

**Town of Underhill
Development Review Board Minutes
April 16, 2018**

Board Members Present:

Matt Chapek
Mark Green
Daniel Lee
Penny Miller

Others Present:

Peter Duval (25 Pine Ridge Road)
Tom Moore (122 Stevensville Road)
March Maheux (38 Poker Road)
Scott Hinman (54 Poker Road)
Brian Wichert (26 Range Road)
Christine Wichert (26 Range Road)
Heidi McLaughlin (493 Vermont Route 15)
Chris Wells (493 Vermont Route 15)

Staff/Municipal Representatives Present:

Andrew Strniste, Planning Director

7:10 PM - 04/09/2018 DRB Public Meeting

- DRB Members convened at Town Hall at 6:50 PM after attending site visits at 38 Poker Hill Road and 28 Range Road.
- [7:10] Acting Chair Penny Miller called the meeting to order.
- [7:10] Acting Chair Miller asked for public comment. Tom Moore, resident of 122 Stevensville Road, was before the Board to inquire about a lot on Shepards Way – part of the Albertini Development approved in 2016. He advised that he wanted to build a net-zero house; however, the building envelope was overly restrictive for what he wanted to build. He explained to the Board that he wished to extend the building envelope to the south. Staff Member Strniste advised that Mr. Moore was in front of the Board to see if they were receptive to the idea, and that he did not see anything in the decision restricting to the building envelope to the already approved area. Board Member Miller stated that the request seemed reasonable. Staff Member Strniste inform Mr. Moore that an access permit for the lot is required, and then informed that the Board that he would need to review the decision in more depth to confirm consistency with the decision. Acting Chair asked the Board if there were any concerns amongst the Board. Board Member Chapek asked Mr. Moore if he knew if there was a reason on why the building envelope was restricted. Acting Chair Miller stated that she remembered the Board advising that the building envelope was more restrictive than necessary. Staff Member Strniste advised that all permanent parking areas need to be within the building envelope. He then informed Mr. Moore that he should contact him to discuss the application requirements. Board Member Green informed Mr. Moore that the request looked straight forward, but he would want to look at the property. A discussion ensued about the process. Staff Member Strniste advised that June 4, 2018 was the next available hearing date. Board Member Lee also advised that he would like to see the property.
- [7:28] Peter Duval, resident of 25 Pine Ridge Road, was before the Board to asked about the upcoming schedule, specifically requesting that the Board reschedule his upcoming continued hearing on May 7, 2018. Mr. Duval advised that he was under the impression that the hearing was continued to May 21, 2018, and at the last scheduled meeting, asked for the Board to move the hearing date to June 4, 2018. Mr. Duval advised that the consultants were working on his request, and that he wanted to talk to the neighbors, though they were not responding to him. Staff Member Strniste advised that the Board informed the public during the February 5, 2018 hearing that the evidentiary portion of the

hearing would be kept open to May 21, 2018 to allow those who were absent to submit rebutting written testimony. Acting Chair Miller informed Mr. Duval that this was a big project that takes a lot of planning, and that continuing the planning process with the public involved is not ideal. Mr. Duval advised that he thought his application was going to be approved with conditions, and that he would not need to provide a lot of design components. Due to the time, Staff Member Strniste advised that the Board should discuss the request after the hearing.

**7:36 PM – Maheux Combined Sketch Plan, Preliminary & Final Subdivision Review
38 Poker Hill Road (PH038), Underhill, Vermont**

Docket #: DRB-18-07

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- [7:36] Acting Chair Miller began the meeting by providing an overview of a combined sketch plan, preliminary & final subdivision review hearing. She explained that the hearing procedures for the evening's hearing and swore in those who wished to speak. Acting Chair Miller asked if there were any ex parte communications with the applicant or any conflicts of interest. No ex parte communications were made and no conflicts of interest were identified. Two members of the public were present for the evening's hearing. No additional exhibits were added into the records.
 - [7:40] Mr. Marc Maheux, the applicant, was before the Board and advised that the application under review was approved in 2016, and had been preliminarily approved, as well as being accepted at the sketch plan level, several times. Unfortunately he had missed the Mylar filing deadline; though, nothing has changed since that previous approval. Mr. Maheux informed the Board that the project is a subdivision of a 15 acre parcel of land into two parcels – one parcel being approximately one-acre and the other being approximately 14 acres. The one-acre parcel would be located entirely within the Underhill Flats Village Center District and the 14 acre parcel would be located within the Underhill Flats Village Center District and the Rural Residential District. Mr. Maheux advised that the portion of the 14 acre lot that will be developed is in the Flats district, and therefore, those zoning requirements shall apply, and that the case law provided by the Town's attorney cited by Staff Member Strniste did not apply. He then advised that the Planned Residential Development alternative was a waste of time.
 - [7:44] Mr. Maheux informed the Board that he wanted to do what he originally set out to do and that time is of the essence.
 - [7:45] Acting Chair Miller began a discussion about "Top of Bank" v. "Top of Slope," which is referred to in the zoning regulations under Section 3.18. She and Staff Member Strniste provided some clarification in regards to a potential issue about the proposed accessory garage and detached accessory dwelling being located in a setback requirement. They informed the Board and the applicant that the "Top of Bank" setback requirement applied since there was a floodplain, and that the "Top of Bank" was likely in the immediate vicinity of Roaring Brook. A discussion ensued on who makes the determination of where the "Top of Bank" or "Top of Slope" is located. Mr. Maheux advised that since the regulation is in the Town's zoning regulations, then the Zoning Administrator needs to make the decision. Acting Chair Miller and Staff Member Strniste advised that the 100-foot setback requirement applied, though because of the location of "Top of Bank," nothing would be located in the setback.
 - [7:56] A discussion ensued about the frontage issue that was discovered during Staff Member Strniste's review of the application. He advised that: 1) the property line could be reconfigured, thus needing a continuance, 2) the one-acre lot could be flip-flopped with the property line still needing to be reconfigured, thus requiring a continuance as well, or 3) reclassifying the project as a Planned Residential Development, thus requiring a re-warning

of the project. Staff Member Strniste read a citation provided by the Town's attorney which summarizes that subdivided lots shall meet the requirements of all zoning districts the lot is located in. Mr. Maheux then informed the Board that the application had been approved based on the Town Plan and met the requirements of the Flats District previously. He then advised that he had been through the process previously and was not trying to pull anything.

- [8:04] Mr. Scott Hinman, resident and abutting property owner of 54 Poker Hill Road, advised that he could not care less about the road frontage issue. He then informed the Board about the floodplain area around Roaring Brook, and that a large amount of that area had been designated as wetlands when the State of Vermont visited his property, and that those wetlands could potentially extend onto Mr. Maheux's land as well. Mr. Hinman also expressed his concern about the possibility of another, new neighbor complaining about him hunting on his own land. Board Member Green advised that there was not a whole lot the Board could do, as they do not regulate what people do on their land.
- [8:10] Acting Chair Miller informed the Board that she did not know what to do regarding the frontage issue. She asked Mr. Maheux if the Board required him to have the frontage suggested by Staff Member Strniste, would he prefer to adjust the property lines or reclassify the project as Planned Residential Development. Mr. Maheux opined that a PRD would be more expensive. Staff Member Strniste explored the potential costs of reclassifying and warning the application as a PRD v. moving the property line, thus requiring additional engineering. Resident Hinman informed the Board that they should use common sense. Mr. Peter Duval directed the Board's attention to Section 2.2.E.2; however, the Board had to end the hearing before Mr. Duval could fully explain the relevance of the Regulation.
- [8:18] The Board and applicant agreed to continue the hearing to after the Wells/McLaughlin Conditional Use Review hearing.

**8:19 PM – Wells/McLaughlin Conditional Use Review
28 Range Road (RA028), Underhill, Vermont**

Docket #: DRB-18-08

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- [8:19] Acting Chair Miller began the meeting by providing an overview of a conditional use review hearing. She explained that the hearing procedures for the evening's hearing and swore in those who wished to speak. Acting Chair Miller asked if there were any ex parte communications with the applicant or any conflicts interest. No ex parte communications were made and no conflicts of interest were identified. Four members of the public were present for the evening's hearing. No additional exhibits were added into the records.
 - [8:23] Mr. Chris Wells, a co-applicant, informed the Board that they were looking to utilize the same footprint of the previous single-family dwelling; however, extend the foundation to where the porch use to be, and make what use to be the porch area living space. He also advised that the bulkhead would be on the driveway side. Board Member Miller asked a clarification question in regards to the setback boundaries and requirements. Mr. Wells advised that they wanted to build a one story single-family dwelling.
 - [8:26] Acting Chair Miller advised that the increase in volume is the reason the applicants were required to submit a conditional use review application; however, they appeared to want to continue a low profile. Board Member Chapek asked if the existing septic system was working and approved. That applicants confirmed that it was. Staff Member Strniste advised that formal correspondence from the State should be obtained form the State, which he speculated would not be much of an issue. Staff Member Strniste also advised that he would need certification that everything was approved and working properly for the

Certificate of Occupancy permit.

- [8:31] Staff Member Strniste provided an overview of his comments in the Staff Report. He informed the Board that they had the ability to provide conditions pertaining to lighting. The applicants advised that power is currently overhead; however, they are proposing to move them underground. Staff Member Strniste informed the Board about element one of the waiver requirements, and advised that they had to find that building elsewhere on the lot would be unreasonable. The Board clarified that the waiver would apply to the south and west portions of the lot.
- [8:40] Acting Chair Miller asked if the Board had enough information to make a decision about the application. The Board answered yes. Board Member Chapek made a motion to close the evidentiary portion of the hearing, which was seconded by Board Member Green. The motion was pass unanimously. Board Member Green made a motion to approve the motion in open session, but craft the decision in closed deliberative session. The motion was seconded by Board Member Chapek and passed unanimously. Board Member Chapek made a motion to approve the application, which was seconded by Board Member Lee. The motion was passed unanimously. The Board and Staff Member Strniste provided an overview of the process that follows the evening's hearing.

**7:36 PM – Maheux Combined Continued Sketch Plan, Preliminary & Final Subdivision Review
38 Poker Hill Road (PH038), Underhill, Vermont Docket #: DRB-18-07**

- [8:45] The Board continued with the Maheux combined Sketch Plan, Preliminary & Final Subdivision Review application. Mr. Maheux advised that Staff Member Strniste was wrong in the way that he was interpreting the Town's zoning regulations, and directed the Board's attention to Section 2.2.E.2, which was provided to him by Mr. Duval. He subsequently read the regulation to the Board and informed the Board that this regulation means that his proposed subdivision is conforming to the Regulations. Staff Member Strniste made the counterpoint that Section 2.2.E.2 cannot be read without taking into consideration the preceding text under Section 2.2.E, which specifically uses the term "Development." Subsequently, Staff Member Strniste advised that "Development" refers the user to "Land Development," which is defined as referring to buildings and structures and not subdivisions. In addition, he advised that State Law would likely supersede Town Regulations should the Board interpret the regulations as Mr. Maheux proposed. Mr. Duval advised that Section 2.2.E.2 was part of the Town's Regulations back to 2004.
- [8:52] Mr. Maheux then stated to the Board that regardless, judge made law isn't actual law, and suggested that State law does not supersede Town law anyway. Board Member Miller expressed her trouble with the issue since their previous interpretation of the Regulations would have permitted the subject subdivision. Staff Member Strniste provided his opinion about the Town's Regulations and made the distinguishing point about subdivisions v. developments.
- [8:55] Board Member Green expressed concern about setting a long lasting policy, and that the Board needs to be consistent going forward. Acting Chair Miller advised that new policy would not be set since the application was approved previously. Board Member Green then referenced the legal interpretation mentioned earlier by Staff Member Strniste. Acting Chair Miller then advised that there was an error and discrepancy in the zoning regulations, and therefore, the Board should consider approving it since the application was already approved at various times.
- [8:57] Mr. Maheux informed the Board that Staff Member Strniste's interpretation of the zoning regulations was wrong and that he was not an attorney. He then stated that the

zoning regulations were drafted by Chittenden County Regional Planning Commission (CCRPC) where there are attorneys on staff reviewing the regulations beforehand. He then informed the Board that Staff Member Strniste does not understand what he is saying and what he is told. Acting Chair Miller asked Staff Member Strniste what the Board's options were. Staff Member Strniste advised that they could continue with the application as a subdivision or re-warned as a Planned Residential Development. Mr. Maheux then informed the Board that there would be legal consequences should the Board not approve the application. Staff Member Strniste subsequently stated that in his opinion the Board could: 1) continue the hearing to obtain more information, 2) continue to hearing and have Mr. Maheux update the property lines to meet the frontage requirement, 3) approve the subdivision as is, or 4) re-warn the subdivision as a Planned Residential Development. Mr. Maheux re-informed the Board that Article II allows the Board to approve the subdivision as is. Board Member Lee informed the Board that he was willing to enter deliberative session. Staff Member Strniste advised that the decision would have to be unanimous since there were only four members in attendance.

- [9:07] Board Member Lee made a motion to close the evidentiary portion of the hearing. Board Member Chapek seconded the motion, and the motion passed unanimously. Board Member Lee made a motion to enter into and craft the decision in closed deliberative session, which was seconded by Board Member Chapek. The motion was passed unanimously.
- [9:10] Mr. Maheux asked why Board Member Lee felt the need to deliberate in closed session since he thought the public has a right to see the Board deliberate. Board Member Lee advised that he was new to the process, and Board Green advised that entering into closed deliberative session allows them to discuss the application without any undue influence, as well as craft the decision over email.

10:25 PM – Other Business

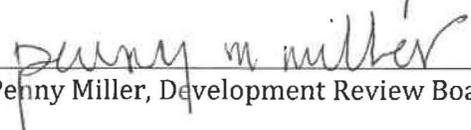
- [9:12] Mr. Duval advised that the Board should separate the code issues from the application. He also advised that a similar issue came up during the Jacobs subdivision, and the zoning district is what prevails.

Board Entered into Deliberative Session

- [10:25] Acting Chair Miller made a motion to adjourn. The motion was seconded by Board Member Chapek and passed unanimously.
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Submitted by:
Andrew Strniste, Planning Director & Zoning Administrator

These minutes of the 04/16/2018 meeting of the DRB were accepted
this 16 day of July, 2018.



Penny Miller, Development Review Board Acting Chair