

DEVELOPMENT REVIEW BOARD
TOWN OF UNDERHILL, VERMONT

P.O. Box 32, Underhill Center, VT 05490
E-mail: underhillzoning@comcast.net

Phone: (802) 899-4434
Fax: (802) 899-2137

17 June 2009

Mr. Albert Bernasconi
49 Meadow Lane
Underhill, VT 05489

Re: Appeal of Notice of Violation issued 18 March 2009
Development Review Board Hearing 4 May 2009
Findings of Fact and Development Review Board Decision

Dear Mr. Bernasconi:

Regarding the Development Review Board (DRB) hearing convened in the above referenced matter, the board based the following findings on exhibits submitted at the hearing, a site visit held on 4 May 2009, and oral testimony heard at the hearing.

- We find the appellant was issued a building permit B-06-51, for the construction of a 32' x 28' accessory building on 3 October 2006 by then Zoning Administrator Christine Murphy.
- We find the appellant began extracting gravel from the site in conjunction with the building permit on or around 5 July 2007.
- We find that appellant was issued a notice of violation from Zoning Administrator Murphy on 24 July 2007, indicating the violation is in connection with a building permit issued 3 October 2006 and amended upon agreement on 16 April 2007. The notice of violation cites concerns regarding the gravel extraction, traffic, safety and potential effects on down slope property owners.
- The board finds no record of a permit amendment dated 16 April 2007.
- We find the appellant was issued a subsequent letter by Zoning Administrator Murphy on 31 July 2007, requiring a report from an engineer addressing the impact of activities on site, a remediation plan, and detailing what future plans are for the site.

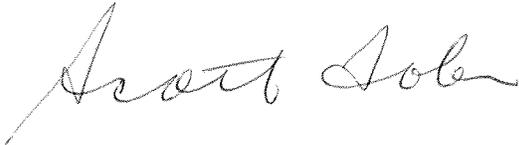
- The board finds no record of a remediation plan submitted by the appellant. Furthermore, the board finds that the volume of gravel removed from the site was well beyond the scope considered incidental to a building permit.
- We find the appellant was issued a letter dated 27 August 2007 by Town Administrator Christine Murphy outlining a six step plan for remediation of the gravel extraction area. Included in the letter was a requirement that all remediation work be complete by 30 September 2007.
- We find the appellant was issued a Notice of Violation on 18 March 2009 citing that gravel was removed from the site in conjunction with building permit B-06-51, and since no accessory structure was constructed the activity constituted "extraction of earth resources" and a violation of the Underhill Zoning Regulations.
- We find the testimony of Gerard Bernasconi citing his lack of understanding of repercussions for his expired building permit unreasonable. It would be reasonable to expect a homeowner to know that if a building permit expires, having no structure on the proposed site would require an application re-submittal and cost to continue the project. It is also reasonable to expect an experienced contractor of 20+ years to anticipate potential repercussions for a building permit expiring without a building on the proposed site. Especially when that project involved excessive and controversial gravel extraction, obviously no longer incidental to the building project.
- We find that no observations of the gravel extraction area were made by town representatives between 27 August 2007 and 18 March 2009. (testimony of Zoning Administrator)
- We find the appellants made a good faith effort to comply with the 27 August 2007 remediation plan issued by Zoning Administrator Murphy. (Observations by DRB conducted during site visit on 4 May 2009, and evidence of established vegetation).
- Based on observations made by the DRB during the site visit we did not find conditions that demonstrated excessive erosion, the potential for excessive erosion, or conditions that would otherwise threaten the public health, safety or welfare.
- We did not find any evidence of recent earth moving activity, although we find the previous impact significant and the applicant stretched the allowable provision for gravel removal as outlined in the zoning regulations. We found the site stabilized as directed by

the 27 August 2007 remediation plan issued by Zoning Administrator Murphy

- We find that the Town of Underhill was remiss in not outlining how compliance with the 27 August 2007 remediation plan would be measured; or conducting a subsequent site inspection specific to the gravel extraction area prior to issuing the 18 March 2009 Notice of Violation.
- We find that although there is a 15 year statutory limitation on zoning violations, any reasonable person would have considered the matter resolved given the 18 month lag between the required completion date of the 27 August 2007 remediation plan and the 18 March 2009 Notice of Violation.

Based on the above findings, we hereby overturn the "Notice of Violation" issued 18 March 2009. No further action is required.

Sincerely



Scott Tobin
Chairman, Underhill Development Review Board

Enclosures

List of Exhibits 1- 17
Certificate of Service

Development Review Board Hearing
Bernasconi, 4 May 2009

List of Exhibits

1. Memorandum to the Development Review Board dated 4 May 2009 from Chuck Brooks, Clerk of the Underhill Development Review Board
2. Appeal Hearing Checklist, completed by Chuck Brooks, Clerk of the Underhill Development Review Board
3. List of Abutting Neighbors, prepared by Chuck Brooks, Clerk of the Underhill Development Review Board
4. Copy of Letter dated 13 April 2009 by Chuck Brooks Clerk of the Underhill Development Review Board sent to adjoining landowners.
5. Original Application for the Zoning Permit B-06-51.
6. Portion of original sketch submitted in support of the original zoning application
7. Current tax map showing Bernasconi lot.
8. Notice of violation sent to Albert Bernasconi from Zoning administrator Kari Papelbon dated 18 March 2009
9. Bernasconi reply dated 23 March 2009
10. Copy of Vermont statues dealing with administrative appeals including:
 - a. 24 VSA Chapter 117 sec 4464, Hearing and Notice requirements.
 - b. 24 VSA Chapter 117 sec 4465, Appeals of Decisions of Administrative Officer
 - c. 24 VSA Chapter 117 sec 4468, Hearing on Appeal.
 - d. 24 VSA Chapter 117 sec 4469, Appeal; variances.
 - e. 24 VSA Chapter 117 sec 4471, Appeal to environmental court.
 - f. 25 VSA sec 810 Rules of Evidence
11. Copy of information from the Vermont Secretary of State regarding how to conduct an appeals hearing.
12. Copy of Notice of Violation letter issued to Albert Bernasconi by Zoning Administrator Christine Murphy dated 24 July 2007. (submitted by Murphy at the hearing)
13. Copy of letter issued to Albert Bernasconi by Zoning Administrator Christine Murphy dated 31 July 2007. (submitted by Murphy at the hearing)
14. Copy of letter issued to Albert Bernasconi by Zoning Administrator Christine Murphy dated 27 August 2007. (submitted by Murphy at the hearing)
15. Photocopy of hand written note submitted by Christine Murphy dated 7/5/07, outlining summary of phone conversations from 7/5,

Development Review Board Hearing
Bernasconi, 4 May 2009

List of Exhibits

- 7/10, 7/11 & 7/12 regarding Bernasconi extraction. (submitted by Murphy at the hearing)
16. Photocopy of hand written note submitted by Christine Murphy dated 7/23/07 outlining summary phone conversation with Joe Nelson, Meadow Lane resident and actions taken by Murphy. (submitted by Murphy at the hearing)
17. Photocopy of hand written note submitted by Christine Murphy dated 7/24/07 outlining summary phone conversation with Gerard Bernasconi & Chris Cameron. (Submitted by Murphy at the hearing).

I hereby certify that on 18 June 2009, I sent a copy of the attached development review board findings and decision, via first class mail, postage paid to the following parties at the addresses listed below.

Albert Bernasconi
49 Meadow Lane
Underhill, VT 05489

Gerard Bernasconi
388 Williams Road
Colchester, VT 05446

Chris & Lynn Cameron
53 Meadow Lane
Underhill, VT 05489

Charles & Shirley Cressman
45 Meadow Lane
Underhill, VT 0549

Christine Murphy
Town Administrator/ Planner
P.O. Box 32
Underhill Center, VT 05490

Kari Papelbon
Zoning Administrator
P.O. Box 32
Underhill Center, VT 05490

By:

Certificate of Service



Scott Tobin
Chairman,
Underhill Development Review Board
P.O Box 32,
Underhill Center, VT 05490