TOWN OF UNDERHILL
APPLICATION OF BRENT GOPLEN
FOR A 5-LOT SUBDIVISION
PRELIMINARY FINDINGS AND DECISION

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

Docket No. DRB-11-06: Goplen

I. INTRODUCTION AND PROCEDURAL HISTORY

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

A. On December 21, 2011, 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 18, 2011 and was accepted.

B. On September 1, 2011, a copy of the notice of a public site visit was mailed to the applicant, Brent Goplen, 20 Lower English Settlement Rd., Underhill, VT 05489, and to the following owners of properties adjoining the property subject to the application:

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

A copy of the notice was also mailed to Gunner McCain, McCain Consulting, 93 South Main St., Ste. 1, Waterbury, VT 05676.

C. On August 30, 2011, notice of the public site visit for the proposed Goplen subdivision was posted at the following places:

1. The property to be developed, LE020;
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 Town of Underhill website.

D. On August 31, 2011, notice of a public site visit was published in *Seven Days.*

E. A site visit was held at the property on September 19, 2011 at 5:45 PM. Present the site visit were:

- Chuck Brooks
- Charles Van Winkle, Chairperson
- Peter Seybolt
- Deb Shannon
- Matt Chapek
- Will Towle

Zoning Administrator Kari Papelbon, Gunner McCain (consultant for Brent Goplen), Doug Robie (neighbor) and Gerald Aldrich (neighbor) also attended the site visit.

F. On January 3, 2012 notice of the preliminary hearing on the proposed Goplen subdivision was mailed via Certified Mail to the applicant, Brent Goplen, 100 Minges Creek PL #F101, Battle Creek, MI 49015, and to the abutters in (B) above.

G. On January 3 & 4, 2012 notice of the preliminary hearing for the proposed Goplen subdivision was posted at the locations in (C) above. The notice was posted at the property to be developed, LE020, on January 19, 2012.

H. On January 11, 2012, notice of the preliminary hearing was published in *Seven Days.*

I. The preliminary hearing began immediately following the hearing scheduled for 6:30 PM on February 6, 2012.

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

- Chuck Brooks
- Will Towle
- Matt Chapek
- Penny Miller, Vice/Acting Chairperson

Kari Papelbon, Zoning Administrator; Gunner McCain, Consultant; Dan Sweet, Consultant; Andrea and Richard Phillips, neighbors; Nancy Devoid and Larry Plouffe, neighbors; and Kathryn Barickman, neighbor also attended the hearing.

K. At the outset of the hearing, Vice/Acting Chairperson 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:

- Richard and Andrea Phillips, 211 River Rd., Underhill, VT 05489
- Larry Plouffe, 7 Romar Dr., 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
- Dan Sweet, Hunger Mountain Forestry, Inc., P.O. Box 250, Waterbury, VT 05676

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

1. A staff report sent by Zoning & Planning Administrator Kari Papelbon to the Development Review Board, Brent Goplen, and Gunner McCain of McCain Consulting.
2. A copy of Brent Goplen's Application for Subdivision: Preliminary (dated 12-13-11);
3. A copy of the completed Subdivision Checklist: Preliminary Hearing;
4. A copy of the plans prepared by Gunner McCain of McCain Consulting, Inc. (Sheets S-1 (State) through S-6 and SW-1 through SW-2 dated 12-8-11);
5. A copy of the survey prepared by Keith Van Iderstine of McCain Consulting, Inc. (dated 12-13-11);
6. A copy of the letter dated 12-20-11 from Mr. McCain to ZA/PA Papelbon;
7. A copy of the completed School Impact Questionnaire from Superintendent of Schools John R. Alberghini (dated 11-29-10);
8. A copy of the letter to VT ANR Permit Specialist Jeff McMahon (dated 12-9-11);
9. A copy of the VT ANR Environmental Interest Locator map depicting deer yards, wetlands, and prime agricultural soils (printed 12-8-11);
10. A copy of the VT ANR Environmental Interest Locator map depicting Source Protection Areas (Sheet 1 printed 3-29-11);
11. A copy of the VT ANR Environmental Interest Locator map depicting Source Protection Areas (Sheet 2 printed 3-29-11);
12. A copy of the VT ANR Well Locator map (printed 10-27-10);

13. A list of the nearby drilled wells (no date);
14. A copy of the 1988 Flood Insurance Rate Map for the parcel area;
15. A copy of the Goplen Subdivision – Deed & Home Owners Association Information (no date);
16. A copy of the Existing General Forest Stand Descriptions and Harvest Recommendations (no date);
17. A copy of the map depicting clearing and tree stands prepared by Hunger Mountain Forestry, Inc. for Brent Goplen (no date);
18. A copy of the tax map for LE020;
19. A copy of the minutes from the 7-18-11 Sketch Plan meeting;
20. A copy of the letter to Brent Goplen from ZA/PA Kari Papelbon (dated 8-1-11);
21. A copy of the hearing notice published in *Seven Days* on 11-12-12;
22. A copy of the letter from Underhill-Jericho Fire Department Duty Officer Harry Schoppmann (dated 2-6-12);
23. A copy of the FEMA Digital Flood Insurance Rate Map (50007C0193D, effective July 18, 2011);
24. A copy of the Vermont Agency of Natural Resources and Natural Resources Board Project Review Sheet (response date 12-19-11).

M. The preliminary hearing was continued to February 16, 2012 at 6:30 PM.

N. Present at the continued preliminary hearing on February 16, 2012 were the following members of the Development Review Board:

- Penny Miller, Vice Chairperson
- Charles Van Winkle, Chairperson

Kari Papelbon, Zoning Administrator, also attended the hearing. As there was not a quorum of Board Members present, the hearing was continued to February 27, 2012 at 6:30 PM. All interested parties, including the applicant and his consultant, were informed prior to the hearing of the continuance.

O. The continued preliminary hearing began at 6:31 PM on February 27, 2012.

P. At the outset of the hearing, Chairperson Charles Van Winkle explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." No neighbors were present.

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

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

Town Official(s) who spoke:

- Rod Fuller, Underhill Road Foreman

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

1. A copy of the Findings Checklist;
2. A copy of the map prepared by Brad Holden depicting parcels, contours, and orthophotography for the area;
3. A copy of the Lower English Settlement Road Hydrologic Study and Stormwater Drainage Analysis Report prepared by Champlain Consulting Engineers, P.C. (plans dated December 1, 2001);
4. A copy of the email from Doug Robie dated 2-15-12.

All exhibits are available in the Goplen, LE020, subdivision file at the Underhill Zoning & Planning 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 ±27.8-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 Section 2.3, Table 2.4 of the 2011 Unified Land Use and Development Regulations.

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

- Article II, Table 2.4 – Water Conservation District
- Section 3.2 - Access
- Section 3.7 – Lot, Yard & Setback Requirements
- Section 3.13 – Parking, Loading & Service Areas
- Section 3.17 – Source Protection Areas
- Section 3.19 – Surface Waters & Wetlands

- Section 3.22 – Water Supply & Wastewater Systems
- Section 7.2 – Subdivision Review, Applicability
- Section 7.5 – Subdivision Review, Preliminary Subdivision Review
- Article VIII – Subdivision Standards

D. Road and driveway approval is requested pursuant to review under the 2002 Underhill Road Policy and the 2011 Unified Land Use and Development Regulations. As structured, the Board may grant with Final Plat Approval, "Access Approval" as outlined in Sections 3.2 and 8.6(A)(3), (9) of the 2011 Unified Land Use and Development Regulations. Final review of the access upgrades will be made by the Selectboard. DRB recommendations will be submitted to the Selectboard for their consideration and review of the Access Permit.

E. Mr. and Mrs. Phillips and Mr. Plouffe provided testimony at the hearing regarding concerns for runoff, tree cutting and blow-downs, and aesthetics. Specifics may be found in the minutes.

F. Mr. Sweet provided testimony at the hearing that no additional runoff would result from the removal of trees as proposed in the tree cutting plan.

G. Mr. Fuller provided testimony at the hearing that, based on his review of the plans, he would not anticipate additional runoff from the development that would affect Town infrastructure.

III. <u>CONCLUSIONS</u>

Applicable Regulation Standards

Article 2, Table 2.4, Water Conservation District

The Board finds that the application, with the minor change to the building envelope on Lot 2 proposed by the consultant to comply with minimum setbacks, meets all of the applicable dimensional standards with the exception of the Minimum Frontage requirement for Lots 4 and 5. See Conclusions for *Section 3.2* and *Section 8.6* below.

Section 3.2, Access

The Board makes the following findings on the application as proposed:

A. Access for Lot 1 is proposed with adequate frontage on Lower English Settlement Road. Access for Lot 2 is proposed with adequate frontage on the proposed development road. Access for Lots 3, 4, and 5 are off of the end of the proposed development road, which ends in a vehicular turnaround. [Section 3.2(A)].

B. Section 3.2(B) is not applicable to the subdivision as it does not involve a nonconforming lot.

C. As the access for the subdivision is proposed in the location of the existing driveway on Lower English Settlement Road, approval from the Select board is required for the upgrade. [Section 3.2(C)].

D. Only one access point per lot is proposed. This meets the requirement of Section 3.2(D)(2).

E. Section 3.2(D)(3) will be a condition of final approval.

F. The proposed width of the access does not extend along the length of the road frontage. [Section 3.2(D)(5)].

G. The subdivision is an allowed development in the Water Conservation zoning district. [Section 3.2(D)(6)].

H. Corner lots will meet frontage requirements after subdivision. [Section 3.2(D)(7)].

I. A shared driveway serving Lots 3 and 4 is proposed off of the end of the private development road. A draft shared maintenance agreement has been submitted. [Section 3.2(D)(8)].

J. The proposed driveways and private development road meet minimum requirements per the Vermont Agency of Transportation B-71 standard for residential and commercial drives. The average finished grade of the driveways and private development road as proposed will be less than 12% as measured over any 50-foot section. Pull-offs are proposed along the private development road, which ends in a vehicle turn-around. [Section 3.2(D)(9)].

K. The private development road proposed with the subdivision ends in a vehicle turn-around/cul-de-sac. As presented at the preliminary hearing, the proposed private development road meets the Vermont Agency of Transportation A-76 standard. See Conclusions for *Section 8.6* below. [Section 3.2(D)(10)].

L. No Class IV road accesses are proposed with the subdivision. [Section 3.2(D)(11)].

Section 3.7, Lot, Yard & Setback Requirements

The Board makes the following findings on the application as proposed:

A. The application as proposed meets the requirements of (A)-(D).

B. See Conclusions for *Section 8.6* below. [Section 3.7(E)].

Section 3.13, Parking, Loading & Service Areas

The Board finds that the subdivision as presented provides adequate space for off-street parking on each lot. Only residential lots are proposed within the subdivision.

Section 3.17, Source Protection Areas

The Board makes the following findings:

A. The proposed subdivision is located in a source protection area; however, no development is proposed within a 200-foot radius of a well or spring that serves a public water supply. [Section 3.17(A)(1)].

B. On-site septic systems cannot be located outside of the designated source protection area as it encompasses the entire parcel. [Section 3.17(A)(2)].

C. The proposed subdivision includes single-family residential lots only. [Section 3.17(B)].

Section 3.19, Surface Waters & Wetlands

The Board makes the following findings:

A. All proposed building envelopes, impervious surfaces, and on-site septic systems meet all required setbacks to the wetland and unnamed stream on Lot 3.

B. The riparian buffer and wetland buffer requirements will be incorporated into conditions of final approval. [Section 3.19(D)(5),(6)].

C. No encroachment into the buffers is proposed. [Section 3.19(E)(2)(d)].

D. The prohibition of new lawn areas within buffers will be incorporated into conditions of approval. [Section 3.19(E)(3)].

Section 3.22, Water Supply & Wastewater Systems

The Board makes the following findings:

A. The proposed septic system designs for the lots in the subdivision have been reviewed by the Vermont Department of Environmental Conservation Wastewater Management Division. A Vermont Agency of Natural Resources and Natural

Resources Board Project Review Sheet (response date 12-19-11) has been submitted with the preliminary plans. Submission of an approved Wastewater System and Potable Water Supply Permit will be considered in fulfillment of this section. [Section 3.22 (A) and (C)(1), (2)].

B. The Underhill-Jericho Water District does not provide service to the area of the proposed subdivision. Water will be supplied via on-site wells for each lot. [Section 3.22(B)(1)].

C. Section 3.22(C)(2) is not applicable as there are no mapped Special Flood Hazard Areas in the vicinity of the proposed subdivision.

D. The proposed septic system on Lot 2 and the replacement septic area on Lot 1 meet all setback requirements from surface waters and wetlands. [Section 3.22(C)(4)].

E. Section 3.22(D) is not applicable as no off-site septic systems are proposed.

F. On-site septic systems cannot be located outside of the designated source protection area. See Conclusions for *Section 3.17* above. [Section 3.22(C)(5)].

Section 7.2, Subdivision Review, Applicability

The Board makes the following findings:

A. The proposal qualifies as a subdivision per Section 7.2(A)-(C).

B. The proposed subdivision does not qualify for an exemption under Section 7.2(D).

C. The proposed subdivision was classified as a major subdivision during the sketch plan review on July 18, 2011 per Section 7.4(E).

Section 7.5, Subdivision Review, Preliminary Subdivision Review

The Board makes the following findings:

A. The proposed subdivision does not qualify for an exemption under Section 7.5(B).

B. The submission requirements of Section 7.5(C) and the hearing requirements of Section 7.5(D) were fulfilled.

C. This decision is written in fulfillment of Section 7.5(E).

Article VIII, Subdivision Standards

The Board makes the following findings:

A. The Applicant's consultant provided responses to applicable sections of Article VIII on the Findings Checklist. This document will be reviewed at the final subdivision hearing. [Section 8.1(C), Sections 8.2 through 8.8].

B. The Board finds that frontage requirements for Lots 4 and 5 are not met due to their location at the end of a cul-de-sac. The Board finds that Lots 4 and 5 qualify for, and approves, a waiver of the minimum frontage requirement for those lots per Section 8.6(A)(2)(c).

Underhill Road Policy, Vermont Agency of Transportation A-76 and B-71 standards

The Board finds that the proposed development road and driveways meet the Vermont Agency of Transportation A-76 and B-71 standards.

IV. DECISION AND FINAL HEARING REQUIREMENTS

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

A. The building envelope on Lot 2 shall be revised to comply with minimum setback requirements per Article II, Table 2.4.

B. Culverts shall appear on the final site plan (sheet to be filed in the Land Records upon approval).

C. The Board accepts the proposed tree cutting plans as presented by Dan Sweet of Hunger Mountain with a revision to include a 75-foot no-cut buffer where cutting is restricted to removing damaged and diseased trees, and which follows the existing treeline along the perimeter of the parcel. This revision shall appear on the final plans.

D. Surface waters, wetlands, and buffers shall be designated as open space on the final plat and site plan in accordance with Section 8.3(B)(5) and Section 8.4.

E. New lawn areas within the riparian/wetland buffer are not permitted per Section 3.19(E)(3). This restriction shall appear on the final site plan and plat.

F. Prior to submission of a final hearing application, at least 3 potential road names shall be submitted for review and approval by the Selectboard. Parcel codes will be provided by the Zoning & Planning Administrator upon approval. Parcel codes shall appear on the final plans.

G. An Access Permit shall be obtained from the Selectboard prior to filing an application for final subdivision review in accordance with Section 8.6(A)(3).

H. A copy of the Wastewater System and Potable Water Supply Permit shall be submitted with the application for final subdivision review.

I. A copy of the State Stormwater Permit application materials shall be submitted with the final hearing application. Applicant shall be prepared to address the Champlain Consulting Engineers, Inc. report dated December 1, 2001 at the final hearing.

Dated at Underhill, Vermont this 2 day of April, 2012.

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. Appeal period ends 5-2-12.