TOWN OF UNDERHILL
APPLICATION OF RICHARD AND LAURIE WILCOX,
BENJAMIN WILCOX, AND WILLIAM AND DEBBIE DAVIS
FOR A 2-LOT SUBDIVISION
FINAL FINDINGS AND DECISION

In re: Richard and Laurie Wilcox
Benjamin Wilcox
152 Weed Road
Essex Junction, VT 05452

William and Debbie Davis
36 Hill Crest Lane
Underhill, VT 05489

Docket No. DRB-10-01: Davis/Wilcox

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Richard and Laurie Wilcox's, Benjamin Wilcox's, and William and Debbie Davis' final hearing application for a 2-Lot subdivision of property located at 60 Page Road in Underhill, VT.

1. On December 30, 2009, Brad Holden filed an application for subdivision on behalf of the Applicants for the project. A copy of the application and survey are available at the Underhill Town Hall. Upon advice of Town Attorney Vincent Paradis, the preliminary and final hearings were combined into a final hearing.

2. On December 31, 2009, a copy of the notice of final hearing was mailed to the applicants, Richard and Laurie Wilcox, Benjamin Wilcox, 152 Weed Road, Essex Junction, VT 05452 and William and Debbie Davis, 36 Hill Crest Lane, Underhill, VT 05489, and via certified mail to the following owners of properties adjoining the property subject to the application:

    a. Stone, 11 Doon Road, Underhill, VT 05489
    b. Hardy, P.O. Box 88, Underhill, VT 05489
    c. Crowell/Sabalis, 609A Irish Settlement Road, Underhill, VT 05489
    d. Lyster/May, 17 Doon Road, Underhill, VT 05489
    e. Yellin, 20 Doon Road, Underhill, VT 05489
    f. Boucher, 29 Blueberry Hill Road, Weston, MA 02493
    g. Clark, P.O. Box 7, Underhill, VT 05489
    h. Schneider, 569 Irish Settlement Road, Underhill, VT 05489

3. On January 1, 2010, notice of a public hearing was published in the *Burlington Free Press*.

4. By December 31, 2009, notice of the final hearing on the proposed Wilcox and Davis subdivision were posted at the following places:

a. The property to be developed, PG060;
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 at 6:30 PM on January 18, 2010.

6. Present at the final hearing were the following members of the Development Review Board:
   - Matt Chapek
   - Penny Miller
   - Charles Van Winkle, Vice Chair
   - Stan Hamlet

   Kari Papelbon, Zoning Administrator, Brad Holden, consultant, Richard and Benjamin Wilcox, applicants, William Davis, applicant, Craig Schneider, neighbor, and Timothy Crowell, neighbor, also attended the hearing.

7. At the outset of the hearing, Vice Chairperson Charles Van Winkle explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Interested parties who spoke at the hearing were:

   - Brad Holden, Vermont Land Surveyors, 4050 Williston Rd., Ste. 112, South Burlington, VT 05403
   - William Davis, 36 Hill Crest Lane, Underhill, VT 05489
   - Timothy Crowell, 609A Irish Settlement Rd., Underhill, VT 05489

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, the Wilcox Family, and the Davis Family;
   b. Richard, Laurie, and Benjamin Wilcox's Application for Subdivision: Final Hearing (dated 12-30-09);
   c. William and Debbie Davis' Application for Subdivision: Final Hearing (dated 12-30-09);
   d. A copy of the survey prepared by Brad Holden of Vermont Land Surveyors for Richard and Laurie Wilcox, Benjamin Wilcox, and William and Debbie Davis (dated 12-30-09);
   e. A copy of the tax map for PG060;
   f. A copy of the waiver request from Brad Holden (dated 1-6-10).

These exhibits are available in the Davis/Wilcox, PG060, 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 applicants seek a permit to subdivide land. The subject property is a ±136.6-acre parcel located at 60 Page Road in the Town of Underhill.

2. The property is located in the Soil and Water Conservation zoning district and a small corner of the property is located in the Rural Residential zoning district as depicted on the town tax map and defined in §IX and §VI of the Underhill Zoning Regulations.

3. §IX of the Underhill Zoning Regulations provides for the following minimum requirements:

    a. No lot shall be less than 15 acres. The density shall not be greater than one dwelling unit plus an accessory apartment.

    b. Each lot shall have a frontage of at least 400 feet.

    c. The primary dwelling or use has a minimum front yard setback of 100 feet, a minimum side yard setback of 75 feet, and a minimum rear yard setback of 75 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 100 feet.

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. Subdivision approval is requested for the project. Relevant regulations include:

    - Application Submission Requirements, pages 9-11 of the Underhill Subdivision Regulations, "Final Plat for Subdivisions"

- Planning Standards, pages 11-12 of the Underhill Subdivision Regulations, "Evaluation Considerations"
- General Application Requirements, page 17 of the Underhill Subdivision Regulations, "Waivers"

6. Two woodlots are proposed. No development of the lots is proposed.

7. The proposed Davis parcel will be accessed off of an existing right-of-way at the end of Page Road. The proposed Wilcox parcel will be accessed over the lands of Davis at 51 Page Road, over a proposed 50-foot-wide right-of-way from the Wilcox land at 50 Page Road, and via the existing woods road on the parcel to be subdivided.

8. A waiver of the requirements for subdivision in the Underhill Subdivision Regulations has been submitted.

9. Town Attorney Vincent Paradis has recommended that the Development Review Board approve of the request to waive the subdivision regulation requirements and to approve of the two lots for use strictly as woodlots with the condition that no structures, improvements, or development shall be allowed on the proposed lots. Should the applicants wish to change the use of the lots, review and approval of the Development Review Board shall be required.

10. Application Submission Requirements, "Final Plat for Subdivisions" – The final plat shall be drawn to a scale of not more than two hundred (200) feet to the inch, and shall show:

    a. Proposed subdivision name or identifying title, the parcel code of the original lot, the name of the municipality, the name and address of the record owner and sub divider, the name, license number and seal of the licensed land surveyor and/or professional engineer, the boundaries of the subdivision and its general location in relation to existing roads or other landmarks and scale, date, true north point, and legend.

    b. Road names and lines, pedestrian ways, lots, reservations, easements and areas to be dedicated to public use.

    c. Sufficient data acceptable to the Commission to determine readily the location, bearing and length of every road line, lot line, boundary line and to reproduce such lines upon the ground. When practicable these should be tied to reference points previously established by a public authority.

    d. The length of all straight lines, the deflection angles, radii, length of curves, tangent distances and bearings for each road.

    e. By proper designation on such Plat, all public open space for which offers of dedication are made by the sub divider and those spaces title to which is reserved by the sub divider.

f. Lots within the subdivision numbered in numerical order within blocks, and blocks lettered in alphabetical order.

g. The location of all of the improvements referred to in Article VIII and in addition thereto the location of all utility poles, sewage disposal systems, and rough grading and other devices and methods of draining the area within the subdivision.

h. The location and results of all percolation tests for each lot of the subdivision, the location of all proposed sanitary sewage systems, and a statement that all such systems will be designed and constructed in conformance with the Sewage Ordinance for the Town of Underhill, as well as to applicable state regulations and standards.

i. The location of all existing and proposed sources of potable water, along with evidence that such will not contaminated by the proposed sewage systems.

j. Monuments - Reinforced concrete monuments of 3,000 p.s.i. concrete containing four (4) number three reinforcing rods, set one (1) in each corner. The monuments shall be four (4) inches square at the top, and three (3) feet long or any approved equal. Monuments shall be set at all R.O.W. intersections, and at all points of curvance (P.C.), points of tangency (P.T.), on both sides of the right-of-way and any other critical points in the road lines as will enable a land surveyor to correctly stake out any lot in the subdivision. In addition, monuments will be set on all corners of the boundary. Each monument shall have identification on the top, so that the marked center shall be the point of reference. The tops of such monuments shall project above the surrounding ground surface at least four (4) inches. The monuments shall be set in place after all other road improvements are completed.

There shall be submitted to the Commission with the final plat the following supporting documents:

a. A certificate from an engineer or other consultant approved by the Town as to the satisfactory completion of all improvements required by the Commission, or, in lieu thereof, a performance bond to secure completion of such improvements and their maintenance for a period of two years, with a certificate from the Board of Selectmen that it is satisfied either with the bonding or surety company, or with security furnished by the sub divider.

b. The sub divider shall provide letters from the Chittenden East School District Superintendent and the Underhill-Jericho Fire Department, addressing the impact of the proposed subdivision under criterion (10) of Section 600.

c. For lots less than 10 acres in size, the applicant must provide a subdivision permit from the Vermont Agency of Environmental Conservation, Department of Water Resources.

d. The sub divider shall provide written acknowledgement from the Selectmen that all plans for road construction have been reviewed by the Selectmen and are in compliance with the road policy for the Town of Underhill.

e. Any other documents required by the Commission as a result of preliminary plat approval.

11. Planning Standards, "Evaluation Considerations"

a. Whether land is unsuitable for subdivision or development due to flooding, improper drainage, steep slopes, rock formations, adverse earth formations or topography, utility easements or other features which will reasonably be harmful to the safety, health, and general welfare of the present or future inhabitants of the subdivision and/or its surrounding areas.

b. Whether the proposal includes due regard for the preservation and protection of existing features, trees, scenic points, brooks, streams, wetlands, rock outcroppings, water bodies, deer yards and other wildlife habitat, and other natural and historical resources.

c. Whether the proposal includes sufficient open space for active and passive recreation.

d. Whether the proposal includes adequate provision for the control of runoff and erosion during and after construction.

e. Whether the proposed development is in compliance with the Comprehensive Plan, Zoning Ordinance and any other By-Laws then in effect.

f. Whether any portion of the proposed development is located in a flood plain.

g. Whether the proposed development is compatible with surrounding properties.

h. Whether the site is suitable for the proposed density.

i. Whether the proposal contains adequate provision for pedestrian traffic in terms of safety, convenience, access to points of destination and attractiveness.

j. Whether the proposed development when viewed in the context of other developments in the town, will place an unreasonable burden on the ability of local governmental units to provide municipal or governmental services and facilities.

k. Whether there is sufficient water available for the reasonably foreseeable needs of the proposed development.

l. Whether the proposed development will cause unreasonable highway congestion or unsafe conditions with respect to the use of roads and highways in the Town.

m. Whether the proposed development will cause a significant increase in visual, air, noise or water pollution.

12. General Application Requirements, "Waivers" – The [Development Review Board] may waive or vary, subject to appropriate conditions, the provisions of any or all improvements and application submission requirements as in its judgment of the special circumstances of a particular plat or plats are not requisite in the interest of public health, safety and general welfare, or which in its judgment are inappropriate because of an inadequacy or lack of connecting facilities adjacent to or in proximity to the subdivision.

    In granting waivers or variances, the [Development Review Board] shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived or varied. No such waiver or variance may be granted if it would have the effect of nullifying the intent and purpose of the Town's Plan, By-Laws, or the Zoning Regulations, which may be acted on by the Zoning Board of Adjustment only. Any waiver shall require the approval of a majority of the full [Board]. A document defining all granted waivers shall be presented to the legislative body for review and subsequent approval prior to the public hearing for a final plat review.

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 Wilcox and Davis 2-lot subdivision at 60 Page Road.

General Application Requirements, "Waivers"

The Development Review Board approves of the request to waive the requirements for subdivision, including the Application Submission Requirements, pages 9-11 of the Underhill Subdivision Regulations, "Final Plat for Subdivisions" and the Planning Standards, pages 11-12 of the Underhill Subdivision Regulations, "Evaluation Considerations," in the Underhill Subdivision Regulations per the advice of Town Attorney Vincent Paradis.

The Development Review Board approves the application and plat subject to the following conditions:

1. The subdivided lots shall be used solely for woodlots. No structures, except those which are exempt from local zoning per the Vermont Agency of Agriculture's Accepted Agricultural Practices, improvements, or development shall be allowed on the parcels.

2. Any change of use of the lots shall require additional review and approval by the Development Review Board prior to such change.

3. The final plat shall include the new parcel codes for the lots.

4. Any state approvals or letters regarding exemption from §1-304(a)(2) of the Vermont Wastewater System and Potable Water Supply Rules shall be submitted to the Zoning Administrator prior to filing the final plat.

5. Proposed deeds for the lots shall be submitted to the Zoning Administrator prior to filing the final plat. The deeds shall include the exemption language required by the State of Vermont's Wastewater System and Potable Water Supply Rules.

6. The final subdivision plat shall be filed in the Underhill Land Records. No transfer or sale of property may occur prior to recording the final plat, decision, and all applicable permits and approvals in the Town of Underhill Land Records.

Dated at Underhill, Vermont this 2 day of February, 2010.

Charles Van Winkle

Charles Van Winkle, Vice 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 March 4, 2010, when the 30-day appeal period has expired.