

**Town of Underhill**  
Development Review Board Minutes  
Chairperson Scott Tobin

April 21, 2008

**Board Members Present:**

Scott Tobin, Chair  
Deb Shannon  
Penny Miller  
Chuck Brooks  
Matt Chapek  
Charlie Van Winkle

**Also Present:**

Kari Papelbon, Zoning Administrator  
Chris Murphy, Town Planner

**6:37 PM:** Meeting called to order. Chairperson Scott Tobin began the meeting by explaining the procedure for the preliminary hearing.

**6:43 PM:** Martha Montgomery Trust preliminary hearing commenced.

**Martha Montgomery Trust**  
**60 Maple Leaf Road**

**Consultant Present:**

Gunner McCain  
McCain Consulting, Inc.  
93 S. Main Street, Ste. 1  
Waterbury, VT 05676

**Other Parties Present:**

JoAnn Hanowski  
James Fredericks  
70 Maple Leaf Road  
Underhill, VT

John & Jeannie Panner  
55 Maple Leaf Road  
Underhill, VT

Tom Montgomery  
60 Maple Leaf Road  
Underhill, VT

<b>Identifier:</b>	<b>Contents:</b>
ZA-1	Plans prepared by Gunner McCain for the Martha Montgomery Trust (Sheets S1-9 revised 1-31-07, EC-1 revised 1-31-08, EC-2 dated 8-16-07, and SW-1 dated 1-31-08)
ZA-2	A copy of the survey by Keith R. Van Iderstine, L.S. of McCain Consulting for the Martha Montgomery Trust (dated 2-28-08)
ZA-3	A copy of the GIS map showing nearby drilled wells and yields
ZA-4	A copy of the wildlife impact assessment by Tina Scharf and David Capen (dated February 2008) and Curriculum Vitae for Tina Scharf
ZA-5	A copy of the draft Common Land Management Plan
ZA-6	A copy of the draft Road Maintenance Agreement
ZA-7	A copy of the waiver requests for the PRD
ZA-8	A copy of the memorandum from Mike Weisel regarding the road design and erosion control and stormwater plans (dated 4-9-08)
ZA-9	A copy of the Proposed Findings of Fact
ZA-10	A copy of the letter from JoAnn Hanowski, 70 Maple Leaf Road (dated 10-25-07)
ZA-11	A copy of the parcel map for ML060
ZA-12	A copy of the Subdivision Checklist: Preliminary Hearing
ZA-13	A copy of the email from Michael Luck and Barbara Wilson, 42 Maple Leaf Road (dated 4-21-08)
ZA-14	A copy of the letter and testimony from Jeannie Panner, 55 Maple Leaf Road (dated 4-21-08)
ZA-15	A copy of the letter and testimony from John Panner, 55 Maple Leaf Road (dated 4-21-08)

- Chairperson Tobin read the preliminary hearing checklist and swore in all interested parties. He then entered into record documents ZA-1 through ZA-15.
- Gunner McCain explained that the plans before the Board are the near final version, with some revised items on revised preliminary plans.
- Board Member Charlie Van Winkle asked if Mr. McCain could provide an overview of the project for those in the audience who were unable to attend the previous sketch plan meetings. Mr. McCain stated that the parcel of approximately 130 acres in the Water Conservation and Soil & Water Conservation zoning districts is being proposed for subdivision. One of the objectives of Shelly Barker, Trustee for the Martha Montgomery Trust, was to separate the existing home from the existing camp. Thus, she chose to pursue a Planned Residential Development (PRD) for leniency of the setback requirements. She also felt strongly about retaining and preserving open space, one of the requirements for a PRD. Mr. McCain then continued with a brief explanation of the slopes and general nature of the project.
- Ms. JoAnn Hanowski asked if the audience could ask questions. Chairperson Tobin explained that audience members would have an opportunity to do so at a later point in the hearing.

- Mr. McCain added that at the previous hearing he presented the Board with a conventional subdivision layout that seemed feasible for comparison to the PRD plans.
- Board Member Van Winkle asked how many lots were shown in the conventional plan. Mr. McCain responded that the density would allow for 9 lots with 8 new houses and no common land. He then explained that the proposed lots would be served by a private road and onsite water and sewer systems, and that applications for permits for water, septic, stormwater, and erosion control have been or will be submitted to the State (within one week).
- Chairperson Tobin asked if all of the septic systems were conventional. Mr. McCain explained that Lots 6 and 8 had mound systems. Board Member Van Winkle asked if any of the systems utilized pretreatment. Mr. McCain responded that they did not and that pretreatment systems are less desirable under the new State regulations.
- Mr. McCain explained that a wildlife assessment had been conducted for the project area, which concluded that the parcel did not contain critical habitat. A Class II wetland exists on the adjoining property to the east, of which the Town's 100-foot buffer around the wetland extends onto the project area. Mr. McCain explained that a lot line was adjusted so that the 50-foot State buffer and the remaining Town buffer would be on the common land rather than Lot 8. The building envelope does not encroach into the Town's buffer.
- Chairperson asked the road plans in relation to the letter of analysis from Town Engineer Mike Weisel. Mr. McCain explained that he was unaware of the Road Policy requirement that grades of 10% do not continue for more than 500 feet at a time. A waiver request has been submitted for this standard. He then explained that the 6-inches of finished material on top of the 12-inch subbase was an oversight and would be corrected. Mr. McCain then explained that a waiver of the final plat for subdivision requirement that an engineer's certification that all improvements have been completed as required must be submitted at the time of filing the final Mylar or a performance bond be secured has been requested.
- Board Member Penny Miller then asked about the curve radii referenced in Mike Weisel's letter. Mr. McCain stated that no radii are shown; however a waiver of the 100-foot requirement is requested for the radius at the curb cut. He then added that the Mirafi filter fabric would be used. Chairperson Tobin then asked about the right-of-way requirement from Mr. Weisel's letter, to which Mr. McCain responded that he would change it to 60 feet as it was an oversight.
- ZA Papelbon asked Mr. McCain to clarify what the plan legend shows to be a stone wall at each of the stormwater ponds. Mr. McCain explained that the areas in question were spillways for the ponds and provided further details about the design of the dry ponds. Both ponds were designed to accommodate a 25-year flood event. Board Member Miller asked if stormwater retention ponds require maintenance. Mr. McCain

- responded that they do as sediment settles and collects at the bottoms of the ponds and that State stormwater permitting rules require at least an annual inspection of the stormwater discharge system with a report filed to the Agency of Natural Resources. The system will need to be recertified every few years. Board Member Matt Chapek asked if the State conducted the inspections, to which Mr. McCain responded that the engineer is responsible. The Homeowners' Association will be required to comply with the stormwater permit, which includes the inspection.
- Chairperson Tobin asked if the Board would like to review the waiver requests. Board Member Van Winkle indicated his preference for reviewing the proposed Findings of Fact rather than the waiver requests as Mr. McCain will be revising those requests. Mr. McCain reviewed the submitted Findings.
  - Chairperson Tobin asked Mr. McCain if he had included winter construction plans. Mr. McCain responded that he had not at this point, but that those plans would be prepared and submitted to the State should winter construction occur.
  - Board Member Deb Shannon asked what the total disturbed area of 10 acres included. Mr. McCain replied that Sheet EC-1 showed the disturbed area as an outline around areas where earth will be disturbed and construction will take place.
  - Chairperson Tobin asked what the sizes of the homes would be. Mr. McCain responded that the new lot owners would decide, but that Ms. Barker is considering a maximum size restriction. Board Member Van Winkle asked about the wastewater design capacity, to which Mr. McCain replied that they were designed to serve 4-bedroom homes.
  - Chairperson Tobin asked if letters from the fire department or school district had been received. ZA Papelbon responded that she did not have copies and Mr. McCain added that his interpretation of the regulations was that those letters were final hearing requirements. ZA Papelbon stated that receiving those letters sooner is preferable.
  - Chairperson Tobin asked about the request to have an accessory apartment in the existing barn on Lot 3. Mr. McCain explained that the waivers were for the square footage and distance between the apartment and future house site. He added that he would be amenable to having a condition that the apartment would be the primary structure until the new house is built and that the apartment would need to comply with the zoning regulations in place at the time of building the home. ZA Papelbon asked if the camp, shown on the plans as a barn, currently has septic capacity. Mr. McCain asked Tom Montgomery if the barn has a septic system. Mr. Montgomery stated that it does and is functional, although he does not know where the system is located. Mr. McCain added that the barn is not insulated, but does have a kitchen area. The septic system that has been designed will accommodate two bedrooms in the barn and a 4-bedroom house. A brief discussion regarding the conversion of the barn ensued. Board Member Miller asked whether the designed septic system

would be installed now. Mr. McCain responded that it would not need to be installed now and added that Ms. Barker intends to retain the lot for herself at this point and is not planning on moving back or building a house in the short-term.

- Mr. McCain stated that his and Ms. Barker's understanding is that the lots cannot be further subdivided once approved. The Board replied in the affirmative. Mr. McCain then asked ZA Papelbon if a lot line adjustment would be allowed, to which she replied she believed it would.
- ZA Papelbon then asked if Mr. McCain or Mr. Montgomery knew where the septic system currently serving the barn was located. Mr. Montgomery replied that he knew where the tank is but not where the lines are. Board Member Deb Shannon asked whether a new house on that lot would rely on the existing septic system for capacity. Mr. McCain replied that the designed system for Lot 3 would not rely on the current septic and has been designed for 6-bedroom capacity.
- Mr. Panner asked if the procedure for upgrading a seasonal camp could be combined with the PRD process. Mrs. Panner added that converting the camp to a year-round residence would need approval if Ms. Barker wants to convert the barn to an apartment. ZA Papelbon asked Chairperson Tobin to defer to Town Administrator/Planner Chris Murphy. Ms. Murphy replied that the Town does not distinguish between a seasonal camp and a year-round residence any longer due to the State's takeover of septic jurisdiction. The Town will refer to the State's requirements. A brief discussion regarding taxing on the barn/camp ensued.
- Chairperson Tobin asked Mr. McCain to discuss the road, in particular the wetland crossing. Mr. McCain explained that approximately 500 square feet of the Class III wetland would be impacted by the road crossing. He further explained that the location for the curb cut was chosen due to the topography of the area—moving the curb cut further south would require traversing a steeper bank and that lot was desirable for a house site. Mr. McCain further explained that the wetland drains south, under Maple Leaf Road, and onto adjacent property as mentioned by a neighbor.
- Chairperson Tobin asked if the Board had any questions before moving on. ZA Papelbon then spoke, referring to missing items per the Subdivision Checklist: Preliminary Hearing. Missing items include parcel ML070, suggested locations of buildings, utility easements (they will likely follow the road and buried), setbacks, letters from the fire department and school district, all State permits, the location of the wetland and driveways on the site plan. She also stated that the wetland buffer that extends onto Lot 1 should be shown, as well as the three existing culverts on Maple Leaf Road. ZA Papelbon then explained that she would need to speak with Ms. Barker's attorney, Lori Ruple, regarding the language in the agreements, deeds, and easements. She then asked if the Class III wetlands noted in the wildlife assessment had been delineated. Mr. McCain replied that they had not been formally delineated. ZA Papelbon

- ZA Papelbon asked if information regarding aquifer flows was readily available. Mr. McCain responded that the information regarding availability of water was obtained from the State's well yield database. This information shows that adequate water for a single-family home can be obtained from drilled wells. Board Member Van Winkle stated that one of the neighbor concerns is the recharge potential with development occurring at higher elevations. Mr. McCain responded that the idea of "the higher up the mountain, the less water" is not accurate—there are natural springs on top of the mountain, and water travels in pressurized bedrock fractures. Surface elevation does not determine how much water will be produced by a drilled well, nor how deep one must drill in order to reach the water in the aquifer.
- Board Member Miller stated that another neighbor concern is whether their well yield would be affected by additional drilled wells. Mr. McCain replied that the accepted standard for drilled wells serving single-family homes is that when wells are approximately 150 feet apart there have not been interference issues.
- Chairperson Tobin asked whether no-cut zones or screening provisions would be added to the rear of Lots 4, 5, and 7. Mr. McCain replied that no provisions for tree-cutting had been provided.
- Board Member Chuck Brooks asked what the note "rooftop to be disconnected" on the plans means. Mr. McCain answered that it is a stormwater issue where "disconnected" means the roof runoff would not be directed into the water conveyance; rather it would be directed onto relatively flat ground (grass) before it goes to the stormwater conveyance.
- ZA Papelbon explained that the project would be covered under the Army Corps of Engineers' General Permit for the wetlands. Mr. McCain explained that since there will be approximately 500 square feet of impact to the Class III wetland at the proposed road crossing, the State will not regulate the wetland. Instead, the wetland will be regulated at the federal level through the Corps. Their permit process is multi-tiered, the lowest of which is called "non-reporting" where less than 3000 square feet of wetland will be impacted. All requirements under their General Permit must be followed for coverage, but with the exception of keeping documentation that the impact is less than 3000 square feet, no reports or plans to the Corps are necessary. ZA Papelbon asked how it was

determined that 500 square feet would be impacted. Mr. McCain explained that the width of the wetland at the crossing is about 15 feet and an approximation of ±30 feet for the road. ZA Papelbon added that she had provided a letter with a copy of the plans to Mike Adams of the Corps at his request when she contacted him with questions regarding the General Permit process. Chairperson Tobin asked whether they would be sending the guidelines, to which ZA Papelbon responded that she thought they would but that they may also be available online. She stated she would find out.

- Chairperson Tobin asked if there were further questions from ZA Papelbon or the Board. There were none. Chairperson Tobin then invited the audience to provide their comments and ask questions.
- ZA Papelbon read the letter from Michael Luck and Barbara Wilson, 42 Maple Leaf Road, opposing waiver requests for the project.
- Board Member Van Winkle asked if there was another wetland besides the Class III shown on the plans. ZA Papelbon responded that the wetland on the plans is the one that the letter refers to. Mr. McCain and members of the audience added that there are more wetlands on the parcel than the one shown.
- Jo Ann Hanowski, 70 Maple Leaf Road, then spoke. She stated that the wildlife assessment was very generic, many wetlands on the property have not been mapped, vernal ponds exist on the property that have not been identified, flow into the Class II wetland on one of the lots has not been mapped and impact to that flow would have an impact on the adjacent property. She then asked how many lots could be developed on the property if designed in accordance with the zoning regulations and setback requirements. Mr. McCain replied that he could create 9 lots. Mrs. Panner stated that the map she had said it was 7. Chairperson Tobin explained that, based on the Town's different zoning district requirements, the plan presented could have supported one additional home. Ms. Hanowski asked if the wetland map had been presented. Board Member Van Winkle explained that the Board asked the applicant to do a density plan based on mapped data available through GIS, the Board agreed with the density plan, and then asked Mr. McCain to do detailed engineering on the PRD. Ms. Hanowski stated that Class III wetlands are not mapped and that the analysis presented was incomplete. Board Member Van Winkle stated that it satisfied the Board. He then asked Ms. Hanowski about vernal pools and their locations on the property. She stated that while she noticed them during a walk on the property, she did not feel it was her responsibility to map them for the applicant. ZA Papelbon then asked how a vernal pond is identified. Ms. Hanowski replied that it is a depression filled with water in which frogs and salamanders reside until they dry up in the summer. She then stated that her biggest concern was for the impact to the Class III wetland on Lots 4 and 5. A discussion of potential wetland impacts, vernal ponds, and the wildlife assessment occurred.

- Mr. McCain provided his comments in response to Ms. Hanowski's concerns and comments. He explained that the Class II wetland on the adjoining property is upslope of Lot 8 and all development is proposed downslope of the wetland. No water channel exists running off of Lot 8 toward the wetland. Board Member Miller added that the lot lines are not clear on the property, so Ms. Hanowski may not have known exactly which property she was on at the time. Mr. McCain continued, providing information regarding critical habitat, "undue, adverse impact," clustered housing, and the drainage from the wetland.
- Jeannie Panner, 55 Maple Leaf Road, then spoke. She stated that the conventional plan presented at a previous hearing showed 7 lots. Mr. McCain responded that he did show 7 lots in a conventional plan because he was asking for 7 lots. Out of those 7 lots, at least 3 lots were much greater than the minimum acreage required for the zoning district and he could have shown more lots. Mrs. Panner then provided her objections to the proposed apartment and corresponding waiver requests. She added that the plans do not show the stream mentioned in Mr. Luck and Ms. Wilson's letter and provided information regarding the flow and condition of the stream. Other concerns include potential contamination to the stream, the proposed stockpiles on the plans, setbacks, and the effects of the waivers and future tree cutting on the lots. Board Member Miller asked Mrs. Panner about the connection between cutting the trees and the stormwater plan. Mrs. Panner responded that the tree roots soak up the water and removing the trees will cause runoff. ZA Papelbon explained that there is no State regulation that prevents a landowner from clear cutting. Mr. Panner stated that other municipalities prohibit cutting above a certain elevation or limit a certain percentage. Board Member Matt Chapek asked where the stream flowed prior to the existence of the Panners' house. Mr. Panner explained that it always flowed through the culvert and that he has never seen the culvert dry. He added that their land is so porous that the water is currently not draining to the Stevensville Brook.
- Mr. McCain responded to Mr. and Mrs. Panner's comments, stating that barns are usually large and are accessory uses. He also reiterated that he and his firm designed the project to meet all of the appropriate standards with regard to stormwater and erosion control to deal with sediment and runoff. The brook mentioned by Mrs. Panner is currently being impacted by sediment from the road and that the proposed project will not impact it further.
- John Panner, 55 Maple Leaf Road, then spoke, stating that he and his wife have lived at that address since 1985 and after the Town re-graded the hill past Tom Montgomery's house at 60 Maple Leaf Road they began seeing runoff from the road. The proposed project is larger than doing work on a road and his concern is for a much larger impact. A hydrology study has been found since his testimony from a previous hearing and he provided a summary of that thesis (bedrock aquifer recharge). Mr. Panner

is concerned about decreased recharge occurring as a result of the project. He then explained that the State's well database contains errors, and provided a summary of the freelance corrective work he has been conducting with regard to the locations of those wells. A discussion of springs, aquifers, hydrology, well yields, and well and spring shields ensued. Mr. Panner stated that he was pleased to hear that the stormwater pond maintenance would be addressed in the agreements drafted by the applicant's attorney. He suggested making the ponds as part of the Common Land.

- Gunner McCain provided his responses to Mr. Panner's concerns. He explained that the spring shield serving the Montgomery house is a result of site-specific mapping conducted as part of the project. When it was originally created by the consultant who worked on the previous subdivision he used USGS contours to create the shield (uphill spring shields are created based on the contours on the ground) because there was no potential source of contamination on the uphill portion of the land. This project was mapped because there would be development uphill of that spring and found that the USGS contours were inadequate. Mr. McCain further explained that wells and springs are typically disconnected groundwater regimes, that a flow of 4 gallons per minute as in nearby wells is plenty for a single-family home, and provided information regarding storage and usage.
- Board Member Miller asked Mr. McCain if using the appropriate methods and meeting the criteria was sufficient for maintaining a sound stormwater approach. Mr. McCain responded that it was.
- Chairperson Tobin asked if any other members of the audience would like to speak. Mr. James Fredericks responded that he was there to support Ms. Hanowski.
- Tom Montgomery, 60 Maple Leaf Road, then spoke asking whether the stormwater ponds would be dry and whether the water now flowing to the ditch would go to the ponds. Mr. McCain responded in the affirmative, and explained that the ponds would take the water directly off of the road ditches and provided an explanation of how the ponds work.
- Chris Murphy, Town of Underhill Planning Administrator then spoke, asking Mr. McCain if the length of time for constructing the road based on which lots are sold would comply with a Construction General Permit for each lot. Mr. McCain responded that he believed the way he applied for the permit would include the lot development so that the individual lot owners would not have to apply for the permit. ZA Papelbon responded that the note on the plans indicated that the individual lot owners would have to apply for the Construction General Permit. Mr. McCain responded that he would double-check. He further explained that even if the lot is not covered under the original submission and will disturb only a portion of an acre, the lot would need coverage because it is the common plan of development that triggers jurisdiction. He said that deed language would solve that problem, and that the top portion of the road would be added

once most of the construction is completed. Mr. McCain then explained that he would ask the Board to allow a phasing of the road construction, which would allow the applicant to fund the construction through the sale of the lots. Board Member Miller asked if the applicant would sell the lots closest to the road first. Mr. McCain responded that she would like the option to do so, but if someone would like one of the lots farther in then she would have the option. Board Member Miller then asked about when the stormwater infrastructure would be installed based on the lots sold. Mr. McCain explained that the stormwater pond closest to the road would be built when the first section of the road is installed and would cover stormwater between it and the second pond. The second pond would be installed with the second portion of the road. Town Planner Murphy added that the project would require both a stormwater permit and a Construction General Permit. Mr. McCain then explained the two permits. Ms. Hanowski stated that it sounded like the project was going to happen based on the conversations and that she did not believe the Board had enough information to determine the impact the project could have. Town Administrator Murphy suggested making a condition of the subdivision that the Town gets a copy of the inspection reports and certification letters to the State. She then stated that it would be best to have building envelopes rather than proposed house sites. Mr. McCain replied that building envelopes are shown. Board Member Miller then asked if a house is built as far to the side of a building envelope as possible how the well protection area would affect a neighboring lot. Mr. McCain responded that the leach fields and drilled wells in the locations shown on the plans and receive permits based on those plans. An amended permit would be required should the drilled well be moved. Town Planner Murphy explained that all construction would need to be within the approved building envelopes and any changes to the site plan that would require building outside of the envelope (and potentially re-siting the well location) would require a site plan amendment and approval by the DRB. Mr. McCain explained that although some building envelopes may extend beyond the limits of disturbance shown, the limits of disturbance would move with the location of the house. Mrs. Panner asked if the assumption was that trees would only be cut within the limits of disturbance. Mr. McCain replied in the negative. Mrs. Panner replied that someone could clear cut the lots and asked if the stormwater plan would still work. Mr. McCain stated that he did not believe that the stormwater plan would be significantly affected by clearing trees. Town Planner Murphy then explained that underground utilities are required in the regulations. She then stated that the Town is currently rewriting the regulations and that the current regulations regarding accessory apartments would change, and reiterated that a variance is not necessary for the driveway. Town Planner Murphy then told Mr. and Mrs. Panner that she had not previously heard about the silt runoff on Maple Leaf Road impacting the brook, but she would speak to the Road Foreman.

- Mrs. Panner stated that the Board is being asked to vote on a project based on current regulations, not what regulations may be accepted in the future.
- ZA Papelbon asked Mr. McCain if the grassed channels would require a specific kind of maintenance. Mr. McCain responded that the grassed channels would become part of the stormwater infrastructure.

**9:17 PM:** All interested parties left the hearing at this point.

- Gunner McCain asked whether the Board felt they had enough information to make a decision. Chairperson Tobin replied that he took the words out of his mouth. ZA Papelbon stated that the road stops at a point at Lot 8 and a right-of-way would continue onto the lot. Mr. McCain has indicated his preference for the western lot line to be the front lot line. Should the Board agree, that would be the lot line in perpetuity. Board Member Matt Chapek asked Mr. McCain why he chose that line. Mr. McCain responded that it was fairly arbitrary, except to meet setbacks.
- Board Member Van Winkle asked about the list waivers. ZA Papelbon stated that the missing waiver was for the curve radius at the curb cut.

**9:21 PM:** Chairperson Tobin asked if the Board had enough information to make a decision on whether the meeting fulfills the requirements of the Underhill regulations for preliminary hearing. Board Member Van Winkle stated that the Board had not yet seen the revised drawings and that he'd like to see the waiver requests in a consolidated list. He then stated that he believed the interested parties needed an opportunity to review the revised drawings. The Board felt that since the interested parties did not stay for the remainder of the meeting that they did not need to wait for their comments on the revised plans.

Mr. McCain then provided the updated copies of and a brief explanation of the changes to the plans (Sheet S1—the index changed, Sheet S2—included the water line to the barn, Sheets S5 and S7—deleted pretreatment notes as the systems are mound, EC-1—changed the title block, the stormwater ponds are larger, notes changed, EC-2—ponds changed, subdrainage areas were adjusted, the culvert at station 9+00 was moved, some notes changed, used to be SW-1, and EC-3—used to be EC-2—editing notes to be consistent with other sheets). ZA Papelbon asked what the 5x5 stone splash pad. Mr. McCain replied that it is a stone area for water dispersal. ZA Papelbon asked if it was a permanent feature, to which Mr. McCain replied that it was. Town Planner Murphy asked if a wetlands delineation had been conducted. Mr. McCain replied that Nicole Fitch (McCain Consulting) had done so and that there was a small wetland above storm pond 2.

Board Member Miller asked if vernal pools were considered Class III wetlands. Town Planner Murphy stated that they were considered habitat.

Board Member Chuck Brooks asked about what the initials on Sheet EC-1 were. It was stated that those are soil types.

ZA Papelbon asked Mr. McCain to continue his explanation of the wetland delineated above storm pond 2. He explained that Ms. Fitch had delineated the Class III wetland at the lower portion of the development, the small wetland above storm pond 2, the edge of the Class II wetland on Lot 8, and walked the rest of the development area but did not find any other wetlands.

**9:30 PM:** Chairperson Tobin asked if the Board felt that they had enough information to move forward with a decision. Board Member Penny Miller stated that she was unsure how to address the vernal ponds. Board Member Deb Shannon added that she had a lot of questions regarding that and whether the Board could restrict clear cutting. Town Planner Murphy asked Mr. McCain what the State's position on clear cutting is with regard to clear cutting and obtaining a stormwater permit. Board Member Van Winkle asked about what would happen if someone wanted to clear cut to pasture horses. Town Planner Murphy stated that such acts are permitted for agricultural operations. Mr. McCain stated that he did not believe the State's regulations mention trees or lack thereof with stormwater control plans. He stated that the State standard on hydrology that is still current methodology has runoff curve numbers based on how vegetated a site is. A forested area will runoff slower than a field, but the stormwater infrastructure design and stormwater permit are based on impervious surface. The design is based on impervious surface. A discussion regarding runoff potential ensued. Mr. McCain offered a suggestion to have a permit condition or deed restriction that cutting over a certain number of acres would require prior review and approval by the DRB. Town Planner Murphy stated that she thought the underlying concern of the neighbors was screening.

A discussion about procedure ensued. Board Member Chuck Brooks stated that he would prefer to continue the hearing based on needing additional information. A discussion about requirements ensued. Board Member Deb Shannon stated that she believed the wildlife assessment was vague and did not give regard for the effects of the development on the animals and the reverse. A discussion about the wildlife assessment ensued.

Board Member Penny Miller asked about the silt and water quality issues raised by the neighbors. Mr. McCain responded that the safeguards presented are designed to prevent silt from entering the water, and if they are installed and maintained properly they work very well. Chairperson Tobin stated that the inspection and certification letters copied to the Town would be a requirement which would address current concerns regarding siltation and runoff.

Board Member Charlie Van Winkle proposed to continue the evidentiary portion of the hearing for two weeks. It was determined that another hearing would be

required and a discussion regarding procedure as well as interested party testimony ensued.

**9:57 PM:** Board Member Charlie Van Winkle made a motion, seconded by Chairperson Scott Tobin, to move into deliberative session. The motion was opposed by Board Member Chuck Brooks.

Board Member Penny Miller asked about procedure with regard to new evidence presented at final hearing. A discussion regarding procedure ensued.

Board Member Matt Chapek asked whether the proposed workshop would require a waiver or a variance. ZA Papelbon stated that structures that do not meet setbacks would need waivers under a PRD. A PRD allows for waivers, a discussion of which ensued.

**10:05 PM:** Board Member Charlie Van Winkle made a motion, seconded by Board Member Penny Miller, to move into open deliberative session. The motion was passed with Board Member Chuck Brooks opposed.

**10:28 PM:** Open Deliberative Session continued to Monday, April 28 at 6:00 PM.

**Monday, April 28: Continued Deliberative Session** (all Board Members who attended the hearing on April 21 were present with the exception of Board Member Chuck Brooks. Zoning Administrator Kari Papelbon also attended.)

**6:30 PM:** Board Member Matt Chapek made a motion, seconded by Board Member Deb Shannon, to move into closed deliberative session. The motion was passed by all Board Members present.

**9:50 PM:** Chairperson Scott Tobin asked if the Board would like to come out of closed deliberative session. Board Member Penny Miller made a motion, seconded by Board Member Deb Shannon, to move into open session.

A short discussion of the waivers ensued.

**9:53 PM:** Board Member Charlie Van Winkle made a motion, seconded by Board Member Deb Shannon, to grant a waiver for the proposed workshop setback to the wetland. The motion was passed by all Board Members present, with Board Member Penny Miller abstaining.

The following votes on the requested waivers were cast:

**Lot size requirements for Lots 2-8:** Board Member Penny Miller made a motion, seconded by Board Member Deb Shannon, to grant waivers of the lot size requirements for Lots 2-8. The motion was passed by all Board Members present.

**Frontage requirements for Lots 6-8:** Board Member Charlie Van Winkle made a motion, seconded by Board Member Penny Miller, to grant waivers to the frontage requirements for Lots 6-8. The motion was passed by all Board Members present.

**Proposed workshop on Lot 2 setback to lot line:** Board Member Charlie Van Winkle made a motion, seconded by Board Member Deb Shannon, to grant a waiver to the proposed workshop's setback requirement to the side lot line. The motion was passed by all Board Members present.

**Lot line setbacks for Lots 2, 3, 6, 7, and 8:** Chairperson Scott Tobin asked for a vote to grant waivers to the side lot line setback requirement for the existing house on Lot 2, for the existing shed on Lot 3, the front lot line setback for the proposed building envelope on Lot 6, the front and side setbacks for the proposed building envelope on Lot 7, and the side setback for the proposed building envelope on Lot 8. All Board Members present voted to grant waivers for the setbacks listed above.

**Proposed apartment separation distance requirement from proposed building envelope on Lot 3:** Board Member Charlie Van Winkle made a motion, seconded by Board Member Penny Miller, to grant the waiver for the distance requirement between the proposed building envelope and the existing barn/proposed apartment, with the understanding that the apartment would be the primary dwelling on the Lot until a new home is built. The motion was passed by all Board Members present.

**Proposed apartment square footage on Lot 3:** Board Member Charlie Van Winkle made a motion, seconded by Board Member Penny Miller, to deny the waiver request for the proposed square footage of the proposed apartment on Lot 3. The motion was passed by all Board Members present.

Board Member Charlie Van Winkle made a motion, seconded by Board Member Deb Shannon, to require the square footage of the proposed apartment in the barn on Lot 3 conform to current zoning regulations. Should the regulations change, the apartment must conform to the regulations in place at the time of construction of the new home. The motion was passed by all Board Members present.

**Proposed curve radius at curb cut and proposed length of grade:** Board Member Charlie Van Winkle made a motion, seconded by Board Member Penny Miller, to recommend approval of the waiver request of the 100' curve radius requirement at the proposed curb cut and the requirement that a 10% grade cannot exceed 500' in length to the Selectboard. The motion was passed by all Board Members present, with Board Member Deb Shannon abstaining.

**Engineer certification or performance bond requirement:** Board Member Charlie Van Winkle made a motion, seconded by Board Member Deb Shannon, to approve, with conditions, the waiver request of the requirement that an engineer certify that all improvements required by the Board were installed properly or a performance bond be submitted with the final Mylar. The motion was passed by all Board Members present.

**10:35 PM:** Board Member Charlie Van Winkle made a motion, seconded by Board Member Matt Chapek, to approve the preliminary subdivision application with conditions and additional final hearing requirements (see decision). The motion was passed by all Board Members present.

**10:36 PM:** Chairperson Scott Tobin made a motion, seconded by Board Member Deb Shannon, to adjourn. The motion was passed by all Board Members present.

These minutes of the 4-21-08 and continued 4-28-08 meetings of the DRB were

Accepted

This \_\_\_\_\_ day of \_\_\_\_\_, 2008

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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.***