

TOWN OF UNDERHILL  
APPLICATION OF MARC & JANE MAHEUX  
FOR A 2-LOT SUBDIVISION  
PRELIMINARY SUBDIVISION FINDINGS AND DECISION

In re: Marc & Jane Maheux  
38 Poker Hill Rd.  
Underhill, VT 05489

Docket No. DRB-12-04: Maheux

**I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns Marc & Jane Maheux's preliminary hearing application for a 2-lot subdivision of property located at 38 Poker Hill Rd. in Underhill, VT.

- A. On May 9, 2012, Marc Maheux filed an application for subdivision for the project. A sketch plan review of the project was held on June 4, 2012 and was accepted.
  
- B. Application for Preliminary Approval was made on May 31, 2013 and application was deemed complete. A hearing was tentatively scheduled for September 16, 2013 at that time. Due to personal change in the Planning and Zoning Office the meeting was to be moved back to October 21, 2013 but a notice deficiency resulted in the hearing being finally held on November 4, 2013, and continued to December 2, 2013. On October 17, 2013, a copy of the notice of preliminary hearing was mailed via Certified Mail to the following owners of properties adjoining the property subject to the application:
  - 1. Massingham, 46 Poker Hill Rd, Underhill, VT 05489
  - 2. Novembrino, PO Box 91, Underhill, VT 05489
  - 3. Verity, 13 Fox Run Rd., Underhill, VT 05489
  - 4. Frede, 13 Barrett Lane, Underhill, VT 05489
  - 5. McKay, 11 Barrett Lane., Underhill, VT 05489
  - 6. Jenot, 1 Barrett Lane, Underhill, VT 05489
  - 7. Brooks, 33 Poker Hill Road, Underhill, VT 05489
  - 8. Garrapy, 32 Poker Hill Road, Underhill, VT 05489
  - 9. Provost et. al., 39 Poker Hill Road, Underhill, VT 05489
  - 10. Forsberg Life Estate, Forsberg, et. Al. P.O. Box 146, Underhill, VT 05489
  - 11. St. Amour, 54 Poker Hill Rd., Underhill, VT 05489
  
- C. On October 17, 2013, notice of the public site visit for the proposed Maheux subdivision was posted at the following places:

1. The Underhill Town Clerk's office;
  2. The Underhill Country Store;
  3. Wells Corner Market;
  4. The Underhill Center Post Office;
  5. The Underhill Flats Post Office;
  6. Jacobs IGA;
- D. On October 17, 2013, notice of the public hearing was published in *The Burlington Free Press*.
- E. The preliminary hearing began at 6:30 PM on November 4, 2013, and was continued to December 2, 2013 at 6:30 PM. The Maheux hearing was the first item on the agenda.
- F. Present at the December 2, 2013 hearing were the following members of the Development Review Board:
- Charles Van Winkle, Chairperson,
  - Matt Chapek,
  - Mark Hamelin,
  - Will Towle, and
  - Helen Wagner
- Acting Administrative Officer Brian Bigelow; and Applicant Marc Maheux 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:
- Marc Maheux, 38 Poker Hill Road, Underhill, VT 05489
- H. During the course of the hearing the following exhibits were submitted to the Development Review Board **(Note items 'a' thru 'o' were submitted prior to November 4, 2013 hearing, items 'p' thru 'y' were submitted subsequently prior to the December 2, 2013 hearing with item 's' replacing item 'f')**:
- a. Marc & Jane Maheux's Application for Subdivision: Preliminary (dated 5-31-13);
  - b. A copy of the completed Subdivision Checklist: Preliminary Hearing;
  - c. A copy of the survey and plans prepared by David A. Tudhope, L.S. Project # 759, Sheet 1;
  - d. A copy of the ANR Form 1 (notice of Overshadowing at the time of Filing an Application for a Wastewater System and Potable Water Supply Permit);

- e. A copy of VT DEC ANR Wastewater and Potable Water Supply Permit (Project #: WW-4-4126) dated October 21, 2013;
- f. A copy of the Findings Checklist;
- g. A copy of the draft warranty deeds for each lot;
- h. A copy of the Project Review Sheet from the VT Department of Environmental Conservation & Natural Resources Board (dated 10-14-13);
- i. A copy of completed application for water allocation from the Jericho-Underhill Water District for the proposed two units (810 gpd: 6 bedrooms @ 135 gals per day) on the newly created lot #1.
- j. A copy of the letter from Harry Schoppmann of the Underhill Jericho Fire Department (dated October 29, 2013);
- k. Copy of input from the Chittenden East Supervisory Union (dated October 25, 2013);
- l. A copy of the tax map for PH038 overlaid with watercourse, wetland and flood zone information;
- m. A copy of the minutes from the 6-4-12 Sketch Plan/Conditional Use meeting;
- n. A copy of the hearing notice as published in *The Burlington Free Press*, posted in six public places and mailed to abutters;
- o. A copy of the procedure checklist for this meeting; and
- p. The original memo for the November 4, 2013 packet;
- q. This revised memo dated November 26, 2013;
- r. Marc Maheux memo to DRB dated 11/25/13;
- s. Revised Article VIII Subdivision Standards Findings Checklist;
- t. DRB Minutes of November 4, 2013;
- u. Copy of 2012 Conditional Use/Site Plan Application;
- v. Copy of 2012 Sketch Plan Application;
- w. Copy of Conditional Use Permit CU-12-01 dated 6-21-12;
- x. Copy of Condition Use Notice of Decision, dated 6-21-12; and
- y. Copy of DRB minutes of 6-4-12.

These exhibits are available in the Maheux PH038, subdivision file (DRB-12-04) at the Underhill Zoning & Planning Office.

## II. FINDINGS

### **Factual Findings**

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 ±15.2-acre parcel located at 38 Poker Hill Road in Underhill, VT (PF 038).

- B. The property is located in both the Underhill Flats Village Center and the Rural Residential zoning districts as defined in Article II, Table 2.2 and Table 2.3 of the 2012 Unified Land Use and Development Regulations.
- C. A portion of the property is also within the Flood Hazard Overlay District. No development is proposed within that district.
- D. Subdivision approval is requested for the project pursuant to review under the following sections of the 2012 Unified Land Use and Development Regulations:
- Article II, Table 2.2 – Underhill Flats Village Center District
  - Article II, Table 2.3 – Rural Residential District
  - Article II, Table 2.7 – Flood Hazard Overlay District
  - Article III, General Regulations
  - Section 3.2 – Access
  - Section 3.7 – Lot, Yard & Setback Requirements
  - Section 3.19 – Surface Waters & Wetlands
  - Section 3.22 – Water Supply & Wastewater Systems
  - Article VI – Flood Hazard Area Review
  - Section 7.2 – Applicability
  - Section 7.5 – Preliminary Subdivision Review
  - Article VIII – All
- E. Access review is required under the 2002 Underhill Road Policy and the 2012 Unified Land Use and Development Regulations. Parent lot has the benefit of two separate access points/driveways. Final review of the access will be made by the Selectboard. DRB recommendations will be submitted to the Selectboard for their consideration and review of the Access Permit.
- F. A site visit specific for the Subdivision application has not been held.

### III. CONCLUSIONS

#### **Applicable Regulation Standards**

##### *Article II, Table 2.2, Underhill Flats Village Center District*

The Board finds that the application meets all of the applicable dimensional standards. See Conclusions for *Section 3.2* and *Article VIII* below.

##### *Article II, Table 2.7, Flood Hazard Overlay District*

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

- A. A portion of the property lies within Zone A of the Special Flood Hazard Area as depicted on Map Panel 0187D effective July 18, 2011. No development is proposed within that area.
- B. See *Conclusions* for Article VI below.

### *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 Poker Hill Road and no new access points. Application proposes utilizing the two existing access points. No easements are proposed.
- B. The subdivision is an allowed development in the Underhill Flats Village Center zoning district [Section 3.2(D)(6)].

### *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, meets the requirements of Section 3.7(B).
- C. 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 bisects the parent lot. No development or encroachments are proposed within the riparian buffer or setback.

### *Section 3.22, Water Supply & Wastewater Systems*

The Board makes the following findings:

- A. The Underhill-Jericho Water District provides service to the area of the proposed subdivision. A letter indicating the District's approval of service to the subdivision has been submitted as part of this application.

- B. Applicants have obtained a VT DEC ANR Wastewater and Potable Water Supply Permit (Project #: WW-4-4126) dated October 21, 2013;

*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 7.2, Subdivision Review, Applicability*

The Board makes the following findings:

- A. The proposal qualifies as a subdivision per Section 7.2(C).
- B. The proposed subdivision does not qualify for an exemption under Section 7.2(D).
- C. The proposed subdivision was classified as a major subdivision during the sketch plan review on June 6, 2012 per Section 7.4(E).

*Section 7.5, Subdivision Review, Preliminary Subdivision Review*

The Board makes the following findings:

- A. The submission requirements of Section 7.5(C) and the hearing requirements of Section 7.5(D) were fulfilled.
- B. This decision is written in fulfillment of Section 7.5(E).

*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. This document will be reviewed at the final subdivision hearing [Section 8.1(C), Sections 8.2 through 8.8].

**IV. DECISION AND FINAL HEARING REQUIREMENTS**

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

- A. Driveway design details shall be submitted with the application for final subdivision review.

- B. Access for the new developed lot (lot #1) shall be reviewed by the Selectboard prior to filing an application for final subdivision review in accordance with Section 8.6(A)(3).
- C. The Board approves one (1) principal dwelling on Lot 2 and one (1) principal dwelling on Lot 1.

Dated at Underhill, Vermont this 6<sup>th</sup> day of January, 2014.



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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 6 FEBRUARY 2014