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

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

UNDERHILL TOWN CLERK'S OFFICE
Received For Record 10-21 A.D., 20 08
At 11 O'clock — minutes A M. Recorded
In Book 16 Page 132-141 of Underhill Records
Attest
Town Clerk

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) final hearing application for an 8-Lot Planned Residential Development (PRD) for property located at 60 Maple Leaf Road in Underhill, VT.

1. On June 24, 2008, Gunner McCain filed a complete application for a final subdivision hearing on behalf of Sheldon Barker, Trustee for the Martha Montgomery Trust for the project. A copy of the application is available at the Underhill Town Hall.

2. By June 18, 2008, notice of the final hearing on the proposed Montgomery Trust PRD were posted at the following places:

   a. The property to be developed, 60 Maple Leaf Road;
   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.

3. On June 23, 2008, a copy of the notice of a final hearing was mailed via certified mail to the applicant, Sheldon Barker, P.O. Box 655, Albian, CA 95410, and 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

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

Notice was also mailed to:

- Gunner McCain, McCain Consulting, 93 South Main Street, Waterbury, VT 05676

4. On July 3, 2008, notice of the final hearing was published in the Mountain Gazette.

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

   - Penny Miller
   - Matt Chapek
   - Charlie Van Winkle
   - Scott Tobin, Chair

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

6. 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
   - John and Jeannie Panner, 55 Maple Leaf Road, Underhill, VT 05489
   - Michael Luck and Barbara Wilson, 42 Maple Leaf Road, Underhill, VT 05489
   - Tom Montgomery, 60 Maple Leaf Road, Underhill, VT 05489

7. 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, Trustee, and Gunner McCain of McCain Consulting;
   b. Final Subdivision Application for the project filed by Gunner McCain of McCain Consulting on behalf of Shelly Barker, Trustee of the Martha Montgomery Trust (dated 6-24-08);
   c. A copy of the final plans prepared by Gunner McCain of McCain Consulting for Shelly Barker (Sheets S-1 and S-8 revised 6-17-08; Sheets S-2 through S-5, S-7, EC-1 through EC-2, and SW-1 revised 4-28-08; Sheets S-6 and S-9 revised 1-31-08; and Sheet EC-3 revised 3-19-08);
   d. A copy of the survey prepared by Keith Van Iderstine of McCain Consulting for Shelly Barker (dated 4-28-08);
   e. A copy of the Letter of Transmittal and Notice of Intent information;
   f. A copy of the Notice of Intent for Stormwater Discharges (dated 4-8-08);

g. A copy of the School Impact Questionnaire completed by Superintendent James Massingham (dated 5-2-08);
h. A copy of the letter from Heather Mack of the VT Water Quality Division confirming receipt of the NOI (dated 4-16-08);
i. A copy of the letter from Kurk Flynn of the Underhill-Jericho Fire Department (dated 5-20-08);
j. A copy of the letter from Ernestine Chevrier confirming receipt of an application for a wastewater and potable water supply permit (dated 6-10-08);
k. A copy of the Proposed Findings of Fact (updated 6-17-08);
l. A copy of the List of PRD Waivers (updated 7-1-08);
m. A copy of the email from Roger Thompson of the VT Wastewater Management Division (dated 6-30-08);
n. A copy of the Declaration of Covenants, Conditions and Restrictions;
o. A copy of the By-Laws of the Montgomery Subdivision Landowners Association;
p. A copy of the Shared Driveway Deed Language for Lots 2 and 3;
q. A copy of the VT AOT Minimum Width of Lanes and Shoulders;
r. A copy of the completed Subdivision Checklist: Final Hearing;
s. A copy of the revised plans dated 6-30-08 (Sheets S-1, S-2, S-8, EC-1, and EC-2);
t. A copy of the revised survey dated 7-16-08 (Sheets 1-2);
u. A copy of the memorandum from Mike Weisel dated July 15, 2008;
v. A copy of the emails from Mike Weisel dated July 17 and July 18, 2008;
w. A copy of the letter from Bill Young of Maple Leaf Farm;
x. A copy of the letter from John and Jeannie Panner.

These exhibits are available in the ML060 Martha Montgomery Trust Planned Residential Development 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 Requirements:

3. Survey and Engineering Plan Elements: The Board finds that the engineering drawing shows the identifying title, parcel codes, 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 survey does not contain the seal of the licensed surveyor. The seal shall be on the final survey Mylar.

4. Road/Pedestrian Ways/ Easements/Reservations: The Board finds that the application satisfies the requirement as the road name and lines, pedestrian way, lots, open space, and easements are shown on the plans.

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

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

7. Public Space/Reserved Space: The Board finds that the application satisfies the requirement as the dedicated open land is shown on the plans and that it will be managed by a Landowners Association. Provisions for the maintenance and management of the open land have been submitted.

8. Lot Numbering: The Board finds that the application satisfies the requirement as the lots are numerically numbered on the proposed plan.

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

10. 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.

11. 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.

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

13. Installation of Infrastructure or Bonding: A waiver request has been submitted for 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. See (B) (2) below.

14. 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.

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

16. Curb Cut/Selectboard Approval of Driveways and Road: The Selectboard has final jurisdiction over approval of curb cuts, road/driveway designs, and improvements on existing Town roads. However, persuasive testimony by abutting neighbors regarding the existing culvert and drainage issues on Maple Leaf Road was presented to the Board at the final hearing. In recognition of such testimony, the Board recommends to the Selectboard that they require upgrades to the existing portion of Maple Leaf Road. Suggested improvements are:

    a. that the applicant upgrade the existing 12-inch culvert south of the entrance to Wheeler Road and adjacent to ML042 on Maple Leaf Road to a 24-inch (or engineer-justified appropriately-sized) culvert with upstream level spreader or culvert headwall; and
    b. that the applicant add approximately 300 feet of (3-5 inch) stone-lined ditching on the eastern side of Maple Leaf Road between the existing 24-inch culvert south of the entrance to Wheeler Road adjacent to Lot 4 and the existing 12-inch culvert adjacent to ML042.

    In addition to these recommendations, the Board recommends to the Selectboard that they approve the proposed road, curb cut, driveway designs, and waivers in B (3) below.

B. Waivers: 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 3: 93-foot waiver for the front lot line setback for the shed (front lot line as the western lot line adjoining Lot 2)
    73-foot waiver for the front lot line setback for the barn (front lot line as the western lot line adjoining Lot 2)

    b. Lot 4: 12-foot waiver for the 300-foot frontage requirement

    c. Lot 8: 25-foot waiver for the rear lot line setback (correction from preliminary decision)

    All waivers previously granted in the preliminary decision remain valid.

2. Engineer's Certification or Bond for Improvements with the Final Mylar: The Board grants the waiver with the condition that prior to issuance of a building permit to Lots 3-8, an engineer shall provide a letter to the Zoning Administrator certifying

    a. that the shared infrastructure has been installed to the lot per the phasing schedule in the approved plans;

b. that the approved curb cut has been installed per the plan; and
c. that the driveway has been "roughed in" per the approved plan.

Driveway top treatment may be installed at the end of the construction period. All erosion prevention, sediment control, and stormwater measures shall be installed per the phasing schedule in the approved plans. 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.

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.

C. Town Engineer Review: The Board finds that the plans have been reviewed by the Town Engineer. All concerns expressed in the memorandum dated April 9, 2008 were addressed in the final plans as stated in the memorandum dated July 15, 2008 and e-mails dated July 17, 2008.

D. Screening and Erosion Control: The Board finds that testimony presented by interested parties at the final hearing regarding the aesthetics and potential for erosion after removal of trees on Lot 4 was persuasive. The Board finds the suggestion for a 50-foot tree-lined natural buffer along Maple Leaf Road on Lot 4 to aid in the prevention of erosion and runoff on Lot 4 and to provide screening to be acceptable. Only those trees necessary for initial construction and infrastructure installation shall be removed.

E. Planning Standards: Evaluation Considerations

1. Suitability for Development: The land is suitable for development as evidenced by the submitted plans S-1 through S-9, EC-1 through EC-3, and SW-1, prepared by McCain Consulting, Inc. and reviewed by the Town Engineer. The areas to be developed do not lie in a flood plain and do not contain steep slopes, rock formations, 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.

2. Preservation and Protection of Existing Features: The new homes will all be located near the bottom of the property, near Maple Leaf Road. Development will avoid the existing Class II wetland and will avoid the existing Class III wetlands on the property as much as practicable. Where buildings or building envelopes are within 100 feet of the wetland, waivers have been requested. As evidenced by the previously submitted "Assessment of Wildlife Habitat on the Montgomery Property," prepared by Tina Scharf and David Capen, there are no

mapped deer yards or other critical wildlife habitat in the vicinity of the proposed development.

3. Recreation: The undeveloped portions of the property will provide sufficient open space for recreation. Additionally, Lot 1, consisting of approximately 76 acres, will remain open and available for recreation as detailed in the Common Land Management section of the Homeowners Association agreement.

4. Runoff and Erosion Control: Erosion control measures are outlined on Sheets EC-1, 2, and 3 of the plans. The measures proposed to control erosion include 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 9.14 acres. Coverage under the State of Vermont Construction General Permit (CGP) has been applied for. In addition, a 50-foot tree-lined natural buffer on Lot 4 along the lot line bordering Maple Leaf Road will aid in erosion prevention and runoff control. The erosion control measures and stormwater plans have been reviewed and found to be sufficient for the project by the Town Engineer.

5. Compliance with the Town Plan, Ordinances, and By-Laws: As evidenced by the plans submitted, the project conforms to the PRD and other sections of the Zoning Regulations. The submitted planned residential development plans also 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 project parcel and the surrounding area do not lie in a FEMA-mapped flood plain.

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

8. Suitability for Density: The Board finds that the plans which have been submitted with the subdivision application and testimony provided by the applicant's engineer demonstrate that the proposed development is suitable for the proposed density.

9. Pedestrian Traffic: Maple Leaf Road is sufficiently wide enough to accommodate diverse forms or transportation including automobile, pedestrian, and bicycle traffic.

10. Provision of Municipal and Governmental Services: Since 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 project. Similarly, school bus service is available without the need to modify or extend bus routes.

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 as evidenced by the State of Vermont drilled well yield logs.

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, as evidenced in the memos provided by the Town Engineer, 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 typically generated by single-family residences. Water pollution concerns are addressed by erosion control and wastewater disposal plans. Additionally, Lot 4 will maintain a 50-foot tree-lined natural buffer for screening purposes along the lot line bordering Maple Leaf Road.

F. Based on the fulfillment of the above subdivision requirements subject to final conditions, granted conditional waivers, findings, and evaluation considerations, the Board finds that the application satisfies the requirements for a planned residential development.

III. DECISION AND CONDITIONS

Based upon the findings above, and subject to the conditions set forth below, the Development Review Board grants approval for the planned residential development as presented at the final hearing. The Development Review Board recommends approval of the road, curb cuts/driveways, and waivers with the recommended conditions to the Selectboard.

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. Compliance with State and Federal Permits: Applicant shall comply with all conditions of required State and Federal permits. Copies of all required permits shall be submitted to the Zoning Administrator.

3. Shared Infrastructure and Driveways: Prior to issuance of a building permit to Lots 3-8, an engineer shall provide a letter to the Zoning Administrator certifying

    a. that the shared infrastructure has been installed to the lot per the phasing schedule in the approved plans;

b. that the approved curb cut has been installed per the plan; and
c. that the driveway has been "roughed in" per the approved plan.

Driveway top treatment may be installed at the end of the construction period. All erosion prevention, sediment control, and stormwater measures shall be installed per the phasing schedule in the approved plans. 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.

4. 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.

5. Septic System Certification: A copy of the engineer's letter to the State certifying that the septic system for any lot out of this subdivision has been installed per the approved plans shall be filed with the Zoning Administrator.

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

7. Road Maintenance Agreements: A final road agreement for maintenance of the shared traveled portion of the existing Montgomery Road shall be submitted to the Zoning Administrator for approval prior to filing the final plat. The road agreement for Lots 2 and 3 shall be referenced in the deeds to the lots. Failure to maintain a road maintenance agreement shall be considered a violation of the subdivision permit.

8. Homeowners' Association Agreement: A final Homeowners Association agreement/by-laws shall be submitted to the Zoning Administrator for approval prior to filing the final plat. This agreement shall include the final Common Land Management agreement, the final road agreement for maintenance of the shared traveled portion of the proposed Wheeler Road, and language that improvements to any lots in this subdivision may require additional State and local permits. Reference to this agreement shall appear in any deed in this subdivision. Failure to maintain a Homeowners Association and required agreements shall be considered a violation of the subdivision permit.

9. Easement 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 filing the final plat.

10. Screening: With the exception of removing only those trees necessary for initial construction and infrastructure installation, Lot 4 shall maintain a 50-foot tree-lined natural buffer for screening and to aid in erosion and runoff control along the western lot line bordering Maple Leaf Road. This requirement shall appear in

the Homeowners Association Agreement and reference to this shall appear in the deed to Lot 4.

11. Subdivision and Boundary Line Adjustments: No lot in this subdivision shall be further subdivided. Boundary Line Adjustments between adjoining residential properties may be allowed. This language shall appear in any deed to the lots in this subdivision (Lots 1-8).

12. Digital Submission of Plat and Plans: Prior to recording the final Mylars, the applicant shall submit a copy of the final plat and site plan Sheet S-1 as an AutoCAD file (2000 or later) to the Zoning Administrator.

13. 911 Codes: Lots 1-8 shall post their 911 codes prior to issuance of any building permit (Lot 1: MG006, Lot 2: MG003, Lot 3: MG004, Lot 4: WH006, Lot 5: WH014, Lot 6: WH023, Lot 7: WH026, Lot 8: WH028). At such time a new dwelling on Lot 3 is constructed and access is gained from a curb cut off of Wheeler Road, the 911 code and address shall be changed to a Wheeler Road code.

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

15. Selectboard Approval: Applicant shall obtain approval of the road, driveways, and waiver requests from the Selectboard prior to filing the final plat.

Dated at Underhill, Vermont this 6th day of August, 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 9/5/08, when the 30-day appeal period has expired.

Please refer to the Selectboard Minutes dated August 21, 2008, September 18, 2008, and October 2, 2008 for approvals of waivers, driveway/road design, and information regarding the DRB's suggested road improvements.