

**Town of Underhill
Development Review Board Minutes
February 6, 2017**

Board Members Present:

Matt Chapek
Mark Green
Karen McKnight
Penny Miller
Will Towle
Charles Van Winkle

Others Present:

Brad Holden, LS (60 Covey Road, Underhill)
Richard Hamlin, P.E. (P.O. Box 9, Essex Junction)
William West (21 Warner Creek, Underhill)
Katie Robinson (21 Warner Creek, Underhill)
Alex Karner (24 Warner Creek, Underhill)
Alexis Karner (24 Warner Creek, Underhill)
Diane Rose Abdinoor (22 Warner Creek, Underhill)
Albert Abdinoor (22 Warner Creek, Underhill)
Jason Ruwet, Esq. (6 Joshua Way, Essex)
Warren Palmer (116 Skunk Hollow Road, Jericho)
Thomas Cota (18 Warner Creek, Underhill)
George McCain, P.E. McCain Consulting (93 S Main St, Waterbury)
Courtney Palmer (116 Skunk Hollow Road, Jericho)
Wayne Russin (10 Otter Creek, Underhill)
Gary Franklin, Esq., Primmer (P.O. Box 1489, Burlington)
Adam Hammond (213 Browns River Road, Essex)
Marty Baslow (65 Colonel Page Road, Essex)

Staff/Municipal Representatives

Present:

Andrew Strniste, Planning Director and
Zoning Administrator

6:30 PM – 02/06/2017 Development Review Board Meeting

- DRB Members convened at Town Hall at 6:30 PM.
- Chair Van Winkle called the meeting of the Underhill Development Review Board to order at 6:40pm to review the appeal by Warren & Courtney Palmer and Marty Baslow of the zoning violation prepared by Andrew Strniste, the Underhill Zoning Administrator.
- Chair Van Winkle began the meeting by explaining the purpose of the hearing: to review the appeal and supporting documentation to determine whether the Zoning Administrator made an appropriate decision in issuing the violation, review the regulations and other municipal ordinances pertinent to the application, and to identify issues or concerns.
- Chair Van Winkle referenced the definition of interested party and swore in hearing participants. He asked if Board members had any conflicts of interest or ex parte communications. There were no conflicts of interest or ex parte communications reported.
- Chair Van Winkle entered into the record the information packet that was sent by the DRB Clerk prior to the hearing, Exhibits A through F.
- A. Strniste displayed a graphic timeline showing subdivision application through the zoning violation appeal before us relative to the Warner Creek subdivision, and he then expanded upon the various events in his oral presentation.
- In summary, the timeline post-construction: Prior to A. Strniste's being hired as Z.A. (Zoning Administrator), O'Leary Burke engineers sent 2 letters to the Underhill Z.A. indicating that they had inspected the Warner Creek subdivision road/infrastructure, and it complied with the layout

and requirements as shown on the approved Site Plan. After a site visit and relying on the engineer's statements, the Z.A. issued a Certificate of Occupancy to the first and subsequent homeowners. Following that and after A. Strniste was hired, complaints were received regarding discrepancies between the built infrastructure and the approved subdivision layout, especially relative to Lot 5's ingress/egress R.O.W. through Lots 3 & 4. Brad Holden was hired to survey the infrastructure of Lots 3 and 4, document as-built conditions, and compare those to the approved Site Plan. Discrepancies were confirmed, and A. Strniste drafted a zoning violation with the assistance of the Town Attorney which was sent to Saxon Oaks, the developer of the subdivision infrastructure and housing. The violation included possible corrective actions. Saxon Oaks contested the violation, and Marty Baslow, owner of Lot 5 and owner of the land pre-subdivision, contested the corrective actions proposed in the violation. Both have appealed the Zoning Administrator's violation to the DRB.

- A. Strniste discussed in more detail the 11 zoning violations as described in Exhibit C.
- Discussion ensued between Board member Towle and A. Strniste regarding the authority of the DRB vs the authority of the Selectboard to review the appeal relative to the road and driveways.
- B. Holden, licensed land surveyor, gave an overview of his as-built survey, comparing what was originally approved vs what was built.
- Gary Franklin, representing Saxon Oaks, presented Exhibit F which he had prepared. He referenced the Underhill Zoning Regulations Section 10.4, the Vermont Supreme Court decision re: Tekram Partners in which the signed Certificates of Occupancy had the effect of approving the infrastructure, and a VT Statute which states that a Certificate of Occupancy is final and cannot be overturned. Discussion ensued between Board member W. Towle and G. Franklin about the wording of the signed C.O.'s for Warner Creek.
- George McCain, representing McCain Consulting, Inc. which was retained by Saxon Oaks as the designers of the approved Site Plan, discussed the VT State NOAV (Notice of Alleged Violation) re: the stormwater system and the related punch list items currently being addressed.
- Discussion ensued between Board member Towle and G. Franklin about the conditions of when judgments can be reopened and the issue of who should assume liability.
- Marty Baslow, owner of undeveloped Lot 5, stated that the issues with stormwater previously discussed create a significantly negative impact on his parcel and access to his parcel, and he presented photos (from 2/25/16) to document water flow onto his parcel and subsequent pooling. Discussion ensued between Board member Towle and M. Baslow to confirm what M. Baslow was appealing about the zoning violation. M. Baslow discussed the other as-built discrepancies from the approved Site Plan and their impact on his lot.
- Jason Ruwet, representing M. Baslow, confirmed that M. Baslow is not disputing the violations but is disputing the proposed remedies within the violation, specifically any issued variances from the previously approved design that might allow the as-built infrastructure to remain. He referenced VT Statute stating that a variance should not be issued if it creates permanent impairment to the use of an adjacent property. He further stated that M. Baslow would like Warner Creek to go through the subdivision process again or the infrastructure to be corrected to the approved design.
- Discussion ensued between Board member Towle and J. Ruwet about who, if anyone, should assume liability.

- Rick Hamelin, P.E., retained by M. Baslow, addressed the impairments to M. Baslow's parcel or use of his parcel, given the existing construction of the infrastructure. He explained that the interrelationship of site elements is a delicate and complex balance; since any deviation can have a ripple effect, the best case scenario is for the site to be reconstructed to the originally approved design- rather than take a piecemeal look at individual issues. He commented further on the previous testimony re: the VT State's Notice of Alleged Violation.
- Discussion ensued between Board member Towle and R. Hamelin to confirm which as-built site elements were out of conformance with the O'Leary Burke letters (Exhibit C, Strniste's Zoning Violation, sub -exhibits F & G).
- Discussion ensued between various DRB members, R. Hamelin and B. Holden to identify the stormwater elements on the approved Site Plan.
- Alex Karner, owner of Lot 4, stated that site-work and grading had been done around his home by Saxon Oaks in spring of 2016, and it has adjusted how the water flows on his parcel.
- Discussion ensued between Board member Towle and J. Ruwet about whether the stormwater issues are related to the appeal. Further discussion ensued about the possibility of M. Baslow building the connecting road to his parcel per the approved design and bypassing DRB intervention.
- Discussion ensued between Board member Towle, J. Ruwet, M. Baslow, and A. Strniste about M. Baslow's Lot 5 access being denied by the Selectboard until the violation issues have been resolved.
- A. Karner asked that the DRB make a decision quickly because the sale of his house has been compromised by the unresolved violation and undue stress is being created by this issue. M. Baslow concurred.
- Discussion ensued between Board member Towle and A. Karner about the amount of infrastructure in place when the house on Lot 4 was purchased in fall of 2015.
- Albert Abdinoor, owner of Lot 3 since November 2015, expressed his feeling that a home buyer should not be held culpable for local government's oversight.
- Discussion ensued between Board chair Van Winkle and A. Abdinoor about the Warner Creek homeowner's association.
- A. Strniste discussed why individual stormwater issues were not specifically included in the zoning violation. He reiterated the deviations from the approved Site Plan and his concerns relative to those deviations.
- Discussion ensued between Board member Towle and A. Strniste to identify any infrastructure elements not yet constructed at the time of the C.O.'s being issued or elements not within plain view.
- Discussion ensued between Board member Towle, A. Strniste, B. Holden, and R. Hamelin about the unlikelihood of any Z.A. to correctly assess as-built compliance with engineering drawings. Further, the idea of hiring an engineering consultant to perform periodic site inspections was discussed and to whom that charge should fall.
- G. McCain reiterated that his office is working to resolve the NOAV and discussed the reasons for being out of compliance. Further, he commented that the location of certain site elements are customarily at the judgment of the licensed engineer, and the location of other elements are customarily "first come; first serve."

- M. Baslow reiterated that the water shedding onto his parcel will impact where his future development is located.
- Warren Palmer pointed out that the land slopes steeply up from the Lot 4 house site and feels stormwater runoff to Lot 5 is attributed to natural site conditions vs the constructed infrastructure.
- Discussion ensued between Board members Chapek and Towle and W. Palmer about the Warner Creek development road and infrastructure. W. Palmer stated that he constructed the development road to the lot line between Lots 3 & 4. The access to Lot 4 house was built as a driveway, not a road. Additionally, he discussed other changes that were made during construction.
- Discussion ensued between Board member McKnight and W. Palmer about the septic pipe for Lot 4.
- R. Hamelin reiterated that if the infrastructure was built according to the plan, M. Baslow would know what to expect.
- Discussion ensued between Board members and A. Strniste about the approved road design and construction. Further discussion about the road design and turnarounds ensued between the Board and G. Franklin and W. Palmer. W. Palmer stated that he had discussions with 2 Zoning Administrators about the requirements for terminating the road, and they directed him to end the road at the property line between Lots 3 & 4, making the access to the house on Lot 4 a driveway only (vs a road).
- M. Baslow asked that a letter from the UJ Fire Department to McCain Consulting be read out loud.
- Discussion ensued between Board chair Van Winkle and W. Palmer about an easement for power to Lot 5.
- At 9:43pm, Board member Chapek made a motion, seconded by M. Green to close the evidentiary portion of the hearing and move into deliberative session. The motion passed by all Board members present.
- At 9:55pm, the DRB moved into deliberative session.
- The meeting adjourned at 10:45pm.

These meeting minutes reflect a summary of the topics discussed at the Monday, February 6, 2017 meeting. An audio recording of the meeting is available to the public.

Submitted by:
Penny Miller, DRB Clerk

These minutes of the 02/06/2017 meeting of the DRB were accepted
this 20 day of FEBRUARY, 2017.



Charles Van Winkle, Chairperson