

TOWN OF UNDERHILL
APPLICATION OF ISABEL BASLOW
FOR A 5-LOT SUBDIVISION
PRELIMINARY FINDINGS AND DECISION

In re: Isabel Baslow
13 Baslow Lane
Underhill, VT 05489

Docket No. DRB-09-02: Isabel Baslow

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Isabel Baslow's preliminary hearing application for a 5-Lot subdivision of property located at 13 Baslow Lane in Underhill, VT.

1. On February 27, 2009, Michael Baslow, Power of Attorney, filed an application for subdivision on behalf of Isabel Baslow for the project. A copy of the application and site plan are available at the Underhill Town Hall. As this is a resubmission for a project with an expired approval, a new sketch plan hearing is not required. All documents from the previously-approved hearings are available at the Underhill Town Hall.
2. On March 31, 2009, a copy of the notice of a public site visit and hearing was mailed to the applicant, Isabel Baslow, c/o Mike & Deb Baslow, 19 Baslow Ln., Underhill, VT 05489 and to the following owners of properties adjoining the property subject to the application:
 - a. Bosley, P.O. Box 253, Underhill, VT 05489
 - b. Baslow, 19 Baslow Ln., Underhill, VT 05489
 - c. Raineault, 28 Gerts Knob, Underhill, VT 05489
 - d. Coia, P.O. Box 212, Underhill, VT 05489
 - e. Lamphere, 27 North Underhill Station Rd., Underhill, VT 05489
 - f. Luce, 50 North Underhill Station Rd., Underhill, VT 05489
 - g. Langsenkamp, 60 North Underhill Station Rd., Underhill, VT 05489
 - h. Netelkos/Boquel, 295 Poker Hill Rd., Underhill, VT 05489
 - i. Francis, 305 Poker Hill Rd., Underhill, VT 05489
 - j. Varney, 329 Poker Hill Rd., Underhill, VT 05489
 - k. Audet, 725 VT Rte. 15, Underhill, VT 05489
 - l. Tatro, 1617 VT Rte. 15, Morrisville, VT 05661
 - m. Sminkey/Nadeau, 769 VT Rte. 15, Underhill, VT 05489
 - n. Woods, 772 VT Rte. 15, Underhill, VT 05489
 - o. Dehart, 779 VT Rte. 15, Underhill, VT 05489
 - p. Baslow, 780 VT Rte. 15, Underhill, VT 05489
 - q. Russin, P.O. Box 417, Underhill, VT 05489
 - r. Lunn, 13 Warner Creek Rd., Underhill, VT 05489
 - s. Bugbee/Robenstein, P.O. Box 221, Underhill, VT 05489
 - t. Trull, 17 Warner Creek Rd., Underhill, VT 05489
 - u. Glenn, P.O. Box 336, Underhill, VT 05489

Notice was also provided via email and phone to Gunner McCain, McCain Consulting.

3. On April 2, 2009, notice of a public site visit and hearing was published in the Mountain Gazette.
4. By April 3, 2009, notice of the site visit and the preliminary hearing on the proposed Baslow subdivision were posted at the following places:
 - a. The property to be developed, BS013;
 - 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. A site visit was held at the property on April 20, 2009. Present the site visit were:
 - Chuck Brooks
 - Stan Hamlet
 - Penny Miller
 - Deb Shannon
 - Scott Tobin, Chair

Zoning Administrator Kari Papelbon, Gunner McCain (consultant for the Baslows), and several neighbors also attended the site visit.

6. The preliminary hearing was scheduled to begin immediately following the site visit scheduled for 6:00 PM on April 20, 2009.
7. Present at the preliminary hearing were the following members of the Development Review Board:
 - Chuck Brooks
 - Penny Miller
 - Deb Shannon
 - Stan Hamlet
 - Scott Tobin, Chair

Kari Papelbon, Zoning Administrator also attended the meeting.

8. It was discovered that a property owner across VT Rte. 15 did not receive notice of the site visit and hearing. As such, the hearing and additional site visit were continued to May 11, 2009 at 6:30 PM. On April 21, 2009, a copy of the notice of a public site visit and preliminary hearing was mailed to the applicant, Isabel Baslow, c/o Mike and Deb Baslow, 19 Baslow Ln., Underhill, VT, 05489 and to the following owners of properties adjoining the property subject to the application:
 - a. Bosley, P.O. Box 253, Underhill, VT 05489
 - b. Baslow, 19 Baslow Ln., Underhill, VT 05489
 - c. Raineault, 28 Gerts Knob, Underhill, VT 05489
 - d. Coia, P.O. Box 212, Underhill, VT 05489

- e. Lamphere, 27 North Underhill Station Rd., Underhill, VT 05489
- f. Luce, 50 North Underhill Station Rd., Underhill, VT 05489
- g. Langsenkamp, 60 North Underhill Station Rd., Underhill, VT 05489
- h. Netelkos/Boquel, 295 Poker Hill Rd., Underhill, VT 05489
- i. Francis, 305 Poker Hill Rd., Underhill, VT 05489
- j. Varney, 329 Poker Hill Rd., Underhill, VT 05489
- k. Tatro, 1617 VT Rte. 15, Morrisville, VT 05661
- l. Sminkey/Nadeau, 769 VT Rte. 15, Underhill, VT 05489
- m. Woods, 772 VT Rte. 15, Underhill, VT 05489
- n. Dehart, 779 VT Rte. 15, Underhill, VT 05489
- o. Baslow, 780 VT Rte. 15, Underhill, VT 05489
- p. Russin, P.O. Box 417, Underhill, VT 05489
- q. Lunn, 13 Warner Creek Rd., Underhill, VT 05489
- r. Bugbee/Robenstein, P.O. Box 221, Underhill, VT 05489
- s. Trull, 17 Warner Creek Rd., Underhill, VT 05489
- t. Glenn, P.O. Box 336, Underhill, VT 05489
- u. Tatro-Lavigne, 799 VT Rte. 15, Underhill, VT 05489
- v. Smith, 38 Gerts Knob Rd., Underhill, VT 05489

Notice was also provided via email and phone to Gunner McCain, McCain Consulting.

9. By April 24, 2009, notice of the continued site visit and preliminary hearing on the proposed Baslow subdivision were posted at the following places:
 - a. The property to be developed, BS013;
 - 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.
 10. A site visit was held at the property on May 11, 2009. Present the site visit were:
 - Chuck Brooks
 - Stan Hamlet
 - Penny Miller
 - Matt Chapek
 - Scott Tobin, Chair
- Zoning Administrator Kari Papelbon and Gunner McCain (consultant for the Baslows) also attended the site visit.
11. The continued hearing was scheduled to commence immediately following the site visit scheduled for 6:30 PM on May 11, 2009.
 12. Present at the preliminary hearing were the following members of the Development Review Board:
 - Chuck Brooks
 - Penny Miller
 - Matt Chapek

- Stan Hamlet
- Scott Tobin, Chair

Kari Papelbon, Zoning Administrator, also attended the meeting.

13. 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
- Marie Trull, 17 Warner Creek, Underhill, VT
- Cynthia Glenn, 18 Warner Creek, Underhill, VT (mailing address in 2 above)

14. 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, Michael Tatro, and Gunner McCain of McCain Consulting;
- b. A copy of Isabel Baslow’s Application for Subdivision: Preliminary;
- c. A copy of the completed Subdivision Checklist: Preliminary;
- d. Plans prepared by Gunner McCain of McCain Consulting for Isabel Baslow (Sheets 1, 2, 4, and 5 of 5 revised 4-21-09 and Sheet 3 revised 11-10-05);
- e. A copy of the survey by Lynn Ribolini for Isabel Baslow (revised 9-29-06);
- f. A copy of the Easement Agreement (dated 10-24-02 and recorded in the Underhill Land Records);
- g. Copies of the Wastewater System and Potable Water Supply Permits for the subdivision (dated 10-4-04 and 7-25-06);
- h. A copy of the Memo from Mike Weisel, Town Engineer, regarding the 2006 Baslow subdivision (dated 11-8-05);
- i. A copy of the letter from Chittenden East Supervisory Union #12 Superintendent of Schools James Massingham (dated 11-1-05);
- j. A copy of the letter from Underhill-Jericho Fire Department Chief Randy Clark (dated 11-16-05);
- k. A copy of the November 16, 2005 Selectboard Minutes with the subdivision road and driveway design approvals (signed 12-1-05);
- l. A copy of the Zoning Board of Adjustment Findings and Decision (dated 1-9-06);
- m. A copy of the Planning Commission Subdivision Review Findings and Decision (dated 7-19-06);
- n. A copy of the letter to Isabel Baslow from Christine Murphy regarding the missing elements from the final subdivision hearing (dated 7-24-06);
- o. A copy of the letter to Isabel Baslow from Christine Murphy regarding the final Mylar (dated 10-19-06);
- p. A copy of the email correspondence between State Stormwater Program Environmental Analyst Kevin Burke and Zoning Administrator Kari Papelbon regarding the required stormwater permits for the subdivision;
- q. A copy of the hearing notice published in the Mountain Gazette (dated 4-2-09);
- r. A copy of the parcel map for BS013;
- s. A copy of the draft Proposed Findings of Fact.

These exhibits are available in the Isabel Tatro, BS013 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 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 are contained on the plans.
3. The Board finds that the preliminary application satisfies the requirement as the acreage, property lines, existing easements, floodplain, and wetlands are shown on the plans.
4. The Board finds that the preliminary application satisfies the requirement as the wetland areas and limited cut zone are depicted on the plans.
5. The Board finds that The Board finds that the site plan is missing parcel VT805 – Morris/Sanjurjo and the last name of the owners of VT799 should be spelled Tatro-Lavigne. These are not material errors that would prevent the application from receiving preliminary plat approval from the Board. Parcel VT805 and the correct spelling for the owners of VT799 shall be shown on the final site plan.
6. The Board finds that the preliminary application satisfies the requirement as the applicable zoning regulations and district boundaries are contained in the plans.
7. The Board finds that the preliminary application satisfies the requirement as the septic systems, wells, culverts, and proposed underground utilities are shown on the plans.
8. The Board finds that the preliminary application satisfies the requirement as the proposed locations, name, and proposed widths of Warner Creek Road and the driveways are contained in the plans. Septic easements are also shown on the plans. These shall be shown on the revised survey for the final hearing.
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 date, north point and orientation, scale, and legend are contained on the plans.
12. The Board finds that the preliminary application meets the requirement as a survey by a licensed surveyor has been submitted. Any revised survey submitted for the final hearing shall be by a licensed surveyor.
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.
15. The Board finds that the preliminary application satisfies the requirement as details for stormwater collection and drainage are contained in the plans.
16. The Board finds that the preliminary application satisfies the requirement as preliminary designs for culverts 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 visits conducted April 20, 2009 and May 11, 2009 satisfied the requirement.
19. The Board finds that this requirement is not applicable as no land is to be dedicated to public use.
20. The Board finds that the preliminary application satisfies the requirement as the nature and extent of the proposed alteration of Warner Creek are contained in the plans.
21. The Board finds that the preliminary application satisfies the requirement as proposed buildings are single-family homes and residential outbuildings. No proposed buildings are dedicated for public use.
22. The Board finds that the preliminary application satisfies the requirement as the plans depict the proposed locations for underground utilities.
23. The Board finds that this requirement is not applicable as neither waivers nor variances have been requested.
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. Planning Standards: Evaluation Considerations—Provisional Findings

1. **Suitability for Development:** The Baslow property is on the east side of Vermont Route 15 in Underhill, Vermont. It is accessed via Gerts Knob Road and Warner Creek Road. The property is approximately 84.30 acres in size. Four lots are proposed for development. The lots to be developed will be accessed via an extension of Warner Creek Road. The remaining property will remain with the Isabel Baslow house which is accessed via Gerts Knob Road. The area is not in a flood plain as designated on the Flood Insurance Rate Map (FIRM), Panel 500042 0010 B, for the Town of Underhill, Vermont. The property is crossed by four drainage ways of various sizes. Flood flow calculations were submitted by Nicholas P. Nowlan, PE of McCain Consulting, Inc. to show that the proposed culverts and drainage swales were sufficiently sized to accommodate the expected flood flows. The proposed development is laid out to preserve the steeper areas east of the proposed house sites. There are no significant rock formations or earth formations within the proposed development area. Existing utilities, including electric and phone service are located along Warner Road. These utilities will not be adversely impacted by the proposed development.
2. **Preservation and Protection of Existing Features:** By keeping the proposed development close to existing development, more than 60 acres of land will be preserved. Development will be sufficiently set back from wetlands, brooks and streams to ensure their protection. Where roads, proposed buildings or leachfields are within 100 feet of wetlands or streams, a variance was granted by the Underhill Zoning Board of Adjustment. There are no mapped deer yards in the vicinity of the proposed development.
3. **Recreation:** The four proposed building lots are located in the Rural Residential zoning district requiring a minimum lot size of 3 acres. Three of the four proposed building lots are greater than 10 acres in size, and the remaining proposed building lot is over 6 acres in size. As laid out the undeveloped portions of the property will provide sufficient open space for recreation, wildlife habitat and protection of forest resources.
4. **Runoff and Erosion Control:** Erosion control plans have been prepared by Nicholas P. Nowlan, PE of McCain Consulting, Inc. The plans generally follow the recommended practices outlined by the Agency of Natural Resources in their Erosion Control Handbook. The practices proposed to control erosion include maintenance of silt fencing to delineate disturbed areas and to filter silt from stormwater runoff; installation of check dams in roadside swales to slow runoff and to settle out soil particles, installation of properly sized and aligned culverts to ensure safe passage of flood flows; protection of long exposed slopes with erosion control matting; and establishment of both temporary and permanent vegetation as soon as possible during and after construction. A Construction General Permit is also being pursued for the project.
5. **Compliance with the Town Plan, Ordinances, and By-Laws:** The 2004 Underhill Municipal Development Plan includes the Zoning District map and the Natural Resources map. One can deduce that compliance with the zoning regulations, and giving due regard to the natural resources of the town, would indicate compliance with the Municipal Development Plan. Part of the subdivision review process includes review by the Select Board of the access location, road layout and construction details for compliance with Underhill's Road Policy. The Select Board has passed favorably upon the road and driveway plans. The Vermont Agency of Natural Resources (ANR) has issued a permit for the proposed wastewater disposal and water supply systems. Since some aspects of the permitted design have changed during the town review process, an amended ANR

permit will be applied for upon completion of the town review process so that the approved town and ANR plans are consistent.

6. **Flood Plain:** The area is not in a flood plain as designated on the Flood Insurance Rate Map (FIRM), Panel 500042 0010 B, for the Town of Underhill, Vermont. Two drainage ways cross the property in the proposed development area. Flood flow calculations were submitted by Nicholas P. Nowlan, PE of McCain Consulting, Inc. to show that the proposed culverts and drainage swales were sufficiently sized to accommodate the expected flood flows.
7. **Compatibility with Surrounding Properties:** The neighboring properties along Warner Creek Road, Gerts Knob Road and Vermont Route 15 consist of residential lots three acres in size or larger. Generally, residences are located within 500 feet of existing roads. The steeply sloped hillsides beyond the residences are undeveloped. The proposed subdivision is in keeping with the pattern of development that has taken place along this stretch of Warner Creek Road, Gerts Knob Road and Vermont Route 15.
8. **Suitability for Density:** The plans which have been submitted with the subdivision application demonstrate that the proposed development can be laid out with sufficient controls to protect the natural resources in the area including streams, wetlands, forest resources and wildlife habitat. The plans also demonstrate that there is adequate area for fully protected water supply sources and compliant wastewater disposal systems.
9. **Pedestrian Traffic:** Warner Creek Road will serve as the primary route of transportation for the proposed development. The road is sufficiently wide enough in the vicinity of the proposed development to accommodate diverse forms of 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. It is not anticipated that the proposed development road will be taken over and maintained by the Town of Underhill.
11. **Water Availability:** The sources of water for the proposed development will be individual drilled wells. The effective minimum yield needed to serve one four bedroom house is 0.68 gallons per minute. Well yields in the Underhill area are generally far in excess of the minimum required well yield.
12. **Highway Congestion:** Warner Creek Road will serve as the primary route of transportation for the proposed development. The proposed development will generate an estimated average daily volume of 40 trips per day. The peak hourly volume is estimated to be 8 trips per hour. Warner Creek Road could conceivably handle 1,500-2,400 trips per hour which far exceeds current use levels. The extra traffic generated by the proposed development will not exceed the excess road capacity of the traffic network within the Town of Underhill. Sight distances at the Warner Creek Road intersection with Vermont Route 15 are sufficient in both directions so that an unsafe condition does not exist. The Board recognizes that approval of the private road upgrades and driveways are the jurisdiction of the Selectboard. The Board recommends approval of the road to the Selectboard.

13. Visual, Air, Noise, Water Pollution: The proposed development is laid out so that the building sites will be screened from both Warner Creek Road and neighboring properties. 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. Water pollution concerns are addressed by erosion control and wastewater disposal plans, as well as the Construction General Permit. Covenants that will run with the development also address aspects of visual, air, noise and water pollution.

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.

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. A revised survey depicting the proposed relocation of a portion of Warner Creek, the shared driveways to Lots 1-4, and the corrected septic easement locations shall be submitted to the Zoning Administrator with the revised plans prior to scheduling the final hearing.
3. A revised letter from the Underhill-Jericho Fire Department addressing their abilities to provide services to the proposed subdivision shall be submitted for the final hearing.
4. All draft easement deeds, private road/driveway maintenance agreements, the shared stormwater infrastructure maintenance agreement, and a draft of the Homeowners Association by-laws/agreement shall be submitted prior to scheduling the final hearing. The Homeowners Association agreement shall include a provision that all certifications and reports on the stormwater infrastructure shall be copied to the Town. The private road maintenance agreement and shared stormwater infrastructure maintenance agreement may be included in the Homeowners Association document.
5. All variance requests shall be submitted in writing to the Zoning Administrator prior to scheduling the final hearing.

Baslow Preliminary Decisi.
21 April 2009

Dated at Underhill, Vermont this 15th day of June, 2009.

Scott Tobin
Scott Tobin, Chair, Development Review Board