TOWN OF UNDERHILL
APPLICATION OF CHRISTOPHER AND BETH NETELKOS
FOR A 2-LOT SUBDIVISION
FINAL FINDINGS AND DECISION

In re: Christopher and Beth Netelkos
295 Poker Hill Rd.
Underhill, VT 05489

Docket No. DRB-09-11: Netelkos

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Christopher and Beth Netelkos' final hearing application for a 2-lot subdivision of property located at 295 Poker Hill Rd. in Underhill, VT.

1. On October 25, 2010, Gunner McCain of McCain Consulting filed an application for subdivision on behalf of Christopher and Beth Netelkos for the project. A copy of the application and additional information are available at the Underhill Town Hall.

2. By November 12, 2010, notice of the public site visit and preliminary hearing on the proposed Shapiro subdivision was posted at the following places:

    a. The property to be developed, PH295;
    b. The Underhill Town Clerk's office;
    c. The Underhill Country Store;
    d. Wells Corner Market;
    e. The Underhill Flats Post Office;
    f. Jacobs IGA;
    g. The Deborah Rawson Memorial Library;
    h. The Town of Underhill website.

3. On November 12, 2010, a copy of the notice of a public site visit was mailed to the applicants, Christopher and Beth Netelkos, 295 Poker Hill Rd., Underhill, VT 05489 and via Certified Mail to the following owners of properties adjoining the property subject to the application:

    a. Michael and Marty Baslow, Remaindermen, 13 Baslow Ln., Underhill, VT 05489
    b. Coia, P.O. Box 212, Underhill, VT 05489
    c. Tall, 7 Metcalf View, Underhill, VT 05489
    d. Hall/Reed, 253 Poker Hill Rd., Underhill, VT 05489
    e. Gingras, 291 Poker Hill Rd., Underhill, VT 05489
    f. Power, TTEE, 294 Poker Hill Rd., Underhill, VT 05489
    g. Pilo, 298 Poker Hill Rd., Underhill, VT 05489
    h. Francis, 305 Poker Hill Rd., Underhill, VT 05489
    i. Cumming/Petit, 311 Poker Hill Rd., Underhill, VT 05489

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

4. On November 18, 2010, notice of a public site visit and preliminary hearing was published in the *Mountain Gazette*.

5. The final hearing was held on December 6, 2010 at 6:30 PM.

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

   - Chuck Brooks (recused)
   - Matt Chapek
   - Penny Miller
   - Will Towle
   - Charles Van Winkle, Vice Chair
   - Peter Seybolt

   Kari Papelbon, Zoning Administrator; Peter Lazorchak, Consultant; Georgia Cumming, neighbor; Gary and Elizabeth Francis, neighbors; and 4 other parties 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." Those who spoke at the hearing were:

   - Christopher Netelkos, 295 Poker Hill Rd., Underhill, VT 05489
   - Georgia Cumming, 311 Poker Hill Rd., Underhill, VT 05489
   - Gary and Elizabeth Francis, 305 Poker Hill Rd., Underhill, VT 05489

   Consultant who spoke on behalf of the applicants:

   - Peter Lazorchak, McCain Consulting, 93 South Main Street, Ste. 1, Waterbury, VT 05676

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, Christopher and Beth Netelkos, and Peter Lazorchak of McCain Consulting;
   b. Christopher and Beth Netelkos' Application for Subdivision: Final (dated 9-12-10);
   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 Christopher and Beth Netelkos (Sheets 1-2 revised 10-5-10);
   e. A copy of the preliminary survey prepared by Keith Van Iderstine of McCain Consulting, Inc. for Christopher Netelkos and Beth Ann Boquel (dated 10-7-10);
   f. A copy of the letter from Harry Schoppmann of the Underhill-Jericho Fire Department (dated 5-7-10);

g. A copy of the Wastewater System and Potable Water Supply Permit #WW-4-3482 (dated 5-24-10);
h. Copies of the draft warranty deeds (2) for the lots;
i. A copy of the Proposed Findings of Fact (dated 10-22-10);
j. A copy of the preliminary decision (dated 5-28-10);
k. A copy of the minutes from the 5-17-10 preliminary hearing (approved 5-28-10);
l. A copy of the tax map for PH295;
m. A copy of the hearing notice published in the *Mountain Gazette* (11-18-10).

These exhibits are available in the Netelkos, PH295, subdivision file at the Underhill Zoning Office.

II. FINDINGS

Factual 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 ±30.78-acre parcel located at 295 Poker Hill Road in Underhill, VT (PH295).

2. The property is located in the Rural Residential and Soil & Water Conservation zoning districts as defined in §§VI and IX 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"

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 - 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. The DRB acknowledges that this has not been received. See Section IV, Decision for conditions.

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.

5. 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.

6. Ms. Cumming, adjoining neighbor, provided testimony that the survey shows an area of boundary dispute along her shared lot line with Netelkos.

7. Mr. and Mrs. Francis, adjoining neighbors, provided testimony that the boundary dispute affects their property line, acreage, and right-of-way. They also stated concerns for the location of the proposed well, the location of the proposed septic system, the proposed ditching on the driveway, and stated that they do not believe a splash pad will alleviate perceived future runoff issues.

8. Based on the testimony at the hearing, the Board finds there is a boundary dispute as to the northern boundary of the applicants lot (hereafter the "Francis/Cumming Line"). As outlined below, a determination of which boundary line is the correct boundary is unnecessary to the Board's decision as the applicant Netelkos consented at the hearing to comply with setbacks from both the disputed line and the Netelkos line sufficient to meet the regulations. As such, the Board makes no finding about which is the correct boundary line.

III. CONCLUSIONS

Applicable Regulation Standards

Application Submission Requirements, "Final Plat for Subdivisions"

a. The Board finds that the final application satisfies the requirement as the title, parcel codes, Town name, name and address of the owner, the name and license number of the engineer and surveyor, the boundaries of the subdivision, scale, date, north arrow, and legend are identified on the plans and survey.

b. The Board finds that the final application satisfies the requirement as the road name and lines, lots, and easements are shown on the plans and survey.

c. The Board finds that the final application satisfies the requirement as the bearings and distances of the lot lines are depicted on the survey.

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

e. The Board finds that this requirement is not applicable as there are no proposed open spaces to be dedicated for public use.

f. The Board finds that the final application satisfies the requirement as the utilities, septic systems, drainage, and erosion control details are contained in the plans.

g. The Board finds that the final application satisfies the requirement as the percolation test results and locations of septic systems are contained in the plans. A Wastewater System and Potable Water Supply Permit has been issued by the State.

h. The Board finds that the final application satisfies the requirement as the wells are depicted on the plans. A Wastewater System and Potable Water Supply Permit has been issued by the State.

i. The Board finds that the final application satisfies the requirement as monumentation locations and notes are contained on the survey. The Board recognizes that the requirement for concrete monuments is obsolete and accepts the proposal for iron rebar.

j. 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 and indicate their ability to provide services to the subdivision. The Selectboard will review the plans and waiver request for the bonding requirement. The Board recognizes that the State no longer requires subdivision permits for the creation of lots less than 10 acres in size.

Planning Standards, "Evaluation Considerations" – Final Findings

a. The land is suitable for development as evidenced by the submitted plans, Sheets 1 and 2 of 2, prepared by McCain Consulting, Inc. The area to be developed does 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.

b. Town (100') and State (50') buffers are shown along the wetland on the site. 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 0.94 acres. Coverage under the Construction General Permit is not required. Erosion controls for the Lot 2 house site are depicted on Sheet 1 of the plans.

e. As evidenced by the plans submitted, the project conforms to the Zoning Regulations, which indicates compliance with the Town Plan as well.

f. As shown on the previously provided Flood Insurance Rate Map (FIRM), Panel 5000420010B, the project parcel does not lie in a floodplain.

g. The neighboring properties along Poker Hill Road 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. Poker Hill Road is sufficiently wide enough to accommodate diverse forms or transportation including automobile, pedestrian, and bicycle traffic.

j. Since the proposed development is within an existing developed portion of the town, governmental services including fire protection and police services do not have to be extended to serve the project. Similarly, school bus service is available without the need to modify or extend bus routes.

k. The new lot will be served by an individual, on-site drilled well. Drilled wells in the area have proven sufficient to serve single-family homes. Please refer to the previously provided GIS map depicting nearby drilled wells and their yields.

l. The new residence is expected to generate 10 vehicle trip ends per day. Site distances at the existing driveway intersection with Poker Hill Road are sufficient in both directions and unsafe conditions do not exist.

m. The proposed residence will be substantially screened from travelers on Poker Hill Road. 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.

IV. DECISION

Based upon the findings above, the Development Review Board approves the final application and plat as presented at the hearing subject to the following conditions:

1. The Development Review Board does not reach a decision as to the boundary line in dispute; however, the subdivision shall conform to local regulations. The building envelope for Lot 2 shall be located no closer than 50 feet from both the "Netelkos Line" and the "Francis/Cummings Line." The driveway for Lot 2 shall be located no closer to both the "Netelkos Line" and the "Francis/Cummings Line" than 20 feet. All setbacks or similar relevant to this permit shall comply with both the "Netelkos Line" and the "Francis/Cummings Line."

2. 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.

3. The survey plat shall be revised to reflect the correct landowner last name of Pilo for parcel PH298.

4. The shared driveway maintenance agreement shall be recorded in the Land Records. The agreement, or a reference to the agreement, shall appear in the deeds to Lots 1 and 2.

5. The deeds to Lots 1 and 2 shall include reference to the septic easement on Lot 2 for the Lot 1 replacement leachfield.

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 Lot 2 has been installed per the approved plans shall be filed with the Zoning Administrator.

9. In lieu of a performance bond, prior to issuance of a building permit to Lot 2, an engineer shall provide a letter to the Zoning Administrator certifying that the driveway has been "roughed in" per the approved plan. "Rough-in" means that the driveway area is cleared and stumped, the driveway is shaped to subgrade with required ditches and culverts (as applicable), and the subbase is in place.
   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 driveway has been constructed as designed.

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

11. Lot 2 shall have its 911 code (PH297) posted prior to issuance of any building permit.

12. Applicant shall obtain approval of the driveway design and culvert size, underground utilities, and waiver request for the bonding requirement from the Selectboard prior to filing the final plat. (See January 6, 2011 Selectboard minutes).

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

Dated at Underhill, Vermont this 17 day of January, 2011.

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 proceeding 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. Appeal period ends 2-16-11.