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

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

Docket No. DRB-09-13: MacDonough

UNDERHILL TOWN CLERK'S OFFICE
Received For Record 5.12 A.D., 20 10
At 11 O'clock — minutes A M. & Recorded
In Book 180 Page 351-360 of Underhill Records
Attest
Town Clerk

I. INTRODUCTION AND PROCEDURAL HISTORY

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

1. On March 11, 2010, Jeffrey Olesky of Civil Engineering Associates, Inc. filed, on behalf of William and Lynn MacDonough, a final application for subdivision for the project. Copies of the application, plans, and supporting information are available at the Underhill Town Hall. A preliminary hearing was held on January 4, 2010 and approved.

2. On March 16, 2010, a copy of the notice of the final public hearing was mailed to the applicants, William and Lynn MacDonough, P.O. Box 21, Underhill Center, VT 05490, and via certified mail 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

   Notice was also emailed to Jeff Olesky, Civil Engineering Associates, Inc. at jolesky@cea-vt.com.

3. By March 16, 2010, notice of the final 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.

4. On March 18, 2010, notice of the final public hearing was published in the *Mountain Gazette*.

5. The final hearing was scheduled to begin at 6:30 PM on April 5, 2010.

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

   - Chuck Brooks
   - Will Towle
   - Charlie Van Winkle
   - Scott Tobin, Chair

   Kari Papelbon, Zoning Administrator, and William and Lynn MacDonough, applicants, also attended the meeting.

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:

   - William MacDonough, P.O. Box 21, Underhill Center, VT 05490

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, William and Lynn MacDonough, and Jeff Olesky of Civil Engineering Associates, Inc.;
   b. William and Lynn MacDonough's Application for Subdivision: Final (dated 3-10-10);
   c. A copy of the completed Subdivision Checklist: Final Hearing;
   d. A copy of the plans prepared by Jeffrey Olesky of Civil Engineering Associates, Inc. for William and Lynn MacDonough (Sheets C1.0, C1.2, C2.0, C2.1 revised 3-8-10 and Sheet C1.1 revised 3-25-10);
   e. A copy of the Preliminary Plat prepared by Timothy R. Cowan of Civil Engineering Associates, Inc. for William and Lynn MacDonough (revised 3-25-10);
   f. A copy of the letter to Ernie Christianson, VT DEC Wastewater Management Division (dated 3-10-10);
   g. A copy of the letter from Ernestine Chevrier, VT DEC Wastewater Management Division acknowledging receipt of the MacDonoughs' application (dated 3-16-10);
   h. A copy of the letter from Harry Schoppmann of the Underhill-Jericho Fire Department (dated 2-26-10);
   i. A copy of the Proposed Findings of Fact;
   j. A copy of the tax map for KR042;
   k. A copy of the preliminary decision;
   l. A copy of the minutes from the 1-4-10 Preliminary Hearing;
   m. A copy of the hearing notice published in the *Mountain Gazette* (published 3-18-10);
   n. A copy of the letter from Harry Schoppman of the Underhill-Jericho Fire Department (dated March 30, 2010);
   o. A copy of the draft deeds and deed language;
   p. A copy of the request to waive the bonding requirement.

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
   - Final plat submission requirements, pages 9-11, "Final Plat for Subdivisions"
   - Planning Standards, pages 11-12, "Evaluation Considerations"

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.

5. Application Submission Requirements, Final Plat for Subdivisions – The final Subdivision Plat shall consist of one or more sheets of drawings which conform to the following requirements: One copy shall be on mylar clearly and legibly drawn, and the size of the sheets shall be either 18" X 24" or a multiple thereof. Four paper copies shall complete the submission. Such sheets shall have a margin of 2" outside of the borderlines on the left side for binding and a 1" margin outside the border along the remaining sides. Space shall be reserved thereon for endorsement by all appropriate agencies. The final plat for a subdivision shall conform in all respects to the preliminary plat as approved by the [DRB]. One such drawing shall be a survey of the affected property, drawn to meet the requirement for plat plans filed with the Town Clerk (Title 27, V.S.A., Chapter 117). 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 [DRB] 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.

k. There shall be submitted to the [DRB] with the final plat the following supporting documents:

   i. A certificate from an engineer or other consultant approved by the Town as to the satisfactory completion of all improvements required by the [DRB], 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.

ii. 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.

iii. 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.

iv. 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.

v. Any other documents required by the [DRB] as a result of preliminary plat approval.

6. 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.

III. DECISION AND CONDITIONS

Based upon the findings above, and subject to the conditions set forth below, the Development Review Board grants final approval for the subdivision as presented at the final 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 32 feet for the frontage requirement for both proposed driveways have been submitted. This is an adjustment from the preliminary hearing.

(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 was submitted at the preliminary hearing indicating the conformance with the district density requirements. Both proposed lots will be served by a shared, 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 Planning Standards, "Evaluation Criteria" – Final Findings section.

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 hearing and shown on the final plans are 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 was submitted at the preliminary hearing for the frontage requirement. A revised waiver request was submitted at the final hearing.

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

a. The Board finds that the application satisfies the requirement as all of the requirements are on the plans.

b. The Board finds that the application satisfies the requirement as Krug Road, the proposed and existing lots, and easements are shown on the plans.

c. The Board finds that the application satisfies the requirement as bearings and distances appear on the plat.

d. The Board finds that this requirement is not applicable as there are no new proposed roads.

e. The Board finds that this requirement is not applicable as no open space is dedicated for public use.

f. The Board finds that the application satisfies the requirement as lots have been labeled in numerical order.

g. The Board finds that the preliminary application satisfies the requirement as existing utility poles, the location of the septic system, and erosion control and drainage measures are contained in the plans.

h. The Board finds that the application satisfies the requirement as percolation test results and locations, and the location of the proposed septic system are contained in the plans. An application to the State for a Wastewater Disposal and Potable Water Supply Permit has been submitted.

i. The Board finds that the application satisfies the requirement as the well location is indicated on the plans. An application to the State for a Wastewater Disposal and Potable Water Supply Permit has been submitted.

j. The Board finds that the application satisfies the requirement as monument locations and descriptions appear on the plat.

k. The Board finds that the applicants have submitted a request for a waiver of the bonding requirement, and letters from the school district and fire department have been received indicated ability to provide services to the subdivision. The Selectboard will review the plans and waiver request for the bonding requirement.

Planning Standards, "Evaluation Criteria" – Findings

a. Neither of the proposed properties will create a situation that will potentially be harmful to the safety, health and general welfare of the property owners or their surrounding neighbors. The property generally has a gradual down slope from southeast to northwest that leads to a small tributary of the Browns River. The 100' stream buffer, Class II wetlands and 100' wetland buffer have been shown on the proposed plans. This project will have no impact to these environmental features. In addition, no portion of the existing property is located within a floodplain.

b. As part of this subdivision, approximately 2.57 acres of the original 7.28-acre lot is being designated as open space. This area includes the tributary of the Browns River, its associated 100' buffer, as well as all of the approximate Class II wetlands on the existing

property. The remaining portions of the lot are being developed in an environmentally-conscious way, and due to the size of the proposed lots, cannot be further subdivided.

c. As mentioned above, approximately 2.57 acres of the existing property is being designated as open space for active and passive recreation.

d. Although construction activity for this project does not require coverage under the State of Vermont Construction General permit, the site contractor shall adhere to the erosion control measures outlined in the State of Vermont "Low Risk Site Handbook for Erosion Prevention and Sediment Control." In addition, erosion control call-outs and details have been included in the site work plan set.

e. The proposed subdivision and development is in general compliance with the Comprehensive Plan, Zoning Ordinances and other By-Laws. A request to waiver 32 feet for the frontage requirement for both proposed lots has been submitted as the existing lot does not have enough frontage to meet the requirements for both proposed lots.

f. No portion of the existing lot is located within a floodplain.

g. The proposed subdivision and residential development is a permitted use and consistent with the surrounding residential properties.

h. The proposed lots meet the minimum lot size requirements for this zoning district and represent a suitable proposed density.

i. No pedestrian traffic is anticipated in conjunction with the proposed project.

j. The proposed project represents the addition of a single-family residential home and will not place an unreasonable burden on the ability of local governmental units to provide municipal or governmental services as indicated by letters from the Underhill-Jericho Fire Department and Chittenden East Supervisory District.

k. A yield test has been performed on the existing well and has shown there is adequate existing flow to provide water service to both proposed properties.

l. The proposed project represents the addition of a single-family residential home and will not cause unreasonable traffic congestion along Krug Road.

m. The proposed project will not cause a significant increase in visual, air, noise or water pollution as only one additional residential home is proposed.

The Development Review Board approves the 32-foot waiver of the frontage requirement for Lots 11A and 11B, and the application and plat subject to the following conditions:

1. 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 or sale of property may occur prior to recording the final plat and all applicable permits in the Town of Underhill Land Records

2. The final plat shall be revised to include the building envelope on Lot 11B.

3. The deed language for the easements shall be revised to clarify that the easements will be centered on as-built lines. Easement language shall contain a mechanism for the lot owners to share maintenance and other expenses related to the shared field and water system.

4. The deed language shall be revised to include the correct descriptions of the lots and easements.

5. No lot in this subdivision shall be further subdivided. This language shall appear in any deed to the lots in this subdivision.

6. All required State and local permits shall be recorded in the Land Records.

7. 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. 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 Zoning Administrator.

9. Prior to recording the final Mylars, the applicant shall submit a copy of the plat and Sheet C1.1 in digital format. The format of the digital information shall require approval of the Zoning Administrator.

10. Lots 11A and 11B shall have their 911 codes posted prior to issuance of any building permit (Lot 11A: KR042, Lot 11B: KR034).

11. All subdivision fees shall be paid in full to the Zoning Administrator prior to filing of the final plat.

12. Applicant shall obtain approval of the curb cut and driveway design, underground utilities, and waiver request for the bonding requirement from the Selectboard prior to filing the final plat.

The Board also approves the recommendation to the Selectboard for approval of the curb cut and driveway design, and approval of the waiver request of the bonding requirement with the following standard condition:

Prior to issuance of a building permit to Lot 11B, an engineer shall provide a letter to the Zoning Administrator certifying

1. that the approved curb cut has been installed per the plan; and
2. that the driveway has been "roughed in" per the approved plan.

Driveway top treatment may be installed at the end of the construction period. A copy of the engineer's letter to the State certifying that the septic system and upgrades to the well have been made in accordance with the approved plans shall be filed with the Zoning Administrator.

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

* Note: date should be 27th of April.

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 local permits shall be issued until April 26, 2010, when the 30-day appeal period has expired.

Note: appeal period should be May 27, 2010.

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