TOWN OF UNDERHILL
APPLICATION OF MARCY GIBSON FOR SUBDIVISION
FINAL HEARING FINDINGS AND DECISION

In re: Marcy Gibson
50 New Road
Underhill, VT 05489

Docket No. DRB-07-16: Marcy Gibson

## I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Marcy Gibson's final hearing application for a 2-Lot subdivision permit for property located at 50 New Road in Underhill, VT.

1. On December 13, 2007, Marcy Gibson filed a final application for subdivision for the project, which included engineering drawings, a survey, a proposed Shared Driveway Maintenance Agreement, proposed easement deed language, and Proposed Findings of Fact. Also received prior to the hearing were copies of the Act 250 Amendment application, a copy of State wastewater and potable water supply permit # WW-4-2964, and a copy of the State of Vermont Land Use Permit Amendment # 4C0563-3.

2. On December 20, 2007, a copy of the notice of a final hearing was mailed to the applicant, Marcy Gibson, 50 New Road, Underhill, VT, 05489. A copy of the notice of final hearing was mailed via certified mail to the following owners of properties adjoining the property subject to the application:

    a. McClellan, P.O. Box 152, Underhill Center, VT 05490
    b. Oman, P.O. Box 216, Underhill Center, VT 05490
    c. Albertini, P.O. Box 168, Underhill Center, VT 05490

3. On December 27, 2007, notice of the final hearing was published in the Burlington Free Press. Additional notice of the final hearing was published in the Mountain Gazette on January 17, 2008.

4. By December 31, 2007, notice of the final hearing on the proposed Gibson subdivision was posted at the following places:

    a. The Underhill Town Clerk's office;
    b. The Underhill Center Post Office;
    c. The Underhill Flats Post Office;
    d. The Underhill/Jericho Deborah Rawson Memorial Library;

5. The final hearing was scheduled for 6:30 PM on January 21, 2008.

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

   - Scott Tobin, Chair
   - Chuck Brooks
   - Stan Hamlet
   - Matt Chapek
   - Deb Shannon

   Zoning Administrator Kari Papelbon also attended the meeting.

7. At the outset of the hearing, Chairperson Scott Tobin explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Interested parties who spoke at the hearing were:

   - Marcy Gibson, 50 New Road, Underhill, VT 05489
   - Gunner McCain, McCain Consulting, 93 South Main Street, Waterbury, VT 05676

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

   1. A staff report sent by Zoning Administrator Papelbon to the Development Review Board;
   2. Plans prepared by Peter Lazorchak of McCain Consulting for Marcy Gibson (dated 12-6-07);
   3. A copy of the survey prepared by Carroll Peters for Marcy Gibson (dated 12-3-07);
   4. A copy of the wastewater system and potable water supply permit from the State of Vermont, WW-4-2964 (dated 1-2-08);
   5. A copy of the State of Vermont Land Use Permit Amendment, 4C0563-3 (dated 1-7-08);
   6. A copy of the proposed Shared Driveway Maintenance Agreement;
   7. A copy of the proposed easement language to be included in the deed to the new lot;
   8. A copy of the Winter Stabilization chapter of the Low Risk Site Handbook for Erosion Prevention and Sediment Control (referenced in #17 of the Act 250 permit);
   9. A copy of the parcel map showing the mapped deer yard (referenced in #21 of the Act 250 permit);
   10. A copy of the Proposed Findings of Fact;
   11. A copy of the completed Subdivision Checklist: Final Hearing.

   These exhibits and preliminary hearing decision are available in the Marcy Gibson, NR050 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:

1. The engineering drawing and survey are now tied to each other.

2. The width of the proposed driveway to Lot 2 shall be 14 feet wide, with a 12-foot traveled way, per the Town of Underhill Road Policy.

3. Lots 1 and 2 will share a driveway. Applicant has submitted a proposed Shared Driveway Maintenance Agreement.

4. There is an existing utility easement on the property. The location of the transformer and telephone box is on the southern part of Lot 2. The driveway as depicted in the plans shall not cross the utility easement.

5. The well on Lot 2 has been relocated to prevent the well shield from encroaching onto the adjacent parcel.

6. A wastewater permit, WW-4-2964, has been obtained.

7. An Act 250 Permit Amendment, 4C0563-3, has been obtained.

8. The Applicant's Act 250 Permit Amendment referenced the "Winter Stabilization" chapter of the Vermont Department of Environmental Conservation Water Quality Division – Stormwater Section's publication, *The Low Risk Site Handbook for Erosion Prevention and Sediment Control.*

9. The Applicant's Act 250 Permit Amendment application referenced a deer wintering area on the parcel. This parcel is the site of a previous gravel pit. An Act 250 Permit and Amendment have been issued for this parcel.

10. The Act 250 Permit Amendment requires that the Applicant include deed language stating that the parcel is in the immediate vicinity of a deer wintering area.

11. The Board finds that the following conditions apply to this subdivision:

    a. Final approval of this subdivision is conditioned upon approval of the driveway design by the Selectboard.

b. Final approval of this subdivision is granted upon filing of the final subdivision survey 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.

c. The proposed driveway to Lot 2 and the shared driveway improvements shall be constructed per the approved plan. The designer/engineer must perform an inspection during and upon completion of construction of these improvements to make sure that all the design elements, including but not limited to the drainage plan, have been constructed as designed. Before a building permit would issue to any lot, the designer/engineer must certify by letter to the Zoning Administrator that the driveway to Lot 2 and the shared driveway improvements have been constructed as designed, with the letter filed in the zoning records of the Town of Underhill.

d. A driveway maintenance agreement for maintenance of any shared traveled portion of the proposed driveway must be submitted to the Zoning Administrator for approval before filing of the final Mylar. The driveway agreement must include a provision that it runs with the land and this language must be included in the deeds to the lots in the subdivision.

e. The Mylars shall include the new property code for Lot 2 (NR048).

f. The building envelope, septic areas, and driveway must be staked out by the designer/surveyor/engineer prior to any construction, and off-set stakes must be held in place until completion of construction and inspection by the Zoning Administrator or her agent for conformance with the approved plans.

g. Prior to recording the final plan, the applicant shall submit a copy of the site plan in digital format. The format of the digital information shall require approval of the Zoning Administrator.

h. The 911 code for Lot 2 shall be posted prior to issuance of any building permit.

i. All subdivision fees must be paid in full to the Zoning Administrator before filing of the final survey with the Town Clerk.

## III. DECISION AND CONDITIONS

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

**Conditions for Subdivision**

1. Per the Underhill Subdivision Regulations, final approval of the subdivision is granted upon filing of the final subdivision survey and any other documents as required herein in the Underhill Land Records.

2. The proposed driveway to Lot 2 and the shared driveway improvements shall be constructed per the approved plan. The designer/engineer must perform an inspection during and upon completion of construction of these improvements to make sure that all the design elements, including but not limited to the drainage plan, have been constructed as designed. Before a building permit would issue to any lot, the designer/engineer must certify by letter to the Zoning Administrator that the driveway to Lot 2 and the shared driveway improvements have been constructed as designed, with the letter filed in the zoning records of the Town of Underhill.

3. A driveway agreement for the maintenance of any shared traveled portion of the proposed driveway shall be submitted to the Zoning Administrator for approval prior to prior to filing of the final Mylar. The driveway agreement shall include a provision that it runs with the land and this language must be included in any deeds to lots in the subdivision.

4. The Board recommends that the Selectboard grant approval for the proposed shared driveway. The Selectboard granted approval on January 24, 2008.

5. The Mylars shall include the new property code for Lot 2 (NR048).

6. The building envelope, septic areas, and driveway shall be staked out by an engineer, surveyor, and/or licensed designer prior to any construction, and off-set stakes shall be held in place until completion of construction and inspection by the Zoning Administrator or her agent for conformance with the approved plans.

7. All state permit requirements, including, but not limited to, wastewater and Act 250 must be adhered to.

8. The Requirements for Winter Construction as laid out in *The Low Risk Site Handbook for Erosion Prevention and Sediment Control* shall be followed for construction between October 15 and April 15 as per the Act 250 Permit Amendment. The requirements for construction activities involving earth disturbance beyond October 15 or that begin prior to April 15 are as follows:

a. Enlarged access points, stabilized to provide for snow stockpiling.
b. Limits of disturbance moved or replaced to reflect boundary of winter work.
c. A snow management plan prepared with adequate storage and control of meltwater, requiring cleared snow to be stored down slope of all areas of disturbance and out of stormwater treatment structures.
d. A minimum 25 foot buffer shall be maintained from perimeter controls such as silt fence.
e. In areas of disturbance that drain to a water body within 100 feet, two rows of silt fence must be installed along the contour.
f. Drainage structures must be kept open and free of snow and ice dams.
g. Silt fence and other practices requiring earth disturbance must be installed ahead of frozen ground.
h. Mulch used for temporary stabilization must be applied at double the standard rate, or a minimum of 3 inches with an 80-90% cover.
i. To ensure cover of disturbed soil in advance of a melt event, areas of disturbed soil must be stabilized at the end of each work day, with the following exceptions:
    i. If no precipitation within 24 hours is forecast and work will resume in the same disturbed area within 24 hours, daily stabilization is not necessary.
    ii. Disturbed areas that collect and retain runoff, such as house foundations or open utility trenches.
j. Prior to stabilization, snow or ice must be removed to less than 1 inch thickness.
k. Use stone to stabilize areas such as the perimeter of buildings under construction or where construction vehicle traffic is anticipated. Stone paths should be 10-20 feet wide to accommodate vehicular traffic.

9. The 911 code for Lot 2 shall be posted before issuance of any building permit.

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

11. All subdivision fees shall be paid in full to the Zoning Administrator prior to filing the final survey and engineering plan with the Town Clerk.

The subdivision as depicted on the final plans with the above stated conditions is approved.

Dated at Underhill, Vermont this 31st day of January, 2008.

Scott Tobin

Scott Tobin, 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. No documents shall be recorded until March 1, 2008, when the 30-day appeal period has expired.