TOWN OF UNDERHILL
APPLICATION OF PHILIP JACOBS
FOR SUBDIVISION
FINAL HEARING FINDINGS AND DECISION

In re: Philip Jacobs
16 Harvest Run
Underhill, VT 05489

Docket No. DRB-07-6: Philip Jacobs

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Philip Jacobs' final hearing application for a 6-Lot subdivision of property located at 16 Harvest Run in Underhill, VT.

1. On April 2, 2008, Philip Jacobs filed a final application for subdivision for the project, which included engineering drawings, a survey, Proposed Findings of Fact, a copy of the Water Allocation application, a list of waiver requests, a letter from the Chittenden East Supervisory Union, Trip Generation excerpts, and evidence of submission of applications to the State for necessary permits. Proposed easement and right of way deed language, a road maintenance agreement, and Homeowners Association agreement, revised waiver requests, and stormwater summary were also submitted prior to the hearing.

2. On May 14, 2008, a copy of the notice of the final hearing was mailed via certified mail to the applicant, Philip Jacobs, 73 Upper English Settlement Road, Underhill, VT 05489 and to the following owners of properties adjoining the property subject to the application:

   a. Covey, 14 Harvest Run, Underhill, VT 05489
   b. Burghoff, 29 Maple Ridge, Underhill, VT 05489
   c. McDevitt, 35 Maple Ridge, Underhill, VT 05489
   d. O'Brien, 41 Maple Ridge, Underhill, VT 05489
   e. Landerl, 43 Maple Ridge, Underhill, VT 05489
   f. Jacobs/Hood, 4108 Rockside Hills Dr., Raleigh, NC 27603
   g. Jurkiewicz/Salzer, 34 Sugar Hill, Underhill, VT 05489
   h. Williamson, P.O. Box 66, Underhill, VT 05489
   i. Nichols, 4 Sugar Hill, Underhill, VT 05489
   j. Nelson, 2 Sugar Hill, Underhill, VT 05489
   k. Cavangh, 25 Meadow Lane, Underhill, VT 05489
   l. Tripp, 17 Meadow Lane, Underhill, VT 05489
   m. Morse, 18 Meadow Lane, Underhill, VT 05489
   n. Smith, 424 VT Rte. 15, Underhill, VT 05489
   o. Manning, 421 VT Rte. 15, Underhill, VT 05489

p. Underhill-Jericho Fire Department, P.O. Box 150, Underhill, VT 05489
q. Underhill Garage, Inc., P.O. Box 7, Underhill, VT 05489
r. Georgia Mead, TTEE, c/o Deg Campanelli, 149 Montgiven Ave., Fairhaven, VT 05743
s. United Church of Underhill, P.O. Box 265, Underhill, VT 05489
t. Gombrich, 6 Depot St., Underhill, VT 05489
u. Richiedei, 12 Harvest Run, Underhill, VT 05489
v. Village Service, c/o J&T Alexander, P.O. Box 111, Underhill, VT 05489

3. On May 15, 2008, notice of the final hearing was published in the Mountain Gazette.

4. By May 19, 2008, notice of the final hearing on the proposed Jacobs subdivision were posted at the following places:

   a. The property to be developed, 16 Harvest Run;
   b. The Underhill Town Clerk's office;
   c. The Underhill Center Post Office;
   d. The Underhill Flats Post Office;
   e. The Town of Underhill website.

5. The final hearing was scheduled to commence at 6:30 PM on June 2, 2008.

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

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

   Kari Papelbon, Zoning Administrator, Chris Murphy, Town Planner, and Selectboard Members Steve Walkerman, Steve Owen, and Dan Steinbauer 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:

   - Paul O'Leary, O'Leary Burke Civil Associates, PLC, 1 Corporate Drive, Suite #1, Essex Junction, VT 05452
   - Philip Jacobs, 73 Upper English Settlement Road, Underhill, VT 05489

- Bill McMains, United Church of Underhill, P.O. Box 265, Underhill, VT 05489
- Covey, 14 Harvest Run, Underhill, VT 05489

8. 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, Phillip Jacobs, Paul O'Leary and Howard Snider of O'Leary Burke Civil Associates, PLC;
   b. Plans prepared by Paul O'Leary and Howard Snider of O'Leary Burke for Philip Jacobs, (Sheets 1-7 and Sheet 9 dated 1-28-08, Sheet 8 dated 2-27-08, and Sheets E2-E4 dated 2-6-08);
   c. A copy of the survey prepared by Joseph R. Flynn of O'Leary-Burke for Philip Jacobs (revised 3-19-08);
   d. A copy of the Application for Water Allocation from Philip Jacobs to the Jericho-Underhill Water District (dated 12-3-07);
   e. A copy of the letter from Heather Mack of the State of Vermont Stormwater Management Program confirming receipt of the Notice of Intent for stormwater discharge (dated 3-21-08);
   f. A copy of the letter from Eric Blatt of the State Water Supply Division confirming receipt of the application for a Construction General Permit (dated 2-13-08);
   g. A copy of the letter from Mary Baril of the State Wastewater Management Division confirming receipt of the application for a Wastewater permit for the project (dated 2-14-08);
   h. A copy of the letter from Ernest Christianson from the State Wastewater Management Division confirming the completion of his review of the application for a Wastewater permit (dated 4-23-08);
   i. A copy of the letter from the Chittenden East Supervisory Union #12 (dated 11-27-07);
   j. A copy of the Single-Family Detached Housing trip ends report by the Institute of Transportation Engineers (pages 263-265);
   k. A copy of the letter from Eric Blatt of the State Water Supply Division confirming receipt of the application for a Construction General Permit (dated 2-13-08);
   l. A copy of the letter from Mary Baril of the State Wastewater Management Division confirming receipt of the application for a wastewater permit for the project (dated 2-14-08);
   m. A copy of the draft easements and right-of-way agreements;
   n. A copy of the draft Road Maintenance Agreement;
   o. A copy of the draft Declaration of Covenants, Conditions, and Restrictions;
   p. A copy of the Proposed Findings of Fact;
   q. A copy of the waiver requests for the project;
   r. A copy of the Underhill Selectboard Minutes dated 11-29-07 granting conditional approval of the driveway design and waiver of the 10% grade requirement;

s. A copy of the Subdivision Checklist: Final Hearing.

These exhibits are available in the HR016 Jacobs 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 on the final plat submission requirements as delineated on pages 9-11 of the Underhill Subdivision Regulations, "Final Plat for Subdivisions:"

A. Submission Requirements:

Final Hearing:

1. Survey and Engineering Plan Elements: The Board finds that the engineering drawing shows the identifying title, name of the municipality, name and address of the record owner and sub divider, the seal of the registered engineer, the boundaries of the subdivision, scale, date, north point, and legend. The Board finds that the parcel codes on the engineering drawing need to be updated and that the utility easement along Harvest Run is missing. The survey is missing building envelopes and the utility easement along Harvest Run, and the parcel codes need to be updated. These are not material errors that would prevent the application from receiving final approval from the Board.

2. Road/Pedestrian Ways/ Easements/Reservations: The Board finds that the lots are shown on the plans. The new road name, Jacobs Hill Road, shall be shown on the final Mylars. The utility easement on Harvest Run is not shown on the plans. All existing and proposed utility easements shall be shown on the final Mylars.

3. Lot Lines/Bearings/Distances: The Board finds that the application satisfies the requirement as the lot lines, bearings, and distances are shown on the plans.

4. Road Details: The Board finds that the application satisfies the requirement as the road details are shown on the plans.

5. Public Space/Reserved Space: The Board finds that this requirement is not applicable as there are no dedicated open spaces, although we do note that Lot 6 will be retained by the applicant and is shown on the plans.

6. Lot Numbering: The Board finds that the application satisfies the requirement as the lots are numerically numbered on the proposed plan and that the final plat shall include 911 codes. The codes shall be updated on the final Mylars to reflect the new road name, Jacobs Hill Road.

7. Infrastructure: The Board finds that the application satisfies the requirement as septic systems, grading, and stormwater details are contained in the plans.

8. Wastewater System Design: The Board finds that the application satisfies the requirement as the location and results of all test pits and septic systems are shown on the plans. An application to the State for a Wastewater System and Potable Water Supply Permit has been submitted.

9. Existing and Proposed Water Supplies: The Board finds that the application satisfies the requirement as the locations of existing and proposed water sources are contained on the plans. The State of Vermont has jurisdiction over isolation distances between potable water supplies and wastewater disposal systems.

10. Monumentation: The Board finds that the application satisfies the requirement as monumentation locations and details are contained in the plans.

11. Installation of Infrastructure or Bonding: A waiver request from the requirement that an engineer provide a letter certifying that all required improvements have been satisfactorily completed or, in lieu thereof, supply a Selectboard-approved 2-year performance bond for the improvements at the time of filing the final plat has been submitted. See (B) below.

12. UJFD/CESU Letters: The Board finds that the application satisfies the requirement as letters from the Underhill-Jericho Fire Department and Chittenden East Supervisory Union have been submitted.

13. State Permits: The Board finds that the applicant's consultant has submitted applications to the State for all necessary permits.

14. Curb Cut/Selectboard Approval of Driveway: The Board finds that the Underhill Selectboard has granted approval of the driveway design and curb cut subject to conditions, see §III (A)(3) below.

B. Waiver: Engineer's Certification or Bond for Improvements with the Final Mylar: The Board grants the waiver with the condition that within six (6) months of issuance of the first building permit for the subdivision, an engineer shall provide a letter to the Zoning Administrator certifying that all shared infrastructure including, but not limited to, the private road, stormwater, and underground utilities, has been installed per the plan, or provide a 2-year guaranty in the form of a performance bond or irrevocable letter of credit as approved by the Selectboard for the remaining

construction of the shared infrastructure. The Board recommends approval of the waiver with the recommended condition to the Selectboard.

C. Planning Standards: Evaluation Considerations

1. Suitability for Development: The land is suitable for development as per the plans submitted to the Town of Underhill by O'Leary-Burke Civil Associates and per the applications that have been submitted to the State of Vermont, including the Permit to Construct (municipal water), the Discharge Permit (stormwater), the Construction General Permit (erosion), and the Wastewater System and Potable Water Supply permit (sewage and subdivision). An access road into the project has been designed with a waiver request submitted to the Selectboard for two portions of the roadway that exceed a 10% grade. The land that is designated to be developed does not lie within a flood plain and there are no earth formations or other features that will impair the health, safety and general welfare of present or future inhabitants of the subdivision and/or the surrounding region.

2. Preservation and Protection of Existing Features: The development has been sited in such a way that will minimize disturbance to the seasonal streams that drain the property. A proposed private road, Jacobs Hill Road, will be extended to serve the proposed lots and will closely follow the gravel road that currently exists on the property. A portion of the proposed lots and roadway are located in the area of a former gravel operation, which has previously been disturbed and cleared of vegetation. Of the parcel's 45 total acres, only ten (10) acres will be involved with this subdivision. A 75-foot undisturbed buffer along the rear portions of Lots 1-5 is shown on the plans. A wildlife biologist and a wetlands consultant have analyzed the site and have determined that the subdivision will not negatively affect the wildlife populations or habitat with adequate provisions for preserving the wooded areas between the house sites or the functions of the wetlands that are located on the property.

3. Recreation: The current six-lot proposal is for a conventional subdivision, which does not require that land be set aside for open space. However, Lot 6 is being retained by the owner and will not be developed at this time. Approximately 34 acres of Lot 6 will remain open for active and passive recreation. The slopes on the property have used as a sledding hill for many years, and the neighbors hike on the parcel and will be allowed to continue to do so at this time.

4. Runoff and Erosion Control: The project requires both a General Permit 3-9015 (Storm Discharge) and a Construction General Permit 3-9020, 2006 (Erosion Prevention) from the State of Vermont. Plan sheet 8, including calculations, was submitted for the Storm Discharge permit. Plan sheets E2-E4 were submitted to the State for the erosion prevention permit. The submitted plans contain adequate provisions per the State of Vermont regulations for both stormwater runoff treatment and for erosion prevention and sediment control on the site during

construction and following completion of the project, based on the report of Town Engineer Mike Weisel.

5. Compliance with the Town Plan, Ordinances, and By-Laws: The proposed subdivision meets the goals of the Town Plan as high-density residential development is promoted for the Residential District with public water supply and at the same time, maintaining a small town ambiance and open land. Development is encouraged in this district due to the availability of municipal services and close proximity to the village center. The project design meets the requirements of the Residential District with respect to lot size and building setbacks. A 100-foot setback to streams and wetlands is also met, except for Lot 1, which is not an approved building lot at this time. A waiver for two portions of the roadway is being requested for grades that exceed 10%. The individual driveways meet the Town's 10% maximum grade requirements.

6. Flood Plain: The proposed subdivision has been sited on elevated land between two small drainages and will be safely above any flood plain. Much of the site is characterized by deep gravel soils, which have the capability to absorb surface water. Stone-lined swales along the new road will direct stormwater runoff into the ground.

7. Compatibility with Surrounding Properties: The proposed subdivision will be compatible with the surrounding properties as the site is bordered by three (3) single-family residential subdivisions. Homestead Acres, a residential subdivision, abuts the property on the north and east. Maple Ridge, a residential subdivision, abuts the property on the east and south. The project is accessed through Harvest run, a residential subdivision on the south, and the village center, a mix of residential and commercial properties, abuts the property on the west.

8. Suitability for Density: The proposed subdivision is located in the Residential-Water zoning district, which has a one (1) acre minimum with a maximum of two (2) units per lot. The proposed density is suitable for the site as six lots are being proposed, all of which meet the zoning requirements of the district. Lots 2-5 will be single-family. Lot 1 is not an approved building lot at this time and the remainder of the property, Lot 6 (approximately 34 acres of open land), will remain undeveloped at this time.

9. Pedestrian Traffic: There are four single family residences proposed with the project. These properties, which will be located on a dead-end gravel road, will generate an estimated three to four (3-4) peak hour weekday vehicle trips, which should not inconvenience pedestrians or jeopardize their safety. Pedestrians will have a short walk to the village center and will also have access to the remaining thirty-four (34) acres adjacent to their homes.

10. Provision of Municipal and Governmental Services: The proposed subdivision will not place an unreasonable burden on the local government services as the

project will be private and will be governed by a Homeowners Association. The Chittenden East Supervisory Union has stated that the local school system will be able to provide services for the students that will be generated by the subdivision. Fire protection and police services do not have to be extended to serve the subdivision as they already serve the area.

11. Water Availability: A municipal water main extension will provide water to the proposed subdivision. The Jericho-Underhill Water District has adequate pressures and availability to provide water to the project. An application has also been sent to the State of Vermont Water Supply Division for a "Permit to Construct." The permit was issued on May 28, 2008.

12. Highway Congestion: The four single family homes with the proposed subdivision will generate approximately three to four (3-4) peak hour weekday trip ends and approximately thirty-nine (39) total trip ends per day. This amount of traffic will not cause unreasonable highway congestion or unsafe conditions on the roads and highways of the Town.

13. Visual, Air, Noise, Water Pollution: The proposed subdivision will not cause a significant increase beyond that which is typical in single-family residential areas in visual, air, or noise pollution after the construction period. The project has been designed to meet the State of Vermont's requirements for stormwater runoff, erosion prevention, subsurface sewage disposal and potable water.

III. DECISION AND CONDITIONS

Based upon the findings above, and subject to any of the conditions set forth below, the Development Review Board grants approval for the 6-lot subdivision as presented at the final hearing. The Development Review Board recommends approval of the waiver request for the bonding requirement timeframe with the suggested condition listed in §II (B) above.

A. Conditions for Subdivision:

1. Recording Requirement: Per the Underhill Subdivision Regulations, final approval of the subdivision is granted upon filing of the final subdivision plat in the Underhill Land Records. No transfer or sale of property may occur prior to recording the final plat and all applicable permits in the Town of Underhill Land Records.

2. Pending State Permits: Applicant shall provide all applicable, required State permits to the Zoning Administrator prior to acceptance of the final plat. Applicant shall comply with all conditions of required State permits, including, but not limited to, wastewater, potable water supply, stormwater, and Construction General Permits.

3. Road Design: The Selectboard approved the private road and driveway design on November 29, 2007 with the following conditions:

    a. The road foreman must review the gravel specifications and the applicant must follow his recommendations;
    b. The road foreman has the right to inspect all road construction; and
    c. If in the future the Town agrees to take on the road, the road shall first be paved to Town specifications by the current owner of the road at that time.

4. Shared Infrastructure: Within six (6) months issuance of the first building permit for the subdivision, an engineer shall provide a letter to the Zoning Administrator certifying that all shared infrastructure including, but not limited to, the private road, stormwater, and underground utilities, has been installed per the plan, or provide a 2-year guaranty in the form of a performance bond or irrevocable letter of credit as approved by the Selectboard for the remaining construction of the shared infrastructure.

5. Stormwater Infrastructure Certification: A copy of all annual inspection reports and certification reports sent to the State for the stormwater infrastructure shall be copied to the Zoning Administrator.

6. Road Maintenance Agreement(s): A road agreement for the maintenance of the shared traveled portion of the proposed Jacobs Hill Road and the existing Harvest Run shall be submitted to the Zoning Administrator for approval prior to filing the final plat. The road agreement for the lots on the proposed Jacobs Hill Road shall run with the land and shall be referenced in the deeds to the lots.

7. Driveways: Prior to issuance of a building permit for any lot, an engineer shall certify that the approved curb cut has been installed per the plan, and that the driveway has been roughed in per the plan. Driveway top treatments may be installed at the end of the construction period. Approved driveways shall be the only points of ingress and egress during the construction period so as to minimize:

    a. Compaction of site soils; and
    b. The effect on the submitted Stormwater plans.

8. Homeowners Association Agreement: A final Homeowners Association agreement/by-laws for the Jacobs Hill Road lots (Lots 1-5) shall be submitted to the Zoning Administrator for approval prior to filing the final plat. Reference to this agreement shall appear in any deed out of this subdivision. The agreement shall include provisions for the maintenance of all shared infrastructure and reference to the Homeowners Association shall be included in the deeds to Lots 1-5.

9. Property Codes: The engineering drawing and certified plat shall include the new property codes for Lots 1-5 (JB008, JB014, JB016, JB018, and JB022 respectively).

10. Stake-out of Improvements: All building envelopes and septic areas shall be staked out by the surveyor/engineer 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. A copy of the engineer's certification letter for the septic system to the State shall also be filed with the Zoning Administrator.

11. Additional Deed Language: Final deed language regarding all easements that are to be included in each deed shall be submitted to the Zoning Administrator prior to acceptance of the final plat.

12. Stake-out of Undisturbed Buffer: The "75-foot Undisturbed Buffer" depicted on the plan shall be flagged off prior to any construction, and the flags shall remain in place until completion of construction. Language describing this buffer shall appear in the deeds to Lots 1-5.

13. Digital Submission of Plat and Plans: Prior to recording the final Mylars, the applicant shall submit a copy of the certified plat and site plan in digital format. The format of the digital information shall require approval of the Zoning Administrator.

14. 911 Codes: Lots 1-5 shall post their 911 codes (JB008, JB014, JB016, JB018, JB022) before issuance of any building permit.

15. Fees: All subdivision fees shall be paid in full to the Zoning Administrator prior to filing of the final plat with the Town Clerk.

Dated at Underhill, Vermont this 3rd day of July, 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 August 2, 2008, when the 30-day appeal period has expired.