TOWN OF UNDERHILL
APPLICATION OF DUNCAN MCLANE,
TRUSTEE OF THE DEANE SQUABETTY TRUST,
FOR CONDITIONAL USE/SITE PLAN APPROVAL
FOR A STREAM STABILIZATION PROJECT
FINDINGS AND DECISION

In re: Duncan McLane, TTEE
Deane Squabetty Trust
2117 Granger Way
Lummi Island, WA 98262

Docket No. DRB-12-01: Deane Squabetty Trust

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding involves review of Duncan McLane's (Trustee for the Deane Squabetty Trust) application for a conditional use/site plan review approval for a stream stabilization project on property owned by the Trust at 165 Deane Rd. in Underhill, VT.

A. On December 5, 2011, Duncan McLane, Trustee, filed a conditional use and site plan review application for a stream stabilization project on property owned by the Deane Squabetty Trust at 165 Deane Rd., Underhill, VT. Copies of the applications and materials are available at the Underhill Town Hall.

B. On January 3, 2012, copies of the notice of a public hearing were mailed via Certified Mail to the Applicant, Duncan McLane, Trustee, Deane Squabetty Trust, 2117 Granger Way, Lummi Island, WA 98262, and to the following abutting neighbors:

1. Sogle Property LLC, 675 Glenn Dr., Cambridge, VT 05444
2. Tisbert, 5901 Pleasant Valley Rd., Cambridge, VT 05444
3. Bogue Family Trust, c/o D. Bogue, 66 Buckingham Rd., Colchester, VT 05446
4. Town of Cambridge, P.O. Box 127, Jeffersonville, VT 05464
5. Templeton, 15 Lyman St., Laconia, NH 03246
6. Knapp, P.O. Box 11, Jericho, VT 05465
7. Gamarci, 33 Waughbrook, Underhill, VT 05489
8. Czaja, P.O. Box 18, Underhill Center, VT 05490
9. ANR, 103 S. Main St., Center Building, Waterbury, VT 05671-0301
10. Laura Glenn, 675 Glenn Dr., Cambridge, VT 05444
11. Davis, 15 Waughbrook, Underhill, VT 05489
12. Glenn, 770 Andrews Rd., Cambridge, VT 05444
13. Blumhagen, 651 26th St., Des Moines, IA 50312

C. On January 3 and 4, 2012 notice of the public hearing on the proposed McLane/Deane Squabetty conditional use/site plan review application were posted at the following places:

1. The property to be developed, 165 Deane Rd. (1/11/12);
2. The Underhill Town Clerk's office;
3. The Underhill Center Post Office;
4. The Underhill Flats Post Office;
5. Jacobs IGA;
6. The Underhill Country Store;
7. Wells Corner Market;
8. The Town of Underhill website.

D. On January 11, 2012, notice of a public hearing on the proposed conditional use/site plan review application was published in *Seven Days.*

E. The hearing began at 6:30 PM on February 6, 2012.

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

1. Penny Miller, Vice Chair
2. Matt Chapek
3. Chuck Brooks
4. Will Towle

Kari Papelbon, Zoning & Planning Administrator; Pete Czaja, neighbor; Gunner McCain, consultant for the next hearing; Dan Sweet, consultant for the next hearing; and Nancy Devoid and Larry Plouffe, neighbors for the next hearing, also attended the hearing.

G. At the outset of the hearing, Vice Chairperson and Acting Chair Penny Miller explained the criteria under 24 V.S.A. § 4465(b) for being considered an "interested party." Those who spoke at the hearing were:

1. Duncan McLane, Trustee, Deane Squabetty Trust, 2117 Granger Way, Lummi Island, WA 98262 (via telephone).

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

1. A staff report sent by Zoning and Planning Administrator Kari Papelbon to the Development Review Board, Duncan McLane, the Underhill Selectboard, the Underhill Conservation Commission Chair, and the Underhill-Jericho Fire Department;
2. Duncan McLane's Conditional Use Review Hearing Request (dated 11-30-11);

3. A copy of the Squabetty Trust Stream Stabilization Project plans prepared by Engineered Earth Systems (Sheets 1-15 dated 9-11-11);
4. A copy of the Conditional Use Review Standards Findings Checklist;
5. A copy of the Site Plan Review Standards Findings Checklist;
6. A copy of the letter from Army Corps of Engineers Chief Frank DelGiudice approving the project (dated 10-25-11);
7. A copy of the VT ANR Project Review Sheet (dated 11-9-11);
8. A copy of the email from VT ANR Stream Alteration Engineer Chris Brunelle approving the project (dated 11-10-11);
9. A copy of the waiver request letter (dated 11-16-11);
10. A copy of the letter to Mr. McLane from Engineered Earth Systems (dated 11-23-11);
11. A copy of the tax map for DE165;
12. A copy of the hearing notice published in *Seven Days* on 1-11-12;
13. The application binder submitted by Duncan McLane, Trustee of the Deane Squabetty Trust (various dates).

These exhibits are available in the Deane Squabetty Trust, DE165T, Conditional Use/Site Plan Review 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, Duncan McLane, Trustee, seeks conditional use and site plan review approval for a stream stabilization project on property owned by the Deane Squabetty Trust.

B. The subject property, 165 Deane Rd., Underhill, VT is located in the Soil and Water Conservation zoning district per Article II, Table 2.6 of the 2011 Unified Land Use and Development Regulations.

C. Approval is requested for the project pursuant to review under the following sections of the 2011 Unified Land Use and Development Regulations:

1. Article II, Table 2.6: Soil & Water Conservation District
2. §3.19: Surface Waters & Wetlands
3. §5.3: Site Plan Review
4. §5.4: Conditional Use Review
5. §5.5(A): Waivers and Variances

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Table 2.6

The Board finds that the proposed project will meet all requirements of the district with conditional use and site plan review approval.

§3.1: Surface Waters and Wetlands

The Board makes the following findings:

A. The Vermont Stream Alteration General Permit, Army Corps of Engineers coverage under the Vermont General Permit (Category 2), and a State Project Review Sheet have been submitted in fulfillment of the requirements of Section 3.19(C).
B. The stream restoration proposal requires Conditional Use approval per Section 3.19(E)(2)(g).
C. While a waiver request for the riparian buffer and setback encroachment has been submitted per Section 5.5(B), it is not required as the project is subject to Conditional Use Review [see (B) above].

§5.3: Site Plan Review

The Board makes the following findings:

A. The Applicant has submitted responses to the standards of this section.

B. The proposed plans will not have undue adverse impacts to significant natural, historic, and scenic resources as the project will restore rip-rap along the streambank, repair damaged bridge wing walls, and install mitigation measures to prevent future adverse impacts from stream channel instability; the parcel is not above 1500 feet in elevation; although the project requires encroachment into the riparian setback and buffer (see Section 3.19 *Findings* above), it is allowed as a Conditional Use; no Special Flood Hazard Areas exist on the property; no delineated source protection areas exist on the property; there are no mapped significant wildlife habitat areas or travel corridors on the property; and existing scenic resources will be unaffected [Section 5.3(B)(1)].

C. The proposal is compatible with the provisions of the Soil & Water Conservation zoning district with Conditional Use approval. Slope and stream stabilization measures proposed in the project will mitigate instability of the stream (direction, velocity, flow) and soil erosion [Section 5.3(B)(2)].

D. Section 5.3(B)(3),(4), and (5) are not applicable as proposal does not include plans for new access points or infrastructure, the existing parking area will not change, and no service areas are proposed.

E. The proposed project is sited more than 1200 feet from the nearest property line, 1100 feet of which is densely vegetated. No other screening is proposed [Section 5.3(B)(6)].

F. Section 5.3(B)(7) is not applicable to this application as no outdoor lighting is proposed.

G. The proposal includes plans to divert the existing stream channel prior to commencement of the project utilizing a sandbag dike. Two options exist for transferring water around the work site: installing a large culvert or utilizing a mechanical pump. Additional details are provided in the submitted project plans, and the required Vermont Stream Alteration General Permit and Army Corps of Engineers Vermont General Permit approvals have been obtained [Section 5.3(B)(8)].

§5.4: Conditional Use Review

The Board makes the following findings:

A. The Applicant has submitted responses to the standards of this section. The Board accepts and approves these responses.

B. No undue adverse impacts are perceived on the capacity of existing or planned community services and facilities, the character of the area, traffic in the vicinity, current bylaws (with Conditional Use approval), or the utilization of renewable energy resources as the proposal is for a stream stabilization project affecting the existing bridge and stream on the landowner's property. Traffic generated by the project has been estimated at 40 trips over a 5-day period, averaging 8 trips per day.

Section 5.5, Waivers and Variances

The Board makes the following findings:

A. The Board waives all requirements and standards of Section 5.3 determined to be not applicable [Section 5.5(A)].

B. While a waiver request for the riparian buffer and setback encroachment has been submitted per Section 5.5(B), it is not required as the project is subject to Conditional Use Review [see *3.19(B) Findings* above].

IV. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board unanimously grants approval for the conditional use/site plan review application for the stream stabilization project as described at the hearing and in the submitted application documents. See State and Federal permits/approvals for conditions.

Dated at Underhill, Vermont this 27 day of February, 2012.

Penny Miller

Penny Miller, Vice Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Division of Superior 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 3-28-12.