Attachment A

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TOWN OF UNDERHILL
APPLICATION OF ISABEL BASLOW
FOR A 5-LOT SUBDIVISION
FINAL HEARING FINDINGS AND DECISION

In re: Isabel Baslow
13 Baslow Lane
Underhill, VT 05489

Docket No. DRB-09-02: Isabel Baslow

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Isabel Baslow's final hearing application for a 5-Lot subdivision of property located at 13 Baslow Lane in Underhill, VT.

1. On August 13, 2009, Michael Baslow, Power of Attorney, filed an application for subdivision on behalf of Isabel Baslow for the project. A copy of the application and plans are available at the Underhill Town Hall.

2. On September 28, 2009, a copy of the notice of a public site visit and hearing was mailed via Certified Mail to the applicant, Isabel Baslow, c/o Mike & Deb Baslow, 19 Baslow Ln., Underhill, VT 05489 and to the following owners of properties adjoining the property subject to the application:

   a. Bosley, P.O. Box 253, Underhill, VT 05489
   b. Raineault, 28 Gerts Knob, Underhill, VT 05489
   c. Coia, P.O. Box 212, Underhill, VT 05489
   d. Lamphere, 27 North Underhill Station Rd., Underhill, VT 05489
   e. Luce, 50 North Underhill Station Rd., Underhill, VT 05489
   f. Langsenkamp, 60 North Underhill Station Rd., Underhill, VT 05489
   g. Netelkos/Boquel, 295 Poker Hill Rd., Underhill, VT 05489
   h. Francis, 305 Poker Hill Rd., Underhill, VT 05489
   i. Varney, 329 Poker Hill Rd., Underhill, VT 05489
   j. Tatro, 1617 VT Rte. 15, Morrisville, VT 05661
   k. Sminkey/Nadeau, 769 VT Rte. 15, Underhill, VT 05489
   l. Woods, 772 VT Rte. 15, Underhill, VT 05489
   m. Dehart, 779 VT Rte. 15, Underhill, VT 05489
   n. Baslow, 780 VT Rte. 15, Underhill, VT 05489
   o. Russin, P.O. Box 417, Underhill, VT 05489
   p. Lunn, 13 Warner Creek Rd., Underhill, VT 05489
   q. Bugbee/Robenstein, P.O. Box 221, Underhill, VT 05489
   r. Trull, 17 Warner Creek Rd., Underhill, VT 05489
   s. Glenn, P.O. Box 336, Underhill, VT 05489
   t. Smith, 38 Gerts Knob, Underhill, VT 05489
   u. Tatro-Lavigne, 799 VT Rte. 15, Underhill, VT 05489

   Notice was also provided via email to Gunner McCain, McCain Consulting.

3. On October 1, 2009, notice of the final hearing was published in the Burlington Free Press.

4. By September 30, 2009, notice of the site visit and the preliminary hearing on the proposed Baslow subdivision were posted at the following places:

    a. The property to be developed, BS013;
    b. The Underhill Town Clerk's office;
    c. The Underhill Center Post Office;
    d. The Underhill Flats Post Office;
    e. The Deborah Rawson Memorial Library;
    f. The Town of Underhill website.

5. The final hearing was scheduled to begin immediately following the second sketch plan meeting on October 19, 2009.

6. Present at the final hearing were the following members of the Development Review Board:

    - Chuck Brooks
    - Penny Miller
    - Deb Shannon
    - Stan Hamlet
    - Scott Tobin, Chair
    - Charlie Van Winkle

    Kari Papelbon, Zoning Administrator, Stephen Walkerman, Selectboard Chair, and a guest also attended the meeting. Board Member Charlie Van Winkle did not cast a vote as he did not participate in the preliminary hearing. Board Member Deb Shannon's vote was not counted as she did not participate in the preliminary hearing.

7. At the outset of the hearing, Chairperson Scott Tobin explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Interested parties who spoke at the hearing were:

    - Gunner McCain, McCain Consulting, 93 South Main Street, Waterbury, VT 05676
    - Mike and Deb Baslow, 19 Baslow Lane, Underhill, VT
    - Mike Lunn, 18 Warner Creek, Underhill, VT (mailing address in 2 above)

8. During the course of the hearing the following exhibits were submitted to the Development Review Board:

    a. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board, Mike and Deb Baslow, and Gunner McCain of McCain Consulting;
    b. Isabel Baslow's Application for Subdivision: Final Hearing (8-9-09);
    c. A copy of the completed Subdivision Checklist: Final Hearing;
    d. A copy of plans prepared by Gunner McCain of McCain Consulting for Isabel Baslow (Sheet 1 of 5 revised 7-29-09; Sheet 2 of 5, Sheet 4 of 5, and Sheet 5 of 5 revised 4-21-09; Sheet 3 of 5 revised 11-10-05; Sheets SW-1 through SW-3 dated 6-1-09);
    e. A copy of the Final Plat prepared by Lynn Ribolini for Isabel Baslow (revised 10-12-06);
    f. A copy of the Access and Utilities Right-of-Way Survey prepared by Keith Van Iderstine of McCain Consulting for Isabel Baslow (dated 8-7-09);

g. A copy of the letter from Ernest Christianson regarding the boundary adjustment for Lots 2 and 5 (dated 6-3-09);
h. A copy of the Construction General Permit # 6154-9020 (dated 7-17-09);
i. A copy of the Stormwater Permit #6154-9015 (dated 8-10-09);
j. A copy of the letter from the Underhill-Jericho Fire Department (dated 7-1-09);
k. A copy of the Private Roadway Agreement;
l. A waiver request for the bonding requirement and Lot 1 wetland setback (dated 8-12-09);
m. A copy of the minutes from the May 11, 2009 hearing;
n. A copy of the Preliminary Decision (dated 6-1-09);
o. A copy of the hearing notice published in the Burlington Free Press (dated 10-1-09);
p. Draft Declaration of the Warner Creek Planned Community;
q. Proposed Conditions for Subdivision;
r. Sheet 1 of 5 revised 10-1-09.

These exhibits are available in the Isabel Baslow, BS013 Subdivision file at the Underhill Zoning Office.

II. FINDINGS

Background

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

Based on the application, testimony, exhibits, and other evidence, the Development Review Board makes the following findings on the final plat submission requirements as delineated on pages 9-11 of the Underhill Subdivision Regulations, "Final Plat for Subdivisions:"

A. Submission Requirements

Final Hearing Requirements:

1. Survey and Engineering Plan Elements: The Board finds that the engineering drawings and survey show the identifying title, parcel codes, name of the municipality, name and address of the record owner and sub divider, the seal of the registered land surveyor, the boundaries of the subdivision, scale, date, north point, and legend. The seals of the registered engineer on the engineering drawings and surveyor on the Access and Utilities Right-of-Way Survey are missing. These are not errors as the plans and survey are stamped after receiving final approval and the Applicants' consultant has indicated that the final plans and survey will be stamped and signed. The seals and signatures shall appear on the Mylars. The Board also finds that the acreage on the western side of VT Route 15 was not included in the overall acreage for Lot 5. A determination of such acreage or evidence of conveyance of the acreage shall be submitted to the Zoning Administrator prior to filing the final plat.

2. Road/Pedestrian Ways/Easements/Reservations: The Board finds that the application satisfies the requirement as the proposed road extension, the lots, and easements are shown on the plans. No areas are proposed for public use beyond the roadway extension.

3. Lot Lines/Bearings/Distances: The Board finds that the application satisfies the requirement as the lot lines, bearings, and distances are shown on the plans.

4. Road Details: The Board finds that no new roads are proposed and the details for the extension of Warner Creek are contained in the plans.

5. Public Space/Reserved Space: The Board finds that this requirement is not applicable as there are no dedicated open spaces in the subdivision.

6. Lot Numbering: The Board finds that the application satisfies the requirement as the lots are numerically numbered on the proposed plan.

7. Infrastructure: The Board finds that the application satisfies the requirement as septic systems, proposed utility locations, grading, and stormwater details are contained in the plans.

8. Wastewater System Design: The Board finds that the application satisfies the requirement as the location and results of all test pits and septic system areas are shown on the plans. Two State of Vermont Wastewater System and Potable Water Supply Permits were issued for the project on October 4, 2004 and July 25, 2006. A letter from Regional Engineer Ernest Christianson on June 3, 2009 states that these two permits are still valid.

9. Existing and Proposed Water Supplies: The Board finds that the application satisfies the requirement as the location and results of all test pits and septic system areas are shown on the plans. The State of Vermont has jurisdiction over isolation distances between potable water supplies and wastewater disposal systems. Two State of Vermont Wastewater System and Potable Water Supply Permits were issued for the project on October 4, 2004 and July 25, 2006. A letter from Regional Engineer Ernest Christianson on June 3, 2009 states that these two permits are still valid.

10. Monumentation: The Board finds that the application satisfies the requirement as monumentation locations and details are contained in the plans.

11. Installation of Infrastructure or Bonding: A waiver request from the requirement that an engineer provide a letter certifying that all required improvements have been satisfactorily completed or, in lieu thereof, supply a Selectboard-approved 2-year performance bond for the improvements at the time of filing the final plat has been submitted. See (B) below.

12. UJFD/CESU Letters: The Board finds that the application satisfies the requirement as letters from the Underhill-Jericho Fire Department and Chittenden East Supervisory Union have been submitted.

13. State Permits: The Board finds that the application satisfies the requirement as Construction General Permit # 6154-9020 dated 7-17-09, Stormwater Permit #6154-9015 dated 8-10-09, and two State of Vermont Wastewater System and Potable Water Supply Permits dated October 4, 2004 and July 25, 2006 have been issued. A letter from Regional Engineer Ernest Christianson on June 3, 2009 states that the two Wastewater System and Potable Water Supply Permits are still valid.

14. Curb Cut/Selectboard Approval of Driveways and Road: The Selectboard has final jurisdiction over approval of curb cuts, road/driveway designs, and improvements on existing Town roads.

The Board recommends to the Selectboard that they approve the proposed driveway/roadway extension designs, the underground utilities, and waivers in B (2) below.

B. Waivers: The Board makes recommendations on waiver requests of any Road Policy requirement, bonding requirement, underground utilities, and other requirements that are the jurisdiction of the Selectboard. The following requests have been submitted:

1. Engineer's Certification or Bond for Improvements with the Final Mylar: The Board recommends approval with the condition that prior to issuance of a building permit to any lot out of this subdivision, an engineer shall provide a letter to the Zoning Administrator certifying

   a. that the shared infrastructure has been installed to the lot per the phasing schedule in the approved plans;
   b. that the approved curb cut has been installed per the plan; and
   c. that the driveway has been "roughed in" per the approved plan.

   Driveway top treatment may be installed at the end of the construction period. All erosion prevention, sediment control, and stormwater measures shall be installed per the phasing schedule in the approved plans. Approved driveways shall be the only points of ingress and egress during the construction period so as to minimize:

   a. compaction of site soils; and
   b. the effect on the submitted stormwater plans.

   Upon completion of construction, the designer/engineer must certify by letter to the Zoning Administrator that the shared infrastructure and driveways have been constructed as designed.

2. 10% Maximum Grade: The plans depict a maximum grade of approximately 13%. The Board recommends approval.

3. Underground Utilities: The Board recommends approval.

4. Roadway Extension/Driveway Design: The Board recommends approval.

C. Variances: The Board finds that two variances were granted in the 2006 decision.

1. Lot 2: 50-foot variance of the wetland setback requirement for the north side of the building envelope.

2. Lot 3: 50-foot variance of the wetland setback requirement for the north and south sides of the building envelope.

These variances remain valid. A request for a 50-foot variance of the wetland setback requirement for the east-southeast side of the building envelope on Lot 1 was also submitted. Variances must meet the following requirements per 24 V.S.A. §4469:

1. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

The Board finds that the lot to be developed contains multiple Class III wetlands and steep embankments that limit potential building locations.

2. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

   The Board finds that due to the presence of Class III wetlands and the steep embankments behind the wetlands that the property could not be developed in strict conformity with the provisions of the bylaw. Approval of the variance request allows the Applicant to develop the property in a reasonable manner.

3. Unnecessary hardship has not been created by the appellant.

   The Board finds that the presence of natural features such as the Class III wetlands and steep embankments on the property have not been created by the Applicant.

4. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

   The Board finds that approval of the variance will not alter the essential character of the neighborhood as a buffer zone around the wetland will still exist and the proposed development is residential in a residential neighborhood, will not substantially or permanently impair the appropriate use or development of the adjacent property as a buffer zone around the wetland will still exist to protect its functions for stormwater control, will not reduce access to renewable energy resources, and a reduction in the wetland buffer will not be detrimental to the public welfare as the buffer will still exist. The Board also recognizes that the State requires a 50-foot buffer around Class II wetlands; therefore, a 50-foot variance of the Town's 100-foot buffer requirement around Class III wetlands seems reasonable.

5. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

   The Board finds that authorization of this variance will allow the Applicant to reasonably develop the land in a way that best conforms to the Town requirements. The Board also recognizes that the State requires a 50-foot buffer around Class II wetlands; therefore, a 50-foot variance of the Town's 100-foot buffer requirement around Class III wetlands seems reasonable.

   The 50-foot variance for the wetland setback requirement on the east-southeast side of the building envelope on Lot 1 is approved.

D. <u>Planning Standards: Evaluation Considerations</u>

The Board finds that the Planning Standards: Evaluation Considerations in the preliminary decision remain valid.

Based on the fulfillment of the above subdivision requirements subject to final conditions, granted conditional waivers and variances, findings, and evaluation considerations, the Board finds that the application satisfies the requirements for a subdivision.

III. DECISION AND ADDITIONAL FINAL HEARING REQUIREMENTS

Based upon the findings above, and subject to any of the conditions set forth below, the Development Review Board grants approval for the 5-lot subdivision as presented at the final hearing. The Development Review Board recommends approval of the roadway extension/driveway design, underground utilities, and the waiver requests with the suggested condition listed in §II (B) above.

A. Conditions for Subdivision:

1. Determination of Ownership of Bulk Land: Applicant shall provide a determination to the Zoning Administrator on the remaining land on the western side of VT Rte. 15 prior to filing the final plat. The determination shall either

    a. confirm that the land is owned by Isabel Baslow and will be a part of Lot 5; or
    b. provide evidence of conveyance of the land.

2. Recording Requirement: Per the Underhill Subdivision Regulations, final approval of the subdivision is granted upon filing of the final subdivision plat in the Underhill Land Records. No transfer or sale of property may occur prior to recording the final plat and all applicable permits in the Town of Underhill Land Records.

3. State and Federal Permits: All required permits shall be recorded in the Land Records.

4. Driveway and Erosion Control Measures: Prior to issuance of a building permit to any lot out of this subdivision, an engineer shall provide a letter to the Zoning Administrator certifying

    a. that the shared infrastructure has been installed to the lot per the phasing schedule in the approved plans;
    b. that the approved curb cut has been installed per the plan; and
    c. that the driveway has been "roughed in" per the approved plan.

    Driveway top treatment may be installed at the end of the construction period. All erosion prevention, sediment control, and stormwater measures shall be installed per the phasing schedule in the approved plans. Approved driveways shall be the only points of ingress and egress during the construction period so as to minimize:

    a. compaction of site soils; and
    b. the effect on the submitted stormwater plans.

    Upon completion of construction, the designer/engineer must certify by letter to the Zoning Administrator that the shared infrastructure and driveways have been constructed as designed.

5. Stake-out of Improvements: All building envelopes and septic areas shall be staked out by the surveyor/engineer prior to any construction, and off-set stakes shall be held in place until completion of construction.

6. Septic Certification Letter: A copy of the engineer's letter to the State certifying that the septic system for any lot out of this subdivision has been installed per the approved plans shall be filed with the Zoning Administrator.

7. Inspection Reports and Certifications: A copy of all inspection reports and certification reports sent to the State for the stormwater infrastructure shall be copied to the Zoning Administrator.

8. Homeowners Association Document: Reference to the Homeowners Association agreement shall appear in any deed in this subdivision. Failure to maintain a Homeowners Association and required agreements shall be considered a violation of the subdivision permit.

9. Road Maintenance Agreement: The Private Roadway Agreement shall include the correct revised dates. This agreement may appear in the Homeowners Association agreement.

10. Digital Submission of Plat and Plans: Prior to recording the final Mylars, the applicant shall submit a copy of the certified plats and Sheet 1 of 5 and Sheet 2 of 5 in digital format. The format of the digital information shall require approval of the Zoning Administrator.

11. 911 Codes: All lots shall have their 911 codes posted prior to issuance of any building permit (Lot 1: WC023, Lot 2: WC021, Lot 3: WC022, Lot 4: WC024).

12. Fees: All subdivision fees shall be paid in full to the Zoning Administrator prior to filing of the final plat.

13. Selectboard Approval: Applicant shall obtain approval of the roadway extension and driveways, underground utilities, and waiver requests for the bonding requirement and 10% grade requirement from the Selectboard prior to filing the final plat (see 10-29-09 minutes).

Dated at Underhill, Vermont this 9th day of NOVEMBER, 2009.

Scott Tobin

Scott Tobin, Chair, Development Review Board

UNDERHILL TOWN CLERK'S OFFICE
Received For Record 2·3 A.D., 20 10
At 11 O'clock — minutes A M. & Recorded
In Book 179 Page 131-138 of Underhill Records
Attest
Town Clerk

NOTICE: This decision may be appealed to the Vermont Environmental 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. No documents shall be recorded until December 9, 2009, when the 30-day appeal period has expired.

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