TOWN OF UNDERHILL
APPLICATION OF SHELDON BARKER, TRUSTEE OF THE
MARTHA MONTGOMERY TRUST
FOR A PLANNED RESIDENTIAL DEVELOPMENT
PRELIMINARY FINDINGS AND DECISION

In re: Sheldon Barker, Trustee
Martha Montgomery Trust
60 Maple Leaf Road
Underhill, VT 05489

Docket No. DRB-07-17: Sheldon Barker, Trustee

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Sheldon Barker's (Trustee for the Martha Montgomery Trust) preliminary hearing application for an 8-Lot Planned Residential Development (PRD) for property located at 60 Maple Leaf Road in Underhill, VT.

1. On September 20, 2007, Gunner McCain filed an application for subdivision on behalf of Sheldon Barker for the project. A copy of the application and site plan are available at the Underhill Town Hall. A sketch plan hearing was held on October 1, 2007. The sketch plan meeting was continued to October 15, 2007, at which point the sketch plan was accepted.

2. On October 4, 2007, notice of a public site visit was published in the Mountain Gazette.

3. On October 16, 2007, a copy of the notice of a public site visit was mailed to the applicant, Sheldon Barker, P.O. Box 655, Albian, CA 95410. A copy of the notice of public site visit was mailed to the following owners of properties adjoining the property subject to the application:

    a. Infields, LLC, 1438 Ridge Rd., Laurel Hollow, NY 11791
    b. Smith/Mellencamp, 110 Summit St., Burlington, VT 05401
    c. Willmuth, 125 Cliff St., Burlington, VT 05401
    d. Chittenden Trust Co, TTEE, 2 Burlington Sq., Burlington, VT 05401
    e. Grossman, P.O. Box 202, Underhill Center, VT 05490
    f. Curran, 81 Maple Leaf Rd., Underhill, VT 05489
    g. Panner, 55 Maple Leaf Rd., Underhill, VT 05489
    h. Luck/Wilson, 163 Riverview Ave., Little Silver, NJ 07739
    i. Maple Leaf Farm, 14 Maple Leaf Rd., Underhill, VT 05489

4. A site visit was held at the property on Saturday, October 27, 2007. Present the site visit were:

    - Chuck Brooks
    - Matt Chapek
    - Stan Hamlet

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- Penny Miller
- Peter Seybolt
- Deb Shannon
- Scott Tobin, Chair
- Charlie Van Winkle

Chris Murphy, Zoning Administrator, and Zoning Assistant Kari Papelbon also attended the site visit. Michael Weisel also attended the site visit.

5. On March 27, 2008, a copy of the notice of preliminary hearing was mailed to the applicant, Sheldon Barker, P.O. Box 655, Albian, CA 95410 and to the abutters listed above in (3). Notice was also mailed to:

   a. Montgomery, 60 Maple Leaf Road, Underhill, VT 05489
   b. Hanowski, P.O. Box 186, Underhill Center, VT 05490

6. By October 1, 2007, notice of the site visit and by April 4, 2008 notice of the preliminary hearing on the proposed Barker/Montgomery PRD were 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 Town of Underhill website;

7. The preliminary hearing was scheduled for 6:30 PM on April 21, 2008.

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

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

   Kari Papelbon, Zoning Administrator, and Chris Murphy, Town Planner, also attended the meeting.

9. 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:

   - Gunner McCain, McCain Consulting, 93 South Main Street, Waterbury, VT 05676
   - JoAnn Hanowski, 70 Maple Leaf Road, Underhill, VT (mailing address in 5b above)
   - John and Jeannie Panner, 55 Maple Leaf Road, Underhill, VT
   - Tom Montgomery, 60 Maple Leaf Road, Underhill, VT

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

    a. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board, Sheldon Barker, and Gunner McCain of McCain Consulting;
    b. Plans prepared by Gunner McCain of McCain Consulting for the Martha Montgomery Trust, (Sheets S1-9 revised 1-31-08, EC-1 revised 1-31-08, EC-2 dated 8-16-07, and SW-1 dated 1-31-08);
    c. A copy of the survey prepared by Keith R. Van Iderstine, L.S. of McCain Consulting for the Martha Montgomery Trust dated 2-28-08;
    d. A copy of the GIS map showing nearby drilled wells and yields;
    e. A copy of the wildlife impact assessment by Tina Scharf and David Capen (dated February 2008) and Curriculum Vitae for Tina Scharf;
    f. A copy of the draft Common Land Management Plan;
    g. A copy of the draft Road Maintenance Agreement;
    h. A copy of the waiver requests for PRD;
    i. A copy of the memorandum from Mike Weisel regarding the road design and erosion control and stormwater plans (dated 4-9-08);
    j. A copy of the Proposed Findings of Fact;
    k. A copy of the letter from JoAnn Hanowski (dated 10-25-07);
    l. A copy of the parcel map for ML060;
    m. A copy of the Subdivision Checklist: Preliminary Hearing;
    n. A copy of the email from Michael Luck and Barbara Wilson, 42 Maple Leaf Road (dated 4-21-08);
    o. A copy of the letter and testimony from Jeannie Panner, 55 Maple Leaf Road (dated 4-21-08);
    p. A copy of the letter and testimony from John Panner, 55 Maple Leaf Road (dated 4-21-08);
    q. Revised plans, Sheets S-1, S-2, S-5, S-7, EC-1, EC-2, EC-3 (revised 3-19-08).

These exhibits are available in the Martha Montgomery Trust, ML060 Planned Residential Development file at the Underhill Zoning Office.

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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 on the preliminary plat submission requirements as delineated on pages 7-9 of the Underhill Subdivision Regulations, "Preliminary Plat for Subdivisions:"

A. Submission Requirements

1. The Board finds that the preliminary application satisfies the requirement as the proposed subdivision and Town are identified on the plans.

2. The Board finds that the preliminary application satisfies the requirement as the record owner's and designer's information is contained on the plans.

3. The Board finds that the Class III wetland on Lots 2, 3, and 4 are shown on the engineering plans. The Board finds that sheet S-1 does not depict the Class III wetland on Lots 2, 3, and 4 or the Class II wetland buffer on Lot 1. These are not material errors that would prevent the application from receiving preliminary plat approval from the Board. Applicant shall be instructed to include the Class III wetland and the Class II wetland buffer on sheet S-1 of the final plans.

4. The Board finds that the preliminary application satisfies the requirement as the open space is depicted on the plans.

5. The Board finds that the preliminary application is missing the abutting parcel and code for 70 Maple Leaf Road (ML070). This is not a material error that would prevent the application from receiving preliminary plat approval from the Board. The missing code shall appear on the final plans.

6. The Board finds that the preliminary application satisfies the requirement as the applicable zoning regulations and district boundary lines are contained in the plans.

7. The Board finds that the preliminary application is missing culverts on Maple Leaf Road and at the end of the driveway to 55 Maple Leaf Road. This is not a material error that would prevent the application from receiving preliminary plat approval from the Board. The missing culverts shall appear on the final plans.

8. The Board finds that the plans do not depict the right-of-way width, the name of the private road, or the curve radii for the private road required in the Underhill Road Policy. The locations of utility easements are not shown on the plans. These are not material errors that would prevent the application from receiving preliminary plat approval from the Board. The right-of-way width, the name of the private road, the curve radii, and the utility easements shall appear on the final plans. The plans do show the location of the proposed open land.

9. The Board finds that the preliminary application satisfies the requirement as the contours are depicted on the plans.

10. The Board finds that the preliminary application satisfies the requirement as cross-sections for the road and driveways are contained in the plans.

11. The Board finds that the preliminary application satisfies the requirement as the information is contained on the plans.

12. The Board finds that the preliminary application meets the requirement as a survey has been submitted.

13. The Board finds that the preliminary application satisfies the requirement as drilled wells are contained on the plans.

14. The Board finds that the preliminary application satisfies the requirement as septic system locations and details are contained in the plans.

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15. The Board finds that the preliminary application satisfies the requirement as stormwater plans and details have been submitted.

16. The Board finds that the preliminary application satisfies the requirement as culvert details are contained in the plans.

17. The Board finds that the preliminary application satisfies the requirement as the plans contain proposed lot lines and suggested locations of buildings.

18. The Board finds that the site visit conducted October 27 satisfied the requirement.

19. The Board finds that an open land management agreement for the open land is insufficient. The Board finds that since a draft was submitted, this is not a material error that would prevent the application from receiving preliminary plat approval from the Board. A revised draft open land management agreement shall be submitted to the Zoning Administrator prior to scheduling the final hearing.

20. The Board finds that the plans do not show the widths of the traveled ways of the proposed driveways. The plans do not show the correct base and crusher-run gravel amounts for the driveways and private road. The Board finds that since the applicant's consultant has indicated that these were oversights and would comply with the Town of Underhill Road Policy, these are not material errors that would prevent the application from receiving preliminary plat approval from the Board. The widths of the traveled ways and the correct base and crusher-run gravel amounts shall appear on the final plans.

21. The Board finds that the preliminary application satisfies the requirement as no buildings are proposed for public use.

22. The Board finds that the plans do not show the proposed locations for underground utilities. This is not a material error that would prevent the application from receiving preliminary plat approval from the Board. All proposed locations for underground utilities shall be shown on the final plans.

23. The Board finds that the preliminary application satisfies the requirement as a list of waivers and justification has been submitted.

24. The Board finds that the preliminary application satisfies the requirement as the plans contain a vicinity map.

25. The Board finds that the preliminary application satisfies the requirement as the plans show the entire parcel and road.

B. Waivers of the dimensional requirements for the development, subject to appropriate conditions, may be granted by the Board per Planned Residential Development regulations. The Board grants approval to the following waivers as allowed under the planned residential development scheme as they will not adversely affect public health, safety, or general welfare:

1. Dimensional Requirements

    a. Lot 2: Four-acre waiver of lot size

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15-foot waiver for the side lot line setback for the house
13-foot waiver for the side lot line setback for the workshop

b. Lot 3: Five-acre waiver of lot size
13-foot waiver for the side lot line setback for the shed
110-foot waiver for the distance between the proposed accessory apartment and proposed building envelope

c. Lot 5: Six-acre waiver of lot size

d. Lot 6: Ten-acre waiver of lot size
10-foot waiver for the front lot line setback for the building envelope

e. Lot 7: Seven-acre waiver of lot size
5-foot waiver for the front lot line setback for the building envelope
20-foot waiver for the side lot line setback for the building envelope
Road frontage waiver is not necessary

f. Lot 8: Ten-acre waiver of lot size
25-foot waiver for the side lot line setback for the building envelope
Road frontage waiver is not necessary

2. Wetland waivers: Waivers for the wetland setbacks to the proposed infrastructure are not necessary as adequate erosion control plans, based on Town Engineer review, have been submitted.

3. Private Road: 100-foot curve radius—request for less than 100 feet at first curve
10% grade over 500 feet in length

The Board recommends approval of the waivers for the private road to the Selectboard based on recommendations of the Town Engineer.

4. Engineer's Certification or Bond for Improvements with the Final Mylar: The Board grants the waiver provided that the road is constructed per the submitted plans and schedule, subject to final conditions. The Board recommends approval of the waiver to the Selectboard.

5. Accessory apartment waiver: Addition of 260 square feet to the 1000 square-foot maximum

The Board denies the 260-square foot waiver for the proposed accessory apartment. The Board recognizes that the accessory apartment may be used as the primary dwelling on the lot until such time as a primary dwelling is constructed. Upon application for a building permit for a primary dwelling, the accessory apartment shall comply with the regulations in place at the time of application.

C. Planning Standards: Evaluation Considerations—Provisional Findings

1. Suitability for Development: The Board finds that the land is suitable for development according to the submitted plans S-1 through S-10, EC-1, EC-2, and SW-1 (revised on 3-19-08 as S-1 through S-9 and EC-1 through EC-3), prepared by Gunner McCain of

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McCain Consulting, Inc. The areas to be developed do not lie in a flood plain and do not contain adverse earth formations or other features that will impair the health, safety, and general welfare of present or future inhabitants of the subdivision or its surrounding areas. Lot 1, designated as open space, will preserve steep slopes, rock formations, and other natural features.

2. Preservation and Protection of Existing Features: The new homes will be located near the bottom of the property near Maple Leaf Road. Development will avoid the existing Class II wetland on the adjoining property and will avoid the existing Class III wetlands on the property as much as practicable. Where infrastructure is proposed within 100 feet of the wetland, adequate erosion control plans, based on Town Engineer review, have been submitted. There are no mapped deer yards in the vicinity of the proposed development. Lot 1, designated as open space, will preserve and protect existing natural features. A wildlife assessment conducted by Tina Scharf and David Capen concluded that the development at the bottom portion of the parcel would minimize animal habitat fragmentation, while the remainder of the land would continue to allow animal travel. The Board is not persuaded by neighbor testimony regarding objections to the qualifications of the wildlife assessment consultants or objections to the assessment's methods and conclusions.

3. Recreation: Undeveloped portions of the property will provide sufficient open space for recreation.

4. Runoff and Erosion Control: The proposed erosion control measures outlined on sheets EC-1 through EC-3 include the installation of construction fencing to delineate disturbed areas, maintenance of silt fencing to filter silt from stormwater runoff, and the establishment of both temporary and permanent vegetation as soon as possible during and after construction. The total new disturbed area for the project will be approximately 10.2 acres. A construction general permit (CGP) will be obtained prior to the start of construction.

5. Compliance with the Town Plan, Ordinances, and By-Laws: The proposed development complies with the planned residential development regulations found in the Town of Underhill Zoning Regulations, and the submitted planned residential development plans achieve the goals of the Town Plan by providing recreational opportunities, encouraging forestry, protecting the environment, and preserving local natural resources.

6. Flood Plain: The development does not lie in a mapped floodplain per the Federal Emergency Management Agency's Flood Insurance Rate Maps.

7. Compatibility with Surrounding Properties: Neighboring properties along Maple Leaf Road contain existing residences and the proposed development is in keeping with the pattern of development that has taken place in this area.

8. Suitability for Density: The submitted plans demonstrate that the proposed development is suitable for the proposed density. The Board also finds that evidence submitted at a previous hearing regarding density for a traditional subdivision satisfies the density requirement.
9. Pedestrian Traffic: Maple Leaf Road is sufficiently wide enough to accommodate diverse forms of transportation including automobile, pedestrian, and bicycle traffic. The Board finds that the addition of six new house sites to the area will not have the effect of

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preventing access to points of destination and will not remove the convenience of access to Maple Leaf Road or properties in the area.

10. Provision of Municipal and Governmental Services: The proposed development is within an existing developed portion of the town. Governmental services, including fire protection and police services, do not have to be extended to serve the development. Similarly, school bus service is available without the need to modify or extend bus routes. Letters from the Underhill Jericho Fire Department and Chittenden East Supervisory Union regarding their abilities to provide services to the proposed development are forthcoming for the final hearing.

11. Water Availability: The lots will be served by individual, on-site drilled wells. Drilled wells in the area have proven sufficient to serve single-family homes per the Vermont Agency of Natural Resources database of drilled well yields and permits. The Board is not persuaded by neighbor testimony regarding the existing drilled well yields and aquifer flows. A potable water supply permit from the State, which will serve as evidence of sufficient water for the development, is forthcoming for the final hearing.

12. Highway Congestion: Maple Leaf Road currently serves other residences in the area. Each new residence is expected to generate 10 vehicle trip ends per day. Site distances at the development road intersection with Maple Leaf Road are sufficient in both directions so that unsafe conditions will not exist.

13. Visual, Air, Noise, Water Pollution: The proposed residences will be substantially screened from travelers on Maple Leaf Road. Air pollution, including dust from drives and exhaust from heating sources, will not exceed levels generated by typical single-family residences. Similarly, the noise generated by the proposed development will not exceed noise levels generated by single-family residences after construction has ended. Water pollution concerns are addressed by erosion control and wastewater disposal plans.

III. DECISION AND ADDITIONAL FINAL HEARING REQUIREMENTS

Based upon the findings above, and subject to any of the additional final hearing requirements and conditions set forth below, the Development Review Board grants provisional preliminary approval for the subdivision as presented at the preliminary hearing. The Board recommends approval to the Selectboard of the approved and recommended waivers.

Final Hearing Requirements in Addition to the Subdivision Requirements on Pages 9-11 of the Underhill Subdivision Regulations:

1. A copy of the State Wastewater System and Potable Water Supply Permit shall be submitted to the Zoning Administrator prior to the final hearing. Evidence of submission of an application for all other required State permits, including, but not limited to, stormwater and a Construction General Permit shall be submitted to the Zoning Administrator prior to scheduling the final hearing.

2. Letters from the Underhill-Jericho Fire Department and the Chittenden East Supervisory Union addressing their abilities to provide services to the proposed PRD shall be submitted prior to scheduling the final hearing.

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3. The Class III wetland delineated on Lots 2, 3, and 4 shall be shown on the final site plan Sheet S-1.

4. The Class II wetland buffer that extends from the neighboring property to the east and onto Lot 1 shall be shown on the final plans.

5. All curve radii and correct right-of-way widths shall be depicted on the final plans.

6. All draft easement deeds, driveway/right-of-way and private road maintenance agreements, the shared stormwater infrastructure maintenance agreement, the Homeowners Association by-laws/agreement, deed language to the lots stating that they cannot be further subdivided, and a revised draft open land management agreement shall be submitted prior to scheduling the final hearing.

7. All driveways shall be depicted as 12-foot traveled ways on the final plans.

8. The final plans shall show the correct base and crusher-run gravel amounts for the driveways and private road.

9. All existing culverts on Maple Leaf Road and the existing culvert at the end of the driveway to 55 Maple Leaf Road shall be shown on the final plans.

10. The location of all existing and proposed easements shall be shown on the final plans.

11. Parcel ML070 shall be shown on the final plans and survey.

12. All property codes, listed below, and the name of the private road, Wheeler Road, shall be shown on the final plans and survey.

    a. Lot 1—MG005
    b. Lot 2—MG003
    c. Lot 3—MG004
    d. Lot 4—WH006
    e. Lot 5—WH014
    f. Lot 6—WH023
    g. Lot 7—WH026
    h. Lot 8—WH028

13. All driveways shall be shown on the final site plan.

14. The final engineering drawing must be tied to the final survey for final subdivision approval. The building envelope, driveway, proposed building locations, existing and proposed easements, new property code for Lot 2, applicable zoning regulations, and the correct year in the approval blocks shall be shown on the final survey. Revised copies of the engineering drawings and survey must be submitted to the Zoning Administrator prior to scheduling the final hearing.

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Dated at Underhill, Vermont this 9 day of June, 2008.

Scott Tobin

Scott Tobin, Chair, Development Review Board

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