

TOWN OF UNDERHILL
APPLICATION OF MARC AND JANE MAHEUX
FOR CONDITIONAL USE APPROVAL
FOR AN EARTH DISTURBANCE PROJECT
FINDINGS AND DECISION

In re: Marc and Jane Maheux
38 Poker Hill Rd.
(P.O. Box 236)
Underhill, VT 05489

Docket No. DRB-12-04: Maheux

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding involves review of Marc and Jane Maheux's application for a conditional use approval for an earth disturbance project on property they own at 38 Poker Hill Rd. in Underhill, VT.

- A. On May 9, 2012, Marc Maheux filed a conditional use/site plan review application for an earth disturbance project on property he owns at 38 Poker Hill Rd., Underhill, VT. Copies of the applications and materials are available at the Underhill Town Hall.
- B. On May 15, 2012, copies of the notice of a site visit and public hearing were mailed via Certified Mail to the Applicants, Marc and Jane Maheux, P.O. Box 236, Underhill, VT 05489, and to the following abutting neighbors:
 - 1. Forsberg Life Estate, Forsberg et al, P.O. Box 146, Underhill, VT 05489
 - 2. McKay, 11 Barrett Ln., Underhill, VT 05489
 - 3. Verity, 13 Fox Run Rd., Underhill, VT 05489
 - 4. St. Amour, 54 Poker Hill Rd., Underhill, VT 05489
 - 5. Novembrino, P.O. Box 91, Underhill, VT 05489
 - 6. Provost, et al, 39 Poker Hill Rd., Underhill, VT 05489
 - 7. Jenot, 1 Barrett Ln., Underhill, VT 05489
 - 8. Massingham, 46 Poker Hill Rd., Underhill, VT 05489
 - 9. Garrapy, 32 Poker Hill Rd., Underhill, VT 05489
 - 10. Brooks, 33 Poker Hill Rd., Underhill, VT 05489
 - 11. Breton, 13 Barrett Ln., Underhill, VT 05489
 - 12. Mahany, 35 Sand Hill Rd., Underhill, VT 05489
- C. On May 15, 2012 notice of the site visit and public hearing on the proposed Maheux conditional use application were posted at the following places:

1. The property to be developed, 38 Poker Hill Rd. (5-14-12);
 2. The Underhill Town Clerk's office;
 3. The Underhill Center Post Office;
 4. The Underhill Flats Post Office;
 5. Jacobs IGA;
 6. The Underhill Country Store;
 7. Wells Corner Market;
 8. The Town of Underhill website.
- D. On May 16, 2012, notice of a site visit and public hearing on the proposed conditional use application was published in *Seven Days*.
- E. The site visit began at 6:30 PM on June 4, 2012.
- F. Present at the site visit were the following members of the Development Review Board:
1. Charles Van Winkle, Chair
 2. Matt Chapek
 3. Chuck Brooks
 4. Will Towle
- Kari Papelbon, Zoning & Planning Administrator; Marc Maheux, applicant; Bruce Garrapy and James Massingham, neighbors also attended the site visit.
- G. The hearing began at 7:11 PM on June 4, 2012.
- H. Present at the hearing were the members of the Development Review Board in (F) above. Kari Papelbon, Zoning & Planning Administrator; Marc Maheux, applicant; Bruce Garrapy and Alton Verity, neighbors; Gunner McCain, consultant for the next hearing; Brent Goplen, applicant for the next hearing; Kathryn Barickman, Anne Jobin-Picard, and Jeremiah Mahany, neighbors for the next hearing, also attended the hearing.
- I. At the outset of the hearing, Chairperson 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. Marc Maheux, P.O. Box 236, Underhill, VT 05489.
- J. During the course of the hearing the following exhibits were submitted to the Development Review Board:

1. A staff report sent by Zoning and Planning Administrator Kari Papelbon to the Development Review Board, Marc and Jane Maheux, the Underhill Selectboard, the Underhill Conservation Commission Chair, and the Underhill-Jericho Fire Department;
2. Marc and Jane Maheux's Application for Subdivision: Sketch Plan (dated 5-9-12);
3. Marc and Jane Maheux's Conditional Use/Site Plan Review Hearing Request (dated 5-9-12);
4. A copy of the plans prepared by Marc Maheux (dated 4-20-12 and 4-23-12);
5. A copy of the Conditional Use Review Standards Findings Checklist;
6. A copy of the Site Plan Review Standards Findings Checklist;
7. A copy of the tax map for PH038;
8. A copy of the hearing notice published in *Seven Days* on 5-16-12.

These exhibits are available in the Maheux, PH038, Conditional Use and Subdivision file at the Underhill Zoning Office.

II. FINDINGS

Factual Findings

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:

- A. The Applicants, Marc and Jane Maheux, seek conditional use approval for an earth disturbance project on property they own.
- B. The subject property, 38 Poker Hill Rd., Underhill, VT is located in the Underhill Flats Village Center and Rural Residential zoning districts per Article II, Tables 2.2 and 2.3 respectively of the 2012 Unified Land Use and Development Regulations.
- C. Approval is requested for the project pursuant to review under the following sections of the 2012 Unified Land Use and Development Regulations:
 1. Article II, Table 2.2: Underhill Flats Village Center District
 2. Article II, Table 2.3: Rural Residential District
 3. Article II, Table 2.7: Flood Hazard Overlay District
 4. Section 3.7: Lot, Yard & Setback Requirements
 5. Section 3.14: Performance Standards
 6. Section 3.18: Steep Slopes
 7. Section 3.19: Surface Waters & Wetlands

8. Section 4.9: Extraction & Quarrying
9. Section 5.3: Site Plan Review
10. Section 5.4: Conditional Use Review
11. Section 5.5: Waivers & Variances
12. Section 10.2: Exemptions

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Tables 2.2 and 2.3

The Board finds that the proposed project will meet all requirements of the district with conditional use approval.

Article II, Table 2.7

The Board finds that the proposed earth disturbance project will be conducted outside of the Special Flood Hazard Area (Zone A).

§3.7: Lot, Yard & Setback Requirements

The Board makes the following findings:

- A. Only one principal use/structure exists on the lot and no requests for additional principal uses or structures have been received [Section 3.7(A)].
- B. Sections 3.7(B) through (E) are not applicable to the request and no waivers have been requested for the proposed conditional use.

§3.14: Performance Standards

The Board makes the following findings:

- A. The proposed earth disturbance project, with conditions, will not create dangerous, injurious, noxious, or otherwise objectionable conditions that adversely affect or interfere with the reasonable use of adjoining or nearby properties as the earth disturbance will not change existing drainage patterns and, with the exception of a portion that will be moved on the property at 32 Poker Hill Road in cooperation with the adjoining landowner, the earth disturbance will be contained on the applicants' property [Section 3.14(A)].
- B. The proposed earth disturbance project, though anticipated to be completed over several years, will not result in a significant increase in noise levels in the vicinity so as to be incompatible with the surrounding area. The work will be

conducted by the property owners and/or their contractors with no off-site removal of material. In order to minimize noise levels, it will be a condition of approval for work to be completed in 3 years [Section 3.14(B)(1)].

- C. Any vibration due to the earth disturbance project will be from the use of equipment to move the gravel material onsite. No additional vibration is anticipated. In order to minimize vibration, it will be a condition of approval for work to be completed in 3 years [Section 3.14(B)(2)].
- D. Dust will be controlled utilizing stabilization measures for exposed soil as presented during the hearing, including seeding disturbed areas in accordance with the VT DEC Water Quality Division, Stormwater Section's *The Low Risk Site Handbook for Erosion Prevention and Sediment Control*. Additionally, in order to minimize dust, erosion, and sedimentation of the Roaring Brook, it will be a condition of approval for the work to be completed in 3 years [Section 3.14(B)(3)].
- E. Section 3.14(B)(4)-(10) are not applicable to the proposed conditional use.

§3.18: Steep Slopes

- A. To minimize the amount of disturbance to the existing steep slopes on the property, no work is permitted below the 788 contour line as depicted on the submitted plans.

§3.19: Surface Waters & Wetlands

The Board finds that the proposed earth disturbance project will be conducted outside of buffer areas.

§4.9: Extraction & Quarrying

The Board makes the following findings:

- A. The proposal includes the extraction in excess of 400 cubic yards to be used onsite. The DRB recognizes that the volume of disturbed earth could exceed 9,200 cubic yards based on the information provided and lacking a finished grad plan. Therefore, the project does not qualify for an exemption under Section 4.9(B).
- B. The proposal does not include extraction and quarrying for commercial purposes, and the extraction of material will be contained onsite to create a more gradually-sloping yard area in the vicinity of the existing barn. Re-grading of the land, as per applicant testimony during the site visit and hearing, is

proposed to be at a uniform grade with the property at 32 Poker Hill Road. Therefore, the Board finds that Sections 4.9(C) through (H) are not applicable to the proposed conditional use project.

§5.3: Site Plan Review

The Board makes the following findings:

- A. The Applicant has submitted responses to the standards of this section.
- B. The proposed plans will not have undue adverse impacts to significant natural, historic, and scenic resources as the project will occur on a portion of the applicants' property, and erosion prevention measures to adverse impacts from project are incorporated; existing drainage patterns will be maintained through the swale; the parcel is not above 1500 feet in elevation; only one area of steep slope will be affected and the remaining steep slopes will be unaffected; the project will not encroach into the riparian setback and buffer; no disturbance is proposed within the Special Flood Hazard Area on the property; no delineated source protection areas exist on the property; there are no mapped significant wildlife habitat areas or travel corridors on the property; and existing scenic resources will be unaffected [Section 5.3(B)(1)].
- C. The proposal is compatible with the provisions of the Underhill Flats Village Center and Rural Residential zoning districts with Conditional Use approval. Slope stabilization measures proposed in the project will mitigate soil erosion [Section 5.3(B)(2)].
- D. Section 5.3(B)(3),(4), and (5) are not applicable as proposal does not include plans for new access points or infrastructure, the existing parking area will not change, and no service areas are proposed.
- E. The proposed project is intended to create a more uniform grade with the adjoining property (32 Poker Hill Rd.) for lawn maintenance. Currently, the area in the proposed project is a partially-grassed gravel bank with a barn structure. Disturbed areas will be grassed. No other screening is proposed [Section 5.3(B)(6)].
- F. Section 5.3(B)(7) is not applicable to this application as no outdoor lighting is proposed for the project.
- G. The proposal includes plans to remove a steep mound on the property to create a more even grade for safety and maintenance. The existing swale will be maintained for drainage purposes. Erosion control measures will be

implemented in accordance with Section 5.3(B)(8) [See Section IV below for conditions].

§5.4: Conditional Use Review

The Board makes the following findings:

- A. The Applicant has submitted responses to the standards of this section.
- B. No undue adverse impacts are perceived on the capacity of existing or planned community services and facilities, the character of the area, current bylaws (with Conditional Use approval), or the utilization of renewable energy resources as the proposal is for an onsite earth disturbance project affecting only a portion of the landowner's property and a small section of the adjoining neighbor's property (in cooperation with the neighbor). No material is proposed to be moved offsite; therefore, traffic in the vicinity will be unaffected [Section 5.4(B)].
- C. Site Plan Review Standards have been addressed above.

§5.5: Waivers and Variances

The Board waives all requirements and standards of Section 5.3 determined to be not applicable [Section 5.5(A)].

§10.2: Exemptions

The Board finds that the proposed project does not qualify as an exempt use as the elevation of land will be changed by more than two feet over an area greater than 10,000 square feet [Section 10.2(A)(4)].

IV. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board unanimously grants approval for the conditional use application for the earth disturbance project as described at the hearing and in the submitted application documents, with the following conditions:

- A. The approval is for the movement of material onsite only. No material is approved for removal offsite.
- B. The existing drainage pattern as it affects Poker Hill Road and the property shall be preserved and maintained via a west-to-east swale as identified from the site visit and application submissions.

- C. All disturbed areas shall be seeded and mulched in accordance with the Low-Risk Site Handbook.
- D. No water-borne sediment or erosion gullies shall occur below 788' contour line and beyond the approved area of disturbance as depicted on the submitted plans.
- E. All earth disturbance shall occur within the delineated zone as depicted on the submitted plans. No work shall occur below the 788' contour line.
- F. All earth disturbance work shall be completed within 3 years from the effective date of approval (end of appeal period).

Dated at Underhill, Vermont this 21 day of June, 2012.

Charles Van Winkle

Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Division of Superior Court by an interested person who participated in the proceeding 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 7/21/2012.