

Town of Underhill
Development Review Board Minutes
Chairperson Scott Tobin

March 23, 2009

Board Members Present:

Scott Tobin, Chair
Chuck Brooks
Matt Chapek
Penny Miller
Deb Shannon
Peter Seybolt
Charlie Van Winkle
Stan Hamlet

Also Present:

Kari Papelbon, Zoning Administrator
Mike Weisel, Town Engineer

6:36 PM: Chairman Scott Tobin called the Christie sketch plan meeting to order.

Applicant Present:

Brian Christie
50 Mullen Rd.
Underhill, VT

Consultant Present:

Gunner McCain
McCain Consulting
4050 Williston Rd.
South Burlington, VT

Other Participants Present:

Cindy Cross-Greenia
34 Mullen Rd.
Underhill, VT

Julie Kelliher
37 Mullen Rd.
Underhill, VT

Michael Lang

49 Mullen Rd.
(238 River Rd.)
Underhill, VT

Mike Tatro
38 Mullen Rd.
(Massachusetts)
Underhill, VT

Guest

Identifier:	Contents:
ZA-1	A copy of Brian Christie's Application for Subdivision: Sketch Plan
ZA-2	A copy of the completed Subdivision Checklist: Sketch Plan
ZA-3	A sketch plan prepared by Gunner McCain of McCain Consulting for Janice and Brian Christie (Sheet 1 of 1, dated 2-27-09)
ZA-4	A copy of the 2006 Tatro subdivision, approved by the Planning Commission, depicting the Limited Cut Zones
ZA-5	A copy of the GIS map showing contours and natural features
ZA-6	A copy of the parcel map for MU050
ZA-7	Staff report prepared by Kari Papelbon

- Chairperson Tobin began meeting by explaining the procedure for the sketch plan meeting.
- Gunner McCain, consultant for the Applicant, explained the site plan and provided details. The parcel is approximately 10 acres, which was subdivided by Michael Tatro a few years ago. The Christies are looking to create one lot of 7 acres for themselves and sell a 3-acre parcel. The existing driveway will be utilized with approximately 100 feet for the new driveway. Over 1 acre of land will be cleared, requiring a Construction General Permit. No coverage needed for stormwater because the expansion of impervious surface is less than 5000 square feet.
- A discussion of what will be considered the front lot lines ensued. In the past, the front lot line has been determined based on where the driveway enters the lot, which would mean the front lot line would be where the drive meets the end of Mullen Road. The front lot line is important for determining setbacks. Mr. McCain requested clarification from the Board as the proposed barn building envelope is currently 50 feet from the lot line adjacent to the current driveway. Several Board Members asked Mr. McCain for clarification on the proposed lot lines, building envelopes, and driveways.
- Board Member Penny Miller asked if the driveway was called Mullen Road. Mr. McCain responded that he was unsure as to where the end of

Mullen Road was. Board Member Deb Shannon asked if it is where the Town's plows turn around. Board Member Stan Hamlet asked Cindy Cross-Greenia if she had previously mentioned that the Town's plows stop just beyond her driveway. She responded that that was correct. The rest of the road is private. A discussion of the road and private driveways ensued.

- Board Member Hamlet asked for clarification on the site plan and previous survey. It was explained that the survey from the previous Tatro subdivision was included to show the entire lot as well as the limited cut zone on the Christie parcel.
- Board Member Charlie Van Winkle asked where the frontage for the two lots will be achieved. Mr. McCain explained where the access will be for each lot and stated that the entire ROW would be frontage. A discussion of the frontage as they pertain to setbacks ensued. Mr. McCain offered to move one of the lot lines to address the setback and frontage question.
- Chairperson Tobin asked if the entire parcel was in the Rural Residential zoning district. Mr. McCain replied that a small corner was in the Soil & Water Conservation district. ZA Papelbon further explained that the district line would not affect the development.
- Board Member Matt Chapek asked about the minimum frontage. Board Member Penny Miller asked if a driveway was considered a private road. Board Member Van Winkle stated that if the driveway has a permanent easement or right-of-way at least 30-feet in width then, yes. A second discussion of frontage ensued. Chairperson Tobin asked Mr. McCain if he could address the proposed property line. Mr. McCain responded that he would.
- Mr. McCain asked for clarification of how setbacks are measured—from the property line or the edge of the right-of-way. The Board provided an explanation that the setbacks are measured from the property line and not the edge of the right-of-way. A brief discussion of the setback measurements ensued.
- Chairperson Tobin asked if there were any other potential issues. Mr. McCain stated that there were not and provided another brief explanation of the overall plan.
- Chairperson Tobin asked about the location of the well. Mr. McCain explained that he believed that the well shield would partially extend onto the abutting parcel but that he would try to find a location to keep the shield entirely on the new lot. ZA Papelbon explained that the septic

system setbacks are controlled by the State. Mr. McCain explained what the requirements were.

- Board Member Chuck Brooks asked if there was one zoning district or two. ZA Papelbon explained that there are two, but the more restrictive district was only a small portion of the lot. Mr. McCain explained that he would show that line on subsequent submissions, although the plans do not call for any development in that area.
- Board Member Matt Chapek asked if the road continued beyond the parcel. Mr. McCain explained that it does and shows up on several maps as Mullen Road, but that his understanding is that Mullen Road stops by the Greenia house.
- ZA Papelbon stated that her concerns were addressed and added that State permits will be required.
- Chairperson Tobin asked for public comment.
- Brian Christie, 50 Mullen Road, asked why the property line needed to be moved out of the center of the drive. Mr. McCain replied that he would discuss that with him.
- Julie Kelliher, 37 Mullen Road, stated that she would wait to see what would happen with the frontage issue. She then stated that this was the first time anyone had heard about a road that continues beyond the property to the adjoining Wilma Clark property. What is the origin of the road, who has rights to it, and is it a Town road? Mr. McCain stated that he never heard of anyone having rights to the road other than the landowners. Mike Tatro provided additional information that his attorney found that Mr. Villeneuve created that road and was only used as a logging road and was private. The issue of a potential road prompted a lengthy discussion.
- Board Member Peter Seybolt asked who drew the map depicting the woods road. Mr. McCain explained that his firm drew it and that woods road is a designation for a logging road. The benefit is for field work.
- Chairperson Tobin asked ZA Papelbon if she had spoken to Road Foreman Rod Fuller regarding the location of the terminus of the Town portion on Mullen Road. She replied that Mr. Fuller confirmed that the Town's responsibility ends about at Julie Kelliher's and Cindy Cross-Greenia's driveways.
- Julie Kelliher reiterated her concern for discovering whether there were private, legal rights to the woods road in question. Board Member Miller

asked why such rights would affect this development. Cindy Cross-Greenia explained her concerns regarding whether the road would be considered an ancient road. Board Member Van Winkle asked for clarification on the ancient road issue. Mrs. Cross-Greenia read from a Vermont League of Cities and Towns publications regarding ancient roads. A discussion of this ensued. Mr. McCain asked for Mrs. Cross-Greenia to provide documentation that would prove the logging road in question was an ancient road. Mr. Tatro provided an explanation of the road and its use. It seems as though it was used as a logging road. Brian Christie discussed where he believed the logging road was. Mr. McCain reiterated that there is no current documentation to suggest that Mullen Road extends beyond the current extent as an ancient road past the Christie lot. Further discussion on this matter ensued. Mrs. Kelliher reiterated that it is a valid discussion and would like to see the history of the title search. Mr. McCain stated that he did not believe the Christies' attorney would have a problem providing their title search. Chairperson Tobin stated that all abutters had been notified. Mr. Tatro also offered the title searches conducted by his attorneys.

- Mike Lang, 49 Mullen Road, asked whether the proposed new lot affects the development of his lot with regard to road conditions, subdivisions on the road, etc. Mr. McCain explained that the Christies have no intention of further subdividing beyond this application and that Mr. Lang could subdivide his own land. A brief discussion of the access to the Lang lot ensued. Board Member Miller asked that since there would be 3 houses if the road would have to be improved. Mr. Lang asked if his intentions to build would be affected by this subdivision. It was responded that they would not. Board Member Miller asked her question again. Mr. McCain responded that his understanding was that the road had been built to Town specifications from the previous Tatro subdivision. Mr. McCain then provided additional information regarding the proposed access.

7:38 PM: Chairperson Tobin asked if the Board had enough information to proceed. He made a motion, seconded by Board Member Hamlet, for the Board to deliberate in closed session after the next hearing. The motion was passed by all Board Members present.

Mr. McCain asked for a short break. The Board agreed. Mr. Lang, Mr. Christie, and another guest left at this point.

7:42 PM: Chairperson Tobin called the Tatro preliminary hearing to order.

Identifier: Contents:

ZA-1	A copy of Michael Tatro's Application for Subdivision: Preliminary
ZA-2	A copy of the completed Subdivision Checklist: Preliminary

- ZA-3 Plans prepared by Gunner McCain of McCain Consulting for Michael Tatro (Sheets S-1 and SW-1, revised 2-27-09; Sheets S-2, S-3, and SW-2, dated 1-22-09)
- ZA-4 A copy of the survey by Keith R. Van Iderstine, L.S. of McCain Consulting for Michael Tatro (dated 2-27-09)
- ZA-5 A copy of FIRM panel 5000420010B
- ZA-6 A copy of the draft Proposed Findings of Fact
- ZA-7 A copy of the School Impact Questionnaire from James Massingham, Chittenden East Supervisory District Co-Superintendent (dated 2-6-09)
- ZA-8 A copy of the letter to Chief Randy Clark of the Underhill Jericho Fire Department (dated 2-5-09)
- ZA-9 A copy of the draft Private Roadway Agreement
- ZA-10 A copy of the parcel map for MU038
- ZA-11 Staff report prepared by Kari Papelbon
- S-1 Email from Gunner McCain dated 3-23-09 with a letter dated 3-13-09 and specifications from George McCain regarding the existing bridge on the Tatro property
- S-2 Email from Michael Weisel, Town Engineer, dated 3-6-09 with his analysis of the plans
- S-3 Email from Gunner McCain to ZA Papelbon and copied to the DRB dated 3-6-09 in response to receiving Town Engineer Weisel's analysis of the plans
- S-4 Email from Chris Baron, 480 Poker Hill Road, to ZA Papelbon regarding the Tatro subdivision
- S-5 "Long and Winding Ancient Roads Discussion Comes to End: Important Deadlines Loom in Future Years" article by Trevor Lashua from *VLCT News*, July 2006.

- Chairperson Tobin began meeting by explaining the procedure for the preliminary hearing and swore in all interested parties. He then entered the above documents into record. ZA Papelbon read the email from abutting neighbor Chris Baron. Chairperson Tobin stated that the Board had conducted a site visit on Saturday, March 21, 2009.
- Gunner McCain provided an explanation of the preliminary subdivision plans. The lots will use a shared driveway off of the existing curb cut. State permits will be required for septic and stormwater. Septic systems will be more than the minimum of 25 feet from the property boundary. Construction inspections will also be required to ensure protection of the

wetlands, in addition to the Town's 100-foot buffer. The road/shared driveway will be construction with a 10% grade. This project is required to obtain approval from the State Operational Stormwater program, and a road maintenance agreement has been drafted.

- Board Member Miller asked if the stream buffer was considered a no-cut zone. Mr. McCain replied that it was, but that the stream buffer was not applicable to the driveways. With the exception of infrastructure, the stream buffer is a no-cut zone. Board Member Miller asked if a homeowner typically is aware of that, Mr. McCain replied that it will be in the covenants and is in the Town's regulations.
- Chairperson Tobin stated that documentation providing a professional opinion of the bridge has been submitted. Mr. McCain provided a brief summary of that structural analysis. Chairperson Tobin stated that he saw some uprights, presumably for guardrails. Mr. McCain stated that those were just there and that the width of the bridge is 11 feet.
- Chairperson Tobin asked ZA Papelbon if the Road Policy has requirements for guardrails. ZA Papelbon stated that the Road Policy requires bridges to be constructed to AOT standards. The question of icing conditions was raised. Chairperson Tobin stated that the bridge would be included in the Selectboard's approval of the driveway, for which the DRB would be making recommendations. ZA Papelbon read the requirement for bridges on page 8 of the Road Policy. She then stated that she believes that standard is really for large bridges. Mr. McCain also stated his opinion that AOT would not look at the bridge.
- Board Member Van Winkle asked Town Engineer Mike Weisel was a structural engineer. Mr. Weisel replied that he did look at the bridge that afternoon and that he concurs with Mr. McCain that the bridge is well over-designed for the amount of weight that will ever cross the bridge. One of the six posts has been bent and should be straightened and fastened. A guardrail bolted to each side with three posts, etc. would be a good idea.
- Chairperson Tobin stated that there was some discussion at the end of the site visit as to whether the culvert on the existing lot next to the existing driveway should be removed. Mr. McCain stated that taking the culvert out is probably the best thing to do. Chairperson Tobin asked if the stormwater retention ponds were designed to keep the overall flow neutral from the current situation. Mr. McCain stated that the design requirements for the State program are such that post-development peak discharges cannot exceed pre-development peak discharge levels. Chairperson Tobin asked about the replacement culverts. Mr. McCain explained that the properly-sized culverts will be installed with the proper installation techniques.

- Board Member Miller asked how the builders are made aware of the requirement to have rooftops disconnected and without gutters and valve-stops. Mr. McCain replied that the Stormwater permitting program has changed due to this concern, especially with “orphan” stormwater permits. The new requirements are that they will not issue a permit until a legal homeowners association has been created so that the permits are transferred to that entity. He stated that those documents would be provided to the Board. He added that twice a year a report must be submitted to the State regarding the function of the ponds, and every three years the ponds must be certified by a professional to be functioning properly.
- Board Member Matt Chapek asked if a homeowner could build a gutter at grade. Mr. McCain stated that while the plans do not specifically mention such, the intent and purpose of the plans is to have water sheet across the lawns.
- Board Member Seybolt asked where the frontage on the lots was. Mr. McCain stated that he believed, based on the discussion at sketch plan, that the layout presented was acceptable to meet the frontage requirements.
- Chairperson Tobin asked Mr. McCain if he had gotten a chance to look at the report sent by Town Engineer Mike Weisel. Mr. McCain responded that he had. They would like to leave the option to the prospective buyers of the lots of whether to install a pond or rain garden and would amend the plans to state such. The road grade creates the 6-8 foot cut, not the stormwater pond. Enhanced details on the anti-seep collars will also be provided. Clarification on the driveway design will also be provided per Mr. Weisel’s recommendations.
- Board Member Miller asked what a bioretention pond looks like. Mr. McCain responded that plants grow in it and that a typical stormwater pond has a pipe with a hole so that the water drains out of the pond slowly. The bioretention pond has a pipe that rises to a certain level for water to flow out, but there is no hole at the bottom. The water will seep into the ground. Soils need to be amended for a bioretention pond (rain garden). Water will dry out after a day or so, but the standing water will not be in the pond long enough to breed insects, etc.
- ZA Papelbon stated that details for culvert headwalls and a draft Homeowners Association agreement will be required for the final plans. She also stated that since the road will service 3 houses it needs to become a private, named road. She then asked who delineated the wetlands, to which Mr. McCain responded that Nicole Fitch (McCain

Consulting) had done so and he believed a State representative had been to the site as well. She also stated that copies of all Stormwater reports will need to be copied to the Town, recommended by Chairperson Tobin to be included in the Homeowners Association agreement.

- Chairperson Tobin asked for public comments.
- Julie Kelliher, 37 Mullen Road, stated that she has similar issues with the woods roads as potential ancient roads with private rights as she had with the proposed Christie subdivision.
- Cindy Cross-Greenia, 34 Mullen Road P.O. Box 392, asked if any of the proposed buildings other than the current rental building would be public buildings intended for rental. Board Member Van Winkle asked where in the Town's regulations Mrs. Cross-Greenia was looking. She stated it was criterion #21 in preliminary plat for subdivisions. Board Member Van Winkle stated that he believed they considered public buildings to be multi-family structures. He stated that the application is for single-family homes. Board Member Seybolt asked if Mrs. Cross-Greenia had problems with rental units, to which she stated she did as there were issues with the previous renters of the existing house. She does not want to see additional rental buildings in the neighborhood. She is concerned about the aesthetics of the lots and her privacy. Specific concerns are for the driveway and the house on Lot 2 as they will be seen from her backyard, losing privacy. She also referenced the growth rate in the Town Plan and stated that her road has seen 100% growth over the last 3 years. Mrs. Cross-Greenia does not believe the subdivision is in conformance with the regulations and Town Plan. She also stated that she's concerned about trees being cut down and asked for a no-cut zone along the entire shared property line with Lot 2. She also stated that driving over the bridge is noisy and wants the trees as a noise buffer. Mrs. Cross-Greenia then stated that the culverts in place were installed illegally and questioned how someone who has illegally installed culverts can proceed with subdivision without fixing those culverts first.
- Board Member Miller asked about the culverts to which Mrs. Cross-Greenia referred. Mr. McCain explained that those culverts need to be redone properly. ZA Papelbon explained that when the culverts are reinstalled that the requirements in the Low-Risk Site Handbook will need to be followed to prevent stream contamination and ensure that the culverts are installed correctly.
- Board Member Van Winkle asked if Mrs. Cross-Greenia could reiterate her concerns for the small culvert seen at the site visit. She stated that the culvert was too small, and that her husband's concern is that the

culvert will block and the water will flood their house again. Mr. McCain stated that he agreed that it is too small and it will be removed.

- Mr. McCain stated that single-family homes are proposed and that he believed the Board was correct with regard to the public building issue. He stated that with 3-acre zoning neighbors will see each other and that screening does not mean that neighbors will not see other houses. A discussion of lot sizes, tree-cutting, and privacy ensued. Mr. McCain stated that the area Mrs. Cross-Greenia requested is protected by the Town and State buffer areas. A discussion of these buffer areas ensued. Board Member Van Winkle asked about mowing in the State wetland buffer for a lawn—it was stated that such was not permitted—and putting bioretention ponds in the State buffer, to which Mr. McCain responded that they would want the developer to avoid such if possible. After a brief discussion on a limited cut zone, Mr. McCain stated that he and his client would make a decision prior to the final hearing.
- Board Member Chapek asked if the buffer zones could be shown on the plans. It was stated that the buffer zones are on the plans for the new lots, but not on the lot with the existing house as no new development is proposed on that lot. Mr. McCain further explained that the hatched areas on the plans are those areas with more protection than the buffer areas for the Environmentally Sensitive Rural Development Credit in the State's Stormwater Program. Saving 25% of the project as undeveloped allows an applicant to meet one of the criteria. ZA Papelbon asked if the credit limits cutting in those areas. Mr. McCain replied that it doesn't and that the undeveloped areas could change over time as long as the percentage does not change.
- Board Member Seybolt stated that, as he recalled, Julie Kelliher's concerns about the woods roads would be addressed by submission of the title searches. This was confirmed by several present.
- Chairperson Tobin asked Mr. McCain to read his Proposed Findings of Fact based on the 13 criteria in the subdivision regulations. Board Member Stan Hamlet asked if a letter from the fire department had been received. Mr. McCain responded that his office sent a letter but had not yet heard back from the Fire Chief. Board Member Matt Chapek asked if school buses went to the end of Mullen Road. It was stated by several that kids walk to the end of Mullen Road to catch the bus. Chairperson Tobin asked if a different configuration of planks would solve the noise concerns raised by Mrs. Cross-Greenia. Mr. McCain responded that such is typically done for better weight distribution. Mr. Tatro provided his experience with a different bridge. Board Member Chuck Brooks added his experience with his bridge as well.

- Board Member Hamlet asked about outdoor furnaces. He said the State has had some discussion about not permitting them further. Board Member Brooks stated that the DRB cannot regulate outdoor furnaces.
- Board Member Miller asked where the public portion of Mullen Road ends and the private portion begins. Mr. McCain stated he was unclear and he thought that the Town trucks turn around at the driveway to 38 Mullen Road. Board Member Miller asked about gravel and grading, to which Mr. McCain and Mr. Tatro said the Town takes care of those as well as plowing up to that driveway. ZA Papelbon stated that perhaps Mr. McCain should call Road Foreman Rod Fuller to confirm where the Town does stop maintenance.

8:59 PM: Chairperson Tobin asked if the Board had enough info to make a decision on the preliminary application. He then made a motion, seconded by Board Member Stan Hamlet, to enter a closed deliberative session. The motion was passed by all Board Members present.

9:43 PM: Board Member Stan Hamlet made a motion, seconded by Board Member Chuck Brooks, to move into open deliberative session. The motion was passed by all Board Members present.

Board Member Chuck Brooks made a motion, seconded by Board Member Stan Hamlet, to accept the Christie sketch plan application with several recommendations:

1. Include the items missing from the sketch plan checklist in subsequent submissions (the "limited-cut zone" from the previous subdivision, the zoning district lines and criteria, the location of existing utilities).
2. Ensure all new buildings conform to setbacks.
3. Demonstrate that the lots have the proper frontage.
4. Show all rights-of-way.

The motion was passed by 6 Board Members and opposed by 1 Board Member.

9:47 PM: Board Member Stan Hamlet made a motion, seconded by Board Member Chuck Brooks, to move into closed deliberative session. The motion was passed by all Board Members present.

9:53 PM: Board Member Stan Hamlet made a motion, seconded by Chairperson Scott Tobin, to move into open deliberative session. The motion was passed by all Board Members present.

Board Member Stan Hamlet made a motion to have ZA Papelbon draft an email with concerns about the Tatro preliminary application. There was no second and the motion failed.

Board Member Stan Hamlet made a revised motion, seconded by Board Member Peter Seybolt, to approve the Tatro preliminary subdivision application with conditions:

1. Include the details for the bioretention pond option as well as elevation and grading details for the ponds, details for the anti-seep collars, and clarification on the driveway design as per Town Engineer Mike Weisel's email dated March 6, 2009.
2. Include details for the proposed culvert headwalls.
3. Provide a draft of the Homeowners Association agreement to include maintenance of the shared private road and stormwater ponds, and a requirement to copy the Town into all certifications and reports submitted to the State.
4. Name the private road.

The motion was passed by all Board Members present.

While the existing bridge on the property was discussed, the Board recognizes that this will fall under the jurisdiction of the Selectboard. Recommendations from the DRB to the Selectboard will be provided with final subdivision approval.

9:55 PM: Board Member Peter Seybolt made a motion, seconded by Board Member Stan Hamlet, to adjourn. All Board Members were in favor.

9:55 PM: Meeting adjourned.

These minutes of the 3-21-09 meeting of the DRB were

Accepted

This _____ day of _____, 2009.

Chairperson Scott Tobin

These minutes are subject to correction by the Underhill Developmental Review Board. Changes, if any, will be recorded in the minutes of the meeting of the DRB.