

TOWN OF UNDERHILL  
APPLICATION OF ROBERT AND PATTI DANIS  
FOR A 4-LOT SUBDIVISION  
FINAL FINDINGS AND DECISION

In re: Robert and Patti Danis  
898 VT Rte. 15  
Underhill, VT 05489

**UNDERHILL TOWN CLERK'S OFFICE**  
Received For Record 5:17 A.D., 20 10  
At 11 O'clock — minutes A M. & Recorded  
In Book 1809 Page 30-310 of Underhill Records  
Attest Juli Ann  
Town Clerk

Docket No. DRB-09-10: Danis

**I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns Robert and Patti Danis' final hearing application for a 4-lot subdivision of property located at 898 VT Rte. 15 in Underhill, VT.

1. On March 22, 2010, Gunner McCain of McCain Consulting filed an application for subdivision on behalf of Robert and Patti Danis for the project. A copy of the application and additional information are available at the Underhill Town Hall. A preliminary hearing was held on January 1, 2010 for the project and approved.
2. On April 2, 2010, a copy of the notice of a public final hearing was mailed to the applicants, Robert and Patti Danis, 898 VT Rte. 15, Underhill, VT 05489 and via certified mail to the following owners of properties adjoining the property subject to the application:
  - a. Doner, 535 Cooper Hill Road, Hyde Park, VT 05665
  - b. McNeill, 70 Cloverdale Road, Underhill, VT 05489
  - c. Horvath, 74 Cloverdale Road, Underhill, VT 05489
  - d. Dumas, P.O. Box 101, Underhill, VT 05489
  - e. Colby, 2 Roy Drive, Underhill, VT 05489
  - f. Dolan/Burt, 6 Roy Drive, Underhill, VT 05489
  - g. Greene/Verge, P.O. Box 204, Underhill, VT 05489
  - h. Williams, 12 Roy Drive, Underhill, VT 05489
  - i. Simays, 881 VT Rte. 15, Underhill, VT 05489
  - j. Audette, 890 VT Rte. 15, Underhill, VT 05489
  - k. Chicoine, 896 VT Rte. 15, Underhill, VT 05489
  - l. Roy, 910 VT Rte. 15, Underhill, VT 05489

A copy of the notice was also emailed to Gunner McCain, McCain Consulting at gmccain@mccainconsulting.com.

3. On April 3, 2010, notice of the final hearing was published in the *Burlington Free Press*.
4. By April 3, 2010, notice of the final hearing on the proposed Danis subdivision was posted at the following places:
  - a. The property to be developed, VT898;
  - b. The Underhill Town Clerk's office;
  - c. The Underhill Center Post Office;

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- d. The Underhill Flats Post Office;
  - e. The Underhill Country Store;
  - f. Wells Corner Market
  - g. Jacobs IGA;
  - h. The Town of Underhill website.
5. The final hearing was scheduled to begin immediately following the preceding hearing scheduled for 6:30 PM on April 19, 2010.
  6. Present at the preliminary hearing were the following members of the Development Review Board:
    - Chuck Brooks, Acting Chair
    - Matt Chapek
    - Penny Miller
    - Peter Seybolt
    - Deb Shannon
    - Stan Hamlet

Kari Papelbon, Zoning Administrator; Gunner McCain, Consultant; Robert Danis, Applicant; and Robert Newman, Applicant for the next hearing; Randy Clark, Chief of the Underhill-Jericho Fire Department; and Harry Schoppman, Duty Officer of the Underhill-Jericho Fire Department also attended the hearing.

7. At the outset of the hearing, Acting Chairperson Chuck Brooks explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Interested parties who spoke at the hearing were:
  - Robert Danis, 898 VT Rte. 15, Underhill, VT 05489

Others who spoke were:

- Gunner McCain, McCain Consulting, 93 South Main Street, Ste. 1, Waterbury, VT 05676
  - Randy Clark, Underhill-Jericho Fire Department, P.O. Box 150, Underhill, VT 05489
  - Harry Schoppman, Underhill-Jericho Fire Department, P.O. Box 150, 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, Robert and Patti Danis, and Gunner McCain of McCain Consulting;
    - b. Robert and Patti Danis' Application for Subdivision: Final (dated 3-14-10);
    - c. A copy of the completed Subdivision Checklist: Final Hearing;
    - d. A copy of the plans prepared by Gunner McCain of McCain Consulting, Inc. for Robert and Patti Danis (Sheet SD-1 revised 3-15-10, Sheets S-1 through S-4 revised 3-9-10, Sheet EC-1 revised 3-9-10, and Sheet C-1 revised 11-17-09);

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- e. A copy of the survey prepared by Keith van Iderstine of McCain Consulting, Inc. for Robert and Patti Danis (dated 3-11-10);
- f. A copy of the Construction General Permit Authorization (dated 12-9-09);
- g. A copy of the letter from Frank DelGiudice of the New England District of the US Army Corps of Engineers (dated 1-15-10);
- h. A copy of the letter from William Zabiloski of the VT Wastewater Management Division (dated 3-10-10);
- i. A copy of the letter from Harry Schoppmann, UJFD Duty Officer (dated 3-23-10);
- j. A copy of the draft Findings of Fact (from the Preliminary Hearing);
- k. A copy of the waiver request for the bonding requirement (dated 4-9-10);
- l. A copy of the tax map for VT898;
- m. A copy of the proposed subdivision conditions;
- n. A copy of the minutes from the 1-4-10 Preliminary Hearing;
- o. A copy of the preliminary decision;
- p. A copy of the confirmation email for the hearing notice to published in the *Burlington Free Press* (4-2-10);

These exhibits are available in the Danis, VT898, 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 20.2-acre parcel located at 898 VT Rte. 15 in Underhill, VT (VT898).
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 Subdivision Regulations:
  - Application Submission Requirements, pages 9-11, "Final Plat for Subdivisions"
  - Planning Standards, pages 11-12, "Evaluation Considerations"
4. 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

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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 be 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.

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- 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.

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- 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.
7. The applicants requested, at the preliminary hearing, the following variances:
- a. Lot 3 – 85’ variance building envelope setback to the wetland (the building envelope is proposed to be 15’ from the wetland on the western side)
  - b. Lot 4 – 90’ variance for the building envelope setback to the wetland (the building envelope is proposed to be 10’ from the wetland on the northwestern side)
8. The variance requests are submitted for §III(V) of the Underhill Zoning Regulations: “No structure for human habitation... will be permitted within 100 feet of the streambank or any watercourse.”
9. The variance requests were reviewed at the preliminary hearing under 24 V.S.A. §4469:
- a. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.
  - b. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
  - c. Unnecessary hardship has not been created by the appellant.
  - d. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.
  - e. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

### **III. DECISION AND CONDITIONS**

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Based upon the findings above, and subject to any of the conditions set forth below, the Development Review Board grants final approval for the subdivision as presented at the hearing.

**Application Submission Requirements, "Final Plat for Subdivisions"**

- a. The Board finds that the application satisfies the requirement as the 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 professional engineer; the boundaries of the subdivision; scale; date; true north point; and legend are on the plans.
- b. The Board finds that the application satisfies the requirement as the road name has been discussed, and road lines and easements contained on the plans. The name Black Dog Lane shall appear on the final Mylars. There are no areas dedicated for public use.
- c. The Board finds that the application satisfies the requirement as the all lines are contained on the plans, and the site visit conducted October 24, 2009 confirmed the locations of such features.
- d. The Board finds that the application satisfies the requirement as the road and driveway details and radii appear on the plans. The Vermont Agency of Transportation has required a change in the curb cut, which is shown on the final plans. Additionally, the Army Corps of Engineers has required compliance with their General Permit under Category 2 for the installation of the culvert to access Lot 2.
- e. The Board finds that this requirement is not applicable as there are no areas dedicated for public open space.
- f. The Board finds that the application satisfies the requirement as the parcel codes are contained on the plans in the correct format.
- g. The Board finds that the application satisfies the requirement as the utility poles, proposed utility lines, sewage disposal systems, and grading details appear on the plans. A Construction General Permit was issued for the project on December 9, 2009.
- h. The Board finds that the application satisfies the requirement as the percolation test results and the locations of all septic systems appear on the plans. An application for a Wastewater Disposal and Potable Water Supply Permit has been submitted to the Vermont Wastewater Management Division.
- i. The Board finds that the application satisfies the requirement as the existing and proposed well sites are contained on the plans, and an application for a Wastewater Disposal and Potable Water Supply Permit has been submitted to the Vermont Wastewater Management Division.
- j. The Board finds that the application satisfies the requirement as the survey contains monument details and locations.
- k. The Board finds that the application satisfies the requirement as a waiver request has been submitted for the bonding requirement, and the Selectboard will review the request with the road and driveway details at their next meeting. Letters from the

Underhill-Jericho Fire Department and Chittenden East Supervisory District have been received and both indicate their abilities to provide services to the subdivision. The road plans shall conform to the agreement made between the Underhill-Jericho Fire Department, the Applicant, the consultant, and the DRB at the final hearing including, but not limited to the following: the proposed road will have intermediate widenings along Black Dog Lane of sufficient size for emergency vehicle passing zones. The existing driveway will serve as a turnaround for emergency vehicles.

#### **Planning Standards, "Evaluation Criteria" – Final Findings**

- a. A portion of the property is in Zone A on the effective FEMA Flood Insurance Rate Map. As part of the requirements under the National Flood Insurance Program Regulations, Base Flood Elevations (BFEs) were determined at the site using HEC RAS (an HY-8 Culvert Analysis Report was also provided). All development will be above the calculated BFE, as verified by Vermont Floodplain Manager Rob Evans. The land is suitable for development as evidenced by the submitted plans prepared by McCain Consulting, Inc. The areas to be developed do not contain steep slopes, rock formations, adverse earth formations, or other features that will impair the health, safety, and general welfare of present or future inhabitants of the subdivision or its surrounding areas. The Vermont Agency of Transportation has required the removal of a ledge outcropping along VT Route 15.
- b. Buffers are shown along the stream and wetlands on the site. Variances are being requested for the development proposed within the buffers. There are no mapped deer wintering areas or other critical wildlife habitats in the vicinity of the proposed development.
- c. The undeveloped portions of the lots will provide sufficient open space for recreational use by the lot owners.
- d. The total new disturbed area for the project will be approximately 1.8 acres. Coverage under the Construction General Permit is required and has been received.
- e. Where the project does not conform to the Underhill Zoning Regulations, variance requests have been submitted.
- f. A portion of the property is in Zone A on the effective FEMA Flood Insurance Rate Map. As part of the requirements under the National Flood Insurance Program Regulations, Base Flood Elevations (BFEs) were determined at the site using HEC RAS (an HY-8 Culvert Analysis Report was also provided). All development will be above the calculated BFE (716.72'), as verified by Vermont Floodplain Manager Rob Evans.
- g. The neighboring properties along VT Route 15 contain existing residences. The proposed subdivision is in keeping with the pattern of development that has taken place in this area.
- h. The plans which have been submitted with the subdivision application demonstrate that the site is suitable for the proposed density.

- i. VT Route 15 is sufficiently wide enough to accommodate vehicular traffic, and the proposed private drives will be wide enough for pedestrian traffic. No sidewalks exist along VT Route 15, and the proposed private road will not connect to other town roads.
- j. Since the proposed development is within an existing developed portion of the town, governmental services including fire protection, police services, and school bus service do not have to be extended to serve the project. Chittenden East Supervisory Union #12 has indicated that it can accommodate the additional capacity from the proposed subdivision. A letter from the Underhill-Jericho Fire Department confirming their ability to serve the proposed development has been received. Per the agreement made at the final hearing, the proposed road will have intermediate widenings along Black Dog Lane of sufficient size for emergency vehicle passing zones. The existing driveway will serve as a turnaround for emergency vehicles.
- k. 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 a survey of drilled well yields.
- l. Each new residence is expected to generate 10 vehicle trip ends per day. Site distances at the existing driveway intersection with VT Route 15 are sufficient in both directions. VT Route 15 is a major State highway. Per the Vermont Agency of Transportation, a ledge outcrop will be removed and the existing curb cut will be relocated to improve site distances.
- m. The proposed residences will be substantially screened from travelers on VT Route 15. Air pollution, including dust from drives and exhaust from heating sources, will not exceed levels generated by typical single-family residences. Similarly, the noise generated by the proposed development will not exceed noise levels generated by single-family residences. Water pollution concerns are addressed by erosion control and wastewater disposal plans.

#### **Variance Requests – Final Findings**

Lot 3 – 85' variance (15' to the wetland) for the proposed building envelope

- a. The Board finds that there are unique physical circumstances or conditions, including the presence of wetland areas, ledge outcroppings, and a steep bank at the rear of the proposed lot, which are peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.
- b. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- c. Unnecessary hardship has not been created by the appellant as the wetlands, ledge, and steep bank are existing natural features.
- d. The variance will not alter the essential character of the neighborhood or district in which the property is located because the proposed variance request is for a residential

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building envelope in a residential area, the proposed building envelope is sufficiently removed from adjoining properties, the reduction in the setback to the wetland will not impair any lot's ability to obtain renewable energy sources, nor will the variance be detrimental to the public welfare as it affects a private residential lot.

- e. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

Lot 4 – 90' variance (10' to the wetland) for the proposed building envelope

- a. The Board finds that there are unique physical circumstances or conditions, including the presence of wetland areas, ledge outcroppings, and a steep bank at the rear of the proposed lot, which are peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.
- b. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- c. Unnecessary hardship has not been created by the appellant as the wetlands, ledge, and steep bank are existing natural features.
- d. The variance will not alter the essential character of the neighborhood or district in which the property is located because the proposed variance request is for a residential building envelope in a residential area, the proposed building envelope is sufficiently removed from adjoining properties, the reduction in the setback to the wetland will not impair any lot's ability to obtain renewable energy sources, nor will the variance be detrimental to the public welfare as it affects a private residential lot.
- e. The Board recognizes that a variance of this size is atypical in the Town, and that the shared lot line with Lot 3 or the building envelope could be altered to reduce the variance required. A variance of 50 feet will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

The Development Review Board approves the final 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 decision in the Town of Underhill Land Records.
2. An 85-foot variance of the wetland setback to the western portion of the building envelope (near flag A4 on the plans) is approved for Lot 3.
3. A 50-foot variance of the wetland setback to the northwestern portion of the building envelope (near flag A12 on the plans) is approved for Lot 4.

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4. All State permits shall be recorded in the Land Records.
5. The proposed road shall conform to the agreement with the Underhill-Jericho Fire Department regarding the width and widenings made at the final hearing [see Sections III Application Submission Requirements, "Final Plat for Subdivisions (k) and III Planning Standards, "Evaluation Criteria" – Final Findings (j)].
6. 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;
  - b. that the approved curb cut has been installed per the plan; and
  - c. that the driveway 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 approved plans.

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.

7. The road maintenance agreement shall be recorded in the Land Records. A reference to this agreement shall appear in any deed in this subdivision.
8. 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.
9. 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.
10. Prior to recording the final Mylars, the applicant shall submit a copy of the final plats and site plan Sheet S-1 in digital format to the Zoning Administrator.
11. All lots shall have their 911 codes posted prior to issuance of any building permit (Lot 1: BD005, Lot 2: BD007, Lot 3: BD011, Lot 4: BD012).
12. All subdivision fees shall be paid in full to the Zoning Administrator prior to filing the final plat with the Town Clerk.
13. Applicant shall obtain approval of the curb cut, driveways, and waiver request from the Selectboard prior to filing the final plat.

Dated at Underhill, Vermont this 14<sup>th</sup> day of May, 2010.

  
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 Chuck Brooks, Acting Chair, Development Review Board