



# Town of Underhill

## Development Review Board

### Findings and Decision

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#### PRELIMINARY SUBDIVISION APPLICATION OF TOMASI LIVING TRUST c/o MARTHA TOMASI LANE FOR A 2-LOT SUBDIVISION

In re: Tomasi Living Trust c/o Martha Tomasi Lane  
79 Pleasant Valley Road (PV079)  
Underhill, VT 05489

Docket No. DRB-17-02

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

#### I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a preliminary subdivision application submitted by Tomasi Living Trust c/o Martha Tomasi Lane regarding a 2-lot subdivision of property located at 79 Pleasant Valley Road in Underhill, Vermont.

- A. On February 6, 2017, Martha Tomasi Lane on behalf of the Tomasi Living Trust filed a sketch plan review application for the abovementioned project. A sketch plan review meeting of the project was held on February 20, 2017 and a letter of acceptance was issued on March 3, 2017.
- B. On May 7, 2017, Martha Tomasi Lane on behalf of the Tomasi Living Trust filed an application for preliminary approval for the abovementioned project. Planning Director & Zoning Administrator, Andrew Strniste received the application and determined that it was complete shortly thereafter. A site visit was scheduled to commence on Thursday, June 1, 2017 at 6:00 PM, while the hearing date was scheduled for 7:45 PM and at Underhill Town Hall on June 5, 2017.
- C. On May 10, 2017, a copy of the notice of the preliminary subdivision review hearing was mailed via certified mail to the following property owners adjoining the property subject to the application:
  1. PV068 – Irene Linde Life Estate, Robert & Philip Linde Remaindermen, P.O. Box 64, Underhill Center, VT 05490
  2. PV070 – Ann W. Linde & Nathan Goldman, 70 Pleasant Valley Road, Underhill, VT 05489
  3. PV095 – Peter J. & Cynthia T. Seybolt Trustees, P.O. Box 199, Underhill Center, VT 05490
  4. PV099 – Carolyn S. Gregson, P.O. Box 36, Underhill Center, VT 05490
  5. SY007, Formerly PV109 – Richard J. & Barbara A. Albertini, John J. & Christine M. Albertini Trustees, P.O. Box 168, Underhill Center, VT 05490
  6. SY011, Formerly PV109 – Richard J. & Barbara A. Albertini, John J. & Christine M. Albertini Trustees, P.O. Box 168, Underhill Center, VT 05490

7. PV139 – Richard J. & Barbara A. Albertini, P.O. Box 168, Underhill Center, VT 05490
8. MT002X [*Hand Delivered*] – Town of Underhill, P.O. Box 120, Underhill, VT 05489
9. IS050 – Timothy S. & Jane M. Reny, P.O. Box 106, Underhill Center, VT 05490
10. IS076 – Johannes & Susan Jobst, 76 Irish Settlement Road, Underhill, VT 05489
11. IS084 – Frank & Michelle T. Jackson, P.O. Box 75, Underhill Center, VT 05490
12. IS094 – Sandra Murphy, 94 Irish Settlement Road, Underhill, VT 05489
13. NR003 – John & Denise Angelino, 3 New Road, Underhill, VT 05489
14. Applicant: PV079 – Tomasi Living Trust c/o Martha Tomasi Lane, 286 Ponus Ridge, New Canaan, CT 05489
15. Consultant: Grover Engineering, P.C., 2044 Main Road, Huntington, VT 05462

D. During the week of May 7, 2017, notice of the public hearing for the proposed Tomasi Preliminary Subdivision hearing 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.

E. On Saturday, May 13, 2017, the notice of public hearing was published in the *Burlington Free Press*.

F. A site visit at the property located at 79 Pleasant Valley Road, Underhill, Vermont, commenced at 6:00 pm on June 1, 2017.

G. Present at the site visit were the following members of the Development Review Board:

1. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member, Karen McKnight
5. Board Member, Penny Miller
6. Board Member, Stacey Turkos

Municipal representatives and members of the public present during the site visit were:

7. Planning & Zoning Administrator, Andrew Strniste
8. Conservation Commission Member, Amy Golodetz
9. Applicant's Engineer, Dean Grover from Grover Engineering
10. Abutting Neighbor, Irene Linde
11. Abutting Neighbor, Ann W. Linde
12. Abutting Neighbor, Nathan Goldman

H. The preliminary subdivision review hearing began at 8:00 PM on June 5, 2017 at the Town of Underhill Town Hall.

I. Present at the preliminary subdivision hearing were the following members of the Development Review Board:

1. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Matt Chapek

3. Board Member, Mark Green
4. Board Member, Karen McKnight
5. Board Member, Penny Miller
6. Board Member, Stacey Turkos

Also in attendance was Staff Member, Andrew Strniste, Planning Director & Zoning Administrator.

Others present at the hearing were:

1. Dean Grover, Grover Engineering, Applicant's Engineer and Representative (2044 Main Road, Huntington, VT 05462)
2. Irene Linde, Abutting Neighbor (68 Pleasant Valley Road, Underhill, VT 05489)
3. Ann W. Linde, Abutting Neighbor (70 Pleasant Valley Road, Underhill, VT 05489)
4. Nathan Goldman, Abutting Neighbor (70 Pleasant Valley Road, Underhill, VT 05489)
5. John Butler, Underhill Resident (621 Irish Settlement Road, Underhill, VT 05489)
6. Daniel Lee, Underhill Resident (15 Range Road, Underhill, VT 05489)

J. 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. Dean Grover, Grover Engineering, Applicant's Engineer and Representative
2. Irene Linde, Abutting Neighbor
3. Ann W. Linde, Abutting Neighbor
4. John Butler, Underhill Resident

K. In support of the final subdivision application, the following exhibits were submitted to the Development Review Board:

- Exhibit A - Tomasi Final Subdivision Review Staff Report
- Exhibit B - Application for Preliminary Subdivision Review
- Exhibit C - Correspondence from Applicant
- Exhibit D - Certificate of Service
- Exhibit E - Sketch Plan Review Acceptance Letter
- Exhibit F - ANR Project Review Sheet
- Exhibit G - Draft Easements
- Exhibit H - MMU Ability to Serve Letter
- Exhibit I - Email from Seybolt
- Exhibit J - Subdivision Plat
- Exhibit K - Vicinity Plan
- Exhibit L - Site Plan
- Exhibit M - Driveway Details
- Exhibit N - PV079 Rules of Procedure Hearing

One additional exhibit was submitted during the hearing.

Exhibit O - Proposed Building Envelope Modification

The exhibits submitted as part of the sketch plan application, except as amended above, are also incorporated into this decision.

All exhibits are available for public review in the PV079 Preliminary Subdivision Review file (DRB 17-02) at the Underhill Zoning & Planning office.

## **II. FINDINGS**

The Minutes of the June 5, 2017 meeting, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to the 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):

### ***FACTUAL FINDINGS***

The applicant, the Tomasi Living Trust, c/o Martha Tomasi Lane, record owner of the property located at 79 Pleasant Valley Road in Underhill, VT, is seeking a subdivision permit to subdivide land. The property is located in the Rural Residential and Water Conservation zoning districts as defined in Article II, Tables 2.3 & 2.4 of the 2014 Underhill Unified Land Use & Development Regulations.

### ***ARTICLE II – ZONING DISTRICTS***

#### **A. ARTICLE II, TABLE 2.3 – RURAL RESIDENTIAL DISTRICT**

The Board finds that the focus of the proposed subdivision and proposed development are not located in the Rural Residential District.

#### **B. ARTICLE II, TABLE 2.4 – WATER CONSERVATION DISTRICT**

The Board finds that the newly created lot will meet the zoning requirements of the Water Conservation District.

### ***ARTICLE III – GENERAL REGULATIONS***

#### **A. SECTION 3.2 – ACCESS**

The Board finds that a preliminary access permit (Access Permit #: A-17-04) for Lot 2 was received from the Selectboard on January 31 2017, which was approved with conditions.

#### **B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS**

The Board finds that the proposed lot and proposed development will meet the requirements of the Water Conservation zoning district. One principal use is proposed for each lot, both single-family dwellings, which are permitted per Table 2.4.B.5. Both lots meet the minimum frontage requirement of 300 feet. The applicant has indicated that he will be enlarging the building envelope as part of the Final Subdivision Review application, but will be satisfying the requirements of the zoning district. The applicant shall also determine if the remnants of the old barn foundation on Lot 1 may be utilized for reconstruction of a barn at any time by the present or future owner. If so, the applicant should request a setback waiver as part of Final Subdivision Review for the Board to discuss and review.

#### **C. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS**

The Board finds that there is sufficient evidence to believe that the applicants will meet the parking requirement of two spaces as required per table 3.1.

**D. SECTION 3.17 – SOURCE PROTECTION AREAS**

The Board finds that the subdivision/development is located within a Groundwater Source Protection Area: however, the submission of a Wastewater Systems & Potable Water Supply permit, which will be required as part of the Final Subdivision Review application, satisfies the presumption that this source protection area will not be adversely impacted.

**E. SECTION 3.18 – STEEP SLOPES**

The Board finds that the existing lot contains areas of steep slopes (15-25%) and very steep slopes (>25%); however, the applicant has identified a building envelope that allows development to be constructed outside of these areas, and therefore, there will be a *de minimis* impact on the areas of steep slopes.

**F. SECTION 3.19 – SURFACE WATERS & WETLANDS**

The Board finds that no wetlands were identified on either lot. While an unnamed stream is located on the northern part of the lot, the proposed development is to occur over 1,200 feet from the stream. Therefore, the newly proposed lot, and any associated development as represented by the applicant will not be located in the vicinity of these features, and therefore, will cause little to no impact.

**G. SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS**

The Board finds that the applicant has not submitted a Wastewater System and Potable Water Supply Permit from the Agency of Natural Resources; however, a Project Review Sheet has been issued, and said permit is required. The Board cannot make a finding with regards to water supply and wastewater disposal and will rely on the ANR permit as a rebuttable presumption that the project has adequate water and wastewater disposal capabilities. The applicant shall submit a copy of the permit or evidence that an application has been made with his Final Subdivision Review application.

**ARTICLE VI – FLOOD HAZARD AREA REVIEW**

The Board finds that a 100-year Flood Hazard Area is located on the existing lot; however, the proposed lot is not located in the immediate vicinity, and therefore, no review under this article is required.

**ARTICLE VII – SUBDIVISION REVIEW, ARTICLE VII**

**A. SECTION 7.2 – APPLICABILITY**

The Board finds that the applicant's proposed subdivision is subject to the requirements of the 2014 Underhill Unified Land Use & Development Regulations per § 7.2, and was classified as a "minor subdivision" during the sketch plan review meeting and in the decision letter issued on March 3, 2017.

**B. SECTION 7.3 – SKETCH PLAN REVIEW**

The Board finds that the applicant adequately satisfied the conditions provided in the Sketch Plan Review Letter issued on March 3, 2017. The applicant provided an easement for the trail near the unnamed stream, as well as provided a pedestrian easement along Pleasant Valley Road (on the south side of the road). Furthermore, the applicant carefully reviewed and situated the water/wastewater system in a way that causes the least amount of future development disturbance.

**C. SECTION 7.5 – PRELIMINARY SUBDIVISION REVIEW**

The Board finds that the applicants satisfied the intent of this section and provided the

necessary materials to make a determination on the preliminary subdivision application.

***SUBDIVISION STANDARDS, ARTICLE VIII***

**A. SECTION 8.1 – APPLICABILITY**

The Board finds that no technical review is needed at this time. The Board also finds that the applicant has not requested any waivers at this time, but should consider if the present or future owner of Lot 1 may wish to construct a barn on the remnants of the old, historic foundation. If so, a setback waiver should be requested as part of Final Subdivision Review.

**B. GENERAL STANDARDS, SECTION 8.2**

**SECTION 8.2.A – DEVELOPMENT SUITABILITY**

The Board finds that there are no foreseen undue adverse impacts to the public health and safety, the natural environment, neighboring properties and uses, or the character of the area in which the proposed development is located.

**SECTION 8.2.B – DEVELOPMENT DENSITY**

The Board finds that the proposed subdivision meets the density requirements per this section and the Water Conservation zoning district.

**SECTION 8.2.C – EXISTING CONDITIONS**

The Board finds that the proposed layout of the development will minimize the impact to the natural environment, and that there will be minimal impact to the existing site features and natural amenities. While the Board finds that there are prime agriculture soils present on the proposed Lot 2, the proposed development will be located toward the boundary of this designation, thus not causing any fragmentation.

**SECTION 8.2.D – UNDERHILL TOWN PLAN & DEVELOPMENT REGULATIONS**

The Board finds that the proposed subdivision & development conform to the Underhill Town Plan & the Underhill Unified Land Use and Development Regulations.

**SECTION 8.2.E – DISTRICT SETTLEMENT PATTERNS**

The Board finds that the proposed subdivision & development are consistent with the characteristics of the rural zoning districts as described in Section 8.2.E.2.

**SECTION 8.2.F – LOT LAYOUT**

The Board finds that the proposed subdivision meets the requirements of this subsection.

**SECTION 8.2.G – BUILDING ENVELOPE**

The Board finds that the proposed building envelope on Lot 2 meets the requirements of this section, and that it is more restrictive than what is permitted by the ULUDR. During the hearing, the applicant's engineer submitted a modified building envelope, and informed the Board the he will be consulting with the applicant about possibly enlarging the envelope even more. That Board is satisfied with the proposed building envelope modification submitted during the hearing, and is amenable to an additional modification provided that the building envelope conforms to all of the constraints in the ULUDR.

**SECTION 8.2.H – SURVEY MONUMENTS**

The Board makes no finding regarding this subsection.

**SECTION 8.2.I – LANDSCAPING & SCREENING**

The Board finds that the applicant is proposing development that will preserve the existing trees, tree lines, and wooded areas located on the Lot 2, as well as proposing a building envelope that does not extend into the forested areas, thus satisfying the requirements of this Section.

**SECTION 8.2.J – ENERGY CONSERVATION**

The Board makes no findings, nor makes any requirements with regard to energy conservation.

**C. SECTION 8.3 – NATURAL & CULTURAL RESOURCES**

**SECTION 8.3.A – RESOURCE IDENTIFICATION & PROTECTION**

The Board finds that the applicant has ascertained the approximate location of an existing trail that runs parallel to the unnamed stream located on the northern portion of Lot 2, which is utilized by many Underhill residents. The applicant has informed and illustrated an easement protecting the trail for the benefit of Underhill residents.

**SECTION 8.3.B – SURFACE, WATERS, WETLANDS & FLOODPLAINS**

The Board finds that there will be no adverse impacts on the existing floodplains and surface waters that exist on the northern portion of Lot.

**SECTION 8.3.C – ROCK OUTCROPS, STEEP SLOPES, HILLSIDES & RIDGELINES**

The Board finds that the existing lot contains areas of steep slopes and very steep slopes; however, the applicant has identified a building envelope that allows development to be constructed outside of these areas, and therefore, there will be a *de minimis* impact on the areas.

**SECTION 8.3.D – NATURAL AREAS & WILDLIFE HABITAT**

The Board finds that a wintering deer yard is located on the northern portion of the existing lot, and that the existing trail bisects the edge of this area. The proposed development on Lot 2 will be located over 1,000 feet to the south of this wintering deer yard. Furthermore, the Board finds that a priority level 6/7 habitat block is located on the existing lot; however, development is not expected to occur in this area. Therefore, there are no significant adverse impacts on natural areas & wildlife habitat.

**SECTION 8.3.E – HISTORIC & CULTURAL RESOURCES**

The Board finds that there are remnants of an old barn/silo foundation which the Underhill Town Subdivision Review Standards encourage to maintain as historic features. Therefore, the Board recommends that if the applicant would like to reserve the future option for the current or subsequent owners of Lot 1 to reconstruct a barn on this foundation, a setback waiver should be requested in the final subdivision application.

**SECTION 8.3.F – FARMLAND**

The Board finds that the applicant has chosen a building envelope location on a smaller portion of prime agricultural soils field to the north of Pleasant Valley Road, rather than encumber the large acreage of prime agricultural soils on the portion of Lot 2 south of Pleasant Valley Road. The driveway is proposed to follow the edge of the meadow along the side of an existing tree and fence line, thus minimizing the fragmentation of open agricultural land and associated visual impacts.

**SECTION 8.3.G – FORESTLAND**

The Board finds that the applicant is not proposing to disturb any of the forestland that exists on the existing lot at this time; and therefore, the impact on forestland will be minimal.

**D. SECTION 8.4 – OPEN SPACE & COMMON LAND**

**SECTION 8.4.A – OPEN SPACE**

The Board finds that the applicant has not proposed to designate any land as open space.

**SECTION 8.4.B – COMMON LAND**

The Board finds that the applicant has not proposed to designate any land as common land.

**SECTION 8.4.C – LEGAL REQUIREMENTS**

The Board finds that this subsection does not apply since the applicant has not designated any land as open space or common land as part of the proposed project.

**E. SECTION 8.5 – STORMWATER MANAGEMENT & EROSION CONTROL**

The Board finds that the applicant shall conform to the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control, published by the Watershed Management Division of the Vermont Department of Environmental Conservation when performing excavation and site work. The Board also finds that the proposed development shall have a minimal impact on stormwater runoff and does not require an additional treatment plan.

**F. SECTION 8.6 – TRANSPORTATION FACILITIES**

**SECTION 8.6.A – ACCESS & DRIVEWAYS**

The applicant obtained a preliminary access permit from the Selectboard on January 31, 2017 (Access Permit #: A-17-04), with conditions. With the potential of the applicant subdividing in the future, the applicant has proposed a driveway curb cut that could align with a future curb cut across Pleasant Valley Road, thus satisfying the requirements of the Underhill Road Ordinance. The applicant has acknowledged that if future development/subdivision were to occur that additional review would be required.

In addition, the Board finds that the applicant has addressed the conditions and recommendations provided by the Selectboard and the Underhill-Jericho Fire Department.

**SECTION 8.6.B – DEVELOPMENT ROADS**

The Board finds that this subsection does not apply since the access way will only serve one lot.

**SECTION 8.6.C – PARKING FACILITIES**

The Board finds that no parking facilities, other than those to be expected with single-family residences, are proposed.

**SECTION 8.6.D – TRANSIT FACILITIES**

The Board finds that no transit facilities are proposed.

**SECTION 8.6.E – PEDESTRIAN ACCESS**

The Board is satisfied with the proposed 10-foot-wide pedestrian easement that the applicant has provided along the south side of Pleasant Valley Road to accommodate pedestrian traffic, mainly from Underhill Central School to Casey's Hill, but also from Underhill Center. While the Board initially requested a 15-foot-wide easement span the entirety of the lot on the south side

of Pleasant Valley Road, the Board approves of the easement as proposed, which starts across from Lot 1 and approximately adjacent to the curvature of road travelling north along Pleasant Valley Road.

#### **G. SECTION 8.7 – PUBLIC FACILITIES & UTILITIES**

##### **SECTION 8.7.A – PUBLIC FACILITIES**

The Board finds the proposed subdivision and development will not create an undue burden on the existing and/or planned public facilities. The Board finds there will be no adverse impact on the school district.

##### **SECTION 8.7.B – FIRE PROTECTION**

The Board finds there will be no undue burden on the existing and/or planned public facilities. Underhill Jericho Fire Department has provided a letter recommending that the proposed driveway include a turnaround, typically meeting the following specifications: a 15 feet by 37.5 feet turnaround with a 35 feet radius. The applicant has satisfied these recommendations

##### **SECTION 8.7.C – WATER SYSTEMS**

The Board finds that the applicant is in the process of obtaining a Wastewater System & Potable Water Supply Permit, and once obtained will confirm the presumption that the soils, water, and groundwater will not be contaminated. Water will be supplied via a private drilled well, and is indicated on the submitted site plan. The permit shall be a requirement of Final Subdivision Review.

##### **SECTION 8.7.D – WASTEWATER SYSTEMS**

The Board finds that the applicant is in the process of obtaining a Wastewater System & Potable Water Supply Permit, and once obtained will confirm the presumption that the soils, water, and groundwater will not be contaminated. The applicant has identified the locations of the wastewater systems on the submitted site plan. The permit shall be a requirement of Final Subdivision Review.

##### **SECTION 8.7.E – UTILITIES**

The Board finds the applicant has represented and illustrated that all electrical, communications, and media utilities will be installed underground in accordance with § 8.7.E.

#### **H. SECTION 8.8 – LEGAL REQUIREMENTS**

The Board finds that the applicant has provided the draft easement language, specifically in regards to the wastewater system serving Lot 1, the pedestrian easement along Pleasant Valley Road, and the trail easement located towards the northern part of the proposed Lot 2.

The Town will provide the applicant the Albertini Trail Easement for reference, and as a model easement, as soon as it becomes available. The Board acknowledges that the finalization of this easement may not occur prior to the final subdivision review, and will condition final approval on finalizing a trail easement with the Town as soon as those materials become available and reviewed.

In addition, the applicant shall submit the intended deed language that references the abovementioned trail easement as part of the Final Subdivision Review application.

### **III. CONCLUSION**

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

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

### **IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS**

The Board does not grant any waivers at this time, as no waivers have been requested. However, the applicant should consider if they would like to request any waivers (specifically setback waivers) as part of Final Subdivision Review pertaining to the existing barn foundation located on Lot 1.

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

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

1. That Board finds that the applicant shall submit an updated building envelope for the North side of Pleasant Valley Road on Lot 2 as part of Final Subdivision Review. As mentioned above, the Board is amenable to a building envelope modification so long as it meets the requirements of the ULUDR.
2. The Board finds the applicant shall submit proposed deeds referencing the wastewater system easement for Lot 1, the trail easement, and the pedestrian easement along Pleasant Valley Road. The Board understands that the model trail easement language may not be finalized prior to the Final Subdivision Review Hearing, and therefore, will condition final approval on finalizing the trail easement with the Town.
3. The Board finds that the applicant shall incorporate the trail identified during the Albertini Subdivision Application on Plan Sheet 2 of 3, titled "Vicinity Plan."
4. The Board finds that the applicant shall submit copies of the final Wastewater System & Potable Water Supply Permit issued by the Vermont Agency of Natural Resource, Department of Environmental Conservation.
5. The Board requires the applicant to include parcel codes on the final plat. Lot 1 will retain its parcel code of PV079, while Lot 2 shall be identified as PV071.

Dated at Underhill, Vermont this 29th day of JUNE, 2017.

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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 29 July 2017.