TOWN OF UNDERHILL
APPLICATION OF TIMOTHY AND THERESA POTVIN
FOR A 4-LOT SUBDIVISION
FINAL FINDINGS AND DECISION

In re: Timothy and Theresa Potvin
27 Moose Run
Underhill, VT 05489

Docket No. DRB-10-11: Potvin

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Timothy and Theresa Potvin's final hearing application for a 4-lot subdivision of property located at 27 Moose Run in Underhill, VT.

A. On February 7, 2012 Sheila McIntyre of Summit Engineering, Inc. filed a final application for subdivision on behalf of Timothy and Theresa Potvin for the project. A copy of the application and additional information are available at the Underhill Town Hall.

B. On March 8, 2012, a copy of the notice of a final hearing was mailed via certified mail to the applicants, Timothy and Theresa Potvin, P.O. Box 135, Underhill Center, VT 05490, and to the following owners of properties adjoining the property subject to the application:

1. Reynolds/Bryant, 354 Pleasant Valley Rd., Underhill, VT 05489
2. Becker, 309 Pleasant Valley Rd., Underhill, VT 05489
3. Ely, P.O. Box 235, Underhill Center, VT 05490
4. Wursthorn, P.O. Box 143, Underhill Center, VT 05490
5. UVM Campus Planning Services, Attn: Linda Seavey, Director, 109 South Prospect St., Burlington, VT 05405
6. Hathaway/Greene, P.O. Box 211, Underhill Center, VT 05490
7. Boudah, 318 Pleasant Valley Rd., Underhill, VT 05489
8. Wyman, 16 Pomeroy, Burlington, VT 05401
9. Russell, P.O. Box 218, Jericho, VT 05465
10. Potvin, 285 Pleasant Valley Rd., Underhill, VT 05489
11. VT ANR, 103 South Main St., Waterbury, VT 05676
12. Howard/Macarelli, 366 Pleasant Valley Rd., Underhill, VT 05489
13. Dragon, P.O. Box 104, Underhill Center, VT 05490

A copy of the notice was also emailed to Larry Young, Summit Engineering, Inc. at lyoung@summitengvt.com and to Sheila McIntyre, Summit Engineering, Inc. at SMcIntyre@summitengvt.com.

C. By March 16, 2012, notice of the final hearing on the proposed Potvin subdivision was posted at the following places:

1. The property to be developed, MO027;
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 March 14, 2012, notice of final hearing was published in *Seven Days.*

E. The final hearing began at 6:31 PM on April 2, 2012.

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

- Chuck Brooks
- Matt Chapek
- Penny Miller
- Will Towle
- Charles Van Winkle, Chair

Kari Papelbon, Zoning & Planning Administrator; Sheila McIntyre, Summit Engineering, Inc; Brad Holden, Selectboard Chair; one neighbor; and interested parties for the second scheduled hearing 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." No interested parties presented testimony.

Consultant(s) who spoke on behalf of the Applicants:

- Sheila McIntyre, Summit Engineering, Inc., 50 Joy Dr., South Burlington, VT 05403

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

1. A staff report sent by Zoning & Planning Administrator Kari Papelbon to the Development Review Board, Timothy and Theresa Potvin, Larry Young and Sheila McIntyre of Summit Engineering, Inc., the Underhill Selectboard, the Underhill Conservation Commission Chair, and the Underhill-Jericho Fire Department;
2. Timothy and Theresa Potvin's Application for Subdivision: Final (dated 2-6-12);
3. A copy of the completed Subdivision Checklist: Final;

4. A copy of the plans prepared by Larry Young of Summit Engineering, Inc. (Sheets S1, S2, PP1, D1, and D2 dated 1-31-12);
5. A copy of the survey prepared by Larry Young of Summit Engineering, Inc. (dated 1-31-12);
6. A copy of the letter from Sheila McIntyre of Summit Engineering, Inc. (dated 1-31-12);
7. A copy of the acknowledgement of submitted State permits (dated 2-6-12);
8. Copies of the submitted State permit applications (wetland, water/wastewater, and stormwater);
9. A copy of the Project Review Sheet (dated 2-14-12);
10. A copy of the letter from William Zabiloski of VT Department of Environmental Conservation (dated 3-12-12);
11. A copy of the letter from Harry Schoppmann of the Underhill Jericho Fire Department (dated 11-1-11);
12. A copy of Private Roadway Maintenance Agreement;
13. A copy of the proposed easement language;
14. A copy of the findings of fact related to the Evaluation Considerations (dated 1-31-12);
15. A copy of the final hearing requirements letter (dated 11-18-11)
16. A copy of the preliminary decision (dated 11-17-11);
17. A copy of the minutes from the 10-22-11 site visit and the 10-24-11 preliminary hearing;
18. A copy of the tax map for MO027;
19. A copy of the hearing notice (published in *Seven Days* on 3-14-12);
20. A copy of the stormwater details;
21. A copy of the signed determination from VT Stream Alteration Engineer Chris Brunelle (dated 3-30-12).

These exhibits are available in the Potvin, MO027, 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:

A. The Applicants seek a permit to subdivide land. The subject property is a ±130-acre parcel located at 27 Moose Run in Underhill, VT (MO027).

B. The property is located in the Scenic Preservation and Soil & Water Conservation zoning districts as defined in §VIII and §IX of the 2003 Underhill Zoning Regulations.

C. Subdivision approval is requested for the project pursuant to review under the following sections of the 2002 Town of Underhill Subdivision Regulations:

- Final Plat Submission Requirements, pages 9-10, "Final Plat for Subdivisions"
- Planning Standards, pages 11-12, "Evaluation Considerations"

D. Section III(V)(2) of the 2003 Underhill Zoning Regulations applies to this application. This section states: Dumping, filling, excavation or grading of land within 100 feet of any streambank or any watercourse shall be permitted only if doing so does not affect the water table or natural water flow patterns, cause erosion due to removal of vegetation cover, or increase the possibility of flooding. Documentation addressing these standards shall be presented...when a permit is sought.

E. Road and driveway approvals are requested for the project pursuant to review under the 2002 Underhill Road Policy. The Board recognizes that final approval of the road, driveways, and any waivers of the Road Policy will be made by the Selectboard, and that DRB recommendations will be submitted for consideration.

F. Final Application Submission Requirements, "Final Plat for Subdivisions" – The final plat for a subdivision shall conform in all respects to the preliminary plat as approved by the [DRB]...The final plat shall be drawn to a scale of not more than two hundred (200) feet to the inch, and shall show:

1. Proposed subdivision name or identifying title, the parcel code of the original lot, the name of the municipality, the name and address of the record owner and subdivider, the name, license number and seal of the licensed land surveyor and/or professional engineer, the boundaries of the subdivision and its general location in relation to existing roads or other landmarks and scale, date, true north point, and legend.

2. Road names and lines, pedestrian ways, lots, reservations, easements and areas to be dedicated to public use.

3. Sufficient data acceptable to the [DRB] to determine readily the location, bearing and length of every road line, lot line, boundary line and to reproduce such lines upon the ground. When practicable these should be tied to reference points previously established by a public authority.

4. The length of all straight lines, the deflection angles, radii, length of curves, tangent distances and bearings for each road.

5. By proper designation on such Plat, all public open space for which offers of dedication are made by the subdivider and those spaces title to which is reserved by the subdivider.

6. Lots within the subdivision numbered in numerical order within blocks, and blocks lettered in alphabetical order.

7. The location of all of the improvements...and in addition thereto the location of all utility poles, sewage disposal systems, and rough grading and other devices and methods of draining the area within the subdivision.

8. The location and results of all percolation tests for each lot of the subdivision, the location of all proposed sanitary sewage systems, and a statement that all such systems will be designed and constructed in conformance with the Sewage Ordinance for the Town of Underhill, as well as to applicable state regulations and standards.

9. The location of all existing and proposed sources of potable water, along with evidence that such will not be contaminated by the proposed sewage systems.

10. Monuments – Reinforced concrete monuments of 3,000 p.s.i. concrete containing four (4) number three reinforcing rods set one (1) in each corner. The monuments shall be four (4) inches square at the top, and three (3) feet long or any approved equal. Monuments shall be set at all R.O.W. intersections, and at all points of curvance (P.C.), points of tangency (P.T.), on both sides of the right-of-way and any other critical points in the road lines as will enable a land surveyor to correctly stake out any lot in the subdivision. In addition, monuments will be set on all corners of the boundary. Each monument shall have identification on the top, so that the marked center shall be the point of reference. The tops of such monuments shall project above the surrounding ground surface at least four (4) inches. The monuments shall be set in place after all other road improvements are completed.

11. There shall be submitted to the [DRB] with the final plat the following supporting documents:

    a. A certificate from an engineer or other consultant approved by the Town as to the satisfactory completion of all improvements required by the [DRB], or, in lieu thereof, a performance bond to secure completion of such improvements and their maintenance for a period of two years, with a certificate from the Board of Selectmen that it is satisfied either with the bonding or surety company, or with security furnished by the subdivider.

    b. The subdivider shall provide letters from the Chittenden East School District Superintendent and the Underhill-Jericho Fire Department, addressing the impact of the proposed subdivision...

    c. For lots less than 10 acres in size, the applicant must provide a subdivision permit from the Vermont Agency of Environmental Conservation, Department of Water Resources.

d. The subdivider shall provide written acknowledgement from the Selectmen that all plans for road construction have been reviewed by the Selectmen and are in compliance with the road policy for the Town of Underhill.

e. Any other documents required by the [DRB] as a result of preliminary plat approval.

F. Planning Standards, "Evaluation Considerations"

1. Whether land is unsuitable for subdivision or development due to flooding, improper drainage, steep slopes, rock formations, adverse earth formations or topography, utility easements or other features which will reasonably be harmful to the safety, health, and general welfare of the present or future inhabitants of the subdivision and/or its surrounding areas.

2. Whether the proposal includes due regard for the preservation and protection of existing features, trees, scenic points, brooks, streams, wetlands, rock outcroppings, water bodies, deer yards and other wildlife habitat, and other natural and historical resources.

3. Whether the proposal includes sufficient open space for active and passive recreation.

4. Whether the proposal includes adequate provision for the control of runoff and erosion during and after construction.

5. Whether the proposed development is in compliance with the Comprehensive Plan, Zoning Ordinance and any other By-Laws then in effect.

6. Whether any portion of the proposed development is located in a flood plain.

7. Whether the proposed development is compatible with surrounding properties.

8. Whether the site is suitable for the proposed density.

9. Whether the proposal contains adequate provision for pedestrian traffic in terms of safety, convenience, access to points of destination and attractiveness.

10. Whether the proposed development when viewed in the context of other developments in the town, will place an unreasonable burden on the ability of local governmental units to provide municipal or governmental services and facilities.

11. Whether there is sufficient water available for the reasonably foreseeable needs of the proposed development.

12. Whether the proposed development will cause unreasonable highway congestion or unsafe conditions with respect to the use of roads and highways in the Town.

13. Whether the proposed development will cause a significant increase in visual, air, noise or water pollution.

G. The following waiver has been requested:

1. Waiver of the bonding requirement in Section II(E)(11)(a) above.

The Board recognizes that final approval of the waiver request will be made by the Selectboard, and that DRB recommendations will be submitted for consideration.

III. CONCLUSIONS

Applicable Regulation Standards

Application Submission Requirements, "Final Plat for Subdivisions" [as noted above in Section II (F)] – The Board finds that the application fulfills requirements (3), (4), and (6)-(9).

A. Requirement #1 - The Board finds that the application does not include the new parcel codes (see Section IV).
B. Requirement #2 – The Board finds that a proposed name for the private road is not on the plans. The Board recognizes that the Selectboard has approved the name LAP Run (see Section IV).
C. Requirement #5 – The Board finds that this is not applicable as no public open space is included in the proposal.
D. Requirement #10 – The Board finds that the requirement for reinforced concrete monuments is out of date. The Board accepts the proposal for iron pins as presented on the survey.
E. Requirement #1, bonding – The Board finds that a waiver of this requirement has been requested. Recommendations for approval will be submitted to the Selectboard.
F. Requirement #2, letters – The Board finds that letters from Chittenden East Supervisory Union and the Underhill-Jericho Fire Department have been received and indicate their ability to provide services for the subdivision.
G. Requirement #3, ANR permit – The Board finds that state permitting requirements with regard to subdivisions have changed since 2002. Applications for a Wastewater System and Potable Water Supply Permit, stormwater permit, and Conditional Use Determination are in process. Stream Alteration Engineer Chris Brunelle reviewed the project and determined on 3-30-12 that it conforms to Section C.2.1. Non-Reporting Activities under the Stream Alteration General Permit. Construction General Permit applications will be submitted by the owners of the individual lots for the disturbance in excess of one acre.
H. Requirement #4, Selectboard road approval – The Board finds that this will occur after their decision has been issued. Recommendations for approval will be submitted to the Selectboard.
I. Requirement #5, other – See Section IV.

Planning Standards, "Evaluation Considerations"

The Applicant's consultant provided Findings of Fact in response to the Evaluation Considerations. The Board accepts these responses and makes supplemental findings where applicable.

A. Consideration #2 – Wetlands and their associated buffers are depicted on the plans. A State Wetlands Permit for the impacts to the Class II wetlands related to the installation of the private road is required. No other impacts to the wetlands are proposed and erosion control measures have been submitted. Stream Alteration General Permit requirements indicate that the stream crossings are non-reporting and do not require additional State reporting or approval. The Board finds that the above, with the issuance of a State Wetlands Permit, indicates due regard given to the preservation of the existing natural features on the property.
B. Consideration #8 – The Board finds that a revision to the 5-lot subdivision presented at the preliminary hearing reduced the number of lots presented at the final hearing. The Board finds that the site is suitable for the reduced density.

Underhill Road Policy, "Upgrade of Driveway or Road"

A. The Board finds that the designs for the private road and driveways were submitted with the final hearing application package. The Board recognizes that approval of roads and driveways are the jurisdiction of the Selectboard, and recommendations for their approval will be submitted to the Selectboard.

IV. DECISION AND CONDITIONS

Based upon the findings above, and subject to the conditions below, the Development Review Board grants approval for the 4-lot subdivision as presented at the final hearing.

A. Per the Underhill Subdivision Regulations, final approval of the subdivision is granted upon filing of the final subdivision plat in the Underhill Land Records. No transfer or sale of property may occur prior to recording the final plat and all applicable permits in the Town of Underhill Land Records.

B. All parcel codes, the private road name (LAP Run), and wetlands shall appear on the final Mylars.

C. The Road Maintenance Agreement/Homeowners Association documents shall be revised to reflect the change in the number of lots and the approved road name. This Agreement shall be recorded in the Land Records. A reference to this agreement shall appear in the deeds to all lots.

D. All required State and local permits shall be recorded in the Land Records.

E. All building envelopes and septic areas shall be staked out by the surveyor/engineer prior to any construction, and off-set stakes shall be held in place until completion of construction.

F. A copy of the engineer's letter to the State certifying that the septic systems for Lots 2, 3, and 4 have been installed per the approved plans shall be filed with the Zoning Administrator prior to issuance of a building permit. The certification letter shall be recorded in the Land Records.

G. The final plat shall contain signature blocks for DRB approval and Town Clerk recording.

H. Prior to recording the final Mylars, the applicant shall submit a copy of the plat and Sheet 1 in digital format. The format of the digital information shall require approval of the Zoning Administrator.

I. All new lots shall have their 911 codes posted prior to issuance of any building permit (Lot 2: LR014, Lot 3: LR024, Lot 4: LR030).

J. All subdivision fees shall be paid in full to the Zoning Administrator prior to filing of the final plat.

K. Applicant shall obtain approval of the curb cut, road and driveway design, underground utilities, and waiver request for the bonding requirement from the Selectboard prior to filing the final plat.

The Board also approved the recommendation to the Selectboard for approval of the road and driveway design, the underground utilities, and the waiver request of the bonding requirement with the following standard conditions:

Upon completion of construction of the road, the designer/engineer must certify by letter to the Zoning Administrator that the road has been constructed as designed (per B-71 Standards and the Underhill Road Policy).

Upon completion of construction of the driveway to the individual lot (Lot 2, Lot 3, Lot 4), the designer/engineer must certify by letter to the Zoning Administrator that the driveway has been constructed as designed (per B-71 Standards and the Underhill Road Policy).

Dated at Underhill, Vermont this 14 day of MAY, 2012.

Charles Van Winkle

Charles Van Winkle, Chairperson, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental Division of Superior 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. Appeal period ends 6-13-12.