TOWN OF UNDERHILL
APPLICATION OF MARTY BASLOW AND MICHAEL BASLOW,
REMAINDERMEN OF THE ISABELLE BASLOW LIFE ESTATE
FOR A 2-LOT SUBDIVISION
FINAL FINDINGS AND DECISION

In re: Marty Baslow & Michael Baslow
13 Baslow Ln.
Underhill, VT 05489

Docket No. DRB-11-01: Baslow

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Marty Baslow's and Michael Baslow's combined preliminary and final hearing application for a 2-lot subdivision of property located at 13 Baslow Ln. in Underhill, VT.

A. On April 25, 2011, McCain Consulting filed an application for subdivision on behalf of the Baslows for the project. A copy of the application and additional information are available at the Underhill Town Hall. A sketch plan review of the project was held on February 7, 2011 and was accepted.

B. On April 25, 2011, a copy of the notice of the combined preliminary and final hearing was mailed to the applicants, Marty Baslow, 65 Colonel Page Rd., Essex Junction, VT 05452, Michael Baslow, 19 Baslow Lane, Underhill, VT 05489, and to the following owners of properties adjoining the property subject to the application:

1. Sminkey/Nadeau, 769 VT Rte. 15, Underhill, VT 05489
2. Russin, P.O. Box 417, Underhill, VT 05489
3. Dehart, 779 VT Rte. 15, Underhill, VT 05489
4. Baslow, 780 VT Rte. 15, Underhill, VT 05489
5. Lunn, 13 Warner Creek, Underhill, VT 05489
6. Bugbee/Robenstein, P.O. Box 221, Underhill, VT 05489
7. Glenn, 18 Warner Creek, Underhill, VT 05489
8. Tatro-Lavigne, 799 VT Rte. 15, Underhill, VT 05489
9. Smith, 38 Gerts Knob, Underhill, VT 05489
10. Francis, 305 Poker Hill Rd., Underhill, VT 05489
11. Tatro, 1617 VT Rte. 15E, Morrisville, VT 05489 (was not returned)
12. Varney, 329 Poker Hill Rd., Underhill, VT 05489
13. Cook, 773 VT Rte. 15, Underhill, VT 05489
14. Langsenkamp, 60 North Underhill Station Rd., Underhill, VT 05489
15. Luce, 50 North Underhill Station Rd., Underhill, VT 05489
16. Netelkos/Boquel, 295 Poker Hill Rd., Underhill, VT 05489
17. Raineault, 28 Gerts Knob Rd., Underhill, VT 05489
18. Coia, P.O. Box 212, Underhill, VT 05489
19. Lamphere, MJFM Lamphere Remaindermen, 27 No. Underhill Station Rd. Underhill, VT 05489
20. Bosley, 4 Baslow Ln., Underhill, VT 05489

21. Mike and Deb Baslow/Baslow Life Estate c/o Michael Baslow, 19 Baslow Ln., Underhill, VT 05849
22. Pecor, 772 VT Rte. 15, Underhill, VT 05489
23. Pamela Hogan, 17 Warner Creek, Underhill, VT 05489

A copy of the notice was also emailed to Gunner McCain, McCain Consulting at gmccain@mccainconsulting.com.

C. On April 25, 2011, notice of the combined preliminary and final hearing on the proposed Baslow subdivision was posted at the following places:

1. The property to be developed, BS013 (April 27, 2011);
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 April 27, 2011, notice of the combined preliminary and final hearing was published in *Seven Days*.

E. The hearing began at 6:32 PM on May 16, 2011.

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

- Chuck Brooks
- Matt Chapek
- Penny Miller, Vice Chairperson
- Will Towle
- Peter Seybolt
- Charles Van Winkle, Chairperson

Kari Papelbon, Zoning Administrator; Gunner McCain, Consultant; Marty Baslow, Applicant; and Elizabeth Baslow (Marty's wife) also attended the hearing.

G. At the outset of the hearing, Vice Chairperson Penny Miller explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Those who spoke at the hearing were:

- Marty Baslow, 65 Colonel Page Rd., Essex Junction, VT 05452

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

- Gunner McCain, McCain Consulting, 93 South Main Street, Ste. 1, Waterbury, VT 05676

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

1. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board, Marty Baslow, Michael Baslow, and Gunner McCain of McCain Consulting;
2. Marty Baslow's and Michael Baslow's Applications for Subdivision: Final (dated 2-25-11 and 4-25-11);
3. Copies of the completed Subdivision Checklist: Preliminary Hearing and the completed Subdivision Checklist: Final Hearing;
4. A copy of the survey prepared by Keith Van Iderstine of McCain Consulting, Inc. for Michael Baslow and Marty Baslow (dated 4-20-11);
5. A copy of the Flood Insurance Rate Map Panel 0010 B for the property;
6. A copy of the Wastewater System and Potable Water Supply Permit #WW-4-2103-2 (dated 2-5-11);
7. A copy of the letter from Harry Schoppmann of the Underhill-Jericho Fire Department (dated 4-25-11);
8. A copy of the completed School Impact Questionnaire from Superintendent of Schools John Alberghini (dated 2-23-11);
9. A copy of the Proposed Findings of Fact;
10. A copy of the proposed Private Roadway Agreement;
11. A copy of the waiver request for the bonding requirement (dated 4-21-11);
12. A copy of the sketch plan meeting minutes (dated 2-21-11);
13. A copy of the tax map for BS013;
14. A copy of the hearing notice published in *Seven Days* (4-27-11).

These exhibits are available in the Baslow, BS013, 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 ±42.53-acre parcel located at 13 Baslow Lane in Underhill, VT (BS013).

B. The property is located in the Rural Residential and Soil & Water Conservation zoning districts as defined in §VI 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:

- Application Submission Requirements, pages 7-9, "Preliminary Plat for Subdivisions"
- Application Submission Requirements, pages 9-11, "Final Plat for Subdivisions"
- Planning Standards, pages 11-12, "Evaluation Considerations"

D. Application Submission Requirements, "Preliminary Plat for Subdivisions" – The preliminary plat shall be drawn to a scale of not more than two hundred (200) feet to the inch, and shall show or be accompanied by the following information:

1. Proposed subdivision name or identifying title and the name of the town.

2. Name and address of record owner, sub divider and designer of Preliminary Plat.

3. Number of acres within the proposed subdivision, location of property lines, existing easements, buildings, water-courses and other essential existing physical features, natural features and resources.

4. The location of natural features or site elements to be preserved.

5. The names of all subdivisions immediately adjacent and the names of owners of record of adjacent acreage, including those directly across any road adjoining proposed subdivision.

6. The provisions of the Zoning Regulations applicable to the area to be subdivided and any zoning district boundaries affecting the tract.

7. The location and size of any existing sewerage systems and water supplies, culverts and drains or underground cables on the property to be subdivided.

8. Location, names and present widths of existing and proposed roads, easements, building lines, parks, and other public open spaces as well as similar facts affecting adjacent property.

9. Contour lines at intervals of ten (10) feet of existing grades and of proposed finished grades where change of existing ground elevation will be five (5) feet or more.

10. Typical cross sections of the proposed grading and roadways.

11. Date, true north point, scale, and legend.

12. Complete survey of subdivision tract by a licensed registered engineer or surveyor.

13. Means of providing water supply to the proposed subdivision.

14. Means of on-site disposal of septic wastes including location and results of tests to ascertain subsurface soil, rock and ground water conditions, depth to ground water unless pits are dry at depth of seven (7) feet; location and results of preliminary percolation tests for plat.

15. Provisions for collecting and discharging storm drainage, in the form of drainage plan.

16. Preliminary designs of any bridges or culverts which may be required.

17. The proposed lot lines with approximate dimensions and suggested locations of buildings.

18. The location of temporary markers adequate to enable the Commission to locate readily and appraise the basic layout in the field. Unless an existing road intersection is shown, the distance along a road from one corner of the property to the nearest existing road intersection shall be shown.

19. All parcels of land proposed to be dedicated to public use and the conditions of such dedication.

20. The sub divider shall coincidentally with submitting the preliminary layout, also furnish a statement signed by him or her to the Commission reciting:

    a. The nature and extent of the proposed road or roads. These must meet Town highway specifications as established by the Selectmen;

    b. The nature and extent of any recreational features, parks, or playgrounds to be provided, if any, and whether or not and under what conditions they are to be dedicated to the Town;

    c. The way in which the proposed development relates to the Comprehensive Plan for the Town of Underhill.

21. The sub divider shall indicate if any of the proposed units are to be considered as public buildings.

22. The sub divider shall indicate the location of proposed underground cables.

23. List of waivers, if any, the sub divider desires from the requirements of these regulations, and justification therefore.

24. The preliminary Plat shall be accompanied by a vicinity map drawn to show the relation of the proposed subdivision to the adjacent properties and to the general surrounding area. The vicinity map shall show all the area within two thousand (2,000) feet of any property line of the proposed subdivision. Such vicinity map will be shown on a U.S.G.S. map at a scale of approximately one (1) inch to 24,000.

25. If the preliminary Plat submitted covers only part of the sub divider's entire holding, then the applicant shall submit an outline of the platted area, together with its road system and an indication of the future probable road system of the remaining portion of the tract.

E. Application Submission Requirements, "Final Plat for Subdivisions" – The final Subdivision Plat shall consist of one or more sheets of drawings which conform to the following requirements: One copy shall be on mylar clearly and legibly drawn, and the size of the sheets shall be either 18" X 24" or a multiple thereof. Four paper copies shall complete the submission. Such sheets shall have a margin of 2" outside of the borderlines on the left side for binding and a 1" margin outside the border along the remaining sides. Space shall be reserved thereon for endorsement by all appropriate agencies. The final plat for a subdivision shall conform in all respects to the preliminary plat as approved by the [DRB]. One such drawing shall be a survey of the

affected property, drawn to meet the requirement for plat plans filed with the Town Clerk (Title 27, V.S.A., Chapter 117). 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 sub divider, 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 sub divider and those spaces title to which is reserved by the sub divider.

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 referred to in Article VIII 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 contaminated by the proposed sewage systems.

10. Monuments - 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 sub divider.

    b. The sub divider shall provide letters from the Chittenden East School District Superintendent and the Underhill-Jericho Fire Department, addressing the impact of the proposed subdivision under criterion (10) of Section 600.

    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 sub divider 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 variance has been requested:

- Lot 6 existing shed front setback – 30 feet from the proposed front lot line (centerline of Baslow Lane)

I. The following waiver has been requested:

- Bonding requirement – The Board recognizes that this is a final application submission requirement under the 2002 Underhill Subdivision Regulations and is under the jurisdiction of the Selectboard. Recommendations by the DRB will be provided for Selectboard consideration.

III. CONCLUSIONS

Applicable Regulation Standards

Application Submission Requirements, "Preliminary Plat for Subdivisions" [as noted above in Section II (D)] – The Board finds that the application fulfills requirements (1) through (6), (8), (11), and (12), and that requirements (7), (9), (10), and (13) through (22) are not applicable to the proposed plan as there is no new development proposed.

A. Requirement #23 - The Board finds that a waiver and a variance request have been submitted. See Section IV.

Application Submission Requirements, "Final Plat for Subdivisions" [as noted above in Section II (E)] – The Board finds that the application fulfills requirements (1) through (4), (6), (10), and 11(b), and that requirements (5), (7), (8), (9), and (11) (b)-(d) are not applicable to the plan as there is no new development proposed. The Board recognizes that a State Wastewater Permit was obtained for the project although no new development or systems are proposed.

A. Requirement #11(a) - The Board finds that a waiver request has been submitted. See Section IV.

Planning Standards, "Evaluation Considerations"

A. The Board finds that the land is suitable for subdivision as no new development is proposed.

B. The Board finds that the proposal does not include new development and existing natural features will not be affected.

C. The Board finds that the proposal does not affect the existing open space for active and passive recreation.

D. The Board finds that the proposal does not include new development that would affect erosion or runoff.

E. The Board finds that a waiver request for the bonding requirement and a variance request for the existing shed have been submitted. See Section IV.

F. The Board finds that no Special Flood Hazard Areas have been identified on the land to be subdivided and no new development is proposed.

G. The Board finds that the proposed subdivision is compatible with the residential nature of surrounding properties.

H. The Board finds that the subdivision will not change the existing density.

I. The Board finds that the subdivision does not change the existing pedestrian traffic possibilities.

J. The Board finds that letters from the Underhill-Jericho Fire Department (UJFD) and Chittenden East regarding their abilities to serve the proposed subdivision have been submitted.

K. The Board finds that the subdivision does not include new development, and that existing sewage and water supplies will continue to be used. A State Wastewater Permit has been issued for the subdivision.

L. The Board finds that there are no new roads proposed for the subdivision. Access will remain via the existing private road (Baslow Lane).

M. The Board finds that the proposed subdivision will not cause a significant increase in visual, air, noise or water pollution as the proposal does not include new development.

IV. DECISION AND CONDITIONS

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

A. The Road Maintenance Agreement shall be revised to reflect the correct acreage.

B. The shed is approved for a variance in its current location. Routine maintenance and repair are allowed; however, any expansion or change of use will require additional approvals.

C. The waiver for the bonding requirement will be recommended for approval to the Selectboard.

D. 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.

E. The shared driveway maintenance agreement shall be recorded in the Land Records. A reference to this agreement shall appear in the deeds to the lots.

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

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

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

Dated at Underhill, Vermont this 1 day of June, 2011.

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.