

TOWN OF UNDERHILL  
APPLICATION OF PHIL JACOBS  
FOR A 5-LOT SUBDIVISION  
PRELIMINARY FINDINGS AND DECISION

In re: Phil Jacobs  
16 Harvest Run (HR016)  
Underhill, VT 05489

Docket No. DRB 16-01

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns lands owned by Phil Jacobs, and Phil Jacobs' preliminary hearing application for a 5-lot subdivision of property located at 16 Harvest Run in Underhill, VT.

- A. On January 5, 2016, Phil Jacobs filed an application for subdivision for the project. A sketch plan review of the project was held on February 1, 2016 and was accepted.
- B. Application for preliminary approval was made on May 16, 2016. On May 17, a copy of the preliminary hearing notices was mailed via certified mail to the following owners of properties adjoining the property subject to the application:
  - a. Robert and Kathleen Covey, PO Box 5, Underhill VT 05489
  - b. David and Dorothy Richiedeji, PO Box 278, Underhill VT 05489
  - c. Matthew and Jacqueline Gombrich, 6 Depot Street, Underhill VT 05489
  - d. Estate of Ronald Viau, 6 Harvest Run, Underhill VT 05489
  - e. Deborah Shannon, PO Box 202, Underhill VT 05489
  - f. Jamie Eisenberg, 12 Park Street, Underhill VT 05489
  - g. Gertrude Hunt, 159 Orr Road, Jericho VT 05465
  - h. Marguerite Walsh, 4 Depot Street, Underhill VT 05489
  - i. Robert and Louise Nichols, 4 Sugar Hill, Underhill VT 05489
  - j. Joseph and Ruth Nelson, 2 Sugar Hill, Underhill VT 05489
  - k. Alan and Bonita Morse, 18 Meadow Lane, Underhill VT 05489
  - l. Emmet and Paige Manning, 421 VT Route 15, Underhill VT 05489
  - m. Malachi and Shannon McCauley, 424 VT Route 15, Underhill VT 05489
  - n. Underhill-Jericho Fire Department, PO Box 150, Underhill VT 05489
  - o. Brett Decker, 408 VT Route 15, Underhill VT 05489
  - p. Eben Widland, 8 Jacobs Hill, Underhill VT 05489
  - q. Aaron Brillhard, 16 Jacobs Hill, Underhill VT 05489
  - r. Randy and Kelly Jewell, 14 Jacobs Hill, Underhill VT 05489
  - s. Tobin and Rebecca Clough, 18 Jacobs Hill, Underhill VT 05489
  - t. Jason and Jodie Ferreira, 22 Jacobs Hill, Underhill VT 05489
  - u. John Pepi, 26 Jacobs Hill, Underhill VT 05489

A hearing was scheduled for June 6, 2016.

- C. On May 17, 2016, notice of the public hearing was posted at the following places:
  - 1. The Underhill Town Clerk's office;
  - 2. The Underhill Center Post Office;
  - 3. The Underhill Flats Post Office.
- D. During the week of May 21, 2015, the notice of the public hearing was published in the *Burlington Free Press*.
- E. The preliminary plan hearing convened at 6:35 PM on June 6, 2016. Present at the preliminary hearing on 6/6/2016 were the following voting members of the DRB: Charles Van Winkle, Karen McKnight, Mark Green, Matt Chapek, Penny Miller, Will Towle.

Applicant Phil Jacobs and Consultant Paul O'Leary (O'Leary-Burke) also testified at the hearing.

- F. 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:
  - a. William Widlund (8 Jacobs Hill Road)
  - b. Alan Morse (18B Meadow Lane)
  - c. Aaron Brillhart (16 Jacobs Hill Road)
  - d. Louise Nichols (4 Sugar Hill Road)
- G. Those who sent letters to be read at the hearing were:
  - a. Robert and Kathleen Covey
  - b. Aaron Brillhart (2 letters)
  - c. Gertrude Hunt
  - d. Tobin Clough
- H. At the June 6, 2016 meeting, the decision was made to continue the hearing. A site visit was held at the property at 6:35 on June 13, 2016. No testimony was taken during the site visit, but the board expressed a desire to become more familiar with the existing drainage patterns on the site.
- I. The preliminary hearing re-convened on June 20, 2016. Present at the hearing on 6/20/2016 were the following voting members of the DRB:
  - a. Charles Van Winkle, Chairman
  - b. Will Towle, Vice-Chairman
  - c. Penny Miller, Secretary
  - d. Matt Chapek
  - e. Mark Greene
  - f. Karen McKnight
- J. Also testifying at the hearing were Applicant Phil Jacobs and Consultant Paul O'Leary (O'Leary-Burke).
- K. The following interested parties were present at the hearing:

Dori Richiedei, Harvest Run, Underhill VT

- L. Those who sent letters to be read at the hearing were:
  - a. Aaron Brillhart (16 Jacobs Hill Road)
- M. During the course of the hearing the following exhibits were submitted to the Development Review Board:
  - a. Phil Jacobs Application for Subdivision: Preliminary (received 5/16/2016);
  - b. Letter from the DRB to the applicant following sketch plan review (2/16/2016);
  - c. Site Plan Review Standards Findings Checklist, 4 pages (5/16/2016);
  - d. Steep Slopes Map from ANR Natural Resources Atlas;
  - e. Subdivision Phase 2 Plan, page 1 of site plan packet, prepared by O'Leary Burke Civil Associates, (5/10/2016);
  - f. Min's Lane Plan View, page 2 site plan packet, prepared by O'Leary Burke Civil Associates, (5/10/2016);
  - g. Min's Lane Road Profile, page 3 of site plan packet, prepared by O'Leary Burke Civil Associates, (5/10/2016);
  - h. Roadway and Erosion Control Details, page 4 of site plan packet, prepared by O'Leary Burke Civil Associates, (5/10/2016);
  - i. Water Details, page 5 of site plan packet, prepared by O'Leary Burke Civil Associates, (5/10/2016);
  - j. Sewage Disposal and Landscaping Details, page 6 of site plan packet, prepared by O'Leary Burke Civil Associates, (5/10/2016)
  - k. Preliminary plat, prepared by O'Leary Burke Civil Associates, (5/10/2016);
  - l. A copy of the hearing notice as sent to the applicant and property abutters, publicized in three locations and published in the *Burlington Free Press* the week of 5/23/2016;
  - m. Email from Tobin Clough concerning the development;
  - n. Email from Aaron Brillhart concerning the development (1 of 2);
  - o. Email from Aaron Brillhart concerning the development (2 of 2) (dated 6/13);
  - p. Copy of Jacobs Hill Road Maintenance Agreement (Vol168/pg 222-223);
  - q. Copy of Declaration of Covenants, Conditions and Restrictions Jacobs Subdivision Jacobs Hill Road Lots 1-6 (Vol 168/Pg 217-221);
  - r. First Amendment to Declaration(Vol 173/Pg 450);
  - s. Preliminary Access Permit 16-03, approved May 24, 2016;
  - t. A copy of the procedure checklist for this meeting; and
  - u. Exhibit W: Draft Road Maintenance Agreement (dated 6/2/2016);
  - v. Exhibit X: Draft Road Declaration of Covenants, Revised (added to packet 6/2/3016);
  - w. Exhibit Y: Hydraulic Report re: the culvert on Harvest Road (added to packet 6/2/2016);
  - x. This memorandum.

These exhibits are available in the Jacobs HR016 subdivision file (DRB 16-01) at the Underhill Planning and 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 a permit to subdivide land. The subject property is located at 16 Harvest Run in Underhill, VT (HR016).
- B. The property is located in the Underhill Flats Village Center District as defined in Article II, Table 2.2 of the 2014 Underhill Land Use and Development Regulations (ULUDR).
- C. Phil Jacobs is the record owner of the property.
- D. Subdivision approval is requested for the project pursuant to review under the following sections of the ULUDR.
  - a. Article II, Table 2.2 – Underhill Flats Village Center District (pg. 9)
  - b. Section 3.2 – Access (pg. 27)
  - c. Section 3.7 – Lot, Yard & Setback Requirements (pg. 35)
  - d. Section 3.17 – Source Protection Areas (pg. 52)
  - e. Section 3.18 – Steep Slopes (pg. 53)
  - f. Section 3.19 – Surface Waters & Wetlands (pg. 60)
  - g. Section 3.22 – Water Supply & Wastewater Systems (pg. 65)
  - h. Section 7.2 – Applicability (pg. 132)
  - i. Section 7.3 – Sketch Plan Review (pg. 134)
  - j. Section 7.4 - Application Requirements (pg. 136)
  - k. Section 7.5 - Preliminary Subdivision Review (pg. 137)
  - l. Article VIII – (pg. 143)
    - i. Section 8.1 Applicability - The board finds that the proposed subdivision shall be evaluated under the subdivision standards outlined in the Town of Underhill, Unified Land Use and Development Regulations, as amended March 4, 2014.
    - ii. Section 8.2 General Standards:
      - 1. Development suitability - The board finds that the subdivision is suitable for the area.
      - 2. Development density - The board finds that the subdivision is consistent with the development density for the zoning district.
        - a. Existing site conditions - The board finds that the subdivision is compatible with the existing site conditions and the layout and design integrates into the land and takes advantage of topography, and is respectful of existing site features and natural amenities.
      - 3. Underhill Town Plan & Development Regulations – The board finds that the subdivision is in preliminary conformance with the UULUDR.
      - 4. District settlement patterns – namely Underhill Flats Village Center District - The board finds that the subdivision is concentrating density in development patterns consistent with village development patterns.
      - 5. Lot layout – The board finds that the subdivision is compatible with the surrounding area.
      - 6. Building envelopes – The board finds that the applicant is proposing building envelopes that are more restrictive than allowed by the UULUDR. The board makes no requirement in this regard, these building envelopes shall be enforced by deed restrictions.
      - 7. Survey Monuments - The board makes no findings with regard to survey monuments.
      - 8. Landscaping & screening - The board makes no findings, nor requirements with regard to landscaping and screening.

9. Energy conservation – The board makes no findings, nor requirements with regard to energy conservation.
- iii. Section 8.3 Natural & Cultural Resources:
    1. Resource identification and protection – The board finds there are no natural or cultural resources identified or protected areas proposed.
    2. Surface waters, wetlands & floodplains – The board finds that other than minor drainage runoff, there are no major surface waters traversing the project, there have been no wetlands identified and there are no mapped floodplains in the project area.
    3. Rock outcrops, steep slopes, hillsides & ridgelines – The board finds there are no rock outcrops, or ridgelines in the project area. The board finds hillsides are a general feature of the project. The board finds some steep slopes are involved with the project, but development areas are not proposed within these areas.
    4. Natural areas & wildlife habitat – The board finds there are no mapped natural areas or wildlife habitat areas in the project area.
    5. Historic & cultural resources – The board finds there are no historic or cultural resources within the project.
    6. Farmland – The board finds no impact on farmland.
    7. Forestland – The board finds no impact to forestland.
  - iv. Section 8.4 Open Space & Common Land
    1. Open Space – The board makes no findings or requirements at this time with regard to open space.
    2. Common land – The board makes no findings or requirements at this time with regard to common land.
    3. Legal requirements - The board finds that the original Harvest Run development was not included in the covenants governing Jacobs Hill Road. However, the board finds a proposed maintenance agreement that includes Jacobs Hill Road, Harvest Run and the proposed Min's Lane (so called).
  - v. Section 8.5 Stormwater management & erosion control – The board finds an extensive analysis has been conducted regarding existing drainage patterns during the 10 year and 25-year design frequency storm events.
    1. The board finds (3) three different methodologies were used to conduct the analysis.
    2. The board finds the prior development in the vicinity of the project altered the drainage patterns, thereby directing more surface water flow through the project area.
    3. The board finds based on evidence submitted by the applicant, that runoff from the 25-year design storm event may accumulate on adjacent properties west of the project. The board requests a management plan for the 25-year event.
  - vi. Section 8.6 Transportation facilities – The board finds a Preliminary Access Permit has been approved by the Selectboard (Exhibit W).
    1. The board finds the proposed development road has the capacity to accommodate vehicular traffic from the proposed subdivision.

2. The board finds the additional traffic generated by the proposed development will not exacerbate existing traffic and circulation on both Jacobs Hill Road and Harvest Run.
  3. Driveways – The board finds evidence, and is reasonably assured, that the driveways to the new lots can be constructed to these regulations.
  4. Development roads – The board finds based on the evidence submitted that the proposed development road has the capacity to accommodate vehicular traffic generated by the proposed development.
  5. Design & construction - The board finds based on the evidence submitted that the proposed development road meets or exceeds the minimum design requirements with respect to Rights-of-way, Grades, Drainage, Travel Lanes, Surfacing, and Dead Ends as outlined in the UULUDR.
  6. Improvements – The board finds the existing road infrastructure on Harvest Run requires drainage improvements and continued maintenance.
  7. Acceptance – The board finds the proposed development road will not be accepted for ownership by the town.
  8. Names, Signs and 911 Locator Numbers – The board finds that names, signs and 911 numbers shall be required for final approval.
  9. Parking facilities – The board finds that no parking facilities, other than those to be expected with single family house, are proposed.
  10. Transit facilities – The board finds that no transit facilities are proposed.
  11. Pedestrian Access – The board finds no specific infrastructure is proposed regarding pedestrian access. The board finds that the nature of development at the project and surrounding area is sufficient for pedestrian access.
- vii. Section 8.7 Public Facilities & Utilities
1. Public Facilities – the board makes no findings with regard to public facilities.
  2. Fire Protection - the board makes no findings with regard to fire protection.
  3. Water Systems – the board finds the proposed lots will be served by the Jericho Underhill Fire District.
  4. Wastewater Systems – the board finds the proposed lots will be served by private wastewater systems
  5. Utilities - the board finds electrical, communication, and media utilities shall be located below grade.
- viii. Section 8.8 Legal Requirements – the board finds the proposed maintenance agreements includes Harvest Run, Jacobs Hill Road, and Min’s Lane.

### III. Conclusion

The Board concludes that, based on the evidence submitted and the above findings that the proposed development generally conforms to the Unified Land Use and Development Regulations.

### IV. Decision and Final Hearing Requirements

Based upon the findings above, and subject to the supplemental hearing conditions below, the Development Review Board grants preliminary approval for the subdivision as presented at the preliminary hearing with the following conditions.

1. The board requires the applicant, formalize upon approval, the proposed roadway maintenance agreement to include Harvest Run, Jacobs Hill Road and Min's Lane.
2. The board requires the applicant to prepare a priority list of improvements to Harvest Run with a proposed cost share arrangement, and to provide evidence (certified mail or otherwise) that the list has been forwarded to residents along Harvest Run.
3. The board requires the applicant to prepare an annual maintenance plan for Harvest Run with annual cost share estimates to cover plowing and annual maintenance of Harvest Run and to provide evidence (certified mail or otherwise) that is the plan has been forwarded to residents along Harvest Run.
4. The board requires the applicant to provide a stormwater management plan for the 25-year design storm event.
5. The board requires the applicant to include parcel codes on the final plat.

Dated at Underhill, Vermont this 3<sup>rd</sup> day of August, 2016

---

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 **2 September, 2016.**