TOWN OF UNDERHILL
APPLICATION OF RMB Construction/Spence/Wheelock
FOR A 2-LOT SUBDIVISION
FINAL FINDINGS AND DECISION

In re: RMB Construction
63 Palmer Lane
Jericho, VT 05465

Darcy Spence & Mary Wheelock
PO Box 242
Underhill, VT 05489

Docket No. DRB-13-06 Bouffard Spence

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns RMB Construction, Darcy Spence, and Mary Wheelocks' final hearing application for a 2-lot subdivision of property located at 10 & 12 Bridle Trail in Underhill, VT.

A. On May 7, 2013, RMB Construction, Darcy Spence, and Mary Wheelock filed an application for subdivision. A copy of the application materials and additional information are available at the Underhill Town Hall. A sketch plan meeting was held on June 3, 2013.

B. Application for Preliminary Approval was made on October 9, 2013. On October 31, 2013, a copy of the notice of preliminary hearing was mailed via Certified Mail to adjoining property owners. A preliminary hearing was held on November 18, 2013.

C. Application for Final Approval was made on January 27, 2014.

D. On February 5, 2014, a copy of the notice of the final hearing was mailed via Certified Mail to the Applicants, 63 Palmer Lane, Jericho, VT 05465 & PO Box 242, Underhill, VT 05489 and to the following owners of properties adjoining the property subject to the application:

1. Miller, 18 Bridle Trail, Underhill, VT 05489
2. Sowers/Haas, 24 Bridle Trail, Underhill, VT 05489
3. Gustavsen, 99 Poker Hill Rd, Underhill, VT 05489
4. Longley, 91 Poker Hill Rd, Underhill, VT 05489
5. Nadeau, 88 Poker Hill Rd, Underhill, VT 05489
6. Hood/Kapusta, 3 Blakey Rd, Underhill, VT 05489
7. Monk, 96 Autumn Ln., Bristol, VT 05443
8. Macone/Drucker, 31 Poker Hill Rd, Underhill Rd, 05489
9. Beaucage, 79 Poker Hill Rd, Underhill, VT 05489

E. Notice of the final hearing on the Bouffard, Spence & Wheelock subdivision was posted at the following places:

1. The property to be developed, BT010 & BT012
2. The Underhill Town Clerk's office;
3. The Underhill Center Post Office;
4. The Underhill Flats Post Office;

5. The Underhill Country Store
6. Wells Corner Market

F. On February 6, 2014, notice of a final hearing was published in the *Burlington Free Press.*

G. The final hearing was held on February 24, 2014. The hearing began at 6:00 PM. The Bouffard, Spence & Wheelock application was the first item on the agenda and began at the conclusion of the public comment period.

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

- Charles Van Winkle, Chairperson
- Will Towle
- Matt Chapek
- Karen McKnight
- Shanie Bartlett
- Mark Hamelin

DRB Member Penny Miller was present but excused herself from the hearing.

Zoning & Planning Administrator Sarah McShane, and Consultant Dexter Lefavour also attended the hearing.

I. At the outset of the hearing, Chairperson 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:

- Richard Bouffard, RMB Construction Co., 63 Palmer Lane, Jericho, VT 05465 (Applicant/Landowner)

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

a. A combination Staff Report & DRB Rules of Procedure sent by Zoning Administrator Sarah McShane to the DRB, the Applicants, the Selectboard, the Underhill Jericho Fire Department, and the Conservation Commission Chair;
b. Bouffard/Spence/Wheelock Application for Subdivision: Final (dated 1-27-14);
c. A copy of the completed Subdivision Checklist: Final Hearing;
d. A copy of the plans prepared by Lefavour P.C. Engineering & Environmental Services, dated July 2013 & Dec. 31, 2013;
e. A copy of a map created using the Vermont Agency of Natural Resources Atlas;
f. A copy of a portion of the Vermont Agency of Transportation Standard B-71 'Standards for Residential and Commercial Drives";
g. A copy of the tax map & zoning map for BT010 & BT012;
h. A copy of the DRB minutes from the 6-3-13 Sketch Plan meeting and 11-18-2013 Preliminary Plan meeting;

i. A copy of the hearing notice published in *The Burlington Free Press* on 2-6-14;
j. A copy of the Findings Checklist;
k. A copy of the Private Road Agreement recorded in the Underhill Land Records;
l. A copy of the review letter from Harry Schoppmann III, Duty Captain, Underhill-Jericho Fire Department dated October 29, 2013;
m. A copy of the review letter from John R. Alberghini, Superintendent, Chittenden County East Supervisory Union, dated October 25, 2013.
n. A copy of Page 4 of the August/September 2004 edition of *VLCT News* regarding Statute of Limitations on Land Use Permit Enforcement Action.
o. A copy of the Wastewater System & Potable Water Supply Permit;
p. A copy of the Project Review Sheet;
q. A copy of the Draft Warranty Deeds;

These exhibits are available in the Bouffard/Spence, BT012 & BT010, subdivision file at the Underhill Town Hall.

II. FINDINGS

Factual Findings

The Minutes of the meetings written by Sarah McShane 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 Applicant seeks a permit to subdivide land. Lot 1 of the subject property is a ±4.5 acres and Lot 2 is ±5.38 acres. The parcels are located at 10 & 12 Bridle Trail in Underhill, VT (BT010 & BT012).

B. The properties are located in the Rural Residential and Soil & Water Conservation zoning districts as defined in Article II, Table 2.3 and Table 2.6 of the 2012 Unified Land Use and Development Regulations.

C. Subdivision approval is requested for the project pursuant to review under the 2012 Unified Land Use and Development Regulations.

III. CONCLUSIONS

The Board finds the application is in conformance with the following sections of the Town of Underhill Unified Land Use & Development Regulations:

Article II, Table 2.3 Rural Residential District
Article II, Table 2.6 Soil and Water Conservation District
Article III, Section 3.2 Access
Article III, Section 3.7 Lot, Yard, and Setback Requirements
Article III, Section 3.13 Parking, Loading, and Service Area
Article III, Section 3.17 Source Protection Area

Article III, Section 3.19 Surface Waters & Wetlands
Article III, Section 3.22 Water Supply & Wastewater Systems
Article VII, Section 7.2 Applicability
Article VII, Section 7.6 Final Subdivision Review
Article VII, Section 7.7 Plat Recording Requirements
Article VIII, Subdivision Standards

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 2102 Unified Land Use and Development Regulations and the Underhill Town Plan, and such waivers are not requisite in the interest of public health, safety and general welfare. Sufficient evidence, in the form of submitted testimony and plan layout, has been submitted to justify the waiver.

IV. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board unanimously grants approval for the 2-lot subdivision as described at the hearing and in the submitted application documents, with the following conditions:

A. The warranty deed for Lot 1 should be revised to correspond to the acreage on the survey.

B. The parcel codes for both Lots shall appear on the final Mylars.

C. The warranty deed for Lot 2 recorded in the Town Land Records should indicate the triangular portion of Lot 2 located in the Soil and Water Conservation district shall not be disturbed and left in its natural state

D. A revised Road Maintenance Agreement reflecting the newly created subdivision shall be recorded in the Town Land Records.

E. A copy of the Wastewater System and Potable Water Supply Permits shall be recorded in the Town Land Records.

F. 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.

G. 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)].

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

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

Dated at Underhill, Vermont this 17 day of March, 2014.

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 4/17/2014.