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TOWN OF UNDERHILL
APPLICATION OF MICHAEL TATRO
FOR A 3-LOT SUBDIVISION
FINAL FINDINGS AND DECISION

6488
UNDERHILL TOWN CLERK'S OFFICE
Received For Record 4-9 A.D., 20 10
At 8 O'clock — minutes A M. & Recorded
In Book 180 Page 46-55 of Underhill Records
Attest
Town Clerk

In re: Michael Tatro
535 Main St.
Dalton, MA 01226

Docket No. DRB-08-11: Michael Tatro

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Michael Tatro's final hearing application for a 3-Lot subdivision of property located at 38 Mullen Road in Underhill, VT.

1. On October 9, 2009, Gunner McCain filed an application for subdivision on behalf of Michael Tatro for the project. A copy of the application and site plan are available at the Underhill Town Hall. A preliminary hearing was held on March 23, 2009 and approved.

2. On October 19, 2009, a copy of the notice of final hearing was mailed via certified mail to the applicant, Michael Tatro, 535 Main St., Dalton, MA 01226 and to the following owners of properties adjoining the property subject to the application:

    a. Greenia, P.O. Box 392, Underhill, VT 05489
    b. Kelliher, 37 Mullen Rd., Underhill, VT 05489
    c. Weber, P.O. Box 25, Underhill, VT 05489
    d. Lang, 238 River Rd., Underhill, VT 05489
    e. Christie, 50 Mullen Rd., Underhill, VT 05489
    f. Baron/Dickgiesser, 480 Poker Hill Rd., Underhill, VT 05489

3. On October 29, 2009, notice of a public hearing was published in the *Burlington Free Press*.

4. By October 30, 2009, notice of the final hearing on the proposed Tatro subdivision were posted at the following places:

    a. The property to be developed, MU038;
    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 begin immediately following the preceding site visit and hearing scheduled for 6:30 PM on November 16, 2009.

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

- Matt Chapek
- Penny Miller
- Charlie Van Winkle
- Will Towle
- Stan Hamlet
- Scott Tobin, Chair

Kari Papelbon, Zoning Administrator, Gunner McCain, consultant, Michael Tatro, applicant, Cindy Cross-Greenia, neighbor, William and Lynn MacDonough, applicants for the next hearing, and a guest also attended the hearing.

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:

   - Gunner McCain, McCain Consulting, 93 South Main Street, Waterbury, VT 05676
   - Cindy Cross-Greenia, 34 Mullen Road, Underhill, VT (mailing address in 2 above)
   - Michael Tatro, 38 Mullen Road, Underhill, VT (mailing address in 2 above)

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, Michael Tatro, and Gunner McCain of McCain Consulting;
   b. Michael Tatro's Application for Subdivision: Final Hearing (dated 10-7-09);
   c. A copy of the completed Subdivision Checklist: Final Hearing;
   d. A copy of plans prepared by Gunner McCain of McCain Consulting for Michael Tatro (Sheets S-1 through S-3 and SW-1 through SW-2 revised 9-2-09);
   e. A copy of the Final Plat prepared by Keith Van Iderstine of McCain Consulting for Michael Tatro (dated 6-29-06);
   f. A copy of the Construction General Permit #5549-9020.3 (dated 9-18-09);
   g. A copy of the Stormwater Permit #5549-9015 (dated 10-1-09);
   h. A copy of the Wastewater System and Potable Water Supply Permit WW-4-3334 (dated 9-4-09);
   i. A copy of the letter from the Underhill-Jericho Fire Department (dated 4-24-09);
   j. A copy of the Attorney's Report and Opinion on Title from Norman C. Smith, Esq. (effective to 10-5-09);
   k. A copy of the Draft Declaration of Deer Run Planned Community (dated 10-8-09);
   l. A copy of the email from Mike Weisel regarding comments made at the preliminary hearing (dated 3-23-09);
   m. A copy of the minutes from the March 23, 2009 preliminary hearing;
   n. A copy of the Preliminary Decision (dated 4-9-09);
   o. A copy of the hearing notice published in the Burlington Free Press (dated 10-29-09);
   p. Sheet SW-1 (revised 11-12-09);

q. Proposed Conditions for Subdivision;
r. Waiver request for bonding requirement (dated 11-10-09);
s. Email from Nicole Fitch, McCain Consulting, addressing questions from ZA Kari Papelbon's email dated 10-12-09 (dated 11-11-09).

These exhibits are available in the Michael Tatro, MU038, Subdivision file at the Underhill Zoning Office.

II. FINDINGS

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:

1. The applicant seeks a permit to subdivide land. The subject property is a ±10.97-acre parcel located at 38 Mullen Road in the Town of Underhill.

2. The property is located in the Rural Residential zoning district as depicted on the town tax map and described in §VI of the Underhill Zoning Regulations.

3. Subdivision approval is requested for the project pursuant to review under the Town of Underhill Subdivision Regulations.

4. §VI of the Underhill Zoning Regulations provides for the following minimum requirements:

    a. No lot shall be less than 3 acres. The density shall not be greater than one dwelling unit plus an accessory apartment.

    b. All lots of whatever size shall have a frontage of at least 250 feet.

    c. The primary dwelling or use has a minimum front yard setback of 75 feet, a minimum side yard setback of 50 feet, and a minimum rear yard setback of 50 feet.

    d. Accessory uses or buildings, parking areas and driveways shall be constructed not less than 20 feet from side and rear lot lines. Accessory uses or buildings shall not be closer to the front lot line than the distance from the front lot line to the nearest point of the primary dwelling or shall not be closer to the front lot line than 75 feet.

5. All proposed lots are at least 3 acres in size with one proposed dwelling unit.

6. All lots have at least 250 feet of frontage along the private road (Tatro Road) or Mullen Road.

7. All proposed building envelopes are at least 75 feet from the proposed front lot lines, and at least 50 feet from the proposed side and rear lot lines.

8. The proposed private road (Tatro Road), the driveways off of the private road, and suggested parking areas are at least 20 feet from the proposed side and rear lot lines.

9. Submission Requirements as delineated on pages 9-11 of the Underhill Subdivision Regulations, "Final Plat for Subdivisions" provide for the following:

   a. Survey and Engineering Plan Elements: The Board finds that the engineering drawing and survey show the identifying title, name of the municipality, name and address of the record owner and sub divider, the boundaries of the subdivision, parcel codes, scale, date, north point, and legend. The seal of the surveyor is missing. This is not an error as the survey is stamped after receiving final approval and the Applicants' consultant has indicated that the final survey will be stamped and signed. The seal and signature shall appear on the Mylar.

   b. Road/Pedestrian Ways/ Easements/Reservations: The Board finds that application satisfied the requirement as the road names (Mullen Road and Tatro Road), lots, reservations for the Environmentally Sensitive Rural Development Credit, and proposed easements are shown on the plans. No areas are dedicated to public pedestrian ways or public use.

   c. 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.

   d. Road Details: The Board finds that the application satisfies the requirement as the lengths of all straight lines, radii, lengths of curves, and bearings and distances are contained in the plans. A waiver request for the minimum 100-foot curve radius requirement has been submitted.

   e. Public Space/Reserved Space: The Board finds that the application satisfies the requirement as the wetland and stream buffers are shown on the plans with the area reserved for the Environmentally Sensitive Rural Development Credit. The applicant and his consultant have also stated that a limited cut zone will be added to the plans along the shared lot line between Lots 1 and 2 along the stream and the property line with 34 Mullen Road.

   f. Lot Numbering: The Board finds that the application satisfies the requirement as the lots are numerically numbered on the proposed plan. No new blocks are proposed.

   g. Infrastructure: The Board finds that the application satisfies the requirement as septic systems, proposed utility easements and existing poles, grading, and stormwater details are contained in the plans.

   h. Wastewater System Design: The Board finds that the application satisfies the requirement as the location and results of all test pits and septic system areas are shown on the plans. A State of Vermont Wastewater System and Potable Water Supply Permit was issued for the project on September 4, 2009.

   i. 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. A State of Vermont

Wastewater System and Potable Water Supply Permit for the project was issued on September 4, 2009.

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

k. 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.

l. 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.

m. State Permits: The Board finds that the application satisfies the requirement as a Construction General Permit #5549-9020.3 was issued on September 18, 2009, and Stormwater Permit #5549-9015 was issued on October 1, 2009, and a Wastewater System and Potable Water Supply Permit was issued on September 4, 2009. State permits for lots less than 10 acres in size are no longer required by the Agency of Natural Resources.

n. Curb Cut/Selectboard Approval of Driveway/Underground Utilities: The Selectboard has final jurisdiction over approval of curb cuts, road/driveway designs, and underground utilities. As the Development Review Board makes recommendations on the above to the Selectboard and the Selectboard was not available for the final hearing, the Board finds that this requirement shall be fulfilled prior to filing the final Mylars.

o. The Board recommends to the Selectboard that they approve the proposed driveway and road design, underground utilities, and waivers in (10) and (11) below.

10. Waiver - Engineer's Certification or Bond for Improvements with the Final Mylar: The Board finds the waiver request to be reasonable and recommends that the Selectboard approve the waiver with the conditions that prior to issuance of a building permit to any lot out of this subdivision, an engineer shall provide a letter to the Zoning Administrator certifying

    a. that the shared infrastructure has been installed to the lot per the approved plans;
    b. that the approved curb cut to the lot has been installed per the plan; and
    c. that the driveway to the lot 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.

The existing bridge shall also be upgraded to include runner planks and steel beam guardrails, and the bent post shall be fixed per Town Engineer Mike Weisel's recommendations.

Upon completion of construction, the designer/engineer must certify by letter to the Zoning Administrator that the shared infrastructure and driveways have been constructed as designed. This certification shall be recorded in the Land Records.

11. Waiver – Minimum 100-foot Curve Radius Requirement: The Underhill Road Policy requires a minimum curve radius of 100 feet. Three curves on the proposed Tatro Road are 75 feet, 80 feet, and 50 feet. All provisions in the Road Policy are the jurisdiction of the Selectboard. The Board recommends approval of the waiver request to the Selectboard.

12. Planning Standards: Evaluation Considerations

    a. Suitability for Development: The Board finds that the land is suitable for development as evidenced by the submitted plans, Sheets S-1 through S-3 and SW-1 and SW-2, prepared by McCain Consulting, Inc. 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 natural features that would be reasonably harmful to the health, safety, and general welfare of present or future inhabitants of the subdivision or its surrounding areas.

    b. Preservation and Protection of Existing Features: Buffers will be preserved along the stream and wetlands on the site. No development will occur within 100 feet of these features. There are no mapped deer wintering areas or other critical wildlife habitats in the vicinity of the proposed development as evidenced by the previously submitted GIS map depicting nearby deer wintering areas. Additionally, the project plans note that ±3.4 acres are set aside to obtain the Environmentally Sensitive Rural Development Credit under the Operational Stormwater General Permit.

    c. Recreation: The undeveloped portions of the lots will provide sufficient open space for recreational use by the lot owners.

    d. Runoff and Erosion Control: The total new disturbed area for the project will be approximately 1.2 acres. Coverage under the Construction General Permit has been obtained.

    e. Compliance with the Town Plan, Ordinances, and By-Laws: As evidenced by the plans submitted, the project conforms to the Zoning Regulations and Town Plan. Where the project does not conform, waivers have been requested.

    f. Flood Plain: As shown on the attached Flood Insurance Rate Map (FIRM), Panel 5000420010B, the project parcel does not lie in a flood plain.

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

h. Suitability for Density: The plans which have been submitted with the subdivision application demonstrate that the site is suitable for the proposed density.

i. Pedestrian Traffic: Mullen Road is sufficiently wide enough to accommodate diverse forms or transportation including automobile, pedestrian, and bicycle traffic. The project does not propose the addition of sidewalks.

j. 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. Letters from the Underhill-Jericho Fire Department and the Chittenden East Supervisory District have been submitted regarding their abilities to provide services to the proposed subdivision. The Selectboard will have final jurisdiction over the access details.

k. 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 nearby well yields from the State of Vermont database.

l. Highway Congestion: Mullen Road currently serves other residences. Each new residence is expected to generate 10 vehicle trip ends per day. Site distances at the development road intersection with Mullen Road are sufficient in both directions so that unsafe conditions will not exist. The Board recognizes that approval of the private road and driveways are the jurisdiction of the Selectboard, and will make recommendations for such areas to the Selectboard.

m. Visual, Air, Noise, Water Pollution: The proposed residences will be substantially screened from travelers on Mullen Road. An additional "limited cut zone" has been proposed along the shared boundary with 34 Mullen Road as well. 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, and the Board will recommend the addition of runner planks to the existing bridge to address noise concerns raised at the preliminary hearing. Water pollution concerns are addressed by erosion control, stormwater, and wastewater disposal plans and permits.

13. The Board recognizes that interested party testimony was presented at the final hearing with regard to the Underhill-Jericho Fire Department's letter requesting an upgrade to the width of the existing bridge from 11 feet to 20 feet. Such testimony was in favor of the bridge upgrade. The Board did not agree with the upgrade and will not recommend the upgrade to the Selectboard. The Selectboard has final jurisdiction over the bridge.

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 Tatro 3-lot subdivision at 38 Mullen Road.

Conditions

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, sale, or development of property may occur prior to recording the final plat, decision, and all applicable permits and approvals in the Town of Underhill Land Records. The final Engineering Drawing Sheet S-1 shall be recorded in the Land Records.

2. State and Federal Permits: All State permits shall be recorded in the Land Records.

3. Private Road, Driveways, Bridge, and Erosion Control Measures: Prior to issuance of a building permit to any lot out of this subdivision, an engineer shall provide a letter to the Zoning Administrator certifying

   a. that the shared infrastructure has been installed to the lot per the approved plans;
   b. that the approved curb cut to the lot has been installed per the plan; and
   c. that the driveway to the lot 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.

   The existing bridge shall also be upgraded to include runner planks and steel beam guardrails, and the bent post shall be fixed per Town Engineer Mike Weisel's recommendations.

   Upon completion of construction, the designer/engineer must certify by letter to the Zoning Administrator that the shared infrastructure and driveways have been constructed as designed. This certification shall be recorded in the Land Records.

4. Culvert Installation: All culvert installations shall follow the requirements in *The Low-Risk Site Handbook for Erosion Prevention and Sediment Control.*

5. Road Maintenance Agreement: The Private Roadway Agreement shall be recorded in the Land Records. Reference to the Private Roadway Agreement shall appear in any deed in this subdivision. This agreement may appear in the Homeowners Association agreement.

6. Homeowners Association Document: The Homeowners Association document shall be recorded in the Land Records. Reference to the Homeowners Association 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

7. 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.

8. Septic Certification Letter: 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 Town Clerk for recording and copied to the Zoning Administrator.

9. Inspection Reports and Certifications: A copy of all inspection reports and certification reports sent to the State for the stormwater infrastructure shall be filed with the Town Clerk for recording and copied to the Zoning Administrator.

10. Digital Submission of Plat and Plans: Prior to recording the final Mylars, the applicant shall submit a copy of the final plats and engineering drawing in digital format to the Zoning Administrator.

11. 911 Codes: All lots shall have their 911 codes posted prior to issuance of any building permit (Lot 1: TA003, Lot 2: TA004, Lot 3: TA005).

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

13. Selectboard Approval: Applicant shall obtain approval of the curb cuts, private road and driveways, underground utilities, and waivers of the minimum curve radii requirement and bonding requirement from the Selectboard prior to filing the final plat.

14. Limited Cut Zone: A limited cut zone to maintain a vegetative screen within the Town's 100-foot brook buffer, shown as the area around the 129-foot property line between Lots 1 and 2, shall appear on the final Mylar. No clear-cutting shall be allowed in this area.

The following recommendations will be made to the Selectboard:

1. That the existing bridge be upgraded to include runner planks and steel beam guardrails, and the bent post fixed per Town Engineer Mike Weisel's recommendations.

2. That the Selectboard approves the waivers of the bonding requirement and the minimum curve radii, with the conditions proposed in (3) above.

3. That the Selectboard approves the driveways/road designs.

4. That the Selectboard approves the underground utility location.

Dated at Underhill, Vermont this 7th day of December, 2009.

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 Jan. 6, 2010, when the 30-day appeal period has expired.

END OF DOCUMENT