TOWN OF UNDERHILL
APPLICATION OF MICHAEL & HOLLY RAINVILLE
AND KEVIN MCKEGNEY
FOR A 2-LOT SUBDIVISION
FINAL FINDINGS AND DECISION

In re: Michael & Holly Rainville
Kevin McKegney
8 Dumas Rd.
Underhill, VT 05489

Docket No. DRB-12-03: Rainville & McKegney

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Michael & Holly Rainville's and Kevin McKegney's's final hearing application for a 2-lot subdivision of property located at 8 Dumas Rd. in Underhill, VT.

A. On August 13, 2012, Michael Rainville filed an application for subdivision on behalf of all Applicants for the project. A copy of the application and additional information are available at the Underhill Town Hall.

B. On August 27, 2012, a copy of the notice of the final hearing was mailed via Certified Mail to the Applicants, Michael & Holly Rainville and Kevin McKegney, 80 Cemetery Rd., Jericho, VT 05465, and to the following owners of properties adjoining the property subject to the application:

1. Holden, P.O. Box 337, Underhill, VT 05489
2. Dyck, 9 Poker Hill Rd., Underhill, VT 05489
3. Kapusta, 6 Dumas Rd., Underhill, VT 05489
4. Gray, 10 Dumas Rd., Underhill, VT 05489
5. Kozlowski, 4 Dumas Rd., Underhill, VT 05489
6. Douglas, 2 Dumas Rd., Underhill, VT 05489
7. Roaring Brook Homeowners Assn., P.O. Box 161, Underhill, VT 05489

C. On August 27, 2012, notice of the final hearing on the proposed Rainville & McKegney subdivision was posted at the following places:

1. The property to be developed, DM008;
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 Town of Underhill website.

D. On August 29, 2012, notice of the final hearing was published in *Seven Days.*

E. The final hearing began at 6:34 PM on September 27, 2012.

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

- Chuck Brooks
- Will Towle
- Penny Miller
- Charles Van Winkle, Chairperson

Zoning & Planning Administrator Kari Papelbon; Applicants Michael Rainville and Kevin McKegney; and two Johnson State students also attended the hearing.

G. 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:

- Michael Rainville and Kevin McKegney, 80 Cemetery Rd., Jericho, VT 05465 (Applicants)

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

1. Michael Rainville's Application for Subdivision: Final (dated 8-13-12);
2. A copy of the plans prepared by Christopher Leister of Hogg Hill Design, LLC. (Sheet 1 revised 7-15-12, Sheets 2 & 3 dated 2-17-12, Sheet 4 revised 7-30-12);
3. A copy of the survey prepared by Christopher Haggerty of Button Professional Land Surveyors, PC (Survey date 4-3-12, Plat date 4-15-12, signed 5-15-12);
4. A copy of the approved JUWD Application for Water Allocation for Lot 2 (dated 5-7-12);
5. A copy of the approved JUWD Application for Water Allocation for Lot 1 (dated 8-6-12);
6. A copy of the Wastewater System and Potable Water Supply Permit (dated 8-20-12);
7. A copy of the Draft Warranty Deeds for Lots 1 and 2;
8. A copy of the completed Subdivision Standards Findings Checklist;
9. A copy of the final hearing requirements letter (dated 7-9-12);
10. A copy of the Preliminary decision (dated 7-6-12);
11. A copy of the minutes from the 6-18-12 Preliminary Hearing;
12. A copy of the hearing notice (published in *Seven Days* on 8-29-12);
13. A copy of the test pit logs;
14. A copy of the VT Agency of Transportation B-71 standards;
15. A copy of the procedure checklist and staff memo for this hearing.

These exhibits are available in the Rainville & McKegney, DM008, subdivision file at the Underhill Zoning Office.

II. FINDINGS

Factual Findings

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 ±2-acre parcel located at 8 Dumas Road in Underhill, VT (DM008).

B. The property is located in the Underhill Flats Village Center zoning district as defined in Article II, Table 2.2 of the 2011 Unified Land Use and Development Regulations.

C. Subdivision approval is requested for the project pursuant to review under the following sections of the 2011 Unified Land Use and Development Regulations:

- Article II, Table 2.2 – Underhill Flats Village Center District
- Article II, Table 2.7 – Flood Hazard Overlay District
- Section 3.2 – Access
- Section 3.7 – Lot, Yard & Setback Requirements
- Section 3.13 – Parking, Loading & Service Areas
- Section 3.19 – Surface Waters & Wetlands
- Section 3.22 – Water Supply & Wastewater Systems
- Article VI – Flood Hazard Area Review
- Section 7.6 – Final Subdivision Review
- Article VIII – Subdivision Standards

D. Driveway approval for the subdivision is requested pursuant to review under the 2002 Underhill Road Policy and the 2011 Unified Land Use and Development Regulations. An Access Permit was submitted to the Selectboard on August 30, 2012.

E. Written and verbal comments from adjacent landowners were received during the sketch plan and preliminary hearing reviews. No further comments were received during the final hearing review process.

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Table 2.2, Dimensional Standards

The Board finds that the application as proposed meets all of the applicable dimensional with the exceptions of the driveway setback and the frontage requirement for Lot 2. Waivers were granted for both the setback and frontage requirements in the Preliminary Decision. See *Conclusions* for Section 3.2, Section 3.7, and Section 8.6 below.

Article II, Table 2.7, Flood Hazard Overlay District

The Board finds that the application as proposed does not include development in the Special Flood Hazard Area on the proposed Lot 2. A buffer of 30' from the Special Flood Hazard Area line is depicted on the plans. The building envelope on Lot 2 is outside of the 30-foot buffer for the Special Flood Hazard Area.

Section 3.2, Access

The Board makes the following findings on the application as proposed:

A. Access for the subdivision is proposed with adequate frontage on Dumas Road. The proposed frontage for Lot 2 does not meet dimensional requirements; however, a waiver was approved by the Board in the preliminary decision as the Applicant proved the lot could be subdivided without the waiver. The Board determined that approval of the waiver would better serve the needs of the two lots.[Section 3.2(A)]. See (I) and (J) and *Conclusions* for Sections 3.7 and 8.6 below.

B. Section 3.2(B) is not applicable to the subdivision as it does not involve a nonconforming lot. No additional access is proposed for the triangular piece of property (±0.16 acres) across Dumas Road.

C. As the proposed shared access for the subdivision is proposed on a town highway (Dumas Road), an access permit from the Selectboard is required [Section 3.2(C)].

D. Only one new access point with a shared driveway to serve the subdivision is proposed. The existing easement over the southern portion of Lot 1 serving the existing barn, 4 Dumas Road, and 6 Dumas Road will remain unchanged. Due to the existing locations of structures, utilities, and existing and replacement septic areas on the lot, access to the proposed subdivision via the existing easement would result in a less functional site layout. This meets the requirement of Section 3.2(D)(2).

E. Section 3.2(D)(3) is a condition of final approval. See *Decision and Conditions*.

F. The proposed width of the access to Lot 2 does not extend along the length of the road frontage [Section 3.2(D)(5)] .

G. The subdivision is an allowed development in the Underhill Flats Village Center zoning district [Section 3.2(D)(6)].

H. Section 3.2(D)(7) is not applicable as the lot is not a corner lot nor will the proposed lots be corner lots following subdivision [Section 3.2(D)(7)].

I. A shared driveway serving the subdivision is proposed off of Dumas Rd. less than 12 feet from the proposed boundary between Lots 1 and 2. Shared driveways may be located within side yard setbacks per Section 3.2(D)(8), which requires a waiver (approved in the Preliminary Decision). See also *Conclusions* for Section 3.2(D)(9) below. A draft shared maintenance agreement has been submitted as part of the deeds [Section 3.2(D)(8)]. See *Decision and Conditions*.

J. The proposed shared driveway meets minimum requirements per the Vermont Agency of Transportation B-71 standard for residential and commercial drives. The proposed shared driveway will be located less than 12 feet from the proposed boundary between Lots 1 and 2, which is allowed per Section 3.2(D)(8) and requires a waiver per Section 3.2(D)(9)(a). The Board approved a waiver of the 12-foot side setback requirement in the Preliminary Decision. No steep slopes, primary agricultural soils, surface waters, wetlands, or buffer areas will be impacted by the proposed driveway. The average finished grade of the driveway as proposed will be less than 12% as measured over any 50-foot section, and will be less than 500 feet in length.

K. Section 3.2(D)(10) is not applicable as no private development roads are proposed.

L. No Class IV road accesses are proposed with the subdivision [Section 3.2(D)(11)].

Section 3.7, Lot, Yard & Setback Requirements

The Board makes the following findings on the application as proposed:

A. Only one principal structure is proposed per lot [Section 3.7(A)].

B. The subdivision, with the exception of the frontage and the driveway setback requirements, meets the requirements of Section 3.7(B). Waivers were granted in the Preliminary Decision for both the setback and frontage requirements. See *Conclusions* for Section 3.2 above and Section 8.6 below.

C. The subdivision will not be served by a private development road [Section 3.7(C)].

D. No corner lots are proposed [Section 3.7(D)].

E. Section 3.7(E)(3)(a) applies to the application. See *Conclusions* for Section 8.6 below.

Section 3.13, Parking, Loading & Service Areas

The Board finds that the subdivision as presented provides adequate space for off-street parking on each lot. Only residential lots are proposed within the subdivision.

Section 3.19, Surface Waters & Wetlands

The Board finds that Roaring Brook crosses the triangular piece of land across Dumas Road from the subdivision. No development or encroachments are proposed within the riparian buffer or setback. The riparian buffer shall appear on the final Mylars. See *Conclusions* for Section 8.4

and *Decision and Conditions* below.

Section 3.22, Water Supply & Wastewater Systems

The Board makes the following findings:

A. The proposed septic system designs for the lots in the subdivision have been approved by the Vermont Department of Environmental Conservation Wastewater Management Division. A copy of the approved Wastewater System and Potable Water Supply Permit has been submitted in fulfillment of this section [Section 3.22 (A) and (C)(1), (2)].

B. The Underhill-Jericho Water District provides service to the area of the proposed subdivision. The District's approval of service to the subdivision has been submitted in fulfillment of this section [Section 3.22(B)(1)].

C. No septic systems are proposed within the mapped Special Flood Hazard Area on the property [Section 3.22(C)(3)].

D. No septic systems are proposed within the riparian buffer or setback [Section 3.22(C)(4)].

E. Section 3.22(C)(5) is not applicable as the proposed subdivision is not located within a Source Protection Area.

F. Section 3.22(D) is not applicable as no off-site septic systems are proposed.

Article VI, Flood Hazard Area Review

The Board finds that no development is proposed within the portion of the property in Zone A of the Special Flood Hazard Area as depicted on Map Panel 0187D effective July 18, 2011.

Section 7.6, Subdivision Review, Final Subdivision Review

The Board makes the following findings:

A. The submission requirements of Section 7.6(B) and the hearing requirements of Section 7.6(C) were fulfilled.

B. This decision is written in fulfillment of Section 7.6(D).

Article VIII, Subdivision Standards

The Board makes the following findings:

A. The Applicants provided responses to applicable sections of Article VIII on the Findings Checklist. The Board accepts these responses and makes supplemental findings where applicable [Section 8.1(C)].

B. The land, as evidenced by the submission of plans compliant with all district dimensional standards except where two waivers were approved, is suitable for the intended use and proposed density of development, and will not result in undue adverse impacts to public health and safety, the natural environment, neighboring properties and uses, or the character of the area. Special Flood Hazard Areas will remain undeveloped and outside of the building envelope on Lot 2 as shown on the plans [Section 8.2(A)].

C. The proposed subdivision meets the requirements of Sections 8.2(B) through (I). No pedestrian access is proposed for the private development. Due to the existing locations of structures, utilities, and existing and replacement septic areas on the lot, access to the proposed subdivision via the existing easement would result in a less functional site layout; therefore, the proposed Lot 2 does not meet minimum frontage requirements and a shared driveway for Lots 1 and 2 does not meet minimum setback requirements. See *Conclusions* for Sections 3.2 and 3.7 above and for Section 8.6 below.

D. Section 8.2(J) is not applicable as the orientation of the house within the proposed building envelope will be at the discretion of the owner.

E. No comments have been received from the Underhill Conservation Commission regarding the proposed subdivision [Section 8.3(A)].

F. Existing Special Flood Hazard Areas are located outside of the building envelope on Lot 2. No development is proposed on the 0.16-acre triangular piece across Dumas Rd. No designated Source Protection Areas exist on the property [Section 8.3(B)].

G. No development is proposed in areas of steep or very steep slopes, there are no exposed rock outcrops or ledges on the property, and visually prominent hilltops and ridgelines will be unaffected by the proposed subdivision [Section 8.3(C)].

H. No wildlife habitat or travel corridors have been identified in the vicinity of the proposed development [Section 8.3(D)].

I. Sections 8.3(E), (F), and (G) are not applicable as no historic or cultural resources, farmland, or forestland exist on the property.

J. There are no wetlands identified on the property. No development is proposed on the 0.16-acre triangular piece across Dumas Rd., which is subject to the setback and buffer requirements for the Roaring Brook and the Special Flood Hazard Area regulations [Section 8.4(A)]. Section 8.4(B) is not applicable as no common land is proposed. Language requiring compliance with setbacks and buffers shall be incorporated into deeds to the lots and is a condition of final approval.

K. As the property is mostly flat, development is not proposed in the vicinity of the Roaring Brook, and the development does not meet the requirements for State stormwater permitting, no erosion prevention, sediment control, or stormwater plans are required [Section 8.5].

L. The application meets the requirements of Section 8.6(A) as only one new curb cut onto Dumas Road is proposed, the frontage requirement for Lot 2 was waived by the Board in the Preliminary Decision per Section 8.6(B)(2), and the setback requirement for the driveway was waived in the Preliminary Decision as Lots 1 and 2 will share a driveway. An Access Permit application for the curb cut was submitted to the Selectboard on August 30, 2012.

M. The application meets the requirements of Section 8.6(C) as no common or shared parking areas are proposed, and the parking areas for Lot 2 are proposed within the building envelope.

N. Sections 8.6(D) and (E) are not applicable as the application does not include the creation of a private development road, no transit or bus stop shelters are required, and no pedestrian access has been proposed for the private development.

O. The application meets the requirements of Section 8.7 as a letter from the Underhill Jericho Fire Department indicates their ability to provide services to the proposed subdivision, an approved State Wastewater System and Potable Water Supply Permit was submitted, approved service for the lots from the Jericho Underhill Water District was submitted, and utilities will be underground in the easement locations shown on the plans.

P. Submission and recording of deeds is a condition of final approval [Section 8.8].

Q. Per Section 8.1(D), all Sections above considered not applicable are waived. The Board finds that waiving such requirements will not nullify the intent and purpose of the 2011 Unified Land Use and Development Regulations or the Underhill Town Plan, and such waivers are not requisite in the interest of the public health, safety and general welfare. Sufficient evidence, in the form of submitted permit applications and plan layout, has been submitted to justify the waivers.

Underhill Road Policy, Vermont Agency of Transportation B-71 standard

A. The Board finds that the proposed shared driveway has been designed to meet all applicable standards and that an Access Permit application was submitted to the Selectboard on August 30, 2012.

IV. DECISION AND CONDITIONS

Based upon the findings above, and subject to the conditions below, the Development Review Board grants approval for the 2-lot subdivision as presented at the final hearing.

A. The parcel codes for Lot 1 (DM008) and Lot 2 (DM010) shall appear on the final Mylars. The existing DM010 shall be shown with a note indicating the change in code to DM012.

B. The 0.16-acre triangular piece across Dumas Road shall be included in the deed to Lot 2 as discussed by the Applicants at the final hearing. The inclusion with Lot 2 shall also appear on the final Mylars (survey and engineering).

C. The survey shall include the most recent revision date.

D. The Warranty Deeds for the lots shall be revised to correspond to the acreages on the survey.

E. Dimensions and locations of the easement over Lot 1 for the Lot 2 septic system shall appear on the final Mylars.

F. Per Section 3.2(D)(3), no additional access rights to a public highway shall automatically result from the subdivision or re-subdivision of Lots 1 and 2. Changes to the approved curb cut are the jurisdiction of and shall be reviewed by the Selectboard.

G. Deeds shall incorporate the provisions of (B) and (D) above and (H) and (I) below as well as all easements. Easement language shall

   a. ensure compliance with B-71 standards for the driveway
   b. include a mechanism for cost-sharing for the maintenance of the shared driveway
   c. include snow removal in the cost-sharing
   d. the scope and anticipated uses of the deeded easement over Lot 1 for the Lot 2 septic system shall incorporate the language contained within Section 3.5 of the Wastewater System and Potable Water Supply Permit.

H. Per Section 3.19(D)(5), the riparian buffer shall be maintained as undisturbed, naturally-vegetated buffers. The Roaring Brook buffer on the 0.16-acre triangular piece shall appear on the final site plan and plat as open space per Sections 8.3(B)(5), 8.4(A), and 8.8.

I. Per Section 3.19(E)(3), the creation of new lawn areas within buffers is not permitted.

J. A copy of the Wastewater System and Potable Water Supply Permit and engineer's certification letter shall be submitted for recording in the Town Land Records prior to issuance of a Certificate of Occupancy for either lot [Section 3.22(E)].

K. Per Section 7.2(B), no land shall be subdivided until final subdivision approval has been obtained from the DRB and the approved subdivision plat is recorded in the Underhill land records.

L. No transfer, sale or long-term lease of title to property as defined under 32 VSA §9601 of any portion of an existing lot; predevelopment site work; or issuance of zoning permits to develop a subdivided lot shall occur until final subdivision

approval has been obtained from the DRB and the final Mylars have been recorded in the Underhill Land Records [Section 7.2(C)].

M. The final plat and engineering site plan shall be submitted in accordance with Section 7.7.

N. All subdivision and recording fees must be paid in full prior to recording a subdivision plat in accordance with Section 7.7(B).

O. The E-911 codes for Lot 1 (DM008) and Lot 2 (DM010) shall be posted per the Underhill Jericho Fire Department specifications prior to issuance of a building permit.

Dated at Underhill, Vermont this 4 day of OCTOBER, 2012.

Charles Van Winkle

Charles Van Winkle, 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. Appeal period ends 11/3/2012.