TOWN OF UNDERHILL
APPLICATION OF WARREN PALMER
FOR A REVISION TO AN APPROVED SUBDIVISION
FINAL FINDINGS AND DECISION

In re: Warren Palmer
122 Skunk Hollow Road
Jericho, VT 05465

Docket No. DRB 14-15 Palmer

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a final subdivision revision hearing on the application of Warren Palmer to re-subdivide and re-locate the building envelope on Lot 2 of the previously approved 2009 5-Lot Isabel L. Baslow subdivision on Warner Creek Road in Underhill, VT.

A. On November 4, 2014, Warren Palmer filed an application for a revision to an approved subdivision. A copy of the application and additional information are available at the Underhill Town Hall.

B. On November 7, 2014, a copy of the notice of the preliminary hearing was mailed via Certified Mail to the Applicant, Warren Palmer, 122 Skunk Hollow Road, Jericho, VT 05465, and to the following owners of properties adjoining the property subject to the application:

1. Thomas & Sally Ann Bosley, 4 Baslow Lane, Underhill, VT 05489
2. Russell & Elise Baslow, 13 Baslow Lane, Underhill, VT 05489
3. Francis & Evelyn Comstock, 19 Baslow Lane, Underhill, VT 05489
4. Steven Coia, PO Box 212, Underhill, VT 05489
5. George Smith, 38 Gert's Knob Road, Underhill, VT 05489
6. Maple Station LLC, 1 Town Market Place, Essex Jct., VT 05452
7. Craig & Morgan Luce, 50 N. Underhill Station Rd., Underhill, VT 05489
8. Drew Vandeth & Kristen Juel, 60 N. Underhill Station Road, Underhill, VT 05489
9. Robert & Alisson Richards, 295 Poker Hill Road, Underhill, VT 05489
10. Gary & Elizabeth Francis, 305 Poker Hill Rd., Underhill, VT 05489
11. Douglas & Christine Varney, 329 Poker Hill Road, Underhill, VT 05489
12. Kellog & Eunice Tatro, 1617 VT Route 15, Morrisville, VT 05661
13. Shawn & Michelle Pecor, 772 VT Route 15, Underhill, VT 05489
14. Gretchen Dehart, 779 VT Route 15, Underhill, VT 05489
15. Christopher Greenwood, 780 VT Route 15, Underhill, VT 05489
16. Wayne Ralph Russin, PO Box 417, Underhill, VT 05489
17. Louis D. Lawton, 13 Warner Creek, Underhill, VT 05489
18. Allen Bugbee, PO Box 221, Underhill, VT 05489
19. Garan & Kelly, 17 Warner Creek, Underhill, VT 05489
20. Cynthia & David Glenn, 18 Warner Creek, Underhill, VT 05489
21. Saxon Oaks Co., 122 Skunk Hollow Road, Jericho, VT 05465

22. Marty Baslow, 65 Colonel Page Road, Essex, VT 05452
23. Mark & Daniel Tatro-Lavigne, 799 VT Route 15, Underhill, VT 05489

A copy of the notice was also mailed to McCain Consulting, Inc., 93 S Main St, Waterbury, VT 05676

C. A notice of the final hearing on the proposed subdivision revision was posted at the following places:

1. The property to be developed, WC021
2. The Underhill Town Clerk's office;
3. The Underhill Center Post Office;
4. The Underhill Flats Post Office.

D. On November 12, 2014, notice of a final hearing was published in *The Seven Days Newspaper.*

E. The final hearing began at 6:30 PM on December 1, 2014.

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

- Charles Van Winkle, Chairperson
- Will Towle
- Penny Miller
- Karen McKnight
- Mark Hamelin
- Jim Gilmartin

Planning & Zoning Administrator Sarah McShane and Applicant Warren Palmer 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:

- Warren Palmer, Applicant- 122 Skunk Hollow Road, Jericho, VT 05465
- Louis Lawton, Resident- 13 Warner Creek Road, Underhill, VT 05489

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

a) A copy of W. Palmer's application for Subdivision: Final & Checklist (dated 11/4/14);
b) A copy of the completed Subdivision Standards Findings Checklist (dated 10/27 & 28/2014);
c) A copy of the Site Plans-Warren Palmer, Revision to WW-4-2013-1 for Lot 1 & 2 septic systems, Lot 2 Building Envelope & Creation of Common-land, Sheets 1 of 2, and 2 of 2, prepared by Gunner McCain, McCain Consulting, Inc. dated 10/17/2014;
d) A copy of correspondence from DEC Drinking Water & Groundwater Protection Division (dated 11-14-14);
e) A copy of the zoning map of the area;

f) A copy of the hearing notice as published in Seven Days, posted at three public locations and mailed to abutters;
g) A copy of DRB minutes from 10-19-2009;
h) A copy of the Isabel L. Baslow 5-Lot Subdivision Decision DRB 09-02 (dated 11-9-2009);
i) A copy of the Isabel L. Baslow Subdivision Permit, (date effective 2-1-2010);
j) A copy of the existing Isabel L. Baslow Plat and Subdivision plan as recorded in the Underhill Land Records on hanging file 254A & 255A;
k) A copy of the DRB Decision 11-01 for the 2-Lot subdivision of 13 Baslow Lane (dated 6-1-2011);
l) A copy of the ZBA Findings and Decision (dated 1-9-2006);
m) A copy of the procedure checklist for this meeting;
n) A copy of the Procedural Memo;
o) A copy of the Declaration of Covenants, Conditions, Agreements, Easements and Restrictions for Warner Creek, Underhill, VT (no date).

These exhibits are available in the Palmer, WC021, subdivision file (DRB 14-15) at the Underhill Zoning Office.

II. FINDINGS

Factual Findings

Based on the application, testimony, exhibits, and other evidence, the Development Review Board makes the following findings:

A. The Applicant seeks approval to revise the location of the building envelope as approved on Lot 2 of the 2009 Isabel L. Baslow Subdivision. The subject property is a ±23.0 acre parcel located at 21 Warner Creek Road in Underhill, VT (WC021).

B. The Applicant seeks approval to re-subdivide Lot 2 (21 Warner Creek) into two parcels; a 12.3 acre residential lot and 10.7 acre common-land lot to be owned by the Homeowners Association.

C. The subject property is located in the Rural Residential and Soil & Water Conservation zoning districts as defined in Article II, Table 2.3 and 2.6 of the 2012 Unified Land Use and Development Regulations.

D. No revisions to the road or driveway are proposed.

E. Approval is requested for the project pursuant to the 2012 Unified Land Use and Development Regulations.

III. CONCLUSIONS

The Development Review Board finds the application is in conformance with the following sections of the 2012 Unified Land Use and Development Regulations:

- Table 2.3 – Rural Residential District
- Table 2.6 –Soil & Water Conservation District

- Section 3.2 – Access
- Section 3.7 – Lot, Yard & Setback Requirements
- Section 3.18 – Steep Slopes
- Section 3.19 – Surface Waters & Wetlands
- Section 3.22 – Water Supply & Wastewater Systems
- Section 7.2 – Applicability
- Section 7.8 – Revisions to an Approved Subdivision
- Article VIII – Subdivision Standards

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 2102 Unified Land Use and Development Regulations and the Underhill Town Plan, and such waivers are not requisite in the interest of public health, safety and general welfare. Sufficient evidence, in the form of submitted testimony and plan layout, has been submitted to justify the waiver.

IV. DECISION AND CONDITIONS

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

A. Per Section 7.7 the amended building envelope and boundaries of the common-land Lot shall be recorded on a plat prepared by a certified land surveyor and recorded in the Underhill Land Records within 180 days of this decision.

B. The final plat shall be submitted in accordance with Section 7.7.

C. The common-land lot shall be conveyed to the Homeowners Association by separate deed. Failure to maintain a Homeowners Association and required agreements shall be considered a violation of the subdivision permit.

D. The *Declaration of Covenants, Conditions, Agreements, Easements and Restrictions for Warner Creek* should be updated and recorded in the Underhill Land Records prior to the conveyance of any Lot.

E. The State Wetlands Office should make a determination of the wetlands on the property. If determined to be Class 3 wetlands, the associated buffer indicated on the subdivision plan may be reduced to 25 ft and the Zoning Administrator may issue permits for approved projects outside of the 25 ft buffer.

F. All conditions of the previous 2009 Isabel L. Baslow Subdivision approval shall remain in effect unless specifically amended through this application.

G. A Zoning Permit shall be retained prior to construction in accordance with Section 10.3 of the Unified Land Use & Development Regulations.

H. Nothing in this decision shall be deemed to alter any existing deed restrictions or covenants applicable to the subject property.

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

Dated at Underhill, Vermont this 15 day of December, 2014.

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 16 JAN 15