TOWN OF UNDERHILL
APPLICATION OF BRENT GOPLEN
FOR A 5-LOT SUBDIVISION
FINAL 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 final hearing application for a 5-lot subdivision of property located at 20 Lower English Settlement Rd. in Underhill, VT.

A. On May 1, 2012, McCain Consulting, Inc. 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.

B. On May 15, 2012, a copy of the notice of the final hearing was mailed via Certified Mail to the Applicant, Brent Goplen, 100 Minges Creek PL #F101, Battle Creek, MI 49015, and to the following owners of properties adjoining the property subject to the application:

1. Phillips, 211 River Rd., Underhill, VT 05489
2. Aldrich, 26 Lower English Settlement Rd., Underhill, VT 05489
3. Jobin-Picard, 13 Lower English Settlement Rd., Underhill, VT 05489
4. Barickman, 2 Lower English Settlement Rd., Underhill, VT 05489
5. Robie, 11 Lower English Settlement Rd., Underhill, VT 05489
6. Devoid/Plouffe, 7 Romar Dr., Underhill, VT 05489
7. Warren, 1 Romar Dr., Underhill, VT 05489

A copy of the notice was also emailed to Gunner McCain and Kristen Rose Howell, McCain Consulting, Inc., at gmccain@mccainconsulting.com and kristen@mccainconsulting.com.

C. On May 15, 2012, notice of the final hearing on 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 May 16, 2012, notice of the final hearing was published in *Seven Days*.

E. The final hearing began at 6:47 PM on March 19, 2012.

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

- Chuck Brooks
- Will Towle
- Matt Chapek
- Charles Van Winkle, Chairperson

Zoning & Planning Administrator Kari Papelbon; Gunner McCain, Consultant; Brent Goplen, Applicant; Kathryn Barickman, Anne Jobin-Picard, and Jeremiah Mahany, neighbors, also attended the hearing.

G. 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." Those who spoke at the hearing were:

- Brent Goplen, 100 Minges Creek PL #F101, Battle Creek, MI 49015 (Applicant)
- Kathryn Barickman, 2 Lower English Settlement Rd., Underhill, VT 05489
- Anne Jobin-Picard, 13 Lower English Settlement Rd., Underhill, VT 05489
- Jeremiah Mahany, 35 Sand Hill Rd., Underhill, VT 05489

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

- Gunner McCain, McCain Consulting, Inc., 93 S. Main St., Ste. 1, Waterbury, VT 05676

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

1. Brent Goplen's Application for Subdivision: Final (dated 5-1-12);
2. A copy of the completed Subdivision Checklist: Final Hearing;

3. A copy of the plans prepared by Gunner McCain of McCain Consulting, Inc. (Sheets S-1 (State) through S-4 revised 5-8-12, Sheets S-5 and S-6 dated 3-13-12, and Sheets SW-1 through SW-2 dated 12-8-11);
4. A copy of the survey prepared by Keith Van Iderstine of McCain Consulting, Inc. (dated 5-8-12);
5. A copy of the letter dated 4-6-12 from James Sandberg of the VT DEC Drinking Water and Groundwater Protection Division;
6. A copy of the Wastewater System & Potable Water Supply permit application and Certification Statement;
7. A copy of the letter dated 4-10-12 from Kristen Rose Howell of McCain Consulting, Inc. to Kevin Burke, Environmental Analyst, Stormwater Section, VT DEC;
8. A copy of the Notice of Intent for Stormwater Discharges Associated with Construction Activity on Low Risk Sites (Construction General Permit);
9. A copy of the letter dated 4-11-12 from Peter Lazorchak of McCain Consulting, Inc. to Kevin Burke, Environmental Analyst, Stormwater Section, VT DEC;
10. A copy of the Notice of Intent to Discharge Stormwater;
11. A copy of the Subdivision Standards Findings Checklist;
12. A copy of the letter from Gunner McCain to ZA/PA Papelbon (dated 5-11-12);
13. A copy of the Stormwater Treatment & Discharge Narrative (dated April 2012);
14. Copies of the draft Goplen Subdivision Piney Grove Homeowners Association, draft Subdivision Deeds, and draft deed covenants;
15. A copy of the Access Permit;
16. A copy of the Preliminary Decision (dated 4-2-12);
17. A copy of the minutes from the 2-6-12 and 2-27-12 Preliminary Hearings;
18. A copy of the hearing notice published in *Seven Days* on 5-16-12;
19. A copy of the procedure checklist and staff memo for this hearing.

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 ±27.7-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 Article II, 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 7.6 – Subdivision Review, Final Subdivision Review
- Article VIII – Subdivision Standards

D. Access approval for the subdivision is requested pursuant to review under the 2002 Underhill Road Policy and the 2011 Unified Land Use and Development Regulations. An Access Permit was approved by the Selectboard on May 4, 2012.

E. Ms. Barickman provided testimony at the final hearing regarding concerns for her shallow well.

F. Ms. Jobin-Picard provided testimony at the final hearing regarding concerns for drainage and culverts.

G. Mr. Mahany provided testimony at the final hearing regarding tree-cutting and deed restrictions.

III. <u>CONCLUSIONS</u>

Applicable Regulation Standards

Article II, Table 2.4, Dimensional Standards

The Board finds that the application as proposed meets all of the applicable dimensional standards. 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. See Conclusions for *Section 8.6* below [Section 3.2(A)].

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

C. An Access Permit from the Selectboard was approved on May 4, 2012 [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 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 draft shared maintenance agreement for the shared driveway to Lots 3 and 4 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 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 allowed uses: single-family residential lots with accessory dwellings only [Section 3.17(B)].

Section 3.19, Surface Waters & Wetlands

The Board makes the following findings:

A. No stream or wetland crossings are proposed [Section 3.19(C)].

B. All proposed building envelopes, impervious surfaces, and on-site septic systems meet all required setbacks to the wetland and unnamed stream on Lot 3 [Section 3.19(D)(1)-(4)].

C. The riparian buffer and wetland buffer requirements will be incorporated into conditions of final approval. No development is proposed within the buffers [Section 3.19(D)(5),(6)].

D. No encroachment into the riparian and wetland buffers is proposed [Section 3.19(E)(2)(d)].

E. No lawn areas are proposed within the buffers. 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) was submitted with the preliminary plans. Submission of an approved Wastewater System and Potable Water Supply Permit will be considered in fulfillment of this section and will be a condition of approval [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 7.6, Subdivision Review, Final Subdivision Review

The Board makes the following findings:

A. The final subdivision application was submitted in accordance with Section 7.6(B).

B. The hearing requirements of Section 7.6(C) were fulfilled.

C. This decision is written in fulfillment of Section 7.6(D).

D. The appeal provisions are contained in this decision per Section 7.6(E).

E. Section 7.6(F) will be a condition of approval.

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.

B. The subdivision will not result in undue adverse impacts to public health and safety, neighboring properties and uses with the State approval of the proposed stormwater and wastewater system and potable water supply permits [Section 8.2(A). See Conclusions for Section 8.5 below].

C. Density calculations have been submitted. The allowed density is not exceeded with the subdivision [Section 8.2(B)].

D. No development is proposed in the setback or buffer areas for the stream and wetland on Lot 3; there are no mapped Special Flood Hazard Areas on the property; a proposed tree-cutting plan by Hunger Mountain Forestry, Inc., which limits the amount of cutting to 1/3 of the trees on the property and the percent clearing for the road and each lot, was accepted by the Board at the preliminary hearing; a 75-foot no-cut buffer around the perimeter of the property is shown on the plans; primary agricultural soils on Lot 1 will remain usable for agricultural purposes; and no historic sites or structures have been identified on the property [Section 8.2(C)].

E. The subdivision, with conditions, conforms to the policies and objectives in the Town Plan and these regulations [Section 8.2(D)].

F. The subdivision, with conditions, reflects the settlement pattern for the Water Conservation zoning district as described in the Town Plan, and Article II and Section 8.2(E)(2) of the Unified Land Use and Development Regulations.

G. Lot layouts meet the applicable requirements of Section 8.2(F).

H. Building envelopes, which conform to setbacks, are depicted on both the engineering plans and the survey [Section 8.2(G)].

I. Survey monument locations and details are shown on the survey [Section 8.2(H)].

J. A tree-cutting plan prepared by Hunger Mountain Forestry, Inc. and a 75-foot no-cut buffer will preserve trees on the property in fulfillment of the landscaping and screening provisions of Section 8.2(I).

K. The locations of the proposed lots and building envelopes, as well as the tree-cutting plan, will allow for end-user energy conservation measures [Section 8.2(J)].

L. The wetland and stream and associated buffers on the property are designated as open space areas on the engineering plans and survey; development in areas of steep slopes is avoided where possible; no mapped wildlife habitat areas, with the exception of the wetland, exist on the property; no historic or cultural resources have been identified on the property; Lot 1 has been designed to allow for the continued use of agricultural soils; and a tree-cutting plan and 75-foot no-cut buffer around the perimeter of the property will protect much of the existing forestland [Section 8.3].

M. Open space on the property has been identified for the wetland, stream, and associated buffer areas on the engineering plans and survey. The stormwater infrastructure, road, shared driveways, and shared utilities are depicted on the plans. The maintenance requirements for and access to these facilities are contained in the Homeowners Association documents and deeds [Section 8.4].

N. Testimony regarding the stormwater management plans was received during the preliminary hearing from owners of adjacent properties. Testimony was received regarding pre-existing, long standing, and problematic run off and drainage problems affecting areas along Lower English Settlement Road and Romar Drive and adjacent to the applicant's parcel. The Board found this testimony credible and concerning. Dan Sweet of Hunger Mountain Forestry, Inc. provided testimony that no additional runoff would result from the removal of trees as proposed in the tree-cutting plan. Road Foreman Rodney Fuller provided testimony that, based on his review of the plans, he would not anticipate additional runoff from the development that would affect Town infrastructure. Stormwater calculations and a letter from Site Technician Gunner McCain stating that the post-development stormwater rates would not exceed pre-development rates were also received. The Board relies upon these submissions and this testimony and finds that the plan would not result in a net increase in stormwater runoff nor would the proposed subdivision exacerbate existing and long-standing water conditions in the area. A stormwater permit application has been submitted to the State. The approved permit will be additional support in fulfillment of Section 8.5.

O. 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 approved in the preliminary decision, a waiver of the minimum frontage requirement for those lots per Section 8.6(A)(2)(c). An Access Permit from the Selectboard is required for the upgrade to the existing access on Lower English Settlement Road and was issued on May 4, 2012. The proposed development road, Piney Grove Lane, meets the requirements of Section 8.6. Site Technician Gunner McCain stated during the hearing that the driveway to Lot 1 will be revised to be a 12-foot wide driveway to be consistent with the widths of the driveways to Lots 3-5. With this revision, the

driveways meet the requirements of Section 8.6. No common or shared parking facilities are proposed.

P. The application meets the requirements of Section 8.7 as letters from the Chittenden East Supervisory Union and Underhill Jericho Fire Department indicate their ability to provide services to the proposed subdivision, a State Wastewater System and Potable Water Supply Permit application was submitted to the State and is under review, and utility locations are shown on the plans. While the Town regulations allow a maximum 12% average driveway and roadway grade over any 50-foot section, the Underhill Jericho Fire Department's review indicates that service is not an issue provided grades do not exceed 10%. It is recommended that that the current and future owner(s) of the lots contact the Fire Department for any questions regarding service. Changes to the road and driveway plans may require additional review and approval by the Underhill DRB and/or Selectboard. Submission of an approved Wastewater System and Potable Water Supply Permit will be considered in fulfillment of this section [Section 8.7].

Q. Submission and recording of deeds and Homeowners Association documents will be a condition of final approval [Section 8.8].

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. An Access Permit from the Selectboard was approved on May 4, 2012.

IV. DECISION AND CONDITIONS

Based upon the findings above, and subject to the conditions below, the Development Review Board grants approval for the 5-lot subdivision as presented at the final hearing.

A. The waiver of the frontage requirement for Lots 4 and 5 is approved per Section 8.6(A)(2)(c).

B. Per Section 3.2(D)(3), no additional access rights to a public highway shall automatically result from the subdivision or re-subdivision of the lots. Changes to the approved curb cut improvements on Lower English Settlement Road are the jurisdiction of and shall be reviewed by the Selectboard. Changes to the remaining infrastructure shall be reviewed by the DRB.

C. The driveway to Lot 1 shall be revised to be a 12-foot wide driveway as discussed at the final hearing.

D. Per Section 3.19(D)(6), the 25-foot Class III wetland buffer and 25-foot riparian (stream) buffer shall be maintained as undisturbed, naturally-vegetated buffers.

E. Per Section 3.19(E)(3), the creation of new lawn areas within buffers is not permitted.

F. A copy of all State permits including, but not limited to, a Wastewater System and Potable Water Supply Permit, Stormwater Permit, and engineer's certification letter(s) shall be submitted prior to issuance of a Certificate of Occupancy for any lot [Section 3.22(E)].

G. Per Section 7.2(B), no land shall be subdivided until final subdivision approval has been obtained from the DRB and the approved subdivision plat is recorded in the Underhill land records.

H. No transfer, sale or long-term lease of title to property as defined under 32 VSA §9601 of any portion of an existing lot; predevelopment site work; or issuance of zoning permits to develop a subdivided lot shall occur until final subdivision approval has been obtained from the DRB and the final Mylars have been recorded in the Underhill Land Records [Section 7.2(C)].

I. 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 restriction shall appear in all legal documents including, but not limited to, the Homeowners Association documents and deeds.

J. Legal documents, including, but not limited to, deeds, easements, and Homeowners Association documents, shall be revised to include the name of the private road (Piney Grove Lane), the requirements for maintenance and certification of the shared infrastructure, state that all lots are subject to the approved tree-cutting plan by Hunger Mountain Forestry, Inc. and the 75-foot no-cut buffer, and to include the restrictions for the open space (i.e., wetland and riparian buffers). All legal documents shall be recorded in the Town of Underhill Land Records in accordance with Section 3.2(D)(8) and Section 8.8(B).

K. The Town shall be granted an access easement for the maintenance and repair of the stormwater pond on Lot 1. All expenses for the maintenance and repair of said pond and/or any damage to Town infrastructure resulting from the failure of said pond shall be the responsibility of the Homeowners Association.

L. No subdivision plat shall be recorded in the land records of the town until final subdivision approval has been issued by the DRB and recorded in the land records

of the town under Section 10.7. Final subdivision approval shall not be construed to constitute acceptance by the Town of Underhill of any street, easement, utility, park, recreation area, or other open space shown on the final plat.

M. The final plat and engineering site plan shall be submitted in accordance with Section 7.7.

N. All subdivision and recording fees must be paid in full prior to recording a subdivision plat in accordance with Section 7.7(B).

O. The E-911 codes for all lots (Lot 1: PY002, Lot 2: PY004, Lot 3: PY019, Lot 4: PY020, Lot 5: PY016) and private road sign shall be posted per the Underhill Jericho Fire Department specifications prior to issuance of a building permit.

P. A certificate of compliance, to be issued by the Zoning Administrator under Section 10.4, based on the submission of as-built plans and certifications that improvements (the road and stormwater infrastructure) have been installed as approved by the Board. No zoning permit shall be issued for the development of a subdivided lot until the certificate has been issued and recorded in the land records of the town. (Should this be phased?)

Dated at Underhill, Vermont this 21 day of June, 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 7/21/2012.