

TOWN OF UNDERHILL  
APPLICATION OF MICHAEL TATRO  
FOR A 3-LOT SUBDIVISION  
PRELIMINARY FINDINGS AND DECISION

In re: Michael Tatro  
535 Main St.  
Dalton, MA 01226

Docket No. DRB-08-11: Michael Tatro

**I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns Michael Tatro's preliminary hearing application for a 3-Lot subdivision of property located at 38 Mullen Road in Underhill, VT.

1. On February 20, 2009, Gunner McCain filed an application for subdivision on behalf of Michael Tatro for the project. A copy of the application and site plan are available at the Underhill Town Hall. A sketch plan hearing was held on January 5, 2009 and accepted.
2. On March 5, 2009, notice of a public site visit and hearing was published in the Mountain Gazette.
3. On February 25, 2009, a copy of the notice of a public site visit and hearing was mailed to the applicant, Michael Tatro, 535 Main St., Dalton, MA 01226. A copy of the notice of public site visit was mailed to the following owners of properties adjoining the property subject to the application:
  - a. Greenia, P.O. Box 392, Underhill, VT 05489
  - b. Kelliher, 37 Mullen Rd., Underhill, VT 05489
  - c. Weber, P.O. Box 25, Underhill, VT 05489
  - d. Lang, 238 River Rd., Underhill, VT 05489
  - e. Christie, 50 Mullen Rd., Underhill, VT 05489
  - f. Baron/Dickgiesser, 480 Poker Hill Rd., Underhill, VT 05489
4. By March 4, 2009, notice of the site visit and the preliminary hearing on the proposed Tatro preliminary subdivision were posted at the following places:
  - a. The property to be developed, MU038;
  - b. The Underhill Town Clerk's office;
  - c. The Underhill Center Post Office;
  - d. The Underhill Flats Post Office;
  - e. The Town of Underhill website.
5. A site visit was held at the property on Saturday, March 21, 2009. Present the site visit were:
  - Chuck Brooks

- Matt Chapek
- Stan Hamlet
- Penny Miller
- Deb Shannon
- Scott Tobin, Chair
- Charlie Van Winkle

Zoning Administrator Kari Papelbon and Gunner McCain (consultant for Michael Tatro) also attended the site visit.

6. The preliminary hearing was scheduled for 6:30 PM on March 23, 2009.
7. Present at the preliminary hearing were the following members of the Development Review Board:

- Chuck Brooks
- Matt Chapek
- Penny Miller
- Deb Shannon
- Peter Seybolt
- Charlie Van Winkle
- Stan Hamlet
- Scott Tobin, Chair

Kari Papelbon, Zoning Administrator also attended the meeting.

8. 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:

- Gunner McCain, McCain Consulting, 93 South Main Street, Waterbury, VT 05676
- Julie Kelliher, 37 Mullen Road, Underhill, VT
- Cindy Cross-Greenia, 34 Mullen Road, Underhill, VT (mailing address in 3 above)
- Michael Tatro, 38 Mullen Road, Underhill, VT (mailing address in 3 above)

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

- a. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board, Michael Tatro, and Gunner McCain of McCain Consulting;
- b. A copy of Michael Tatro’s Application for Subdivision: Preliminary;
- c. A copy of the completed Subdivision Checklist: Preliminary;
- d. Plans prepared by Gunner McCain of McCain Consulting for Michael Tatro (Sheets S-1 and SW-1, revised 2-27-09; Sheets S-2, S-3, and SW-2, dated 1-22-09);
- e. A copy of the survey by Keith R. Van Iderstine, L.S. of McCain Consulting for Michael Tatro (dated 2-27-09);
- f. A copy of FIRM panel 5000420010B;

- g. A copy of the draft Proposed Findings of Fact;
- h. A copy of the School Impact Questionnaire from James Massingham, Chittenden East Supervisory District Co-Superintendent (dated 2-6-09);
- i. A copy of the letter to Chief Randy Clark of the Underhill Jericho Fire Department (dated 2-5-09);
- j. A copy of the draft Private Roadway Agreement;
- k. A copy of the parcel map for MU038;
- l. Email from Gunner McCain dated 3-23-09 with a letter dated 3-13-09 and specifications from George McCain regarding the existing bridge on the Tatro property;
- m. Email from Michael Weisel, Town Engineer, dated 3-6-09 with his analysis of the plans;
- n. Email from Gunner McCain to ZA Papelbon and copied to the DRB dated 3-6-09 in response to receiving Town Engineer Weisel's analysis of the plans;
- o. Email from Chris Baron, 480 Poker Hill Road, to ZA Papelbon regarding the Tatro subdivision;
- p. "Long and Winding Ancient Roads Discussion Comes to End: Important Deadlines Loom in Future Years" article by Trevor Lashua from VLCT News, July 2006.

These exhibits are available in the Michael Tatro, MU038 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 on the preliminary plat submission requirements as delineated on pages 7-9 of the Underhill Subdivision Regulations, "Preliminary Plat for Subdivisions:"

#### **A. Submission Requirements**

1. The Board finds that the preliminary application satisfies the requirement as the proposed subdivision and Town are identified on the plans.
2. The Board finds that the preliminary application satisfies the requirement as the record owner's and designer's information is contained on the plans.
3. The Board finds that the preliminary application satisfies the requirement as the acreage, property lines, existing easements, existing buildings, streams, and wetlands are shown on the plans.
4. The Board finds that the preliminary application satisfies the requirement as the wetland areas are depicted on the plans.

5. The Board finds that the preliminary application satisfies the requirement as the names of adjacent landowners are shown on the plans.
6. The Board finds that the preliminary application satisfies the requirement as the applicable zoning regulations are contained in the plans. This property is entirely within one zoning district.
7. The Board finds that the preliminary application satisfies the requirement as the location and size of septic systems, wells, and proposed culverts are shown on the plans.
8. The Board finds that the plans do not depict the name of the private road or the curve radii for the private road required in the Underhill Road Policy. The locations of utility easements are not shown on the plans. These are not material errors that would prevent the application from receiving preliminary plat approval from the Board. The name of the private road, the curve radii, and the utility easements shall appear on the final plans.
9. The Board finds that the preliminary application satisfies the requirement as the contours are depicted on the plans.
10. The Board finds that the preliminary application satisfies the requirement as cross-sections for the road and driveways are contained in the plans.
11. The Board finds that the preliminary application satisfies the requirement as the date, north point and orientation, scale, and legend are contained on the plans.
12. The Board finds that the preliminary application meets the requirement as a survey by a licensed surveyor has been submitted.
13. The Board finds that the preliminary application satisfies the requirement as drilled wells are contained on the plans.
14. The Board finds that the preliminary application satisfies the requirement as septic system locations and details are contained in the plans.
15. The Board finds that the plans are missing details for the anti-seep collars and the bioretention pond option. These are not material errors that would prevent the application from receiving preliminary plat approval from the Board. These details shall be included in the final plans. Stormwater plans and details have been submitted for the dry retention pond option.
16. The Board finds that the plans are missing details for proposed culvert headwalls. This is not a material error that would prevent the application from receiving preliminary plat approval from the Board. Such details shall appear on the final plans. Details regarding the structural load bearing capacity of the existing bridge have been submitted. The DRB will make recommendations regarding the road and bridge, to include the addition of guardrails and runner planks to the bridge, to the Selectboard for their approval.
17. The Board finds that the preliminary application satisfies the requirement as the plans contain proposed lot lines and suggested locations of buildings.
18. The Board finds that the site visit conducted March 21, 2009 satisfied the requirement.

19. The Board finds that this requirement is not applicable as no land is to be dedicated to public use.
20. The Board finds that the plans do not show the correct base and fabric widths for the driveways. The Board finds that since the applicant's consultant has indicated that this was an oversight and would extend the base and fabric widths to comply with the Town of Underhill Road Policy, this is not a material error that would prevent the application from receiving preliminary plat approval from the Board. The correct base and fabric widths shall appear on the final plans.
21. The Board finds that the preliminary application satisfies the requirement as proposed buildings are single-family homes and residential outbuildings. No proposed buildings are dedicated for public use.
22. The Board finds that the plans do not show the proposed locations for utilities. This is not a material error that would prevent the application from receiving preliminary plat approval from the Board. All proposed locations for utilities shall be shown on the final plans.
23. The Board finds that this requirement is not applicable as neither waivers nor variances have been requested.
24. The Board finds that the preliminary application satisfies the requirement as the plans contain a vicinity map.
25. The Board finds that the preliminary application satisfies the requirement as the plans show the entire parcel and road.

B. Planning Standards: Evaluation Considerations—Provisional Findings

1. **Suitability for Development:** The Board finds that the land is suitable for development as evidenced by the submitted plans, Sheets S-1 through S-3 and SW-1 and SW-2, prepared by McCain Consulting, Inc. The areas to be developed do not lie in a flood plain and do not contain steep slopes, rock formations, adverse earth formations, or other features that will impair the health, safety, and general welfare of present or future inhabitants of the subdivision or its surrounding areas.
2. **Preservation and Protection of Existing Features:** Buffers will be preserved along the stream and wetlands on the site. No development will occur within 100 feet of these features. There are no mapped deer wintering areas or other critical wildlife habitats in the vicinity of the proposed development as evidenced by the previously submitted GIS map depicting nearby deer wintering areas.
3. **Recreation:** The undeveloped portions of the lots will provide sufficient open space for recreational use by the lot owners.
4. **Runoff and Erosion Control:** The total new disturbed area for the project will be approximately 1.3 acres. Coverage under the Construction General Permit (CGP) is required which calls for such measures as silt fencing, stone-lined ditches, etc. (dependent upon the site).

5. Compliance with the Town Plan, Ordinances, and By-Laws: As evidenced by the plans submitted, the project conforms to the Zoning Regulations, which indicates compliance with the Town Plan as well.
6. Flood Plain: As shown on the attached Flood Insurance Rate Map (FIRM), Panel 5000420010B, the project parcel does not lie in a flood plain.
7. Compatibility with Surrounding Properties: The neighboring properties along Mullen Road contain existing residences. The proposed subdivision is in keeping with the pattern of development that has taken place in this area.
8. Suitability for Density: The plans which have been submitted with the subdivision application demonstrate that the site is suitable for the proposed density.
9. Pedestrian Traffic: Mullen Road is sufficiently wide enough to accommodate diverse forms of transportation including automobile, pedestrian, and bicycle traffic.
10. Provision of Municipal and Governmental Services: Since the proposed development is within an existing developed portion of the town, governmental services including fire protection and police services do not have to be extended to serve the project. Similarly, school bus service is available without the need to modify or extend bus routes.
11. Water Availability: The lots will be served by individual, on-site drilled wells. Drilled wells in the area have proven sufficient to serve single-family homes as evidenced by nearby well yields from the State of Vermont database.
12. Highway Congestion: Mullen Road currently serves other residences. Each new residence is expected to generate 10 vehicle trip ends per day. Site distances at the development road intersection with Mullen Road are sufficient in both directions so that unsafe conditions will not exist. The Board recognizes that approval of the private road and driveways are the jurisdiction of the Selectboard.
13. Visual, Air, Noise, Water Pollution: The proposed residences will be substantially screened from travelers on Mullen Road. Air pollution, including dust from drives and exhaust from heating sources, will not exceed levels generated by typical single-family residences. Similarly, the noise generated by the proposed development will not exceed noise levels generated by single-family residences. Water pollution concerns are addressed by erosion control and wastewater disposal plans.

### **III. DECISION AND ADDITIONAL FINAL HEARING REQUIREMENTS**

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

**Final Hearing Requirements in Addition to the Subdivision Requirements on Pages 9-11 of the Underhill Subdivision Regulations:**

1. A copy of the State Wastewater System and Potable Water Supply Permit shall be submitted to the Zoning Administrator prior to the final hearing. Evidence of submission of an application for all other required State permits, including, but not limited to, stormwater and a Construction General Permit shall be submitted to the Zoning Administrator prior to scheduling the final hearing.
2. A letter from the Underhill-Jericho Fire Department addressing their abilities to provide services to the proposed subdivision shall be submitted prior to scheduling the final hearing.
3. The name for the proposed private road shall be submitted to the Zoning Administrator prior to scheduling the final hearing. New parcel codes will be provided by the Zoning Administrator prior to scheduling the final hearing. The named road and new parcel codes for the lots shall appear on the final plans.
4. All curve radii shall be depicted on the final plans.
5. The locations of utility easements, existing and proposed, shall be shown on the final plans.
6. The details for the anti-seep collars, the bioretention pond option, and culvert headwalls shall be included in the final plans.
7. The correct base and fabric widths for the driveways shall be shown on the final plans.
8. All draft easement deeds, private road maintenance agreements, the shared stormwater infrastructure maintenance agreement, and a draft of the Homeowners Association by-laws/agreement shall be submitted prior to scheduling the final hearing. The Homeowners Association agreement shall include a provision that all certifications and reports on the stormwater infrastructure shall be copied to the Town. The private road maintenance agreement and shared stormwater infrastructure maintenance agreement may be included in the Homeowners Association document.

Dated at Underhill, Vermont this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Scott Tobin, Chair, Development Review Board