



Town of Underhill

Development Review Board

Findings and Decision

SUBDIVISION AMENDMENT APPLICATION OF THE PINEY GROVE HOMEOWNER'S ASSOCIATION TO AMEND THE APPROVED STORMWATER PLANS

In re: Piney Grove Subdivision
Underhill, VT 05489

Docket No. DRB-17-07

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

I. INTRODUCTION AND PROCEDURAL/FACTUAL HISTORY

This proceeding concerns the subdivision amendment application submitted by the Piney Grove Subdivision Homeowner's Association to amend the approved stormwater plans from a previous subdivision review hearing pertaining to the Piney Grove Subdivision, located in Underhill, Vermont.

- A. The Underhill Development Review approved the original Piney Grove Subdivision and subdivision plans on June 21, 2012 (Development Review Board decision #: DRB-11-06). As part of that application, the Board reviewed and approved stormwater plans, which were an integral part of this current application. As a condition of approval, the applicant was required to obtain a Certificate of Compliance, acknowledging that the infrastructure had been installed and completed correctly.
- B. After construction had commenced in the Spring of 2013, but before the Certificate of Compliance was issued, unexpected and severe storm events occurred resulting in torrential downpours and flash-flooding which caused the recently installed stormwater system to fail. As a result, the developer took necessary actions to control the sudden floods, most notably causing a cascading waterfall onto the Allendorf's property (4 Piney Grove).
- C. On November 25, 2013, the Acting Zoning Administrator, Brian Bigelow, issued a Certificate of Compliance (Permit #: CC-13-01) upon the completion of the infrastructure.
- D. On December 9, 2013, Attorneys Timothy M. Eustace, Esq. & Matthew S. Stern, on behalf of Grant M., Susan S., and Ryan Allendorf, appealed the Certificate of Compliance to the Development Review Board.
- E. The appeal hearing was schedule for, and held on, February 3, 2014, and subsequently continued to February 24, 2014.
- F. The Development Review Board issued its decision on April 7, 2014 reversing the issuance of the Certificate of Compliance, finding that although the emergency remedial measures may have

been necessary at the time, they did not constitute an authorized substitution for the originally approved subdivision plans. The Board determined that the as-built stormwater infrastructure significantly deviated from the originally approved stormwater plans, and that a Certificate of Compliance should not have been issued. Instead the applicant was required to submit a revised stormwater plan as a subdivision amendment application before procuring a Certificate of Compliance.

- G. The applicant subsequently appealed the decision to the Vermont Environmental Court, but ultimately withdrew his appeal.
- H. On March 27, 2017, Brent Goplen, on behalf of the Piney Grove Homeowner's Association filed an application for Subdivision Amendment Review to amend the previously approved stormwater plans. Planning Director & Zoning Administrator, Andrew Strniste, advised the applicant that the submitted application was deficient, as it lacked the necessary information for the Board to make a decision, specifically the stormwater impact to the entire subdivision. Staff provided the applicant a list of questions to be answered that would assist the Board in making their decision. On April 10, 2017, the applicant provided additional information to Staff.
- I. After reviewing the materials, Staff advised the applicant that the application was still deficient. Recognizing that the applicant would unlikely provide the Board with additional information, Staff scheduled a site visit for 6:30 PM on Monday 15, 2017 and the hearing for 7:10 PM on Monday 22, 2017.
- J. On April, 26, 2017, a copy of the notice of the subdivision amendment review hearing was mailed via certified mail to the following property owners adjoining the property subject to the application:
 - 1. PY002 – Lisa Dame, P.O. Box 104, Underhill, VT 05489
 - 2. PY004 – Ryan Allendorf, Grant M. & Susan S. Allendorf, 4 Piney Grove Lane, Underhill, VT 05489
 - 3. PY016 – Green Valley Collections Agency Trust, 5753 Highway 85 North 2624, Crestview, FL 32536
 - 4. PY019 – Green Valley Collections Agency Trust, 5753 Highway 85 North 2624, Crestview, FL 32536
 - 5. PY020 – Peter V. Mutolo & Shelby M. Evans, 184A Vermont Route 15, Jericho 05465
 - 6. R0001 – Gary & Carol Warren Life Estate, Daniel L. & Kenneth A. Warren Remaindermen, 1 Romar Drive, Underhill, VT 05489
 - 7. LE002 – James & Kathryn Barickman, 2 Lower English Settlement Road, Underhill, VT 05489
 - 8. LE011 – Douglas E. Robie, 11 Lower English Settlement Road, Underhill, VT 05489
 - 9. LE013 – Andrea C. Thorpe & David C. Rines, 13 Lower English Settlement Road, Underhill, VT 05489
 - 10. LE026 – Sally A. & Gerald C. Aldrich, 26 Lower English Settlement Road, Underhill, VT 05489
 - 11. RV211 – Richard P. & Andrea C. Phillips, 211 River Road, Underhill, VT 05489
 - 12. SH035 – Jeremiah E. & Jessica G. Mahany, 35 Sand Hill Road, Underhill, VT 05489
 - 13. [Applicant] PY- Piney Grove Homeowner's Association, P.O. Box 242, Zumbrota, MN 55992
 - 14. [Co-applicant] PY – Brent Goplen, P.O. Box 242, Zumbrota, MN 55992
 - 15. [Consultant] – Watershed Consulting Associates, LLC, Attn: Andres Torizzo, P.O. Box 4413, Burlington, VT 05406

- K. During the week of April 23, 2017, notice of the public hearing for the proposed Piney Grove subdivision amendment 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.
- L. On Saturday, April 29, 2017, the notice of public hearing was published in the *Burlington Free Press*.
- M. On May 5, 2017, Krebs & Lansing Consulting Engineers, Inc. was retained by the Town of Underhill to provide an independent review of the submitted stormwater plans.
- N. The site visit commenced at 6:30 PM on May 15, 2017 at the Piney Grove Subdivision in Underhill, Vermont.
- O. Present at the site visit were the following members of the Development Review Board, as well as the public:
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

Others present at the site visit were:

6. Owner of 2 Piney Grove, Lisa Dame
 7. Owner of 4 Piney Grove, Grant Allendorf
 8. Owner of 4 Piney Grove, Susan Allendorf
 9. Owner of 4 Piney Grove, Ryan Allendorf
 10. Owner of 20 Piney Grove, Peter Mutolo
 11. Adjacent Landowner, Gary Warren
 12. Adjacent Landowner, Carol Warren
 13. Adjacent Landowner, Jerry Aldrich
- P. The subdivision amendment review hearing began at 7:10 pm on May 22, 2017 at the Town of Underhill Town Hall.
- Q. Present at the subdivision amendment 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

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

Others present at the hearing were:

1. *[Piney Grove Landowner]*, Peter Mutolo, 184A Vermont Route 15, Jericho, VT 05465
2. *[Piney Grove Landowner]*, Shelby Evans, 184A Vermont Route 15, Jericho, VT 05465
3. *[Piney Grove Landowner]*, Grant Allendorf, 4 Piney Grove, Underhill, VT 05489
4. *[Piney Grove Landowner]*, Susan Allendorf, 4 Piney Grove, Underhill, VT 05489
5. *[Piney Grove Landowner]*, Ryan Allendorf, 4 Piney Grove, Underhill, VT 05489
6. *[Applicants' Consultant]*, Andres Torrizo, 430 Shelburne Road, Burlington, VT 05406
7. *[Independent Review Consultant]*, Ian Jewkes, 164 Main Street, Colchester, VT 05446
8. *[Adjacent Landowner]*, Andrea Thorpe, 13 Lower English Settlement, Underhill, VT 05489

R. 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. Peter Mutolo
2. Shelby Evans
3. Grant Allendorf
4. Ryan Allendorf
5. Andrea Thorpe

S. In support of the subdivision amendment application, and as part of the staff report, the following exhibits were submitted to the Development Review Board:

- Exhibit A – Piney Grove Subdivision Amendment Review Staff Report
- Exhibit B – Subdivision Amendment Application
- Exhibit C – Subdivision Amendment Checklist
- Exhibit D – Burlington Free Press Notice
- Exhibit E – Certificate of Service
- Exhibit F – DRB-11-06 Goplen Final Findings & Decision
- Exhibit G – Piney Grove Homeowner's Association Declaration of Covenants
- Exhibit H – Piney Grove Homeowner's Association Bylaws
- Exhibit I – Original 2012 Stormwater Permit Application
- Exhibit J – DRB-13-13 Allendorf Appeal Decision
- Exhibit K – 2017 DEC State Stormwater Permit Amendment Application
- Exhibit L – 2017 DEC Notice of Intent
- Exhibit M – Original Piney Grove Survey Plan
- Exhibit N – Original Piney Grove Engineering Plans
- Exhibit O – As-Built Stormwater Plans
- Exhibit P – 2016 Site Plan Submitted to Selectboard
- Exhibit Q – 2017 Proposed Subdivision Amendment Plans
- Exhibit R – ANR Slopes Map
- Exhibit S – Krebs & Lansing Independent Review Report

The following exhibits were subsequently submitted and distributed prior to the start of the hearing:

- Exhibit T – Subdivision Amendment Rules of Procedure
- Exhibit U – Independent Stormwater Review Response
- Exhibit V – A-1 Piney Grove Overall Schematic 5-19-17

Exhibit W – A-2 Piney Grove Improvement Plan 5-19-17
Exhibit X – A-3 25,50,100 Year Model Reports

No exhibits were submitted during the hearing.

- T. During the hearing, the Board determined that they wanted Krebs & Lansing Engineering Consultants to review Exhibits U through X, and therefore, the subdivision amendment review hearing was continued to June 19, 2017, at 6:35 PM at the Town of Underhill Town Hall.
- U. The subdivision amendment continued hearing began at 6:35 PM on June 19, 2017 at the Town of Underhill Town Hall.
- V. Present at the subdivision amendment continued 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, Karen McKnight
 - 4. Board Member, Penny Miller
 - 5. Board Member, Stacey Turkos

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

Others present at the hearing were:

- 6. *[Piney Grove Landowner]*, Shelby Evans, 184A Vermont Route 15, Jericho, VT 05465
 - 7. *[Piney Grove Landowner]*, Grant Allendorf, 4 Piney Grove, Underhill, VT 05489
 - 8. *[Piney Grove Landowner]*, Susan Allendorf, 4 Piney Grove, Underhill, VT 05489
- W. Board Member Turkos recused herself from the Board since she did not participate in the previous hearing, nor did she have the opportunity to review the materials beforehand.
 - X. At the outset of the continued hearing, Chair Van Winkle explained that all of the previous parties were still sworn in and eligible to be considered as an “interested party.” Those who spoke at the hearing were:
 - 1. Shelby Evans
 - 2. Grant Allendorf
 - 3. Susan Allendorf
 - Y. In support of the continued subdivision amendment application, and as part of the staff report, the following exhibits were submitted to the Development Review Board:
 - Exhibit Y - State Stormwater Permit Amendment
 - Exhibit Z - Krebs & Lansing Piney Grove Storm Follow-Up Review
 - Exhibit AA - Watershed Consulting Associates Updated Site Plan

No exhibits were subsequently distributed prior to the start of the hearing.

The following exhibits were submitted into the record during the hearing:

Exhibit BB – Email from Mr. Brent Goplen re: Bonding

All exhibits are available for public review in the PY Preliminary Amendment Review file (DRB 17-07) at the Underhill Zoning & Planning office.

II. FINDINGS

The Minutes of the May 22, 2017 and June 19, 2017 meetings, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to those 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 Piney Grove Homeowner's Association, is seeking to amend the originally approved stormwater plans pertaining to the Piney Grove Subdivision located in Underhill, Vermont. The property is located in the Water Conservation zoning district as defined in Article II, Table 2.4 of the 2014 Underhill Unified Land Use & Development Regulations.

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, TABLE 2.4 – WATER CONSERVATION DISTRICT

The Board finds that the subdivision and development were found to have met the purpose and applicable dimensional standards as part of the 2012 Final Subdivision Findings & Decision, DRB decision #: DRB-11-06.

ARTICLE III – GENERAL REGULATIONS

A. SECTION 3.18 – STEEP SLOPES

The Board finds that there are areas of steep slopes (15-25%) and very steep slopes (>25%). The Board finds that the submitted revised stormwater plans better assist in minimizing impervious surfaces, stormwater runoff, channeling, flooding, and soil erosion on steep slopes. As submitted, the proposed stormwater plans will assist in avoiding the need for costly engineering in stabilizing stormwater management practices on very steep slopes, including excessive long-term management and maintenance costs. The Board also finds that Krebs & Lansing Consulting Engineers helped confirm that the proposed plans will be installed and constructed with best management practices for construction, stormwater management, and erosion control.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

The Board finds that there are no flood hazard areas located on the properties within the subdivision, and therefore, review under this article is not applicable.

ARTICLE VII – SUBDIVISION REVIEW, ARTICLE VII

A. SECTION 7.8 – REVISIONS TO AN APPROVED SUBDIVISION

The Board finds that updated stormwater permits from the State of Vermont and a subdivision amendment from the Town of Underhill are required prior to the issuance of a Certificate of Compliance since the 2013 as-built infrastructure fundamentally deviated from what was

originally approved as part of the Board's 2012 Subdivision decision.

SUBDIVISION STANDARDS, ARTICLE VIII

A. SECTION 8.5 – STORMWATER MANAGEMENT & EROSION CONTROL

As a result of the Board's appeal decision on April 7, 2014, the Board acknowledged that as long as the existing stormwater infrastructure could handle the stormwater runoff without impacting the neighboring properties, the Board would not need to inquire into the issues regarding the increased burden on the properties within the development. (see DRB-13-13, Page 7, ¶ 3). In other words, so long as the applicant obtained the necessary easements & State of Vermont permits and showed that the existing infrastructure could handle stormwater runoff, they would not be required to alter the emergency infrastructure that was installed as a result of the unexpected weather.

However, as part of this application, the applicant is proposing a dramatic change to the stormwater plans that includes capturing stormwater runoff in the upper part of the subdivision, and diverting all other stormwater runoff away from the cascading waterfall. Although the applicant has obtained a Stormwater Permit Amendment from the State of the Vermont, to ensure that these proposed changes are sufficient to handle the stormwater runoff, the Town contracted an engineering firm, Krebs & Lansing Engineering Consultants, to perform an independent review of the submitted stormwater plans.

The Board finds that the stormwater plans submitted by the applicant are sufficient to handle the stormwater runoff, relying heavily on the analysis performed by Krebs & Lansing Engineering Consultants. Moreover, the Board is pleased to see that the applicant also incorporated some of the suggestions Krebs & Lansing provided as part of their review.

B. SECTION 8.8 – LEGAL REQUIREMENTS

The Board finds that the Piney Grove Homeowners Association is largely nonfunctioning and under the sole control of the original applicant, Brent Goplen. The Board makes this conclusion based on the lack of compliance with maintenance on the existing stormwater infrastructure. The Board finds that they have the authority to require the applicant to obtain a bond under Section 8.8.C to ensure that the proposed improvements are constructed and implemented, and constructed and implemented properly. The Board finds a bond is necessary based on the contentiousness of the applicant towards responding to requests for additional information during this proceeding, the nonfunctioning homeowner's association, and the lack of assurance of the applicant's intent to complete the necessary improvements in a timely manner. Recognizing the hesitancy from the adjoining neighbors about requiring a bond, specifically the testimony from Grant Allendorf and Shelby Evans, the Board foregoes the upfront requirement, noting that the adjoining neighbors will not have any recourse through Town procedures if the improvements are not completed or not completed properly.

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 stormwater plans generally conform to the Underhill Unified Land Use & Development Regulations.

IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board does not grant any waivers or modifications.

V. DECISIONS AND CONDITIONS OF APPROVAL

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

1. The applicant shall construct and install the stormwater infrastructure according to the plans as presented at the May 22, 2017 and June 19, 2017 hearings, specifically:
 - a. Exhibit V - A-1 Piney Grove Overall Schematic 5-19-17
 - b. Exhibit X - A-3 25,50,100 Year Model Reports
 - c. Exhibit AA - Watershed Consulting Associates Updated Site Plan (Revised 06/08/2017)
2. The applicant shall complete all improvements by 15 November 2017, or provide a completion bond in the amount of \$50,000 to the Town of Underhill by 16 November 2017. Said bond, if required, shall remain in effect for one year from the date of issuance.
3. Prior to obtaining a Certificate of Compliance, the applicant shall furnish a letter prepared and signed by a Vermont Licensed Professional Engineer to the Zoning Administrator certifying that all stormwater infrastructure has been completed in accordance with the abovementioned plans (Condition 1 above).
4. Prior to the Zoning Administrator issuing a Certificate of Occupancy permit for building within the development, the applicant shall obtain a Certificate of Compliance for the infrastructure.
5. The conditions from the original Subdivision decision & findings, Development Review Board docket #: DRB-11-06, remain in effect unless amended herein.

Dated at Underhill, Vermont this 28 day of JUNE, 2017.

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.