TOWN OF UNDERHILL
APPLICATION OF WILLIAM AND LYNN MACDONOUGH
FOR A 2-LOT PLANNED RESIDENTIAL DEVELOPMENT
PRELIMINARY FINDINGS AND DECISION

In re: William and Lynn MacDonough
42 Krug Road
Underhill, VT 05489

Docket No. DRB-09-13: MacDonough

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns William and Lynn MacDonough's preliminary hearing application for a 2-lot planned residential development of property located at 42 Krug Road in Underhill, VT.

1. On November 20, 2009, William and Lynn MacDonough filed an application for subdivision for the project. A copy of the application and site plan are available at the Underhill Town Hall. A sketch plan hearing was held on November 16, 2009 and accepted.

2. On December 1, 2009, a copy of the notice of a public site visit and hearing was mailed to the applicants, William and Lynn MacDonough, P.O. Box 21, Underhill Center, VT 05490. A copy of the notice of public site visit and hearing was mailed to the following owners of properties adjoining the property subject to the application:

    a. Askey/Maxwell, 32 Krug Rd., Underhill, VT 05489
    b. Carey, P.O. Box 163, Underhill Center, VT 05490
    c. Connors, 43 Range Rd., Underhill, VT 05489
    d. Sheridan, P.O. Box 109, Underhill Center, VT 05490
    e. Burke, 33 Range Rd., Underhill, VT 05489

    A copy of the notice was also emailed to Jeff Olesky, Civil Engineering Associates, Inc. at jolesky@cea-vt.com.

3. On December 3, 2009, notice of a public site visit and hearing was published in the *Mountain Gazette*.

4. By December 3, 2009, notice of the site visit and the preliminary hearing on the proposed MacDonough subdivision were posted at the following places:

    a. The property to be developed, KR042;
    b. The Underhill Town Clerk's office;
    c. The Underhill Center Post Office;
    d. The Underhill Flats Post Office;
    e. The Deborah Rawson Memorial Library;
    f. The Town of Underhill website.

5. A site visit was held at the property on December 19, 2009 at 9:00 AM. Present the site visit were:

   - Will Towle
   - Stan Hamlet
   - Penny Miller
   - Peter Seybolt
   - Scott Tobin, Chair

   Zoning Administrator Kari Papelbon, Jeff Olesky (consultant for William and Lynn MacDonough), and William MacDonough also attended the site visit.

6. The preliminary hearing was scheduled to begin at 6:30 PM on January 4, 2010.

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

   - Chuck Brooks
   - Penny Miller
   - Peter Seybolt
   - Will Towle
   - Stan Hamlet
   - Scott Tobin, Chair

   Kari Papelbon, Zoning Administrator, Jeff Olesky, William and Lynn MacDonough, Gunner McCain, and Robert Danis also attended the meeting. Board Member Matt Chapek was recused from the hearing.

8. 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:

   - Jeff Olesky, Civil Engineering Associates, Inc., 10 Mansfield View Ln., South Burlington, VT 05403
   - William MacDonough, P.O. Box 21, Underhill Center, VT 05490

9. 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, William and Lynn MacDonough, and Jeff Olesky of Civil Engineering Associates, Inc.;
   b. William and Lynn MacDonough's Application for Subdivision: Preliminary Hearing (dated 11-20-09);
   c. A copy of the completed Subdivision Checklist: Preliminary Hearing;
   d. A copy of plans prepared by Jeff Olesky of Civil Engineering Associates, Inc. for William and Lynn MacDonough (Sheets C1.0 and C1.3 dated October 2009 and Sheets C1.1 and C1.2 revised 11-18-09);

e. A copy of the Plat of Survey - Proposed prepared by Timothy R. Cowan of Civil Engineering Associates, Inc. for William and Lynn MacDonough (revised 11-18-09);
f. A copy of the tax map for KR042;
g. A copy of the hearing notice published in the Mountain Gazette (dated 12-3-09);
h. Letter from James Massingham of Chittenden East Supervisory Union #12 (dated 1-4-2010).

These exhibits are available in the MacDonough, KR042, 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

1. The applicant seeks a permit to subdivide land. The subject property is a 7.48-acre parcel located at 42 Krug Road in Underhill, VT (KR042).

2. The property is located in the Rural Residential zoning district as defined in §VI of the Underhill Zoning Regulations.

3. Subdivision approval is requested for the project pursuant to review under the following sections of the Town of Underhill Zoning Regulations and Subdivision Regulations:

   - §III(R): Planned Residential Development
   - Preliminary plat submission requirements, pages 7-9, "Preliminary Plat for Subdivisions"

4. §III(R) of the Underhill Zoning Regulations provides for the following: In accordance with the provisions of 24 VSA, Planned Residential Development may be permitted. The purpose is to enable and encourage flexibility of design and development of land based on the unique characteristics of a particular site. The advantage to the community is that the goal of promoting the most appropriate use of land consistent with the Underhill Town Plan and the Underhill Capital plan can better be met. It will help to preserve and maintain agricultural and forest land, wetlands or scenic views and to facilitate the adequate and the economical provision of roads and utility. Accordingly, the [DRB] may modify the area and dimensional requirements of the applicable zoning regulations simultaneously with the approval of a subdivision plat. Planned Residential Development proposals will be reviewed as subdivisions under the Underhill Subdivision Regulations.

   (1) Application requirements – An application for a planned residential development approval shall include a site plan showing the location, height and spacing of buildings, open spaces and their landscaping, roads, driveways and off-road parking, and all other physical features of the proposed design. In addition, the application shall be accompanied by a statement

setting forth the nature of all proposed modifications, changes or supplementation of the area and dimensional requirements of the existing zoning regulations.

(2) Design standards – All planned residential development proposals shall be evaluated according to the following standards:

a. The permitted number of dwellings shall in no case exceed the number which would be permitted, in the [DRB]'s judgment, if the land were subdivided into lots in conformance with the zoning regulations applicable to the designated district. One-family, two-family, three-family or four-family construction may be permitted in the area serviced by the Underhill Jericho water district and located in the residential district at the discretion of the [DRB], while one family construction is permitted in the other districts.

b. The proposed Planned Residential Development must be an effective and unified treatment of the development possibilities on the project site, and the proposed development plan must make appropriate provisions for the preservation of streams and streambanks, steep slopes, wet areas, soils unsuitable for development, forested areas and unique natural and man-made features.

c. The proposed Planned Residential Development must be consistent with the Town's Comprehensive Plan and all applicable by-laws.

d. The proposed Planned Residential Development must be consistent with all of the evaluation standards set forth in the Town's Subdivision Regulations.

e. The proposed Planned Residential Development must provide for the preservation of open space.

f. Open space or common land will be in a location or locations, size and shape approved by the [DRB], and will be protected by appropriate legal devices to insure the continued use of such lands for the purposes of agriculture, forestry, recreation, park or conservation. Such mechanisms may include, but will not be limited to, dedication of restrictive covenants or other appropriate grants or restrictions approved by the [DRB] after consultation with the Town Attorney.

g. All lots created under these rules may not be subdivided further in the future. This restriction will be attached to the deed and filed in the town records.

h. The proposed Residential Development will provide for safe and efficient pedestrian and vehicular circulation, parking and service areas.

i. The proposed Planned Residential Development will safeguard the value and appropriate use of adjacent properties.

j. The proposed Planned Residential Development will include access from existing public highways and will not cause undue congestion or interference with normal traffic flow.

k. The applicant must submit to the legislative body a complete list of all waivers from the Zoning and Subdivision Regulations for review and comment before a final plat

approval is granted. Waivers shall include any modifications to the requirements of any by-law, regulation or town policy, excluding modifications made to lot area or dimensional requirements.

4. Application Submission Requirements, Preliminary Plat for Subdivisions – The preliminary plat shall be drawn to a scale of not more than two hundred (200) feet to the inch, and shall show or be accompanied by the following information:

   a. Proposed subdivision name or identifying title and the name of the town.

   b. Name and address of record owner, sub divider and designer of Preliminary Plat.

   c. Number of acres within the proposed subdivision, location of property lines, existing easements, buildings, water-courses and other essential existing physical features, natural features and resources.

   d. The location of natural features or site elements to be preserved.

   e. The names of all subdivisions immediately adjacent and the names of owners of record of adjacent acreage, including those directly across any road adjoining proposed subdivision.

   f. The provisions of the zoning Regulations applicable to the area to be subdivided and any zoning district boundaries affecting the tract.

   g. The location and size of any existing sewerage systems and water supplies, culverts and drains or underground cables on the property to be subdivided.

   h. Location, names and present widths of existing and proposed roads, easements, building lines, parks, and other public open spaces as well as similar facts affecting adjacent property.

   i. Contour lines at intervals of ten (10) feet of existing grades and of proposed finished grades where change of existing ground elevation will be five (5) feet or more.

   j. Typical cross sections of the proposed grading and roadways.

   k. Date, true north point, scale, and legend.

   l. Complete survey of subdivision tract by a licensed registered engineer or surveyor.

   m. Means of providing water supply to the proposed subdivision.

   n. Means of on-site disposal of septic wastes including location and results of tests to ascertain subsurface soil, rock and ground water conditions, depth to ground water unless pits are dry at depth of seven (7) feet; location and results of preliminary percolation tests for plat.

   o. Provisions for collecting and discharging storm drainage, in the form of drainage plan.

p. Preliminary designs of any bridges or culverts which may be required.

q. The proposed lot lines with approximate dimensions and suggested locations of buildings.

r. The location of temporary markers adequate to enable the Commission to locate readily and appraise the basic layout in the field. Unless an existing road intersection is shown, the distance along a road from one corner of the property to the nearest existing road intersection shall be shown.

s. All parcels of land proposed to be dedicated to public use and the conditions of such dedication.

t. The sub divider shall coincidentally with submitting the preliminary layout, also furnish a statement signed by him or her to the Commission reciting:

   i. The nature and extent of the proposed road or roads. These must meet Town highway specifications as established by the Selectmen;

   ii. The nature and extent of any recreational features, parks, or playgrounds to be provided, if any, and whether or not and under what conditions they are to be dedicated to the Town;

   iii. The way in which the proposed development relates to the Comprehensive Plan for the Town of Underhill.

u. The sub divider shall indicate if any of the proposed units are to be considered as public buildings.

v. The sub divider shall indicate the location of proposed underground cables.

w. List of waivers, if any, the sub divider desires from the requirements of these regulations, and justification therefore.

x. The preliminary Plat shall be accompanied by a vicinity map drawn to show the relation of the proposed subdivision to the adjacent properties and to the general surrounding area. The vicinity map shall show all the area within two thousand (2,000) feet of any property line of the proposed subdivision. Such vicinity map will be shown on a U.S.G.S. map at a scale of approximately one (1) inch to 24,000.

y. If the preliminary Plat submitted covers only part of the sub divider's entire holding, then the applicant shall submit an outline of the platted area, together with its road system and an indication of the future probable road system of the remaining portion of the tract.

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.

§III(R) of the Underhill Zoning Regulations

(1) The Board finds that the application included a site plan showing the location, height and spacing of buildings, open spaces, driveways, well information, septic system location and design, and waiver requests. The open space includes a tributary of the Browns River and Class III wetlands, which shall not be disturbed. Waivers of 22 feet for the frontage requirement for both proposed driveways have been submitted.

(2)

a. The Board finds that the proposed number of dwellings does not exceed the number which would be permitted if the land were subdivided into conforming lots. A density plan has been submitted indicating the conformance with the district density requirements. Both proposed lots will be served by a private drilled well.

b. The Board finds that the proposed plans show an effective unified treatment of the development possibilities as the plans meet all of the district requirements except for frontage. The plans also preserve nearly 2 acres of land to include the stream, streambanks, and wetlands on the property.

c. The Board finds that the proposed plans are consistent with the Town's Comprehensive Plan as it calls for preserving open space and natural features. Where the plans do not meet the requirements of the by-laws, waivers have been requested.

d. (Please see the next section for findings.)

e. The Board finds that the proposed plans preserve nearly 2 acres for open space.

f. The Board finds that the location, size, and shape of the open space as discussed at the preliminary hearing (shape and size to be outside of the building envelopes) is approved. The open space shall not be developed and this restriction shall appear in the deeds to the lots.

g. The Board finds that this restriction will appear in the deeds to the lots and the applicants have been made aware of such requirement.

h. The Board finds that the proposed development is to create 2 residential lots for private use. The proposed driveway has adequate site distances and parking will be on the lots themselves.

i. The Board finds that the proposed plan is to divide the existing developed residential lot into 2 residential lots in a residential neighborhood. Surrounding properties are of similar size.

j. The Board finds that the proposed curb cut for the driveway to Lot 2 will be off of Krug Road, an existing Town road. The additional lot is expected to generate traffic that is typical of residential lots in this neighborhood.

k. The Board finds that a waiver request has been submitted for the frontage requirement.

Application Submission Requirements, Preliminary Plat for Subdivisions, Underhill Subdivision Regulations

a. The Board finds that the preliminary application satisfies the requirement as the proposed subdivision and Town are identified on the plans.

b. The Board finds that the preliminary application satisfies the requirement as the record owner's and designer's information is contained on the plans. The applicants' consultant has agreed to change the address on the plans to the address of the property.

c. The Board finds that the preliminary application satisfies the requirement as the acreage, property lines, proposed easements, existing building, wetlands, and tributary of the Browns River are shown on the plans.

d. The Board finds that the preliminary application satisfies the requirement as the open space, tributary of the Browns River, and Class II wetlands are depicted on the plans.

e. The Board finds that the preliminary application satisfies the requirement as the names of adjacent landowners are shown on the plans.

f. The Board finds that the survey is missing the zoning district information. This is not a material error that would prevent the Board from granting preliminary approval as the district appears on the engineering plans and the applicants' consultant has stated that the missing information will be on the final survey. The Board finds that the zoning district title is missing the word "Residential." This is not a material error that would prevent the Board from granting preliminary approval as the applicants' consultant has stated that this will be corrected on the final hearing plans.

g. The Board finds that the preliminary application satisfies the requirement as the location and size of septic systems, well, and underground utilities are shown on the plans. No culverts are proposed for the driveway to Lot 2.

h. The Board finds that the preliminary application satisfies the requirement as there are no proposed roads, parks, or public open spaces proposed. The location and widths of all proposed easements are shown on the plans.

i. The Board finds that the preliminary application satisfies the requirement as the contours are depicted on the plans.

j. The Board finds that the preliminary application is missing the cross-section and driveway details beyond the proposed width. These are not material errors that would prevent the Board from granting preliminary approval as the applicants' consultant has stated that those details will appear on the final hearing plans.

k. 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.

l. The Board finds that the preliminary application meets the requirement as a survey by a licensed surveyor has been submitted. The zoning district information shall appear on the final survey.

m. The Board finds that the preliminary application satisfies the requirement as drilled wells are contained on the plans. The applicants' consultant stated at the hearing that the proposed drilled well on Lot 2 will be removed for the final hearing submission as the existing well on Lot 1 was tested and found to have adequate supply for both lots.

n. The Board finds that the preliminary application satisfies the requirement as septic system locations and details are contained in the plans. The Applicants' consultant has indicated that the system will comply with all State requirements.

o. The Board finds that the preliminary application is missing a reference to erosion control standards. This is not a material error that would prevent the Board from granting preliminary approval as the applicants' consultant has stated that the a reference to the *Low-Risk Site Handbook* will be added to the plans for final hearing, and that the current plans include some notes for maintenance of trees, restoring disturbed areas, and preservation of grassed areas.

p. The Board finds that this requirement is not applicable as there are no proposed culverts or bridges.

q. The Board finds that the preliminary application satisfies the requirement as the plans contain proposed lot lines and suggested locations of buildings.

r. The Board finds that the site visit conducted December 19, 2009 satisfied the requirement.

s. The Board finds that this requirement is not applicable as no land is to be dedicated to public use.

t. The Board finds that parts of this requirement are not applicable as there are no proposed roads, public parks, or public playgrounds. The application complies with required setbacks to protect the tributary, an open space area will remain in place to protect natural features, and the subdivision conforms to the provisions in the Comprehensive Plan by protecting natural features and open space.

u. 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.

v. The Board finds that the preliminary application satisfies the requirement as proposed power line locations are contained in the plans.

w. The Board finds that a waiver request of the road frontage requirement has been submitted for both lots.

x. The Board finds that the preliminary application satisfies the requirement as the plans contain a vicinity map.

y. The Board finds that the preliminary application satisfies the requirement as the plans show the entire parcel and adjoining property. The subdividers plan to sell Lots 1 and 2, and they will retain the adjoining lot which is the site of their present home.

The Development Review Board approves the preliminary application and plat subject to the following conditions (in addition to the subdivision requirements for final hearing on Pages 9-11 of the Underhill Subdivision Regulations):

1. A 22-foot waiver of the frontage requirement is approved for Lots 1 and 2.

2. The engineering plans shall be revised to reflect the address of the subject property, 42 Krug Road, and the zoning district, Rural Residential.

3. The engineering plans shall be revised to remove bearings.

4. The plans and survey shall be revised to show that the proposed driveway to Lot 2 conforms to district setback requirements (20 feet to a side property line).

5. Driveway cross-sections and details and erosion control plans (or references thereto) shall be included in the final hearing plans.

6. The building envelopes shall be revised to exclude the open space.

7. A copy of the State Wastewater System and Potable Water Supply Permit and letter from the Underhill-Jericho Fire Department shall be submitted to the Zoning Administrator prior to scheduling the final hearing.

8. New parcel codes will be provided by the Zoning Administrator prior to scheduling the final hearing. The new parcel codes for the lots shall appear on the final plans and survey.

9. The survey shall be revised to include the zoning district information.

10. All draft easement deeds, deed language prohibiting further subdivision of the lots and preservation of the open space, and Proposed Findings of Fact shall be submitted to the Zoning Administrator prior to scheduling the final hearing.

Dated at Underhill, Vermont this 27th day of January, 2010.

Scott Tobin

Scott Tobin, Chair, Development Review Board