TOWN OF UNDERHILL
APPLICATION OF MICHAEL & HOLLY RAINVILLE
AND KEVIN MCKEGNEY
FOR A 2-LOT SUBDIVISION
PRELIMINARY FINDINGS AND DECISION

In re: Michael & Holly Rainville
Kevin McKegney
8 Dumas Rd.
Underhill, VT 05489

Docket No. DRB-12-03: Rainville & McKegney

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Michael & Holly Rainville's and Kevin McKegney's preliminary hearing application for a 2-lot subdivision of property located at 8 Dumas Rd. in Underhill, VT.

A. On May 7, 2012, Michael Rainville filed an application for subdivision on behalf of the Applicants 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 April 16, 2012 and was accepted.

B. On May 31, 2012, a copy of the notice of a public site visit and preliminary hearing was mailed via Certified Mail to the Applicants, Michael & Holly Rainville and Kevin McKegney, 80 Cemetery Rd., Jericho, VT 05465, and to the following owners of properties adjoining the property subject to the application:

1. Holden, P.O. Box 337, Underhill, VT 05489
2. Dyck, 9 Poker Hill Rd., Underhill, VT 05489
3. Kapusta, 6 Dumas Rd., Underhill, VT 05489
4. Gray, 10 Dumas Rd., Underhill, VT 05489
5. Kozlowski, 4 Dumas Rd., Underhill, VT 05489
6. Douglas, 2 Dumas Rd., Underhill, VT 05489
7. Roaring Brook Homeowners Assn., P.O. Box 161, Underhill, VT 05489

C. On May 31, 2012, notice of the public site visit for the proposed Rainville/McKegney subdivision was posted at the following places:

1. The property to be developed, DM008;
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 June 1, 2012, notice of a public site visit was published in *The Burlington Free Press.*

E. A site visit was held at the property on June 18, 2012 at 6:30 PM. Present the site visit were:

- Chuck Brooks
- Charles Van Winkle, Chairperson
- Penny Miller
- Will Towle

Zoning & Planning Administrator Kari Papelbon; Applicants Michael Rainville and Kevin McKegney; and neighbors Patricia Gray, Keith and Vera Douglas, and Michelle Kapusta also attended the site visit.

F. The preliminary hearing began at 7:10 PM on June 18, 2012.

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

- Chuck Brooks
- Will Towle
- Penny Miller
- Charles Van Winkle, Chairperson

Zoning & Planning Administrator Kari Papelbon; Applicants Michael Rainville and Kevin McKegney; and neighbors Patricia Gray and Keith Douglas also attended the hearing.

H. 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:

- Michael Rainville and Kevin McKegney, 80 Cemetery Rd., Jericho, VT 05465
- Keith Douglas, 2 Dumas Rd., Underhill, VT 05489
- Patricia Gray, 10 Dumas Rd., Underhill, VT 05489

I. 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, the Applicants, the Selectboard, the Underhill Jericho Fire Department, and the Conservation Commission Chair;
2. Michael & Holly Rainville's and Kevin McKegney's Application for Subdivision: Preliminary (dated 5-7-12);
3. A copy of the completed Subdivision Checklist: Preliminary Hearing;
4. A copy of the plans prepared by Christopher Leister of Hogg Hill Design, LLC (Sheets 1-3 dated 2-17-12);
5. A copy of the survey prepared by Christopher Haggerty of Button Professional Land Surveyors, PC (dated 4-15-12);
6. A copy of the letter dated 5-7-12 from the Applicants to ZA/PA Papelbon;
7. A copy of the Findings Checklist;
8. A copy of the VT ANR Environmental Interest Locator map depicting the groundwater source protection area (printed 2-16-12);
9. A copy of the draft warranty deeds;
10. A copy of the Project Review Sheet from the VT Department of Environmental Conservation and Natural Resources Board (dated 5-15-12);
11. A copy of the letter from Harry Schoppmann of the Underhill Jericho Fire Department (dated June 11, 2012);
12. A copy of the tax map for DM008;
13. A copy of the minutes from the 4-16-12 Sketch Plan meeting;
14. A copy of the hearing notice published in *The Burlington Free Press* on 6-1-12;
15. A copy of the letter from Patricia Gray (dated 6-18-12).

These exhibits are available in the Rainville & McKegney, DM008, subdivision file at the Underhill Zoning & Planning Office.

II. <u>FINDINGS</u>

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 Applicants seek a permit to subdivide land. The subject property is a ±2.0-acre parcel located at 8 Dumas Road in Underhill, VT (DM008).

B. The property is located in the Underhill Flats Village Center zoning district as defined in Article II, Table 2.2 of the 2012 Unified Land Use and Development Regulations.

C. Subdivision approval is requested for the project pursuant to review under the following sections of the 2012 Unified Land Use and Development Regulations:

- Article II, Table 2.2 – Underhill Flats Village Center District
- Article II, Table 2.7 – Flood Hazard Overlay District
- Section 3.2 – Access
- Section 3.7 – Lot, Yard & Setback Requirements
- Section 3.13 – Parking, Loading & Service Areas
- Section 3.19 – Surface Waters & Wetlands
- Section 3.22 – Water Supply & Wastewater Systems
- Article VI – Flood Hazard Area Review
- Section 7.2 – Applicability
- Section 7.5 – Preliminary Subdivision Review
- Article VIII – All

D. Access approval is requested pursuant to review under the 2002 Underhill Road Policy and the 2012 Unified Land Use and Development Regulations. Final review of the access 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. Douglas provided testimony at the hearing regarding an inconsistency in the Wastewater System and Potable Water Supply Permit. Specifics may be found in the minutes.

F. Ms. Gray provided testimony at the hearing regarding concerns for the location of the proposed shared driveway, maintenance and safety on Dumas Rd., lot numbers, boundary markings, sight distances, water runoff, and aesthetics.

III. <u>CONCLUSIONS</u>

Applicable Regulation Standards

Article II, Table 2.2, Underhill Flats Village Center District

The Board finds that the application, with exceptions noted below, meets all of the applicable dimensional standards. Waivers have been requested for the proposed shared driveway setback and the frontage requirement. See Conclusions for *Section 3.2* and *Section 8.6* below.

Article II, Table 2.7, Flood Hazard Overlay District

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

A. A portion of the property (northeast corner) lies within Zone A of the Special Flood Hazard Area as depicted on Map Panel 0187D effective July 18, 2011.

B. See *Conclusions* for Article VI below.

Section 3.2, Access

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

A. Access for the subdivision is proposed with adequate frontage on Dumas Road. During the hearing it was determined that the irregular shape of the lots at the access point should be corrected. The correction would require a waiver of the frontage requirement for Lot 2. 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. As the access for the subdivision is proposed off of Dumas Road, approval from the Selectboard is required for the curb cut [Section 3.2(C)].

D. Only one new access point to serve the subdivision is proposed. The existing easement over the southern portion of Lot 1 serving the existing barn, 4 Dumas Road, and 6 Dumas Road will remain unchanged. Due to the existing locations of structures, utilities, and existing and replacement septic areas on the lot, access to the proposed subdivision via the existing easement would result in a less functional site layout. 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 Underhill Flats Village Center zoning district [Section 3.2(D)(6)].

H. Section 3.2(D)(7) is not applicable as the lot is not a corner lot.

I. A shared driveway serving the subdivision is proposed off of Dumas Rd. less than 12 feet from the proposed boundary between Lots 1 and 2. Shared driveways may be located within side yard setbacks per Section 3.2(D)(8), which requires a waiver.

See also *Conclusions* for Section 3.2(D)(9) below. A draft shared maintenance agreement has been submitted as part of the deeds.

J. The proposed shared driveway meets minimum requirements per the Vermont Agency of Transportation B-71 standard for residential and commercial drives. The proposed shared driveway will be located less than 12 feet from the proposed boundary between Lots 1 and 2, which is allowed per Section 3.2(D)(8) and requires a waiver per Section 3.2(D)(9)(a). The Board finds that the shared driveway qualifies for, and approves, a waiver of the 12-foot side setback requirement. No steep slopes, primary agricultural soils, surface waters, wetlands, or buffer areas will be impacted by the proposed driveway. The average finished grade of the driveway as proposed will be less than 12% as measured over any 50-foot section, and will be less than 500 feet in length [Section 3.2(D)(9)].

K. Section 3.2(D)(10) is not applicable as no private development roads are proposed.

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. Only one principal structure is proposed per lot [Section 3.7(A)].

B. The subdivision, with the exception of the frontage and the driveway setback requirements, meets the requirements of Section 3.7(B). See also *Conclusions* for Section 3.2 above and Section 8.6 below.

C. The subdivision will not be served by a private development road [Section 3.7(C)].

D. No corner lots are proposed [Section 3.7(D)].

E. Section 3.7(E)(3)(a) applies to the application. See Conclusions for *Section 8.6* below.

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 3.19, Surface Waters & Wetlands

The Board finds that Roaring Brook crosses the triangular piece of land across Dumas Road from the subdivision. No development or encroachments are proposed within the

riparian buffer or setback.

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 5-15-12) 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 provides service to the area of the proposed subdivision. A letter indicating the District's approval of service to the subdivision will be a condition of approval [Section 3.22(B)(1)].

C. No septic systems are proposed within the mapped Special Flood Hazard Area on the property [Section 3.22(C)(3)].

D. No septic systems are proposed within the riparian buffer or setback [Section 3.22(C)(4)].

E. Section 3.22(C)(5) is not applicable as the proposed subdivision is not located within a Source Protection Area.

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

Article VI, Flood Hazard Area Review

The Board finds that no development is proposed within the portion of the property in Zone A of the Special Flood Hazard Area as depicted on Map Panel 0187D effective July 18, 2011.

Section 7.2, Subdivision Review, Applicability

The Board makes the following findings:

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

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

C. The proposed subdivision was classified as a minor subdivision during the sketch plan review on April 16, 2012 per Section 7.4(E).

Section 7.5, Subdivision Review, Preliminary Subdivision Review

The Board makes the following findings:

A. The proposed subdivision was denied an exemption under Section 7.5(B) at the sketch plan meeting on April 16, 2012.

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 Applicants 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 requirement for Lot 2 will not be met after the proposed lot line between Lots 1 and 2 is straightened. As the shared driveway will serve a minor subdivision of only two lots, the Board finds that Lot 2 qualifies for, and approves, a waiver of the minimum frontage requirement 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. A waiver of the frontage requirement for Lot 2 is approved.

B. A waiver of the 12-foot side setback requirement for the proposed driveway is approved.

C. The survey and engineering drawings shall be revised to be consistent with each other and the Vermont Gas Systems easement.

D. The proposed boundary line between Lot 1 and Lot 2 shall be revised to remove the irregular jog as discussed during the hearing.

E. Test pit logs shall be submitted with the application for final subdivision review.

F. Driveway design details shall be submitted with the application for final subdivision review.

G. Deeds shall be revised to reflect all easements and shared driveway maintenance requirements.

H. A copy of the letter from the Jericho-Underhill Water District approving water service to the subdivision shall be submitted with the application for final subdivision review.

I. 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).

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

K. The Board approves one (1) principal dwelling on Lot 1 and one (1) principal dwelling on Lot 2. The Board acknowledges the principal dwelling on Lot 2 is intended to be, and has the wastewater capacity to be, a duplex containing a maximum of 3 bedrooms/unit.

Dated at Underhill, Vermont this 6 day of July, 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 8-5-12.