TOWN OF UNDERHILL
APPLICATION OF PHIL JACOBS
FOR CONDITIONAL USE APPROVAL
FOR AN EARTH DISTURBANCE PROJECT
FINDINGS AND DECISION

In re: Phil Jacobs
73 Upper English Settlement Rd.
(16 Harvest Run)
Underhill, VT 05489

Docket No. DRB-12-10: Jacobs

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding involves review of Phil Jacobs' application for a conditional use approval for an earth disturbance project affecting properties he owns at 73 Upper English Settlement Rd. and 16 Harvest Run in Underhill, VT.

A. On November 27, 2012, Phil Jacobs filed a conditional use/site plan review application for an earth disturbance project affecting properties he owns at 73 Upper English Settlement Rd. and 16 Harvest Run in Underhill, VT. This application was made following a discussion on October 11, 2012. Copies of the application and materials are available at the Underhill Town Hall.

B. On May 15, 2012, copies of the notice of a public hearing were mailed via Certified Mail to the Applicant, Phil Jacobs, 73 Upper English Settlement Rd., Underhill, VT 05489, and to the following abutting neighbors:

1. Eisenberg, 23 Park St., Underhill, VT 05489
2. Shannon, P.O. Box 202, Underhill, VT 05489
3. Bolio, 219 Stone Hill Rd., Williston, VT 05495
4. St. Amour, 54 Poker Hill Rd., Underhill, VT 05489
5. Nichols, 4 Sugar Hill, Underhill, VT 05489
6. Tripp, 17 Meadow Ln., Underhill, VT 05489
7. Ortloff, 70 Upper English Settlement Rd., Underhill, VT 05489
8. Peal/Smolin, 57 Claire Pointe Rd., Burlington, VT 05408
9. Barrett, 78 Upper English Settlement Rd., Underhill, VT 05489
10. Dandurand, 141 Poker Hill Rd., Underhill, VT 05489
11. Toensing/Kohler, 95 Upper English Settlement Rd., Underhill, VT 05489
12. Viau, 6 Harvest Run, Underhill, VT 05489
13. Hunt, 159 Orr Rd., Jericho, VT 05465
14. Richiedei, P.O. Box 278, Underhill, VT 05489

15. Walsh, 4 Depot St., Underhill, VT 05489
16. Bogaczyk, P.O. Box 416, Underhill, VT 05489
17. Gombrich, 6 Depot St., Underhill, VT 05489
18. Covey, TTEEs, 14 Harvest Run, Underhill, VT 05489
19. Clough, P.O. Box 112, Underhill, VT 05489
20. Barnett, 48H Starbird Rd., Jericho, VT 05465
21. United Church of Underhill, P.O. Box 265, Underhill, VT 05489
22. Ferreira, P.O. Box 386, Underhill, VT 05489
23. Jewell, P.O. Box 125, Underhill, VT 05489
24. Decker, 408 VT Rte. 15, Underhill, VT 05489
25. Jacobs, 40 Sugar Hill, Underhill, VT 05489
26. UJFD, P.O. Box 150, Underhill, VT 05489
27. Jurkiewicz/Salzer, 34 Sugar Hill, Underhill, VT 05489
28. Williamson, P.O. Box 66, Underhill, VT 05489
29. Underhill Garage, Inc., P.O. Box 7, Underhill, VT 05489
30. Manning, 421 VT Rte. 15, Underhill, VT 05489
31. Morse, 18 Meadow Ln., Underhill, VT 05489
32. McCaulley, 424 VT Rte. 15, Underhill, VT 05489
33. Nelson, 2 Sugar Hill, Underhill, VT 05489

C. On October 12, 2012 notice of the public hearing on the proposed Jacobs conditional use application was posted at the following places:

1. The property where the extraction occurred, 16 Harvest Run;
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 Deborah Rawson Memorial Library;
9. The Town of Underhill website.

D. On October 14, 2012, notice of a public hearing on the proposed conditional use application was published in *The Burlington Free Press.*

E. The hearing began at 7:01 PM on October 29, 2012.

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

1. Charles Van Winkle, Chair
2. Matt Chapek
3. Chuck Brooks

4. Will Towle
5. Penny Miller
6. Karen McKnight

Kari Papelbon, Zoning & Planning Administrator, also attended the hearing.

G. The hearing was continued to December 3, 2012 at 6:30 PM. The Applicant and all abutting property owners in I(B) above were notified prior to the hearing of the continuance.

H. Present at the continued hearing on were the following members of the Development Review Board:

1. Charles Van Winkle, Chair
2. Matt Chapek
3. Will Towle
4. Penny Miller
5. Karen McKnight

Kari Papelbon, Zoning & Planning Administrator; Phil Jacobs, Applicant (with grandson); Dori Richiedei and Ruth & Joseph Nelson, neighbors, also attended the hearing.

I. 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:

1. Phil Jacobs, 73 Upper English Settlement Rd., Underhill, VT 05489.
2. Dori Richiedei, P.O. Box 278, Underhill, VT 05489.
3. Ruth Nelson, 2 Sugar Hill, Underhill, VT 05489.

J. 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, Phil Jacobs, the Underhill Selectboard, the Underhill Conservation Commission Chair, and the Underhill-Jericho Fire Department;
2. Phil Jacobs' Conditional Use/Site Plan Review Hearing Request (dated 11-27-12);
3. A copy of the Final Plan prepared by O'Leary Burke Civil Associates, PLC (revised 10-13-08);
4. Copies of the photos submitted by a neighbor (5);
5. A copy of the Conditional Use Review Standards Findings Checklist;

6. A copy of the Site Plan Review Standards Findings Checklist;
7. Copies of the tax maps for HR016 and LE073;
8. A copy of the hearing notice published in *The Burlington Free Press* on 10-24-12;
9. A copy of the Final Plan prepared by O'Leary Burke Civil Associates, PLC (revised 10-13-08 – this is a duplicate of the plan included in the info pack);
10. A copy of the Boundary Line Adjustment survey prepared by O'Leary Burke Civil Associates, PLC (dated 5-5-11);
11. A copy of the Google Earth map of HR016 created by ZA/PA Papelbon;
12. A copy of the Vermont Agency of Natural Resources map of 73 Upper English Settlement Rd. created by ZA/PA Papelbon (dated 12-3-12);
13. A copy of the Vermont Agency of Natural Resources map of 16 Harvest Run created by ZA/PA Papelbon (dated 12-3-12);
14. Copies of the photos taken by ZA/PA Papelbon of the extraction on HR016 (dated 10-3-12);
15. Photos of the grading work completed on HR016 submitted by Phil Jacobs (no date).

These exhibits are available in the Jacobs, HR016 & UE073, Conditional Use and 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, Phil Jacobs, seeks conditional use approval for an earth disturbance project affecting two properties he owns. The proposal is to remove 1000 cubic yards of earth and gravel from an existing hill on property at 16 Harvest Run and deposit the material to expand the driveway turnaround at 73 Upper English Settlement Road.

B. The subject properties, 16 Harvest Run and 73 Upper English Settlement Rd., Underhill, VT are located in the Underhill Flats Village Center and Rural Residential zoning districts per Article II, Tables 2.2 and 2.3 respectively of the 2012 Unified Land Use and Development Regulations.

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

1. Article II, Table 2.2: Underhill Flats Village Center District
2. Article II, Table 2.3: Rural Residential District
3. Section 3.14: Performance Standards
4. Section 3.19: Surface Waters & Wetlands
5. Section 4.9: Extraction & Quarrying
6. Section 5.3: Site Plan Review
7. Section 5.4: Conditional Use Review
8. Section 5.5: Waivers & Variances

D. Testimony was received during the hearing from neighbors Dori Richiedei, 12 Harvest Run, and Ruth Nelson, 2 Sugar Hill. See the meeting minutes for details.

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Tables 2.2 and 2.3

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

§3.14: Performance Standards

The Board makes the following findings:

A. The proposed earth disturbance project, with conditions, will not create dangerous, injurious, noxious, or otherwise objectionable conditions that would adversely affect or interfere with the reasonable use of adjoining or nearby properties as the earth disturbance will not change existing drainage patterns, and the earth disturbance will be contained on the Applicant's two properties [Section 3.14(A)].

B. The proposed earth disturbance project, though anticipated to be completed over the next two years, will not result in a significant increase in noise levels in the vicinity so as to be incompatible with the surrounding area. When working on the site, the property owner and/or his contractors will remove a maximum of 4--6 truckloads of material per day between the hours of 8:00 AM and 4:00 PM between the months of June and September [Section 3.14(B)(1)].

C. Any vibration due to the earth disturbance project will be from the use of equipment to remove and truck the material offsite. No additional vibration is anticipated. In order to minimize vibration, it will be a condition of approval for work to be completed in 2 years [Section 3.14(B)(2)].

D. Dust will be controlled utilizing stabilization measures for exposed soil as presented during the hearing, including seeding disturbed areas in accordance with the VT DEC Water Quality Division, Stormwater Section's *The Low Risk Site Handbook for Erosion Prevention and Sediment Control.* Additionally, in order to minimize dust, erosion, and sedimentation of the seasonal stream and nearby wetlands, it will be a condition of approval for the work to be completed in 2 years [Section 3.14(B)(3)].

E. Section 3.14(B)(4)-(10) are not applicable to the proposed conditional use.

§3.19: Surface Waters & Wetlands

The Board finds that there is a seasonal stream identified on the property. Currently there is not a culvert for crossing the stream and there is not a proposal to install one for the project. The Applicant provided testimony at the hearing that he consulted an engineer regarding crossing the stream and that he was advised that no structure was required. The crossing will be discontinued upon completion of the project. All work will be conducted outside of wetland buffer areas.

§4.9: Extraction & Quarrying

The Board makes the following findings:

A. The proposal includes the extraction in excess of 400 cubic yards annually to be used at the Applicant's residence at 73 Upper English Settlement Rd. The proposal is to extract up to 1000 cubic yards over a two-year period. Therefore, the project does not qualify for an exemption under Section 4.9(B).

B. The proposal does not include extraction and quarrying for commercial purposes, and the extraction of material will be moved to the Applicant's residence for the expansion of a driveway turnaround area. Therefore, the Board finds that Sections 4.9(C) through (H) are not applicable to the proposed conditional use project.

§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 occur on a portion of the Applicant's property, and erosion prevention measures to adverse impacts from project are incorporated; existing drainage patterns will be maintained as the

steep drop-off on the hill at 16 Harvest Run has been graded for a gradual slope and the soils are well-drained; both parcels are not above 1500 feet in elevation; no areas of steep slope will be affected on either property as the grading has been completed; the project will cross the seasonal stream on the property during the project period only and wetland buffers on both parcels will not be affected by the project; there are no mapped Special Flood Hazard Areas on either 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, with Conditional Use approval, is compatible with the provisions of the Underhill Flats Village Center and Rural Residential zoning. Soil and slope stabilization measures proposed in the project will mitigate soil erosion, and silt fencing around the project area will mitigate excess siltation of the seasonal stream or off-property wetlands [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 accesses will be used, and no service areas are proposed.

E. The proposed project includes maintaining the existing vegetation for screening. 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 for the project.

G. The proposal includes plans to grade the hill at 16 Harvest Run for safety. The existing swale will be maintained. Erosion control measures will be implemented in accordance with Section 5.3(B)(8) [See Section IV below for conditions].

§5.4: Conditional Use Review

The Board makes the following findings:

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

B. No undue adverse impacts are perceived on the capacity of existing or planned community services and facilities, the character of the area, current bylaws (with Conditional Use approval), or the utilization of renewable energy resources as the proposal is for an onsite earth disturbance project affecting only a portion of the landowner's property at 16 Harvest Run and a small portion of the Applicant's residential property at 73 Upper English Settlement Rd. Per the Applicant's submissions and testimony at the hearing, 1000 cubic yards is the total amount proposed for extraction over a two-year period, with

approximately 4-6 truckloads per day being removed between 8:00 AM and 4:00 PM June through September; therefore, traffic in the vicinity will not be adversely affected [Section 5.4(B)].

C. Site Plan Review Standards have been addressed above.

§5.5: Waivers and Variances

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

IV. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board unanimously grants approval for the Conditional Use application for the earth disturbance project as described at the hearing and in the submitted application documents, with the following conditions:

A. The approval is for the removal of 1000 cubic yards of additional material from 16 Harvest Run to 73 Upper English Settlement Road over the next two years. Up to a maximum of 100 cubic yards per year of the total 1000 cubic yards of material approved for extraction may be diverted to destinations other than 73 Upper English Settlement Road.

B. The provisions of the VT DEC Water Quality Division, Stormwater Section's *The Low Risk Site Handbook for Erosion Prevention and Sediment Control* shall be utilized at 16 Harvest Run for areas impacted by the extraction.

C. All earth disturbance work shall be completed within 2 years and 30 days from the effective date of approval.

Dated at Underhill, Vermont this 17 day of December, 2012.

Charles Van Winkle

Charles Van Winkle, 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 18 JAN 2013