TOWN OF UNDERHILL
APPLICATION OF BRENT GOPLEN
FOR A 5-LOT PLANNED RESIDENTIAL DEVELOPMENT
PRELIMINARY FINDINGS AND DECISION

In re: Brent Goplen
20 Lower English Settlement Rd.
Underhill, VT 05489

Docket No. DRB-10-10: Goplen

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Brent Goplen's preliminary hearing application for a 5-lot planned residential development of property located at 20 Lower English Settlement Rd. in Underhill, VT.

A. On November 22, 2010, McCain Consulting filed an application for subdivision on behalf of Brent Goplen for the project. A copy of the application and additional information are available at the Underhill Town Hall. A sketch plan review of the project was held on July 19, 2010 and continued to August 30, 2010 at 6:30 PM. The sketch plan was accepted on August 30, 2010.

B. On December 17, 2010, a copy of the notice of a public site visit and preliminary hearing was mailed to the applicant, Brent Goplen, 20 Lower English Settlment Rd., Underhill, VT 05489, and to the following owners of properties adjoining the property subject to the application:

1. Aldrich, 26 Lower English Settlement Rd., Underhill, VT 05489
2. Shattuck, P.O. Box 31, Underhill Center, VT 05490
3. Phillips, 211 River Road, Underhill, VT 05489
4. Barickman, 2 Lower English Settlement Rd., Underhill, VT 05489
5. Robie, 11 Lower English Settlement Rd., Underhill, VT 05489
6. Jobin-Picard, 13 Lower English Settlement Rd., Underhill, VT 05489
7. Warren, 11 Romar Dr., Underhill, VT 05489
8. Plouffe, 7 Romar Dr., Underhill, VT 05489
9. Wells, 11 Romar Dr., Underhill, VT 05489

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

C. On December 17, 2010, notice of the public site visit and preliminary hearing on the proposed Shapiro subdivision was posted at the following places:

1. The property to be developed, LE020 (December 30, 2010);
2. The Underhill Town Clerk's office;
3. The Underhill Country Store;
4. Wells Corner Market;
5. The Underhill Center Post Office;

6. The Underhill Flats Post Office;
7. Jacobs IGA;
8. The Deborah Rawson Memorial Library;
9. The Town of Underhill website.

D. On December 22, 2010, notice of a public site visit and preliminary hearing was published in *Seven Days*.

E. A site visit was held at the property on January 15, 2011 at 9:00 AM. Present the site visit were:

- Will Towle
- Charles Van Winkle, Acting Chairperson
- Penny Miller
- Matt Chapek

Zoning Administrator Kari Papelbon, Gunner McCain (consultant for Brent Goplen), Brent Goplen, and two neighbors also attended the site visit. Board Member Chuck Brooks conducted a site visit at a later date. Board Member Peter Seybolt was personally familiar with the property.

F. The preliminary hearing began immediately following the preceding hearing scheduled for 6:30 PM on January 17, 2011.

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

- Chuck Brooks
- Matt Chapek
- Penny Miller
- Will Towle
- Peter Seybolt
- Charles Van Winkle, Acting Chairperson

Kari Papelbon, Zoning Administrator; Gunner McCain, Consultant; Brent Goplen, Applicant; Gary and Carol Warren, neighbors; and Kathryn Barickman, neighbor also attended the hearing.

H. At the outset of the hearing, Acting 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:

- Brent Goplen, 20 Lower English Settlement Rd., Underhill, VT 05489
- Gary Warren, 1 Romar Dr., Underhill, VT 05489
- Kathryn Barickman, 2 Lower English Settlement Rd., Underhill, VT 05489

Consultant(s) who spoke on behalf of the Applicant(s):

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

I. During the course of the hearing the following exhibits were submitted to the Development Review Board:

1. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board, Brent Goplen, and Gunner McCain of McCain Consulting;
2. Brent Goplen's Application for Subdivision: Preliminary (dated 11-11-10);
3. A copy of the completed Subdivision Checklist: Preliminary Hearing;
4. A copy of the plans prepared by Gunner McCain of McCain Consulting, Inc. for Brent Goplen (Sheets S-1 – S-5 dated 11-2-10);
5. A copy of the preliminary survey prepared by Keith Van Iderstine of McCain Consulting, Inc. for Brent Goplen (dated 11-10-10);
6. A copy of the letter from Nicole MacHarg of McCain Consulting, Inc. (dated 11-19-10);
7. A copy of the School Impact Questionnaire from Superintendent of Schools John Alberghini (dated 11-29-10);
8. A copy of the List of Waivers (dated 11-10-10);
9. A copy of area mapped Class II wetlands and mapped deer wintering areas;
10. A copy of the ANR Well Locator map and list of nearby drilled wells;
11. A copy of the Flood Insurance Rate Map;
12. A copy of the draft Findings of Fact (dated 11-19-10);
13. A copy of the tax map for LE020;
14. A copy of the minutes from the 7-19-10 Sketch Plan Meeting;
15. A copy of the hearing notice to published in *Seven Days* (12-22-10);
16. A copy of the email to ZA Papelbon from neighbor Doug Robie (dated 1-17-11).

J. The hearing was continued to February 21, 2011 at 6:30 PM.

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

- Matt Chapek
- Chuck Brooks
- Will Towle
- Penny Miller
- Peter Seybolt
- Charles Van Winkle, Acting Chairperson

Kari Papelbon, Zoning Administrator; Gunner McCain, Consultant; Scott Tobin, neighbor; Kathryn Barickman, neighbor; and Andrea Phillips, neighbor also attended the hearing.

L. At the outset of the hearing, Acting 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:

- Scott Tobin, 6 Orchard Rd., Underhill, VT 05489

Consultant(s) who spoke on behalf of the Applicant(s):

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

M. During the course of the hearing the following exhibits were submitted to the Development Review Board:

1. A copy of the revised plans prepared by Gunner McCain of McCain Consulting, Inc. for Brent Goplen (Sheets S-1 – S-2 and S-4 – S-5 revised 2-3-11, Sheet S-3 dated 11-2-10, and Sheets S-6, SW-1, and SW-2 dated 2-3-11);
2. A copy of the preliminary survey prepared by Keith Van Iderstine of McCain Consulting, Inc. for Brent Goplen (dated 2-7-11);
3. A copy of the letter from Harry Schoppmann of the Underhill-Jericho Fire Department (dated 2-7-11);
4. A copy of the Stormwater Treatment and Discharge application materials;
5. A copy of the Waiver Request letter (dated 2-16-11);
6. Drafts of the Subdivision Deeds and Homeowners Association documents;
7. A copy of the letter from Mitchel Cypes of Llewellyn-Howley Consulting engineers (Consultant hired by the town, dated 2-17-11).

These exhibits are available in the Goplen, LE020, 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

A. The applicant seeks a permit to subdivide land. The subject property is a ±27.9-acre parcel located at 20 Lower English Settlement Road in Underhill, VT (LE020).

B. The property is located in the Water Conservation zoning district as defined in §VII of the 2003 Underhill Zoning Regulations.

C. Subdivision approval is requested for the project pursuant to review under the following sections of the 2002 Town of Underhill Subdivision Regulations:

- Preliminary Plat Submission Requirements, pages 7-9, "Preliminary Plat for Subdivisions"
- Planning Standards, pages 11-12, "Evaluation Considerations"

D. Planned Residential Development approval is requested for the project pursuant to review under the following section of the 2003 Town of Underhill Zoning Regulations:

- §III(R), "Planned Residential Development"

E. Road and driveway approvals are requested for the project pursuant to review under the 2002 Underhill Road Policy. The Board recognizes that final approval of the road and any

waivers of the Road Policy will be made by the Selectboard, and that DRB recommendations will be submitted for consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. Planning Standards, "Evaluation Considerations"

1. 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.

2. 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.

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

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

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

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

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

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

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

10. 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.

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

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

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

H. Section III (R) of the 2003 Underhill Zoning Regulations applies to this application. This section states: 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. Undeveloped 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. The proposed Residential Development will provide for safe and efficient pedestrian and vehicular circulation, parking and service areas.

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

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

j. 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.

k. 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.

I. The Upgrade of Driveway or Road section of the 2002 Underhill Road Policy applies to this application. The relevant portion states: "When a driveway or existing road is extended to accommodate a second or third dwelling on a lot formed after 2002, the shared traveled way must be constructed or upgraded to the standards of this Road policy."

J. The Curvature section of the 2002 Underhill Road Policy applies to this application. The relevant portion states: "The radii of curvature of all roads shall be a minimum of one hundred (100) feet."

K. The Grades section of the 2002 Underhill Road Policy applies to this application. The relevant portion states: "The maximum grade on any driveway or road constructed in the Town of Underhill shall not exceed 10%. A 10% grade shall not extend over a distance greater than five hundred (500) feet. Exceptions to this policy will be reviewed by the Selectboard."

L. The Width section of the 2002 Underhill Road Policy applies to this application. The relevant portion states: "All roads will be constructed in accordance with the standard typical section drawings for town highways [Vermont Agency of Transportation Standards…(as amended) for Class III gravel roads...].

M. The following waivers have been requested:

1. Lot 1

   a. Minimum lot size – 4.9 acres proposed
   b. Front setback – 40 feet from building envelope to proposed road
   c. Side setback – 20 feet from building envelope to side lot line

2. Lot 2

   a. Minimum lot size – 3.4 acres proposed
   b. Front setback – 50 feet from building envelope to front lot line
   c. Side setback – 20 feet from building envelope to side lot line

3. Lot 3

   a. Minimum lot size – 4.9 acres proposed
   b. Front setback – 50 feet from building envelope to front lot line

4. Lot 4

   a. Road frontage – served by driveway off terminus of proposed road
   b. Front setback – 50 feet from building envelope to front lot line

5. Lot 5

   a. Road frontage – served by driveway off terminus of proposed road
   b. Rear setback – testimony provided at the hearing indicates that this setback will be met and a waiver is no longer required.

6. Grade – portions of proposed road and driveways serving Lots 3-5 will exceed 10%.

7. Curve radii – one curve radius for the proposed road is 80 feet.

8. Bonding requirement – The Board recognizes that this is a final application submission requirement under the 2002 Underhill Subdivision Regulations and is under the jurisdiction of the Selectboard. Recommendations by the DRB will be provided for Selectboard consideration.

N. Mr. Warren, neighbor, provided testimony that he was concerned for increased water runoff to Romar Drive.

O. Mrs. Barickman, neighbor, provided testimony that most of her concerns had been addressed; however, she stated that she preferred the proposed house on Lot 1 to be sited away from the road, and she had concerns for an increase in traffic on Lower English Settlement Road due to its existing current condition.

P. Mr. Tobin, neighbor, provided testimony that he was concerned for the trees susceptible to wind and blow-downs in the proposed building envelopes.

Q. Pursuant to Section X of the 2003 Underhill Zoning Regulations, the DRB requested and received an independent engineer review of the proposed plans by Mitchel Cypes of Llewellyn-Howley, Inc. This letter is adopted by reference. Mr. McCain, consultant, provided testimony in disagreement with the Cypes letter.

III. CONCLUSIONS

Applicable Regulation Standards

Application Submission Requirements, "Preliminary Plat for Subdivisions" [as noted above in Section II (F)] – The Board finds that the application fulfills requirements (1) through (18) and (24), and that requirements (19) and (21) are not applicable to the proposed plan.

A. Requirement #20 - The Board finds that the application includes details for the proposed road, there are no public spaces or lands dedicated to the Town proposed, and Findings of Fact have been submitted to address compliance with the Town Plan. The Board finds that the proposed road and driveways do not meet all of the specifications in the Road Policy and that several waivers have been requested.

B. Requirement #22 - The Board finds that no proposed underground utilities are specified in the plans.

C. Requirement #23 - The Board finds that a list of waivers has been submitted. See Section II (M).

Planning Standards, "Evaluation Considerations"

A. The Board finds that the land is suitable for subdivision as there are no identified Special Flood Hazard Areas, rock formations, adverse earth formations or topography, utility easements or other features which would 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. The Board finds that the proposal as presented does not adequately preserve and protect the existing trees on the property. While limited cut zones have been proposed, the Board is not convinced by consultant testimony that the amount of allowable cutting will not result in undermined tree root systems and potential damaging tree blow-downs due to wind.

C. The Board finds that the proposal includes sufficient open space for active and passive recreation on the individual lots.

D. The Board finds that the proposal includes adequate provision for the control of runoff and erosion during and after construction.

E. The Board finds that the proposed development does not meet the standards for Planned Residential Developments as described in Section III (R) of the Underhill Zoning Regulations. See the *Section III (R), "Planned Residential Development"* conclusion section below.

F. The Board finds that no Special Flood Hazard Areas have been identified on the land to be developed.

G. The Board finds that the proposed development is compatible with the residential nature of surrounding properties.

H. The Board finds that the site is suitable for the proposed density.

I. The Board finds that the proposal contains adequate provision for pedestrian traffic in terms of convenience, access to points of destination and attractiveness. Safety considerations are addressed in (l) below.

J. The Board finds that a letter from the Underhill-Jericho Fire Department (UJFD) regarding their abilities to serve the proposed development has been submitted; however, the letter states that the UJFD could adequately serve the project provided the proposed road is widened to 24 feet and the grade is reduced to 10% or less. The Boards find that the current proposal does not meet the UJFD's request with regard to roadway width and grade.

Additionally, the letter from the Chittenden East Supervisory Union indicates their ability to provide educational services to the proposed development. As the proposed road is a private road, no Town Highway Department resources will be required to serve the facility.

K. The Board finds that the well yield logs and test pit results indicated that there is sufficient water available for the reasonably foreseeable needs of the proposed development. The Board recognizes that the permitting of wells is the jurisdiction of the Vermont Department of Environmental Conservation.

L. The Board finds that the proposed road, as designed, creates unsafe conditions with regard to curve radii, the number of curves, the proposed grade, the proposed width, and the proposed length. While the Board recognizes that several waivers of the Road Policy have been submitted in accordance with local requirements, the Board finds that approval of such waivers will result in a proposed road that is too difficult and dangerous for vehicles and pedestrians to safely traverse, particularly during winter conditions.

M. The Board finds that the proposed development will not cause a significant increase in visual, air, noise or water pollution as the proposal is for the addition of 4 single-family residential homes.

Section III (R), "Planned Residential Development"

A. Application requirements – The Board finds that the application includes a site plan showing the location, spacing of buildings, open spaces and their limited tree-cutting zones, the proposed private road, driveways, and all other physical features of the proposed design. The Board finds that a comprehensive list of waiver requests has also been submitted.

B. Design standards – The Board makes the following findings:

1. The permitted number of dwellings does not exceed the number which would be permitted, in the Board's judgment, if the land were subdivided into lots in conformance with the zoning regulations applicable to the Water Conservation zoning district.

2. The proposed Planned Residential Development, as designed, is not an effective and unified treatment of the development possibilities on the project site. With the exception of Lot 1, all lots nearly meet or exceed the district minimum acreage requirements. The proposed open space and related limited cut zones do not appear to be a unified preservation for the existing trees beyond prohibition of building. Additionally, the proposed development plan includes the development of fairly steep slopes and currently forested areas, rather than their preservation or protection.

3. The Board finds that the proposed Planned Residential Development is not consistent with the goals of the 2010 Town Plan (clustered development) and that waiver requests of several sections of the Underhill Zoning Regulations and the Underhill Road Policy have been submitted.

4. The Board finds that the proposed Planned Residential Development is not consistent with all of the evaluation standards set forth in the Town's Subdivision Regulations as stated in the *Application Submission Requirements, "Preliminary Plat for Subdivisions"* Conclusions section above.

5. The Board finds that the proposed Planned Residential Development provides for the preservation of open space.

6. The Board finds that the proposed shape and proposed limited tree-cutting zones of the open space are not a sensible treatment of the land.

7. The Board finds that the proposed Residential Development does not provide for safe and efficient pedestrian and vehicular circulation as noted in the *Planning Standards, "Evaluation Considerations" conclusions section* above.

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

9. The Board finds that the proposed Planned Residential Development includes access from Lower English Settlement Road and will not cause undue congestion or interference with normal traffic flow as 4 additional single-family house sites are proposed.

10. The Board finds waiver requests have been submitted. See Section II (M).

11. The Board finds that this requirement would be a condition of approval for the development.

Underhill Road Policy, "Upgrade of Driveway or Road"

A. The Board finds that the proposed private road does not conform to the construction and upgrade standards of the Underhill Road Policy. While the Board recognizes that waiver requests may be submitted for the standards of the Road Policy and that approval of such waivers, roads, and driveways are the jurisdiction of the Selectboard, the Board finds that recommendations for waivers of the proposed road are not in the best interests of the Town, current neighborhood residents, or future residents of the development.

Underhill Road Policy, "Curvature"

A. The Board finds that the proposed road does not meet the minimum curvature requirement. See section II (M) for a list of waiver requests.

Underhill Road Policy, "Grades"

A. The Board finds that the proposed private road and sections of the proposed driveways do not meet the maximum grade requirement. See section II (M) for a list of waiver requests.

Underhill Road Policy, "Width"

A. The Board finds that the proposed road does not meet the minimum width as required by the Road Policy or Vermont Agency of Transportation Standards for Class III gravel roads.

The Board also recognizes that the Road Foreman has expressed a desire for a road that is 18 feet wide with 1-foot shoulders, which does not meet the minimum requirements of the State Standards. See section II (M) for a list of waiver requests.

IV. DECISION

Based upon the findings above, the Development Review Board does not grant preliminary approval for the subdivision as presented at the preliminary hearing.

Dated at Underhill, Vermont this 4 day of April, 2011.

Charles Van Winkle

Charles Van Winkle, 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.