Town of Underhill

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Staff Report Addendum

To: Development Review Board
From: Andrew Strniste, Planning Director
Date: September 30, 2016
Re: Jacobs Final Subdivision Review Hearing

Please find the following exhibits that were submitted after the Jacobs Final Subdivision Review Hearing Staff Report was distributed attached to this memorandum:

1. Exhibit HH - Response to Harvest Run Maintenance Plan from Neighbors
2. Exhibit II - Additional Road Maintenance Materials

Please consider these items when reviewing the staff report.

September 25, 2016

Dear: Town of Underhill Development Review Board
O'Leary-Burke Civil Associates
Phillip Jacobs

Subject: Response to the Harvest Run Proposed Annual Maintenance Plan

The Harvest Run residents have reviewed the proposal provided via registered mail dated August 23, 2016 and have the following issues with the basic assumptions:

- The "swale" along the west side of Harvest Run used to remove the water shed from the Jacobs Hill, Min's Lane and future subdivisions should not be considered the responsibilities of the Residents;

- Harvest Run has been extended to support the new subdivisions and there are indications of further extension, the Residents should not be held responsible for any maintenance beyond the drive of 14 Harvest Run.

- The Residents do not agree with being required to provide improvements to the original Harvest Run to support the additional traffic created by the new subdivisions, the original Harvest Run and drainage has been adequate for twenty plus years to support the traffic of the five homes.

This response is not to be considered an acceptance of any terms within the proposal. The response is meant to identify the assumptions that the Residents agree should not be included in any future proposals.

Regards,
Harvest Run Residents

Deborah Shannon, 4 Harvest Run
Christopher and Christine Scanlon, 6 Harvest Run
Eugene and Teresa Bogaczyk, 10 Harvest Run
David and Dorothy Richiedei, 12 Harvest Run
Robert and Kathleen Covey, 14 Harvest Run

V. 206
P. 274

FIRST AMENDMENT TO
JACOBS HILL ROAD
MAINTENANCE AGREEMENT

This First Amendment to the Jacobs Hill Road Maintenance Agreement is made by the owners of Lots 1 through 7 that have frontage on the Jacobs Hill Road, their heirs, successors and assigns, as shown on survey entitled "Lands of Phil Jacobs, Subdivision & Boundary Line Adjustment Plat, Jacobs Hill Road, Underhill, Vermont" dated June 11, 2013, prepared by O'Leary-Burke Civil Associates, PLC.

WHEREAS, Jacobs Hill Road is depicted on the above referenced survey;

WHEREAS, the owners of Lots 1 through 7 that have frontage on Jacobs Hill Road use Jacobs Hill Road to access their lots;

WHEREAS, Lots 1-6 are subject to and benefitted by the Jacobs Hill Road Maintenance Agreement dated September 2, 2008 and recorded in Volume 168 at Page 222-223 of the Town of Underhill Land Records;

WHEREAS, Lot 6 has been further subdivided to create Lot 7, as shown on survey entitled "Lands of Phil Jacobs, Subdivision & Boundary Line Adjustment Plat, Jacobs Hill Road, Underhill, Vermont" dated June 11, 2013, prepared by O'Leary-Burke Civil Associates, PLC;

WHEREAS, Lot 7 has frontage on Jacobs Hill Road;

THEREFORE, the owners of Lots 1, 2, 3, 4, 5, 6 and 7 agree that Lots 1, 2, 3, 4, 5, and 7 (not Lot 6) shall each be responsible for 16.67% of the cost of maintenance, repair and replacement of Jacobs Hill Road, including, but not limited to the costs of adding gravel, grading, ditching, plowing and sanding;

THEREFORE, in the event of any further subdivision creating Lots with frontage on, and access from, Jacobs Hill Road, said additional Lots will be automatically incorporated with and subject to said Road Maintenance Agreement, as amended, including paying an equal share in the allocation of expenses.

IN WITNESS WHEREOF, Phil Jacobs has hereunto set his hand and seal this 11 day of Sept 2013.

IN THE PRESENCE OF:

Witness

Philip Jacobs, owner
Lots 1, 6 and 7 Jacobs Hill Road

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Underhill Vermont, in said county, this 11 day of Sept. 2013, personally appeared Philip Jacobs who acknowledged the foregoing instrument, by his sealed and subscribed to be his free act and deed.

Before me:
Notary Public
My commission expires: 2/10/15

IN WITNESS WHEREOF, Randy Jewell and Kelley Jewell have hereunto set their hands and seals this 30 day of Aug 2013.

IN THE PRESENCE OF:

Witness

Randy Jewell, owner
Lot 2 Jacobs Hill Road

Witness

Kelley Jewel, owner
Lot 2 Jacobs Hill Road

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Underhill, Vermont, in said county, this 1st day of September 2013, personally appeared Randy Jewell and Kelley Jewell who acknowledged the foregoing instrument, by them sealed and subscribed to be their free act and deed.

Before me:
Notary Public
My commission expires: 2/10/15

IN WITNESS WHEREOF, Aaron Brillhart and Jamie Brillhart have hereunto set their hands and seals this 30 day of Aug 2013.

IN THE PRESENCE OF:

Witness

Aaron Brillhart, owner
Lot 3 Jacobs Hill Road

Witness

Jamie Brillhart, owner
Lot 3 Jacobs Hill Road

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Underhill, Vermont, in said county, this 1st day of September 2013, personally appeared Aaron Brillhart and Jamie Brillhart who acknowledged the foregoing instrument, by them sealed and subscribed to be their free act and deed.

Before me:
Notary Public
My commission expires: 2/10/15

IN WITNESS WHEREOF, Tobin Clough and Rebecca Clough have hereunto set their hands and seals this ____day of _____2013.

IN THE PRESENCE OF:

_____ _____
Witness Tobin Clough, owner
Lot 4 Jacobs Hill Road

_____ _____
Witness Rebecca Clough, owner
Lot 4 Jacobs Hill Road

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At _____, Vermont, in said county, this __ day of _____2013, personally appeared Tobin Clough and Rebecca Clough who acknowledged the foregoing instrument, by them sealed and subscribed to be their free act and deed.

Before me: _____
Notary Public
My commission expires: 2/10/15

4th IN WITNESS WHEREOF, Jason Ferriera has hereunto set his hand and seal this
____day of September 2013.

IN THE PRESENCE OF:

_____ _____
Witness Jason Ferriera, owner
Lot 5 Jacobs Hill Road

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, Vermont, in said county, this 4th day of September 2013, personally appeared Jason Ferriera who acknowledged the foregoing instrument, by his sealed and subscribed to be his free act and deed.

Before me: Kristie T. Real
Notary Public
My commission expires: 2/10/15

IN WITNESS WHEREOF, Tobin Clough and Rebecca Clough have hereunto set their hands and seals this 30 day of Aug. 2013.

IN THE PRESENCE OF:

Witness

Tobin Clough, owner
Lot 4 Jacobs Hill Road

Witness

Rebecca Clough, owner
Lot 4 Jacobs Hill Road

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Jericho, Vermont, in said county, this 1st day of September 2013, personally appeared Tobin Clough and Rebecca Clough who acknowledged the foregoing instrument, by them sealed and subscribed to be their free act and deed.

Before me:
Notary Public
My commission expires: 2/10/15

IN WITNESS WHEREOF, Jason Ferriera has hereunto set his hand and seal this 30 day of Aug 2013.

IN THE PRESENCE OF:

Witness

Jason Ferriera, owner
Lot 5 Jacobs Hill Road

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Jericho, Vermont, in said county, this 1st day of September 2013, personally appeared Jason Ferriera who acknowledged the foregoing instrument, by his sealed and subscribed to be his free act and deed.

Before me:
Notary Public
My commission expires: 2/10/15

MIN'S WAY
ROAD MAINTENANCE AGREEMENT

This Agreement shall be binding upon the owners of Lots 10, 11, 12 and future lots which have frontage on Min's Way, their heirs, successors and assigns, as shown on survey entitled "Lands of Phil Jacobs, 16 Harvest Run, Underhill, Vermont," dated May 10, 2016, prepared by O'Leary-Burke Civil Associates, PLC.

WHEREAS, Min's Way is depicted on the above referenced survey;

WHEREAS, the owners of Lots 10, 11,12 and future lots which have frontage on Min's Way use Min's Way to access their lots;

WHEREAS, pursuant to the Third Amendment of the Declaration of Covenants, Conditions and Restrictions Jacobs Subdivision, as amended, all lot owners on Min's Way shall share in the maintenance and repair of said roadway;

THEREFORE, the owners of Lots 10, 11, 12 and future lots which have frontage on Min's Way shall each be responsible for an equal share of the cost of maintenance, repair and replacement of Min's Way, including, but not limited to the costs of adding gravel, grading, ditching, plowing and sanding, and culvert maintenance, repair or replacement and shall be bound by the terms of this agreement as follows;

1. All decisions pertaining to the routine maintenance, including adding gravel, grading, ditching, plowing and sanding of Min's Way shall be by majority vote of Lots 10, 11, 12 and future lots that have frontage on the Min's Way and each lot shall be entitled to one (1) vote.

2. In the event that the owners of Lots 10, 11, 12 and future lots which have frontage on Min's Way shall decide to make capital improvements to Min's Way including, but not limited to paving, complete reconstruction, etc., such improvements shall be by unanimous vote of all owners of Lots 10, 11, 12 and future lots with frontage on Min's Way. Each lot shall be entitled to one (1) vote;

3. The owner of Lot 8 with frontage on Min's Way shall not be responsible for any of the costs of either routine maintenance or capital improvements to Min's Way until such time that Lot 8 is improved with either a residential or commercial structure whose primary access is Min's Way;

4. In the event that any lot owner(s) fail to pay their proportionate share of the properly approved routine maintenance or capital improvement expenses, a lien on that lot shall arise in favor of the remaining lot owner(s), their heirs, successors and assigns, and the Jacobs Hill Road Homeowners' Association upon recording of a notice of such lien in the Town of Underhill Land Records. Interest shall accrue on the amount of said lien at the rate of twelve percent (12%) per annum until paid in full. The non-paying lot owner(s) shall also be responsible for all costs and expenses, including reasonable attorney's

fees incurred in collecting the outstanding routine maintenance and capital improvement expenses.

5. This road maintenance agreement may be amended by the Declarant of Jacobs Hill Road Subdivision until such time as all lots have been sold, and thereafter may be amended only by a written instrument executed and acknowledged by 80% of Lot owners using Min's Way and recorded in the Underhill Land Records.

6. This Min's Way Road Maintenance Agreement shall run with the land and shall be binding upon all current and future owners of Lots with frontage on Min's Way, and shall be construed in accordance with Vermont law.

N WITNESS WHEREOF, Phil Jacobs, Declarant, has hereunto set his/her hand and seal this ____ day of _____2016.

IN THE PRESENCE OF:

_____ _____

Witness Philip Jacobs, Declarant

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At _____, Vermont, in said county, this ____ day of _____ 2016, personally appeared Philip Jacobs who acknowledged the foregoing instrument, by his sealed and subscribed to be his free act and deed.

Before me: _____
Notary Public
My commission expires: 2/10/19

THIRD AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
JACOBS SUBDIVISION
JACOBS HILL ROAD Lots 1-7,
To be known as
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
JACOBS SUBDIVISION

This Third Amendment to Declaration is made as of this ___ day of_____ 2016, by Philip Jacobs of Underhill, Vermont, hereinafter referred to as "Declarant." This is a Third Amendment to "Declaration of Covenants, Conditions and Restrictions, Jacobs Subdivision, Jacobs Hill Road Lots 1-6," dated the 2nd day of September 2008 and recorded in Volume 168 at Page 217-221 of the Underhill Land Records.

WITNESSETH:

WHEREAS, pursuant to Article 8 of the original Declaration, the Declarant has the right to amend said Declaration until such time as all six (6) lots covered by the Declaration have been sold.

WHEREAS, Lot 7 was subjected to the Declaration pursuant to a Second Amendment dated September 1, 2013 and recorded in Volume 206 at Page 373 of the Underhill Land Records.

WHEREAS, Lot 6 has not been sold.

WHEREFORE, the Declarant has further subdivided Lot 6 to include Lots 8 (not an approved building lot) and Lots 10, 11, and 12, and added Min's Way as access to Lots 10, 11, and 12.

NOW THEREFORE, the Declarant hereby declares that Lots 10, 11, 12 be subject to, benefitted by and incorporated into the Declaration of Covenants, Conditions and Restrictions, Jacobs Subdivision.

The Declaration is further amended as follows, each following provision replaces in full the existing provisions, otherwise, the provisions not cited shall remain the same:

Article 1. Definitions

2. "Lot" shall mean any of Lots 1 through 8 and Lots 10 through 12 adjoining Jacobs Hill Road or Min's Lane as shown on the recorded subdivision map.

4. "Association" shall mean the Jacobs Hill Subdivision Homeowners' Association.

5. "Member" shall mean a member of the Jacobs Hill Subdivision Homeowners' Association.

Article 2. Use Restrictions

2. Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12 shall not be subdivided for any purpose.

Article 3. Easements

1.The owners of all lots have a right of way over Jacobs Hill Road and Harvest Run until accepted by the Town of Underhill as a town road, and shall share equally in the maintenance and repair of said roadways. Pursuant to Vermont common law and Vermont statute, all users of Harvest Run shall share on a pro rata basis in the maintenance and repair of Harvest Run. The owners of Lots 10, 11, 12 and any future users of Min's Way, shall share equally in the maintenance and repair of said roadway pursuant to the terms of Min's Way Road Maintenance Agreement. Reference is made to the Jacobs Hill Road Maintenance Agreement and Min's Way Road Maintenance Agreement which are incorporated herein.

Article 4. Drainage Easements

Each Lot Owner shall be subject to, and have the benefit of, easements for stormwater detention areas and stormwater runoff easements as shown on the engineering site plans. Owners shall pay an equal share of the cost of maintaining, repairing and replacint the stormwater drainage drainage system. Items to be included with, but not limited to, the stormwater insfrastructure maintenance shall be the grassed channel on Lot 1, the grassed channel/swale across Lot 2, the swale across from Lot 4, the grassed channel on Lot 10, the grassed channel on Lot 11, the grassed channel on Lot 12 and the stone lined ditches and culverts, provided however, that Min's Way Road Maintenance agreement shall provide for the maintenance of the culvert on Min's Way. The Homeowners' Association shall inspect all shared infrastructure referenced above at least once a year to determine what, if any maintenance, repairs or replacement needs to be completed to insure the shared infrastructure continues to operate properly, and shall maintain compliance with the requirements of the State stormwater permit, 5718-9015 as amended.

Article 5. Homeowners' Association

Lot Owners shall be members of the Jacobs Hill Subdivision Homeowners' Association, an unincorporated association. The Association shall manage the maintenance, repair and replacement of Jacobs Hill Road, Min's Way, the stormwater drainage system, and enforcement of the use restrictions in Article 2. above.

(rest of Article 5. shall remain the same)

Article 8. Termination or Amendment of Declaration

The covenants, conditions and restrictions of this Declaration may be amended by the Declarant until such time as all lots have been subdivided and sold, and then may be amended only by a written instrument executed and amended by 80% of Lot Owners and recorded in the Underhill Land Records.

(rest of Article 8. shall remain the same)

Article 10. Deeds

Reference to the Covenants, Conditions and Restrictions, Jacobs Subdivision, Jacobs Hill Road Lots 1-6, as amended, shall be referenced in all deeds of conveyance.

In witness whereof, Philip Jacobs, Declarant, hereunto set his hand and seal this _____ day of _____ 2016.

IN THE PRESENCE OF:

_____ _____

Witness Philip Jacobs

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At _____, Vermont, on this ____ day of _____ 2016 personally appeared Philip Jacobs who acknowledged the foregoing instrument by him sealed and subscribed to be his free act and deed.

Before me: _____
Notary Public
My commission expires: 2/10/19