TOWN OF UNDERHILL
APPLICATION OF THOMAS AND ROXANNE NILES
FOR A 2-LOT SUBDIVISION
FINAL FINDINGS AND DECISION

In re: Thomas and Roxanne Niles
137 River Rd.
Underhill, VT 05489

Docket No. DRB-12-106: Niles

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Thomas and Roxanne Niles' final hearing application for a 2-lot subdivision of property located at 137 River Rd. in Underhill, VT.

A. On October 5, 2012, Thomas Niles filed an application for subdivision for the project. A copy of the application and additional information are available at the Underhill Town Hall. A sketch plan meeting was held on August 6, 2012.

B. On October 9, 2012, a copy of the notice of the final hearing was mailed via Certified Mail to the Applicants, Thomas and Roxanne Niles, P.O. Box 3802, Winter Park, FL 32790, and to the following owners of properties adjoining the property subject to the application:

1. Barker, 15 Hedgehog Hill, Underhill, VT 05489
2. Becker, 16 Orchard Rd., Underhill, VT 05489
3. Tobin/Boardman, 6 Orchard Rd., Underhill, VT 05489
4. Westall, 172 River Rd., Underhill, VT 05489
5. Gallagher, P.O. Box 240, Underhill, VT 05489
6. Chamberlin, 97 River Rd., Underhill, VT 05489
7. Willard, 152 River Rd., Underhill, VT 05489
8. Dougherty/Humbargar, 142 River Rd., Underhill, VT 05489
9. Rogers, 133 River Rd., Underhill, VT 05489

A copy of the notice was also emailed to Justin Willis, Willis Design Associates, Inc., at willisdesignvt@comcast.net and to Albert (Terry) Harris at awharris@gmavt.net.

C. On October 9, 2012, notice of the final hearing on the proposed Niles subdivision was posted at the following places:

1. The property to be developed, RV137;
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. Deborah Rawson Memorial Library;
9. The Town of Underhill website.

D. On October 11, 2012, notice of a final hearing was published in *The Burlington Free Press.*

E. The final hearing began at 6:32 PM on October 29, 2012.

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

- Chuck Brooks
- Will Towle (recused)
- Matt Chapek
- Penny Miller
- Karen McKnight
- Charles Van Winkle, Chairperson

Zoning & Planning Administrator Kari Papelbon and Consultant Justin Willis 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."

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

- Justin Willis, Willis Design Associates, Inc., P.O. Box 98, Richmond, VT 05477-0098

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

1. Thomas and Roxanne Niles' Application for Subdivision: Final (dated 10-3-12);
2. A copy of the completed Subdivision Checklist: Final Hearing;
3. A copy of the proposed site plan prepared by Justin Willis of Willis Design Associates, Inc. (dated 10-3-12);
4. A copy of the proposed survey prepared by Albert W. Harris of Harris Surveying & Land Dispute Resolution (dated 10-2-12);
5. A copy of the completed Subdivision Standards Findings Checklist;
6. A copy of the hearing notice published in The Burlington Free Press on 10-11-12;
7. A copy of the ANR Natural Resource Atlas Maps (printed 10-23-12);
8. A copy of the tax map for RV137;
9. A copy of the procedure checklist and staff memo for this hearing.

These exhibits are available in the Niles, RV137, 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 applicants seek a permit to subdivide land. The subject property is a ±101-acre parcel located at 137 River Road in Underhill, VT (RV137).

B. The property is located in the Water Conservation, Rural Residential, and Soil and Water Conservation zoning districts as defined in Article II, Table 2.4; Article II, Table 2.3; and Article II, Table 2.6 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 2.3 – Rural Residential District
- Article II, Table 2.4 – Water Conservation District
- Article II, Table 2.6 – Soil & Water Conservation District
- Article II, Table 2.7 – Flood Hazard Overlay District
- Section 3.2 – Access
- Section 3.7 – Lot, Yard & Setback Requirements
- 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. No new development is proposed.

E. No new or upgraded accesses or driveways are proposed.

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Table 2.3, Dimensional Standards

The Board finds that the application as proposed meets all of the applicable dimensional standards as no development is proposed in the Rural Residential zoning district. The proposed Lot 2 will be ±92.4 acres in the Water Conservation, Rural Residential, and Soil and Water Conservation districts. The proposed acreage exceeds the minimum acreage requirements for all zoning districts.

Article II, Table 2.4, Dimensional Standards

The Board finds that the application as proposed meets all of the applicable dimensional standards. Lot 1 is proposed to be located entirely within the Water Conservation zoning district with no new development proposed. The proposed size of Lot 1, ±9.1 acres, exceeds the minimum acreage requirement for the Water Conservation zoning district. The existing house and garage meet the setback requirements to the proposed lot lines and natural features.

Article II, Table 2.6, Dimensional Standards

The Board finds that the application as proposed meets all of the applicable dimensional standards as no development is proposed in the Soil & Water Conservation zoning district. The proposed Lot 2 will be ±92.4 acres in the Water Conservation, Rural Residential, and Soil and Water Conservation districts. The proposed acreage exceeds the minimum acreage requirements for all zoning districts.

Article II, Table 2.7, Flood Hazard Overlay District

The Board finds that no new development is proposed within the Special Flood Hazard Area.

Section 3.2, Access

The Board finds that no new or upgraded accesses or driveways are proposed with the application.

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 Sections (A) and (B). Section (C) is not applicable.
B. Lot 2 is considered a corner lot such that it has potential frontage along both River Road and Orchard Road. No new development or accesses have been proposed with this application for Lot 2 [Section 3.7(D)].
C. No waivers have been requested [Section 3.7 (E)].

Section 3.17, Source Protection Areas

The Board finds that while the entire parcel is located within a source protection area, Lot 1 is already developed, the lot is not within a 200-foot radius of a well or spring that serves a public water supply, and no new development is proposed. It is not feasible to locate future septic systems on Lots 1 and 2 outside of the source protection area.

Section 3.19, Surface Waters & Wetlands

The Board makes the following findings:

A. No stream alterations or crossings are proposed in the application [Section 3.19(C)].
B. No new development is proposed [Sections 3.19(D)(1), (2), (3)].
C. The proposed septic system replacement area meets the required setbacks [Section 3.19(D)(4)].
D. The riparian and wetland buffer requirements will be incorporated into conditions of approval [Sections 3.19(D)(5), (6)].
E. No new encroachments are proposed in the application [Section 3.19(E)].
F. 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 replacement system for Lot 1 is being reviewed by the Vermont Department of Environmental Conservation Wastewater Management Division. 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 to Lot 1 via the existing well. No new development is proposed [Section 3.22(B)(1)].
C. Section 3.22(C)(3) is not applicable as no new development is proposed within the mapped Special Flood Hazard Areas in the vicinity of the proposed subdivision.
D. The proposed septic system replacement area on Lot 1 meets all setback requirements from surface waters and wetlands [Section 3.22(C)(4)].
E. The proposed septic system replacement area is located in a designated Source Protection Area (SPA); however, it is not feasible to locate outside of the SPA as it encompasses the entire ±101 acres [Section 3.22(C)(5)]. See *Conclusions* for Section 3.17 above.
F. Section 3.22(D) is not applicable as no off-site septic systems are proposed.

Section 7.6, Subdivision Review, Final Subdivision Review

The Board makes the following findings:

A. The preliminary subdivision review requirement was waived at the sketch plan review meeting on August 6, 2012 in conformance with Section 7.5(B).
B. The submission requirements of Section 7.6(B) and the hearing requirements of Section 7.6(C) were fulfilled.
C. This decision is written in fulfillment of Section 7.6(D).

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. The Board accepts these responses and makes supplemental findings where applicable [Section 8.1(C)].

B. The land, as evidenced by the submission of plans compliant with all district dimensional standards, is suitable for the intended use and proposed density of development, and will not result in undue adverse impacts to public health and safety, the natural environment, neighboring properties and uses, or the character of the area. Wetland buffers and setbacks will be met as shown on the plans. No new development is proposed [Section 8.2(A)].

C. The proposed subdivision meets the requirements of Sections 8.2(B) through (F) and (H). No new development is proposed.

D. Sections 8.2(G), (I), and (J) are not applicable as no new development is proposed and as Lot 1 is already developed with an existing house.

E. No comments have been received from the Underhill Conservation Commission regarding the proposed subdivision. No new development is proposed within the wetland and riparian buffers, mapped Special Flood Hazard Areas, or deer wintering areas. No animal corridors are located on the parcel. Proposed lot lines have been configured such that steep and very steep slopes, exposed rock outcrops and ledges, and visually prominent hilltops and ridgelines are unaffected. The proposed subdivision does not prevent the continued use of the land for farmland or forestry activities [Section 8.3].

F. Section 8.3(B)(5) will be a condition of approval. See Section IV below.

G. Development has been proposed to avoid areas of 18% - 22% slope that exist on the property in accordance with Section 8.3(C).

H. Wetlands and their associated buffers are shown on the site plan. The wetland buffer requirements will be incorporated into conditions of approval in fulfillment of Section 8.4(A). Section 8.4(B) is not applicable as no common land is proposed. Language requiring compliance with setbacks and buffers will be incorporated into deeds to the lots and will be a condition of final approval.

I. Erosion prevention and sediment control plans are not applicable as no new development is proposed [Section 8.5].

J. The application meets the requirements of Section 8.6 as no new accesses or driveways are proposed. Lot 1 is proposed to be served by the existing driveway.

K. Sections 8.6(B) through (E) are not applicable as the application does not include the creation of a private development road, no common or shared parking areas are proposed, no transit or bus stop shelters are required, and no pedestrian access has been proposed for the private development.

L. The application meets the requirements of Section 8.7 as no new development is proposed.

M. Submission and recording of deeds incorporating buffer and setback requirements to the wetland on the property, as well as the utility easement, will be a condition of final approval [Section 8.8].

N. Per Section 8.1(D), all Sections above considered not applicable are waived. The Board finds that waiving such requirements will not nullify the intent and purpose of the 2012 Unified Land Use and Development Regulations or the Underhill Town Plan, and such waivers are not requisite in the interest of the public health, safety and general welfare. Sufficient evidence, in the form of submitted permit applications and plan layout, has been submitted to justify the waivers.

IV. DECISION AND CONDITIONS

Based upon the findings above, and subject to the conditions below, the Development Review Board grants approval for the 2-lot subdivision as presented at the final hearing (Board Members Charles Van Winkle, Karen McKnight, Penny Miller, Matt Chapek, and Chuck Brooks voted in favor; Board Member Will Towle recused himself, and did not cast a vote).

A. The site plan and survey shall match (the natural features and zoning districts shall appear on both Mylars).
B. The site plan note regarding the wetlands shall be revised to include local jurisdiction.
C. The parcel code for Lot 2, OR043, shall appear on the final Mylars.
D. A note regarding the location of Lots 1 and 2 within a designated Source Protection Area shall appear on both the site plan and survey.
E. Riparian areas, wetlands, and their associated buffers shall appear on the final site plan and plat as open space per Sections 8.3(B)(5), 8.4(A), and 8.8.
F. Per Sections 3.19(D)(5) and (6), the riparian and wetland buffers shall be maintained as undisturbed, naturally-vegetated buffers. Per Section 3.19(E)(3), the creation of new lawn areas within buffers is not permitted.
G. Per Section 3.2(D)(3), no additional access rights to a public highway shall automatically result from the subdivision or re-subdivision of Lots 1 and 2.
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 final plat and engineering site plan shall be submitted in accordance with Section 7.7.
J. All subdivision and recording fees must be paid in full prior to recording a subdivision plat in accordance with Section 7.7(B).

Dated at Underhill, Vermont this 21st day of NOVEMBER, 2012.

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 12/22/2012.