not think so, but that it might be more of a regulatory concern on a case-by-case basis.
- Mr. Lazorchak asked for Board feedback on the proposed subdivision with regard to compliance with the 2011 Unified Land Use and Development Regulations. It was discussed that the proposed septic lines were, at one point, contained on Lot 2 until the new Wetland Rules became effective and the class changed to Class II. As such, Julie Foley required development to be outside of the 50-foot buffer, including the septic lines.
- Board Member Seybolt asked whether it was impossible to have a utility easement from Bill Cook Road rather in the proposed location across Lot 1. Mr. Lazorchak stated that such might be cost-prohibitive due to the stream and wetlands. Board Member Towle asked if there was any reason the easement for the force main could be used to access the septic location for construction, and provided his concerns for the project (small developable area, encumbrances on all sides). Discussion of the easements ensued.
- Chairperson Van Winkle asked whether the proposed driveway access could be used for the Lot 2 septic construction. Board Member Miller asked if the reason that Lot 2 was 4 acres instead of 3 was due to a restriction in Elena's deed. Mr. Lazorchak confirmed this. Board Member Miller suggested that if the proposed common lot line could be moved to include the septic system on Lot 2 that such would be preferable, but the acreage restriction prevents the line from moving. Mr. Lazorchak confirmed such and explained the plans to keep the lawn area for Lot 1 as well as the acreage for Lot 2.
- Board Member Scott Tobin asked whether the configuration of Lot 2 could be changed so that the force main would not require an easement onto Lot 1, while still keeping Lot 2 at 4 acres. Mr. Lazorchak stated that such was

possible and would be explored. ZA Papelbon asked if moving the line would create a setback issue for the replacement septic area on Lot 1. Mr. Lazorchak stated that it might, but there might be a requirement for an easement or language stating that no disturbance could occur 25 feet downhill of the proposed mound.

- Board Member Matt Chapek asked whether septic capacity existed in the upper corner of Lot 1. Mr. Lazorchak explained that there was not due to the presence of wetlands, and test pits were dug that did not indicate septic feasibility in that area.
- Board Member Seybolt stated that the proposed plan was basically the same as the previously-submitted plan. Mr. Lazorchak stated that not much had changed, although they will be looking at alternate utility options. He added that the preference for the proposed septic construction easement was due to the fact that it is currently open lawn. Ms. Shapiro stated that there are also a lot of rocks in the wooded area. Mr. Lazorchak suggested making the easement temporary and letting future lot owners handle access for replacement purposes. It was decided that such was not a preferred option.
- Board Member Towle asked if there was a reason why the easement for the force main could not be used for constructing the mound. Mr. Lazorchak stated that running heavy equipment over the force main pipes is not necessarily a good idea.
- ZA Papelbon asked if the septic system had to be 100 feet from the stream per the State's rules. Mr. Lazorchak stated that it had to be located 50 feet from the stream, and that a wastewater permit had been obtained. ZA Papelbon asked whether the replacement septic system on Lot 1 was already permitted or if it could be moved. Mr. Lazorchak stated that it was previously permitted with the original wastewater permit.
- Chairperson Van Winkle asked for public comment.
- Suzanne Provost, 369 Poker Hill Road, stated that she thought the permit had already been approved and was curious what was happening. Chairperson Van Winkle provided a summary to date and asked Mr. Lazorchak if he had further comments.
- Mr. Lazorchak asked for more information regarding the irregular lot shape. Board Member Seybolt stated that the irregular lot line deals with one easement request and that the other two easements might be extinguished with an alternate plan for power. ZA Papelbon stated that the new regulations require justification be submitted for proposed irregular lot lines. Mr. Lazorchak asked whether the new regulations discuss encumbrances. Chairperson Van Winkle stated that the planning standards refer to such, and Board Member Seybolt added that the regulations address encumbrances in a general way.

- Ms. Provost asked where the power would be located. Mr. Lazorchak showed the proposed location on the site plan.
- Board Member Towle asked whether the power could follow the septic construction easement. Chairperson Van Winkle stated that it was not necessarily a good idea, but Mr. Lazorchak stated that it is not prohibited and could possibly follow along Poker Hill Road within the Town right-of-way. Board Member Towle stated his opinion that landowners do not necessarily understand easements and expressed support for Board Member Miller's suggestion of changing the lot line.

7:25 PM: Chairperson Van Winkle asked if there were further comments. There were none. Chairperson Van Winkle asked if the Board had enough information to make a decision on whether the sketch plan fulfilled the application requirements. Chairperson Van Winkle stated that the Board needed to decide whether the subdivision would be classified as major or minor, and whether the sketch plan conforms to the rules. The following changes were discussed:

1. Contain the power and septic entirely on Lot 2 if at all possible.
2. Bring the power across Poker Hill Road and follow the construction easement for the septic system.
3. Revise the Wetlands Permit to locate the force main on Lot 2. If that is not possible, revise the proposed Lot 2 property line.

7:30 PM: Chairperson Van Winkle asked again whether the Board had enough information to make a decision on the application. The Board indicated that they did. Board Member Peter Seybolt made a motion, seconded by Board Member Matt Chapek, to enter a deliberative session. The motion was passed by all Board Members present. Chairperson Van Winkle explained the next step in the process.

Peter Lazorchak, Elena Shapiro, and Suzanne Provost left at this point.

8:42 PM: By majority consensus, the Board moved into open session. End of meeting.

These minutes of the 4-4-11 meeting of the DRB were accepted

This _____ day of _____, 2011.

Chairperson Charles Van Winkle

These minutes are subject to correction by the Underhill Development Review Board. Changes, if any, will be recorded in the minutes of the meeting of the DRB.