

TOWN OF UNDERHILL  
APPLICATION OF LUELLA LAMPHERE, ESTATE (CO-OWNER PAT LAMPHERE)  
FOR A 2-LOT SUBDIVISION  
FINAL FINDINGS AND DECISION

In re: Luella Lamphere, EST., Pat Lamphere C/O  
116 Beartown Road  
Underhill, VT 05489

Docket No. DRB-15-05

**Decision:** Approved with conditions (see Section IV – Decisions and Conditions of Approval)

**I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns the hearing for a Final Subdivision application submitted by the Luella Lamphere Estate (co-owner Pat Lamphere) regarding a 2-lot subdivision located at 116 Beartown Road in Underhill, Vermont.

- A. On May 22, 2015, Pat Lamphere filed an application for subdivision for the abovementioned project. A sketch plan review of the project was held on June 1, 2015 and was accepted.
- B. Application for Preliminary Approval was made on August 31, 2015. A hearing was scheduled for October 5, 2015 at that time. The hearing was later cancelled and then rescheduled for February 1, 2016 (note: a site visit was held at the property at 8:30 am on January 30, 2016, in which no testimony was taken on-site). A Preliminary Approval decision was issued by the Development Review Board on March 7, 2016.
- C. On June 13, 2016, an application for Final Subdivision Approval was received, determined complete by the “acting” Zoning Administrator, Brian Bigelow, and a hearing date scheduled for July 18, 2016.
- D. On June 29, 2016 a copy of the notice of final hearing was mailed via Certified Mail to the following owners of properties adjoining the property subject to the application:
  1. State of Vermont Military Department
  2. Karen McKnight
  3. Marcel Fortin
  4. Thomas Hartswick and Debra Shuma-Hartswick
  5. Town of Underhill Selectboard – hand delivered by Town Administrator
  6. Pat Lamphere – hand delivered by the Town Administrator
- E. During the week of June 26, 2016, notice of the public hearing for the proposed Lamphere subdivision was posted at the following places:
  1. The Underhill Town Clerk’s office;
  2. The Underhill Center Post Office; and

3. The Underhill Flats Post Office.

- F. During the week of June 26, 2016, the notice of public hearing was published in the *Burlington Free Press*.
- G. The final hearing convened at 7:05 pm on July 18, 2016 at the Town of Underhill Town Hall.
- H. Present at the final hearing were the following voting members of the Development Review Board: Chair, Charles Van Winkle; Board Member, Mark Green; Board Member Karen McKnight; Board Member, Penny Miller; and Board Member, Will Towle. Board Member McKnight recused herself as an interested party and as an adjoining property owner.

Andrew Strniste, the Town's Planning Coordinator, also testified at the hearing.

- I. At the outset of the hearing, Chair 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. Karen McKnight
  - 2. Michael Fullem
- J. In support of the final plat application, the following exhibits were submitted to the Development Review Board:

- Exhibit a – Luella Lamphere Estate (c/o Pat Lamphere) Application for Subdivision: Final, received 6/6/2016;
- Exhibit b – Subdivision Checklist: Final Hearing (received 6/6/2016);
- Exhibit c – Subdivision Site Plan Luella Lamphere Estate prepared by JH Stuart Associates, dwg 1 of 2, 10/28/2016, revised 6/2/2016;
- Exhibit d – Close-up of Site Plan, revised, prepared by JH Stuart Associates, showing correct driveway and building envelope location, dated 6/17/2016;
- Exhibit e – At-Grade Wastewater Plan prepared by JH Stuart Associates, dwg 2 of 2, dated 8/11/2015;
- Exhibit f – A copy of the Wastewater Permit (WW-4-4473), dated 8/11/2015
- Exhibit g – A copy of the Access Permits granted by the Selectboard, dated 12/28/2015;
- Exhibit h – A copy of the Access Permit granted by the Selectboard, dated 5/24/2016;
- Exhibit i – A copy of the ability to serve letter from the UJFB, dated 6/1/2015;
- Exhibit j – A copy of the ability to serve letter from the MMMUSD, dated 12/1/2015;
- Exhibit k – The signed decision for the preliminary hearing on this application, dated 3/7/2016;
- Exhibit l – A copy of the hearing notice as sent to the application and property abutters, publicized in three locations and published in the Burlington Free Press on 7/2/2016;
- Exhibit m – A copy of the easement language;
- Exhibit n – A copy of the staff report; and
- Exhibit o – A copy of the procedure checklist

All exhibits are available for public review in the Lamphere (BE116) subdivision file (DRB 15-05) at the Underhill Zoning & Planning office.

## **II. FINDINGS**

The Minutes of the meetings, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to these Minutes for a summary of the testimony.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the Underhill Unified Land Use and Development Regulations (ULUDR):

### **A. ARTICLE II, TABLE 2.4 WATER CONSERVATION DISTRICT**

The Board finds that the newly created Lot 2 will not meet the frontage requirement; however, a permanent access easement for ingress and egress has been provided and illustrated that it allows access via a 30 feet right-of-way to Lot 2, thereby complying with §3.2.A. The Board finds that Lot 3 meets the road frontage requirements and that the building envelope will meet all of the setback requirements.

### **B. ACCESS, SECTION 3.2**

The Board finds that the access permit for Lot 2 was received from the Selectboard on May 24, 2016 (Exhibit h: Permit A16-04) and satisfies the requirements of § 3.2(C), noting that no development is proposed for Lot 2 at this time, and that a 30 feet easement will provide access to the lot.

The Board finds that the access permit for Lot 3 that was received from the Selectboard on December 22, 2015, (Exhibit f: Permit A15-17) also satisfies the requirements of § 3.2(C).

### **C. LOT, YARD & SETBACK REQUIREMENTS, SECTION 3.7**

The Board finds that both of the proposed lots will meet the minimum acreage requirement of five acres. Furthermore, the Board finds that Lot 3 will meet the frontage requirements, whereas Lot 2 will not meet the frontage requirement, but meets the access requirement with a connecting right-of-way of 30 feet.

### **D. SOURCE PROTECTION AREAS, SECTION 3.17**

The proposed subdivision is within a designated groundwater source protection area. The Board finds that the subdivision will not have a negative effect on the Source Protection Area as a Wastewater System and Potable Water Supply Permit has been issued by the Vermont Department of Environmental Conservation (Exhibit f: Permit WW-4-4473).

### **E. STEEP SLOPES, SECTION 3.18**

The board finds that the creation of lots will not create a situation where development on steep slopes cannot be avoided.

### **F. SURFACE WATERS & WETLANDS, SECTION 3.19**

The Board finds that there are no surface waters or wetlands on the lots that will be formed or

adversely impacted as a result of the subdivision (Lots 2 & 3). While Lot 1 contains Mill Brook, any proposed development shall abide by zoning setbacks in effect at the time of the permit application.

#### G. **WATER SUPPLY & WASTEWATER SYSTEMS, SECTION 3.22**

The Board finds that the proposed subdivision has an adequate water supply and any proposed wastewater disposal system will not adversely affect the groundwater. The board finds that the issuance of a wastewater permit from the Vermont Department of Environment Conservation substantiates this finding (Exhibit f: Permit WW-4-4473).

#### H. **GENERAL STANDARDS, SECTION 8.2**

**Development Suitability:** The Applicant seeks a permit to subdivide land. The subject property is a residual  $\pm 10$ -acre parcel (Lot #2) from a previous 2-Lot subdivision approved by the Underhill Development Review Board in a decision dated November, 2014. The parcel at issue is located at 116 Beartown Road in Underhill, Vermont (BE116). The Board finds that the proposed development is suitable and compatible with the surrounding area.

**Development Density:** The proposed subdivision is located within the Water Conservation District, in which the minimum lot size is 5 acres. The Board finds that the proposed development density is consistent with the zoning district and the surrounding area.

**Existing Site Conditions:** The existing site conditions are comprised of former pasture, abandoned gravel extraction area and mixed early growth woodland comprising of softwood and emerging hardwoods. The Board finds that the proposed development will not adversely affect the existing site conditions.

**Underhill Town Plan & Regulations:** The Board finds that the proposed development is consistent with the goals of the Underhill Town Plan and conforms to the ULUDR as amended.

**District Settlement Patterns:** The Board finds that the proposed subdivision will be designed and configured as to not cause an undue adverse impact to existing forest resources and environmentally sensitive upland areas. The Board also finds that the lots are configured in a way that will maintain the contiguous tracts of open land between adjoining parcels.

**Lot Layout:** The Board finds that the proposed lot layout conforms to the desired district settlement patterns, meet the minimum lot size and density requirements, conform to lot and yard requirements, and avoid irregularly shaped lots.

**Building Envelopes:** The Board finds that suitable areas for development are available on each lot. The Board finds that the building envelopes suitable for the construction of single family homes or other allowable development shall conform to the zoning regulations in effect at the time of development. The Board finds that the building envelope shown on the plans is not binding and shall be subject to the setbacks requirements in the Unified Land Use and Development Regulations (ULUDR) in effect at the time of permit applications.

**Landscape & Screening:** The Board finds that there is no need for specified landscaping and screening resulting from the development.

**Energy Conservation:** The Board finds there are no specific energy conservation measures proposed with the development, but development on the property is subject to building performance standards in effect at the time of the application.

**I. NATURAL & CULTURAL RESOURCES, SECTION 8.3**

The Board finds that the proposed subdivision and proposed development will not cause any adverse effects on natural or cultural resources.

**J. OPEN SPACE & COMMON LAND, SECTION 8.4**

The Board finds that land will be set aside to be preserved for open space, and that the land will be configured in a way that is contiguous with existing and potential open space on adjacent parcels.

**K. STORMWATER MANAGEMENT & EROSION CONTROL, SECTION 8.5**

The Board finds sufficient evidence that stormwater management will conform to the ULUDR.

**L. TRANSPORTATION FACILITIES, SECTION 8.6**

**Access & Driveways:** The Board finds that the proposed subdivision and proposed development access location, specifically Lot 3, conforms to the requirements as outlined in § 3.2.D.10. An access permit for Lot 3 was received from the Selectboard on December 22, 2015 (Exhibit g: Permit A15-17). Furthermore, the Board finds that a thirty-foot access easement for ingress and egress has been provided for Lot 2, and therefore conforms to the ULUDR. An access permit for Lot 2 was received from the Selectboard on May 24, 2016 (Exhibit h: Permit A16-04).

**Travel Lanes and Shoulder Widths, Rural Roads:** The Board finds that the travel lanes and shoulder widths of the project access road conform to the VAOT design standards B-71, which is incorporated as part of the ULUDR.

**M. PUBLIC FACILITIES & UTILITIES, SECTION 8.7**

The Board finds that there are no public facilities proposed with this project. The Board also finds that electric, data and communication utilities are proposed to be underground and conform to the ULUDR.

**N. LEGAL REQUIREMENTS, SECTION 8.8**

The Board finds that the applicant meets all of the legal requirements of the ULUDR.

**III. CONCLUSION**

The Board is satisfied with the level of investigation, engineering and evaluation conducted in the application submittal and review process concerning the abovementioned project. The Board thoroughly reviewed all aspects of the proposal under the evaluation criteria in the ULUDR.

The Board concludes that the level of detail requested was met, and therefore, there will be no undue adverse impact to the Town from the proposed development.

#### **IV. DECISIONS AND CONDITIONS OF APPROVAL**

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

1. Modifications to driveway design and location within an individual lot to access Lot 2 shall be governed by the Underhill Selectboard, and do not need to come before this Board for approval.
2. Any new electric, data and communication utilities shall be underground.
3. The conditions of the ANR Wastewater System and Potable Water Supply Permit shall be incorporated herein.
4. The E-911 Codes for the lots shall be posted per the Underhill Jericho Fire Department specifications prior to the issuance of an occupancy permit.
5. Per § 7.2(B), no land shall be subdivided until final subdivision approval has been obtained from the DRB and the approved subdivision plat is recorded in the Underhill Land Records.
6. 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 has been approved from the DRB, and the final Mylars have been recorded in the Underhill Land Records [see § 7.2(C)].
7. The parcel codes for all Lots shall appear on the final Mylars. Prior to submitting the Mylars, please contact the Zoning Administrator for the parcel codes.
8. The building envelope as shown on the subdivision plat is non-binding by the town.
9. The driveway outside of the right-of-way shall be removed from the final Mylar submittal.
10. The final plat and engineering site plan(s) shall be submitted for recording within 180 days of the date of this approval in accordance with § 7.7.
11. All subdivision and recording fees must be paid in full prior to recording a subdivision plat in accordance with § 7.7(B)

Dated at Underhill, Vermont this 30<sup>th</sup> day of August, 2016.

---

Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environment 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 **30 September 2016**.