



Town of Underhill

Development Review Board

Findings and Decision

COMBINED PRELIMINARY & FINAL SUBDIVISION REVIEW APPLICATION OF PETER M. BINGHAM FOR A 3-LOT SUBDIVISION

In re: Peter M. Bingham
59 Lower English Settlement Road (LE059)
Underhill, VT 05489

Docket No. DRB-18-13

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the combined preliminary & final subdivision review application submitted by the applicant, Peter M. Bingham, regarding a 3-lot subdivision of property he owns located at 59 Lower English Settlement Road (LE059) in Underhill, Vermont.

- A. On July 24, 2018, the applicant filed a sketch plan review application for the abovementioned project. A sketch plan review meeting of the project was held on August 6, 2018 and a letter of acceptance was issued on August 9, 2018. As outlined in the sketch plan review letter, the applicant requested, and the Development Review Board voted to, waive preliminary subdivision review.
- B. On February 28, 2019, the applicant filed a combined preliminary and final subdivision review application 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 Monday, April 1, 2019 at 6:00 PM, while the hearing date was scheduled for 6:35 PM at Underhill Town Hall on Monday, April 1, 2019.
- C. On March 12, 2019, notice regarding the combined preliminary & final subdivision review hearing was mailed via certified mail to the following property owners adjoining the property subject to the application:
 1. Applicant: LE059 – Peter M. Bingham, 51 Lakeside Avenue, Burlington, VT 05401
 2. HH010 – Andrew R. & Nicole L. Blodgett, 10 Hedgehog Hill Road, Underhill, VT 05489
 3. HH015 – Eric & Kristin Barker, 15 Hedgehog Hill Road, Underhill, VT 05489
 4. HH022 – Peter Mutolo & Shelby Evans, 22 Hedgehog Hill Road, Underhill, VT 05489
 5. LE049 – James D. & Elizabeth A. MacDonald, 49 Lower English Settlement Road, Underhill, VT 05489
 6. LE054 – John Pedrin, P.O. Box 62, Underhill, VT 05489
 7. LE068 – Katherine I. Lesser Trustee, 68 Lower English Settlement Road, Underhill, VT 05489

8. LE072 – Bradley J. & Nancy L. Eldred, 72 Lower English Settlement Road, Underhill, VT 05489
 9. OR044 – Mark & Dawn Weir, 43 Orchard Road, Underhill, VT 05489
- D. During the week of March 10, 2019, notice of the public hearing for the proposed Bingham combined preliminary & final subdivision review hearing was posted at the following places:
1. The Underhill Town Clerk's office;
 2. The Underhill Center Post Office; and
 3. Jacobs & Son Market.
- E. On Saturday, March 16, 2019 the notice of public hearing was published in the *Burlington Free Press*.
- F. A site visit at the property located at 59 Lower English Settlement Road, Underhill, Vermont, commenced at 6:00 PM on Monday, April 1, 2019.
- G. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Matt Chapek
 2. Board Member, Mark Green
 3. Board Member, Daniel Lee
 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. Abutting Neighbor, Katherine I. Lesser
 9. Abutting Neighbor, Ian Roos
 10. Abutting Neighbor, Brad Eldred
 11. Consultant, Brad Holden
- H. The combined preliminary subdivision and final subdivision review hearing began at 6:35 PM on Monday, April 1, 2019 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont.
- I. Present at the combined preliminary & final subdivision hearing were the following members of the Development Review Board:
1. Board Member, Stacey Turkos, Vice Chairperson
 2. Board Member, Matt Chapek
 3. Board Member, Mark Green
 4. Board Member, Daniel Lee
 5. Board Member Karen McKnight
 6. Board Member, Penny Miller

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

Others present at the hearing were:

1. Applicant, Peter M. Bingham (59 Lower English Settlement Road, Underhill, VT 05489)
2. Applicant's Consultant, Brad Holden (60 Covey Road, Underhill, VT 05489)
3. Abutting Neighbor, Andrew Blodgett (10 Hedgehog Hill Road, Underhill, VT 05489)
4. Abutting Neighbor, James D. MacDonald (49 Lower English Settlement Road, Underhill, VT 05489)
5. Abutting Neighbor, Elizabeth A. MacDonald (49 Lower English Settlement Road, Underhill, VT 05489)
6. Abutting Neighbor, Ian Roos (68 Lower English Settlement Road, Underhill, VT 05489)
7. Abutting Neighbor, Brad Eldred (72 Lower English Settlement Road, Underhill, VT 05489)

J. At the outset of the hearing, Vice Chair Stacey Turkos explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Those who spoke at the hearing were:

1. Applicant's Consultant, Brad Holden
2. Abutting Neighbor, Andrew Blodgett
3. Abutting Neighbor, James MacDonald
4. Abutting Neighbor, Elizabeth MacDonald
5. Abutting Neighbor, Ian Roos
6. Abutting Neighbor, Brad Eldred

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

1. Exhibit A - LE059 Bingham Preliminary & Final Subdivision Review Staff Report
2. Exhibit B - Bingham (LE059) Preliminary & Final Subdivision Review Rules of Procedure
3. Exhibit C - Application for Subdivision
4. Exhibit D - Access Permit Application
5. Exhibit E - BFP Notice
6. Exhibit F - Certificate of Service
7. Exhibit G - Project Narrative
8. Exhibit H - Correspondence from Krebs & Lansing
9. Exhibit I - Correspondence re Wetlands
10. Exhibit J - MMUSD Ability to Serve Letter
11. Exhibit K - Survey
Exhibit K (Detailed) - Bingham Plat_2-28-2019
12. Exhibit L - Driveway Site Plan
Exhibit L (Detailed) - Bingham Drive-C1 3-7-19
Exhibit L Supp - Driveway Site Plan with Highlights
13. Exhibit M - Lot 2 Driveway Site Plan & Profile
Exhibit M (Detailed) - Bingham C-2 2-22-19
14. Exhibit N - Lot 3 Driveway Site Plan & Profile
Exhibit N (Detailed) - Bingham C-3 2-22-19
15. Exhibit O - Water-Wastewater Site Plan (1 of 2)
Exhibit O (Detailed) - WWPlanS1_Bingham022619

16. Exhibit P - Water-Wastewater Site Plan (2 of 2)
Exhibit P (Detailed) - WWPlanS2_Bingham022619
17. Exhibit Q - Water-Wastewater Details (1 of 2)
Exhibit Q (Detailed) - WWPlanD1_Bingham022619
18. Exhibit R - Water-Wastewater Details (2 of 2)
Exhibit R (Detailed) - WWPlanD2_Bingham022619
19. Exhibit S - Bingham Sketch Plan Review Letter

After the initial distribution of materials, but prior to the hearing, Staff distributed the following materials to the Development Review Board:

20. Exhibit T - UJFD Comments
21. Exhibit U - WW Permit (WW-4-5198)
22. Exhibit V - Shared ROW & Maintenance Agreement
23. Exhibit W - Septic System Easement
24. Exhibit X - VT E911 Map
25. Exhibit Y - Wetland Determination Data Form 1
26. Exhibit Z - Wetland Determination Data Form 2
27. Exhibit AA - VT ANR Wetlands Map
28. Exhibit BB - Wetland Delineation for Lot 2
29. Exhibit CC - Wetland Delineation for Lot 3
30. Exhibit DD - VT Wetlands General Permit Application

Subsequently, during the hearing, the following exhibits were submitted into the record:

31. Exhibit EE - Bingham PLAT
32. Exhibit FF - 16027-EXPANDED

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 LE059 Bingham Combined Preliminary & Final Subdivision Review file (DRB-18-13) at the Underhill Zoning & Planning office.

II. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS

The Minutes of the April 1, 2019 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 2011 *Underhill Unified Land Use and Development Regulations* (also to be referred to as ULUDR), as amended thru March 6, 2018:

PROJECT SYNOPSIS

The applicant, Peter M. Bingham, record owner of the property located at 59 Lower English Settlement Road (LE059) in Underhill, VT, is seeking a subdivision permit to subdivide the abovementioned land into three lots. The existing property is located in the Rural Residential zoning district as defined in Article II, Table 2.4 of the *Underhill Unified Land Use & Development*

Regulations.

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, TABLE 2.4 – RURAL RESIDENTIAL DISTRICT

The Board finds that the proposed subdivision and development will occur in the Rural Residential zoning district and meets the intent of the purpose statement for medium density development. While the proposed Lot 1 will fail to satisfy the frontage requirement, the Board finds that in this application the requirement can be waived since this is a minor subdivision where one of the lots is accessed by a shared driveway. Therefore, the Board waives the frontage requirements in conformance with Sections 3.2.A.1.a, 3.7.E.3.a and Section 8.6.A.2.a.

Besides the frontage requirement pertaining to Lot 1, the existing single-family dwelling (Lot 1) and proposed buildings on the proposed Lots 2 & 3 – each a single-family dwelling – will satisfy the dimensional requirements, as well as satisfy the district’s minimum acreage and frontage requirements of the Rural Residential District. The Board notes that the north property line for Lot 2 shall be considered the front property line, which should be noted on the Subdivision Plat.

ARTICLE III – GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that the applicant satisfied the requirements of this Section. Specifically, the existing lot is already served by an existing driveway that accesses Lower English Settlement Road – a Class III Highway. Access to Lot 2 will utilize this existing driveway. The proposed Lot 3 will access Lower English Settlement Road directly. Both driveways satisfy the *Underhill Unified Land Use & Development Regulations* requirement of 12 ft setbacks, noting that the existing driveway will serve as the property line between Lots 2 & 3.

In regard to site constraints, the Board notes that the property being subdivided is almost entirely comprised of statewide prime agricultural soils, and therefore, impact to these soils is unavoidable. Furthermore, since the existing driveway bisects a Class II Wetland, and will need to be widened to conform with the *Underhill Road, Driveway & Trail Ordinance*, a Wetlands Permit from the State of Vermont will be required, and shall be submitted prior to the issuance of any zoning permits for Lots 2 and/or 3. The proposed driveway and driveway modifications are not anticipated to impact other site features such as steep slopes, surface waters and stream crossings.

The Board notes that the Selectboard has delegated authority to approve access permits to this Board when reviewing applications involving access components. The Board notes that the applicant has submitted an access permit application (Exhibits D, L, M & N). Review pertaining to the access permit can be found below under Section III of this decision, *Factual Findings & Conclusion Relating to the Underhill Road, Driveway & Trail Ordinance*.

B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that the proposed Lot 1 will contain the existing single-family dwelling and detached accessory structures, a single-family dwelling will be constructed on the proposed Lot 2, and a single-family dwelling will be constructed on the proposed Lot 3, thus conforming to the requirement of one principal use/structure per lot. The proposed lots satisfy the dimensional standards of the underlying zoning district – the Rural Residential District, except for Lot 1, which fails to meet the frontage requirement. The applicant has formally requested a frontage waiver, which this Board approves in conformance with Sections 3.2.A.1.a, 3.7.E.3.a and Section 8.6.A.2.a.

The Board also finds that the existing driveway, once widened in conformance with the *Underhill Road, Driveway & Trail Ordinance*, will encroach upon the Class II Wetlands buffer and thus a Wetlands Permit from the State of Vermont is required.

C. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that there is sufficient evidence to believe that the applicant/subsequent landowner will satisfy the parking requirements for a single-family dwelling as required per Table 3.1. The Board finds that Staff will ultimately review the requirements of this section upon the submission of a zoning permit application.

D. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds the existing property is within a Groundwater Source Protection Area; however, since single-family dwellings are anticipated for Lots 2 & 3, conditional use review in accordance with Section 3.17.B is not required. Should the applicant/subsequent landowner propose another use, conditional use review under Section 3.17.B may be required.

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%), with these areas primarily contained within the proposed Lots 1 & 2. The existing development on Lot 1 does not impact steep or very steep slopes, and the anticipated development on Lots 2 & 3 is not expected to impact the identified slopes.

F. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that an unnamed stream serves as a rear property line for Lot 1, thereby containing a 25-foot setback requirement, which is satisfied. In addition, the proposed lot layouts conform, or will conform with the proper permitting, to the requirements imposed by Class II Wetlands and their associated buffers located on each lot. Specifically, the Class II Wetland on Lot 1 will remain undisturbed. The Class II Wetland on both Lots 2 & 3 will be impacted as a result of the existing driveway serving Lot 1 being widened from 12 feet to 14 feet in conformance with the *Underhill Road, Driveway & Trail Ordinance*. The Board notes that the other Class II Wetland on Lot 3, located to the north, will remain undisturbed.

- The Board finds that a State of Vermont Wetlands Permit is sufficient authorization for the proposed Class II wetland impacts mentioned above and no conditional use review is required regarding wetlands impact for the development as proposed.

G. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that the applicant has obtained a Wastewater System & Potable Water Supply Permit (Exhibit U – Permit #: WW-4-5198) from the Agency of Natural Resources, Department of Environmental Conservation, dated April 1, 2019. The permit allows for the following: Lot 1 – an existing 4-bedroom single-family dwelling with an existing drilled well and wastewater system; Lot 2 – a proposed 5-bedroom single-family dwelling with a proposed drilled well and wastewater mound system; and Lot 3 – a proposed 3-bedroom single-family dwelling with a proposed drilled well and wastewater mound system.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

The Board finds that a Special Flood Hazard Area does not exist on the property, and therefore, review under this Article of the regulations is not required.

ARTICLE VII – SUBDIVISION REVIEW

A. SECTION 7.2 – APPLICABILITY

The Board finds that the applicant's proposed subdivision is subject to the requirements of the *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 August 21, 2018 (Exhibit S).

B. SECTION 7.3 – SKETCH PLAN REVIEW

The Board finds that the applicant adequately satisfied the conditions of approval provided in the Sketch Plan Review Letter issued on August 21, 2018.

C. SECTION 7.5 – PRELIMINARY SUBDIVISION REVIEW

The Board finds that, having previously waived a separate preliminary subdivision review hearing (see Exhibit S), the applicant is permitted to combine preliminary and final subdivision reviews. As a result, the applicant submitted an application that addressed many of the requirements that are typically required as part of a preliminary subdivision review hearing.

D. SECTION 7.6 – FINAL SUBDIVISION REVIEW

As part of the combined preliminary & final subdivision review application, the applicant generally addressed many of the comments and concerns identified in the sketch plan review decision. Therefore, the Board finds that the applicant satisfied the intent of this section and provided the necessary materials to make a determination on the final subdivision review application.

ARTICLE VIII – SUBDIVISION STANDARDS

A. SECTION 8.1 – APPLICABILITY

The Board finds that no technical review is needed for this proposed project. The Board also finds that the applicant has requested one waiver: a waiver of the frontage requirement for the proposed Lot 1, as the lot will be accessed via a shared driveway. Frontage waivers are permitted under Sections 3.2.A.1.a, 3.7.E.a and 8.6.A.2.

B. GENERAL STANDARDS, SECTION 8.2

SECTION 8.2.A – DEVELOPMENT SUITABILITY

The Board does not foresee any undue adverse impacts to the public health and safety or the character of the area in which the proposed development is located. The applicant has not expressed any intention of setting aside land as open space that would exclude periodic flooding, poor drainage, very steep slopes (>25%), or other known hazards, or that is otherwise not suitable to support structures or infrastructure.

SECTION 8.2.B – DEVELOPMENT DENSITY

The Board finds that the proposed subdivision meets the density requirements of the Rural Residential zoning district.

SECTION 8.2.C – EXISTING SITE CONDITIONS

The Board finds that the existing lot to be subdivided is almost entirely comprised of statewide prime agricultural soils (see Sketch Plan Exhibit H). In addition, as discussed under Section 3.18 above, the property contains areas of steep slopes and very steep slopes, largely on Lots 1 & 2. While the subsequent development on Lot 2 & Lot 3 (within the proposed building envelopes), as well as on Lot 1, will unavoidably impact statewide prime agricultural soils,

development on the lots, especially on Lots 2 & 3 with the confined building envelopes, will be situated in a way that will avoid steep slopes. Otherwise, the proposed layout of the subdivision and development will not adversely affect any of the existing site features and/or natural amenities listed under this subsection. Additionally, the layout appears to integrate, and conserve other existing site features and natural amenities listed in this subsection.

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, as the subdivision and development are to be configured in a way that reinforces the rural character and historic working landscape of the rural zoning districts described in Section 8.2.E.2.

SECTION 8.2.F – LOT LAYOUT

The Board finds that the newly created lots conform to the requirements of this subsection to the degree possible with constraints imposed by the land features. The Board notes that the proposed subdivision configuration inhibits the future subdivision of these lots under the current regulations, as each lot will be under six (6) acres, which is the minimum acreage requirement to subdivide a lot in the Rural Residential zoning district. Nevertheless, each proposed lot satisfies the standards enumerated in this subsection.

SECTION 8.2.G – BUILDING ENVELOPE

The applicant has illustrated building envelopes on the newly proposed Lots 2 & 3 that are significantly smaller than the least restrictive building envelope the zoning district allows. The Board finds that the proposed building envelopes shall remain as depicted for the following reasons:

- Lot 2: The Board finds that the area directly to the east of the building envelope contains Class II Wetlands and its associated buffer, and the area directly to the west/south contains the wastewater system and slope.
- Lot 3: The Board finds that the area directly to west contains the replacement wastewater system area for Lot 1, as well as the wastewater system for the proposed development on Lot 3.

As a result, to avoid unintended issues, preventing subsequent development in the areas of the wastewater systems and encroachment into wetlands are important policy reasons to restrict the building envelopes to the limits proposed on the site plan (see Exhibit L). The Board notes that all development, including accessory structures, as well as areas for parking, must be located within the building envelopes.

SECTION 8.2.H – SURVEY MONUMENTS

The Board finds that proposed property monumentation shall be installed as defined on the recordable mylar.

SECTION 8.2.I – LANDSCAPING & SCREENING

Currently, the lot contains a tree-line along Lower English Settlement Road, though not densely vegetated. Nevertheless, this landscaping and screening appears to be consistent with other residential development in the area. With the exception of the required aperture for the proposed driveway on lot 3, this tree-line shall be preserved as per ULUDR, Section 8.2.I.

SECTION 8.2.J – ENERGY CONSERVATION

The Board makes no finding regarding this subsection.

C. SECTION 8.3 – NATURAL & CULTURAL RESOURCES

SECTION 8.3.A – RESOURCE IDENTIFICATION & PROTECTION

The Board is not aware of, nor have they or the applicant identified, any cultural or natural resources/features that require protection or preservation.

SECTION 8.3.B – SURFACE WATERS, WETLANDS & FLOODPLAINS

The Board finds that the proposed subdivision/development contains an unnamed stream that serves as the rear, west property line for the proposed Lot 1. In addition, areas of Class II Wetlands can be found on each proposed lot (see Exhibit L). No special flood hazard areas are located on the property. The proposed lot lines and building envelope have been configured to avoid these areas, as explained under Section 3.19 above.

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

The Board finds that areas of steep slopes (15-25%) and very steep slopes (>25%) exist on the subject property, largely on the proposed Lots 1 & 2 (see Sketch Plan Exhibit G). The proposed lot lines and building envelopes have been configured to avoid these areas. See Section 3.18 above for more information.

SECTION 8.3.D – NATURAL AREAS & WILDLIFE HABITAT

The Board finds that no wintering deer yards have been identified on the existing lot; however, there is a priority level 7 habitat block located on the lot (see Sketch Plan Exhibit F and submitted Exhibit L Supp). The 2016 Vermont Agency of Natural Resources BioFinder has identified the following features that are located generally on the property, towards the front (along Lower English Settlement Road) and rear portion (along the unnamed stream) of the existing lot:

- Highest Priority Wildlife Crossing (along English Settlement Road);
- Riparian Wildlife Connectivity Area (along the unnamed stream);
- Highest Priority Surface Water & Riparian Area (along the unnamed stream);
- Highest Priority Interior Forest Block;
- Highest Priority Connectivity Block; and
- Representative Landscape.

Though some or all of these areas may be located on the proposed lots, based on the configuration of the building envelope, there appears to be a minimal adverse impact on these areas.

SECTION 8.3.E – HISTORIC & CULTURAL RESOURCES

The Board is unaware of any historic or cultural resources that require preservation, and therefore, makes no finding regarding this Section.

SECTION 8.3.F – FARMLAND

The Board finds that the property is almost entirely comprised of statewide prime agricultural soils (see Sketch Plan Exhibit O), and therefore, impact on these areas by subsequent

development anywhere on the subject lot appears unavoidable. See Section 8.2.C above for more information.

SECTION 8.3.G – FORESTLAND

The Board finds, according to aerial photography and their site visit, that the proposed Lot 1 contains areas of forestland, while the proposed Lots 2 & 3 are largely open fields with some forest. The proposed development sites do not appear to impact the forested land proposed on Lots 2 & 3.

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 Board finds that Lots 1 & 2 will be served by a shared driveway accessing Lower English Settlement Road, while Lot 3 will be served by its own driveway accessing Lower English Settlement Road. Since each proposed access way will serve two or less lots, only the requirements under Sections 3.2 & 8.6.A apply. See Section 3.2 above for more information as it relates to the *Unified Land Use & Development Regulations*. See Section III of this decision for more information as it relates to the *Underhill Driveway, Road & Trail Ordinance*.

SECTION 8.6.B – DEVELOPMENT ROADS

The Board finds that this subsection does not apply since the new access ways will serve less than three (3) lots.

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 finds that this section does not apply, and therefore, review under this Section is not required.

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 (see Exhibit J). Comments were solicited from the Underhill Road Foreman, and are incorporated into this decision accordingly.

SECTION 8.7.B – FIRE PROTECTION

The Board finds the proposed subdivision and development will not create an undue burden on the ability of the Underhill-Jericho Fire Department to provide fire protection services (see Exhibit T).

SECTION 8.7.C – WATER SYSTEMS

The Board finds that the applicant has obtained a Wastewater System & Potable Water Supply Permit (Permit #: WW-4-5198) (see Exhibits O, P, Q & R) from the Agency of Natural Resources, Department of Environmental Conservation, on April 1, 2019. The permit allows for the following: a drilled well for the existing 4-bedroom single-family dwelling on Lot 1; a drilled well for a proposed 5-bedroom single-family dwelling on Lot 2; and a drilled well for a proposed 3-bedroom single-family dwelling on Lot 3.

SECTION 8.7.D – WASTEWATER SYSTEMS

The Board finds that the applicant has obtained a Wastewater System & Potable Water Supply Permit (Permit #: WW-4-5198) (see Exhibits O, P, Q & R) from the Agency of Natural Resources, Department of Environmental Conservation, on April 1, 2019. The permit allows for the following: the existing wastewater system (and a replacement system on the proposed Lot 3) for the existing 4-bedroom single-family dwelling on Lot 1; a wastewater mound system for a proposed 5-bedroom single-family dwelling on Lot 2; and a wastewater mound system for a proposed 3-bedroom single-family dwelling on Lot 3.

SECTION 8.7.E – UTILITIES

Since these utilities are placed at the direction of the overseeing entity, the Board encourages that the applicant, to the best of his ability, locate the electrical, communications, and media utilities underground in accordance with Section 8.7.E. Therefore, upon installation, the applicant(s), or future applicant(s), shall submit an updated site plan illustrating the location of those utilities.

H. SECTION 8.8 – LEGAL REQUIREMENTS

The Board finds that the applicant has submitted draft easements to incorporate into associated deeds, thus satisfying the requirements of this Subsection.

III. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL ROAD, DRIVEWAY & TRAIL ORDINANCE

A. SECTION 4 – GENERAL PROVISIONS RELATING TO ACCESSWAYS

SECTION 4.B – REASONABLE ACCESS

The Board finds that the proposed driveways provide reasonable access to a town highway.

SECTION 4.C – DEVELOPMENT ROAD & DRIVEWAY STANDARDS

In reviewing standards for development roads and driveways, the Board shall review the following subsections:

SECTION 4.C.1 – GRADES

The Board finds that the proposed grades for the shared driveway serving Lots 1 & 2, the driving serving Lot 2, and the driveway serving Lot 3, all have grades that are 10% or less, thus satisfying the requirements of this Section.

SECTION 4.C.2 – TOPOGRAPHY

The Board finds that the proposed driveway will impact prime agricultural soils and associated wetland buffers. Impacting the prime agricultural soils is unavoidable since the subject property is almost entirely comprised of these soils. Additionally, the applicant has advised that a wetlands permit will be attained for the shared portion of the driveway that bisects the existing Class II Wetlands.

SECTION 4.C.3 – RADII

The Board finds that a 35 ft. turning radii at the curb cut is excessive and would result in an 82 ft width apron, and therefore, requires the turning radii to be no smaller than proposed 20 ft. The Board encourages the applicant to work with the Underhill-Jericho Fire Department to find acceptable radii.

SECTION 4.C.4 – CURBS

The Board finds that this section does not apply.

SECTION 4.C.5 – GEOTEXTILES

The Board finds that the applicant shall be consistent with this subsection upon constructing and modifying the driveways.

SECTION 4.C.6 – DRAINAGE

The Board finds that the proposed design will not result in drainage occurring in the Town's right-of-way, nor will the drainage impact Lower English Settlement Road, as it relates to sedimentation, erosion or impounding of water.

SECTION 4.C.7 – SLOPES, BANKS & DITCHES

The Board finds that the applicant has provided the necessary ditching to prevent infiltration of water into the gravel sub-base, as well as provided the necessary storm drainage to the appropriate waterways and absorption areas. The Board directs the applicant to be consistent with this subsection upon constructing and modifying the driveways.

SECTION 4.C.8 – WET AREAS

The Board finds that the applicant is in the process of obtaining a Wetlands Permit from the State of Vermont, Agency of Natural Resources.

SECTION 4.C.9 – CULVERTS

The applicant has depicted areas on the site plan (see Exhibit L) where they intend to place culverts. All culverts shall be at least 18 inches by 30 ft. long, in accordance with the comments made by the Underhill Road Foreman. The Board finds that the applicant shall be consistent with this subsection upon constructing and modifying the driveways.

SECTION 4.C.10 – STREAM CROSSINGS

The Board finds that this section does not apply.

SECTION 4.C.11 – BRIDGE

The Board finds that this section does not apply.

SECTION 4.C.12 – DESIGN

The Board finds that the applicant has provided sufficient turnaround areas, and also finds that the applicant shall be consistent with this subsection upon constructing and modifying the driveways. The Board notes that driveway serving Lot 3 satisfies the sight distance requirements.

B. SECTION 5 – SPECIFIC PROVISIONS: DRIVEWAYS & DEVELOPMENT ROADS

SECTION 5.A – DRIVEWAYS

Regarding the standards for driveways, the Board reviews the following subsections:

SECTION 5.A.1 – CONSTRUCTION & DESIGN REQUIREMENTS

The Board finds that the applicant and respected subsequent landowners shall construct the Lot 2 & 3 driveways and shared driveway in conformance with the AOT B-71 Standards, which includes the base layer of the driveway.

SECTION 5.A.2 – LOCATION

The Board finds that the applicant satisfied the requirements of this subsection.

SECTION 5.A.3 – WIDTHS

The Board finds that the following widths shall apply:

- The shared portion of the driveway serving Lots 1 & 2 shall be at least 14 ft. in width;
- The portion of the driveway serving only Lot 1 shall be at least 12 ft. in width;
- The portion of the driveway serving only Lot 2 shall be at least 12 ft. in width; and
- The driveway serving Lot 3 shall be at least 12 ft. in width.

SECTION 5.A.4 – NONCONFORMING LOTS:

The Board finds that this subsection does not apply.

IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

1. The Board waives the frontage requirement for the proposed Lot 1 in accordance with Sections 3.2.A.1.a, 3.7.E.3.a and Section 8.6.A.2.a, as the lot will be served by a shared driveway with Lot 2.
2. The applicant is not required to come before the Board if they wish to relocate the single-family-dwelling within the building envelope. The Board recognizes that this identified

feature on the engineering plans submitted are for illustration purposes only and does not reflect the final footprint of the structure.

V. DECISIONS AND CONDITIONS OF APPROVAL

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 of the *Underhill Land Use & Development Regulations* and concludes that based on the evidence submitted and the above findings, the proposed subdivision and development generally conform to the aforementioned Regulations.

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

Procedural Conditionals

1. No transfer, sale or long-term lease, of title to property as defined under 32 V.S.A. § 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 this Board, and the final Mylar (the subdivision plat) has been recorded in the Underhill Land Records per Section 7.2.C
2. Per Section 7.2.B, no land shall be subdivided until final subdivision approval has been obtained from this Board, and the approved subdivision plat is recorded in the Town of Underhill Land Records.
3. The Board requires the applicant to only record the subdivision plat (Exhibit K), Titled Final Plat Proposed Three Lot Subdivision for Peter M. Bingham, Prepared by Bradford L. Holden, as a Mylar in the Underhill Land Records.
 - a. The Board notes that the north property line for Lot 2 should be considered the front property line, which should be noted on the Subdivision Plat.
4. The Board requires the subdivision plans (Exhibits K thru R) to be updated in conformance with this decision, and that to-scale hard copies, in addition to digital copies, be submitted to the Zoning Administrator to be filed in the corresponding zoning files.
 - a. The applicant(s), or future applicant(s), shall submit an updated site plan illustrating the location of the utilities. In addition, the utilities shall be installed underground in accordance with Section 8.7.E
5. The E-911 Codes for the lots shall be posted per the Underhill-Jericho Fire Department specifications prior to the issuance of a Certificate of Occupancy permit.
6. The final plat shall include parcel codes and shall be submitted for recording within 180 days of the date of this approval (May 2, 2019) in accordance with Section 7.7 of the Underhill Unified Land Use & Development Regulations. One-hundred eighty (180) days from the date of this approval is (October 29, 2019).
7. All subdivision and recording fees must be paid in full prior to recording a subdivision plat in accordance with Section 7.7.B of the Underhill Unified Land Use and Development Regulations.

Substantive Land Use & Development Regulations Conditions

8. The Board requires the project to be constructed in accordance with the drawing set submitted as part of the review process (see Exhibits K thru R) and amended accordingly to address the changes herein and those to be recorded.
9. Prior to the issuance of a building permit for either Lot 2 or 3, the applicant shall submit for recordation the approved State administered Wetlands Permit and State administered Wastewater System & Potable Water Supply Permit.
10. Prior to the issuance of a building permit for either Lot 2 or 3, the applicant shall provide a certification letter from a Vermont Licensed Professional Engineer or qualified consultant indicating that the relevant driveway improvements, in accordance with the access permit conditions of approval, as amended and discussed below, have been constructed according to what was proposed as part of this review.
11. Any proposed modifications to the Lot 2 & Lot 3 building envelopes require additional review by this Board in order to determine conformance with the issues discussed in this decision.
12. 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.
13. New property boundary monumentation referenced on the survey plat shall be installed as a condition of approval.
14. Notwithstanding the conditions above, prior to being issued a building permit, the applicant shall comply with applicable aspects of the *Underhill Unified Land Use and Development Regulations* in effect at the time of the application.

Substantive Road, Driveway & Trail Ordinance Conditions

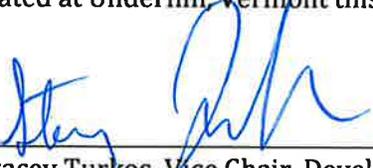
15. As part of this review process, the Board approves the access permit application (Access Permit #: A-19-03) submitted in conjunction with this subdivision application. Construction of the driveways shall be in conformance with the driveway layouts presented in Exhibits L, M & N. In sum the approval of this permit addresses the following:
 - a. The modifications to the existing driveway serving Lot 1, which a part of will be converted to a shared driveway to serve both Lots 1 & 2;
 - b. The construction of the proposed driveway to serve Lot 2; and
 - c. The construction of the proposed driveway to serve Lot 3.

For more information about the Board's findings as they relate to the access permit, please see Section 3.2 above, as well as Section III of this decision related to the *Underhill Road, Driveway & Trail Ordinance*.

16. In the event the applicant or subsequent landowners desire to relocate the driveway, the Board authorizes the Zoning Administrator to make the modifications in conformance with the *Underhill Road, Driveway & Trail Ordinance*. Should the applicant desire modifications that are beyond the authority of the Zoning Administrator, the review process shall be consistent with the normal administrative review access permitting process, thereby requiring review by the Selectboard.

17. The Board finds that the applicant and subsequent respective landowners shall construct the Lot 2 & 3 driveways and the shared driveway in conformance with the AOT B-71 Standards, which includes the base layer of the driveway.
18. The Board encourages the applicant to work with the Underhill-Jericho Fire Department to find an acceptable turning radius for the proposed Lot 2 and Lot 3 driveways, especially where those driveways intersect with other access ways.

Dated at Underhill, Vermont this 2 day of May 2019.



Stacey Turkos, Vice 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 June 1, 2019.