



# Town of Underhill

## Development Review Board

### Findings and Decision

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**COMBINED PRELIMINARY & FINAL SUBDIVISION REVIEW APPLICATION OF PAMELA J. & ANTOINE M. CATUDAL AND JASON A. & KAREN M. GUYMON FOR A 2-LOT SUBDIVISION**

In re: Antoine M. & Pamela J. Catudal  
Jason A. & Karen M. Guymon  
73 North Underhill Station Road (NU073)  
Underhill, VT 05489

Docket No. DRB-19-08

**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 applicants, Pamela J. & Antoine M. Catudal and Jason A. & Karen M. Guymon (hereafter Applicants), regarding a 2-lot subdivision of property they own located at 73 North Underhill Station Road (NU073) in Underhill, Vermont.

- A. On July 15, 2019, the Applicants filed a sketch plan review application for the abovementioned project. A sketch plan review meeting of the project was held on August 5, 2019 and a letter of acceptance was issued on August 20, 2019. As outlined in the sketch plan review letter, the Applicants requested, and the Development Review Board voted to, waive preliminary subdivision review.
- B. On January 31, 2020, the Applicants 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 Saturday, February 29, 2020 at 8:30 AM, while the hearing date was scheduled for 6:35 PM at Underhill Town Hall on Monday, March 2, 2020.
- C. On February 12, 2020, 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. *Applicants:* NU073 – Antoine M. & Pamela J. Catudal and Jason A. & Karen M. Guymon, 73 North Underhill Station Road, Underhill, VT 05489
  2. HL035 – Ellen Goodman Trustee, 35 Highland Road, Underhill, VT 05489
  3. NU041 – Sharon A. Davis, 41 North Underhill Road, Underhill, VT 05489
  4. NU050 – Craig & Morgan Luce, 50 North Underhill Station Road, Underhill, VT 05489

5. NU060 – Drew S. Vandeth & Kristen Juel, 60 North Underhill Station Road, Underhill, VT 05489
  6. NU071 – Cathy S. Bassler, 71 North Underhill Station Road, Underhill, VT 05489
  7. NU074 – Peter Hagen & Lauren Milne, 74 North Underhill Station Road, Underhill, VT 05489
  8. NU077 – Gerard Deforge, 77 Underhill Station Road, Underhill, VT 05489
  9. PH425 – Michael S. & Kathleen A. Simanskas, 425 Poker Hill Road, Underhill, VT 05489
- D. During the week of February 9, 2020, notice of the public hearing for the proposed Guymon/Catudal 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, February 15, 2020 the notice of public hearing was published in the *Burlington Free Press*.
- F. A site visit at the property’s located at 73 North Underhill Station Road, Underhill, Vermont, commenced at 8:30 AM on Monday, February 29, 2020.
- G. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Matt Chapek
  2. Board Member, Penny Miller
- No municipal representatives were present at the meeting. Members of the public that were present during the site visit were:
3. Applicant, Antoine Catudal
- H. The combined preliminary subdivision and final subdivision review hearing began at 6:35 PM on Monday, March 2, 2020 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, Charles Van Winkle, Chairperson
  2. Board Member, Stacey Turkos, Vice Chairperson
  3. Board Member, Matt Chapek
  4. Board Member, Mark Green
  5. Board Member, Daniel Lee
  6. Board Member Karen McKnight
  7. Board Member, Penny Miller

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

Others present at the hearing were:

1. Applicant, Jason Guymon (73 North Underhill Station Road, Underhill, VT 05489)
2. Applicant, Antoine Catudal (73 North Underhill Station Road, Underhill, VT 05489)

J. At the outset of the hearing, Chair Charles Van Winkle explained the criteria under 24 V.S.A § 4465(b) for being considered an “interested party.” Those who spoke at the hearing were:

1. Applicant, Jason Guymon
2. Applicant, Antoine Catudal

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

1. Exhibit A - Guymon/Catudal Sketch Preliminary & Final Subdivision Review Staff Report
2. Exhibit B - Guymon-Catudal(NU073) PrelimFinal Subd Review Hearing Procedures
3. Exhibit C - Application for Subdivision
4. Exhibit D - Access Permit Application (Permit No. A-20-02)
5. Exhibit E - Project Summary
6. Exhibit F - BFP Notice
7. Exhibit G - NU073 Certificate of Service
8. Exhibit H - Project Narrative
9. Exhibit I - MMU Ability to Serve Correspondence
10. Exhibit J - Bassler Correspondence
11. Exhibit K - Shared Maintenance Agreement
12. Exhibit L - Guymon-Catudal Sketch Plan Review Letter
13. Exhibit M - WW Permit No. WW-4-4186
14. Exhibit N - Proposed Survey Plat
15. Exhibit O - Proposed Site Plan

No additional materials were distributed to the Development Review Board prior to the hearing, nor were any additional hearings submitted into the record during the hearing.

All exhibits are available for public review in the NU073 Guymon/Catudal Combined Preliminary & Final Subdivision Review file (DRB-19-08) at the Underhill Zoning & Planning office.

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

The Minutes of the March 2, 2020 meeting, written by Staff Member 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 known as ULUDR or the “Regulations”), as amended March 3, 2020:

**PROJECT SYNOPSIS**

The Applicants, Pamela J. & Antoine M. Catudal and Jason A. & Karen M. Guymon, record owners of the property located at 73 North Underhill Station Road (NU073) in Underhill, VT, are seeking a subdivision permit to subdivide the abovementioned land into two 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 this requirement can be waived since the proposal 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 3.7.E.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 the existing garage, and proposed building on the proposed Lot 2 –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.

**ARTICLE III – GENERAL REGULATIONS**

**A. SECTION 3.2 – ACCESS**

The Board finds that the Applicants satisfy the requirements of this Section. Specifically, the existing lot is already served by an existing driveway that accesses North Underhill Station Road – a Class III Highway. Access to the proposed Lots 1 & 2 will utilize this existing driveway, resulting in the existing driveway becoming a shared driveway. The Board notes that the shared driveway and individual driveways are already constructed, and therefore, no further impact is anticipated. Both the shared driveway and individual driveways satisfy the *Underhill Unified Land Use & Development Regulations* requirement of 12 ft setbacks, and minimize the impact to the features enumerated under Section 3.2.B.7.b (e.g. steep slopes, prime agricultural soils, surface waters, etc.).

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 Applicants have submitted an access permit application (Exhibits D). 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, while a single-family dwelling will be constructed on the proposed Lot 2 (which already contains a detached garage), 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 Applicants have formally requested a frontage waiver, which this Board approves in conformance with Sections 3.7.E.1.a, 3.7.E.3.a and 8.6.A.2.a.

The Board also finds that the portion of the existing driveway that will be converted to the shared driveway already conforms to the 14 ft. driveway width requirement, and the individual

driveways already conform to the 12 ft. driveway width requirements, as required by the *Underhill Road, Driveway & Trail Ordinance*. The existing individual driveway that is to serve Lot 1 bisects an area of prime agricultural soils; however, the bisection occurs towards the edge of the prime soils, thereby not significantly impacting those soils.

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

The Board finds that the existing single-family dwelling on the proposed Lot 1 satisfies the parking requirements required per Table 3.1, and that there is sufficient evidence to believe that the Applicants will satisfy the parking requirements for a single-family dwelling on the proposed Lot 2 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 not within a Groundwater Source Protection Area, nor is it in the immediate vicinity of a public water source; therefore, review under this section is not 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 to the southern and western portions of the existing lot. The existing development on Lots 1 & 2, as well as the proposed development on Lot 2, does not, and is not anticipated to, impact the identified slopes.

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

The Board finds that an unnamed stream bisects the southern portion of the proposed Lot 2, thereby requiring a 25-foot setback, which is expected to be satisfied. In addition, Beaver Brook is located to the south of the existing property's southern property line. Since Beaver Brook is a named stream, and no floodplains are associated with the Brook, a 50 ft. setback from the "top of slope" is required. All existing development meets, and all anticipated development is expected to meet, this requirement.

The Board also finds, according to the Agency of Natural Resources' Atlas, that a Class II Wetlands is located near the shared driveway and North Underhill Station Road, as well as to the northeast of the property. As a result, a 50 ft. Wetlands Buffer requirement is imposed, and is only relevant to the Class II Wetlands located near the shared driveway and North Underhill Station Road; however, all existing development meets, and all anticipated development is expected to meet, this requirement.

**G. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS**

The Board finds that the Applicants have already obtained a Wastewater System & Potable Water Supply Permit (Exhibit M – Permit #: WW-4-4186) from the Agency of Natural Resources, Department of Environmental Conservation, dated February 28, 2014. The permit allows for two, 4-bedroom, single-family residences on the existing lot, where each lot is approved for a drilled well (to be located on each lot) and a septic system for each lot (*Note: the septic system proposed for Lot 2 will be located on Lot 1*).

**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 Applicants’ proposed subdivision is subject to the requirements of the 2020 *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 20, 2019 (Exhibit L).

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

The Board finds that the Applicants adequately satisfied the conditions of acceptance provided in the Sketch Plan Review Letter issued on August 20, 2019 (Exhibit L).

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

The Board finds that, having previously waived a separate preliminary subdivision review hearing (see Exhibit L), the Applicants are permitted to combine preliminary and final subdivision review. As a result, the Applicants submitted an application that addressed many of the requirements that are typically 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 Applicants generally addressed many of the comments and concerns identified in the sketch plan review decision. Therefore, the Board finds that the Applicants 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 Applicants have 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 3.7.E.1.a, 3.7.E.3.a and 8.6.A.2.a.

**B. SECTION 8.2 – GENERAL STANDARDS**

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 Applicants have 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 contains a small area of prime agricultural soils, which will be bisected by the proposed property line (see Exhibits A & H). The Board notes that future development in this area is feasible; however, the Regulations have no specific standards prohibiting development on prime agricultural soils. At this time, in accordance with the Regulations, the Applicants are proposing to minimize impact to prime agricultural soils.

In addition, as discussed under Section 3.18 above, the subject property contains areas of steep slopes and very steep slopes, largely along the southern and western property line of the subject lot. Also, an unnamed stream bisects the southern portion of the proposed lot 2; Beaver Brook traverses the area to the south of the subject property line; and a Class II Wetlands is near the intersection of the existing driveway and North Underhill Station Road.

Even considering the identified constraints above, as well as those not addressed, 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.

#### SECTION 8.2.F – LOT LAYOUT

The Board finds that the newly created lots conform to the requirements of this subsection. The Board notes that, in accordance with the current iteration of the Regulations, subsequent subdivisions of land regarding both lots are feasible, as the lots are configured in a way that would facilitate additional lots in a realistic and logical layout. In regards to the other standards enumerated in this subsection, each proposed lot satisfies them.

#### SECTION 8.2.G – BUILDING ENVELOPE

The Applicants have illustrated a building envelope on the proposed Lot 2 that is notably smaller than the least restrictive building envelope the zoning district allows. The Board finds that the proposed building envelope shall remain as depicted for the following reason:

- The Board finds that the area directly to the north and east of the building envelope is forested area, and therefore, the implementation of the building envelope delineation helps to protect the forested area from fragmentation, thereby conforming with various aspects of the existing and proposed Town Plans.

The Board notes that all development, including accessory structures, as well as areas for parking, must be located within the building envelopes. Any proposed changes to the building envelope requires subsequent review by this Board.

#### 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 subject lot is screened from North Underhill Station Road, as the property is entirely surrounded by forested areas. The current landscaping and screening appears to be

consistent with other residential development in the area. With the exception of the required aperture for the shared driveway, the tree-line shall be preserved in accordance with Section 8.2.I of the Regulations to the greatest extent possible.

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 Applicants 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 bisects the proposed Lot 2, while Beaver Brook traverses an area directly to the south of the subject lot. In addition, areas of Class II Wetlands are found to the northeast of the subject property, as well as on the proposed Lot 2 – near the intersection of the shared driveway and North Underhill Station Road (see Exhibit A). No special flood hazard areas are located on the property. No existing development is in, nor is any anticipated development expected to be in, the vicinity of these features or their associated buffers, 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 towards the southern and eastern property lines on the subject property on both proposed lots (see Exhibit A). The proposed lot line and building envelope have been configured to avoid these areas. No existing development is in, nor is any anticipated development expected to be in, the vicinity of 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 4 habitat block located on the lot (see Exhibit A). The 2016 Vermont Agency of Natural Resources BioFinder has identified the following features that are located generally on the property:

- Class II Wetlands (as outlined under § 3.19 above);
- Highest Priority Wildlife Crossing (overlying the same area as the Class II Wetland on the southern portion of the Lot);
- Riparian Wildlife Connectivity (encompassing Beaver Brook and the unnamed stream);
- Highest Priority Surface Water and Riparian Areas (encompassing Beaver Brook and the unnamed stream);
- Priority Interior Forest Blocks (same area identified as Forest Blocks);
- Highest Priority Connectivity Blocks (same area identified as Forest Blocks); and
- Representative Physical Landscapes (mostly the same area identified as Forest Blocks).

Though some or all of these areas may be located on the proposed lots, based on the configuration of the building envelope for Lot 2, 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 subject property contains an area of prime agricultural soils, which are largely contained to the southeast portion of the proposed Lot 1 (Exhibit A). While future impact to these areas is feasible, there is no immediate proposal for development in this area at this time. 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 2 contains areas of forestland, while the proposed Lot 1 is largely open. The intended development site on the proposed Lot 2 does not appear to impact the forested lands.

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

SECTION 8.4.A – OPEN SPACE

The Board finds that the Applicants have not proposed to designate any land as open space.

SECTION 8.4.B – COMMON LAND

The Board finds that the Applicants have 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 Applicants have 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 Applicants 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 the proposed Lots will be served by an existing shared driveway accessing North Underhill Station 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 I). Comments were solicited from the Underhill Road Foreman; however, they were not provided in time for the hearing due to weather-related events and shorted-staff. As a result, the Applicants shall coordinate with the Zoning Administrator and Road Foreman to ensure a satisfactory driveway layout on Lot 2.

SECTION 8.7.B – FIRE PROTECTION

The Board finds the proposed subdivision and development is not expected create an undue burden on the ability of the Underhill-Jericho Fire Department to provide fire protection services. The Board solicited comments from the Underhill-Jericho Fire Department; however, none were provided in time for the hearing. As a result, the Applicants shall coordinate with the Zoning Administrator and Underhill-Jericho Fire Department to ensure a satisfactory driveway layout on Lot 2.

SECTION 8.7.C – WATER SYSTEMS

The Board finds that the Applicants have obtained a Wastewater System & Potable Water Supply Permit (Permit #: WW-4-4186) (see Exhibits M & O) from the Agency of Natural Resources, Department of Environmental Conservation, on February 28, 2014. The permit allows for two, 4-bedroom, single-family residences on the existing parcel, where each single-family dwelling is approved for a drilled well– currently proposed one well for each lot.

SECTION 8.7.D – WASTEWATER SYSTEMS

The Board finds that the Applicants have obtained a Wastewater System & Potable Water Supply Permit (Permit #: WW-4-4186) (see Exhibits M & O) from the Agency of Natural Resources, Department of Environmental Conservation, on February 28, 2014. The permit allows for two, 4-bedroom, single-family residences on the existing parcel. A separate wastewater system is proposed for each dwelling, with the septic system serving Lot 2 being located on Lot 1, thus requiring an easement.

SECTION 8.7.E – UTILITIES

Since utilities are placed at the direction of the overseeing entity, the Board encourages the Applicants, to the best of their ability, to 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 documenting the location of those utilities.

**H. SECTION 8.8 – LEGAL REQUIREMENTS**

The Board finds that the Applicants shall submit a Road Maintenance Agreement for

recordation prior to the issuance of a Certificate of Occupancy Permit for the anticipated single-family dwelling on the proposed Lot 2. In addition, the deed pertaining to the proposed Lot 2 shall either incorporate by reference or include the easement pertaining to the wastewater system being located on the proposed Lot 1.

### **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 – North Underhill Station Road, a Class III 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 existing driveway to be shared and serve the proposed Lots 1 & 2 have grades that are 10% or less, thus satisfying the requirements of this Section.

###### SECTION 4.C.2 – TOPOGRAPHY

The Board finds that the existing driveway already impacts prime agricultural soils. No adverse or additional impacts are anticipated to occur on the other environmental features enumerated in this section is anticipated.

###### SECTION 4.C.3 – RADII

The Board finds that a 35 ft. turning radii at the curb cut is excessive, and therefore, does not require the turning radii off of North Underhill Station Road, or the turning radii where the shared driveway departs into two separate driveways, to meet the 35 ft. radii. However, the Board encourages the applicant to work with the Underhill-Jericho Fire Department to find an acceptable layout.

###### SECTION 4.C.4 – CURBS

The Board finds that this section does not apply.

###### SECTION 4.C.5 – GEOTEXTILES

The Board finds that the Applicants shall comply 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 into the Town's right-of-way, nor will the drainage impact North Underhill Station Road, as it relates to sedimentation, erosion or impounding of water.

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

The Board finds that the Applicants are leveraging existing features and conditions associated with the subdivision. The Board finds that the existing conditions are not problematic, and the proposed improvements will not exacerbate concerns relative to

slopes, banks and ditches. The Board directs that the Applicants shall comply with this subsection upon constructing and modifying the driveways.

SECTION 4.C.8 – WET AREAS

The Board finds that the existing driveway does not impact any wet areas, as provided in this section, and that any modifications to the shared driveway or individual driveways shall conform to the requirements of this subsection.

SECTION 4.C.9 – CULVERTS

The Board finds that no new culverts are proposed within the town right of way. The Applicants shall coordinate with the Road Foreman to ensure that no additional culverts are required within, or adversely impacting the town right of way. Should additional culverts be required, they shall be installed in accordance with the standards of this subsection.

SECTION 4.C.10 – STREAM CROSSINGS

The Board finds that the Applicants obtained approval from this Board to construct a bridge over the unnamed stream in 2014 (see DRB Decision #: DRB-14-11; Sketch Plan Exhibit F).

SECTION 4.C.11 – BRIDGE

The Board finds that the Applicants obtained approval from this Board to construct a bridge over the unnamed stream in 2014 (see DRB Decision #: DRB-14-11; Sketch Plan Exhibit F).

SECTION 4.C.12 – DESIGN

The Board finds that the Applicants have submitted a site plan (Exhibit O) which seemingly depicts sufficient turnaround areas. Since the Road Foreman and Underhill-Jericho Fire Department were unable to provide comments in time for the hearing, the Applicants shall coordinate with them to ensure that the driveway is satisfactory.

**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 directs that the Applicants and respective subsequent landowners upgrade and or construct driveway modifications in conformance with the AOT B-71 Standards, which includes a base layer for the shared driveways and individual driveways.

SECTION 5.A.2 – LOCATION

The Board finds that the Applicants 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; and
- The portion of the driveway serving only Lot 2 shall be at least 12 ft. in width. Unshared portions of the driveway shall conform with the Underhill Road Driveway and Trail Ordinance, as amended.

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 3.7.E.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 Applicants are not required to come before the Board if they wish to relocate the single-family-dwelling within the building envelope of Lot 2. The Board recognizes that this identified feature on the submitted engineering plans is 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 N), Titled Lands of Antoine M. & Pamela J. Catudal, Karen M. & Jason A. Guymon, Two Lot Subdivision Survey Plat, Prepared by Michael J. Gervais, Drawing Number PL-1, as a Mylar in the Underhill Land Records.
4. The Board requires the subdivision plans (Exhibits N thru O) 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 Applicants, to the best of

their ability, are encouraged to locate the electrical, communications, and media utilities 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 (April 16, 2020) 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 13, 2020.
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 executed in accordance with the drawing set submitted as part of the review process (see Exhibits N thru O) and amended accordingly to address the changes herein and those to be recorded.
9. Prior to the issuance of a building permit for Lot 2, the Applicants shall ensure that State administered Wastewater System & Potable Water Supply Permit has been submitted for recordation.
10. Prior to the issuance of a Certificate of Occupancy Permit for a dwelling unit on the proposed Lot 2, the Applicants 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 building envelope requires additional review by this Board in order to determine conformance with the issues discussed in this decision.
12. The Applicants 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. The Applicants shall submit a Road Maintenance Agreement for recordation prior to the issuance of a Certificate of Occupancy Permit for the anticipated single-family dwelling on the proposed Lot 2.
14. The Applicants shall ensure the deed pertaining to the proposed Lot 2 either incorporates by reference, or includes in the deed itself, the easement pertaining to the wastewater system being located on the proposed Lot 1.
15. New property boundary monumentation referenced on the survey plat shall be installed as a condition of approval.
16. Notwithstanding the conditions above, prior to being issued a building permit, the Applicants shall comply with applicable aspects of the *Underhill Unified Land Use and Development Regulations* in effect at the time of the application for a building permit.

Substantive Road, Driveway & Trail Ordinance Conditions

17. As part of this review process, the Board approves access permit application (Access Permit #: A-20-02) submitted in conjunction with this subdivision application. Construction of the driveways shall be in conformance with the driveway layouts presented in Exhibit O. In sum the approval of this permit addresses the following:
- a. The modifications to the shared driveway, specifically the turnaround area where the two individual driveways (one serving Lot 1 and the other serving Lot 2) intersect;
  - b. The existing driveway with any applicable modification that will serve Lot 1; and
  - c. The existing driveway with any applicable modification that will serve Lot 2.

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*.

18. In the event the Applicants or subsequent landowner(s) 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 Applicants 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.
19. The Board finds that the Applicants and subsequent respective landowners shall construct any modifications to the shared driveways and individual driveways (that serve Lots 1 & 2) in conformance with the AOT B-71 Standards, which includes specifications for the base layer of the driveway.
20. Since the Road Foreman and Underhill-Jericho Fire Department were unable to submit comments prior to the hearing, the Board finds that the Applicants shall coordinate with the Zoning Administrator, Road Foreman and Underhill-Jericho Fire Department to ensure a satisfactory driveway layout prior to the issuance of a Certificate of Occupancy Permit for any proposed dwelling unit on Lot 2.

Dated at Underhill, Vermont this 16<sup>th</sup> day of April, 2020.

*Charles Van Winkle*

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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 May 16, 2020.